

a destination-over. (1) As regards the legacy it was left to Archibald Craig "and the heirs of his body," which was not the more usual expression "to heirs and assignees." (2) As regards the residue, there was the expression "including in the division the lawful children of any of them who may have predeceased as representing their parent or parents *per stirpes*." The provision against alienation in the deed was sufficient also to overcome the presumption in favour of immediate vesting.

Counsel for the pursuer was not called upon.

At advising—

LORD JUSTICE-CLERK—I am of opinion that the Lord Ordinary is right here in the view he takes of the vesting so far as the particular legacy is concerned. As I understand, the only ground on which it is contended that the legacy did not vest *a morte testatoris* is that the term of payment was postponed, and the same contention is advanced against the vesting of the residue. I am of opinion that the postponement of the term of payment here arises from the anxiety of the testator to make certain that there would be funds enough to meet the legacies which he left, and therefore it did not interfere with the right of the legatee. In that case the presumption of law is that vesting takes place *a morte testatoris* and there is nothing to displace it. As regards the legacy, part of it was paid and, that before the expiration of the term. As regards the residue that was not the case, but even if it had been I think I should have held the postponement as one for the sake of convenience, and as not interfering with the general rule of law that vesting takes place *a morte testatoris*. I have nothing to add to the views of the law which have been most distinctly expressed by the Lord Ordinary.

The Court adhered, and remitted the cause to the Lord Ordinary for further procedure.

Counsel for Pursuer—D.-F. Mackintosh, Q.C.—Graham Murray. Agents—Macbrair & Keith, S.S.C.

Counsel for Defenders—R. Johnstone—Wallace—Dickson. Agents—Bruce & Kerr, W.S.

Friday, June 4.

FIRST DIVISION.

MACFARLANE, PETITIONER.

*Election Law—Parliamentary Election—Corrupt and Illegal Practices Prevention Act 1883 (46 and 47 Vict. cap. 51)—Expenses—Limitation—Application for Leave to Pay Additional Expenses.*

In an application by a person who had been a candidate at a Parliamentary election for leave to pay certain accounts rendered after the time required by the Corrupt and Illegal Practices at Elections Act 1883, the Court, in respect that the amount of the account was small and that no prolonged inquiry was necessary, remitted the accounts to the Auditor.

Observed that the remit was so made only

in the special circumstances, and that the case could not be regarded as a precedent.

This was an application under sub-sections 9 and 10 of section 29 of the Corrupt and Illegal Practices Prevention Act 1883 (46 and 47 Vict. cap. 51), by a member of Parliament for leave to pay additional accounts incurred in connection with his election.

The petitioner stated that he was a candidate for the county of Argyll at the election which took place in December 1885, and that he had made the necessary returns of his election expenses on 6th January 1886, but that since that date he had received notice of further claims for election and personal expenses, amounting the former to £23, 4s. 6d., and the latter to £122, 16s. 7d.

He referred to section 29 of the above-mentioned statute, which by sub-section 2 provided that all claims against candidates which are not sent in within the time limited by the Act are to be barred.

The time within which claims are to be sent in is by sub-section 3 limited to fourteen days after the declaration of the poll.

Sub-section 4 provides that all election expenses are to be paid within the time limited by the Act, and any payment made in contravention of this provision is, with certain exceptions, declared an illegal practice, while twenty-eight days after the election is by sub-section 5 fixed as the time within which all expenses incurred must be paid.

Sub-sections 9 and 10, upon which this application was founded, provided as follows:—(Sub-section 9) "On cause being shown to the satisfaction of the . . . Court, such Court, on application by . . . the candidate . . . may by order give leave for payment by a candidate . . . of a claim for any such expenses as aforesaid, although sent in after the time in this section mentioned for sending in claims." . . . (Sub-section 10) "Any sum specified in the order of leave may be paid by the candidate, . . . and when paid in pursuance of such leave shall be deemed to be paid within the time limited by this Act."

The petitioner prayed for leave to pay the above-mentioned accounts.

The Court, in respect of the accounts not being for large sums, remitted the accounts to the Auditor, observing that the procedure followed in this application was not to be regarded as a precedent, and that had the amount been larger and any special inquiry been necessary another mode of inquiry would have been ordered.

Counsel for Petitioner—Rankine. Agents—Myrne & Campbell, W.S.

Friday, June 4.

FIRST DIVISION.

[Lord Lee, Ordinary.

STEVENSON v. LEE.

*Process—Expenses—Caution—Trust-Deed.*

Circumstance in which *hela* that the defender of an action who had granted a trust-deed for behoof of his creditor was bound to find caution for expenses.