duty, and it was also stated, and not contradicted, that such claims have been made and regularly sustained in England. The whole question turns upon the construction of the 21st section of the Succession Duty Act of 1853, which is in the following terms, so far as bearing upon the point here raised:—'The interest of every successor, except as herein provided, in real property, shall be considered to be of the value of an annuity equal to the annual value of such property.' The fact that by the Act 49 Vict. c. 15, unlet shootings must now be valued and enter the valuation roll has no bearing upon the question as to the liability for succession duty under the Act of 1853. The Valuation Act and the various amendments upon it were all subsequent to the Succession Duty Act, and consequently the only matter here to be determined is the construction of the 21st section of the latter Act. The defender admits that a proprietor cannot escape liability for duty merely by allowing his lands to go to waste. But, on the other hand, it is said that if he makes a reasonable use of his property, and if by such reasonable use no annual income is returned, then there is no liability. At the time when the succession here opened none of the shootings of the Duke of Buccleuch were let; they were all in his own hands, but how he disposed of the game there is no averment on the one side or the other. It must be assumed therefore in the Duke's favour that all the game obtained on the land was disposed of without pecuniary return therefor. And, taking the case upon that footing, what does it come to? He is the owner of property which admittedly has annual value, and such being the case, it comes within the very words of the Act of Parliament. The only case relied upon by the defender as bearing upon the question was that of the *Attorney-General* v. *Sefton*, 2 Hurlst & Colt, 362, 11 (H. of L. Cas.) 257, but the answer is that in that case it was admitted that there was no annual value derivable from the property, which is not the case here."

Argued for the reclaimer — The question turned upon the meaning of the words "equal to the annual value of such property" in sec. 21 of the Succession Duty Act of 1853. If an ordinary and legitimate use of the lands was made, and there was no annual income, then no duty was exigible —*Lord Advocate* v. *Marquis of Ailsa*, October 28, 1881, 9 R. 40.

Argued for respondent—The shootings were part of the succession; they enhanced the value of the lands, and the valuation roll supplied a fair estimate of the rent which could have been obtained. The value of unlet shootings was taken into account in estimating provisions to widows and children under the Aberdeen Act—*Leith* v. *Leith*, June 10, 1862, 24 D. 1059; *Macpherson* v. *Macpherson*, May 24, 1839, 1 D. 794, and 5 Bell's App. 280; *Menzies* v. *Menzies*, March 10, 1852, 14 D. 651.

At advising—

LORD PRESIDENT—I cannot find any grounds for doubting that the Lord Ordinary has come to a right conclusion upon this case. The 21st section of the Act provides that "the interest of every successor, except as herein provided, in real property, shall be considered to be of the value of an annuity equal to the annual value of such property." Now, the words which we have to construe are "annual value of such property." All the rest of the clause is quite plain, and the question which we have to decide is, whether the value of unlet shootings is to be taken into account and dealt with as part of such property.

If the question were entirely open it might afford material for a good deal of argument, but it appears to me that there is another class of cases which are conclusive of the present question. The cases of *Menzies* and *Leith* decide that in estimating the annual value of an entailed estate in order to fix the amount of locality lands, and of children's provisions under the Aberdeen Act, unlet shootings must be taken into account. In the case of *Leith* the words were "the free yearly value as aforesaid of the whole of the said lands," and here the words are "shall be considered to be of the value of an annuity equal to the annual value of such property." I cannot see any difference, and therefore hold these decisions to be not only applicable, but binding upon us.

LORDS MURE and ADAM concurred.

LORD SHAND was absent from illness.

The Court adhered.

Counsel for the Pursuer—Sol.-Gen. Robertson—Young. Agent—D. Crole, Solicitor of Inland Revenue.

Counsel for the Defender—R. Johnstone—Low. Agents—Gibson & Strathearn, W.S.

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*Friday, January 27.*

## FIRST DIVISION.

### STOBIE'S TRUSTEES *v.* RONALDSON AND OTHERS.

*Succession—Accretion—Residue.*

A testatrix directed her trustees to realise the residue of her estate, and to pay over the free annual income thereof to her two sisters, equally between them, during their joint lives. In the event of either of them predeceasing her, or upon the death of either of them after her decease, the trustees were to pay over one-half of the income to the children of such sister equally, share and share alike, if more than one, during the lifetime of the survivor of the two sisters, and the other half to such survivor. The trustees were also directed, after the death of the longest liver of the sisters, or after the death of the testatrix, if they both predeceased her, to pay over and divide the whole free residue to and among the children of the sisters.

The testatrix was survived by both sisters, one of whom subsequently died leaving an only child. On the death of this child the surviving sister claimed the liferent of her one-half of the residue *jure accres-*

*cendi*, or alternatively, she maintained that it fell into intestacy, and that she was entitled thereto as heir *in mobilibus* of the testatrix. *Held* (following *Paxton's Trustees* v. *Cowie*, 13 R. 1191) that there was no accretion, and that the income fell to be accumulated and divided along with the rest of the residue in terms of the settlement.

Miss Helen Stobie of Easter Balgedie, Kinross, died on 16th September 1883 leaving a trust-disposition and settlement and codicil, dated respectively 19th December 1877, and 19th March 1881. By the *fourth* purpose of the settlement the testatrix directed her trustees as follows—"That my said trustees shall, as soon as they shall judge expedient after my decease, and in such way and manner as they shall think proper, realise and convert into cash the whole residue and remainder of my said means and estates, including my property of Easter Balgedie, and shall hold the whole of the said residue and remainder, and the price and proceeds thereof, for behoof of the said Margaret Stobie or Ronaldson and Jane Stobie or Clark, in liferent, and shall annually, or at such other times as my trustees shall judge expedient, pay over to them, equally between them, the free annual produce or income thereof during their joint lives, and in the event of either of my said sisters predeceasing me, or upon the death of either of them after my decease, my trustees shall pay over one-half of the said free proceeds or income to her children equally, share and share alike, if more than one, during the lifetime of the survivor of my said sisters, and the other half to such survivor." The *fifth* purpose provided that "as soon as conveniently may be after the death of the longest liver of the said Margaret Stobie or Ronaldson and Jane Stobie or Clark, or after my own death, should they both predecease me, my trustees shall pay over and divide the whole free residue and remainder of my said means and estates, and the price and proceeds thereof, to and among the said William Ronaldson, Thomas Ronaldson, John Ronaldson, Eliza Ronaldson or Thomson, and Maggie Jane Clark, my nephews and nieces, equally, share and share alike."

The testatrix was survived by two sisters, Mrs Ronaldson and Mrs Clark, both widows. Mrs Clark died on 17th September 1883, survived by an only child Miss Maggie Jane Clark. On the death of Miss Stobie the trustees paid to Mrs Ronaldson and Miss Maggie Jane Clark, equally between them, the free annual income of the estate until the death of Miss Maggie Jane Clark on 10th November 1885.

A difficulty then arose as to the disposal of one-half of the free annual income of Miss Stobie's estate accruing during Mrs Ronaldson's lifetime.

This special case was accordingly presented, the *first* parties to which were the trustees under Miss Stobie's trust-disposition and settlement; the *second* parties were Mrs Ronaldson and her children; and the *third* parties were the trustees under Miss Maggie Jane Clark's trust-disposition and settlement.

The parties of the *second* part maintained that upon the death of Miss Clark the liferent of the one-half of the residue enjoyed by her passed by force of the settlement to Mrs Ronaldson; or otherwise, that both Mrs Clark and her daughter Miss Maggie Jane Clark having survived the testatrix and predeceased Mrs Ronaldson, which event was unprovided for by Miss Helen Stobie's trust-disposition and settlement, the one-half of the free annual proceeds or income of Miss Helen Stobie's estate, which was payable to Mrs Clark and her daughter Miss Maggie Jane Clark, and which would, since Miss Clark's death, accrue during the lifetime of Mrs Ronaldson, fell into intestacy, and that Mrs Ronaldson was entitled to payment thereof during her lifetime as Miss Helen Stobie's heir *in mobilibus*.

The parties of the *third* part maintained that the one-half of the free annual proceeds or income of Miss Helen Stobie's estate, which was payable to Mrs Clark and her daughter Miss Maggie Jane Clark, and which would, since Miss Clark's death, accrue during the lifetime of Mrs Ronaldson, formed part of the residue of Miss Helen Stobie's estate conveyed by her trust-disposition and settlement, and should be accumulated with the capital of her estate from time to time as it fell due until the residue became divisible in terms of the fifth purpose.

The following were the questions in law—"(1) Is the said Mrs Margaret Stobie or Ronaldson, as the survivor of the two liferentrices nominated and appointed by the said Miss Helen Stobie, entitled, since the death of the said Miss Maggie Jane Clark, to the liferent of the whole residue of Miss Helen Stobie's trust-estate? (2) Is the said Mrs Margaret Stobie or Ronaldson, as heir *in mobilibus* of the said Miss Helen Stobie, entitled, since the death of the said Miss Maggie Jane Clark, to payment during her lifetime of one-half of the said free annual proceeds or income of the said Miss Helen Stobie's estate which was payable to Mrs Clark and her daughter Miss Maggie Jane Clark? . . . (4) Does the said one-half of the free annual proceeds or income of the said Miss Helen Stobie's estate, which was payable to Mrs Clark and her daughter Miss Maggie Jane Clark, and which will, since Miss Clark's death, accrue during the lifetime of Mrs Ronaldson, form part of the residue of the said Miss Helen Stobie's estate conveyed by her trust-disposition and settlement, and should it be accumulated with the capital of her estate from time to time as it falls due, until the residue becomes divisible in terms of the said fifth purpose?"

Argued for the *first* and *second* parties—Mrs Ronaldson was entitled to the liferent of one-half of the residue on the death of her niece. No doubt that event was not contemplated by the testatrix, and no provision was made for such an occurrence, and in such a case in construing the deed it was necessary to fall back upon the primary purpose. This was clearly a case in which accretion should take place, and on the death of one sister, the other, under the fourth purpose of the trust-deed, succeeded to the liferent of the whole residue. If this were not so, then the income of one-half of the residue was undisposed of, and fell into intestacy—*Tulloch* v. *Tulloch*, November 23, 1838, 1 D. 94; *Barber* v. *Findlater*, February 6, 1835, 13 S. 422.

Argued for the *third* parties—The half of the free yearly interest of the trust-estate freed by the death of Miss Clark fell into residue, and went according to the directions of the will.

The fifth purpose provided for a case like the present—*Paxton's Trustees* v. *Cowie*, July 16, 1886, 13 R. 1191.

At advising—

LORD PRESIDENT—There are just two questions which fall to be determined by this special case; the first is, Whether Mrs Ronaldson, as the survivor of the two liferentrices, is entitled to the liferent of the whole residue of the trust-estate in consequence of the death of Mrs Clark and her daughter? That of course must depend upon whether any right of accretion existed between the two liferentrices. The second question is, Supposing one-half of the liferent to be undisposed of, does it fall into residue or intestacy?

Upon the first question there is, I think, no room for doubt. By the fourth purpose the trustees are directed as follows—[*reads the fourth purpose*]. Now, the meaning of this undoubtedly is, that the sisters are to have equally between them during their joint lives the free annual income of the residue, but it is clear that the share of each is to be separable, because there is the provision that if either of the sisters predecease the testatrix leaving children, the trustees are to pay to the children of such predeceasing sister the mother's share. That being so, there can be no accretion. I think that the doctrine of *Paxton's Trustees* v. *Cowie* directly applies, and that the present case is *a fortiori* of it.

The next question which arises is, what is to become of the one-half of the liferent of residue undisposed of and set free by the death of Miss Clark? The general rule is that when in a deed like the present you find a residuary clause, the existence of such a clause prevents intestacy. It is not, however, necessary to appeal to the general rule in the present case, for the construction of this deed makes it abundantly clear that there is no room for intestacy here. There are two residues mentioned in this settlement; the first is referred to in the fourth purpose as follows—[*reads the fourth purpose*]—that is to say, the trustees were to create a residue by means of sale and realisation, and this residue is to support the burden of the liferents. But at the end of this clause reference is made to another residue, the nature of which is set out in the fifth purpose. It is to be observed that there is no reference back in this section to the residue mentioned in the fourth purpose; it is quite separate, and it is provided that whatever belongs to the estate at the death of the surviving liferentrix is to fall into this residue.

As regards this second question, also, I do not think there is any difficulty. In consequence of the existence of this residuary clause there is no room here for intestacy.

LORD MURE and LORD ADAM concurred.

LORD SHAND was absent from illness.

The Court answered the first and second questions in the negative, and the fourth question in the affirmative.

Counsel for the First and Second Parties—Lorimer. Agent—N. Briggs Constable, W.S.

Counsel for the Third Parties—Low. Agents—Fyfe, Ireland, & M'Kay, W.S.

*Friday, January 27.*

## FIRST DIVISION.

[Lord Lee, Ordinary.

## ROSE *v.* STEVENSON AND OTHERS.

*Title to Sue—Decree for Expenses—Assignation.*

An assignation was granted by the defender in an action of a decree for expenses which he had obtained against the pursuers. The assignee then raised an action against persons other than the pursuers, to recover the amount of the expenses, on the ground that they were truly the *domini litis*. *Held* that the assignee had no title to sue.

In August 1883 Andrew Brodie and Malcolm Neil, weavers, Kilbarchan, Renfrewshire, raised an action of declarator of right of way against Thomas Mann of Glentyan. Judgment was pronounced in the Court of Session, and in the House of Lords in favour of the defender, with expenses, which amounted in all to £860, 19s. 4d.—*Brodie, &c.* v. *Mann*, June 13, 1884, 11 R. 925, 21 S.L.R. 657, *revd.* May 4, 1885, 14 R. (H. of L.) 52, and 22 S.L.R. 730.

By assignation dated 11th February 1887 Mann assigned to Andrew Rose, commercial traveller, 605 Great Eastern Road, Glasgow, his decree for these expenses. The assignation was in these terms—"Considering that an action of declarator and interdict was raised against me in the Court of Session at the instance of Andrew Brodie, weaver, Ewing Street, and Malcolm Neil, weaver, Ewing Street, both in the village of Kilbarchan and county of Renfrew, and that after sundry procedure, including an appeal to the House of Lords at my instance, and a petition to the Court of Session at my instance to have the judgment of the House of Lords applied, I was assoilzied from the conclusions of that action, and the said Andrew Brodie and Malcolm Neil were decerned and ordained to make payment to me of the sum of £438, 6s. 5d. sterling, being the taxed amount of expenses of process incurred by me in the Court of Session, including the expenses of the said petition and procedure thereon, and the sum of £1, 3s. 8d. as the dues of extracting said decree, conform to extract decree of the Court of Session dated 3rd December 1883, and 10th June and 11th July, both in the year 1885, and extracted 13th August 1885, as the same in itself more fully bears, and considering also that in the said appeal to the House of Lords the said Andrew Brodie and Malcolm Neil, respondents, were ordered to pay or cause to be paid to me the costs incurred in respect of the said appeal, the amount thereof to be certified by the Clerk of the Parliaments, conform to order and judgment of the House of Lords dated 4th May 1885, and that the said costs were certified to amount to £421, 9s. 3d., conform to certificate given under the hand of the Depute-Clerk of the Parliaments dated 7th August 1885; and now seeing that for certain good and onerous causes and considerations, but without any money being paid to me, I have agreed to grant these presents; therefore I have assigned and conveyed, as I do hereby assign,