dies leaving moveable estate, and I therefore agree in the result arrived at by your Lordship.

LORD ADAM—I agree with the construction of this marriage-contract, whereby the husband's rights over his wife's moveable estate are held to be excluded *stante matrimonio*. The wife's power over her estate during the subsistence of the marriage was absolute, and she could dispose of it as she chose. I also agree that the 6th section of the Married Women's Property (Scotland) Act applies to the present case, unless it can be shown that its provisions are excluded by the husband's renunciation. Now, the only exclusion mentioned in the deed is the husband's *jus mariti*, which only lasts during and terminates with the marriage. I therefore think with your Lordships that the provisions of section 6 of the Married Women's Property (Scotland) Act apply to the present case.

LORD SHAND was absent.

The Court answered the question in the affirmative.

Counsel for the First Party—Jameson—Hay. Agent—James Skinner, S.S.C.

Counsel for Second Party — Low — Cook. Agents—Wishart & Macnaughton, W.S.

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*Wednesday, July 3.*

## SECOND DIVISION.

### CHRISTIE'S TRUSTEES AND OTHERS.

*Succession—Vesting—Trust—Direction to Trustees to Retain.*

A testator appointed trustees, and left his property to be divided equally among his three children—two daughters and a son. He directed that any share his daughter M might receive was "to go direct to her and her children." His daughter H's share he "settled in like manner," but provided, "also my trustees shall retain charge of her share. It is not to go into her hands." He further directed, "the same with reference to my son C, his share to remain in the hands of my trustees for his behoof."

*Held* that the property vested at the testator's death in his three children, but that, whereas the trustees were bound to pay over M's share to her at once, they were to retain the shares of H and C for their behoof.

Major-General Hugh Lindsay Christie died on 20th September 1888 leaving a holograph will or general settlement dated 14th March 1887, whereby he appointed trustees, and made provision for his wife. He further provided—"To my three children I leave all the rest of my property, consisting of stocks and shares, or whatever belongs to me at my death. To be divided equally. My money being principally in stocks and shares, I do not wish these to be uplifted unless it should be advisable so to do. My trustees are to invest my money or leave it invested in any fairly good security without limitation. Any share that my daughter Mary Agnes may receive, to go direct to her and her children Failing the above mentioned, her share to return to her nearest of kin, except her husband shall have the liferent. My daughter Hughina Margaret's share I settle in like manner, excepting in the event of her decease without issue her share shall return to her nearest of kin. Also my trustees shall retain charge of her share. It is not to go into her hands. The same with reference to my son Charles, his share to remain in the hands of my trustees for his behoof. In the event of his demise, his share to return to his nearest of kin."

The testator was survived by his wife, his two daughters, and his son. His daughter Mrs Mary Agnes Christie or Murray had one child, and by her antenuptial contract of marriage she was bound to pay over to her marriage-contract trustees all *acquirenda* excepting sums not exceeding £100 each. His daughter Mrs Hughina Margaret Christie or Rowland had no marriage-contract, and there were no children of the marriage. His son Charles Robert Christie was under curatory, and had been since 1884 an inmate of the Dundee Royal Lunatic Asylum.

Various questions having arisen in regard to the rights of parties under the said settlement, a special case was submitted to the Court for their opinion by (1) the testator's testamentary trustees, (2) Mrs Murray's marriage-contract trustees, (3) Anthony Hugh Murray, Mrs Murray's only child, and his father, as his administrator-in-law, (4) Mrs Murray, (5) Mrs Rowland, and (6) Charles Robert Christie's *curator bonis*.

The questions of law were as follows:—"1 (*a*) Did the fee of the share of testator's estate bequeathed to his daughter Mrs Mary Agnes Christie or Murray vest in her *a morte testatoris*, and is the capital of it now payable by the first parties, General Christie's trustees, to the second parties as her marriage-contract trustees? 2 (*a*) Did the fee of the share bequeathed to the testator's daughter Mrs Hughina Margaret Christie or Rowland vest in her *a morte testatoris*, and are the first parties bound to pay the capital now to her? or (*b*) Are the first parties bound to hold the fee of this share? 3 (*a*) Did the fee of the share bequeathed to the testator's son Charles Robert Christie vest in him *a morte testatoris?* (*b*) Are the first parties bound to pay the capital thereof now to the party of the sixth part as his *curator bonis?* or (*c*) Are the first parties bound to retain the capital?"

Argued for the first parties—It was evidently the intention of the truster that there should be a continuing trust. There was no direction to realise and pay. On the contrary, the money invested was not to be uplifted, but was to be left invested. The widow was to pay a rent for the use of certain premises, and Mrs Murray's husband was to have the liferent of his wife's share in the event of her predecease. The case might be regarded as falling either under the principle of *Duthie's Trustees* v. *Kinloch*, June 5, 1878, 5 R. 858, in which case the children of the testator would have only a liferent, the fee being in their issue, or under that of *Massy* v. *Scott's Trustees*, December 5, 1872, 11 Macph. 173, in which case, although the fee would be held to vest *a morte* in the testator's children, their issue would have a protected right of succession. The Lord Justice-Clerk (Moncreiff)

pointed out in the case of *Duthie's Trustees* that the case of *Lady Massy*, and the subsequent case of *Gibson's Trustees*, only applied where the testator had failed to provide a machinery for protecting the succession. Here there were trustees. Even if Mrs Murray were entitled to receive her share, the position of Mrs Rowland and Charles Robert Christie was very different. The testator had declared that the trustees should "retain" their shares, and therefore they could not demand immediate payment.

Argued for the second and fourth parties—Whatever might be said as to Mrs Rowland's share, there was no doubt that Mrs Murray's came to herself in fee, and therefore fell to be paid over to her marriage-contract trustees. There was no protected succession. It was "to go direct to her and to her children." The destination to herself and her children was just a destination to herself. The clause beginning "failing the above mentioned" meant failing her without children in the testator's lifetime. Mrs Murray was in a more favourable position than Lady Massy, because there the money was "to be settled by my said trustees on herself and her issue," and yet even there the Court said the trust was not to be kept up—*Massy* v. *Scott's Trustees*, December 5, 1872, 11 Macph. 173, followed in *Gibson's Trustees* v. *Ross*, July 12, 1877, 4 R. 1038; *Ferguson's Trustees* v. *Hamilton and Others*, July 13, 1860, 22 D. 1442; *Allan's Trustees* v. *Allan and Others*, December 12, 1872, 11 Macph. 216; *Houston or Mitchell* v. *Mitchell*, November 17, 1877, 5 R. 154; *Beveridges* v. *Beveridge's Trustees*, July 20, 1878, 5 R. 1116.

Argued for the third party—His mother Mrs Murray had only a liferent. The fee had vested in him as representative of a class. The trustees were bound to invest the money and pay the income to his mother in liferent, and to divide it among the children at her death—*Keating and Others*, June 17, 1870, 7 S.L.R. 548; *Duthie's Trustees*, *supra*.

Argued for the fifth party—There were no words used depriving Mrs Rowland of the absolute fee. Her share was settled in like manner to that of Mary Agnes, who undoubtedly got a fee. Alternatively she got the fee, but the trustees were to see she did not dispose of the money except for onerous causes.

Argued for the sixth party—He was in the same position as the fifth party whose argument he adopted.

At advising—

Lord Justice-Clerk—The important part of this will is where the testator gives this direction to his trustees, to whom he leaves his estate:—"To my three children I leave all the rest of my property, consisting of stocks and shares, or whatever belongs to me at my death. To be divided equally." Now, there are three children—two daughters and a son—and in reference to each of these, after this general bequest, he makes a separate settlement. He proceeds—"Any share that my daughter Mary Agnes may receive to go direct to her and her children. Failing the above mentioned her share to return to her nearest of kin, except her husband shall have the liferent." The question is, whether that bequest amounts to giving her the fee of her share? I am of opinion that it does. "Failing the above mentioned," I take it means failing herself and her children while he is alive; but whether that be so or not, the direction is a distinct direction that any share that his daughter Mary Agnes receives is to go direct to her and her children. The subsequent words do not to my mind in any way qualify the right in her to the fee of that share.

But in the cases of the other daughter and also of the son the directions are different. He says—"My daughter Hughina Margaret's share I settle in like manner, excepting in the event of her decease without issue her share shall return to her nearest of kin." It is the testator's purpose to exclude the husband in that case. Then he says—"My trustees shall retain charge of her share. It is not to go into her hands."

The first question is, whether that direction prevents the fee of that share from vesting in her? I am of opinion that it does not. But can the trustees retain what is given to this daughter in fee? Is that a direction which, on the footing that the fee is in her, can receive effect? I have had great difficulty upon that matter, which I understand some of your Lordships have shared. Some of the cases which have been quoted to us indicate that such a direction cannot be given effect to. But I think in almost all of these cases it appeared that in order to retain the charge of the capital, and prevent the actual money going into the hands of the person to whom the fee was given, it was practically necessary that the Court should set up a trust, and this was held to be without the power of the Court. But that is not the case here. A trust is already created. The testator directs that his trustees are to retain the charge of these two shares. In my opinion that is a direction which they can obey.

I have arrived at that opinion with difficulty, but I have come to the conclusion that the bequest of the fee to Hughina and Charles is not inconsistent with the direction that the trustees should take charge of the shares, and not hand over the *corpora* of the shares to Hughina or Charles.

Lord Young—I am of the same opinion. The only point of interest is that concerning the direction to the trustees to retain in their hands what is given to another in property. It is quite certain that you cannot give the property of money or anything else upon the condition that it is not to be spent, or that only so much be spent and the remainder saved. That is a repugnancy. If you make a person proprietor he must act as proprietor. But I think we have a different case here. I think the donor of money or anything else is entitled to appoint a trust for the protection of the donee. We are not called upon here to determine the exact effect or the scope of the powers of the trustees, or their duty as to retaining charge of these shares, and not allowing them to go into the beneficiaries' hands. We are merely determining that it is their duty to retain these shares in their own hands, and not to allow them to go into the hands of the beneficiaries. And I think that under that, very substantial protection may be given to them, just such as the testator thought was required. I do not speak of creditors, or what may be done,

possibly, in order to frustrate the testator's view, but I think it desirable that the protection contemplated by the testator should at least be started, and, for my part, I should think that the law would be efficacious, if appealed to, to prevent the testator's wish being frustrated. The shares are their property, but they are in the hands of the trustees, to be managed by them, and withheld from them for their protection. They are not limited to giving them the interest merely. They may deal with them in the course of their administration and management as trustees—capital and interest—as they may think best for their interest as the proprietors. Their interest as proprietors is, I think, committed to the charge of the trustees by these words, although we are determining no more at this moment except that it is according to the true meaning of the deed, and the duty of the trustees under it, to retain these shares, and not allow either to pass into the hands of the proprietors.

Lord Rutherfurd Clark and Lord Lee concurred.

The Court pronounced the following interlocutor:—

"Answer the questions therein stated as follows, viz.—1 (*a*) That the fee of the share of the testator's estate bequeathed to his daughter Mrs Mary Agnes Christie or Murray vested in her *a morte testatoris*, and that the capital thereof is now payable by the first parties, General Christie's trustees, to the second parties, her marriage-contract trustees; 2 (*a*) that the fee of the share bequeathed to the testator's daughter Mrs Hughina Margaret Christie or Rowland vested in her *a morte testatoris*, but that the first parties are not bound to pay the capital to her now; and (*b*) are bound to hold it; 3 (*a*) that the fee of the share bequeathed to Charles Robert Christie vested in him *a morte testatoris*; (*b*) that the first parties are not bound to pay the capital thereof now to the party of the sixth part as his *curator bonis*; but (*c*) are bound to retain it," &c.

Counsel for the First Parties—Low—C. K. Mackenzie. Agents—Melville & Lindesay, W.S.

Counsel for the Second Parties—Don Wauchope. Agents—Macandrew, Wright, & Murray, W.S.

Counsel for the Third Party—Sir C. Pearson—Dundas. Agents—Murray & Falconer, W.S.

Counsel for the Fourth Party—Don Wauchope. Agents—J. S. & J. W. Fraser Tytler, W.S.

Counsel for the Fifth Party—A. G. Pearson. Agents—Scott-Moncrieff & Trail, W.S.

Counsel for the Sixth Party—Wood. Agents—Gill & Pringle, W.S.

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*Wednesday, July 3.*

## SECOND DIVISION.

### NELSON *v.* ASSETS COMPANY (LIMITED).

*Sale—Offer and Acceptance—Qualified Acceptance.*

A by letter offered to buy from B certain property which he described. B replied—"I hereby accept your offer as copied on the other side . . . for our interest in the property." It was the fact that B's right of property in the premises did not correspond exactly with the description in the offer. *Held* that this was a qualified acceptance, and that there was no completed contract of sale.

James Nelson, Greenock, as in right of William Logan, house factor, Glasgow, by virtue of an assignation dated 22nd May 1888, brought an action against the Assets Company (Limited), 4 York Place, Edinburgh, to have them decerned and ordained to implement and fulfil their part of a contract entered into between them and William Logan contained in a letter of offer by Logan to Mr W. D. Husband, the manager of the defenders' company, dated 6th December 1886, and an acceptance by Husband on the defenders' behalf addressed to Logan, and dated 9th December 1886, and to deliver to the pursuer a valid disposition to the subjects.

The letter referred to was in the following terms:—

"Dear Sir,—I hereby offer to purchase the following parts of the tenement at the south-west corner of the entrance from Argyle Street to St Enoch Square, known as 'His Lordship's Larder,' namely, the top storey, with all the garret storey, except (*a*) garret room, 10 feet square, in middle or nepos of storey; and (*b*) middle garret room with skylight; also four cellars north of Hunter's, except the eastmost back sunk cellar, with free ish and entry by the common close on the north to Argyle Street, and with a common right along with the other proprietors to the court behind, with entry from Adam's Court Lane. The price to be £3000 sterling, and to be paid at Whitsunday next, 1887, when I am to have entry, free of leases, with the exception of Costigane Brothers, as to which I am to have possession six months after the date of your acceptance hereof. You are to allow £2000 of the price to lie on bond at 4½ per cent. for five years from date of entry. Your acceptance will oblige.—Yours truly, "William Logan."

And the answer was as follows:—

"Dear Sir,—As authorised by the directors, and on behalf of this company, I hereby accept your offer, as copied on the other side, dated 6th instant, of £3000 (three thousand pounds) for our interest in the property known as 'His Lordship's Larder,' St Enoch Square, and in accordance with your stipulation as to the close, 179 Argyle Street, leased to Messrs Costigane Brothers, I have given notice to the lessees that possession is required in terms of articles 1st and 3rd of the relative minute of agreement and lease.—I am, yours faithfully, "W. D. Husband,

"*Sub-Mgr.*"