

of deathbed. Should such a case arise for consideration, we shall have to consider whether the enacting words can receive aid from the preamble, or whether they must be taken as they stand. No such case is raised here, because under the deed of settlement produced and printed the trustees of Mr Coutts have received by deed of gift, assignation, and disposition the sum of £8000 sterling, whereof it is stated the testator handed to them £3200 in cash. That deed of gift is a good title to the money, and may be pleaded in answer to a demand upon the trustees to account. Under the old law the effect of the deed might be taken away by reduction *ex capite lecti*. But here the statute comes in to fortify the title by taking away the right of challenge *ex capite lecti*, and therefore the case of the pursuer under the second plea-in-law entirely fails.

LORD KINNEAR concurred.

The Court adhered.

Counsel for the Pursuer—Galbraith Miller. Agents—J. B. Douglas & Mitchell, W.S.

Counsel for the Defenders—H. Johnston. Agent—Andrew Wallace, Solicitor.

Tuesday, December 16.

FIRST DIVISION.

HASTINGS AND OTHERS v. CHALMERS.

*Public Service—Evidence—Diligence for Recovery of Documents—Report by Police Officer to Procurator-Fiscal—Confidential Communications—Reparation—Illegal Arrest.*

A sergeant of police having arrested certain persons, thereafter made two separate reports to the procurator-fiscal relative to the circumstances of the arrest. In an action of damages against the sergeant for illegal arrest an application was made for the recovery of the reports that they might be used in evidence. Motion *refused*.

This was a motion in the Single Bills incidental to an action of damages raised by the pursuers against the defender, who was at the time of the alleged illegal apprehension complained of a sergeant in the Linlithgowshire police. The pursuers had been arrested by the defender upon 4th June 1889, the defender acting at the demand of James Charles, master of the s.s. "Tay," in which vessel the defenders were seamen; and the defender thereafter made two separate reports to the procurator-fiscal relating to the circumstances of the arrest. The motion was for the recovery of these reports, that they might be used in evidence before the jury which was summoned to try the action of damages.

The pursuers in supporting the motion

relied upon the authority of *Henderson v. Robertson*, 15 D. 292; *Dickson on Evidence*, sec. 1655 (vol. ii. 907); *Boag v. Gillies*, 5 Deas & And. 434.

The defender was willing that the motion should be granted, but appearance was made for the Lord Advocate, who stated that while no harm to the public service was to be apprehended from the recovery of the reports referred to in this instance, yet that he objected upon general grounds to such confidential communications being recovered.

At advising—

LORD PRESIDENT—We refuse this motion on the ground that the reports sought to be recovered are confidential communications by one officer in the public service to his superior officer in the same department.

LORDS ADAM, M'LAREN, and KINNEAR concurred.

Counsel for the Pursuers—W. C. Smith. Agent—W. B. Rainnie, S.S.C.

Counsel for the Lord Advocate—Wallace, A.D. Agent—Crown Agent.

Thursday, December 18.

SECOND DIVISION.

[Lord Trayner, Ordinary.]

HAY v. TWEDDLE AND OTHERS.

*Succession—Vesting—Conditio si sine liberis decesserit.*

By *inter vivos* deed two sisters disposed to themselves and another sister in liferent, and to their three nieces *nominatim*, "and the survivors or survivor of them in fee," certain heritable property which only formed a part of the estate of the granters. The deed bore to be granted "for the love, favour, and affection" which the granters had for each other, for their sister, and for their nieces. Infertment followed in terms of the deed. Thereafter one of the three nieces died intestate without having altered the destination in the deed. She was survived by a son. *Held* that he did not succeed to his mother's share of the fee, as there was no room for the application of the *conditio si sine liberis decesserit*.

By *inter vivos* deed dated 3rd March 1859 two sisters—Mrs Dickie and Miss Crichton—disposed to and in favour of themselves and another sister in liferent, and to their nieces, Julia (Mrs Tweddle), Dorothea (Mrs Howat), and Katherine (Mrs Costine), "and the survivors or survivor of them in fee," certain heritable property in Castle Street, Dumfries. The deed bore to be granted "for the love, favour, and affection" which the granters had for each other, for their sister, and for their nieces. Sasine was duly expedite in terms of the said deed, and infertment taken thereupon on 7th April 1859.