

England, in which the Courts have authorised under the Statute of 1890 so important an extension of business as is now sought for. . . . I have therefore some difficulty in reporting whether the proposed extension can be held to be covered by the provisions of the Act, or whether it may not be necessary to reconstitute the company in order to accomplish the change. This is a matter which I feel it my duty to bring specially under your Lordship's consideration." He further reported with regard to the name of the company—"It humbly appears to me that if the extension of powers asked for is granted by your Lordships, either in whole or in part, it would be proper that the name of the company should be altered so as to indicate the increased nature of the business. The petitioners are willing that the name of the company be changed to 'The Scottish Accident, Life, and Fidelity Assurance Company Limited,' and they are in communication with the Board of Trade for its approval to this change, as provided for under section 13 of the Companies Act of 1862."

The petitioners expressed at the bar their consent to the proposed change of name.

Argued for the petitioners—The prayer of the petition should be granted. Such applications were only refused when the company sought to undertake a totally different kind of business from that which it had been established to transact—*Glasgow Tramway and Omnibus Company Limited v. Magistrates of Glasgow*, March 13, 1891, 18 R. 675; *Young's Paraffin Light v. Mineral Oil Company Limited*, January 16, 1894, 21 R. 384. All the new business proposed to be undertaken by the company was insurance business, and was not foreign to the company's original objects. The case was therefore similar to that of the *Northern Accident Insurance Company*, June 30, 1893, 30 S.L.R. 834, as well as to those of the *Foreign and Colonial Government Trust Company*, L.R. [1891], 2 Ch. 395; *Alliance Marine Insurance Company*, L.R. [1892], 1 Ch. 300; and *National Boiler Insurance Company*, L.R. [1892], 1 Ch. 306.

The Court pronounced the following interlocutor:—

... "Confirm the alteration of the memorandum of association . . . subject always to the condition that the name of the company be changed to 'The Scottish Accident, Life, and Fidelity Insurance Company Limited,' or such other name as may be resolved upon by the company, and approved of by the Board of Trade, as provided for by section 13 of the Companies Act 1862, and be approved by the Court under this petition; and for this end continue the cause, and decern."

Counsel for the Petitioners—Lorimer—Crole. Agents—J. & R. A. Robertson, S.S.C.

Thursday, March 12.

SECOND DIVISION.

MARQUIS v PRENTICE AND HALBERT.

Succession—Vesting—Lease for 950 years—Destination—*Conditio si sine liberis*.

The lessee in a lease for 950 years took the destination to himself "and his heirs as after mentioned" under burden of a liferent to the extent of one-third, and failing both himself and the liferentrix, to his wife in liferent only during her widowhood allenarly, "and after the death of the said spouses" or re-marriage of his wife "then to the children of their marriage equally between them, share and share alike in fee." After the death of both himself and his wife who had survived him, held that the lease vested in the children of the marriage alive at their father's death, and was not postponed till the termination of the widow's liferent, but that the issue of children who had predeceased their father were not entitled to a share, the *conditio si sine liberis* not being applicable in the case of a deed granted by a stranger to the family, and not as a parental provision.

By lease dated 12th July and 17th September 1845, entered into between the Right Honourable Robert Montgomerie Hamilton, Lord Belhaven and Stenton, heritable proprietor of the subjects thereby leased, on the one part, and Alexander Prentice, iron loader at Newmains Iron Works, and residing at Beltonfoot of Wishaw, on the other part, the said Lord Belhaven and Stenton "Let, and in tack and assedation set, to the said Alexander Prentice and his heirs as after mentioned, but always with and under the burden of the liferent of Cecilia Haddow or Prentice, his mother, to the extent of one-third of the subjects after described, during all the days of her natural life, and failing both the said Cecilia Haddow and the said Alexander Prentice, then the whole subjects to and in liferent only, to the present wife of the said Alexander Prentice during the days and years she may continue his widow allenarly, and after the death of the said spouses, or re-marriage of the present wife of said Alexander Prentice, then to the children of their marriage, equally between them, share and share alike in fee." The endurance of the lease was for the whole time and space of 950 years from and after the term of Martinmas 1844, which was declared to have been the term of entry to the possession of the subjects let, notwithstanding the date of the lease. The said Alexander Prentice by said lease bound and obliged himself, "and his heirs and successors herein," to content and pay to the said Lord Belhaven and Stenton £1, 1s. of yearly rent or tack-duty. The lease was not recorded under the Registration of Leases (Scotland) Act 1857, but the lessee entered into possession of the subjects, and possessed them in virtue of the lease during his lifetime.

Alexander Prentice, the lessee, died on 5th November 1877 intestate. He was sur-

vived by his widow, Mrs Janet Shaw or Prentice, by his daughter Mrs Cecilia Prentice or Marquis, and by a son William Prentice, joiner, Wishaw, who had a son Alexander Prentice *secundus*. Three children of the lessee had predeceased him. Of these two died in infancy, and the third Mrs Margaret Prentice or Macdonald, wife of John Macdonald, mason, Wishaw, died intestate on 24th July 1837. She was survived by two daughters, one of whom died when about eight years of age, and the other was Mrs Jessie Macdonald or Halbert, who still survived. William Prentice, the son of the lessee, and the father of Alexander Prentice *secundus*, died on 3rd June 1894, survived by Alexander Prentice *secundus* who was his eldest son and heir-at-law. The said Mrs Janet Shaw or Prentice, the widow of the lessee, did not marry again. She died on 17th July 1895.

Questions having arisen as to the rights of succession to the said lease, the present special case was presented to the Court. The parties to the case were (1) Mrs Cecilia Prentice or Marquis, (2) Alexander Prentice *secundus*, (3) Mrs Jessie Macdonald or Halbert.

The first party, as the only child of the marriage of Alexander Prentice (the lessee) and Mrs Janet Shaw or Prentice, who was alive at the date of the death of the said Mrs Janet Shaw or Prentice (the lessee's widow), claimed that she alone was entitled to succeed to the said lease, in virtue of the destination contained in the lease. Alternatively, she claimed that she and the second party, Alexander Prentice *secundus*, were entitled to succeed to the said lease jointly between them, in respect that the right of succession to the said lease fell to be determined as at the date of the death of Alexander Prentice, the original lessee, and that at that date the only children of the marriage alive were the first party and William Prentice, the father of Alexander Prentice *secundus* (the second party).

The second party, Alexander Prentice, *secundus* as heir-at-law of the said William Prentice, claimed to be entitled to succeed to the said lease jointly with the first party, or to the extent of one-half on the ground already explained.

The third party, Mrs Jessie Macdonald or Halbert, the only surviving child of Mrs Margaret Prentice or Macdonald (who was one of the three children of Alexander Prentice, the lessee, alive at the date of the granting of lease), maintained that under the destination in the lease she was entitled to succeed to the said lease to the extent of one-third along with the first and second parties."

The opinion of the Court was desired upon the following questions of law:—"1. (a) Is the first party, the said Mrs Cecilia Prentice or Marquis, entitled to succeed to the said lease to the exclusion of the second and third parties. (b) Are the first and second parties entitled to succeed to the said lease jointly, or to the extent of a-half each. 2. Is the third party, the said Mrs Jessie Macdonald or Halbert, entitled to

succeed to the said lease to the extent of one-third, or jointly with the first and second parties.

Argued for the third party—(1) The children who were in life at the date when the lease was granted took a vested right in it at that date, and their right could not have been defeated—*Macallister v. Macallister*, February 22, 1859, 21 D. 560. Possession followed on the lease which in the case of a lease was equivalent to recording. But (2) apart from this the third party's claim was good in virtue of the *conditio si sine liberis*. It had been held that it applied in the case of legacies—*Bryce's Trustee*, March 2, 1878, 5 R. 722, and to destinations in bonds of provision inserted at the instance of grantees, for the benefit of their children or of those to whom they stood *in loco parentis*—*M'Laren's Wills and Succession*, vol. i. p. 719. The destination here was in the same position.

Argued for the first party—This was simply a contract between landlord and tenant. (1) The child who survived both spouses was entitled to the lease. The right only vested at the date of the death of the longest liver of the spouses—*Forrester v. Milligan*, July 1, 1830, 8 S. 992; *Macallister v. Macallister*, *cit.* No indefeasible right vested at the date of the lease. The mere length of time for which the lease was granted did not affect the question. (2) In any event there was no vesting till the death of Alexander Prentice, the lessee, for the children of the marriage were substitutes. (3) The third party could only prevail if the *conditio si sine liberis* applied and it did not, for it only took effect in the case of a general family settlement of a testator's whole property—*Crichton v. Howat*, December 18, 1890, 18 R. 260. But, moreover, the children here were substitutes and the *conditio* was not implied in favour of the children of substitutes—*Carter's Trustees v. Carter*, January 29, 1892, 19 R. 408. The case of *Ranken*, June 17, 1870, 8 Macph. 878, in which the *conditio* being inapplicable the term "children" was held to include "grandchildren," stood alone.

Argued for the second party—(1) They adopted the argument for the first party on the question as to the applicability of the *conditio*. (2) The fee was in the lessee, and his wife had only a life interest. Therefore when he died the fee had to be filled. The right to the lease therefore vested in the children who were alive at his death.

At advising—

LORD TRAYNER—In arriving at a determination upon the questions here submitted to us I think there are two things to be kept especially in view—first, the character of the deed in which the destination to be construed comes, and second, the person by whom that deed is granted.

The deed is a lease whereby certain lands are let for a period of 950 years to the late Mr Prentice. The language of the deed in some respects is inappropriate, and would more suitably have been used in a disposition or conveyance of land than in a lease.

The language of the deed, however, such as it is, is sufficient to make quite clear what the granter of it meant to do and did. He leased to Mr Prentice "and his heirs as after mentioned" the subjects there described, provided that on Mr Prentice's death his widow (during viduity) should enjoy the subjects in liferent only, and on her death "then to the children of their marriage equally between them, share and share alike, in fee." Under such a destination the real right conferred by the lease vested at once in Mr Prentice, and on his death vested in the children of the marriage then alive, subject to the burden of the widow's liferent. The children of the marriage surviving at Mr Prentice's death were two in number, the first party to the case, Mrs Marquis, and William Prentice, the father of the second party. The right which vested in William Prentice descended to the second party, who was William Prentice's eldest son and heir-at-law. The third party is the daughter of a child of Alexander Prentice, who predeceased her father, and in whom no right had vested at her death. The third party therefore cannot claim as representing her mother under the destination in question, for nothing vested in her mother, and the destination to "children of the marriage" as matter of destination does not include grandchildren. The third party, however, maintains that notwithstanding this she is entitled to a share of the subjects on the implied *conditio si sine liberis*, and I think this view is excluded by the fact (1) that the deed is granted by a stranger to the family, and (2) that the deed was not granted, and is not said to have been granted, as a parental provision.

The LORD JUSTICE-CLERK and LORD YOUNG concurred.

LORD RUTHERFURD CLARK was absent.

The Court answered the second alternative of the first question by declaring that the first and second parties were entitled to succeed to the lease to the extent of a-half each, and answered the second question in the negative.

Counsel for the First Party—Salvesen—Clyde. Agents—Patrick & James, S.S.C.

Counsel for the Second Party—Rankine—Crabb-Watt. Agents—Patrick & James, S.S.C.

Counsel for the Third Party—Hunter. Agents—Macpherson & Mackay, S.S.C.

## HIGH COURT OF JUSTICIARY.

Friday, February 7.

(Before the Lord Justice-Clerk, Lord Young, and Lord Trayner.)

CARLIN v. MALLOCH.

*Justiciary Cases—Complaint—Relevancy—Want of Specification—Indecent Exposure.*

A party was charged in a police court on a complaint which set forth "that he did, on a boat on the river Clyde, wilfully, indecently, and in a shameless manner expose his person" to a party designed therein. There was no further specification of the manner in which the alleged offence was committed. The accused was convicted "of the crime charged." *Held*, in a suspension, that the complaint was irrelevant, in respect that it failed to set forth specifically what the accused was alleged to have done, and conviction therefore quashed.

*Justiciary Cases—Citation—Verbal Citation by Policeman.*

*Observed* that when a person against whom an information is lodged has a known place of residence, he ought to be cited to appear either by a warrant for his apprehension, or by service of a copy of the complaint, and it is irregular and oppressive merely to send a policeman to tell him to appear.

This was a suspension of a conviction obtained in the Police Court of the burgh of Govan, at the instance of the Procurator-Fiscal, against John Carlin, boatman, residing in Sharpe Street, Govan, on a complaint which set forth "that the said John Carlin, boatman, residing in Sharpe Street, Govan, did, on the seventh day of December 1895, on a boat in the river Clyde, between Govan Ferry and Highland Lane Ferry, in the burgh of Govan, wilfully, indecently, and shameless manner expose his person to Mary Smith or O'Dwyer, wife of Thomas O'Dwyer, labourer, residing in Albert Street, Govan." The accused pleaded not guilty, and after evidence had been led for the prosecution, the magistrate found him guilty of the crime charged, and sentenced him to a fine of sixty-three shillings, with the alternative of thirty days' imprisonment.

No record of the Police Court proceedings was produced, but from Carlin's statement it appeared that no warrant for his apprehension was ever issued, nor was any copy of the complaint served upon him, but that a policeman called upon him at his house and told him to appear at the Police Court the following morning, without stating the offence of which he was to be charged.

Argued for the suspender—(1) The complaint was irrelevant, in respect that it contained no statement of the manner in which the alleged offence was committed. Indecent exposure might be committed in