

then take under a new settlement. The daughters having this power to test or appoint as the case might be, were 'persons competent to dispose of property' in the sense of sec. 22, sub-sec. 2, of the Act. Accordingly the Crown would have a claim for ordinary estate-duty at the death of the liferenters, and it would not be equitable for them to have a further claim for settlement estate-duty now. It made no matter whether they exercised the power or not so long as they had it. The definition in the Settled Land Act did not cover the present case — *In re Pocock* [1896], 1 Ch. 302. But in any view this was property contingently settled, and did not fall within the meaning of the Act. The question for whom the trustees held could not be settled till the occurrence of the event which determined who would be the fiars.

Argued for respondent—The daughters had not a power of disposing absolutely, but only a very limited power of disposal. *M'Laren on Wills*, ii. pp. 1092-93. The case clearly fell within the definition in the Settled Land Act, for the property was at this moment "limited to, or in trust for" these liferenters and their children in fee. The reclaimers had made no attempt to meet the case of *Attorney-General v. Fairley*.

At advising.

LORD PRESIDENT—I entirely agree with the Lord Ordinary in his decision and in his clear explanation of the case. In my opinion this property stands for the time in trust for certain persons by way of succession. I may add that the provisions of Mr Stewart's settlement negatives the theory that the holder of the power founded on by the defenders could dispose of the property as that person thought fit, in the sense of section 22, sub-section 2.

LORD ADAM—I concur. I am perfectly satisfied with the statement of the case by the Lord Ordinary.

LORD M'LAREN—The language of the Act imposing estate-duty, like that of previous Succession Duty Acts, is of a somewhat general and comprehensive character. It is not in any sense technical with reference to the peculiarities of the legal systems of England and Scotland. These Acts are designedly so expressed, as has been remarked in previous cases of succession-duty, in order that the duties may not be evaded, or the estate escape taxation by reason of the employment of some new or unaccustomed form of conveyancing.

Now, it seems to me that "interests in succession" is an expression of such a general character as to include every device known to conveyancers by which the enjoyment of estate under the same deed or will may be had by different persons succeeding to the estate in their order. These words would therefore be applicable just as much to successive interests where the first taker has only a liferent, as to the case of successive interests in fee which might be either

under an entail or under a simple destination. It is said that the operation of this provision of additional duty has been found to be attended with hardship, for which the Legislature has partly provided by a more recent Act. But admittedly the later Act has no application to the present case, because it only empowers the Exchequer to give relief by repayment in a certain state of facts, which has not as yet arisen. I agree with your Lordship that additional estate-duty is exigible.

LORD KINNEAR—I also agree with your Lordship for the reasons stated by the Lord Ordinary, in all of which I concur.

The Court adhered.

Counsel for the Pursuer—Sol.-Gen. Dickson, Q.C.—A. J. Young. Agent—P. J. Hamilton Grierson, Solicitor of Inland Revenue.

Counsel for the Defenders—Ure, Q.C.—A. O. M. Mackenzie. Agents—Drummond & Reid, S.S.C.

Saturday, January 21.

FIRST DIVISION.

POLICE COMMISSIONERS OF AIRDRIE, PETITIONERS.

Police — Police Commissioners — Power to Sell Lands — Burgh Police (Scotland) Act 1892 (55 and 56 Vict. c. 55), sec. 55 (5).

The Burgh Police (Scotland) Act 1892, sec. 55, sub-sec. (5), empowers the commissioners of a burgh to "sell . . . such lands or premises as may have become unfit or otherwise unnecessary for the purposes of this Act."

Authority granted to the police commissioners of a burgh to sell a powder-magazine, which their predecessors had been allowed to erect by an unrepealed section of a private Police Act, and which consequently was not held by them for the purposes of the Burgh Police Act 1892.

In 1850 the Magistrates and Council of the burgh of Airdrie acquired and entered into possession of a piece of ground on which they erected a powder magazine for the use of the burgh. They did this in virtue of power conferred upon them for that special purpose by sec. 59 of the Airdrie Police and Municipal Act 1849 (12 and 13 Vict. c. lxxxix). The powder magazine became vested in the Police Commissioners of Airdrie in terms of sec. 20 of the Burgh Police (Scotland) Act 1892 (55 and 56 Vict. c. 55).

On 7th December 1898 the said Commissioners applied to the Court for authority to sell the powder magazine. The ground of their application was that in recent years public works and dwelling-houses had been erected in the vicinity of the magazine, which had consequently become

a source of serious danger to life and property.

The Court remitted to Mr George M'Intosh junior, W.S., to report on the petition. He reported in favour of the petition being granted on the merits, but raised a question whether the present application was necessary "The petitioners' powers of sale are regulated by section 55, sub-section 5, of the Burgh Police (Scotland) Act 1892, which sub-section is in the following terms:—'The commissioners shall have power from time to time to purchase or take in feu and build, or to lease such lands and premises as shall be required, and to sell or feu or dispose of such lands and premises as may have become unfit or otherwise unnecessary for the purposes of this Act.' The petitioners consider that as the subjects mentioned in the petition were acquired under section 59 of the Airdrie Police and Municipal Act 1849, which section is still in force, they are not held for the purposes of the Burgh Police (Scotland) Act 1892, and that therefore the power of sale conferred upon the petitioners by sec. 55, sub-sec. 5, of that Act does not extend to these subjects."

The Court granted the prayer of the petition.

Counsel for the Petitioners — Horne. Agent—W. B. Rankin, W.S.

Tuesday, January 24.

FIRST DIVISION.

[Lord Kincairney, Ordinary.

BLACK AND OTHERS v. TENNENT AND OTHERS.

Public-House—Licensing Courts—Application for Certificate—Major Part of Justices Assembled—Home Drummond Act 1828 (9 Geo. IV. cap. 58), sec. 7.

The 7th section of the Home Drummond Act provides that it shall be lawful for justices to grant certificates to such persons "as the justices then assembled, or the major part of them, shall think meet and convenient." Held that to fulfil the statutory requisition a majority of the justices sitting at the time when the vote was taken must vote in favour of granting the application, and that it was not sufficient that there should be a majority of those actually voting.

Public-House—Licensing Courts—Certificate—Exclusion of Review—Excess of Jurisdiction—Process—Title to Sue—Home Drummond Act 1828 (9 Geo. IV. cap. 58)—Public-Houses Acts Amendment Act 1862 (25 and 26 Vict. cap. 35), sec. 34.

The 34th section of the Public-Houses Acts Amendment Act 1862 provides that "no warrant, sentence, order, decree, judgment, or decision made or given by justices of the peace under the authority of the said recited Acts or of this Act shall be subject to

reduction, advocacy, suspension, or appeal or any other form of review" on any ground except that stated by the Act, viz., with regard to appeals in cases of breach of certificate.

At a meeting of justices dealing with applications for licences, a vote was taken upon an application, and a majority of those voting were in favour of granting the licence, but as some justices abstained from voting there was not a majority of all the justices sitting in favour of granting it. Objection was thereupon taken by one of the justices that a majority had not voted for granting, and that the licence had not been granted. The objection was overruled by the chairman without putting the question to the meeting, and he directed the clerk to make an entry to the effect that the application was granted. The certificate was confirmed by the county licensing court, though objections were lodged on behalf of an objector who had opposed the application before the justices, on the ground that the certificate had not been duly granted at the licensing meeting. An action of declarator and reduction was raised by the objector to have it found that the certificate and the entry were null and void.

Held (1) that the pursuer had a good title to sue; (2) that as the action was based upon defect of jurisdiction on the part of the justices, it was not excluded by the 34th section of the Act of 1862.

Section 7 of the Home Drummond Act 1828 (9 Geo. IV. cap. 58) enacts that "At such general or district meetings, or at any adjournment thereof . . . it shall be lawful for the said justices and magistrates respectively to grant certificates for the year next ensuing . . . to such and so many persons as the justices or magistrates then assembled at such general or district meeting, or the major part of them, shall think meet and convenient, to keep common inns . . . and such justices or magistrates shall deliver or cause to be delivered to every person so authorised or empowered a certificate . . . provided always that all such meetings shall be held with open doors."

Section 34 of the Public-Houses Acts Amendment Act 1862 (25 and 26 Vict. cap. 35) enacts that "No warrant, sentence, order, decree, judgment, or decision made or given by any quarter sessions, sheriff, justice, or justices of the peace, or magistrate, in any cause, prosecution, or complaint, or in any other matter under the authority of the said recited Acts or of this Act, shall be subject to reduction . . . suspension, or appeal, or to any other form of review or stay of execution, on any ground or for any reason whatever, other than by this Act provided."

The provision referred to is that in the previous section of the Act by which power is given to appeal on certain grounds against decisions relating to breach of certificate, or to trafficking in excisable liquors without a certificate.

An action was raised at the instance of