

record is that a house and offices of the value of £600 are to be erected within two years of the date of the contract, not interfering with the amenity of the manse and garden. The vassal has fulfilled that obligation. Then there is a proviso that no buildings of any other description shall be built on the ground except in such cases as a deviation may be specially sanctioned in writing by the superior. This means that if a vassal wishes to erect on the ground a factory or any other building which is different from a dwelling-house or offices, then that being a deviation from the feu-contract, the consent of the superior is required. I think that the vassal did not require the superior's consent for the alterations or additions now proposed, and I agree that on this matter the Dean of Guild has gone wrong.

The objection of the other respondents, although the Dean of Guild has not dealt with it, is fairly enough before us. I think that it is just as untenable as the objection of the superior. There is nothing here necessarily of the nature of a nuisance. But if it does prove a nuisance, the persons injured thereby will have their legal remedy. Nuisance is not a question with which the Dean of Guild is concerned.

LORD MONCREIFF—I agree with all your Lordships that the Dean of Guild's judgment cannot stand. I do not think that we have to deal with the proviso in the latter part of the clause in question. I am of opinion that the stable proposed to be erected is an office, and that the consent of the superior is not required to its erection. If this stable had interfered with the amenity of the glebe, that would have been another matter; but there is no suggestion that it does so. I am therefore of opinion that the Dean of Guild has misconstrued the contract.

Nuisance is a subject with which the Dean of Guild has nothing to do, and I think any objection brought before him on that ground was incompetent.

The Court sustained the appeal, recalled the interlocutor appealed against, and remitted the cause back to the Dean of Guild to grant a lining as craved.

Counsel for Petitioner — Salvesen — M'Clure. Agents—Simpson & Marwick, W.S.

Counsel for Respondents—James Reid. Agents—Macpherson & Mackay, S.S.C.

Wednesday, June 21.

SECOND DIVISION.

MUNRO'S TRUSTEES v. MUNRO.

Succession—Subject of Gift—Bequest of Amount of Capital Required to Yield £120 per annum.

A testator who died in 1885 directed his trustees to keep a sum of money invested safely so as to yield a life interest to his wife of £120 annually, and after her death to realise and divide the investments among his nephews and nieces. The wife did not accept this provision, and after her death the question arose as to the amount of the bequest to the testator's nephews and nieces. The capital required to yield £120 per annum at the lowest rate of interest on trust investments prevailing during the viduity of the wife, and which was obtainable at her death in 1898, was £4000, the capital required to yield £120 per annum upon trust investments according to an average of the rates of interest current during the viduity of the wife was £3521, 4s. 7d., and the capital required to yield £120 per annum upon trust investments according to current rates of interest at the death of the testator was £3500.

Held that the amount of the bequest to the nephews and nieces of the testator was £4000.

By antenuptial contract of marriage dated 30th October 1860 between William Munro and Ann Gray, William Munro conveyed the whole estate that should belong to him at his death to trustees for behoof of his wife in liferent should she survive him, under the declaration that on her death without issue of the marriage his estate should descend to his next-of-kin or to such other party to whom he might bequeath the same.

There were no children born of the marriage. On 8th June 1885 William Munro died survived by his wife Mrs Ann Gray or Munro. In virtue of the conveyance in their favour in the marriage-contract the trustees were appointed Mr Munro's executors, and administered his whole estate.

In 1886 there was discovered a holograph last will and testament dated 12th March 1873 made by Mr Munro. In it he appointed trustees and executors, and made, *inter alia*, the following bequests:—"I hereby authorise my said trustees and executors to pay over to my dear wife Ann Gray immediately, or as soon after my decease as possible, the sum of two hundred pounds sterling for funeral expenses and suitable mournings for herself and other friends of mine who she may wish to see in suitable mourning upon the occasion; and I further desire my said trustees and executors to keep a sum or sums of money invested safely so as to yield a life interest to my

said wife amounting to one hundred and twenty pounds sterling annually so long as she remains my widow, and after her decease the said sureties may be realised and divided equally between my nephews and nieces, or, if agreed to amongst themselves, the said sureties may be held on their joint account, and the interest arising therefrom divided amongst them till the youngest of them attains their majority." The residue of his estate he bequeathed to his brothers equally amongst them.

After this will was discovered Mrs Munro elected to abide by the provisions in the marriage-contract which gave her the life-rent of her husband's whole estate, and thus the provision for an annuity to her of £120 contained in the will was not acted on. She died on 1st July 1898, and down to the date of her death the marriage-contract trustees continued to manage and administer the whole trust estate.

After Mrs Munro's death questions arose as to the amount carried by the bequest to the testator's nephews and nieces of the capital funds which in his will he directed to be set aside to meet the annuity of £120.

For the settlement of the point a special case was presented to the Court by (1) the marriage-contract trustees, (2) the nephews and nieces of the testator, and (3) John Munro, one of the testator's brothers. The second parties maintained that their bequest under the will amounted to £4000, which the parties were agreed was the capital required to yield £120 per annum at the lowest rate of interest on trust investments prevailing during the viduity of Mrs Munro, and which was obtainable at her death. Alternatively, they maintained that said bequest amounted to £3521, 4s. 7d., which the parties were agreed was the capital required to yield £120 per annum upon trust investments according to an average of the rates of interest current during the viduity of Mrs Munro. On the other hand, the third party maintained that the provision to the nephews and nieces should not exceed the sum of £3500, which the parties were agreed was the capital required to yield £120 per annum upon trust investments according to current rates of interest at the decease of William Munro.

The questions at law were—(1) Is the amount of the bequest to the nephews and nieces of the testator the said sum of £4000? or, Is it the said sum of £3521, 4s. 7d.? or, Is it the said sum of £3500?

LORD JUSTICE-CLERK—I am of opinion that the first alternative of the first question must be answered in the affirmative. I think that the trustees were bound during the widow's viduity to set apart and safely invest a sum sufficient to yield year after year an annuity of £120. It might happen that in some years the interest would exceed that sum, but if such a thing occurred, then the surplus would just accrue to residue. The trustees could not tell the exact rate of interest money would yield from year to year, and they were bound to consider what sum would require

to be set aside in order on a fair calculation to secure a yield of £120. In setting aside £4000 I think that they would have acted with perfect propriety.

LORD YOUNG, LORD TRAYNER, and LORD MONCREIFF concurred.

The Court answered the first alternative of the first question in the affirmative, and the second and third alternatives in the negative.

Counsel for the First and Second Parties — Cullen. Agents — Macrae, Flett, & Rennie, W.S.

Counsel for the Third Party — Cochran Patrick. Agents — Calder Marshall & Walker, W.S.

Wednesday, June 21.

FIRST DIVISION.

[Lord Kincairney, Ordinary

SITWELL v. MACLEOD.

Process—Appeal to Court of Session—Exclusion by Statute—Crofter—Competency of Reduction—Crofters Holdings (Scotland) Act 1880 (49 and 50 Vict. cap. 29), secs. 21 and 25.

By the 21st section of the Crofters Holdings Act 1886, which deals with the procedure for enlarging holdings, it is provided that "In the event of any dispute arising as to whether a person is a 'crofter' within the meaning of this Act, it shall be competent for the Commissioners to determine such question summarily." Section 25 enacts that the Commissioners' decision "in regard to any of the matters committed to their determination shall be final."

In an application to the Commissioners for an order to fix a fair rent on a holding, the landlord objected to the competency of the application on the ground that the applicant was not a crofter within the meaning of the Act. The Commissioners pronounced an order finding and declaring that the applicant was a crofter, and by a further order fixed a rent for the holding.

In an action at the instance of the landlord for the reduction of these two orders, and for the removal of the defender from his holding—*held* that while the question whether an applicant was a crofter was one which the Commissioners had power to decide summarily, as incidental to matters properly committed to their determination, it was not itself such a matter, and that accordingly the limited jurisdiction in regard to it conferred upon the Commissioners was not exclusive of the general jurisdiction of the Court of Session.

Question, whether the conclusions for