

Friday, December 7.

## SECOND DIVISION.

URQUHART'S TRUSTEES v.  
URQUHART.

*Succession—Legacy—Exemption from Legacy-Duty—Person Appointed "Heir" to Annuity Originally Bequeathed Free of Legacy-Duty.*

By his last will and testament a testator directed his trustees to pay an annuity of £50 free of legacy-duty to A. In a codicil the testator recalled a bequest which he had made to B in the original will, and appointed B "heir" to the £50 annuity given to A in the will. The testator was survived by A and B. After A's death, held that the succession-duty on the annuity of £50 bequeathed to B, which became payable on the death of A, fell to be paid by B, and not by the trustees appointed by the testator.

Lewis Carmichael Urquhart died on 20th January 1889 leaving a holograph last will and testament dated 31st July 1878, with relative codicils dated respectively 29th January 1881, 14th August 1884, and 1st May 1888.

By his will he bequeathed his whole estate, real and personal, to trustees for the purposes therein mentioned, and, *inter alia*, directed his trustees, out of the rents of his heritable property, to pay "annuities of £50 sterling in half-yearly instalments, each free of legacy-duty, to my dear brother Alexander Urquhart, of Agnes Villa, Elgin, and to my dear sisters Helen Urquhart, spinster in Elgin, and Isabella Urquhart or Stewart, widow of the late Captain James Stewart, sometime adjutant of the Highland Rifle Militia, Dingwall, now residing at 15 Academy Street, Elgin; and also to pay therefrom in a similar manner annuities of £10 sterling, each free of legacy-duty, to my cousins Margaret Cormie, spinster in Elgin, Helen Cormie or Archibald, widow of the late William Archibald, sometime forrester at Scroggiemill, Elgin, Alexander Mackintosh, labourer in Elgin, and Penuel Anderson or Falconer, widow of the late Alexander Falconer, sometime draper in Elgin, whom failing to her daughter Penuel Falconer, spinster, Edinburgh, now both residing at 8 Cumin Place, in the Newington district of that city, and also to pay therefrom in a similar manner, . . . and free of legacy-duty, an annuity of £20 sterling to Ann Reid, spinster in Elgin, presently in service with me at my residence of West Villa, Elgin."

By the codicil of 14th August 1884 the testator directed as follows:—"The annuity of £10 sterling, lapsed by the death of Helen Cormie or Archibald, I give, devise, and bequeath to the afore-mentioned Ann Reid, my housekeeper, in addition to the annuity of £20 sterling previously settled on her, and all free of legacy-duty."

By the codicil of 1st May 1888 the testator, fearing that there might be a deficiency in his estate, recalled a bequest of the proceeds

of certain heritable subjects which he had made in his will to his nephew Frank Urquhart and his nieces Agnes Urquhart and Elspeth Jane Urquhart, and provided as follows:—"And I hereby constitute and appoint them and their brother Dr Alexander Reid Urquhart, physician to Murray's Hospital, Perth, heirs to the £50 annuities of their uncle Alexander Urquhart of Agnes Villa, and their aunts Miss Helen Urquhart and Mrs Captain Stewart of 15 Academy Street, Elgin, . . . each annuity as it may become vacant by the death of the annuitant being divided equally amongst the said four children or the survivors of them during their lifetime. . . . With regard to the annuities of Miss Penuel Falconer, Margaret Cormie, and Alexander Mackintosh, as they become vacant by death, I constitute and appoint Miss Ann Reid, my housekeeper, heir to each of them in addition to that settled upon herself." . . .

Mrs Penuel Anderson or Falconer predeceased the testator. The testator was survived by Alexander Urquhart, Helen Urquhart, and Isabella Urquhart or Stewart, Margaret Cormie, and Alexander Mackintosh, who had all since died. Miss Penuel Falconer and all the substituted annuitants survived the testator and were still alive.

A question arose as to whether on the death of the original annuitants the annuitants substituted to them in the codicil of 1st May 1888 were entitled to receive the annuities free of legacy-duty, and for the decision of this question, *inter alia*, the present special case was presented for the opinion and judgment of the Court. The parties to the special case were (1) the testator's trustees; (2) the trustees and managers of Dr Gray's Hospital, Elgin, and (3) the trustees of the Northern Infirmary, Inverness, to whom the testator had left special legacies; (4) Alexander Reid Urquhart, Frank Urquhart, and Mrs Agnes Urquhart or Tamson, and Mrs Elspeth Jane Urquhart or Hobart, and their respective husbands, and Miss Penuel Falconer, (5) Miss Ann Reid, and (6) the Baptist Union of Scotland, to whom the testator had left the residue of his personal estate.

The questions of law were, *inter alia*, as follows:—"(3) Do the succession duties upon the annuities of £50 bequeathed by the testator to his brother Alexander Urquhart and his sisters Helen and Isabella respectively, which became payable upon the succession thereto of the said Alexander Reid Urquhart, Frank Urquhart, Agnes Urquhart or Tamson, and Elspeth Jane Urquhart or Hobart, and which will hereafter become payable upon the succession of the survivors and survivor of them, and also upon the annuity of £10 bequeathed by the testator to Penuel Falconer, which may become payable upon the succession thereto of the said Ann Reid, fall to be paid by the first parties? or (4) Are these duties payable by the parties respectively succeeding to said annuities?"

Argued for the first, second, third, and sixth parties—In the absence of express direc-

tions by the testator to a contrary effect, the succession duties which had become and which would become due upon the opening of the succession to the substituted annuitants fell to be settled by the parties succeeding thereto and not by the first parties. This was not the case of one gift being substituted for another, or of one legatee being put in the place of another, and consequently *M. Alpine v. Stewart*, March 20, 1883, 10 R. 837, did not apply. The terms of the bequest to Ann Reid in the codicil of 14th August 1884 showed that where the testator intended that a substituted annuitant should not pay legacy-duty, he expressly said so.

Argued for the fourth and fifth parties—The succession duties falling due on their succession to the annuitants fell to be settled by the testator's trustees. The testator contemplated that the substituted annuitants should be put in the same position as the original annuitants. They were constituted heirs to the annuities. The terms of the gift to Ann Reid in the codicil of 14th August 1884 did not affect the question, because in that codicil she was not constituted an "heir" to a former annuity, but was bequeathed an annuity which had lapsed.

At advising—

LORD JUSTICE-CLERK—[*After referring to other points in the case*].—Further, in the same codicil the testator recalled his bequests of certain heritable subjects, and in lieu of them he made those who would have been entitled to them "heirs" to certain annuities left by the previous deed. The question in regard to them is, whether the trustees must pay these annuities free of legacy duty. The contention upon which the beneficiaries maintain that the annuities must be paid free of duty is, that the original legacies to which they were made heirs were declared to be free of legacy duty, and that it must be presumed that in conferring this benefit upon the new legatees it must have been the intention of the testator to confer it upon the same conditions. If there were nothing else in the testamentary writings except this bequest in general terms, and if this making of heirs to legacies had followed in the same deed on the original legacies, there would, I think, be great plausibility in the suggestion that the intention must be held to be the same as in the original bequest. But here the testator was by a separate deed making an entirely new arrangement, in view of an expected deficiency in his estate, giving a new gift in lieu of what he was cancelling; and it is according to sound reading of such a bequest to look for conditions favourable to the legatee and against the estate to the words of the bequest itself, and not to inferences to be drawn from the favourable conditions under which by a previous deed the same gift had been given to another. But even if this latter were proper to be done in such a case, it could only be done fairly if all parts of the testamentary deeds which might bear upon the question of

intention were considered also. And in this case we find that the question of legacy-duty was considered and specifically dealt with by the testator in the immediately preceding codicil, in which he is doing a similar act to that which he does in the last codicil. An annuity which he left to one legatee who predeceased him he bequeathed to another legatee, and in that particular case he provided that the legacy—which was also in the form of an annuity—should be free of legacy-duty. He having not so expressed himself in regard to the legacies in question, I am unable to hold that the trustees are entitled to free the legatees of legacy-duty.

LORD YOUNG concurred.

LORD TRAYNER—[*After dealing with other points in the case*].—There is some difficulty perhaps connected with the question whether the annuitants who succeed to annuities originally paid "free of legacy-duty" are entitled to receive the annuities they succeed to on the same terms. But I think the safer way is to hold that no annuity is to be paid "free of legacy-duty" except where this is distinctly and in terms provided. It supports this view to note that in one case where the testator provides for the annuitant succeeding to an annuity originally provided to another person, he distinctly states that the annuitant so succeeding shall receive that succession free of duty. Having so provided in one case, the presumption is that he did not intend the same benefit to be conferred in other cases where he did not so provide.

LORD MONCREIFF—[*After dealing with another point in the case*].—(2) The next question is, whether the annuities given by the supplementary will to certain parties who are substituted to the original annuitants should be paid free of legacy-duty? I am of opinion that they should not, for the reasons that have already been stated.

The Court found in answer to the questions of law stated in the special case:—

" . . . (2) That the legacy or succession duties upon the annuities of £50 bequeathed by the testator to his brother Alexander Urquhart and his sisters Helen and Isabella respectively, which became payable on the succession thereto of Alexander Reid Urquhart, Frank Urquhart, Agnes Urquhart or Samson, and Elspeth Jane Urquhart or Hobart, and which will hereafter become payable on the succession of the survivors and survivor of them, and also upon the annuities of £10 bequeathed by the testator to Margaret Cormie and Alexander Mackintosh respectively, which became payable on the succession thereto of Ann Reid, and on the annuity of £10 bequeathed by the testator to Penuel Falconer, which may become payable upon the succession thereto of Ann Reid, fall to be paid by the parties respectively succeeding to said annuities."

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Friday, December 7.

## SECOND DIVISION.

### GILLIES' TRUSTEES v. HODGE.

*Succession—Vesting—Liferent and Fee—Gift one of Liferent or Fee—Direction to Hold for Behoof of Beneficiary and his Family—Interest to be Paid Half to Beneficiary, Half to Family—Power to Advance Capital.*

A testator directed her trustees, on the death of the survivor of two annuitants, to realise the residue of her estate and divide it into equal shares. Some of these shares were to be paid to certain beneficiaries, some were to be held by the trustees for behoof of other beneficiaries. One of the shares the trustees were directed to hold for behoof of "J. H. and his family, as follows"—to pay the interest of the share to J. H. to the extent of one-half, and the interest of the other half to his children, "and if the said J. H. and his children . . . stand in need thereof, I direct my trustees to expend the capital of said share for and in behalf of the said J. H. and his said children." There was also a provision that if any of the beneficiaries should die before "the division of the said residue," the share to which he would have been entitled if alive should go to his issue, but failing issue to the survivors of the beneficiaries equally.

The two annuitants died before the testator. J. H. and his children survived the testator. Thereafter J. H. died, leaving a trust-disposition and settlement.

*Held* that the fee of one-half of the share which the trustees were directed to hold for behoof of J. H. and his family vested in him *a morte testatoris*, and that the fee of the other half vested in his children at the same date.

By trust-disposition and settlement, dated 15th April 1879, Mrs Mary Mitchell or Gillies disposed her whole estates, heritable and moveable, to trustees for the purposes therein specified.

By the fourth and fifth purposes of the deed she directed her trustees to hold the residue of her estates in trust, and out of the free annual proceeds to pay annuities to two persons named.

The last purpose of the deed was in the following terms:—"On the death of the survivor of said two annuitants, I direct my trustees to sell and realise the rest, residue, and remainder of my means and estates then in their hands, if they be not already sold, and divide the same into seven equal parts or shares, and pay one of said parts or shares to the said Alexander Hodge; . . . to pay another of said shares to the said William Hodge; to pay another of said shares to the said Helen Hodge or Morrison; to hold in trust for behoof of the said James Hodge one of the said shares, and for behoof of the said Christina Hodge or Gaff another of said shares, and pay him and her the interest of his and her said shares, or the capital thereof, if he or she requires the same, in such portion and at such times as my said trustees may think proper; to hold another of said shares for behoof of the said John Hodge junior and his family, as follows, viz.—for payment of the interest thereof to the said Daniel Hodge, his son, aye and until he attain the age of twenty-one years complete, and on his attaining said age, for payment of the interest of said share to the said John Hodge junior, to the extent of one-half thereof, and the interest of the other half thereof to the children procreated of the marriage between the said John Hodge junior and the deceased Elizabeth M'Laren, and if the said John Hodge junior and his children by the said Elizabeth M'Laren stand in need thereof, I direct my trustees to expend the capital of said share for and in behalf of the said John Hodge junior and his said children, in such proportions and in such way and manner as they may think proper; to hold the remaining share in trust for behoof of the said Daniel Hodge until he attain the age of twenty-one years, and expend the interest thereof for and towards his maintenance or education until he attain that age, at which period his said share shall be paid to him, . . . declaring that, in the event of either of the said Alexander Hodge, James Hodge, William Hodge, John Hodge junior, Christina Hodge or Gaff, Helen Hodge or Morrison, and Daniel Hodge dying before the division of the said residue, leaving lawful issue, such issue shall be entitled to the share, or respective provisions and share, which their deceased parent or parents would have been entitled to if alive, but failing issue, then to and among the survivors equally, but declaring that the issue of the said John Hodge junior, by his deceased wife Elizabeth M'Laren, shall, in his case, only succeed to the share or provisions falling to him, to the exclusion of his children by the second marriage."

Both the annuitants predeceased Mrs Gillies. Alexander Hodge also predeceased her without leaving issue. The other beneficiaries interested in the residue survived her. Daniel Hodge had attained majority at the date of her decease. In particular, John Hodge junior survived her, and died on 18th March 1899, leaving a trust-disposition and settlement, dated 8th March 1899, by which he conveyed to trustees, *inter*