

of the opinions to which I was referred in the case of *M'Laren v. Burns*, 13 R. 580, 23 S.L.R. 398, to the effect that the value appearing in the valuation roll should be taken as the basis for fixing the amount due to a superior as composition.

"That case was, however, a very peculiar one, as the property in respect of which a casualty was claimed was the lunatic asylum at Woodilee. The parties had agreed to a remit to a man of skill to report as to the annual rent or value of the lands, and the case was decided upon his report, but some of the Judges indicated the opinion that the value as appearing in the valuation roll should have been taken. I think, however, that it was not intended to lay down any rule of general application, but that the opinions were expressed in view of the peculiar circumstances of the particular case.

"The amount which appears in the valuation roll may be very good *prima facie* evidence of its yearly value, but I have never understood that the valuation roll (which is made up for a different purpose altogether) is conclusive in a question between superior and vassal.

"It therefore seems to me that I must allow a proof."

The defender reclaimed, and argued that the valuation roll was the proper criterion in determining the amount of the annual value of lands for the purpose of casualties—*per* Lord Craighill and Lord Rutherford Clark in *M'Laren v. Burns*, February 18, 1886, 13 R. 580, 23 S.L.R. 398. The pursuer set forth no grounds for holding that the value appearing in the valuation roll was inaccurate.

Counsel for the pursuer were not called on.

LORD PRESIDENT—It seems to me to be clear that the course which the Lord Ordinary has followed in allowing to the pursuer a proof of the annual value of the island is correct. It is true that as a matter of convenience the rent or annual value appearing in the valuation roll is very often taken as the measure for determining the amount of a casualty, but there is no statutory provision that the rent or annual value shall be binding on the parties for such a purpose as this. When the parties differ as to the annual value, and either of them declines to be bound by the rent or value appearing in the valuation roll, there is, in my opinion, no alternative but to allow a proof.

LORD ADAM—Mr Craigie's argument came simply to this, that if parties are disagreed as to the value of a property they will be bound by the figures appearing in the valuation roll, unless reasons are averred for holding that the valuation roll is in some way faulty or inaccurate. I do not think this argument can be maintained, and I am therefore for agreeing with the Lord Ordinary.

LORD M'LAREN—I do not know if in such a matter as this the valuation roll

would even be evidence of value. Certainly it would not be conclusive evidence, and I have no doubt whatever that the Lord Ordinary was perfectly right in allowing a proof.

LORD KINNEAR concurred.

The Court adhered.

Counsel for the Defender and Reclaimer—Craigie. Agents—Mackenzie, Innes, & Logan, W.S.

Counsel for the Pursuer and Respondent—H. Johnston, K.C.—Macphail. Agents—Lindsay, Howe, & Co., W.S.

Thursday, July 7.

SECOND DIVISION.

TARRATT'S TRUSTEES v. TARRATT'S TRUSTEES.

Succession—Will—Power of Appointment—Exercise of Power by General Settlement.

By indenture of settlement a power of appointment was reserved to a wife over certain trust funds. She died leaving only a settlement in general terms. *Held* that there was nothing in this case to rebut the presumption that a general settlement exercises a power of appointment.

The question in this case was whether a power of appointment was validly exercised by a general settlement.

Mrs Mary Stewart or Tarratt was married to David Fox Tarratt on 1st May 1865. By indenture of settlement of that date, made between the spouses, and Joseph Tarratt and John Lorne Stewart, fathers of the spouses, and the trustees under the settlement, John Lorne Stewart bound himself to pay to the trustees £1000, and after his decease £5000 more. These sums were to be held in trust for the child or children of the marriage, the income being paid to Mrs Tarratt and to her husband if he survived her. A power of appointment was reserved to Mrs Tarratt.

Daniel Fox Tarratt died intestate in 1888, survived by his wife and two children, Joseph Fox Tarratt and Mary Caroline Campbell Tarratt, who subsequently married the Hon. Osmond Hastings. He left, exclusive of funds settled by his marriage contract, a considerable amount of heritable estate, and moveable estate amounting to about £6000, of which his son succeeded to the heritage and his daughter to two-thirds of the moveables. The son and daughter also succeeded to a large amount of estate as residuary legatees of their grandmother, Joseph Fox Tarratt's share of the net residue amounting to about £100,000 and his sister's share to about £50,000. Joseph Fox Tarratt died on 31st October 1898, at the age of twenty-nine, survived by two infant sons, and leaving a will.

Mrs Tarratt died on 14th January 1904, leaving a holograph will in the following terms:—

“Lochead, Ardrishaig, N.B.

“I leave all I possess to my daughter Mary Caroline Hastings or Tarratt, after the following bequests are paid:—

“£50 to Nurse Woodend,

“£20 to Barbara M'Arthur,

“£10 to Margaret MacLachlan,

“£10 to Alex. Mackay; and

I appoint my brother, John Lorne Stewart, of Coll, my executor.

“MARY TARRATT.

“Lochead, May 19th, 1903.”

The question having arisen whether this will comprehended the subjects of the power of appointment contained in the marriage settlement, a special case was presented for the opinion and judgment of the Court.

The parties to the special case were—(1) The trustees under Mr and Mrs Tarratt's marriage settlement; (2) the trustees under Joseph Fox Tarratt's will; (3) Mrs Mary Caroline Tarratt or Hastings, residuary legatee; and (4) the executor under Mrs Tarratt's will.

The contentions of the parties as stated in the case were:—“The second parties contended that Mrs Tarratt failed to exercise the power of appointment conferred upon her, and that one-half of the sums contributed by John Lorne Stewart fell to be paid to them.

“The third and fourth parties contended that the testatrix did exercise the power in favour of her daughter, and that the wholesums fell to be paid to Mrs Hastings.”

The question in the case was as follows:—“Does Mrs Tarratt's holograph will or settlement carry the trust fund over which she had a power of appointment to her only surviving child—the third party?”

Argued for the first and second parties—A general disposition of his whole property by one having estate besides the subject of a power of appointment, did not necessarily operate as an exercise of the power. At the most there was only a presumption that it did so operate, and there were circumstances in this case to rebut the presumption. Mrs Tarratt's daughter had already received a share of her father's and grandmother's estates—*Smith v. Milne*, June 6, 1826, 4 S. 679; *Dalglish's Trustees v. Young*, June 29, 1893, 20 R. 904, 30 S.L.R. 802; *Hyslop v. Maxwell's Trustees*, February 11, 1834, 12 S. 413; *Mackenzie v. Gillanders*, June 19, 1874, 1 R. 1050, 11 S.L.R. 612.

Argued for the third and fourth parties—There was nothing in the case to prevent the application of the general rule that a general settlement was a valid exercise of a power of appointment—*Mactavish's Trustees v. Ogston's Executors*, March 10, 1903, 5 F. 641, 40 S.L.R. 458; *Clark's Trustees v. Clark's Executors*, February 16, 1894, 21 R. 546, 31 S.L.R. 430; *Cameron v. Mackie*, August 29, 1833, 7 W. & S. 106, per Lord Brougham at p. 141.

LORD JUSTICE-CLERK—The question in this case turns upon whether or not there has been a valid exercise of a power of appointment reserved in a marriage settlement, a power to be exercised not generally but in favour of the issue of the marriage. It appears to be settled by a series of decisions following upon the dictum by Lord Brougham in the case of *Cameron* that the presumption is that a general settlement exercises a power of appointment. Looking to the terms of the deed under construction, I think that rule should be applied, and I do not think there are any circumstances to rebut the presumption. I do not think it relevant to consider the relative fortunes of Mrs Tarratt's two children. I am accordingly of opinion that the question of law should be answered in the affirmative.

LORD TRAYNER—I think the case is not unattended with difficulty, but it has been decided that words of general conveyance in a will such as that which we have here are a sufficient exercise of a power of appointment possessed by the testator. It is for those who contend that they are not to show reason for the contention, and I think none has been shown. I see no ground for refusing to give the words of the testatrix the widest meaning which they will bear, and I concur that the question should be answered in the affirmative.

LORD MONCREIFF—I am of the same opinion. Under the marriage settlement power was reserved to Mrs Tarratt to appoint her share of the funds among her children. She left a holograph will bequeathing “all I possess” to her daughter. By previous decisions such a general disposition has been held to include an exercise of a power of appointment. I think we are bound to follow these decisions and that the question should be answered in the affirmative.

LORD YOUNG—concurred.

The Court answered the question in the affirmative.

Council for the First and Second Parties—Jameson, K.C.—King. Agents—Forrester & Davidson, W.S.

Counsel for the Third and Fourth Parties—Mackenzie, K.C.—Constable. Agents—Constable & Sym, W.S.