

petitioner's husband was the liferent of the estate, and that therefore it is the liferent and not the fee which is the property upon which the Act authorises the amount of the death duties to be charged.

That argument is rested mainly upon the first section of the Act, which provides that "In the case of any person dying after the commencement of this Act, there shall be levied and paid upon the principal value of all property which passes on the death of such person a duty called estate duty."

Now if that enactment had stood alone there would have been much force in the respondent's argument, but I think that the next section of the Act shows that it is not well founded. By that section 2 (1) (b) it is provided that—[*His Lordship quoted the section*].

The effect of that enactment seems to me plainly to be that for the purposes of the Act the property which passed on the death of the petitioner's husband was to be deemed to be, not his liferent interest in the property, but the property itself to the extent to which a benefit accrued or arose by the cesser of that life interest. How the value of that benefit is to be calculated is provided for by section 7 (7) (a), which provides that "if the interest extends to the whole income of the property" the value shall be "the principal value of the property."

It therefore seems to me to be clear that the property which the petitioner is entitled to charge in terms of the 9th and 23rd sections of the Act with the death duties, which she has paid, is the property itself and not merely the life interest to which she succeeded.

I now come to the question of the price of the timber alleged to have been cut upon the estate and sold by the petitioner's husband during the period when he was only a liferenter. The respondent's contention is that the death duties which the petitioner has paid should be taken out of that money and not charged upon the estate. That might be a very reasonable arrangement for the parties to make, but I do not know upon what ground it can be held that the respondent can demand as a matter of right that it shall be done. We were not referred to any provision in the statute giving him any such right. The Lord Ordinary's view was that the respondent's statements in regard to the timber money did not amount to a relevant objection to the prayer of the petition. At the same time his Lordship indicated that the respondent's claim that the petitioner had in her hands a sum of money which represented the price of timber might properly be raised in a separate proceeding, and the respondent has accordingly brought an action, which is pending before the Lord Ordinary, in regard to that money. Again, when the reclaiming note first came before this Division, I gather that the same view was taken as that expressed by the Lord Ordinary, because when the usual remit was made to a man of business there was

specially excepted from the remit "the question regarding timber money." The respondent now asks that procedure in the petition should be sisted to await the result of the action which he has raised. I am of opinion that that motion should not be granted. The petitioner has paid the duties which became due in respect of the heritable estate, and her statutory right is to have the amount charged upon that estate. The fact that there may be a sum of money in petitioner's hands which belongs in fee to the respondent, and to the petitioner in liferent only, is not a sufficient ground in my opinion for the postponement of the exercise of the petitioner's right. I suppose that if the respondent is able to prove the existence of a sum of timber money additional duty will require to be paid in respect thereof, and it may be that the amount will be a proper charge against the fund. But that appears to me to have nothing to do with the present application. I am accordingly of opinion that an interlocutor should be pronounced in terms of Mr Ranken's report.

The Court remitted to the Lord Ordinary to pronounce an interlocutor in terms of the report.

Counsel for Petitioner—W. L. Mackenzie. Agents—Macrae, Flett, & Rennie, W.S.

Counsel for Respondent—Pitman. Agents—Tait & Crichton, W.S.

Friday, June 3.

FIRST DIVISION.

(SINGLE BILLS.)

LORD ADVOCATE, PETITIONER.

Administration of Justice—Process—Production of Document from Public Register—Criminal Trial.

On a petition by the Lord Advocate setting forth that an indictment had been served on a certain person charging him with forging a will, the Court granted warrant to the Keeper of the Records to deliver to the Clerk of Justiciary the will in question for the purpose of being used in the ensuing criminal proceedings.

The Lord Advocate presented a petition to the First Division of the Court of Session setting forth—"That an indictment has been served at the instance of the petitioner upon Francis Lamond Lowson, sometime solicitor in Edinburgh, and now a prisoner in the prison of Edinburgh, charging him with the crime of uttering a forged document. The second diet in said trial is fixed to take place in the High Court of Justiciary in Edinburgh on 27th June 1910.

"That the document which is alleged to have been forged purports to be the last will and testament of Jessie Stewart

Skeen, lately residing at No. 23 Elm Street, Gardner, Mass., U.S.A., then of Tontie Street, Alyth, in the county of Perth, Scotland, and is dated 28th July 1908. Said document was registered in the Books of Council and Session on 17th September 1908.

“That said document appears in said indictment as No. 2 of the Crown List of Productions, and it is necessary in connection with the above-mentioned indictment and the proceedings to follow thereon that the said document should be placed in the hands of the Clerk of Justiciary in order that it may be seen by the accused, in terms of section 37 of the Criminal Procedure (Scotland) Act 1887, and thereafter produced in evidence in support of said charge.”

He craved the Court “to grant warrant to and authorise the Keeper of the Records of Scotland, or other officer in charge of said document, to deliver the said document to the Clerk of Justiciary, Edinburgh, on or before the seventeenth day of June Nineteen hundred and ten, for the purpose of being used in the said criminal proceedings, or alternatively to produce and exhibit same in the course of the said criminal proceedings.”

Argued for the petitioner—Under section 37 of the Criminal Procedure (Scotland) Act 1887 (50 and 51 Vict., cap 35) the panel had the right to see the document in the Justiciary Office, and this right should be implemented if possible. In the case of an admittedly genuine document there might be some reason for withholding the document, but not where there was a dispute as to its authenticity. Under section 37 it would be a hardship on the prisoner if he had to go to the Register House to see the document.

LORD PRESIDENT—This is a petition at the instance of the Lord Advocate, in which he asks for an authority which has admittedly never been granted hitherto, and the point is therefore one of novelty and interest. The petition sets forth that an indictment has been served at the instance of the petitioner upon Francis Lamond Lowson, now a prisoner in the prison of Edinburgh, charging him with the crime of uttering a forged document, and the trial is soon to take place. The document which is alleged to be forged purports to be the last will and testament of a certain Jessie Stewart Skeen. The document was registered in the Books of Council and Session on 17th September 1908, and is there now. The document appears in the indictment as No. 2 of the Crown List of Productions, and the Lord Advocate prays that your Lordships may be pleased to grant a warrant to authorise the Keeper of the Records, or other officer in charge of the said document, to deliver the said document to the Clerk of Justiciary before the 17th June 1910, for the purpose of being used in the said criminal proceedings.

Now it is the case that we have never granted a warrant in these terms hitherto.

The documents in the custody of the Registrar as being in the Books of Council and Session have often had occasion to be produced in civil causes, and the regular proceeding is that an order is pronounced upon the Registrar to send an officer—who does not part with the document—to produce it in process. It is said—and I think said with justice—that that course would not be a safe course here, because unless the document is lodged with the Clerk of Justiciary it is difficult to see how it can be a production, and if it is not a production it cannot be produced at the trial in the usual way. Now the reasons against giving up a document in the ordinary case are obvious. It is, as I say, refused even to our own Court for the purpose of being put into process, and there seems to be a good reason for that, because the position of the Clerk of Court in a civil case is not at all analogous to the position of the Clerk of Justiciary. Although the document is put into the custody of the Clerk of Court, it is in the power of the parties to the case to borrow the process—in other words, there are occasions in which the document may lawfully leave the custody of the Clerk. It is quite otherwise in the case of the Clerk of Justiciary. The other case in which production has been refused has been the case where it is proposed to take the document out of the jurisdiction, in which case also this Court has always been in use to make the custody of the document safe by leaving it in the custody of one of its own officers.

Further than that, it seems to me as the Court of Session are judicially entitled to have cognisance of the other Supreme Court, the Court of Justiciary, of which as a matter of fact we are all members. That being so, and we being judicially aware of the safe custody in which the document would be if it is lodged with the Clerk of Justiciary, I think we ought to further the ends of justice by making the order craved. Therefore I am of opinion that we should grant the petition.

LORD JOHNSTON—I concur.

LORD PRESIDENT—Lord Kinnear and Lord Salvesen also concur, and I have consulted the Lord Justice-Clerk, who takes the same view.

The Court granted the first alternative of the prayer of the petition.

Counsel for the Petitioner—Morison, K.C., A.-D.—Lyon Mackenzie, A.-D. Agent—Crown Agent.