

At advising—

LORD PRESIDENT—This is a petition for the transportation of the manse of the parish of Rutherglen and for authority to sell the old manse. The only point that is raised before your Lordships is raised by the minister upon the last branch of the crave, namely that for authority to sell the old manse. It has been argued to your Lordships that it must be presumed that the existing manse is built upon the glebe, and that if that is so it would be improper that the manse should be sold, but that the old manse should remain part of the glebe.

I do not think that that argument can be sustained, because it is really based upon nothing but mere speculation. The parties have supplied us with all they know about the history of the manse, and all that we know is that it is an old manse, what was its origin no one can tell. Now it may be that the manse has come down from pre-Reformation times—it may be that it was originally erected in terms of the various statutes which gave ministers a right to call upon heritors for a manse—but where nothing is known of the origin of the manse it must be presumed that the ground on which the manse stands is dedicated as manse ground, and that as manse ground it is something other than glebe.

I can understand that in a case where in modern times a manse has to be rebuilt, and it is more convenient that the new manse should be built upon the glebe, and where, with the consent of those representing the benefice, the new manse is built upon the glebe, inasmuch as so much glebe has been taken up by the new manse it would only be equitable that the ground cleared by taking away the old manse should be given to the glebe. But where you know nothing about the past history, but where you merely find a manse standing, then I take it that the ground on which the manse stands is manse ground and separate from the glebe ground. Inasmuch as the heritors here have found a new site it is only right and just that they should be allowed to dispose of the old one. They were not bound to find a new site for the manse, they might have rebuilt it upon the old site. But in the circumstances of this case it was thought expedient to build the manse elsewhere. The heritors have had to find a site elsewhere, and have with the consent of all parties built the new manse upon it. I think they are entitled to the site that has been rendered free.

That I think is obviously the view which the Court held in the case of *Gloag*, which is reported in 1 R. 187. The report of that case bears (p. 188) that “The Court were doubtful whether authority could be granted to feu the site of the old manse, offices, and garden, without a designation thereof as glebe.” That clearly points to the opinion held by the Court that manse ground was one thing and the glebe was another.

Accordingly, upon the whole matter I think that the crave of the petition as

lodged is correct and ought to be granted. I may say that if one had to guess I think it is very likely that this never was glebe ground at all, because it seems to be upon the other side of the water from the glebe. But I do not go upon that because that is also mere speculation. I go upon the simple point that if one knows nothing about the origin of the manse, manse ground is manse ground and not glebe ground.

LORD JOHNSTON—I agree with your Lordship. I think it is quite clear that where nothing is known or can be ascertained as to the history of the site of a manse it must be presumed that the ground of that site wherever it came from was dedicated to the purposes of a manse, and must be dealt with as such in any case such as we have before us where it is desired to transport the manse from one site to another.

LORD MACKENZIE—I am of the same opinion.

LORD ORMDALE—I concur.

LORD HUNTER—I concur.

The Court granted the prayer of the petition.

Counsel for the Petitioners—Blackburn K.C.—D. P. Fleming. Agents—A. B. & F. J. Dewar, W.S.

Counsel for the Respondents—Crabb-Watt, K.C.—Hunter. Agents—Laing & Motherwell, W.S.

## COURT OF SESSION.

Thursday, November 28, 1912.

### OUTER HOUSE.

[Lord Skerrington.]

SALAMON *v.* MORRISON'S TRUSTEES.

*Trust—Trust Accounts—Right to Inspect—Assignee of Beneficiary under the Trust—Assignment of Contingent Interest in Trust Estate—Expense Occasioned by Assignee's Inspection of Trust Accounts.*

Held that a person who held an assignation of the interest of a beneficiary in a trust estate in security of advances was entitled to see the trust accounts.

Observed that where the exercise of this right of inspection of the trust accounts involved unusual or excessive expense, it was proper that the assignee should pay a reasonable fee to the law agents of the trustees.

Mrs Bella Salamon, widow, residing at Oxford Gardens, Notting Hill, London, pursuer, brought an action against James Logan Strang and others, trustees acting under the trust-disposition and settlement of the deceased Hugh Morrison, 22 Bute

Gardens, Hillhead, Glasgow, *defenders*, in which she sought to have the *defenders* ordained to produce the accounts of the trust estate under their charge in order that "the true amount thereof in which the pursuer has presumptive or expectant shares may be ascertained."

It appeared from the averments in the case that the pursuer had advanced certain sums to two of the beneficiaries under Hugh Morrison's trust-disposition and settlement, and held in security therefor bonds and assignations in security over their whole interests in the trust estate, present and future, vested and contingent, and whether of income or of capital.

The arguments of parties sufficiently appear from the opinion of the Lord Ordinary (*infra*). The following additional authorities were referred to at the discussion:—*Springett v. Dashwood*, 1860, 2 Giff. 521; *Otley v. Gilby*, 1845, 8 Beav. 602; *Kemp v. Burn*, 1863, 4 Giff. 348; *Cowin v. Gravett*, 1886, 33 Ch. Div. 179; *Selkirk v. Service*, October 22, 1880, 8 R. 29, 18 S.L.R. 9.

At advising—

LORD SKERRINGTON—This case raises a question of general importance to persons who lend or borrow money on the security of beneficial interests in trust estates, viz.—whether the assignee of a beneficiary, as distinguished from a person who is himself an actual or prospective beneficiary, is entitled as of right to see the accounts of the trust in the absence of some special reason to the contrary. It so happens in the present case that the interest in the trust which belongs to the pursuer's cedent is a contingent one, by which I mean that it has not vested even subject to defeasance. Nothing however turns upon this speciality. In the well known case of *Raes v. Meek* (15 R. 1033, 25 S.L.R. 737, *rev.* 16 R. (H.L.) 31, 27 S.L.R. 8), the title of a contingent beneficiary to appeal to the Court for the protection of his contingent right was affirmed by the House of Lords. It follows in my opinion that such a beneficiary is entitled to see the trust accounts in order to assure himself that the trust has been duly and legally administered. This point was conceded by the *defenders'* counsel, and decisions to the same effect were cited—*Muirhead v. Muirhead's Trustees* (14th July 1909, n. r.) decided by Lord Johnston in the Outer House; *In re Tillott* (1892 1 Ch. 86).

The *defenders'* counsel argued that a person who holds an assignment of a beneficial interest in a trust estate is in an entirely different position from that occupied by his cedent so far as regards the right to see the trust accounts. The maxim *assignatus utitur jure auctoris* had no application unless the cedent transferred his whole right out and out to a single assignee whom he thus substituted for himself as the beneficiary. He argued that a trust beneficiary and an assignee of a part only of his share could not each simultaneously possess and exercise the same right of inspection. A right cannot be assigned and at the same time retained. In the present case the assign-

ation was on its face a security, and if the pursuer's contention was sound it followed that the assignation doubled the number of persons who had a right to see the accounts in respect of one particular share. The beneficiary might equally well execute a score or indeed any number of partial assignations either *ex facie* absolute or in security, and so multiply indefinitely the expense of managing the trust and the duties of the trustees. These arguments overlook the fact that a share, whether vested or unvested, in the capital of a trust estate is in law assignable either in whole or in part. I do not need to consider whether in Scotland a testator can effectually prohibit alienation by inserting a clause of defeasance and gift over, because nothing of that kind was attempted in the present case. A beneficiary's right to inspect the trust accounts does not in my view arise from any fiction or presumption as to what the truster intended. It arises as a natural incident to the particular kind of property which he has chosen to create. Again, I do not need to consider whether a testator could effectually by means of apt language or of a clause of forfeiture deprive a beneficiary of a right to see the trust accounts, not because in the special circumstances secrecy was desirable as it often is in the carrying on of a commercial business, but merely in order to secure that his trustees should be absolutely free from criticism and control. There is nothing in the trust deed or in the circumstances to exclude the right of inspection which a beneficiary ordinarily enjoys. The *defenders'* counsel expressly conceded that if the action had been at the instance of the pursuer's cedent there would have been no good defence to it. But the right to examine the accounts is just as valuable and indeed necessary to a partial assignee as it is to an original beneficiary, and if one denies it to the former one gratuitously deprives this species of property of one of its natural incidents, with the result that it becomes less marketable and consequently less valuable to the beneficiary. Does any valid reason exist why a partial assignee should not be entitled to take the best means of satisfying himself that the trust is being properly managed, and of ascertaining the value and nature of the trust estate? I am aware of none. If a number of such assignations are granted some extra trouble may fall upon the trustees, but trustees must not assume when they accept office that they will have to deal only with the beneficiaries named or pointed out in the will. They are, however, entitled to employ and pay solicitors for taking charge of the trust accounts and exhibiting them when necessary. A beneficiary cannot involve the trust—that is his fellow beneficiaries—in unusual and excessive expenses merely because he chooses to dispose of his contingent or deferred share in a particular manner. The hypothetical score of partial assignees must either appoint a single representative to inspect the accounts on their behalf or they must indemnify the trust by paying for the

extra expense occasioned by repeated inspections of the accounts. In other words, they must pay a suitable fee to the solicitors of the trustees. This the pursuer has offered to do, although there is no averment that the original beneficiary has ever exercised the right of inspection which admittedly belongs to him. The defenders' counsel suggested that the beneficiary himself ought to act as the representative and agent of all his partial assignees, but this suggestion is fanciful and unworkable. Counsel did not seriously dispute that if a partial assignee had ascertained *abunde* that a breach of trust had been committed, and made a relevant averment to that effect, he would be entitled to see the accounts. Surely it is for the benefit of the trustees themselves that any breach of trust which they may have committed (it may be quite innocently) should be pointed out at a time when it may perhaps be rectified easily and cheaply?

The defenders' counsel founded upon the decision in the case of *Jacks' Trustee v. Jacks' Trustees* (1910 S.C. 34, 47 S.L.R. 32), and particularly upon certain passages in the opinion of the Lord President. These observations had reference to the question before the Court, viz., the true construction of certain sections of the Bankruptcy Act, and had no reference to the present question, which his Lordship had no occasion to consider. Counsel also cited *Brower's Executor v. Ramsay's Trustees* (July 12, 1912, 49 S.L.R. 962), in which the pursuer had obtained a decree adjudging a beneficiary's right to the fee of a trust estate subject to a liferent. This case does not help the present defenders, as the adjudging creditor was allowed by the Lord Ordinary (Guthrie) to see the accounts and to lodge objections. In the Inner House the Court negatived any duty on the part of the trustees to fortify the pursuer's position as legal assignee by doing anything which they would not have done in the ordinary course of administration. This decision has no bearing on the present question, as the pursuer is not attempting to interfere with the management of the trust. Nor has the following *dictum* of Lord Lindley (L.J.) in *Low v. Bouverie*, 1891, 3 Ch. 99-100, any application—"But it is no part of the duty of a trustee to tell his *cestui que trust* what incumbrances the latter has created, nor which of his incumbrancers have given notice of their respective charges. It is no part of the duty of a trustee to assist his *cestui que trust* in selling or mortgaging his beneficial interest and in squandering or anticipating his fortune, and it is clear that a person who proposes to buy or lend money on it has no greater rights than the *cestui que trust* himself. There is no trust or other relation between a trustee and a stranger about to deal with a *cestui que trust*, and although probably such a person in making inquiries may be regarded as authorised by the *cestui que trust* to make them, this view of the stranger's position will not give him a right to information which the *cestui que trust* himself is not en-

titled to demand. The trustee therefore is in my opinion under no obligation to answer such an inquiry. He can refer the person making it to the *cestui que trust* himself." In the present case a trust does exist as between the pursuer and the defenders, and she asks for no information which a beneficiary could not legally demand. I shall find that the pursuer is entitled to see the trust accounts. If the defenders think that the matter should not be further litigated I have no doubt that they will give effect to this finding. In the meanwhile I shall pronounce no order upon them. It is of course premature and out of the question to fix the amount of the trust estate as concluded for, but the defenders' counsel did not ask me to dismiss the action on that ground. Though I decide against the defenders, I think that, acting in the interest of the beneficiaries other than the pursuer's cedent, they were entitled to obtain a judgment, as there is very little authority in regard to the rights of assignees in the position of the pursuer.

The Lord Ordinary found that the pursuer was entitled to see the accounts, and continued the cause.

Counsel for the Pursuer—Macmillan, K.C.—Macquisten. Agents—Cowan & Stewart, W.S.

Counsel for the Defenders—Sandeman, K.C.—Hon. W. Watson. Agents—Dove, Lockhart, & Smart, S.S.C.

Friday, February 28, 1913.

#### FIRST DIVISION.

#### ADDIE'S TRUSTEES *v.* ADDIE AND OTHERS.

*Succession—Vesting—Original or Substitutional Gift—Question Whether Condition of Surviving Liferenter Applicable only to Primary Legatees or also to their Issue.*

A testator directed his trustees to hold one-seventh of the residue of his estate for the alimentary liferent of a certain son so long as he continued weak-minded, and declared that in the event (which happened) of his death without issue the capital of the said share of residue should fall and belong to two sons and three daughters of the testator, who were named, "equally among them and the survivors and survivor of them, the issue of any of them predeceasing being entitled equally among them, if more than one, to their deceased parent's share." The trustees were given power in the event (which did not happen) of the son recovering his mental health to pay or make over to him the said share.

*Held* in a Special Case that the gift to issue was substitutional and not independent, that the contingency an-