

The Court adhered.

Counsel for Petitioner—The Lord Advocate—Sol.-Gen. Graham Murray, Q.C.—Don Wauchope. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for Respondent, Marquess of Stafford—Asher, Q.C.—Dundas. Agents—Macpherson & Mackay, W.S.

Counsel for Respondent, Duke of Fife—D.-F. Balfour, Q.C.—Ure. Agents—Mackenzie & Black, W.S.

Counsel for Respondent, Duke of Westminster—D.-F. Balfour, Q.C.—Blackburn. Agents—Mackenzie & Black, W.S.

Friday, February 26.

FIRST DIVISION.

ROSS (FRASER'S JUDICIAL FACTOR).

Judicial Factor—Cautioner—Woman.

Held that an unmarried woman might be accepted as cautioner for a judicial factor's intromissions.

This was a note presented by Hugh Houstoun Ross, judicial factor on the trust-estate created by the antenuptial contract of marriage of Mr and Mrs Edward Fraser.

Mr Ross stated that he had been appointed judicial factor in 1884, and had acted as such ever since, "his cautioners having been (first) his father Hugh Ross, W.S., now deceased, and (second) his mother, Mrs Ross, also now deceased. . . . New caution having again to be found, Mary Charlotte Ross, spinster, residing at No. 16 Northumberland Street, Edinburgh, aged 44, has been offered as cautioner, but the Clerk of Court having expressed doubts as to accepting her as such, it is necessary to have the proposal sustained by the Court. The estate under the factor's charge consists of £3156, 5s. 11d. 2½ per cent. consols, and £41 of same consols, and £15, 14s. 4d. in bank. . . . The cautioner offered has means and estate to the value at least of £5000."

The judicial factor craved the Lord President to move the Court "to authorise the Clerk of Court to accept of the said Mary Charlotte Ross as cautioner for the said Hugh Houstoun Ross, as judicial factor foresaid." . . .

At advising—

LORD PRESIDENT—That no disqualification attaches to a woman as cautioner is pretty clearly shown by what has been done in this factory, in which a woman has already been accepted in that capacity, and we are told that that was done with the approval of the late head of the Court. There might be difficulties perhaps if this lady were to marry, but until that event occurs we are not called upon to decide in regard to them.

LORDS ADAM, M'LAREN, and KINNEAR concurred.

The Court granted the authority craved

Counsel for the Judicial Factor—Dudley Stuart. Agents—Macrae, Flett, & Rennie, W.S.

Saturday, February 27.

FIRST DIVISION.

MARQUESS OF STAFFORD v. DUKE OF SUTHERLAND.

(*Ante*, p. 422)

Appeal to the House of Lords—Leave to Appeal—Entail.

Circumstances in which the Court, in a petition for authority to disentail, refused an application for leave to appeal to the House of Lords against an interlocutor repelling objections to the competency of the petition.

On 26th February 1892 the Marquess of Stafford presented a petition for leave to appeal to the House of Lords against the interlocutor pronounced by the Lord Ordinary on 15th December 1891, and the interlocutor of the First Division adhering to the same.

He argued—It was the practice of the Court to allow an appeal where there was a separable case for appeal, and where the result of the appeal might save litigation by putting an end to the whole proceedings—*The Lord Advocate v. The Duke of Hamilton*, December 17, 1891, 29 S.L.R. 272.

The Duke of Sutherland opposed the application, and argued—The Court was always disinclined to grant an application of this kind where that might lead to there being two appeals instead of one. Especially was this the case in proceedings of the present kind where the death of one of the parties would render the whole proceedings abortive. The case of *The Duke of Hamilton* was quite different. There the reversal of the decision of the Court of Session would render a long and intricate inquiry unnecessary, but here there was no reason why the inquiry should be long or difficult.

At advising—

LORD ADAM—This is an application by the Duke of Sutherland for authority to disentail, and we have decided that he has a title to insist in it, and to have the part of the estate disentailed which he desires to have disentailed. It appears to me that in such a matter the Duke has a pre-eminent interest to have the case decided with as little delay as possible, for the reason which has been suggested, namely, that if any mischance occurs the whole proceedings may prove abortive, and by allowing the delay which an appeal occasions we are increasing the chance of such an occurrence. That, I think, is a very material consideration for refusing leave to appeal at this stage.

When we look at the interest of the other side, no doubt we find that they have

an interest to have the question of their right to prevent this application being proceeded with decided before further proceedings under the petition are taken, but that is not so strong an interest as the interest of the petitioner to have the matter determined without delay.

Looking to these considerations, I think we should refuse the application.

LORD M'LAREN—It seems to me that it may now be regarded as an established practice in entail petitions that, unless in exceptional circumstances, leave to appeal to the House of Lords against an interlocutory judgment of this Court will not be granted, the reason being that the death of any of the parties to such a proceeding materially alters the conditions of the question. The right may be lost altogether, or at any rate a new party will intervene in the proceedings. The case is not so strong here as in some instances, because the application is not for a disentail of the whole estate, but it is difficult to draw a distinction between one case and another on that ground, because what is a small part of one estate may be as large as the whole of another estate of smaller size. I am rather in favour of refusing the application.

LORD KINNEAR concurred.

LORD PRESIDENT—I was at first impressed by the consideration that there are here legal questions of magnitude and importance which are undoubtedly detachable from the sequel of the case. On the other hand, there is very great weight in what has been advanced by Lord Adam, and I have come to think that the balance of considerations is in favour of refusing this application. Two points weigh with me in coming to this conclusion. The first is, that having regard to the relative interests of the disputants, the peculiarity of proceedings of this kind that the death of the petitioner before decree terminates the litigation, gives the Duke an exceptional right to be considered. In the second place, I do not think, after all, that the proceedings here will necessarily or naturally be of a highly complicated character. I sympathise greatly with the difficulties the parties may have in working out the subsequent procedure so as to promote their own pecuniary interests without hampering their argument on the main question; but the responsibility for this rests with themselves, and I am afraid we are not called upon to delay proceedings by allowing an appeal to the House of Lords merely in order to facilitate their dialectics.

The Court refused the petition.

Counsel for the Duke of Sutherland—C. S. Dickson—Don Wauchope. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for the Marquess of Stafford, &c.—D. F. Balfour, Q.C.—Dundas. Agents—Macpherson & Mackay, W.S.

Saturday, February 27.

FIRST DIVISION.

M'KNIGHT & COMPANY AND HARDIE
v. MONTGOMERIE.

Company—Voluntary Liquidation—Removal of Liquidator—Voluntary Liquidation—Due Cause—Companies Act 1862 (25 and 26 Vict. cap. 89), sec. 141.

The shareholders of a company having resolved that it should be wound up voluntarily, unanimously appointed H. to be liquidator, and a number of the creditors of the company subsequently intimated their concurrence in this appointment.

In a petition by H. for a supervision order and for confirmation of his appointment a creditor lodged answers and moved the Court to remove H. from the office of liquidator on the ground that he was a shareholder and had at one time been a director of the company. The Court confirmed H.'s appointment, holding that due cause had not been shown for his removal.

On 16th April 1890 John M'Knight & Company, Limited, was incorporated under the Companies Acts, its registered office being at Binny Quarry, Uphall. The capital of the company was £12,000, divided into 12,000 shares of £1 each, of which 6650 shares were subsequently subscribed, and the purposes for which the company was formed were, *inter alia*, to acquire from the firm of M'Knight & Marshall the whole leases, property, effects, and assets belonging to them in their business of brick-making and quarrying, carried on at Cardross Brick Works and Binny Brick Works and Quarry, together with the debts and goodwill of the said business. The company commenced business as brick manufacturers and quarrymasters immediately after its incorporation on 16th April 1890. The whole paid-up capital of the company was thereafter expended in working the said quarry and in erecting brick-works and machinery therein, and no dividend was ever paid to the shareholders.

On the 26th day of January 1892 an extraordinary general meeting of the company was held at Broxburn, when, *inter alia*, the following extraordinary resolution was unanimously adopted:—"Whereas it has been proved to the satisfaction of the shareholders that the company, by reason of its liabilities, cannot continue its business, and that it is advisable to wind up the same, it is resolved that John M'Knight & Company, Limited, be wound up voluntarily, and that a liquidator be appointed to wind up the affairs of the company and distribute its property." The said meeting thereafter appointed William Hardie, C.A., Greenock, to be liquidator, and authorised him, if he thought fit, to take all necessary proceedings for the winding-up of the company under the supervision of the Court.

On 30th January the company and Hardie,