

with the sum of £2496, and to pay over to the pursuers so much of the proceeds as shall correspond to the proportion of £1000 to £1496; and to hold the balance as part of the capital sum, under the provisions of the said contract. Further, in regard to the sum of £2000 which was lent on bond to Mr Grant of Glenmoriston, and subsequently paid up to the pursuers: Find and declare in terms of the second conclusion of the summons: *Quoad ultra* sustain the defences: Find both parties entitled to their expenses out of the share of the proceeds of the said stock falling to the defenders under the above findings, and decern, and remit to the auditor to tax the expenses now found due, and to report."

Agents for Pursuers—Adam & Sang, S.S.C.

Agents for Defenders—Horne, Horne, & Lyell, W.S.

Friday, October 29.

FIRST DIVISION

BREADALBANE *v.* BREADALBANE'S TRS.

Charter Room—Inventory—Trustees. The trustees of a deceased nobleman held possession of the key of the charter room of what was formerly his residence, but now that of the next heir of entail. The latter had in a previous action resisted the petition of an opposing claimant to get access to the documents in this room; but now sought to get the keys for himself. The Court *refused* to order the trustees to give up the key; but suggested the appointment of some one by the parties to inventory and separate the documents.

This was an action brought by the Earl of Breadalbane against the trustees and executors of the late Marquess, who are in possession of the key of the charter room of Taymouth Castle, craving that they should be ordained to deliver the key to him, and interdicted from allowing any of the documents to be changed, or the custody of the key transferred to other hands. At present there is under appeal, before the House of Lords, a decision of the Court refusing to Donald Campbell, one of the claimants to the Earldom, an order on the trustees to exhibit the documents and titles concerning the Earldom and estate of Breadalbane before an examiner appointed by the Court of Chancery. The present pursuer appeared in that action as a respondent, and resisted the application. In respect of the dependence of this appeal, the Lord Ordinary (BARCAPLE) reported the case to the Court without decision; but expressing a strong opinion that the pursuer should prevail.

LORD ADVOCATE and ADAM, for the pursuer, argued—The pursuer has been served heir of entail to the last proprietor, and is in possession of the title and estates, as well as of Taymouth Castle, in the charter-room of which the documents are. In such a position he is entitled to the key of the charter-room of his own dwelling; and the writs and documents are really in his custody. No question has yet arisen, and no averment been made, of any difficulty about the papers.

DEAN of FACULTY and WATSON, for the defenders, replied—A question may arise as to whose property the documents are. The other claimants must be called before the defenders are in safety to surrender the key to the pursuer. The defenders

have an unimpeachable title to the custody of the documents in the charter-room; or, at least, to these documents other than those relating to the succession under the entail, and to the title and dignities. Authority—*Crawford v. Campbell*, 2 W. & S. 440.

At advising—

LORD PRESIDENT—We are none of us inclined exactly to agree with the views of the Lord Ordinary. We are not prepared to pronounce judgment in terms of the pursuer's conclusions. Nor are we prepared to pronounce a judgment at once transferring the control of the muniment room to the pursuer. The writings in it are of a very unusual kind and amount. They are of great historical value—a value not to be measured by money. There is therefore a great responsibility on the defenders, who, I think, are not unwilling to have this responsibility transferred to the pursuer. The only arrangement, I think, is to have a separation of the documents made; and my only regret is, that such a laborious undertaking was not begun long ago. If the parties do not choose to agree to it among themselves, I think there is no resource but for us to take the matter into our own hands, and appoint an officer of the Court to do so. I think we should give them a reasonable time to make some such agreement; but if they do not, we must take the steps I have indicated.

LORD DEAS—I quite concur with what your Lordship has said; and would only say that it is a great matter for regret that seven years have elapsed without any steps being taken in this direction. And let me point out this, that if this is done by an officer of court there will probably be a far more minute inventory made than there would be if it is done by a gentleman of the parties' own choosing. He can, if he likes, inventory the documents in bundles.

LORD ARDMILLAN concurred.

LORD KINLOCH—I concur; and let me remark, the charter-room is just in fact a charter-chest, and that, though the defenders have the key of the charter-room, the pursuer has the key of the out-door,—the door of the house, and thus he is quite safe.

The case was accordingly dropped, with the view of an arrangement being made.

Agents for Pursuer—Adam, Kirk & Robertson, W.S.

Agents for Defenders—Davidson & Syme, W.S.

Friday, October 29.

SECOND DIVISION.

LOGAN *v.* LOGAN & OTHERS.

Executry—Testament—Homologation—Jus relictae—Repudiation—Election. Held that a widow could not be held to homologate her husband's testament so as to bar her from claiming her legal rights in lieu of the provision made for her by the will, without proof that she knew what her rights were under the will, and what her legal rights were apart from it.

This was an action of reduction brought by Mrs Cecilia Forrester or Logan, widow of the deceased John Logan, schoolmaster of the parish of Mordington, in the county of Berwick, against the executors of her late husband, and certain other parties interested in her husband's executry, for