respect of a small piece of ground upon which the defender in 1890 erected an iron house for the occupation of a gardener fails, and that the pursuer's claim of £15 in respect of a paddock which the defender occupied for three years also fails, for the reasons given by the Lord Ordinary.

Upon the whole matter I am of opinion that the Lord Ordinary's judgment of 12th November 1903 should be adhered to.

LORD M'LAREN—I concur, and I may say that as regards the question raised by the reductive conclusions I should prefer to rest my judgment upon the first of the two grounds treated by the Lord Ordinary, that is to say, that while the Montgomery Act authorises an improvement lease upon the condition that a house of a certain value shall be built upon the ground, this lease makes it a condition that a house of that value has been or shall be erected on the ground. Now, that is not a lease in terms of the statute, because the condition of the lease would be completely fulfilled if the tenant had done nothing at all to the existing house on the ground. I should not wish to say or imply that under no circumstances could a Montgomery lease be sustained if there was already a building on the ground, because I think it would be a question of circumstances. On the one hand, I think it would be very difficult to say that if a lease were granted of, say, a jointure house, or anything equivalent to a good residence, upon condition that building to the value of £10 should be added—that is to say, you might add a coal cellar to a mansion-house—that would be within a good Montgomery lease; and on the other hand, if the lease was a lease of land with a ruinous cottage upon it, which the tenant desired to pull down with the view of erecting buildings of a more substantial kind, I should not see any reason why that should be excluded from the power of the heir of entail in possession under the Montgomery Act. It seems to me that once you have in a lease the condition of the statute binding the tenant to put up buildings to the statutory amount it must then be a question of circumstances whether the land proposed to be given under these conditions is or is not such property as the Act of Parliament contemplated. But we avoid that question in the present case, because we are all of opinion that a lease which does not have the condition prescribed by this statute is a lease for which the heir of entail cannot claim the benefit of the statute—that it is, on the contrary, a contravention of the provisions of it. With regard to the pecuniary conclusions, I adopt the view of your Lordship and the Lord Ordinary.

LORD KINNEAR—I concur with your Lordships and for the same reasons; and I would only add that I agree with Lord M'Laren that there is no necessity for laying down any general rule that a lease can never be sustained as valid under the Montgomery Act if a building has been already erected on the subject let; and for myself I am not prepared to lay down any such general rule. I think with Lord M'Laren that the question we have to determine is, whether the particular lease before us, considered with reference to the circumstances and the condition of the entailed estate at the time it was granted, is or is not a good lease under the Montgomery Act. Now the Montgomery Act authorises a long lease for the purpose of building cottages and villages for the improvement of the entailed estate. I think upon consideration of the terms of the lease with reference to the evidence it is clear that the lease under reduction was not granted in the fair exercise of the powers of that statute or for the purposes of the statute. It was really intended as a provision by the heir of entail in possession for his wife. That was no doubt a very laudable purpose; and the provision itself may be a very proper one for aught I know, but it is not authorised by the deed of entail or by any provision of the entail statutes; and, what is more to the point in this particular case, it is not authorised by the Montgomery Act. For the reasons given in detail by your Lordship in the chair, I think that that proposition is clearly made out; and therefore that we must adhere to the Lord Ordinary's judgment. As to the pecuniary conclusions, on these also I agree with your Lordships that the Lord Ordinary's interlocutor should be affirmed.

LORD PRESIDENT—Lord Adam, who heard the case, and is hearing a proof to-day, asked me to say he entirely concurs in the judgment proposed.

The Court adhered to the judgment of the Lord Ordinary.

Counsel for the Appellant—H. Johnston, K.C.—Graham Stewart. Agents—Mylne & Campbell, W.S.

Counsel for the Respondents—Salvesen, K.C.—W. Mitchell. Agents—Guild & Guild, W.S.

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*Friday March* 11.

## SECOND DIVISION.

[Lord Stormonth Darling, Ordinary.

### TAIT *v.* MUIR AND OTHERS.

*Judicial Factor—Title to Sue—Action of Reduction at Instance of Judicial Factor.*

It being necessary to ascertain the state of the funds of an incorporation with a view to adjusting a scheme for the application of those funds, *held* (*aff.* judgment of Lord Stornmonth Darling) that a judicial factor on the estate of the incorporation had a title to sue an action of reduction of certain of its resolutions carried prior to his appointment against a party upon whom an expectant interest was conferred by the resolutions under reduction.

Sequel to *Tait* v. *Muir*, December 19, 1902, 5 F. 288, 40 S.L.R. 242.

This was an action at the instance of John Scott Tait, C.A., judicial factor on the estate of the Incorporation of Tailors, Edinburgh, against Mrs Emily Sophia Jackson or Muir and others, concluding for reduction of certain minutes of meetings of the said incorporation whereby the defender was admitted to the said incorporation. The minutes of meetings in question were dated prior to the appointment of Mr Tait as judicial factor.

The question of the validity of the resolutions recorded in the minute was before the Court in the previous case in which the facts are fully stated—see *Tait* v. *Muir*, December 19, 1902, 5 F. 288, 40 S.L.R. 242.

In the present action the defender pleaded, *inter alia*—(1) No title to sue.

On 16th December 1903 the Lord Ordinary (STORMONTH DARLING) pronounced an interlocutor by which he decerned against the defender Mrs Muir in terms of the conclusions of the summons.

*Opinion.*—"This is an action at the instance of the judicial factor on the estate of the Incorporation of Tailors of Edinburgh, and it is brought for the purpose of reducing certain resolutions of that Incorporation by which the compearing defender Mrs Muir was admitted to the benefit of its widows' fund. The ground of reduction is that these resolutions were illegal, because they admitted the defender to the widows' fund without payment, or rather for payment of entry-money which was taken out of the funds of the Incorporation. In a previous action in this Court, to which Mrs Muir was not a party, and which is therefore not *res judicata* against her, but which is nevertheless a standing judgment, these resolutions were held to be illegal, from which it followed that the defender could take no benefit under them. After that judgment was pronounced the judicial factor asked Mrs Muir whether she maintained her eventual right to share in the benefits of the widows' fund, or whether she admitted that she could not do so without her entry-money being paid in the regular way and in conformity with the rules and regulations of the Incorporation. To that demand she made no reply at all, and accordingly the present action was brought.

"Now, upon the merits of the case I propose to say nothing, because I am content to rely upon the previous judgment of the Court. I confess that I have heard nothing to-day to convince me that the resolutions in question were other than entirely illegal, and there I leave the merits of the case.

"But then it is said that the pursuer has no title to sue the action, and the ground of that plea, as I understand it, is that he is not entitled to complain of anything that took place before the date of his appointment. Now, that is rather a hard saying when one knows that he was appointed for the very purpose of taking the affairs of the Incorporation out of the hands of its existing managers, and in respect of very serious misappropriation of funds by them. If there were anything in this plea it would have been stated and considered in the previous action. It was so stated and it was disregarded. Accordingly I have no hesitation in holding that the pursuer has not only a title but the sole title to sue the present action."

The Lord Ordinary then dealt with another question raised in the case.

The defender reclaimed—In support of her plea to title the following authorities were cited—*M'Gregor* v. *Beith*, May 24, 1828, 6 S. 853; *Gordon* v. *Williams' Trustee*, July 16, 1889, 16 R. 980, 26 S.L.R. 750.

Counsel for the respondent were not called upon.

LORD JUSTICE-CLERK—I think that this action is competent and competently presented at the instance of the judicial factor. The judicial factor is in this position, that he has to deal with the estate and present a scheme showing how the association may be carried on. There are also claimants on the widows' fund who are entitled to know the condition of the fund, and I think that the judicial factor is entitled to bring this action in order that the defender's claim upon the fund may be disposed of. I see no reason for disturbing the judgment of the Lord Ordinary on either of the preliminary pleas stated by the defender.

LORD TRAYNER and LORD KINCAIRNEY concurred.

LORD YOUNG and LORD MONCREIFF was absent.

The Court adhered.

Counsel for the Pursuer and Respondent—Smith, K.C.—Grainger Stewart. Agents—Macpherson & Mackay, S.S.C.

Counsel for the Defender and Reclaimer—Mackenzie, K.C.—Sanderson. Agents—Wishart & Sanderson, W.S.

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*Saturday, March* 12.

## SECOND DIVISION.

[Lord Kincairney, Ordinary.

## HUTCHESON *v.* HOGGAN'S TRUSTEES.

*Parent and Child—Aliment and Education—Presumption—Father's Obligation to Aliment Children Entitled to Separate Estate—Father Held Entitled to Payment from Trustees out of Interest of Fund Belonging to Children of Sums Expended by Him in their Maintenance in Past Years.*

A testator left a trust-disposition and settlement in which he directed his trustees to pay the interest of a certain sum to his daughter, and on her death leaving children to hold and apply the interest for the maintenance, education, and upbringing" of her children till the youngest attained the