

The Court pronounced the following interlocutor:—

“16th July 1872.— . . . Remit to Mr Cullen, surveyor of the Forfarshire roads, to examine the road referred to in the petition with reference to the grounds of complaint set forth in the petition, and to report *quam primum* as to the condition of the said road, and the cost of the operations which may be necessary for putting it into a proper and sufficient state of repair; and appoint the respondent Patrick Irvine, as clerk to the trustees of the First or Deer District of Roads, in the county of Aberdeen, to prepare and report a state of the funds of the said trust, showing the income, expenditure, and debts of the trust.

Agents for Complainer—Hamilton, Kinnear, & Beatson, W.S.

Saturday, July 13.

CHARLES ROBERTSON, ESQ., OF KINDEACE,
PETITIONER.

Entail—Provisions to Children—Statutes 11 and 12 Vict. c. 36, § 21, and 16 and 17 Vict. c. 94, § 7—Assignment.

An heir in possession of an entailed estate paid the amount of provisions which had been made by the previous heir in possession in favour of younger children, and took an assignation in his own favour to the bond of provision. *Held* that he was entitled, under 11 and 12 Vict. c. 36, § 21, and 16 and 17 Vict. c. 94, § 7, to grant a bond and disposition in security over the entailed estate for the amount of the provisions in favour of himself, as assignee of the said provisions.

The petitioner's father, the late Major Robertson, to whom the petitioner succeeded as heir in possession of the entailed estate of Kindeace in October 1868, granted in 1841 a bond of provision for £2400, under the Aberdeen Act, in favour of his younger children. Major Robertson had then five children in all, but he was survived only by the petitioner and two daughters. The provisions of the daughters had been restricted by a subsequent deed to £600 each, to be paid to their respective marriage-contract trustees.

On 20th January 1870 the petitioner paid the two sums of £600 to the marriage-contract trustees of his two sisters. Instead of taking discharges, he took assignations in his own favour of the bond of provision, to the extent of these two several provisions of £600, these being the only sums payable by him as heir of entail in respect of the bond for £2400.

He now presented the present petition, under § 21 of 11 and 12 Vict. c. 36, to charge the fee and rents of the entailed estate of Kindeace with the amount of these two provisions, viz., £1200. By section 21 it is enacted that, in all cases where an heir of entail in possession of an entailed estate “shall be liable to pay or provide by assignation of the rents and proceeds of such estate,” for any provisions granted to younger children under the Aberdeen Act, or the deed of entail, he may charge the fee and rents of the estate with the amount thereof, by granting bond and disposition in security for the same over the estate.

The Lord Ordinary (MACKENZIE) reported the case on the question, whether the petitioner could

be held to be an heir of entail “liable to pay or provide by assignation of the rents and proceeds” of the estate for the provisions to his sisters granted by his father.

WATSON and ASHER for the petitioner.

At advising—

LORD PRESIDENT—The peculiarity of the case is that the petitioner is to grant a bond in favour of himself. But the apparent anomaly is got over by considering that Mr Robertson appears in two capacities—First, as an heir of entail in possession; Second, as a creditor *qua* assignee of the provision of £1200. In the first capacity he will be succeeded by the next heir of entail, in the second by his executors. This appears a case within the 21st section of the Act. As heir of entail in possession, he is at this moment liable to pay or provide for the provisions in question. No doubt he is liable to himself in his individual capacity, but that does not matter. There might have been a doubt, and there was a doubt, whether it was competent to grant a bond and disposition in security for children's provisions, except to the children themselves. But it was to remove this doubt that the 7th section of the subsequent statute was enacted (16 and 17 Vict. c. 94), which authorises the bond and disposition in security to be granted to any party advancing the amount. Suppose the heir of entail in possession, instead of taking an assignation to the provision, had advanced the money out of his own funds, he could have granted the bond to himself as creditor in that sum. It follows that, having taken an assignation, and come not only into the position of a party advancing the money, but having purchased the provision and come into the place of the younger children, he is the proper recipient of the bond and disposition in security.

LORD DEAS—The terms of the assignation are important. It proceeds on a narrative, not of payment of the provision, but of a specific sum of money by the petitioner as an individual; then there is an assignation of the provision to the petitioner as an individual, and that is the whole deed. The difficulty is solved by attending to this, that the petitioner has not only two characters, but he deals in this deed with both these capacities.

LORDS ARDMILLAN and KINLOCH concurred.

The Court pronounced the following interlocutor:—

“13th July 1872.—Find that, in the circumstances disclosed in the petition and report of Mr Arthur Campbell junior, W.S., the petitioner, as heir of entail in possession of the entailed estate of Kindeace, is entitled, under the provisions of the 21st section of the 11th and 12th Vict. c. 36, and the 7th section of 16th and 17th Vict. c. 94, to grant bond and disposition in security over the said entailed estate for the amount of the provisions settled by the last heir of entail in possession on his younger children, in favour of himself, as assignee of the said provisions.”

Agents for Petitioner—T. & R. B. Ranken, W.S.