relief, and that she has received such relief from the pursuer to the amount of £4, 3s.; (2) that the defender is her illegitimate son: Find in law that the defender is liable to the pursuer in relief of the said sum: Therefore dismisses the appeal: Affirm the judgment of the Sheriff-Substitute appealed against: Of new ordain the defender to make payment to the pursuer of the said sum of £4, 3s."

Counsel for Pursuer—Pearson—Hay. Agent—
Counsel for Defender — Kennedy. Agent—John Macpherson, W.S.

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*Saturday, November 27.*

## OUTER HOUSE.

[Lord Trayner.

GILLON FERGUSSON, PETITIONER.

*Entail—Charging Improvement Expenditure — Expenses of Application—Entail Act* 1875 (38 *and* 39 *Vict. c.* 1), *secs. 7 and* 8.

In a petition to charge an entailed estate by bond and disposition in security with improvement expenditure to the extent of three-fourths of such expenditure, *held* that not the whole expenses of the application and of obtaining the loan, but only three-fourths thereof, could competently be included in the bond and disposition in security.

This was a petition to charge the entailed estate of Isle with improvement expenditure. The petitioner, Joseph Gillon Fergusson of Isle, was heir of entail in possession under a disposition and deed of entail dated in 1768, and recorded in the Register of Tailzies in 1789.

The petitioner was of full age and not subject to any legal incapacity. He had three children, all pupils, and entitled in their order to succeed after him—Robert Don Gillon Fergusson, J. S. E. Gillon Fergusson, and I. M. Gillon Fergusson.

He stated that he had, between 1881 and 1886, expended on the entailed estate, in additions and improvements on the mansion-house and offices and farm buildings, and other permanent improvements, a sum amounting to £2140, and was under 38 and 39 Vict. c. 61, secs. 7 and 8, and 45 and 46 Vict. c. 53, sec. 6 (Entail Acts 1875 and 1882), entitled to borrow money to defray the cost of those improvements, "together with the actual or estimated cost of this application, and of the proceedings therein, and of obtaining the loan, and granting security therefor." He accordingly craved authority to borrow the same, and to charge the fee of the entailed estate other than the mansion-house &c., with a bond of annual-rent binding himself and his heirs of tailzie to pay an annual-rent on said sum for twenty-five years from the authority of the Court being obtained; or alternatively, to borrow three-fourths of the sum expended on improvements, together with the costs of the application as aforesaid, and to charge the fee of the estate with a bond and disposition in security therefor.

A *curator ad litem*, Mr C. G. Rankine Simson, W.S., was appointed to the petitioner's children, and the Lord Ordinary remitted the petition to a man of business, Mr H. B. Dewar, S.S.C.

The petitioner proposed to adopt the alternative of granting a bond and disposition in security.

The *curator ad litem* lodged a minute, in which he contended that in place of the whole expenses being included in the bond and disposition in security, only three-fourths of the expenses should be so included.

He stated—"The curator's view is that the meaning of sec. 7 (6) of the Entail Act 1875 is that the expenses should be added to and put on the same footing as the amount of improvement expenditure which may have been approved of by the Court as chargeable on the estate, the petitioner being entitled to choose whether to charge the whole accumulated sum of improvement expenditure and expenses by way of a bond of annual-rent, or only three-fourths of such accumulated sum by way of bond and disposition in security. The Act referred to first prescribes the manner in which the amount to be charged on the estate, made up partly of improvement expenditure and partly of expenses of the application to the Court, &c., is to be fixed, and then by sec. 8 goes on to provide alternative methods in which the amount so fixed may be charged on the estate; the accumulation of the expenditure and the expenses thus preceding the striking of the three-fourths proportion if the method of granting a bond and disposition in security over the estate is to be adopted."

Mr Dewar in his report to the Lord Ordinary reported that there was diversity of practice on the point, but in a majority of instances the whole expense seemed to have been allowed. He referred more particularly to sub-sec. (6) of sec. 7 of the Entail Act 1875—"In every case the Court shall in fixing the amount to be borrowed under their authority, add to the actual or estimated amount of the cost of the improvements the actual or estimated amount of the cost of the application, and the proceedings therein, and of obtaining the loan, and granting security therefor;" and also to sec. 8 of the Act of 1875. He stated that in his opinion the *curator ad litem* was right, and that three-fourths, and not the whole, of the legal expenses ought to be allowed.

The Lord Ordinary (TRAYNER) pronounced this interlocutor:—"Finds that the procedure has been regular and proper, and in conformity with the provisions of the statutes and relative Acts of Sederunt: Interpones authority: Finds that the petitioner has, prior to the date of application and within the last twenty years, *bona fide* expended on improvements on the said entailed estates the sum of £2081, 12s. 11d.: Disallows the sum of £58, 10s. 3d. mentioned in the abstract appended to Mr Johnston's report: Grants warrant to and authorises the petitioner to borrow and charge the fee and rents of the foresaid entailed lands and estates so far as situated in the shire of Dumfries, other than the mansion-house, offices, and policies thereof, with the sum of £1561, 4s. 9d., being three-fourths of the foresaid sum of £2081, 12s. 11d. expended by the petitioner on improvements as aforesaid, *together with the sum of* £74, 17*s.* 9*d.*, *being three-fourths of the estimated cost of this application and the proceedings therein, and of obtaining the loan and granting security therefor, amounting together to the sum of* £1636, 2*s.* 6*d.*, *with corresponding interest and penalties, and decerns:*

Remits to Mr Dewar to see prepared and executed the draft of a bond and disposition in security for the said sum of £1636, 2s. 6d., or of bonds and dispositions in security for amounts not exceeding in all the said sum of £1636, 2s. 6d. over the said entailed estate, or any portion thereof, so far as situated in the shire of Dumfries, other than as aforesaid, with interest thereon at a rate not exceeding five pounds per centum per annum from the date of the advance until payment, and with penalties in common form, such bond and disposition in security, or bonds and dispositions in security, binding the petitioner, and his heirs of entail in their order successively, to repay the principal sums therein, with interest and penalties as aforesaid, and containing a power of sale in ordinary form, and also all other clauses usual and necessary in bonds and dispositions in security granted over lands in Scotland held in fee-simple, but always with and under the provisions and declarations applicable to such bonds and dispositions in security contained in the statutes thereanent, and to report."

Counsel for Petitioner—Rankine. Agent—David Turnbull, W.S.

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*Saturday, November 27.*

## FIRST DIVISION.

[Lord Fraser, Ordinary.

### MACCREDIE'S TRUSTEES *v.* LAMONDS.

*Partnership—Dissolution—Accounting.*

By contract of copartnery entered into between the two members of a firm of law-agents and their clerk, for the purpose of carrying on the business of law-agents and conveyancers, it was provided by the second article that "the capital of the company shall be £3000, of which £1000 shall be forthwith contributed by the third party in cash, and the balance shall be deemed to be satisfied by the value of the first and second parties' office furniture and law-books, and existing business connection." By the ninth article it was provided that in the event of the death or bankruptcy of any of the partners the business should devolve on and belong to the other partners in proportion to their interests; "and the amount due to the deceased or bankrupt partner shall be ascertained by a balance of the copartnership books, to be struck as at the date of such death or bankruptcy (but in striking such balance the office furniture, law books, &c., shall be taken at a valuation to be made by a competent valuator, and no allowance shall be made for business connection)." In an action of accounting brought by the trustees of the third party after his death—*held* that nothing contained in the ninth article of the contract of copartnery interfered with the application of the common law rule of partnership accounting, that out of the ascertained free assets of the company there fell to be repaid the capital contributed by the partners before any division of the free assets was made; that the sum at which the office furniture and books had been valued fell to be added to the assets of the copartnery; and that these assets were thereafter to be charged with the whole capital contributed by the three partners.

*Partnership—Duty of Partner—Diligence Prestable by Partner in Company Affairs.*

In the winding-up of the affairs of a partnership at the death of one partner, the survivors maintained that they were entitled to allowance as compensation for the deceased not having attended to the business during a portion of the partnership, and so thrown the whole conduct of the business upon them. *Held*, by Lord Fraser (Ordinary), and acquiesced in, that they ought, if the deceased were unable or unwilling to perform his part of the contract, to have sought their remedy by dissolution of the partnership when it became certain that the deceased could not perform his part.

*Observations* on the question whether a court of law will, in consequence of the inattention of the partner to business, interfere to alter the proportion of profits falling to him under the contract.

This was an action of accounting at the instance of the trustees of the deceased Andrew MacCredie, writer, Glasgow, who died on 9th August 1884, against Henry Lamond & Robert Peel Lamond, writers, Glasgow.

A contract of copartnery had been entered into between the deceased Andrew MacCredie and the defenders for the purpose of carrying on the business of law-agents and conveyancers, which was to subsist for seven years from 1st April 1880.

By the second article of said contract it was provided—"The capital of the company shall be £3000, of which £1000 shall be forthwith contributed by the third party in cash, and the balance shall be deemed to be satisfied by the value of the first and second parties' office furniture and law-books and existing business connections. Interest at the rate of five per cent. per annum shall be allowed before striking the profits of the business on the said cash payment, but no interest shall be allowed on the balance of the said capital. Should any further sum or sums of capital be contributed by any of the partners for the purposes of the business, interest shall be allowed thereon at the foresaid rate in favour of the partner contributing before striking the profits."

By the third article it was provided that the interest of each of the Messrs Lamond should be two-fifths and Mr MacCredie's interest one-fifth.

By the ninth article it was provided—"In the event of the death or bankruptcy of any of the partners during the period of the copartnership the business shall devolve on and belong to the other partners in proportion to their interests, and the amount due to the deceased as bankrupt partner shall be ascertained by a balance of the copartnership books, to be struck as at the date of such death or bankruptcy (but in striking such balance the office furniture, law books, &c., shall be taken at a valuation to be made by a competent valuator, and no allowance shall be made for business connection), and shall be paid out by promissory-notes signed by the surviving or solvent partners, by equal instalments of three, six, and nine months from the date of such death or bankruptcy, with interest at five per cent. per