think, may be read as meaning that her mind was at the time in such a state that she was not truly capable of making a will. It was laid down in *Stoddart* v. *Grant* that the onus is on the party who maintains that a will is revoked to prove that it is so, and therefore the onus is here on the party who maintains that one of the wills revoked by the holograph writing was the will of 1852. There is no evidence that when the will of 1852 was made the testatrix was suffering from decay of memory, or was incapable of making a will. One might even go further and say that the inference is the other way, because the terms of the will appear to be entirely fair and rational; it was drawn up by a member of the legal profession, and the witnesses appear to have been the doctor of the testatrix and the minister of her church. There is a strong presumption, therefore, that the testatrix was not at that time suffering from any mental incapacity. There, is accordingly, no evidence in my opinion that the will of 1852 was one of those which was expressly cancelled.

That leaves the question whether the two wills are incapable of standing together? The Lord Ordinary answers that question in the affirmative. He reads the holograph will as one "in which the testatrix deliberately stated her intention of making no provision for the disposal of her free estate after her death." I agree that if that is a correct description of what the holograph will does, it would revoke the will of 1852. If the testatrix had said, "I prefer not to dispose of my estate but to leave my succession to the operation of law," such a declaration would receive effect; but, with very great deference to the Lord Ordinary, whose opinions are always entitled to great respect, I am unable to construe the holograph will in any such way.

Apparently the testatrix intended to make a testamentary disposition of her means, because she says that "in place of" the cancelled wills she makes "the following statement of my wishes." In the statement which follows, however, she makes no testamentary disposition. She does not even—as I read the will—invoke the law of intestate succession. She merely says that she retains in her own name such money as she requires; that she wishes to remember her friends but has little to do it with; and then she commends herself to the care of the Almighty. Perhaps if the cancelled wills had been in existence they might have thrown some light upon what the testatrix had in her mind, but reading what purports to be a statement of her wishes alone, I cannot spell out of it any testamentary intention at all. The Lord Ordinary founds chiefly upon the words, "I wish to rember my friends but have little to do it with," which, he says, show that the testatrix considered her estate to be of such small amount as not to require to be specially bequeathed. That may have been what she meant, but it may not have been so. It seems to me to be impossible to say what she had in her mind when she said she wished to remember her friends, or to read what she said as amounting to a declaration that she did not intend to dispose of her estate at her death, but desired to leave it to the operation of the law of intestacy.

In regard to the last clause in the will it may perhaps be read as the nomination of an executor, but even in that case, although the executor so nominated might supersede the trustees appointed in the will of 1852, that will otherwise would not be thereby revoked. I doubt, however, whether the clause was intended to do more than provide that the gentleman who was her legal adviser at her death should be the law agent employed in winding up her affairs.

LORD JUSTICE-CLERK—I am of the same opinion. It is for those who maintain that the later writing of the testator cancels the earlier will of 1852 to show that it does so. I think they have failed to do so. The will of 1852 in all its aspects is inconsistent with the idea that it was made when suffering from decay of memory, or was one of the two wills revoked, and there is no revocation of all wills. The latter part of the document under construction is not testamentary, but merely expresses a desire that her agent at her death should have the winding up of her affairs.

The Court recalled the interlocutor reclaimed against, held that the writing of 1865 or 1879 had not the effect of revoking the testamentary disposition of 1852, and remitted to the Lord Ordinary to rank and prefer the claimants accordingly.

Counsel for Claimants, Mrs Macqueen and Others (Reclaimers)—Macfarlane, K.C. —Jameson. Agents—Mackenzie & Kermack, W.S.

Counsel for Claimants, Mrs Sherlock and William Francis Bridges (Respondents)—Macphail — Macmillan. Agents — Finlay, Rutherford, & Paterson, W.S.

Counsel for Claimants, Georgina Bridges' Guardian and John Gordon Bridges (Respondents)—Macphail—Macmillan. Agents —Ronald & Ritchie, S.S.C.

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*Saturday, January* 12.

## SECOND DIVISION.

[Sheriff Court of Renfrew and Bute at Paisley.

## THORNTON *v.* BOYD & FORREST.

*Expenses—Amendment of Record in Appeal from Sheriff Court.*

*Observed* by the Lord Justice-Clerk, that in appeals from the Sheriff Courts, "in which counsel cannot go on without asking leave to amend, it is not a good thing to postpone dealing with the question of expenses till the end of the case. This state of things occurs much too often."

James Thornton, tenant of Drygate Farm in the county of Renfrew, brought an action against Boyd & Forrest, contractors, Renfrew, concluding for £723, 10s. for loss, injury, or damage, which they averred they had sustained in various ways owing to the fault and negligence of the defenders, or of those for whom they were responsible, while constructing, for the Glasgow and South-Western Railway, that part of the Dalry and North Johnstone Line, which passed through the farm of Drygate.

On 16th August 1906 the Sheriff-Substitute (LYELL), before answer, allowed parties a proof of their averments. Against this interlocutor the defenders appealed to the Court of Session, and argued that the action was irrelevant. The case was partly heard, and was continued to allow the pursuer's counsel to consider whether they desired to ask leave to amend the record.

On 12th January counsel for the pursuer moved in the Single Bills for leave to make certain amendments, and counsel for the defenders moved that leave should only be granted on condition of paying the expenses thereby caused.

LORD JUSTICE-CLERK—I think that in these cases, which come up far too often from the Sheriff Courts, in which counsel cannot go on without asking leave to amend, it is not a good thing to postpone dealing with the question of expenses till the end of the case. This state of things occurs much too often, and is due to slovenly practice in the Sheriff Courts. We shall allow the amendment on payment of six guineas of expenses.

LORD STORMONTH DARLING and LORD LOW concurred.

The Court allowed the amendment on condition of payment of six guineas of expenses.

Counsel for the Pursuer (Respondent)—M'Clure, K.C.—Munro. Agents—St Clair Swanson & Manson, W.S.

Counsel for the Defenders (Appellants)—C. D. Murray — MacRobert. Agents — Pringle & Clay, W.S.

## REGISTRATION APPEAL COURT.

*Saturday, January* 12.

(Before Lord Stormonth Darling, Lord Pearson, and Lord Johnston.)

### BOGIE *v.* M'GOWAN.

*Election Law—Burgh Franchise—Occupation of Land without Buildings—Representation of the People (Scotland) Act* 1832 (2 *and* 3 *Will. IV, c.* 65), *sec.* 11—*Representation of the People Act* 1884 (48 *Vict. c.* 3), *secs.* 5, 7 (7), *and* 12.

*Held* that land by itself, without a building upon it, is a qualifying subject for the burgh occupation franchise, under section 5 of the Representation of the People Act 1884.

The Representation of the People Act 1884 (48 Vict. cap. 3), sec. 5, enacts—"Every man occupying any land or tenement in a county or borough in the United Kingdom, of a clear yearly value of not less than ten pounds, shall be entitled to be registered as a voter, and when registered to vote at an election for such county or borough in respect of such occupation, subject to the like conditions respectively as a man is, at the passing of this Act, entitled to be registered as a voter and to vote at an election for such county in respect of the county occupation franchise, and at an election for such borough in respect of the borough occupation franchise." Section 7, sub-sec. 7—"The expression 'borough occupation franchise' means . . . as respects Scotland the franchise enacted by the eleventh section of the Act of the Session of the second and third years of the reign of King William the Fourth, chapter sixty-five. . . ." Section 12—"Whereas the franchises conferred by this Act are in substitution for the franchises conferred by the enactments mentioned in the . . . second parts of the second schedule hereto . . . the Acts mentioned in the second part of the second schedule shall be repealed to the extent in the third column of that part of the said schedule mentioned, except in so far as relates to the rights of persons saved by this Act, and except in so far as the enactments so repealed contain conditions made applicable by this Act to any franchise enacted by the Act." Part 2 of Schedule 2 includes the Representation of the People (Scotland) Act 1832 (2 and 3 William IV, c. 65), and the extent of the repeal is "section eleven from the beginning of the section to the words 'sixth day of April then next preceding' inclusive."

The Representation of the People (Scotland) Act 1832, sec. 11, enacts—". . . That every person not subject to any legal incapacity shall be entitled to be registered as hereinafter directed, and to vote at elections for any of the cities, burghs, or towns, or districts of cities, burghs, or towns, hereinbefore mentioned, who, when the sheriff proceeds to consider his claim for registration, shall have been for a period of not less than twelve calendar months next previous to the last day of August in the present or the last day of July in any future year in the occupancy either as proprietor, tenant, or liferenter of any house, warehouse, counting-house, shop, or other building within the limits of such city, burgh, or town, which, either separately or jointly with any other house, warehouse, counting-house, shop, or other building within the same limits or with any land owned and occupied by him, or occupied under the same landlord, and also situate within the same limits, shall be of the yearly value of ten pounds: Provided always that the claimant shall have paid on or before the twentieth day of August in the present or the twentieth day of July in any future year all assessed