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GORDON
v.
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below, whether the billiard-rooms, baths, water-closets, &c., did not lay a much greater onus upon the wall than the old stable and coach-house; but that is a matter of controversy in the papers, and if it is wished there should be further inquiry on that, I do not see how it can be resisted. It is upon this ground I offer to your Lordships, with this qualification, my opinion that the decision of the First Division of the Court of Session is right in this particular case, not that I do not say there has been no plan, but that I cannot infer that which is desired from the plan, and if, to-morrow, any intimation is made to me on the subject of this inquiry, whether it is necessary it should be prosecuted or not, we may then affirm, or so far reverse the judgment, as your Lordships may then be advised, and with that intention, I shall move your Lordships that this matter shall be postponed till to-morrow morning."

It was ordered and adjudged that the interlocutors complained of be, and the same are hereby affirmed.

For the Appellant, *Henry Brougham, W. G. Adam.*

For the Respondents, *Sir Saml. Romilly, Fra. Horner,
Adam Duff.*

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WADDELL, &C.
v.
WADDELL.

GEORGE WADDELL of Ballochnie, and WIL-
LIAM WADDELL, W.S., now of Easter } *Appellants;*
Moffat, }

MISS JEAN WADDELL of Easter Moffat, . *Respondent.*

House of Lords, 9th, March 1818.

LIFERENTER AND FIAR.—A testator left his sister the liferent of his heritable estate and his moveables, burdened with payment of "*all his lawful debts,*" &c. The fee of this property, together with his moveable debts he left to the appellants. The moveable estate left to the sister fell far short of paying the deceased's debts: Held her entitled to relief from the fiar, in so far as these debts exceeded the personal effects left her. Reversed in the House of Lords.

By the settlement of the deceased William Waddell, of Easter Moffat, he conveyed the fee of his heritable estate, and of his moveable debts, which might belong or be due to him at his death, to the appellants, in certain proportions. To the respondent he conveyed the liferent of these subjects, and the property, or *ipsa corpora* of the moveables in his actual

possession, under this express proviso, that she (the respondent) “shall be bound and obliged, as by acceptation hereof, she binds and obliges herself to pay all my just and lawful debts.”

The question, therefore, was, whether the burden of paying the deceased’s debts had been put absolutely on the liferenter; or whether the fiars were liable in relief, in so far as they exceeded the moveable estate left to her.

Lord Balmuto. (Ordinary) pronounced this interlocutor:

“Finds that the deceased, William Waddell of Easter Moffat,
 “ ‘for the love, favour, and affection, which he bore to Jean
 “ ‘Waddell, his sister,’ by a deed of settlement, ‘disponed
 “ ‘and assigned to, and in favour of, the said Jean Waddell
 “ ‘in liferent, and George and William Waddell, his nephews,
 “ ‘in fee, his personal, and heritable estate; but declaring
 “ ‘that the said Jean Waddell, by acceptation hereof, is
 “ ‘bound and obliged to pay all my just and lawful debts,
 “ ‘funeral expenses, and any gifts or legacies I may think
 “ ‘proper to leave, by a writing under my hand;’ that this
 “ declaration is coupled with this other clause: ‘in order the
 “ ‘more easily to carry my intentions, with regard to my
 “ ‘moveable property, into execution, I hereby empower the
 “ ‘said Jean Waddell to sell and dispose of whatever part of
 “ ‘my moveable property above assigned to her in liferent,
 “ ‘and the said George Waddell, in fee, she may think
 “ ‘proper, and convert the same into cash; and after pay-
 “ ‘ment of my debts, sick-bed, and funeral expenses, to lend
 “ ‘out the remainder of the money on heritable bonds, taken
 “ ‘payable to herself in liferent, and the said George Waddell,
 “ ‘in fee;’ which unequivocally indicates the opinion and
 “ belief of the testator that his personal estate was more than
 “ sufficient to pay his funeral expenses, all debts that were
 “ due by him; that in no view could it be the intention
 “ of the late Mr Waddell, to burden his sister with his
 “ debts, in the event of their exceeding his moveable estate,
 “ and deprive her of the favourable situation in which he had
 “ placed her, by giving her the liferent of his whole property;
 “ Finds it is not denied that the personal funds have fallen
 “ greatly short of the debts of the late Mr Waddell, and
 “ therefore that the pursuer (respondent) is entitled to be
 “ relieved by the defenders, fiars of the heritable estates, in
 “ proportion to the value of these estates, in so far as the
 “ principal sums due by the late Mr Waddell exceed the
 “ personal funds and effects, the pursuer (respondent) being
 “ always liable for the interest of such sums, from the death
 “ of the late Mr Waddell, until the defenders shall enter into

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“ possession, and draw the rents of the heritable property.
“ But before further answer, appoints the pursuer to give in
“ a specific condescendence of the debts due to the deceased
“ Mr Waddell, and of all other moveables belonging to him
“ which she has, or might have intromitted with, and of the
“ amount of the debts due by him which she has paid, or are
“ still resting, distinguishing the interest from the principal;
“ and when the said condescendence is lodged, allows the de-
“ fenders to see and answer the same.”

June 16, 1814. On representation, the Lord Ordinary reported the case to the Court, and the Court, of this date, pronounced this interlocutor: “ Upon report of Lord Balmuto, and having advised “ the informations for the parties, the Lords find and declare “ in terms of the Lord Ordinary’s interlocutor, of date 11th “ Dec. 1813; and remit to the Lord Ordinary to proceed ac- “ cordingly; but find the defenders not liable in the expenses “ of process.” On reclaiming petition the Court adhered.

Dec. 22, 1814. Against these interlocutors the present appeal was brought to the House of Lords.

After hearing counsel,

It was ordered and adjudged by the Lords, that the said interlocutors therein complained of be, and the same are hereby reversed; and that the defenders (appellants) be assoilzied; but without prejudice to any claim, if any such the pursuer could sustain, against the defenders (appellants) in case the interest she derived under the disposition stated, should fall short of the amount of the debts paid, or to be paid, by the pursuer (respondent).

For the Appellants, *Sir Saml. Romilly, John Clerk, John Fullerton.*

For the Respondent, *John Leach, John Cunninghame.*

1818.

MACKENZIE,
&C.
v.
MACKENZIE,
&C.

SIR HECTOR MACKENZIE of Gairloch, Bart.,
and ALEX. MACKENZIE, Esq. of Hilton, . *Appellants;*
The Hon. Mrs MARIA HAY MACKENZIE
of Cromarty, and EDWARD HAY MAC-
KENZIE, Esq., her Husband, for his in-
terest, and HENRY DAVIDSON, Esq., of
Tulloch, } *Respondents.*

House of Lords, 18th March 1818.

PRESCRIPTIVE POSSESSION—GRAZING GROUNDS—PART AND PERTINENTS.—A proprietor, who had possessed from time immemo-