

or supply Dr M'Nicol with any information as to their grounds; that he was perfectly ready carefully to consider any such claims, and to deal with them according to their merits; that he considered it his duty to Mr Thomson and his son to remain in office, and resist the present application.

The Lord Ordinary on the Bills, on the 20th April 1871, nominated a judicial factor.

Dr M'Nicol reclaimed; and the case was debated on the 18th May.

BALFOUR for him.

M'LAREN for the petitioners.

The Court were of opinion that it would be a strong step to supersede an executor-nominate, with no allegations of mismanagement against him. They were not in as favourable position to decide this application as they should be. Dr M'Nicol should be in this country, and the claims of the petitioners should be put in some tangible shape.

Their Lordships, with this view, superseded the application for one month, and the case came up on the roll on 1st July.

A statement of the claims of the petitioners in the executry was put in, in regard to which it is sufficient to say that they were claims in respect of various funds alleged to have fallen to the petitioners by succession, and to have been uplifted by the deceased. The total amount exceeded the value of the executry.

Dr M'Nicol had not returned to this country; and although parties were not agreed as to his intentions, it was evident that they were of a somewhat uncertain character.

At advising—

LORD PRESIDENT—This is one of those cases where it is difficult to exercise our discretion to the satisfaction of one's own mind. There are weighty considerations on both sides. The expense of a judicial factory in so small an estate is large. If there was any fair prospect of such an application being avoided in the end, I should not be disposed to appoint a judicial factor. But even if Dr M'Nicol returned, I do not see how the two joint executors could well dispose of Miss Thomson's claims. If we wait till he comes home, the strong probability is that we shall be obliged in the end to resort to a judicial factory. On a balance of considerations, I think the best course is to appoint a factor now.

LORD DEAS—I concur with some hesitation. If the executors could have assumed a third party, a judicial factory might have been avoided. But the testator has given no power of assumption. And if we refused the present application we should only be bringing back the parties before us at some future time.

LORDS ARDMILLAN and KINLOCH concurred.

On the question of expenses, the Lord President observed—I am not generally disposed to saddle the estate with the expenses of a dispute of this kind. But here the conflict between the petitioners and the absent Dr M'Nicol was inevitable. There has been a failure of administration, which has landed the estate in difficulties. The petitioners were justified in making the application. In his absence, the representatives of Dr M'Nicol were justified in lodging answers. I am inclined to say, not only that the petitioners' expenses should come out of the estate, but Dr M'Nicol's

also. There would be no justice in Dr M'Nicol having to pay his expenses when he came home.

The other Judges concurred.

The Court named a judicial factor, and appointed the expenses of both parties to be paid out of the estate.

Agents for Petitioners—J. & R. Macandrew, W.S.

Agents for Dr M'Nicol—Murray, Beith & Murray, W.S.

Saturday, July 1.

LICKLEY, PETITIONER.

Process—Inhibition—Recall—Expenses. Inhibition having been irregularly executed and recorded on the dependence of a summons, which had never been served, the party inhibited presented a petition for its recall. Thereafter the agents of the party inhibiting produced a discharge of the inhibition, and offered to have it recorded and the whole matter arranged extrajudicially. A difficulty occurring in this arrangement, the party inhibited insisted in his petition, obtained the recall of the inhibition, and moved for his expenses. This latter motion was resisted, on the ground that an extrajudicial discharge and purging of the register had been offered and refused.

Held that after a petition had been presented for recall it would not do for the respondent to tender anything in lieu of recall; and that the petitioner being absolutely entitled to judicial recall, he was also entitled to the expenses of the application.

BIRNIE for petitioner.

KEIR for respondent.

Agents for the Petitioner—Henry & Shiress, S.S.C.

Agents for the Respondent—Andrew & Wilson, W.S.

LANDS VALUATION COURT.

Saturday, July 1.

COUNTY OF FORFAR.

(Before Lords Ormidale and Mure.)

JAMES F. WHITE, APPELLANT.

Statute 17 and 18 Vict., c. 91. Appeal partially sustained, without expenses.

Mr White, merchant, Dundee, appealed against the valuation of his house, Spring Grove, Dundee, being fixed at £200.

The assessor had entered the house in the valuation roll at £260. On appeal, the Magistrates of Dundee were of opinion that the valuation should be reduced to £200. The appellant, considering that the house was not worth more than £120, craved a case for the opinion of Her Majesty's Judges, which was accordingly stated and signed. For Mr White it was contended that the house would not let for more than £120. The Act 17 and 18 Vict., c. 91, section 6, provides: "In estimating the yearly value of lands and heritages under this Act, the same shall be taken to be the rent at which, one year with another, such lands and heritages might, in their actual state, be reasonably