

head's testamentary arrangements, that he directs the surplus income to be accumulated during the survivance of the widow. The free income is apparently about £600, and if it were not for the direction to accumulate, the portion of the income corresponding to Mrs Christie's share would be £200. But great difficulty arises from this direction to accumulate; and the question is, Whether we can, by exercising the *nobile officium* of the Court, get over it in order to meet the pressing demand for money to clothe and educate these children, of whom there are four, all in pupilarity.

As regards the proposal to make an allowance of a certain sum per annum to Mrs Christie herself for her maintenance, I think it is impossible to entertain it, for it might amount to simply paying her money out of the portion of Mr Muirhead's estate which ultimately belongs to her children and not to her. But the children's case is different. There seems to be a pressing necessity from their condition; but I should hope that their present condition is not to continue, and that the father of the family, who does not appear to suffer from any incapacity, bodily or mental, will not continue to subsist entirely on the very small income belonging to his wife. Therefore whatever we do in the meantime to meet the existing and pressing necessity must be for one year only, for I hope before the end of that time their condition will be very different. For that year I think we shall be justified in making an allowance for the education and clothing of the four children. As to their maintenance, it is in a different position, for it would be impossible to give anything for their maintenance without giving it substantially for the maintenance of the parents, which is the very thing we cannot do; but to the extent of providing for the education and clothing of the children I think we may fairly allow £30 for each child out of the income of the estate, and on condition that the judicial factor sees to the expenditure of this money, and its proper application to the two objects of education and clothing.

LORD DEAS and LORD MURE concurred.

LORD SHAND—I concur; and I may add that a strong element of the case, in the view which I take, is that the two brothers, who are the ultimate beneficiaries under Mr Muirhead's settlement, desire that this arrangement should be carried out.

LORD PRESIDENT—That is very important. I had forgotten to mention it. Without that circumstance it would have been difficult to grant the application.

The Court recalled the Lord Ordinary's interlocutor, authorised the judicial factor to apply a portion of the income of the estate in his hands to the education and clothing of the four children of Mr and Mrs Christie to the extent of £30 for each of the four children, for one year from date of the interlocutor, the said sum to be administered and applied by the judicial factor personally, and decreed; and superseded consideration of the petition to enable him, if necessary, to make further application to the Court.

Counsel for Petitioner (Reclaimer)—Blair. Agent—Robert Denholm, S.S.C.

Saturday, June 5.

SECOND DIVISION.

[Lord Craighill, Ordinary.]

KYD v. WATERSON AND OTHERS.

Process—Multiplepointing—Competency.

W. executed a voluntary trust-disposition for behoof of creditors. A non-acceding creditor raised an action of multiplepointing in the name of the trustee, on the ground that undue preferences were being given to other creditors to her prejudice. *Held* (rev. Lord Craighill) that such an action was incompetent.

On 9th June 1879 John Waterson, a farmer at Garth of Airtuntly, executed a trust-disposition in favour of George Kyd, an auctioneer at Perth, for behoof of his creditors. The trustee accordingly realised the estate in the autumn of 1879, and the proceeds amounted to about £2500.

Mrs Waterson, the mother of the truster, was one of the creditors to the amount of £525, and had not acceded to the trust, and accordingly, as she believed that undue preferences were being given to some of the other creditors to her prejudice, she raised an action of multiplepointing in the name of the trustee George Kyd, as pursuer and nominal raiser, for the purpose of obtaining the adjudication of the Court upon the rights of the several creditors.

Kyd objected to the competency of the action, on the ground that there was no double distress or conflicting claims in regard to the funds in dispute, and that the same had not been rendered litigious by arrestments.

The Lord Ordinary (CRAIGHILL) found that the action was not incompetent, and appended the following note to his interlocutor:—

“*Note.*—The Lord Ordinary refers parties to the statement of Professor Bell relative to procedure under voluntary trust-deeds for creditors (Commentaries, 7th edition, vol. ii., 391):—‘When an estate vested in trustees is sold, and disputes arise as to the division of the price, the only practicable mode of settling matters is by a multiplepointing raised either by the trustees or in their name; and there can be no doubt that such a proceeding is competent.’ This, the Lord Ordinary thinks, fully covers the present case if the question is to be decided upon authority.”

The trustee reclaimed.

At advising—

LORD ORMDALE—The dictum from Bell's Commentaries which has been quoted is very comprehensive, and comes to this, that in every case where there is a private trust-deed granted, the creditors can come to the Court of Session to take the place of the trustee. There is no precedent for such a proceeding. I referred during the discussion to a case in which the trustee who had carried through a private trust and could not get his discharge from the acceding creditors, accordingly brought a multiplepointing and exoneration to get his discharge from the creditors. That is a very different case from this, where the ground is that the trustee refuses to recognise the claim of one of the creditors. The creditors

are quite amicable, and the dispute, if any, is with the trustee. If the trustee under a private trust-deed refuses to do his duty, the creditors can sequester the estate of the trustor. The complaining claimant is not bound by the trust-deed; he has not acceded to it.

This Court will not sustain a multiplepounding unless it be raised upon good and sufficient grounds. To sustain this action would be to authorise useless expense. If there is any real difficulty the creditors can easily use sequestration. In such a case to bring a multiplepounding is practically to ask the Court to administer the estate. We will recall the Lord Ordinary's interlocutor and dismiss the action.

LORD GIFFORD—I am entirely of the same opinion. This is a very striking proceeding, and no case like it can be adduced in the books. I am averse to introducing a new form of process, especially where there is this simple remedy that any creditor who is displeased with what is being done can use sequestration and so get the advantage of all the short and summary modes of procedure introduced by the Bankruptcy Act. The result of sustaining this attempted proceeding would be that any creditor could supersede the trustee in a voluntary trust and make this Court the trustee, with the anomalous result that this Court could be superseded by the trustee in a sequestration if such a process was resorted to.

Moreover, there is no real double distress here. Is the whole fund, amounting to over £2000, to be thrown into the Court of Session when the only dispute is about a sum of £150? I am of opinion that the whole proceeding is quite incompetent.

LORD YOUNG—I am of the same opinion, and the only observation I wish to make is in reference to the passage from Bell's Commentaries cited in the Lord Ordinary's note. As an absolute and unqualified legal proposition I cannot assent to it. Bell cites no authority for it, and so far as we know or are informed none such exists. Limited and qualified it may be true. Your Lordship in the chair instanced the case of creditors acceding to a trust, and after the trustee had realised and distributed the greater part of the estate and the residue was claimed by several persons, observed that it would be a very convenient proceeding to raise a multiplepounding. Here a non-acceding creditor proposes to supersede a private trustee and put the management of the trust-estate into the hands of this Court. By such a process the estate of any farmer in Scotland might be put under the management of the Court. Voluntary trustees cannot stand in the way of non-acceding creditors. The estate is in the hands of a trustee under a trust which does not affect them. They can use ordinary diligence against the estate. I am clearly of opinion that this process should be dismissed.

The Court recalled the Lord Ordinary's interlocutor, found the action incompetent, and dismissed it.

Counsel for Nominal Raiser and Reclaimer—Strachan. Agent—David Milne, S.S.C.

Counsel for Real Raiser and Respondent—Kinnear—W. J. Mure. Agents—Simpson & Wallace, S.S.C.

HIGH COURT OF JUSTICIARY.

Tuesday, June 8.

(Before Lord Justice-Clerk, Lord Young, and Lord Adam.)

CORNELIUS v. GRANT (PROCURATOR-FISCAL OF LEITH POLICE COURT).

Justiciary Cases—13 and 14 Vict. cap. 92, sec. 1—Prevention of Cruelty to Animals (Scotland) Act—Cruelty.

A person who had failed to beat off a large dog which was fighting with two smaller dogs of his own, sent for a knife and stabbed the large dog with it in several places so that it died. *Held* that in the circumstances, and without reference to claim of damages in a civil action, this was not cruelty in the sense of the statute.

Remarks (per Lord Justice-Clerk) on the construction of the term "cruelty" under the statute.

The Act 13 and 14 Vict. cap. 92, on the preamble that "it is expedient to prevent wanton cruelty in the treatment of horses, cattle, and other domestic animals in Scotland," enacts by section 1 "That any person who shall from and after the passing of this Act cruelly beat, ill-treat, over-drive, abuse, or torture, or cause or procure to be cruelly beaten, ill-treated, over-driven, abused, or tortured, any animal, shall be guilty of an offence, and shall for every such offence be liable to a penalty not exceeding five pounds."

On 2d April 1880 William Cornelius, residing in Trinity, was charged in the Police Court at Leith, at the instance of the Procurator-Fiscal of Court, with contravention of the foregoing section of the Prevention of Cruelty to Animals (Scotland) Act, by having on the 15th day of March wantonly and cruelly ill-treated and abused a dog belonging to Eugen Blume, a teacher, "by wantonly and cruelly stabbing said dog on the right side or belly and right hip with a knife or some other sharp instrument," in such a manner that the dog died on the following day.

The facts were that on 15th March 1880, while Cornelius and his wife were proceeding home, accompanied by their two dogs, they met opposite their own gate a servant who had with her a dog belonging to Blume. The dogs fought, and after being separated began to fight again, and so fiercely that neither Cornelius nor his wife, nor the servant, nor a policeman who came up, could separate them. Mrs Cornelius being much alarmed went into the house, while Cornelius himself, after breaking his umbrella in the attempt to separate the dogs, had handed to him from his house a knife, with which he stabbed Blume's dog several times, and so severely that it died the next day.

The magistrate found the charge proven, and imposed a fine of 30s., with the alternative of 14 days' imprisonment. Cornelius appealed to the High Court of Justiciary.

Argued for appellant—Every act of cruelty is not struck at by the statute. There was here, at