

that they had effectually transferred the shares standing in their names. There are, however, some legal difficulties in the way of holding these transfers effectual, and if these cannot be got over, hard as it may appear, the names of the petitioners may have again to be entered on the list of shareholders of this company.

There are, in the first place, some facts which must be carefully kept in mind, as they have an important bearing upon the decision of this case. The petitioners, for instance, say that they dealt with Mr Drummond all along as an individual, and that they had no idea that he was purchasing these shares for behoof of any other party but himself.

The respondents say that the Messrs Gardiner were all along made aware that the purchase was for the company, and that Drummond was acting for them in the matter.

Now, this is a simple matter of fact, but it is a most important fact, and I must say that I believe the account of this matter given by the Messrs Gardiner. They say that they dealt with Mr Drummond from beginning to end of this transaction as an individual, and they thought that in so dealing with them he was acting for himself, and not as the representative of any other person or body. Then, as to the transfers, one of them is wholly in manuscript, the other is partly written and partly printed. In both the name of Drummond appears as the transferee, but as these transfers now stand they bear to be transfers to Drummond "for behoof of the Victoria Estates Company (Limited)."

In the one transfer, which is wholly in writing, these words, "for behoof of the Victoria Estates Company (Limited)," are interlined, but that interlineation is not authenticated. In the other transfer there are no interlineations, because there was ample room to add the words without interlineation. Now, the Messrs Gardiner say that this interlineation was not there at the time when they executed the transfers. On the other hand, Drummond says it was. The evidence upon this point leaves the whole matter in considerable doubt, but I am willing to assume that the words "for behoof of the Victoria Estates Company (Limited)" were there when the transfer was executed. What is their effect to be? This is a transfer to Drummond as an individual—it is he that pays the money—while the cheque by which it is paid is from his own private account. In such circumstances the transferrer has no business to inquire into the objects of the transfer, or as to whether the purchaser is buying for his own behoof or for that of some third party. He has a good name given to him in the transferee, and he has no more concern in the matter. If the transfer was approved by the company, and was registered in the usual way, the effect of that would be to transfer any liability attaching to these shares from the Messrs Gardiner to Drummond, assuming of course that the company was not entitled to hold its own shares.

Now, what took place in the present case was just this. Upon the 6th November 1878 the transfers were registered, and the entry in the shareholders' ledger was in these terms, "To 100 shares transferred to the Victoria Estates Company (Limited), £100." But such an entry was quite irregular, and it had not the same effect as if Drummond's name had appeared in the list

of shareholders. He was the person whose name should have stood against these shares, and seeing that the company was not in liquidation the question comes to be, whether the company was not bound to make the entry in the register in the name of "James Drummond, for behoof of the Victoria Estates Company (Limited)." I think that they were.

They could, if they had thought fit, have refused to have accepted this transfer, but, on the contrary, they passed it, and duly recognised it as a transfer in favour of the managing director "for behoof of the company." This transfer was formally approved of by the directors. In these circumstances what the directors ought to have done was, they should have registered the transfer in these terms, and not as a transfer to the Victoria Estates Company.

I am therefore of opinion that the directors of this company are not entitled to replace the names of the Messrs Gardiner upon their list of shareholders. Their names were properly struck off at the time when the shares were transferred to Drummond, and although in putting the company's name on the register an illegal act may have been committed, yet the petitioners' names were at that time properly struck off the list of shareholders, and cannot now be replaced.

I am therefore for granting the prayer of this petition by ordering the register of this company to be rectified by striking out the names of the Messrs Gardiner.

LORDS MURE, SHAND, and ADAM concurred.

The Court ordered the register to be rectified by removal of the petitioners' names.

Counsel for Petitioner—Pearson—Dickson.  
Agents—J. & J. Ross, W.S.

Counsel for Respondents (Victoria Company)—  
J. Guthrie Smith—M'Kechnie. Agents—Duncan Smith & Maclaren, S.S.C.

Counsel for Respondent (Drummond)—Shaw.  
Agents—W. Adam & Winchester, S.S.C.

Thursday, July 16.

## FIRST DIVISION.

### WHYTE v. WHYTE'S TRUSTEES.

*Trust—Judicial Factor—Sequestration of Trust Estate.*

Circumstances in which the Court without removing testamentary trustees sequestrated the trust estate and appointed a judicial factor thereon.

This was a petition for sequestration of the trust estate of the deceased George Whyte, proprietor of Meethil and Burnhaven, Aberdeenshire, and if the Court should consider it necessary, for removal of the trustees. The petitioner Phillis Whyte was a daughter of the trusteer, and entitled to a legacy of £1000, which was not to vest during the lifetime of one of the trustees, the trusteer's widow, who was alive and a trustee at the date of the petition. The peti-

tioner had obtained the concurrence of George Whyte, one of the trustees, to the petition. The truster died in 1869. The petitioner averred that the trustees, who were three in number, Mrs Whyte, George Whyte, the truster's son (both of whom were trustees nominated by the truster), and Rev. J. Stewart, were at variance among themselves, and that the management of the estate (which was almost entirely heritable and was heavily burdened) was brought to a dead-lock thereby. On this point it was admitted that there had been variance between George Whyte and the other trustees, but denied that the management was brought to a dead-lock thereby.

The petitioner also averred that no accounts had ever been produced by the respondents, though they were ordered to produce them in a previous action which they had brought against her, and the conclusions of which involved the question of her election between her testamentary provisions and those in the testator's marriage-contract, which action had been dismissed as premature. The trustees stated that full accounts could be produced, and produced in the present process accounts showing that the estate was in a very embarrassed position, and that though the estate at the time of Mr Whyte's death produced a considerable revenue, there was now almost no available revenue.

It was further averred and admitted that the agents of the trustees held an adjudication over the trust-estate for a sum of £319 or thereby, which consisted of cash advances and law charges, the history of which was that the debt had been incurred to them during their agency, that they had resigned the agency, and afterwards led the adjudication for the debt, and had two years after its date again been appointed agents.

Mrs Whyte, one of the trustees, was seventy-eight years of age. The Rev. Mr Stewart had no intromissions with the trust funds.

The answers lodged bore to be on behalf of the majority of the trustees (Mrs Whyte and Rev. Mr Stewart) and all beneficially interested except the petitioner.

George Whyte (who was alleged by the respondents not to have any beneficial interest in the trust, since he had been bankrupt, and his whole interest had been sold by his trustee) made a separate appearance at the bar and lodged a minute craving that the desired appointment should be made, and setting forth that the accounts which had been produced showed that the estate was being rapidly dilapidated, and further that he was excluded from all share in the management.

The Court, without delivering opinions, sequestrated the estate and appointed a judicial factor.

Counsel for Petitioner—Sym. Agents—J. & J. Ross, W.S.

Counsel for Respondent—Comrie Thomson—Dickson.

Friday, July 17.

## FIRST DIVISION.

[Lord M'Laren, Ordinary.

LORD ADVOCATE *v.* LADY WILLOUGHBY  
DE ERESBY.

*Teinds—Valuation—Rescissory Act 1662, cap. 1—Act 1662, c. 9—Act 1663, c. 28.*

A valuation of teinds by the High Commission in 1647 held not to be struck at by the Rescissory Act 1662, c. 1, depriving of all force acts, gifts, tacks, or deeds passed after 1637 to the prejudice of the rights of the several bishoprics.

In the locality of the parish of Cargill a question arose between the Lord Advocate as representing the Crown and Lady Willoughby de Eresby, heiress of entail in possession of the entailed estates of Drummond, as to whether the teinds of the lands of Kirklands of Cargill, and Nether Campsie, the property of Lady Willoughby de Eresby, were or were not valued, the Crown as titular of the teinds of Cargill in right of the Bishop of Dunkeld contending that the teinds in question were unvalued. The Lord Advocate accordingly lodged objections in the locality, alleging that the teinds in question had not been, as they ought to be, included in the state of teinds, and Lady Willoughby de Eresby lodged answers. She maintained (1) that the lands in question were valued by a decree of the High Commission dated December 1647, and which had gone amissing for a long period (during which a valuation of 1629 was assumed to be the ruling valuation), but which she now produced. (2) She maintained, alternatively, that the lands in question were included in a decree of valuation by the Sub-Commissioners of the Presbytery of Dunkeld in 1629, approved by decree of the High Commission dated 24th July 1771 and 3d February 1773.

The former of these contentions was alone the subject of decision in the Inner House in this process, and it is fully explained in the opinion of the Lord President.

The Lord Ordinary repelled the objections for the Lord Advocate.

*Opinion.*—In this case it is contended on behalf of the Crown that the teinds of certain lands pertaining to the respondent, known as the Kirklands of Cargill, and the lands of Nether Campsie, are unvalued.

“There is a valuation of the respondent's estate, made by the Sub-Commissioners for the Presbytery of Dunkeld in 1629, and approved by the Commissioners of Teinds, by decree of approbation and valuation, dated 24th July 1771 and 3d February 1773. But in the valuation thus approved the lands of Nether Campsie are not referred to by name, and in it the Kirklands of Cargill are named without being valued, because it is there stated that they are ‘alleged to be feued *cum decimis inclusis*, but no charter or confirmation produced for verifying thereof.’

“One of the answers made by the respondent is, that the lands in question are valued by a decree of the High Commission dated December 1647, an extract of which is produced and founded on. It is not disputed that the last-mentioned decree has reference to the lands of