

Counsel for the Governors of Anderson's Trust—Guthrie—C. K. Mackenzie. Agent—Robert Stewart, S.S.C.

Agent for the Lord Advocate—J. Auldjo Jamieson, W.S.

Tuesday, December 1.

FIRST DIVISION.

BOWMAN v. MACKINNON AND OTHERS.

*Petition—Trust—Sequestration of Trust-Estate—Removal of Trustees—Judicial Factor.*

One of his next-of-kin of a truster presented a petition for sequestration of the trust-estate, removal of the trustees, and appointment of a judicial factor, on the ground that the trustees intended to remove the trust-estate to England, which would prejudice the petitioner's rights in an action of reduction of the settlement which she was about to bring.

In respect that the trustees stated they had no intention of removing the trust-estate from Scotland, the Court refused the prayer of the petition.

Thomas Melville Russell, who died on 3rd February 1891, by trust-disposition and settlement dated 24th October 1890 conveyed his whole estate, heritable and moveable, to the trustees therein named, and directed them, *inter alia*, to realise and pay over the whole residue to the Mildmay Mission to the Jews in London. He further gave his trustees the right "to take over themselves, or make over to their friends, such parts, of my stock, funds, or securities as my trustees may feel disposed or in their own absolute discretion think to be right and proper, and at such prices as they alone may regard as the fair market value of the day of such stocks, funds, or securities as may be taken over or made over as aforesaid."

Of the trustees named, Duncan Mackinnon, an East India merchant resident in London, alone accepted office, and assumed Neil Macmichael, an East India merchant in Glasgow, as his co-trustee.

The value of Thomas Melville Russell's estate was over £90,000, the greater part of which was invested in East Indian and American companies, and elsewhere furth of Scotland. There was not within Scotland any heritable estate belonging to the deceased.

Mrs Helen Taylor Russell or Bowman, a niece of the testator, and one of his two next-of-kin, on 2nd November 1891 presented a petition to the First Division of the Court of Session praying for sequestration of the trust-estate, removal of the two trustees from office, and the appointment of a judicial factor, and until any answers could be considered she prayed the Court to sequester, remove, and ap-

point, all *ad interim*. The reason alleged by the petitioner was that she was about to bring an action of reduction of the trust-disposition and settlement of 24th October 1890, on the ground that the testator was not of sound mind, and that the officials of the Mildmay Mission to the Jews had acquired undue influence over him.

She averred—"The said Duncan Mackinnon is resident in London, and is not subject to the ordinary jurisdiction of the Scottish Courts, and it is believed and averred that he and Neil Macmichael contemplate immediately removing the trust-estate entirely out of Scotland, and winding it up in England, with the view of trying to defeat any results favourable to the petitioners which may be obtained in the said action of reduction in the Scottish Courts. The contemplated removal of the trust-estate will further put it under the jurisdiction of the Chancery Division of the High Court of Justice in England, and the petitioners fear that in that event their rights in the said trust-estate could only be vindicated, if at all, after long and costly litigation in courts not those of the testator's domicile. Further, it is believed and averred by the petitioners that the said Duncan Mackinnon and Neil Macmichael, in the interests of the said Mildmay Mission to the Jews, and indeed as directed by the said trust-disposition and settlement under which they act, will realise as rapidly as possible the trust-estate and pay it over to the Mildmay Mission. As the said Mission has no domicile in Scotland, and the Scottish Courts have no ordinary jurisdiction over it, it would be extremely difficult, if not impossible, for the petitioners, in the event of their being successful in the said action of reduction, to recover the estate thus paid over to the said Mission."

The trustees opposed the petition, and stated in their answers that they had no intention of removing the estate out of Scotland, or immediately winding-up the trust in prejudice of the petitioner's action of reduction.

At advising—

LORD PRESIDENT—I think that this petition must be refused. I am at a loss to know on what ground the petitioner comes here into Court. The testator left a trust-disposition by which he appointed certain gentlemen as trustees. He died on 3rd February 1891, and we are now at the 1st of December. I have listened attentively to Mr Cooper's statement, and I have failed to discover one single reason for taking the grave and unusual step of removing trustees who tell us—and this is not contradicted—that they have been careful to do nothing to alter the state of the trust-estate, and that if an action of reduction is raised they will hold their hands and hold the estate for the benefit of all who may be found entitled thereto. Mr Cooper has hinted at danger to the petitioner's right if the trust-estate be transferred to England and placed under the jurisdiction of the English Courts. I cannot, however, see any ground for inter-

ference at all, unless we are prepared to sequestrate trust-estates wherever the testator has chosen English trustees. I therefore think that no cause has been shown for granting the prayer of this petition.

LORD ADAM—I concur. There is no ground for taking this step. The sole reason, the petitioner alleges, is that she is afraid of the Court of Chancery obtaining possession of this estate.

LORD M'LAREN—The motive of this petition is a fear that the trustees or legatees may approach the English Courts, which may affect the position of the next-of-kin in an action of reduction which they intend to prosecute. There are no doubt cases where the Court has appointed a judicial factor and removed trustees for the purpose of securing that the estate should not be removed to foreign parts. It is, however, a sufficient answer to that that the trustees here have disclaimed any intention of taking any step to prejudice the claim of the petitioner; and further, until actual proceedings are taken, and we know something of them, we cannot sequestrate, because we cannot tell whether they are legal or not.

LORD KINNEAR concurred.

The Court refused the prayer of the petition.

Counsel for the Petitioner—Sol.-Gen. Graham Murray, Q.C.—Kennedy—F. T. Cooper. Agents—Pringle, Dallas, & Company, W.S.

Counsel for the Trustees—D.-F. Balfour, Q.C.—Wilson. Agents—Duncan & Black, W.S.

Counsel for the Mildmay Mission to the Jews—Asher, Q.C.—Dundas. Agents—J. & J. H. Balfour, W.S.

Tuesday, December 1.

FIRST DIVISION.  
WILSON AND ANOTHER,  
PETITIONERS.

*Bankruptcy Act 1856 (18 and 19 Vict. c. 79)—  
Computation of Time.*

Section 67 of the Bankruptcy Act provides—"The Lord Ordinary or the Sheriff by the deliverance which awards sequestration shall appoint a meeting of the creditors to be held at a specified hour on a specified day being not earlier than six nor later than twelve days from the date of the *Gazette* notice of sequestration having been awarded" . . . for the election of a trustee and other business.

On 5th October a Sheriff awarded sequestration, and appointed a meeting of creditors to be held on 12th October. Notice of sequestration was published in the *Gazette* on 6th October, being the first publication of the *Gazette* after the

award of sequestration. The meeting was held on the 12th October. The Court held that an interval of six days must elapse after the close of the day of the *Gazette* notice, and before the commencement of the day of meeting, and appointed a new meeting of creditors to take place.

The estates of William Wilson were sequestrated by the Sheriff-Substitute of the county of Ayr at Kilmarnock on 5th October 1891, and in the deliverance awarding sequestration he appointed a meeting of the creditors to be held on the 12th day of October 1891 for the purpose of electing a trustee and commissioners.

In terms of sec. 67 of the Bankruptcy (Scotland) Act 1856 this meeting required to be held "on a specified day, being not earlier than six nor later than twelve days from the date of the *Gazette* notice of sequestration having been awarded." Notice of the sequestration and of the place and date of the said meeting was inserted in the *Edinburgh Gazette* of Tuesday the 6th of October 1891, which was the first publication of the *Gazette* after the deliverance awarding sequestration and appointing the meeting was pronounced. The meeting of creditors was duly held on 12th October 1891, and a protest was made on behalf of certain creditors against the legality of the proceedings, in respect that timeous notice of the meeting had not been given in the *Gazette* in terms of the Bankruptcy Statute. The creditors, notwithstanding the protest, elected a trustee and commissioners on the sequestrated estates. When the minutes of the meeting were reported to the Sheriff-Substitute he declined to confirm the election of the trustee on the ground that statutory notice of the meeting had not been given. He held that six clear days must elapse between the date of the *Gazette* notice and the date fixed for the meeting, and that the meeting having been held on the sixth day after the date of the *Gazette* notice the statutory notice had not been duly given.

The bankrupt and a concurring creditor presented this petition to the First Division of the Court of Session praying their Lordships "to remit to the Sheriff of the county of Ayr to declare the said Andrew Stewart to have been duly elected trustee on the sequestrated estates of the said William Wilson, and thereafter on the said Andrew Stewart finding caution, to confirm his election as such trustee, or otherwise to appoint a meeting of the creditors of the said William Wilson to be held within the George Hotel, Kilmarnock, on such day as your Lordships shall appoint, to elect a trustee, or trustees in succession, and commissioners upon the sequestrated estates of the said William Wilson, and to do the other acts provided by the Bankruptcy Statutes, and to appoint intimation of the said meeting to be made in the *Edinburgh Gazette*, and to remit to the said Sheriff of the county of Ayr to proceed further in the matter in terms of the Bankruptcy Statutes."

Argued for the petitioner—The words of