

otherwise, to nominate and appoint a judicial factor upon the trust-estate of the said John Salmon."

The truster's daughter, Mrs Aitken, and her husband, and the trustee on John and Peter Salmon's sequestrated estates, being the sole beneficiaries under the deed, concurred in the application.

LANCASTER, for petitioners, cited *Smith*, 20 March 1862, 24 D. 838; *Watt*, 13 June 1854, 16 D. 941; *M'Aslan*, 17 July 1841, 3 D. 1263; *Glasgow*, 7 Dec. 1844, 7 D. 178; *Miller*, 19 Jan. 1854, 16 D. 358; *Fraser*, 1 March 1837, 15 S. 692.

The Court pronounced the following interlocutor:—

"*Edinburgh*, 13th May 1868.—The Lords having heard counsel for the petitioners, and no appearance having been made for any other party, appoint this petition to be intimated to John Salmon and Peter Salmon, therein designed, and that by sending through the post-office a copy of the said petition and of this interlocutor to each of them, addressed to their place or places of abode last known to the petitioners; further appoint this petition to be intimated to William Mathieson, therein designed, the last known agent of the said John Salmon and Peter Salmon, and appoint the said John Salmon and Peter Salmon to state, and that within ten days from the signing of this interlocutor, whether they or either of them will or will not act under the trust mentioned, and with certification that if they fail to do so the Lords will proceed to remove them from the said office." (Signed 15th May.)

A minute was lodged by the agents, stating that intimation had been made as directed. No reply was made by the absent trustees.

Thereafter this interlocutor was pronounced:—

"*27th May*.—The Lords having resumed consideration of the petition, with the intimation and the minute No. 9 of process, remove John Salmon and Peter Salmon from the office of trustees under the trust-disposition and settlement of the deceased John Salmon, as prayed, and decern."

Agents for Petitioner—Jardine, Stodart, & Frasers, W.S.

Wednesday, May 27.

#### HENDRY v. GRANT AND ANOTHER.

*Agent and Client—Funds received—Specific purpose—Advocation.* Law agents received from a client a sum of money for the purpose of getting the opinion of counsel as to the competency of an advocation, and of advocating the cause if so advised, or raising some other action. Nothing else was done than to take the opinion, which was adverse to advocation. The auditor having reported that the sum received was more than was required for that purpose,—*Held* that, the money being given for a specific purpose, the agents must return the balance whatever counter claim they had against their client.

The pursuer in this case, a farm grieve, pursued the defenders, a legal firm, for damages, and for the recovery of certain specific sums, upon two grounds—(1) that they failed to obey his express instructions in regard to raising an action at his instance against his master (by whom he said he had been improperly dismissed) in respect that while he ordered an action to be brought for a sum of about £28, including his yearly wages and allowances,

the defenders only brought the action for half that amount, being the pursuer's claim for half yearly wages. The action for £14, 4s. having been raised, the Sheriff-substitute decerned for the pursuer. The Sheriff altered this judgment; and the ground of action in this case was that, through the failure of the defenders to obey his express instructions, the pursuer had lost his remedy of advocation, whereby he could have got his rights against his master redressed; (2) the second ground of action was, that, after the final judgment of the Sheriff, the defenders had encouraged the pursuer in the idea that the process in the Inferior Court was capable of being advocated, and had taken from him £10, the purpose of which was expressed in the following receipt which they gave to him:—

"*Elgin*, 3d July 1866.—Received from Mr Wm. Hendry the sum of ten pounds sterling, for the purpose of getting counsel's opinion, and for advocating *Hendry v. Grant*, and raising such other action as may be necessary."

(Signed) "GRANT & JAMESON."

The pursuer said that the defenders were guilty of a want of professional skill in supposing, and leading him to believe, that the process could be advocated.

The Court allowed a proof, and heard parties upon it.

W. A. BROWN for pursuer.

GIFFORD and LANCASTER for defenders.

The Court held (1) that the pursuer had failed to prove that he gave such instructions as he represented; (2) without affirming that the defenders had shown any want of professional skill in taking the opinion of counsel on the point, that advocation of the process was clearly incompetent; but (3) that the sum of £10, having been given for a specific purpose, must be so used, and being too large sum for taking the opinion of counsel, which was all the defenders did with it, they have to return the balance after deducting a lawful charge for agency and counsel's opinion.

The Court having remitted to the Auditor to tax the account, he reported that £4, 6s. was a lawful charge for that purpose, the Court accordingly decerned for the pursuer for the balance of £5, 14s; but assolized the defenders from all the other conclusions of the action.

Agent for Pursuer—James Bell, S.S.C.

Agents for Defenders—H. & A. Inglis, W.S.

Thursday, May 28.

#### FIRST DIVISION.

##### HENRY & CO. v. FOWLER.

*Agreement—Remuneration for Work done.* Circumstances in which *held* that a party suing for remuneration for work done had failed to prove that the work was done on the employment of the defender.

This was an action for payment of certain sums of money alleged to be due by the defender to the pursuers for work done in the way of pulling down old houses and making excavations in ground belonging to the defender.

The Lord Ordinary (KINLOCH), after a proof, pronounced this interlocutor:—"Finds that, on or about the month of August 1856, the defender William Fowler entered into a contract with Robert Paterson, designing himself mason, 140 Renfield