

Saturday, Dec. 22.

FIRST DIVISION.

REPORT OF ACCOUNTANT OF COURT IN RANNIE'S FACTORY.

Factor Loco Tutoris—*New Appointment*—*Cautioner for former Factor*. Held inexpedient, but not incompetent, to appoint the cautioner for a former factor to be the factor *loco tutoris* to a pupil.

R. W. Rannie was, on 2d November 1865, appointed to be factor *loco tutoris* to D. W. Rannie, and having found caution, he entered on the duties of his office. His cautioner was David Mackenzie, solicitor, Perth. R. W. Rannie died on 19th Feb. 1865, and David Mackenzie was, on 11th December 1866, appointed his successor, on the application of the nearest relatives on both sides of the pupil. In the petition for his appointment it had not been noticed that he had been cautioner for the former factor. Upon 12th November 1866 the Accountant of Court (under the Pupils' Protection Act, 12 and 13 Vict., cap. 51) reported the fact to the Junior Lord Ordinary for direction, or for such other action as his Lordship might deem proper, stating that it was the duty of the succeeding factor, in cases like the one in hand, to see that his predecessor's actings, intrusions, and management had been correct and satisfactory, and that it seemed proper that the person discharging the preceding factor's representatives and cautioner should have no beneficial interest in the discharge.

Upon 14th December 1866 the nearest relatives of the pupil on both sides, having been informed of the report by the Accountant, represented that they had the most perfect confidence in Mr Mackenzie, who, as brother-in-law of the pupil's father, had the fullest knowledge of his affairs, and who, in respect of the former factor's (his father-in-law) inability, had actually managed the estate for him, and had so acquired a complete knowledge of it. The accounts of the late factor had been examined by the Accountant of Court and found correct, and the representatives of the late factor did not ask for a discharge (and were willing to give in a minute to that effect) till the pupil came of age, upon receiving a receipt for the amount brought out by the Accountant upon his accounts. These last mentioned facts were stated in answers for Mr Mackenzie, which he was allowed to give in, in reply to the Accountant's report.

After considering the report and answers and hearing parties, the Lord Ordinary (Mure) recalled Mackenzie's appointment, and appointed another factor.

Mackenzie reclaimed, and the nearest relatives aforesaid conjoined themselves with him in the reclaiming note, in which was craved a recal of the Lord Ordinary's interlocutor, and that it should be found that no sufficient cause for the removal of Mackenzie had been alleged.

It was conceded that the new factor appointed by the Lord Ordinary was qualified for the office.

The Court unanimously held that there was no ground for disturbing the interlocutor of the Lord Ordinary; that, while it was competent, it was, in the general case, inexpedient that a cautioner for a former factor should be appointed factor; that, in the present case, the new factor was equally qualified to discharge the duties of the office; and

that, although the objection resolved very much into a technicality in respect of the cautioner's qualifications, it was on the whole better to adhere to the general rule.

Counsel for the Accountant—Mr H. J. Moncreiff.

Counsel for Mackenzie—Mr Gifford. Agents—Thomson & Dickson, W.S.

TASKER v. SHAW'S WATER COMPANY.

Obligation—*Implement*—*Damages*—*Parliamentary Company*—*Director*. A company having agreed to sell heritable property to one of its directors on a representation by him that it belonged to the company, and the company having afterwards ascertained that it did not belong to it, and declined to grant a conveyance—Held (diss. Lord Ardmillan), that in the circumstances the pursuer was not entitled to demand implement or damages. Opinion, per Lord Deas, that the transaction was illegal. Opinion, per Lord Ardmillan, that it was not.

This was an action of declarator, adjudication, and damages, at the instance of James Tasker, merchant, Greenock, against the Shaws Water Company, brought on the ground that the company had refused to grant him a conveyance of a certain piece of land on the west side of Regent Street, Greenock, which, he says, the company agreed to sell to him by a minute of sale. There was a proposal by him to buy and an agreement by the defenders to sell. But when the deed came to be granted, the company had begun to entertain doubts as to their power to grant an effectual disposition; to doubt, in fact, whether the ground in question really belonged to it. In consequence of these doubts, certain alterations were made on the proposed disposition, to the effect that the company could not hold themselves out as heritable proprietors, and could not grant absolute warrandice, but only a conveyance in such terms as were consistent with the right they might be found to possess. Tasker struck out these alterations on the draft conveyance; and it was when matters were in this position that the present action was raised. It concluded that it should be found that the company were bound to grant a disposition in the usual form, or that, if they failed to do so, they should be found liable in damages, and that adjudication should be granted if necessary. The company defended on the ground that they were not satisfied that they were proprietors, that in fact they were not, the piece of ground really belonging to Sir Michael Shaw Stewart. They also said that Tasker was a partner, indeed vice-chairman of the company, at the time of the transaction, which was therefore altogether illegal. They further maintained that they had been led into the transaction by his misrepresentation, that he had had long experience in the affairs of the company, and that when some members were dubious as to their property in this piece of ground, and put the question to Tasker, he had assured them that it belonged to the company, and so led them into the difficulty.

The Lord Ordinary (Jerviswoode), on the motion of the parties, and before answer, allowed them a proof, which was led; and thereafter he pronounced the following interlocutor:—

“Edinburgh, 20th March 1866.—The Lord Ordinary having heard counsel and made avizandum, and of new considered the record, with the proof adduced, productions, and whole process,