

Agents for pursuer—Scott, Moncrieff, & Dalgetty, W. S.

Agents for defender—Hunter, Blair, & Cowan, W. S.

Thursday, June 27.

SHEDDEN AND OTHERS, PETITIONERS.

Trust—Deed of Assumption—Sequestration of Trust-Estate—Judicial Factor—Recal of Factory. A trust-estate being in the hands of a sole trustee, the Court, on the prayer of beneficiaries, sequestrated the estate, and appointed a judicial factor. Sometime thereafter the trustee executed a deed of assumption and conveyance in favour of himself and two new trustees, whereupon the beneficiaries prayed for recal of the sequestration and factory. Prayer granted by the Court in the exercise of its equitable jurisdiction.

Mrs M'Ewan, by trust-disposition and settlement, conveyed her property to trustees, for behoof of her children. On the death of the truster, John Kennedy Donald, as the sole surviving and accepting trustee under the settlement, entered upon the possession and management of the estate. He continued to intrmit with the estate until 1862, when he became insolvent, and was rendered notour bankrupt. He had at that time funds of the estate in his possession. On his refusal to assume new trustees at the request of two of the beneficiaries, and on an application to the Court, the Court sequestrated the trust-estate, and appointed Mr W. J. Carswell judicial factor thereon. Thereafter the judicial factor managed the estate. On 8th March 1865, Mr Donald, as sole surviving trustee, executed a deed of assumption and conveyance, assuming two new trustees to act along with him in the administration of the trust-estate. The beneficiaries now applied for recal of the sequestration and factory.

LORD MURE reported the case.

LANCASTER for the petitioners.

The Court took time to consider.

LORD PRESIDENT—This is a petition for recal of a sequestration and factory under somewhat peculiar circumstances, which has been reported to us by Lord Mure, and which we have thought it worth our while to consider. It seems there was a trust by M'Ewan which got into such a position, by there being only one trustee, that the trust could not be administered, and it was thought right to apply for the appointment of a judicial factor. A petition was presented in 1862, praying for service on the sole trustee, and for appointment of a judicial factor. The prayer has been apparently amended,—a circumstance which was not brought under our notice at the discussion,—and there is added a prayer for sequestration of the trust-estate. And, accordingly, an interlocutor was pronounced by the Lord Ordinary on the Bills, sequestrating the estate, and nominating Mr Carswell to be judicial factor for the purposes of the trust, and with the usual powers. It appeared to us formerly that the Lord Ordinary, in sequestrating the trust-estate, had gone beyond the petition; but it now appears that this was justified by the prayer as amended. Any irregularity is very trifling. The usual powers are given, as well as the powers in the trust-disposition and settlement; but there is nothing material in that. The question is whe-

ther, standing the estate under the management of the factor, it is competent for the sole trustee to execute a deed of assumption assuming two new trustees, and whether that deed can be given effect to by recalling the appointment of the judicial factor, and allowing the trust to revive? I believe your Lordships are all of opinion that that is competent. At first there is a technical difficulty in holding that a trustee who has been superseded, and out of whose hands the estate has passed, can execute a conveyance to himself and two others. But this objection is one of form more than of substance, and in administering our equitable jurisdiction we are not bound to give effect to it. The deed of the trustee is now brought into active operation, for the first time, by our deliverance of recal, and I therefore think the prayer of this petition may be granted.

The other Judges concurred.

Agent for Petitioners—John Ross, S.S.C.

Thursday, June 27.

HALLY v. LANG.

Landlord and Tenant—Summary Application—Removing—Ejection—Vicious and precarious possession. An application presented to a Sheriff-court for summary ejection of parties in possession of house and lands held to be incompetent, there being no allegation that the possession was either vicious or precarious.

This was an advocacy from the Sheriff-court of Dumbartonshire. George Hally, trustee on the sequestrated estate of George Lang, cattle dealer and fletcher at Baillieston, in the county of Lanark, presently residing at Blackmailing, in the county of Dumbarton, presented a petition in the Sheriff-court of Dumbarton, against the said George Lang and his son Robert; Mrs Elizabeth Lang, widow of the deceased Robert Lang; John Lang, son of the deceased Robert Lang; and Mary, Elizabeth, and Ann Lang, daughters of the deceased Robert Lang, setting forth that he, as trustee, was heritable proprietor of the lands of Blackmailing by virtue of act and warrant of the Sheriff and disposition by George Lang; that the respondents George and Robert Lang presently occupied and possessed the whole of the said lands of Blackmailing, except a dwelling-house and garden occupied and possessed by the other respondents; that he, as trustee, was about to sell the lands and others, but the respondents refused to remove from the premises. He prayed for a warrant for summary ejection and removal of the respondents. Condescendence and answers were ordered by the Sheriff. The petitioner, in his condescendence, narrated his title as trustee for behoof of George Lang's creditors, and the disposition by George Lang in his favour; alleged that the respondents, the widow and daughters of the deceased Robert Lang, and his son John Lang, occupied the dwelling-house and garden at Blackmailing; that he, as trustee, was about to sell the said lands with immediate entry to the purchaser, but the respondents refused to quit the premises. He then stated that the titles of Blackmailing consisted of a precept of *clere constat* by the commissioners of the late Lord Blantyre in favour of the deceased Robert Lang, dated in 1793; sasine thereon in favour of Robert, recorded in 1855; Robert's infeftment had been reduced in 1863; George, passing over his father, completed a title to his grandfather