

would be warranted in passing the note, except upon caution in common form."

The suspender reclaimed.

BLACK for reclaimer.

GIFFORD, for respondent, was not called on.

The Court unanimously adhered.

Agent for Complainer—L. Mackersy, W.S.

Agents for Respondent—Thomson, Dickson, & Shaw, W.S.

Tuesday, May 19.

MACANDREW, PETITIONER.

*Trusts (Scotland Act) 1867—Scheme for Administration of Charitable Endowment—Report by Lord Ordinary.* A petition by a judicial factor on a trust-estate for authority to make an interim division of the residue of the trust-estate among certain charitable institutions, according to a scheme suggested to the Court, held not to be a scheme for administration of a charitable or other permanent endowment falling to be reported to the Court by the Lord Ordinary under the 16th section of the Act 30 & 31 Vict., c. 97.

This was a petition presented by James Maclean Macandrew, judicial factor on the estate of the late John Mackenzie. Mackenzie died in Edinburgh in 1852, leaving a trust-disposition and various codicils, conveying his whole means and estate to trustees, who were directed, *inter alia*, to pay certain legacies to certain specified charitable institutions, "and the remainder of the residue of my said estate I appoint my trustees or quorum to pay to the charitable institutions of Edinburgh, or such of them as they shall think proper (other than those specified in the codicil of date 26th May 1849, subjoined to said trust-deed), equally and share and share alike, or in such proportions as they may deem to be right and useful; of all which my said trustees or quorum are hereby constituted sole and only judges." On the death of the sole surviving trustee, the petitioner was appointed judicial factor, and he now applied to the Court for powers in reference to interim distribution of the realised funds of the trust-estate, submitting a scheme of division for approval by the Court. The petitioner set forth the 16th section of the "Trusts (Scotland) Act 1867, 30 & 31 Vict., c. 97, which provides "that when, in the exercise of the powers pertaining to the Court of appointing trustees and regulating trusts, it shall be necessary to settle a scheme for the administration of any charitable or other permanent endowment, the Lord Ordinary shall, after preparing such scheme, report to one of the Divisions of the Court, by whom the same shall be finally adjusted and settled; and in all cases where it shall be necessary to settle any such scheme, intimation shall be made to Her Majesty's Advocate, who shall be entitled to appear and intervene for the interests of the charity, or any object of the trust, for the public interest." The petitioner craved, after intimation and service and advertisement, and answers by parties interested, for approval of the scheme suggested, and warrant to distribute the sum of £3000 in terms of the scheme. The Lord Ordinary (MURK) reported the petition on 13th March last, when the Court, after hearing counsel, indicated a doubt as to whether the petition came properly within the Act, and continued the case for further argument.

The case came again before the Court..

CLARK and THOMS for petitioner.

Their Lordships held that the petition was not a case of settling a scheme for the administration of a charitable or other permanent endowment falling to be reported under the Trusts Act 1861, and remitted the petition to the Lord Ordinary.

MUIRHEAD, for the Lord Advocate, craved the expenses of appearing, but the Court refused the motion.

Agent for Petitioner—D. J. Macbrair, S.S.C.

Tuesday, May 19.

SECOND DIVISION.

CROMBIE v. CROMBIE.

*Husband and Wife—Aliment—Adherence—Separation—Incompetency—Expenses.* In an action of aliment at the instance of a wife, which contained neither a conclusion for adherence nor separation, a sum allowed by the Lord Ordinary to the pursuer to meet the expenses of the case, pending the trial of the question of the competency of the action, *sustained*.

This was an action of aliment brought by a wife against her husband, and unaccompanied by any conclusion either for adherence or separation. The defender pleaded that, in respect of the absence of such conclusions, the action was incompetent; and, at all events, that the ground of action was extinguished by an offer made by the defender in his defences, to receive his wife and aliment her in his house.

The Lord Ordinary having appointed a debate on these questions, he decreed *ad interim* against the defender for £20 to meet the pursuer's expenses.

The defender reclaimed.

PATTISON and MACKAY for him.

STRACHAN in answer.

The Court adhered to the Lord Ordinary's interlocutor, holding that the absence of a conclusion for adherence on the one hand, or separation on the other, did not necessarily make the action incompetent, and that the question whether that was the result was one of some difficulty.

LORD BENHOLME expressed an opinion that no such conclusion was necessary in a case of this sort.

Agent for Pursuer—Andrew Beveridge, S.S.C.

Agent for Defender—Thomas Wallace, S.S.C.

Wednesday, May 20.

FIRST DIVISION.

STIVEN v. THOMAS.

*Bankrupt—Cessio—Pursuit—Prescription—Bar.* R. raised a *cessio* in 1858, and T., who was entered by R. in his state of debts as one of his largest creditors, was appointed trustee. T. litigated as trustee and as creditor for several years, for the purpose of ingathering R.'s estate, and, in an action at his instance, a jury found, in 1866, that T. was a creditor of R. for the amount set forth by R. in his state of debts. In 1867 the estates of R., who died in 1859, were sequestrated. T. claimed on the said debt, but the trustee in the sequestration rejected the claim as prescribed. Held that the trustee was barred in the whole circumstances