

division of the funds and otherwise, being regulated thereby; and so far as this application may not be disposed of by your Lordships prior to the rising of the Court for the autumn vacation, to remit the same to Lord Ordinary on the Bills during the vacation, or to the Sheriff of Lanarkshire, with full powers."

R. V. CAMPBELL for the petitioner.

LORD PRESIDENT said that the sequestration must still be conducted under the Act of 1839, subject to the supervision of the Accountant in Bankruptcy. But the terms of the prayer were far too general, and could not be granted. The Court, however, would give an order for notice to creditors to lodge claims, in order that the sequestration might proceed, and, *quoad ultra*, would supersede consideration of the petition. The petitioner must also give notice by letter to those creditors whom he knew.

Agents for Petitioner—Maitland & Lyon, W.S.

Thursday, July 18.

SECOND DIVISION.

SPECIAL CASE—CHARLES COWAN, ESQ. AND OTHERS, AND A. COWAN'S TRUSTEES AND OTHERS.

Legacy—Will—Construction.

Terms of will held sufficient to carry a sum of £2500 held by trustees for the testatrix in liferent and her issue in fee, with power to the testatrix to test and dispose of the capital sum in contingencies which happened.

This was a Special Case presented by the trustees, as parties of the first part, of the late Alexander Cowan. The third purpose of the trust was as follows. "I direct my said trustees, at the first term of Whitsunday or Martinmas after my death, to set apart for each child of my marriage with the said Helen Brodie or Cowan (Mr Cowan's second wife), the sum of £4000 sterling, which provision of £4000 my said trustees shall hold for the benefit of each such child in liferent, and of his or her issue in fee; but declaring that notwithstanding the force of said direction, my said trustees shall, out of the said provision of £4000, pay to each of the children of my present marriage the sum of £1500, upon and in the event of each such child attaining the age of twenty-five years complete, it being my intention that in the event of his or her attaining that age, each of my said children shall have the sum of £1500 of his or her provision at their own disposal; and I do hereby direct and appoint my said trustees to hold the capital sums of the said provisions, subject to the payments to be made therefrom at the age of twenty-five, liable to the power of division and apportionment thereof by each child among his or her issue, and in the event of any such child dying without issue, he or she, after attaining the age of twenty-one years complete, shall be entitled to test upon the said capital sum, and to dispose thereof as he or she shall think fit, to take effect only in case of such child having no issue as aforesaid." The deed provides lastly—"In case there shall be any surplus of my means and estate remaining after fulfillment of all the purposes before set forth, my said trustees shall make payment of such surplus or residue to the whole of my lawful children of my

former and present marriage, equally among them, share and share alike, the shares of said surplus being entirely at the disposal of the children participating therein, and to be payable to them upon their attaining respectively the age of twenty-five years complete."

Miss C. J. Cowan, Mr Cowan's youngest daughter by his second marriage, died unmarried in January 1872, aged twenty-nine. She left a holograph will in the following terms:—"I, C. J. Cowan, do bequeath all my property to my full brothers and sisters, and, with the exception of personal effects, do give to each full brother an equal portion, and to each unmarried full sister an equal portion, and to each married full sister the interest for life of an equal portion, and, at the death of said sister, the principal to go to her children. The rest of my property, personal effects, I leave to my unmarried sisters, to be kept and disposed of as they think best. I appoint my two brothers, George and Alexander Oswald, to be my executors.

"C. J. COWAN."

The parties of the second part were the full brothers and unmarried sisters of the said deceased Miss C. J. Cowan, and the trustees under the marriage-contract of her two married sisters, and the executors nominated by Miss C. J. Cowan in her will. Both parties were agreed that the sum of £1500 was carried by Miss Cowan's will.

The question submitted for the opinion of the Court was, Whether the provision of £2500 (the balance of the provision of £4000 directed to be set apart for each child of the second marriage) fell to be dealt with by the parties of the first part as part of the residue of the trust-estate of the late Mr A. Cowan, or fell and belonged to the parties of the second part under the terce of the late Miss C. J. Brown.

KEIR, for parties of the first part, contended that Miss Cowan had a mere liferent with power to test, and that the words "all my property" were not sufficient to carry the said provision.

PEARSON for parties of the second part.

Cases referred to—*Hislop*, 12 S. 413; *Grierson*, 4 D. 939.

The Court, without hearing counsel for parties of the second part, unanimously held that the question should be answered in favour of the parties of the second part, on the authority of the case of *Hislop*. They held that Miss Cowan having the power to test and dispose of the capital sum of £4000, she had used words which included the sum of £2500, and that they were not called on to decide whether the fee had vested in her or not.

Agent for First Parties—John M. Bell, W.S.

Agents for Second Parties—Menzies & Coventry, W.S.

Thursday, July 18.

SPECIAL CASE FOR LIEUTENANT JOHN DUNBAR, 21ST FUSILIERS, AND OTHERS (MRS SCOTT'S TRUSTEES.)

Legacy—Construction.

A testator, by trust-disposition and settlement, directed her trustees, in case of her not having advanced money during her lifetime to purchase a captain's commission for John Dunbar, to make payment to him of a sum of £2000.