Friday, December 17.

FIRST DIVISION.

SAWYER *v.* SLOAN.

Curator bonis—*Recall of Appointment.*

Circumstances in which the Court recalled the appointment of a *curator bonis* to a lunatic resident in England, to whom committees of her person and estate had been appointed by the Court of Chancery.

This was a petition by Mr John Sawyer, committee of the estate of Miss Caroline Rae, a lunatic, residing in England, praying for the recal of the appointment of Mr Alexander Sloan as *curator bonis* to the said Miss Rae. The estate from which the lunatic's means were derived was situated in Scotland, and vested in certain trustees. On December 27, 1870, a petition was presented by Mr William Rae, the lunatic's brother, and others, praying for the appointment of a *curator bonis* to her and her sister Harriet, who was in the same mental condition. The prayer of the petition was refused in regard to the latter on the ground that the Court of Chancery had already appointed committees of her person and estate, but Mr Sloan, the respondent, was appointed *curator bonis* to Caroline Rae. In October 1870, on the application of the trustees, all of whom were residing out of Scotland, Mr Robert Stewart, solicitor, Glasgow, was appointed judicial factor on the trust-estate. In December 1871 the Court of Chancery appointed committees of the person of Miss Caroline Rae, and appointed the petitioner Mr Sawyer committee of her estate. The judicial factor considered himself bound to pay over the income of the trust-estate to the *curator bonis*, who, on the other hand, refused to pay it to the petitioner, alleging that he alone had the management and control of the lunatic's affairs. This petition was accordingly presented by Mr Sawyer for the recal of Mr Sloan's appointment as *curator bonis*, and the latter lodged answers, in which he averred, *inter alia*, that the application for the appointment of a committee of the ward's estate was not made in the true interests of the ward, but proceeded from motives of personal feeling on the part of the relatives who presented the application, and that the application had not resulted in the discovery of any property of the ward in England.

Argued for the petitioner—That the lunatic being an Englishwoman, and cognosced in England, her guardian ought to be an Englishman, resident in that country. In Scotland the appointment of a *curator bonis* would be superseded by the appointment of a tutor, and the same rule ought to be applied in the case of the appointment of a committee of the person by the Court of Chancery.

Authorities—*Scott* v. *Bentley*, 28 Feb. 1855, 1 Kay & Johnston, 281; *Baynes* v. *Sutherland*, M. 4595, 1 Pat. App. 454; *Rose* v. *Grant*, 9 June 1835, 7 Jur. 403; *Accountant of Court* v. *Geddes*, 29 June 1858, 20 D. 1174; *Bryce* v. *Grahame*, 26 Jan. 1826, 6 S. 425; *Laing* v. *Robertson*, 21 June 1859, 31 Jur. 554; *Murray* v. *Baillie*, 24 Feb. 1849, 11 D. 710; *Johnston* v. *Beattie*, 29 Jan. 1856, 18 D. 343.

Argued for the respondent—That as his appointment was made by a Court which had jurisdiction to appoint an administrator of the ward's estate in Scotland, and as that appointment was prior in date to the alleged appointment by the Court of Chancery, it was not liable to be recalled on the grounds set forth in the petition. The management of the lunatic's property must be regulated by some one resident in the country in which it was situated.

Authorities—*Preston* v. *Lord Melville*, 29 March 1841, 2 Robinson's App. 45; *Hay. Petr.*, 16 July 1861, 23 D. 1291; *Stuart* v. *Moore*, 27 Feb. 1861, 23 D. 446.

At advising—

Lord President—The appointment of *curator bonis*, which under this petition is sought to be recalled, was made on 10th January 1871, on a petition at the instance of relations, and it prayed for the appointment of a *curator bonis*, not only on the estate of Caroline, but also that of Harriet Rae, their only means being a trust-estate situated and administered in Scotland. The Court in disposing of that petition made a distinction between the cases of the two sisters. They appointed Mr Sloan as *curator bonis* to Caroline Rae, but refused to make any such appointment in the case of Harriet, the reason being that Harriet had already a guardian appointed by the Court of Chancery. It seems to me that that distinction was a proper one, and that the Court did right both in the appointment which they made and in that which they refused to make. As regards Caroline, she had not been cognosced in this country, nor made a ward of Chancery in England, and there was no one therefore to manage her affairs, so that a *curator bonis* in her case was obviously necessary. Harriet, on the other hand, had a guardian appointed by the Court of Chancery, and with a title perfectly sufficient to entitle him to take charge of her affairs. I do not think the principle of international law admits of any doubt. It is quite unnecessary that a fresh guardian should be appointed to manage personal estate, even when situated in another country; the case of heritage of course is different. Now, since Mr Sloan was appointed, Caroline Rae has come to be in the same position as her sister; she is now a ward of Chancery, and has had a personal guardian appointed to her, and in these circumstances I think the prayer of the petition must be granted. I cannot imagine any necessity for keeping up a double machinery for managing this estate. Mr Sawyer has a perfectly good title, and we are bound to recognise it in this country. I am therefore for granting the prayer of the petition.

The other Judges concurred.

The following interlocutor was pronounced:—

"The Lords having resumed consideration of the petition, with the answers for the *curator bonis*, and heard counsel, Recal the appointment of the said curator, and decern; and remit to the Junior Lord Ordinary to proceed farther in the matter of the petition: Find the curator entitled to his expenses in these proceedings out of the lunatic's estate: Remit to the Auditor to tax the account of these expenses when lodged, and report to the Lord Ordinary, and authorise his Lordship to decern for said expenses when taxed."

Counsel for Petitioner — Gloag. Agents — Ronald, Ritchie, & Ellis, W.S.

Counsel for Respondent—Maclaren. Agents—Macandrew & Wright, W.S.

Friday, December 17.

FIRST DIVISION.

[Lord Shand.

M'LAURINS *v.* STAFFORDS.

(Before Seven Judges.)

Issues — Reduction — Essential Error — Inductive Cause.

In an action of reduction of a *de præsenti* deed of gift granted by the pursuer in favour of the defender on the grounds (1) of essential error; and (2) of fraud on the part of the defender and the agent employed by the pursuer to draw the deed—*held* not necessary to insert in the issue that the essential error was "induced by the defender."

This was an action at the instance of Mrs M'Laurin and her husband, both residing in Oban, against Mrs Stafford and her husband, both residing in Pollokshields, and others, beneficiaries under a deed which bore to be granted by the pursuers in favour of the defender Mrs Stafford, dated the 12th and recorded the 23d November 1874. This deed, along with a ratification of it by Mrs M'Laurin of same date, the pursuers sought in this action to have reduced. Mr and Mrs Stafford alone appeared as defenders.

Mrs M'Laurin and her husband were respectively seventy-five and seventy-eight years of age, and their knowledge of the English language was defective. They had been long proprietors of the Old Woodside Hotel, Oban, and thereafter Mrs M'Laurin feued some ground in her own name, and built and furnished the hotel known as the "Craigard Hotel." Mrs M'Laurin also bought for £750 an adjoining piece of ground with a villa upon it, called Braehead, which she furnished and used as an adjunct to the hotel. Upon this villa she borrowed money to the extent of £600.

Mr and Mrs M'Laurin had a family of seven children, two of whom died without issue. Of the remaining five, the two youngest were Ronald M'Laurin, who died three years previously to the raising of this action, leaving a widow and two children; and the defender, who, against her parent's wishes, had married Mr Stafford, then a medical student, in November 1869. Previously to her son Ronald's death in May 1872 the pursuer Mrs M'Laurin, with her husband's consent, had made a settlement, giving Ronald and his wife and the survivor of them the liferent of the Craigard Hotel and the fee to their children, subject to certain annuities, amongst others one to Mrs Stafford.

In the same year, after Ronald's death, Mrs M'Laurin executed a disposition and settlement, leaving Braehead, with its furnishings, to Mrs Stafford, and on 14th August 1873, Mrs M'Laurin, with her husband's consent, conveyed it absolutely by disposition to her. The pursuers alleged that it was on the inducement of Mrs Stafford that these deeds were executed, and that several sums of money were also obtained by her from her mother for certain purposes and misapplied.

The pursuers further averred that Mrs Stafford pressed upon her mother to alter the testamentary settlement made in May 1872, in consequence of which Mr Lawrence, Mrs M'Laurin's agent, was instructed to prepare a deed embodying the changes to which she had agreed. The deed under reduction, which was a *de præsenti* deed of gift in favour of Mrs Stafford, was then prepared, signed, and recorded, and with reference to it the averments of the pursuers were as follows:—"At the time when the said deed was signed by the pursuers, although it was read over in their presence, as this was done rapidly and without explanation, neither of the pursuers understood its import. Mr Lawrence, who prepared the said deed, was the ordinary law-agent of the pursuers, and they relied upon his having taken care as their agent that the said deed was in strict accordance with the instructions which Mrs M'Laurin had given him. The pursuers had no idea that Mr Lawrence had been taking any instructions (as was the fact) from Dr and Mrs Stafford as to the preparation of the said deed. The defenders, Dr and Mrs Stafford and Mr Lawrence, or one or other of them, falsely and fraudulently represented to the pursuers that the deed was merely an alteration of the testamentary settlement of May 1872 of the nature agreed to by Mrs M'Laurin, as above mentioned, and the pursuers signed it in this belief. If the pursuers had known the terms of the deed, and that it was irrevocable, they would not have signed it. They never intended to execute, and never gave any authority for the preparation of an irrevocable deed, and never intended to dispose of their property in the manner set forth in said deed. The said deed was subscribed by or for the pursuers without any consideration being granted therefor, and under essential error as to its tenor, meaning, and effect, as above set forth. The pursuers signed the said deed under essential error, as aforesaid, induced by the said Dr and Mrs Stafford and Mr Lawrence, or one or other of them. They knew that the pursuers, when they subscribed the said deed, or caused it to be subscribed, did not know its tenor, meaning, or effect, and that they never authorised its delivery. The said deed was impetrated from the pursuers by fraudulent concealment practised by the said Dr and Mrs Stafford, and Mr Lawrence, or one or other of them, they well knowing that the pursuers were not aware of the tenor, meaning, and effect of the said deed, and that they would not have signed the said deed if they had been aware of its tenor, meaning, and effect. The said deed was impetrated from the pursuers by false and fraudulent representations as to the tenor, meaning, and effect of the said deed, made to them by the said Dr and Mrs Stafford and Mr Lawrence, or one or other of them, as above set forth. Or otherwise, Mr Lawrence, in consequence of misunderstanding Mrs M'Laurin's said instructions, or being misled by communications to him on the subject from the defenders, made under the profession that they were authorised by Mrs M'Laurin, prepared the said deed in the terms in which it was afterwards executed under the error in fact, that it