the statements contained in the 3rd article of the pursuer's condescendence of and concerning the pursuer in the hearing of the parties therein named: Find that the said statements were unfounded in point of fact: Find that the defender in making said statements acted in his official capacity as chairman of the Water and Drainage Committee of the local authority of Burghead, and solely for the information of the committee, and that he made them in *bona fide* and belief that they were true: Therefore sustain the fourth and fifth pleas-in-law for the defender, assoilzie the defender from the conclusions of the action: Find him entitled to expenses in the Inferior Court and in this Court: Remit, &c., and decern."

Counsel for the Appellant—Balfour, Q.C.—Shaw. Agents—Cumming & Duff, S.S.C.

Counsel for the Respondents—D.-F. Mackintosh—Guthrie. Agents—Gibson & Paterson, W.S.

Friday, November 30.

SECOND DIVISION.

MACDONALD *v.* MACKESSACK.

Process—Decree of Summary Ejection from Agricultural Subject for Failure to Stock—Reduction on the ground of Irregularity in Proceedings—Competency of Action in Sheriff Court.

A Sheriff Court decree for sequestration of the effects of an agricultural tenant for past rent was granted of consent. Thereupon the landlord moved for a plenishing order upon the tenant, and for his summary ejection in case of failure. The tenant by minute stated that he was proceeding to stock. The Sheriff, in respect of that statement, pronounced no formal order, but remitted to a man of skill to see the stocking carried out, and to report within a month. Upon his reporting that there was no stock of any kind upon the place, the Sheriff pronounced decree of summary ejection. *Held* (*diss.* Lord Young) that as there had been no formal order upon the tenant there had been no default, and that the decree ought to be reduced.

Question—Whether an action of ejection from an agricultural subject on account of failure to stock is competent in the Sheriff Court.

In July 1887 Robert Mackessack, Esquire of Ardgye, Alves, Elgin, presented a petition in the Sheriff Court of Elgin, against Robert Macdonald, his tenant in Cardenhill, Alves, who held a nineteen years' lease from Whitsunday 1887, at a yearly rent of £14, praying, *inter alia*, for warrant to sell the sequestrated effects on the farm for arrears of rent, and in the event of the subject of hypothec being exhausted, "or the premises being insufficiently furnished and hypothecated after any sale hereunder, to ordain the defender to stock and replenish the said premises so as to afford sufficient security for payment of any remaining rent payable or to become payable as aforesaid; and failing his doing so, within such time and at the sight of such person as the Court shall appoint, to grant warrant summarily to eject the defender."

Upon 27th October 1887 the tenant by minute consented to decree, and upon the same day the Sheriff-Substitute (RAMPINI), in respect of this minute, granted warrant for the sale of the whole or a sufficient part of the sequestrated effects to satisfy the arrears due.

Before a sale took place the tenant applied for *cessio*, and on 12th November 1887 decree of *cessio* was pronounced. On 10th December 1887 the trustee sold the stock on the farm under the *cessio*. The landlord lodged a claim with the trustee for £37, 17s. 9d., and on 15th March 1888 the whole proceeds of the estate, under deduction of trustee's commission and expenses, were paid over to the landlord by the trustee. The amount so paid was £20, 15s. 6d., which sum included the past rent, for which decree was craved in the landlord's petition, and also a portion of the current year's rent (Whitsunday 1887 till Whitsunday 1888) of the farm of Cardenhill.

Upon 27th December 1887 the landlord lodged a minute in the following terms—"BROWN, for the pursuer, stated that in respect the trustee under the *cessio* of the said Robert Macdonald had recently sold off and displenished the said farm of Cardenhill, the event referred to in the prayer of the petition, viz., 'the subject of the hypothec being exhausted,' had now happened, and the Court is now moved to ordain the defender to stock and replenish the said farm and premises, so as to afford sufficient security for payment of rent now due or to become due at the term of Whitsunday next; and failing his doing so within fourteen days at the sight of Harbourne Marius Straghan Mackay, land surveyor, Elgin, or within such other time and at the sight of such other person as the Court shall appoint, to grant warrant summarily to eject the defender and his goods, gear, and effects from the said farm and premises, and to authorise the pursuer to re-let the same for such periods, and for such rent as may appear best, all in terms of the prayer of the petition." To that minute the tenant upon 18th January lodged the following answer—"That he was proceeding to lay down a crop for the incoming season and was proceeding to stock the said farm of Cardenhill in a husbandlike manner as craved for in said minute." And upon 19th January 1888 the following interlocutor was pronounced—"Having advised the minute and answers, in respect of the statement in the latter that the defender is now in process of laying down a crop for the incoming season, and of stocking the farm of Cardenhill, remits to Mr Harbourne Marius Straghan Mackay, land surveyor in Elgin, to see the same carried out *quam primum*, and to report to the Court not later than 19th of February next."

Upon 18th February 1888 Mr Mackay reported as follows—"In terms of remit from the Sheriff-Substitute of Elginshire, I to-day visited the possession of Cardenhill, occupied by Robert Macdonald. It contains about 23 acres of arable land divided into six lots. Of this land one lot should have been sown out with young grass, but this has not been done. About 12 acres should

have been ploughed, and there is only a little over 4 acres. The turnip shift last season was not properly laid down, and having got no artificial manure the crop was a failure. There is no stock of any kind upon the place. The ploughing has been done by John Grant, Burnside, a neighbour and a brother-in-law of the tenant; but even although he should plough the remainder, the land is in such a poor condition and out of regular rotation, and there being no dung of any kind upon the place, this crop cannot in my opinion be laid down in a satisfactory manner by the present tenant." And upon 22nd February 1888 the following interlocutor was pronounced — "The Sheriff-Substitute having heard parties' procurators on the report by Mr Mackay, and in respect of the statements therein contained, grants warrant to eject, in terms of the prayer of the petition; also authorises the pursuer to re-let, and interdicts, all as prayed for: Finds the defender liable in expenses; modifies the same to the sum of Three pounds three shillings sterling, and decerns against him therefor; and allows extract of this decree to go out after twelve o'clock on Saturday first."

No appeal was taken from the Sheriff-Substitute's interlocutor, but Macdonald, the tenant, raised an action in the Court of Session to have the decree of ejection reduced.

In this action it was, *inter alia*, averred by the defender Mackessack that the pursuer's tenancy was constituted by an entry in the estate books, and that he held his tenancy under a set of regulations and conditions of let applicable to the whole estate. By article 16 thereof it was provided, that in the event of one whole year's rent of any farm remaining unpaid, or if the tenant should be sequestrated, or made bankrupt, the lease should, in the option of the proprietor, *ipso facto* cease and determine.

The pursuer Macdonald averred in answer— ". . . The entry in the estate books referred to was made by the landlord's factor; the pursuer did not sign the landlord's books, nor the regulations and conditions referred to. No copy of said regulations and conditions was furnished to the pursuer or seen by him at or before the date of said lease, and he never agreed to said regulations and conditions, and, in particular, he never agreed to article 16 thereof."

The pursuer pleaded—"(2) The pretended decree in question having proceeded upon an incompetent application, and the Court having no jurisdiction in the circumstances to pronounce said decree, the same is inept, and should be reduced. (3) Said pretended decree being unfounded and unwarranted, and the proceedings complained of being irregular and oppressive, the pursuer is entitled to have the same reduced and set aside."

The defender (the landlord) pleaded—"(1) The pursuer, being an undischarged bankrupt, is bound to sist his trustee as a party to the present action, and, failing this being done, or caution being found for expenses, the present action should be dismissed. (3) The pursuer has no title or interest to sue. (5) The decree of the Sheriff having been competently pronounced, and no suspension thereof having been brought, the defender is entitled to absolvitor. (6) In respect that the pursuer has incurred an irritancy, the defender should be assoilzied."

Upon 6th July 1888 the Lord Ordinary (LEE) pronounced the following interlocutor:—"Repels the first and third pleas-in-law for the defender: Finds that the decree of ejection complained of was incompetent, and was not pronounced of consent of the pursuer: Therefore repels the defences; reduces, decerns, and declares in terms of the conclusions of the summons, &c.

"*Note.*—(1) I repelled the plea that the pursuer must sist his trustee or find caution, because the action in substance is an action to defend the pursuer in the possession of his farm by restoring him against a decree of ejection which is said to have been incompetently and illegally pronounced. The case, I think, falls fairly within the principle of the decision in *Stephen* v. *Skinner*, 22 D. 1122.

"(2) Upon the merits of the action two questions were discussed—(Firstly) Whether the decree of ejection could be maintained on the ground that it was founded on and justified by the conventional irritancy alleged in the answer to Cond. 1; and (secondly) whether it was good as a decree by default, or on the ground that the pursuer by his minute consenting to decree, in terms of the leading conclusion of the petition, was barred from objecting to it.

"The former of these questions it is clear must be answered in the negative. The Sheriff Court proceedings show that the decree of ejection was not in fact founded on the irritancy, or upon any allegation that it had been incurred, so that even if the Sheriff Court had jurisdiction to pronounce decree of ejection upon such a conventional irritancy not declared, the ejection could not be sustained upon that ground. It appears very doubtful, however, whether in this case a process of summary ejection was competent before the Sheriff, for the case was not one in which the pursuer was possessing without any title—*Horn* v. *M'Lean*, 8 S. 329; *Nisbet* v. *Aikman*, 4 Macph. 284.

"But on the question whether the decree can be sustained as a decree by default, there was, it was thought, more to be said. It was contended that the Sheriff's interlocutor of 19th January, remitting to a man of skill to see the defender's proceedings carried out, 'and to report to the Court not later than 19th February next,' followed by the report of 18th February, proved that the pursuer was in default. The decree bears to be 'in respect of the statements therein contained,' viz., contained in Mr Mackay's report. But the pursuer's position, as shown in the minutes and answers, was that he was proceeding to stock the farm, the stock which had been upon it having been sold for behoof of the landlord and other creditors in the way explained on record. Now, the report, although it states that there was no stock on the farm on 18th February, does not instruct that there was no stock upon the 19th, and does not negative distinctly the statement that the tenant was 'proceeding to stock,' &c. In short, the Sheriff Court proceedings do not show any default committed. I think that in the absence of any definite order there was a miscarriage in point of procedure, of which the pursuer is entitled to take advantage.

"With regard to the case of *Scott*, 7 S. 481, I think it does not apply here; there is nothing in the proceedings to show that the pursuer consented to decree of ejection, or that he is barred

in any way from maintaining his objections to the decree."

The defender reclaimed, and argued—(1) The case of *Stephen* v. *Skinner*, May 31, 1860, 22 D. 1122, relied upon by the Lord Ordinary in repelling the first plea-in-law, was not in point, because there the case had never been tried at all; it had proceeded upon a decree in absence, and the trustee, who had declined to sist himself, had a personal interest adverse to that of the suspender. (2) The Sheriff had jurisdiction. It was a question whether before 1877 the Sheriff could eject summarily for a legal irritancy. He could for a conventional irritancy, or for desertion, and, by custom perhaps, for legal irritancy in urban subjects. He could perhaps summarily eject for non-stocking even in agricultural subjects, on the ground that that was equivalent to desertion. But all such questions had been set at rest by the Sheriff Court Act of 1877, which gave the Sheriff the same power to deal with heritable subjects as the Court of Session had, provided only the value of the subject in dispute did not exceed the sum of £50 by the year, or £1000 value, and the action was not one of adjudication or of reduction—Bell's Prin. 1258; Bell on Leases, ii. 8; A. of S., December 14, 1756; *Ross M'Kye* v. *Nabony*, December 4, 1780, M. 6214; *Tait* v. *Gordon*, July 3, 1828, 6 S. 1055; *Horn* v. *M'Lean*, January 19, 1830, 8 S. 329, and 2 Deas & And. 182; *Thomson* v. *Handyside*, December 27, 1833, 12 S. 557 (Lord President Hope); *Wright* v. *Wightman*, October 30, 1875, 3 R. 68; Sheriff Court Act 1877 (40 and 41 Vict. cap. 50), sec. 8. (3) There was no prescribed or statutory order which the Sheriff had neglected to pronounce. He had given the tenant due warning to stock by the terms of the remit to Mr Mackay, and as the tenant had failed to stock after such warning he was entitled to pronounce decree of summary ejection. The landlord had asked that a formal order should be pronounced, and it was only on account of the tenant's minute that the order had taken the form of a remit to Mr Mackay.

The respondent argued—(1) Though nominally pursuer he was really defending his possession, and the Lord Ordinary had exercised a wise discretion in allowing him to proceed without finding caution—*Stephen*, *supra*. (2) The Sheriff had no jurisdiction. The petition was not founded upon a conventional irritancy nor upon the Act of Sederunt of 1756, and these were the only grounds upon which the Sheriff had jurisdiction in such cases—*Horn*, *supra*. The Sheriff could pronounce a decree ordering the tenant to stock his farm, but he could not carry it out—*Horn*, *supra*; *M'Dougall* v. *Buchanan*, December 11, 1867, 6 Macph. 120; Dove Wilson's Sheriff Court Practice, pp. 484-487. (3) Even if the Sheriff had jurisdiction the proceedings here had been irregular. No order to stock had been pronounced. Such an order should have been made upon the tenant after Mr Mackay's report, but as it had not been made there had been no default, and the decree of ejection pronounced because of presumed default fell to be reduced.

At advising—

Lord Justice-Clerk—This is an action of reduction of a decree pronounced in the Sheriff Court at Elgin in a process between Mr Mackessack, proprietor of Ardgye, and one of his tenants Mr Macdonald. It appears from the proceedings that the tenant had fallen into arrears to a considerable extent, and the landlord brought an action against him in the Sheriff Court, one of the conclusions of which was to have the stock on the farm made good for the rent due under the landlord's hypothec. The tenant consented to decree being pronounced, and accordingly the Sheriff gave power to sell so much of the tenant's effects as would meet the landlord's claim. Then the landlord lodged a minute in which he stated that—"In respect that the trustee under the *cessio* of the said Robert Macdonald had recently sold off and displenished the said farm of Cardenhill, the event referred to in the prayer of the petition, viz., the subject of the hypothec being exhausted, had happened, and the Court is now moved to ordain the defender to stock and replenish the said farm and premises so as to afford sufficient security for payment of rent now due or to become due at the term of Whitsunday next, and failing his doing so . . . to grant warrant summarily to eject the defender." Now, if the order asked had been granted probably this case would never have arisen, but the tenant appeared on 19th January and stated that he was proceeding to lay down a crop for the incoming season, and was proceeding to stock the said farm in a husbandlike manner, and in respect of this statement by the defender's agent the Sheriff did not pronounce an order upon the tenant to stock within an indefinite period at the sight of a man of skill, but remitted to Mr Mackay, land surveyor, to see what was being done, and to report not later than 19th February. Upon 18th February Mr Mackay reported that a certain part of the farm had been ploughed, but that even if the remainder should be ploughed, the land was in such poor condition, and there was such absence of manure of any kind upon the place, that the crop could not in his opinion be laid down in a satisfactory manner by the present tenant. He also reported that there was no stock of any kind upon the place, but the report does not state in clear terms whether or not any steps were being taken to stock it.

This action of reduction has been raised by the tenant on the ground that he had been summarily ejected without having had any order served upon him to stock within a definite time under pain of summary ejection. The Lord Ordinary thought that that ground of reduction must receive effect. He based his judgment upon the ground that as there had been no order to stock there could be no decree on account of default, and after the most careful consideration I have come to think that the interlocutor pronounced by his Lordship was the only one he could have pronounced in the circumstances. It is perfectly plain on the face of the proceedings that the failure to fix and to certiorate the defender of any definite time within which he must stock was entirely an oversight of the Sheriff, who was misled by the tenant himself to pronounce the interlocutor he did, but he did not so word his interlocutor as to put the tenant in default, and therefore the tenant could not be summarily ejected as being in default. It would be somewhat dangerous to sanction the idea that a tenant may be summarily ejected for non-fulfilment of an order to stock without intimation of a definite term at which if he fail to stock he may

be summarily removed. There was here a remit to a man of skill to see that the stocking was carried out, but there was no notice to the tenant that if he had not stocked before a certain date he would be summarily ejected. There was no definite intimation made to him from which he could draw the distinct conclusion that failure to stock would be followed by summary ejection. I am therefore for adhering to the Lord Ordinary's interlocutor.

Lord Young—This case has received and deserves a good deal of consideration. The question was argued to us whether the action brought by the landlord was a competent process for the Sheriff Court. Perhaps it is not necessary in the view expressed by your Lordship, and shared in, I understand, by my other brethren on the bench, to decide that question, but in the view I take of this matter it is necessary for me to express my opinion upon it. The question is whether a tenant upon failure to stock may be ejected by summary application to the Sheriff, the alternative view being that action must be by declarator in this Court. If by statute only the latter method were competent, of course it would be necessary to resort to that method, although I should even then regret the necessity, as application to the Sheriff is so obviously a more apt remedy than a declarator. In the analogous case of a tenant of a house failing to furnish it, as his implied if not express obligation, it is settled that the landlord's remedy is ejection by summary application to the Sheriff. I am, in the absence of any distinct authority to the contrary, disposed to hold that the remedy of a suffering landlord in such a case as this is also a summary application to the Sheriff, and that it would be a denial of justice to the landlord to say that he can only proceed by declarator in this Court.

A further question remains, which is important although merely formal, and a more formal matter it would be impossible to conceive. The Lord Ordinary here has based his judgment upon the fact that the warrant of ejection was not preceded by a formal order to stock the farm within a definite time, failing which there would be summary ejection. This was undoubtedly the proper course to pursue; it was the course prayed for in the prayer of the petition. I stop to point out that after all the warrant of ejection would not have been pronounced for a breach of an order of Court—that is, for contumacy, but for a breach of the contract with the landlord, ascertained and found to have been committed after a reasonable opportunity had been given for fulfilling it. Now, attending to the circumstances of this case, we see that the tenant was ascertained to be in, and continued to be in, that breach of contract after not only reasonable and fair but full and ample opportunity had been given to him to fulfil it. After the farm had been displenished by the trustee in the *cessio* a minute was given in on behalf of the landlord upon 27th December 1887 stating that fact and moving the Court to ordain the tenant to stock and farm, and failing his doing so within fourteen days, at the sight of Mr Mackay, to grant warrant for his summary ejection, with the warning that if he failed to do so he would be ejected. As your Lordship has observed, if that course had been exactly followed, and if the Sheriff had ordered the farm to be stocked in terms of the minute, and ejection had followed, there would probably have been no such action of reduction as the present. But the course would have been followed but for the interposition of the tenant himself. Now, what was that interposition? It was at the stage when the proper form would have been to give an opportunity to the tenant to stock within fourteen days, and the order to that effect would have been pronounced when he interposed with the minute of 18th January stating that he was proceeding to lay down a crop for the incoming season, and to stock the farm in a husbandlike manner. In effect he said—"What is the use of making an order upon me? I am doing what is wished. Don't trouble yourself about it; I am doing it as fast as I can. I don't want a formal opportunity which such an order would signify." Well, what does the Sheriff do? It would have been more regular if he had said—"I won't attend to your minute; it may be a trap. I will pronounce a formal order." But he does attend to it, and in the very spirit in which it was intended. Instead of the order thereby demonstrated to be in the tenant's view superfluous, he remits to Mr Mackay to see whether the tenant is doing what he professes to be doing, and to report if it has been done. Upon 18th February—a month afterwards, and not fourteen days as asked by the landlord—Mr Mackay reports that the farm is totally displenished, and that there is not a trace of either stock or dung upon it, and thereupon the Sheriff pronounces the order for ejection. There was no appeal. There was no attempt to review the judgment, but this reduction is brought because the warrant was pronounced without being preceded by a formal order to stock. This is not candid or proper conduct on the part of the tenant, and we ought to give no countenance to it. He has no right to remain in the farm except under the contract, and one of the conditions of his contract is that it should be so stocked as to give to the landlord security for the rent, and if he failed, and continued to fail, to comply with the condition, after due and sufficient notice, he was liable to be ejected. I think therefore there are no grounds here for reducing this decree.

Lord Rutherfurd Clark—I give no opinion upon the question whether this summary ejection was competent before the Sheriff. Upon the authorities quoted it would be difficult to hold that the action was competent unless we are further to hold that there has been a change in procedure because of the recent Sheriff Court Act of 1877. I agree with Lord Young that if competent it would be a better form of process to proceed by summary action before the Sheriff rather than by declarator of reduction in this Court. But assuming the competency of the proceedings, I think they were not regularly carried out, and that the tenant therefore is entitled to decree of reduction.

Lord Lee—I concur with your Lordship in the chair and with Lord Rutherfurd Clark, and upon this simple ground, that the case was not ripe for a decree by default. In arriving at this conclusion I assume that an action of ejection founded on an irritancy of the contract of lease would be competent in the Sheriff Court if the question

were properly raised. The Sheriff Court Act of 1877 expressly provides that declarators of heritable right up to a certain value are to be competent in the Sheriff Court. Here there was a peculiarity which, I should say, required declaratory words to be employed in the prayer of the petition. What the landlord desired was warrant to sell the stock and crop to pay the rent for 1886, and only after that does the petition go on to ask a further decree ordering the tenant to stock the farm so as to give security for the rent to become due for crop 1887, and for ejection in case of failure. I think that that was a case in which it was essential to justice that the irritancy should be regularly declared, and that the proceedings should be so conducted as to make it quite clear that the irritancy had been incurred.

The Court refused the reclaiming-note and adhered to the Lord Ordinary's interlocutor.

Counsel for the Defender (Reclaimer)—D.-F. Mackintosh—Graham Murray. Agents—Macpherson & Mackay, W.S.

Counsel for the Pursuer (Respondent)—R. Johnstone—Orr. Agent—Robert Stewart, S.S.C.

Saturday, December 1.

FIRST DIVISION.

MARTIN AND OTHERS *v.* STEWART.

Pupil — Tutor — Guardianship of Infants Act 1886 (49 *and* 50 *Vict. c.* 27), *sec.* 2.

Sec. 2 provides—"On the death of the father of an infant, . . . the mother, if surviving, shall be the guardian of such infant, either alone when no guardian has been appointed by the father, or jointly with any guardian appointed by the father. When no guardian has been appointed by the father, . . . the Court may, if it shall think fit, from time to time, appoint a guardian or guardians to act jointly with the mother." By sec. 8 "guardian" means "tutor," and "infant" means "pupil."

Where a father had died without making any nomination of tutors or curators to his pupil child, the Court, on the application of the next-of-kin of the pupil on the father's side, appointed the brother of the widow to act jointly with her as tutor to the pupil.

The late John Stewart, shipowner and insurance broker, 3 Fenchurch Avenue, London, died on 25th August 1888 in London, survived by his wife Mrs Charlotte Ferguson or Stewart, and by an only child Elizabeth Stewart, born 10th October 1877.

Mr Stewart was a Scotsman by birth, and died domiciled in Scotland, his principal residence being his mansion-house of Larghan, Coupar-Angus. His free personal estate was about £20,000, and his real estate about £9200 in value. Mr Stewart left no nomination of tutors or curators to his child, and the present petition was accordingly presented by Mrs Ann Stewart or Martin, his sister, and certain others, the next-of-kin of the said pupil on her father's side, for the appointment of tutors to act along with Mrs Stewart in terms of the Guardianship of Infants Act 1886. They averred that Mr Stewart died intestate; that he and his wife never entered into any marriage-contract; that the said Elizabeth Stewart was his sole heir; that she was in delicate health both mentally and physically, and would not likely ever be able to manage her own affairs or to make a will. They further averred that Mrs Stewart was without experience in business, and was not qualified to take sole charge of winding-up the deceased's London business. They suggested as a suitable person for the office of tutor, *inter alios*, James Adam Young, the eldest son of another sister of the pupil's father, who had acted as Mr Stewart's manager, and was therefore conversant with his business. Mr Young's name appeared in the petition as one of the petitioners, but he wrote to the petitioners' agent requesting him to withdraw his name, as it was there "not only without my knowledge and consent, but against my clearly expressed wishes."

Among the parties called as respondents was William Ferguson, farmer and manure merchant, Perth, a brother of Mrs Stewart.

Mrs Stewart lodged answers, in which she denied the allegations regarding the pupil's mental condition, but admitted that she suffered from certain delicacies of constitution, including defective sight and slight curvature of the spine.

The respondent further averred—"She has more knowledge and experience regarding her husband's business than any of the petitioners. She assisted him largely in his business correspondence (his hand having been injured by an accident), and in matters of personal business he habitually consulted her. Further, in realising the deceased's estate the respondent will have the assistance and advice of all those on whom her husband most relied, being (1) the said Mr James Adam Young, his nephew and confidential clerk and his probable successor in business, who is ready to give his services without seeking any appointment as tutor; (2) the said Mr Peter Hunter, who has for twenty years held a power of attorney from the deceased in connection with the management of his business; (3) Messrs Linklater & Company, the deceased's London solicitors; and (4) Mr Charles Boyd, solicitor, Coupar-Angus, his solicitor in Scotland. The respondent on 12th October last applied for appointment to the office of executrix-dative *qua* relict of the deceased, and in that capacity she will find caution for the whole amount of the moveable estate. Her own personal interests are co-incident with those of the pupil. In these circumstances the present petition to have a tutor appointed to act along with the respondent, or to have her ordained to find caution is unnecessary and vexatious. Any appointment made under the petition would lapse by the pupil's attaining to minority in less than a year."

Argued for the petitioners—Two questions were involved—the present custody of the child, and the custody of her estate. The widow was well qualified for the first office, but not for the second, in which she required the assistance of a business man.

Argued for the respondent—The widow was qualified to act alone, and nothing was alleged