

advances out of capital. But as the income of this estate is unappropriated, of course as each year's income accrues it is the duty of the trustees to add it to the capital to increase the amount of the residue. It is the right and duty of trustees to accumulate undisposed of income with capital, and therefore I think this application is quite within the scope of the Act of Parliament which deals with the unappropriated capital of trust-estates.

Now, not to repeat the words of the clause, the conditions of a valid application to the Court are that the class of children—the family of children—must have an interest in the trust fund, and that no other persons can show an interest under the deed. If these conditions exist, the Court may grant the trustees power to make advances from the capital of the estate, even though the interest of any individual child may be contingent, because it is so put in the statute. The object of this remedial provision is to avoid the difficulty which arises, where, owing to the existence of a clause of survivorship as between children, it would not be held that a right to an absolute share vested in each child at the testator's death. But the statute recognises that provided the children as a family have the sole interest in the fund, and that there are no other funds applicable to their maintenance, power to apply this common fund may be granted. Now, I think we have before us exactly the case which the Act contemplates. There is no destination-over in this deed, and if the children were all in minority the only persons who could claim this fund would be the next-of-kin. These are the children themselves, and although in the case I am putting they are all dead, their collateral relatives do not take as next-of-kin in their own right, but as representing the children. This was established in the case of *Lord v. Colvin*, 23 D. 111, and the principle was recognised in the very carefully considered judgment of the House of Lords in *Gregory's Trustees v. Alison*, 16 R. (H. of L.) 10, and it appears to me to be quite unnecessary to call the next-of-kin of the children for whose behoof this application is made. The same considerations render it unnecessary to appoint a curator *ad litem*, because according to the report which is before us there is no other source of maintenance open to these children. The application is for their benefit, and my opinion, which I understand your Lordships agree with, is that it would be unnecessary to appoint a curator *ad litem* except for the protection of some interest in the children themselves. I am therefore of opinion that we may now grant the power craved.

LORD KINNEAR—I entirely agree in all that Lord M'Laren has said.

The LORD PRESIDENT concurred.

LORD ADAM was absent.

The Court granted the prayer of the petition.

Counsel for the Petitioner—Burnett.
Agents—Fraser, Stodart, & Ballingall, W.S.

Saturday, July 7.

FIRST DIVISION.

BAXTER, PETITIONER.

Nobile Officium—Appointment of Auditor to the Court of Session ad interim.

Edmund Baxter, W.S., Auditor of the Court of Session, presented a petition to the Court of Session stating that he was at present seriously unwell, and that in the present state of the Session it was of serious importance that the work of the office should be carried on, and praying the Court to make such an interim appointment as they might think fit.

Counsel referred to 1 and 2 Geo. IV. cap. 38, sec. 38, and to Mackay's Manual of Practice (1893), p. 83, which contained a list of other offices to which the Court had made *ad interim* appointments.

The Court appointed Mr Ellison Ross, S.S.C., to discharge the duties of Auditor until the third sederunt-day of next Session.

Counsel for the Petitioner—Mackay.
Agent—Charles Baxter, W.S.

Tuesday, July 17.

FIRST DIVISION.

[Sheriff-Substitute of Lanarkshire.]

CURRIE v. ALLAN AND CAMPBELL.

Ship—Perilous Position of Ship at Quay—Obstruction by Vessel Lying Outside and Refusing to Move—Right to Cut Other Vessel's Ropes.

A steamship lying in a perilous position at a quay was unable to sail because another vessel lying outside had the ropes mooring her to the quay stretched across said ship. During the whole of one night it was impossible for the outside and smaller vessel to sail with safety, and in the morning when she might possibly have made the attempt some of the crew still refused to go to sea. The master of the inside vessel after repeatedly requesting the master of the outside one to move, and having given warning of what he would do, cut the ropes and sailed away. The crew on board the other ship with difficulty got on shore, while the vessel was driven on to the opposite coast and there stranded, sustaining considerable damage.

Held that it lay with the master who had cut the ropes to justify what he had done, that he had failed to do so, and that the owners of his vessel were liable in damages for the loss sustained by the one cut adrift.

Observed that a man is not entitled to