

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court recalled the interlocutor of the Lord Ordinary, and assolizied the defender.

Counsel for the Pursuers—Guthrie—F. T. Cooper. Agents—Henry & Scott, W.S.

Counsel for the Defender—Jameson—W. Campbell. Agents—Boyd, Jameson, & Kelly, W.S.

Tuesday, July 9.

## FIRST DIVISION.

### A B, PETITIONER.

*Administration of Justice—Law-Agent—Misconduct—Deletion from Roll—Re-admission.*

Circumstances in which the Court *re-admitted* a law-agent whose name had been removed from the roll on account of an act of embezzlement committed fifteen years previously, for which he had been sentenced to three months' imprisonment, but who had satisfied the Court as to the probity of his conduct since his liberation.

On 26th December 1879, A B, a law-agent in Glasgow, was convicted of having embezzled a sum of £600, which he had obtained for clients as a loan over subjects belonging to them, and was sentenced to a term of three months' imprisonment. After his liberation, on 30th May 1880, A B, by letter addressed to the Registrar of Enrolled Law-Agents in Scotland, instructed the withdrawal of his name from the roll, and this was done. On 4th June 1895, A B presented a petition craving the Court "to re-admit the petitioner as a law-agent, . . . and to decern and ordain the Registrar of Law-Agents to restore the name of the petitioner to the Register of Enrolled Law-Agents."

The petitioner stated, *inter alia*, that, after obtaining the loan and pending the settlement of the transaction, he had instructed one of his clerks to place the amount in a separate account with his bankers; that, as he afterwards discovered, his clerk had paid the money to his general bank account; that at the time he believed himself to be solvent; that, owing to losses occasioned by the unprecedented depression which followed the collapse of the City of Glasgow Bank, he had become insolvent, and his estates had been sequestrated in July 1879; that the amount of the said loan being immixed with his own funds was, after his sequestration, not available to the borrowers, who laid an information with the Fiscal, upon which the petitioner had been charged with embezzlement, and after trial convicted; that since his release he had endeavoured to earn an honest livelihood in Glasgow, that he had acted as a clerk in the employment of a Glasgow firm of writers, and was now managing and conveyancing clerk to another firm, and that on 3rd December 1894

he had presented a petition for discharge under the Bankruptcy Acts, which had been granted. He produced numerous certificates in his favour, including one signed by nearly one hundred law-agents and conveyancers, which spoke highly of his ability and integrity.

On 5th June the petition was ordered to be intimated to the Incorporated Society of Law-Agents, and answers were lodged by the Society, in which they averred that their Council had examined the proceedings in the petitioner's bankruptcy with reference to his allegations regarding the circumstances leading to his trial, and they begged to refer the Court to these proceedings should their Lordships think these allegations material; that they had ascertained that there was precedent in the practice of the English courts for restoring to the roll solicitors who had been convicted of such a crime as this; that they understood the Glasgow Faculty of Procurators had had notice of the petition, and did not oppose it; and that in the circumstances "the respondents are content to leave in the hands of the Court the question which they respectfully submit falls to be decided, viz., whether, without detriment to the interests of the profession and of the public, the petitioner can be restored to the Roll of Law-Agents?"

Argued for the petitioner—The formal answer given by the Incorporated Society of Law-Agents left the matter to the discretion of the Court. No answer had been made by the Society of Procurators, and individually they had written certificates in his favour. There were English precedents for granting the petition, which showed that great weight was attached by the Court to evidence in the petitioner's favour such as was produced here. Each case was decided according to its circumstances, and no general principles need be laid down. The case of *Unwin*, March 28, 1882, 72 Law Times (O.S.), 388, was very similar to the present one. In the case of *Robins*, 1865, 34 L.J.Q.B. 121, re-admission was granted after only six years' probation. In "*Anonymous*," 1853, 17 Beav. 475, it was granted after ten years. In *Pyke*, 1865, 34 L.J.Q.B. 121, re-admission was only refused because no affidavits as to conduct were produced.

At advising—

LORD PRESIDENT—The petitioner, whose conviction was in 1879, has since that date lived in Glasgow, where the offence for which he was convicted was committed, and has worked industriously in the business of the law. We ordered his application to be intimated to the Incorporated Society of Law-Agents, and that body has considered all the circumstances, and has inquired into the bankruptcy proceedings, out of which arose the criminal indictment upon which the petitioner was found guilty. We have strong testimony in the certificates contained in the appendix to the petition, and it is to be noted that many of them have been obtained from persons belonging to a profession which is most

punctilious in caring for its honour, while others are from persons of undoubted character and respectability, who in other relations of life have had an opportunity of observing the conduct of the petitioner.

Now, on the one hand, we cannot lay down an inflexible rule that when once a law-agent has been convicted of a crime his position is irretrievably lost. This must depend—as has been held by the English courts—both upon the quality of the offence committed and upon the subsequent conduct of the offender, coupled with the length of time which has elapsed since his conviction being sufficient to warrant a belief in the stability of the petitioner's good behaviour. In the present case, without in any way extenuating the gravity of the offence committed by the petitioner, it does not appear to be one of those gravest offences which leave an indelible stain.

On the other hand, I do not wish to encourage the idea that the mere lapse of time gives a right to claim re-admission. But I think that the circumstances of this petition are so favourable as to justify us in granting the prayer.

LORD ADAM—I am of the same opinion. The petitioner was convicted in 1879 of the embezzlement of funds which had been entrusted to him in his capacity of a law-agent, and was sentenced to three months' imprisonment. What followed was that his name was, on his own application, removed from the list of law-agents. That, in my opinion, constitutes no difference from his being struck off the roll, which would have been done but for his application.

But I agree that, where an unfortunate offender is struck off the roll, it does not necessarily follow that his sentence is perpetual and without the possibility of being rescinded. He may have shown by his conduct for years that he has come to see the heinousness of his offence and has returned to ways of rectitude, and can it be said that there is no restitution possible? Such a view cannot be a proper one, and if we are satisfied that his repentance is true, and that by his conduct during fifteen years he has redeemed his position, and can be safely restored to his profession of a law-agent, I can see no reason why we should not restore him. I think that the petitioner has so satisfied us. It is not only a consideration of the time which has elapsed since his offence, but of his conduct during that time, which, as shown by the certificates produced, has satisfied us. Therefore I agree with your Lordship.

LORD M'LAREN and LORD KINNEAR concurred.

The Court granted the prayer of the petition.

Counsel for the Petitioner—D. Dundas—W. Thomson. Agents—W. & J. Burness, W.S.

Counsel for the Society of Law-Agents—Macfarlane. Agents—Carment, Wedderburn, & Watson, W.S.

Tuesday, July 9.

FIRST DIVISION.

MACLEAN, PETITIONER.

*Process—Trustee—Non-Gratuitous Trustee—Resignation—Petition for Confirmation of Resignation—Trust Act 1867 (30 and 31 Vict. cap. 97), sec. 1.*

A member of a shipbuilding firm, who was appointed a trustee under a trust-disposition and settlement executed by one of his partners, accepted office "without prejudice to his rights as a partner." By the terms of the trust he was entitled on acceptance of office to a legacy of £50. Five months after accepting office, finding that his interest as a partner had become inconsistent with his duty as a trustee, he resigned office, and his resignation was accepted by the remaining trustees. On being offered payment of the legacy he refused to accept it. Sixteen years later, doubts having been expressed as to the validity of his resignation, the trustee presented a petition craving the Court "to hold the reasons stated in the petition as sufficient to entitle the petitioner, as at 5th November 1879, to resign the office of trustee . . . and to approve of said resignation accordingly, and to authorise and confirm the same as at said date."

The Court refused the petition as incompetent.

*Opinions* that, where a non-gratuitous trustee has resigned his office in consequence of a conflict having arisen between his personal interests and his duties as trustee, his resignation may be sustained as valid at common law, although he has not obtained authority to resign from the Court.

By trust-disposition and settlement, executed in December 1878, Robert Curle, shipbuilder, Glasgow, senior partner of the firm of Barclay, Curle, & Co., assigned and disposed his whole estates, heritable and moveable, to trustees for the purposes expressed in the trust-deed. By the second purpose he directed his trustees "to pay to each of the gentlemen hereinbefore named as trustees, who may accept office and act as trustees, the sum of £50 sterling, payable at the first term of Whitsunday or Martinmas after my decease."

The truster died on 8th June 1879, and was survived by his widow and by three children—Mrs Miller, Mrs Lamont, and Robert Barclay Curle.

On the 18th June 1879 the first meeting of the trustees appointed in the trust-settlement took place, when two of their number—Mr James Hamilton and Sir Andrew Maclean—accepted office conditionally, the minute of the meeting bearing that "it was understood that Messrs James Hamilton and Andrew Maclean so accepted under reservation of and without prejudice to their rights as surviving partners of Barclay, Curle, & Company."