

was carefully guarded so as not to be applicable to such a case as this, where the destination-over, which suspends vesting, is not to the survivors of the class or to the issue of predeceasers, but is in favour of third parties.

"I agree with the reporter in thinking that there may be a claim of debt here, as for aliment, against the estate left by the father, in the case of such of the children as are not able to support themselves. But it is for the trustees, and tutors and curators, to work that out on their own responsibility, with the consent, if they can obtain it, of the other contingent fiars.

"I am constrained to refuse the petition."

Counsel for the Petitioners—A. S. D. Thomson. Agent — Andrew Newlands, S.S.C.

Tuesday, June 2.

FIRST DIVISION.

WHITTLE, PETITIONER.

Trust—Trustee—Bankruptcy of Trustee—Removal.

One of two testamentary trustees who had been sequestrated, and who was indebted to the trust-estate, removed on the petition of the other trustees and the beneficiaries.

This was a petition at the instance of Mr Robert Whittle, one of two trustees under the trust-disposition of the late Mr John Whittle, Barnhill, Dumfries, with consent and concurrence of the beneficiaries under the trust, craving the Court to remove the other trustee, Mr Joseph Carruthers, solicitor, Moffat, from the management of the trust. Under the trust-disposition the trustees were directed to hold the residue of the truster's estate in liferent for his widow, the fee being left equally among the children.

The petitioner averred that the respondent had been lately in financial difficulties, that on April 21st, 1896, his estates had been sequestrated, and that a claim had been lodged in the sequestration by the petitioner on behalf of the trust estate for the sum of £117, in respect of transactions between the respondent and the late John Whittle.

The respondent lodged answers in which he averred that the claim against him on behalf of the trust-estate was greatly overstated, and that he had counter claims which would more than meet it. He averred further that he had acted for years as the law-agent of the truster, and that the latter had never wished to recal his appointment.

Argued for petitioner—The effect of the sequestration of a trustee clearly was to render him ineligible for the office, more especially in a case like this, where the trust-estate had a claim against him, and also where the trust was a continuing one — *M'Dowall v. M'Dowall*, 1789, M. 7453;

*Towart*, May 14th, 1823, 2 S. 305; *Smith*, May 15th, 1832, 10 S. 531; *Macpherson v. A B*, December 19th, 1840, 3 D. 315. In the last case the trustee was removed even though he offered to find caution.

Argued for respondent—No charge was made against him personally. The debt had existed before the appointment was made, and his sequestration had placed the respondent in a more favourable position with regard to holding this office, since it was the trustee in the sequestration who was interested in resisting the claim, and not himself. In any case the Court should not remove him, but if they thought a change of management necessary, should appoint a judicial factor.

LORD PRESIDENT—I think there is enough to render necessary the removal of this trustee.

It is quite clear that his position as a sequestrated bankrupt, alleged to be indebted to the trust-estate, makes him a very unsuitable person to act as one of two trustees managing that estate. I think it is to be regretted that the respondent did not solve the difficulty by retiring. As, however, he declines to do so, it appears to me that our clear course is to remove him. No more censure of him is implied by our doing so than is involved in his having rendered this course necessary by not himself taking the proper step of retiring from the trust. It is out of the question that a person in the respondent's position should be allowed, in order to save his dignity, to insist upon the appointment of a judicial factor, that is, to mulct the estate in the expenses of judicial management in place of the present gratuitous administration.

LORD M'LAREN and LORD KINNEAR concurred.

LORD ADAM was absent.

The Court granted the petition.

Counsel for Petitioner—Younger. Agents—Steele & Johnston, W.S.

Counsel for Respondent—Cullen. Agent—Alex. Wyllie, S.S.C.

Tuesday, June 9.

FIRST DIVISION.

THE GOVERNORS OF BELL'S TRUST, PETITIONERS.

Trust—Scheme for Administration of Educational Trust—Amendment of Scheme—Educational Endowments (Scotland) Act 1882 (45 and 46 Vict. cap. 59), sec. 7—Extension of Area of Benefits of Trust.

The Educational Endowments (Scotland) Act 1882, sec. 7, enacts that, "subject to the provisions of this Act, it shall be the duty of the Commissioners, in re-organising as aforesaid educational endowments, to have special regard to