

times wondered why it is not taken advantage of more often than seems to be the case. But the benefits of the change must clearly be exercised within the limits which define the statutory jurisdiction of the Court in the matter.

Now the words of section 18 seem to me plainly to contemplate an application by the trustees in the administration of the trust as a body, or at least a majority of them, who seek to place the administration of their trust under the guidance of the Court, and so to obtain immunity for their actings in the matters of investment and distribution. It does not apply to an application by a minority of trustees, or one single trustee, who disagree with the majority as regards the administration of the trust.

In the *Earl of Stair's* case the trust was already under the Court's guidance under section 18 when the application which is reported arose. That application was made by the trustees, who desired to obtain the advice of the Court as to whether they should or should not exercise a discretionary power conferred upon them, and the Court refused to advise the trustees on that matter. But in dealing with the case the judges, and especially Lord President Robertson, did express dicta as to the proper scope and nature of section 18. Thus the Lord President described it as enabling "the trustees acting under any private trust to obtain immunity for their acts, in the important articles of investment and distribution, by subjecting their administration to the supervision of the Accountant of Court." In another passage he alludes to the "administrators" of a trust coming under the supervision of the Accountant of Court and thereby obtaining protection.

These phrases seem to me to carry out the view I entertain in common with your Lordship that the section contemplates the trustees as a corporate body, or a majority of them, applying to the Court. Lord President Robertson and also Lord McLaren indicated the view that even as regards matters of distribution the section would not warrant the Court in intervening for the determination of contentious rights. That, however, is a matter which does not seem to arise now upon the question of strict competency, although it might have had a bearing upon the merits of the case if it had gone on, which, for the reasons I have expressed, I think it should not.

I therefore hold this petition to be incompetent on the simple ground that it is beyond our jurisdiction, as not being an application of the trustees but of a minority. This view appears to be in accordance with that which Lord Blackburn in the Outer House entertained and would have given effect to but that he thought, quite properly, the better course was to report the matter to your Lordships. I think we should refuse the petition.

LORD GUTHRIE—I agree. The section of the Act founded on repeals a section of the Act of 1856, with the result that whereas under the previous Act it was a question of getting the Accountant of Court to super-

intend the administration of the estate generally, in this case his superintendence is to be restricted to investment and distribution. On the other matter—namely, the language involving action on the part of the whole body of trustees or a majority of them—no change was made.

It seems to me, therefore, that this matter was dealt with by the Legislature on the footing which Mr Watson maintains, and there are expressions in section 18, in addition to anything in the 1856 Act, which go to strengthen his contention—such as the expression "such trustees," and the provision at the end for the accounts being reported on with regard to any question that may arise in the administration of the estate.

LORD SALVESEN was absent.

The Court dismissed the petition.

Counsel for the Petitioners—Macphail, K.C.—Gentles. Agents—Fyfe, Ireland, & Company, W.S.

Counsel for the Respondents—Hon. Wm. Watson, K.C.—A. M. Mackay. Agents—Murray & Brydon, S.S.C.

Saturday, March 6.

FIRST DIVISION.

LOW, PETITIONER.

Parent and Child—Process—Custody—Divorced Wife Removing Child from Guardian Nominated by Father and Taking Child out of the Jurisdiction—Form of Interlocutor.

A husband having divorced his wife for adultery and obtained custody of the only child of the marriage, a girl of about four years of age, died leaving a will in which he nominated his mother, whom failing certain others, to be tutors, curators, and guardians of the child. The mother accepted office and acted. The divorced wife having taken forcible possession of the child, and having removed her to England, the mother presented a petition craving an order on the divorced wife to deliver up the child to her to remain in her custody, and with various other craves. On a first enrolment the Court, upon a statement by counsel that in the event of publication of the proceedings there was a material risk of the divorced wife disappearing with the child, and that the petitioner undertook to go to England to receive the child, *dispensed with* intimation on the walls, and *granted* warrant to officers of law to take possession of the child and deliver her to the petitioner, and *recommended* to all magistrates in England or elsewhere to give their aid and concurrence in carrying the warrant into effect.

Mrs Isabella Carfrae or Low, widow, *petitioner*, brought a petition, the *prayer* of which was in the following terms—"May it

therefore please your Lordships to appoint this petition to be intimated on the walls and in the minute book, and to be served edictally upon Violet Revel or Low [the divorced wife of the petitioner's son], and to ordain her to lodge answers hereto, if so advised, within eight days after service; and upon resuming consideration hereof, with or without answers, to find that the petitioner is entitled to the custody of Jeanne Carfrae Low [the daughter of the petitioner's son by his divorced wife], and to make an order decerning and ordaining the said Violet Revel or Low to deliver up to the petitioner, or to those having her authority, the said child, to remain in her custody; and if and in so far as may be necessary, to find that the said Violet Revel or Low is not a fit and proper person to act as custodian or guardian of the said Jeanne Carfrae Low, and to remove her from the office of guardian to the said Jeanne Carfrae Low; and pending the currency of the said intimation and service of the present petition, in respect that the said Jeanne Carfrae Low has been improperly and without warrant carried out of Scotland, to grant warrant to messengers-at-arms or other officers of the law to take the person of the said Jeanne Carfrae Low into their custody wherever she can be found; to grant warrant to open shut and lockfast places; and to convey and deliver her into the custody of the petitioner or of some neutral person to be nominated by your Lordships; and to recommend to all magistrates in England and elsewhere to give their aid and concurrence in carrying this warrant into effect; further, to authorise execution hereof to pass on a copy of said warrant certified by the Clerk of Court."

The *petitio*n set forth—"On or about 12th June 1915 Thomas Carfrae Low, son of the petitioner, was married to Violet Revel or Low. There was one child of the marriage, a daughter named Jeanne Carfrae Low, now four years of age. The domicile of origin of Thomas Carfrae Low was Scottish, and he retained the said domicile until the time of his death. While Thomas Carfrae Low was on military service Violet Revel or Low left his house and lived in open adultery with a certain Robert Grant, then also serving in His Majesty's Forces, taking with her Jeanne Carfrae Low. Thereafter Thomas Carfrae Low raised an action of divorce against Violet Revel or Low, in which the Lord Ordinary pronounced an interlocutor in the following terms—'22nd February 1919.—Lord Ormidale.—*Act. Christie.*—The Lord Ordinary having considered the summons, proof, and productions, finds facts, circumstances, and qualifications proven relevant to infer the defender's guilt of adultery: Finds her guilty of adultery accordingly: Divorces and separates the defender from the pursuer and from his society, fellowship, and company: Finds and declares in terms of the declaratory conclusions of the summons, and decerns: Finds the pursuer entitled to the custody and keeping of Jeanne Carfrae Low, the only child of the marriage between the pursuer and defender: Interdicts, prohibits, and discharges

the defender from interfering in any way with the said child or the pursuer as her custodian, and decerns.—*GEORGE L. MACFARLANE.*' After a considerable amount of trouble Thomas Carfrae Low succeeded in getting possession of the said child, and as he was still engaged in his military duties he placed the said child with the petitioner. In July 1919 Thomas Carfrae Low in the course of his military service went to India, where he died on or about 30th October 1919. Thomas Carfrae Low left a trust-disposition and settlement dated 27th June 1919. By said trust-disposition and settlement he further nominated the petitioner, whom failing his aunt Miss Grace Carfrae, 18 Coltbridge Terrace, Edinburgh, whom failing the said Margaret Ellen Low and Archibald Brown Campbell, and the survivor of them, to be tutors, curators, or guardians, or tutor, curator, or guardian, of his said daughter. The petitioner since the death of Thomas Carfrae Low has acted as tutor and guardian of Jeanne Carfrae Low, who continued to reside with her at 4 Murrayfield Avenue. On Saturday, 7th February 1920, Violet Revel or Low, without any previous communication with the petitioner, and Robert Grant came to Edinburgh, and on the afternoon of said date, while Jeanne Carfrae Low was out with her nurse, took violent possession of Jeanne Carfrae Low and removed her by motor car to Newcastle where they spent the night. Next day they left Newcastle taking Jeanne Carfrae Low with them. The petitioner has since been able to trace Violet Revel or Low and Robert Grant to a flat at 2 K Portman Mansions, Marylebone Road, London, W., where they are at present residing. She has been unable to ascertain the whereabouts of Jeanne Carfrae Low, though she believes that she is being detained by Violet Revel or Low at said address. Violet Revel or Low has no means or estate of her own; she and Robert Grant are now living as husband and wife, as they did during the subsistence of the marriage between her and Thomas Carfrae Low, and though it is possible they may now be married the petitioner is not in a position to state whether this is so or not. The petitioner, however, respectfully submits that Violet Revel or Low has no right to the custody and guardianship of Jeanne Carfrae Low, and is, moreover, not a fit and proper person to have such custody and guardianship. The petitioner and Jeanne Carfrae Low are greatly attached to each other. The petitioner is able and anxious to provide her with a proper home, and to bring her up in suitable surroundings, and she respectfully submits that she is entitled to the exclusive custody and guardianship of Jeanne Carfrae Low. She further submits that *ante omnia* Jeanne Carfrae Low should be brought back within the jurisdiction and restored to her custody and keeping or to the custody and keeping of some neutral person to be nominated by your Lordships until the rights, if any, of Violet Revel or Low are judicially determined."

In the Single Bills counsel for the petitioner moved the Court to dispense with intimation on the walls in respect that it

was probable that if the present application was made public Violet Revel or Low would endeavour to defeat its object by disappearing with the child in question. He further moved the Court to grant warrant instantly to officers of law to recover the child in question, stating that no question of neutral custody need arise as the petitioner intended to proceed to London to receive the child. The following were referred to:—*Paul, Petitioner*, 1838, 16 S. 822; *Earl of Buchan v. Lady Cardross*, 1842, 4 D. 1268; *Leys v. Leys*, 1886, 13 R. 1223, at p. 1227, 23 S.L.R. 834; the Guardianship of Infants Act 1886 (49 and 50 Vict. cap. 27), section 2.

The Court pronounced this interlocutor—

“The Lords appoint the petition to be intimated in the minute book in common form (*hoc statu* dispense with intimation of the petition on the walls) to be served edictally upon Violet Revel or Low mentioned in the petition, and ordain her to lodge answers thereto, if so advised, within eight days after such intimation and service: In respect it appears that the child Jeanne Carfrae Low mentioned in the petition has been improperly carried off from the jurisdiction of this Court, or otherwise is kept in concealment without the consent, permission, or knowledge of the petitioner, Grant warrant to messengers-at-arms and other officers of the law to take the person of the said child into their custody wherever she can be found, and to convey and deliver her into the custody of the petitioner to be kept by her till the further orders of the Court: and Authorise all Judges Ordinary and their procurator-fiscals in Scotland to aid the said messengers and officers in the execution of this warrant by taking such precognition as may be necessary for discovering the place to which the said child has been removed or where she is concealed: and Recommend to all magistrates in England and elsewhere to give their aid and concurrence in carrying this warrant into effect: Dispense with the reading of this interlocutor in the minute book, and authorise a certified copy of this interlocutor to be used in place of an extract.”

Counsel for the Petitioner—J. A. Christie.
Agents—Mylne & Campbell, W.S.

COURT OF TEINDS.

Saturday, March 6.

SECOND DIVISION.

[Lord Sands, Ordinary.

GALLOWAY v. EARL OF MINTO.

Teinds—Stipend—Valuation of Teinds—Teinds Valued in Money and Stipend Localled in Victual—Tender of Money Value of Teinds for the Year in Satisfaction of Victual Stipend—Surrender.

A heritor whose teinds have been valued in money but have had a stipend localled upon them in victual is bound, where the sum claimed as stipend in terms of the decree of locality exceeds the amount of the valued teinds, either to pay the amount or to surrender the teinds in perpetuity, and cannot satisfy the minister's claim by tendering for the particular year the amount of the teinds as valued.

Teinds—Stipend—Valuation of Teinds—Unvalued Teinds—Tender of One-Fifth of Rent for the Year in Satisfaction of Victual Stipend—Act of 1633, cap. 15.

Held (by Lord Sands, Ordinary) that where stipend claimed in terms of a decree of locality exceeds one-fifth of the rent of lands whose teinds are unvalued, the heritor must either pay the amount or lead a valuation and surrender: he cannot satisfy the minister's claim by tendering one-fifth of the rent of the lands as the full value of the teinds.

Opinion (per Lord Sands, Ordinary) that the Act of 1633, cap. 15, ratifying an Act of the Teind Commissioners of 23rd March 1631, whereby provision was made in the case of unvalued teinds for payment by the heritor according to the fifth part of his present rent, did not alter the radical character of teinds as a right to one-tenth of the increase; it did not convert the teinds to a right to one-fifth of the rent; it provided means, meant at the time to be temporary, of liquidating the value of the teind where it was necessary to do so, in all cases where leading had been given up; and that there was no call on a minister, founding on his decree of locality, to liquidate the value of unvalued teind.

The Reverend Alexander Galloway, Minister of the parish of Minto in the county of Roxburgh, *pursuer*, brought an action in the Court of Teinds against the Earl of Minto, proprietor of the lands and barony of Minto and other lands in that parish, *defender*, in which he sought to have it found and declared—“(First) That under and by virtue of a decreet of modification, dated 8th February 1907, pronounced by our said Lords, as commissioners foresaid, in a process of augmentation, modification and locality raised at the instance of the present *pursuer* against the heritors of the parish