

effects, and in all things conformed to the said statutes, and was found entitled to and received from the Commissioner of said District Court of Bankruptcy a certificate of conformity to the requirement of the bankruptcy laws. The said certificate is dated 30th August, and was allowed and confirmed by the Court of Review in Bankruptcy, on 28th September, and entered on record, pursuant to Act of Parliament, on 17th October, all in the year 1844.

The statute 5 and 6 Vict. c. 122, sec. 37, enacts, "That every bankrupt who shall have duly surrendered, and in all things conformed himself to the laws in force at the time of issuing the fiat in bankruptcy against him, shall be discharged from all debts due by him when he became bankrupt, and from all claims and demands made proveable under the fiat, in case he shall obtain a certificate of such conformity, so signed and allowed and subject to such provisions as hereinafter mentioned."

That certain inhibitions had been raised against the said Thompson, Mellis & Company—1st, an inhibition by William Henry Tilstone, merchant, London; and 2d, two inhibitions raised by Messrs Porter & Latimer, colliery owners, Newcastle-upon-Tyne, and that the debts for which these inhibitions were raised were debts incurred by the said Thompson, Mellis & Company, and the petitioner as a partner thereof, prior to the date of the certificate before referred to, and the petitioner is therefore discharged thereof. That the residence or place of business of the said William Henry Tilstone and Messrs Porter and Latimer are unknown to the petitioner, and they have no known agent in Scotland.

The prayer of the petition was—"May it therefore please your Lordships to grant warrant for serving this petition on the said William Henry Tilstone, and Messrs Porter & Latimer, and to ordain them to give in answers thereto within a short space, if so advised, and on resuming consideration of the petition, with or without answers, to recall the foresaid inhibitions in so far as the same affect the petitioner; and to grant warrant for marking the same as discharged in the record of inhibitions; or to do otherwise in the premises as to your Lordships shall seem proper."

ASHER for the petitioner.

LORD PRESIDENT said that since Mr Tilstone and Messrs Porter and Latimer had disappeared, the question came to be, whether, because it was impossible to serve the petition upon these gentlemen, the inhibitions should be allowed to stand until the debts expired. I do not feel inclined to go so far as this, but, on the contrary, I think we should grant the prayer of the petition.

The other Judges concurred.

Agents for Petitioner—Henry & Shires, S.S.C.

Thursday, July 18.

JOHN C. FOULDS, PETITIONER.

Bankruptcy—Bankruptcy Act 1839—Trustee—Creditors—Sederunt Book.

Where a sequestration had not been proceeded with, there being no funds of the bankrupt available, and the sederunt-books and other papers had been lost, the trustee,

on the bankrupt afterwards succeeding to property, petitioned the Court for powers to carry through the sequestration, notwithstanding the loss of the papers. The Court authorised a notice to be given to creditors to lodge claims; and, *quoad ultra*, superseded consideration of the petition.

This petition was presented by Mr John Christie Foulds, accountant, under the following circumstances:—

On 20th April 1855 the estates of James Cormie were sequestrated by the Lord Ordinary on the Bills, under the Act 2 and 3 Vict. c. 41; and on May 7, 1855, the petitioner was elected trustee on the estates, and was thereafter duly confirmed. The petitioner's intromissions under the sequestration were of trifling amount, the assets of the estate being so small as not to cover the expenses of the sequestration, much less to pay a dividend to the creditors. Shortly after the sequestration, the bankrupt left Scotland, and nothing was heard of him till last year, when it was learned that he had returned to this country, and was endeavouring to carry through a sale of a small property in Paisley to which he had succeeded through the death of his father, John Cormie, spirit-dealer in Anderston of Glasgow. The petitioner thereupon made the necessary application to the Lord Ordinary on the Bills, and, on November 1, 1871, obtained deliverance and warrant of his Lordship declaring the subjects in Paisley, as described in the application, to be vested in the petitioner, as trustee foresaid, at the date of the succession thereto, all in terms of the said Act. Then the petitioner convened a meeting of creditors, who elected commissioners in place of two of the original commissioners, who had died. Afterwards the petitioner sold the subjects, and thus obtained a sum of from £200 to £300 for division. But the difficulty arose that the Sederunt Book, claims of creditors, and whole other documents in the sequestration were lost, and could not be found. The petitioner had thus no list of the creditors who lodged claims, nor any means of getting such a list, and consequently he could not declare or pay a dividend, or otherwise proceed with the sequestration.

In these circumstances the trustee presented this petition, the prayer of which was as follows:—

"May it therefore please your Lordships, after such intimation or service hereof (if any) as to your Lordships may seem necessary, to grant to the petitioner authority to proceed in the sequestration, and to take all necessary steps therein for the division of the funds, and otherwise, notwithstanding the loss of the Sederunt Book, claims, and other documents, and the petitioner's consequent inability to use or produce the same in terms and for the purposes of the statute; and to authorise the petitioner to insert a notice in the Edinburgh Gazette, North British Advertiser, and Glasgow Herald newspapers, addressed to the creditors on the estate, setting forth the date of the sequestration and the loss of the claims lodged by creditors, and requiring creditors, and representatives of creditors deceased, to lodge claims in the statutory form within the period of one month from the last date of notice, under certification that the assets of the estate shall be divided among such creditors, or representatives of creditors, only as shall lodge claims within the said period; the claims so lodged being always disposed of in accordance with the provisions of the said Act, and the further procedure in the sequestration, with a view to the

division of the funds and otherwise, being regulated thereby; and so far as this application may not be disposed of by your Lordships prior to the rising of the Court for the autumn vacation, to remit the same to Lord Ordinary on the Bills during the vacation, or to the Sheriff of Lanarkshire, with full powers."

R. V. CAMPBELL for the petitioner.

LORD PRESIDENT said that the sequestration must still be conducted under the Act of 1839, subject to the supervision of the Accountant in Bankruptcy. But the terms of the prayer were far too general, and could not be granted. The Court, however, would give an order for notice to creditors to lodge claims, in order that the sequestration might proceed, and, *quoad ultra*, would supersede consideration of the petition. The petitioner must also give notice by letter to those creditors whom he knew.

Agents for Petitioner—Maitland & Lyon, W.S.

Thursday, July 18.

SECOND DIVISION.

SPECIAL CASE—CHARLES COWAN, ESQ. AND OTHERS, AND A. COWAN'S TRUSTEES AND OTHERS.

Legacy—Will—Construction.

Terms of will held sufficient to carry a sum of £2500 held by trustees for the testatrix in liferent and her issue in fee, with power to the testatrix to test and dispose of the capital sum in contingencies which happened.

This was a Special Case presented by the trustees, as parties of the first part, of the late Alexander Cowan. The third purpose of the trust was as follows. "I direct my said trustees, at the first term of Whitsunday or Martinmas after my death, to set apart for each child of my marriage with the said Helen Brodie or Cowan (Mr Cowan's second wife), the sum of £4000 sterling, which provision of £4000 my said trustees shall hold for the benefit of each such child in liferent, and of his or her issue in fee; but declaring that notwithstanding the force of said direction, my said trustees shall, out of the said provision of £4000, pay to each of the children of my present marriage the sum of £1500, upon and in the event of each such child attaining the age of twenty-five years complete, it being my intention that in the event of his or her attaining that age, each of my said children shall have the sum of £1500 of his or her provision at their own disposal; and I do hereby direct and appoint my said trustees to hold the capital sums of the said provisions, subject to the payments to be made therefrom at the age of twenty-five, liable to the power of division and apportionment thereof by each child among his or her issue, and in the event of any such child dying without issue, he or she, after attaining the age of twenty-one years complete, shall be entitled to test upon the said capital sum, and to dispose thereof as he or she shall think fit, to take effect only in case of such child having no issue as aforesaid." The deed provides lastly—"In case there shall be any surplus of my means and estate remaining after fulfillment of all the purposes before set forth, my said trustees shall make payment of such surplus or residue to the whole of my lawful children of my

former and present marriage, equally among them, share and share alike, the shares of said surplus being entirely at the disposal of the children participating therein, and to be payable to them upon their attaining respectively the age of twenty-five years complete."

Miss C. J. Cowan, Mr Cowan's youngest daughter by his second marriage, died unmarried in January 1872, aged twenty-nine. She left a holograph will in the following terms:—"I, C. J. Cowan, do bequeath all my property to my full brothers and sisters, and, with the exception of personal effects, do give to each full brother an equal portion, and to each unmarried full sister an equal portion, and to each married full sister the interest for life of an equal portion, and, at the death of said sister, the principal to go to her children. The rest of my property, personal effects, I leave to my unmarried sisters, to be kept and disposed of as they think best. I appoint my two brothers, George and Alexander Oswald, to be my executors.

"C. J. COWAN."

The parties of the second part were the full brothers and unmarried sisters of the said deceased Miss C. J. Cowan, and the trustees under the marriage-contract of her two married sisters, and the executors nominated by Miss C. J. Cowan in her will. Both parties were agreed that the sum of £1500 was carried by Miss Cowan's will.

The question submitted for the opinion of the Court was, Whether the provision of £2500 (the balance of the provision of £4000 directed to be set apart for each child of the second marriage) fell to be dealt with by the parties of the first part as part of the residue of the trust-estate of the late Mr A. Cowan, or fell and belonged to the parties of the second part under the terce of the late Miss C. J. Brown.

KEIR, for parties of the first part, contended that Miss Cowan had a mere liferent with power to test, and that the words "all my property" were not sufficient to carry the said provision.

PEARSON for parties of the second part.

Cases referred to—*Hislop*, 12 S. 413; *Grierson*, 4 D. 939.

The Court, without hearing counsel for parties of the second part, unanimously held that the question should be answered in favour of the parties of the second part, on the authority of the case of *Hislop*. They held that Miss Cowan having the power to test and dispose of the capital sum of £4000, she had used words which included the sum of £2500, and that they were not called on to decide whether the fee had vested in her or not.

Agent for First Parties—John M. Bell, W.S.

Agents for Second Parties—Menzies & Coventry, W.S.

Thursday, July 18.

SPECIAL CASE FOR LIEUTENANT JOHN DUNBAR, 21ST FUSILIERS, AND OTHERS (MRS SCOTT'S TRUSTEES.)

Legacy—Construction.

A testator, by trust-disposition and settlement, directed her trustees, in case of her not having advanced money during her lifetime to purchase a captain's commission for John Dunbar, to make payment to him of a sum of £2000.