

amined was Hugo Knoblauch, merchant, the German Consul at Leith.

The petitioner prayed that authority might be granted to James Bland Sutherland, S.S.C., Leith, the legal assessor of the German Consul at Leith, to examine the witnesses named in the petition, and for an order commanding their attendance.

Authorities—*Blair*, July 14, 1883, 10 R. 1223; *Robinow*, July 19, 1883, 10 R. 1246.

When the cause was moved the Lord President referred to the unreported case of *Robinow*, mentioned in the report of *Blair*, 20 S.L.R., p. 810, where the Court appointed the examination to be before the Sheriff-Substitute of the district.

The Court granted the application, *observing* that in the present case the gentleman named in the prayer was well known to the Court, and that the appointment was made by the Court itself, and it was not to be understood that as a matter of course the nominee of the petitioner would in all cases be appointed.

Counsel for Petitioner—Armour. Agents—Beveridge, Sutherland, & Smith, S.S.C.

Thursday, July 15.

FIRST DIVISION.

THE SOCIETY OF SOLICITORS IN
THE SUPREME COURTS OF SCOTLAND,
PETITIONERS *v.* CLARK.

(*Ante*, p. 690).

Law Agent—Society of Solicitors in the Supreme Courts—Act 34 and 35 Vict. cap. 107—Petition to Strike Name off Roll.

On the petition of the Society of Solicitors in the Supreme Courts, the Court *ordered* the name of a member who had been convicted under the Criminal Law Amendment Act 1885, and imprisoned, to be struck off the roll of the members of the Society.

On 5th May 1886, Andrew Clark, S.S.C., was charged along with another person under a complaint at the instance of the Procurator-Fiscal of Midlothian before the Sheriff-Substitute of the Lothians, under the Summary Jurisdiction (Scotland) Acts, with a crime and offence under section 11 of the Criminal Law Amendment Act 1885, said to have been committed on 20th April 1886.

After trial, Clark and the other person named in the charge were convicted of an offence under section 11, and sentenced to imprisonment for thirty days.

Clark brought a bill of suspension and liberation before the High Court of Justiciary, which bill was upon 8th June 1886 (*ante*, p. 690) refused, and warrant of imprisonment granted against Clark, who had obtained interim liberation.

Upon 16th June 1886 the Council of the Society of Solicitors in the Supreme Courts held a meeting to consider what steps should be adopted in consequence of the conviction of Clark. They passed a resolution that the Council "were of opinion that the conduct of the said Andrew Clark had been such as to warrant his expulsion

from the Society," and they directed the Society's fiscal to present a petition setting forth their resolution, and craving sentence of expulsion. This petition of the Solicitors in the Supreme Courts was then presented, praying the Court after such intimation, if any, as the Court should order, to pronounce sentence of expulsion against Clark, and to direct his name to be struck off the roll of members of the said Society.

The petitioners stated that their Society was originally incorporated by charter under the Great Charter, and that by statute of 1871 (35 and 35 Vict. c. 107) the charter was of new confirmed and ratified so far as not altered by the Act, and the petitioners of new incorporated into a body corporate and politic. Section 29 of this statute provides—"The Council may, on a report by the fiscal of the Society, or on the presentation of a complaint by any person aggrieved by the conduct of a member, inquire into any allegations affecting the professional character of a member, and if they shall see cause, after such inquiry, may suspend such member from practising as a solicitor in the Supreme Courts for any period not exceeding two years; and such member shall during the period of such suspension be debarred from exercising or enjoying any of the rights or privileges of a member; and if it shall appear to the Council that the conduct of the member has been such as to warrant his expulsion from the Society, they shall direct their fiscal to present a petition to the Lord President and the other Judges of the Court of Session, setting forth the resolution of the Council on the subject, and the Court shall have power by either of its Divisions to deal with the petition as they shall think fit, and if they see cause, pronounce sentence of expulsion; and any member against whom such sentence shall have been pronounced shall from and after the date of such sentence forfeit all his rights and privileges as a member of the Society: Provided always that such expulsion shall not effect the rights, if any, of the widow and children of such member to participate in the fund, nor his obligations as a contributor in terms of the provisions herein contained."

The Court ordered intimation on the walls and in the minute book, and service on Clark.

Clark lodged answers. He set forth that he had been long in business and a member of various public bodies, and averred that he was innocent of the crime charged; that the full facts were not before the Council; that prior to presenting the petition no inquiry was held by the Council or their fiscal, and that no complaint was ever made to the respondent regarding his conduct; that they made no intimation to him of the proposed proceedings, and gave him no opportunity of making any explanation before passing their resolution; and that they should have given him an opportunity of defending himself. He maintained that in any view the charge did not touch his "professional character" as a member of the Society, and that the petition was irrelevant, and the action of the Council of the Society oppressive and unjust, and that the Court should not act on the resolution of the Council of the Society in the circumstances in which it has been arrived at; "that the conviction founded on is not *per se* such evidence of the respondent's guilt as to entitle the Society to proceed upon it in a matter

affecting his status and civil rights as a member of the Society, without notice, and without giving him an opportunity of clearing himself, and making such explanations as he may be advised."

Argued for Petitioners—The words in section 29 covered everything affecting professional character, and not merely professional conduct. The Society could deal with any offence in a member which would have entitled them to have excluded him from becoming a member. The application was competent and the prayer of the petition should be granted—*Solicitors of Elgin v. Shepherd*, February 16, 1881, 18 S.L.R. 303.

Replied for respondent—The application was unwarranted, for the basis of the petition was a report by the Society's fiscal, and there was no averment that such a report was ever prepared; besides, all the proceedings of the Council took place behind the respondent's back. In an application of this kind the Court had a discretionary power, and this was not a case in which it should be exercised against the respondent. "Conduct" in the statute meant exclusively professional conduct. The Society had nothing to do with the moral character of any of its members. The petition should therefore be dismissed, or alternatively there should be a remit for further inquiry.

At advising—

LORD PRESIDENT—The fact upon which the Society proceeded in presenting this petition was, that the respondent was convicted under section 11 of the Criminal Law Amendment Act. Now, it is not necessary that I should enter into a construction of that section or make any reference to the charge against the respondent in the Sheriff Court. The only fact before us, and the only fact upon which we are asked to pronounce judgment, is that the respondent has been convicted of such an offence, and the question which we have to determine is, whether the commission of such an offence is conduct affecting the professional character of a member of the Society? If that conduct is such as to affect his professional character, then it is within the scope of section 29 of the statute. I do not think it requires, under the statute, to be professional conduct; the statute does not say so. I think it is any conduct which can have the effect of injuriously affecting the member's professional character. I do not entertain any doubt that the offence committed was such a very serious one as to affect professional character—the character of any member of the legal profession. But it was argued for the respondent that the procedure in connection with the presentation of this petition had been irregular and that he had not had fair play. In ordinary cases no doubt, where the inquiry is commenced before the Council of the Society, the procedure would require to be regular, and a fair opportunity would need to be given to the party charged to meet the accusations made against him. Here, however, there was no occasion for any inquiry whatever. The fiscal made his report that the respondent had been convicted of this offence, and therefore the Society presented the present petition. If we think the evidence of this conviction sufficient, then I am satisfied that the procedure has been quite regular. I think that evidence is sufficient, and I also think the offence of which the respondent was convicted was a very serious offence in a moral point of view, and therefore was not only

calculated to affect, but most certainly did affect, his professional reputation.

I am therefore for granting the prayer of the petition.

LORDS MURE, SHAND, and ADAM concurred.

The Court granted the prayer of the petition.

Counsel for Petitioners—D. F. Mackintosh, Q. C.—J. A. Reid. Agent—David Philip, S. S. C., Fiscal of the S. S. C. Society.

Counsel for Respondent—Pearson—Hay. Agent—Party.

Friday, July 16.

SECOND DIVISION.

(Before Seven Judges.)

[Lord Kinnear, Ordinary.]

PAXTON'S TRUSTEES v. PAXTON.

Succession—Accretion—Joint or Several Gift—Legacy—Residue—Resulting Intestacy.

It is a settled rule of construction of settlements (subject to being controlled by the evident intention of the testator) that when a gift, whether of a legacy or of residue or of corporeal moveables, is given to several persons in language importing a severance of their shares, each is entitled to his share only, and in no event to more, and therefore there is in the event of one of them predeceasing the testator no room for accretion.

Therefore where a testator divided one portion of his estate by leaving a special legacy to a legatee, the remaining portion "to be equally divided between my late wife's sisters J. A. and M. S., my late wife's brother R. S., and my late wife's niece J. S.," and R. S. predeceased the testator—*held* that his share was undisposed of and fell to the testator's heirs *in mobilibus*.

James Paxton, Kilmarnock, died in January 1884 leaving a settlement executed in 1878, whereby he conveyed his whole property to trustees. By the second purpose thereof he there provided—"My trustees shall, as soon after my decease as they shall find convenient and practicable, divide the whole of my estate into two equal parts, and shall divide the one part among my brothers John and William, and my whole sisters and their respective families, share and share alike, the families of a deceased brother or sister taking their parent's share, whether such brother or sister shall have predeceased me or not; and shall divide the other part of my said estate as follows—£200 to my late wife's sister, Margaret Smith or Crabbie, in the event of her predeceasing me said sum of £200 to be paid to my sister Jane Paxton or Cowie, the remaining portion to be equally divided between my late wife's sisters, Jane Brown Smith or Aikman, Mary Ann Smith or Swanston, my late wife's brother Robert Smith, and my late wife's niece Jeannie Aikman Swanston; in the event of said Mary Ann Smith or Swanston predeceasing me, her portion to be equally divided amongst her surviving daughters."