

were properly raised. The Sheriff Court Act of 1877 expressly provides that declarators of heritable right up to a certain value are to be competent in the Sheriff Court. Here there was a peculiarity which, I should say, required declaratory words to be employed in the prayer of the petition. What the landlord desired was warrant to sell the stock and crop to pay the rent for 1886, and only after that does the petition go on to ask a further decree ordering the tenant to stock the farm so as to give security for the rent to become due for crop 1887, and for ejection in case of failure. I think that that was a case in which it was essential to justice that the irritancy should be regularly declared, and that the proceedings should be so conducted as to make it quite clear that the irritancy had been incurred.

The Court refused the reclaiming-note and adhered to the Lord Ordinary's interlocutor.

Counsel for the Defender (Reclaimer)—D. F. Mackintosh—Graham Murray. Agents—Macpherson & Mackay, W. S.

Counsel for the Pursuer (Respondent)—R. Johnstone—Orr. Agent—Robert Stewart, S. S. C.

Saturday, December 1.

FIRST DIVISION.

MARTIN AND OTHERS v. STEWART.

Pupil — Tutor — Guardianship of Infants Act 1886 (49 and 50 Vict. c. 27), sec. 2.

Sec. 2 provides—"On the death of the father of an infant, . . . the mother, if surviving, shall be the guardian of such infant, either alone when no guardian has been appointed by the father, or jointly with any guardian appointed by the father. When no guardian has been appointed by the father, . . . the Court may, if it shall think fit, from time to time, appoint a guardian or guardians to act jointly with the mother." By sec. 8 "guardian" means "tutor," and "infant" means "pupil."

Where a father had died without making any nomination of tutors or curators to his pupil child, the Court, on the application of the next-of-kin of the pupil on the father's side, appointed the brother of the widow to act jointly with her as tutor to the pupil.

The late John Stewart, shipowner and insurance broker, 3 Fenchurch Avenue, London, died on 25th August 1888 in London, survived by his wife Mrs Charlotte Ferguson or Stewart, and by an only child Elizabeth Stewart, born 10th October 1877.

Mr Stewart was a Scotsman by birth, and died domiciled in Scotland, his principal residence being his mansion-house of Larghan, Coupar-Angus. His free personal estate was about £20,000, and his real estate about £9200 in value. Mr Stewart left no nomination of tutors or curators to his child, and the present petition was accordingly presented by Mrs Ann Stewart or Martin, his sister, and certain others, the next-of-kin of the said pupil on her father's

side, for the appointment of tutors to act along with Mrs Stewart in terms of the Guardianship of Infants Act 1886. They averred that Mr Stewart died intestate; that he and his wife never entered into any marriage-contract; that the said Elizabeth Stewart was his sole heir; that she was in delicate health both mentally and physically, and would not likely ever be able to manage her own affairs or to make a will. They further averred that Mrs Stewart was without experience in business, and was not qualified to take sole charge of winding-up the deceased's London business. They suggested as a suitable person for the office of tutor, *inter alios*, James Adam Young, the eldest son of another sister of the pupil's father, who had acted as Mr Stewart's manager, and was therefore conversant with his business. Mr Young's name appeared in the petition as one of the petitioners, but he wrote to the petitioners' agent requesting him to withdraw his name, as it was there "not only without my knowledge and consent, but against my clearly expressed wishes."

Among the parties called as respondents was William Ferguson, farmer and manure merchant, Perth, a brother of Mrs Stewart.

Mrs Stewart lodged answers, in which she denied the allegations regarding the pupil's mental condition, but admitted that she suffered from certain delicacies of constitution, including defective sight and slight curvature of the spine.

The respondent further averred—"She has more knowledge and experience regarding her husband's business than any of the petitioners. She assisted him largely in his business correspondence (his hand having been injured by an accident), and in matters of personal business he habitually consulted her. Further, in realising the deceased's estate the respondent will have the assistance and advice of all those on whom her husband most relied, being (1) the said Mr James Adam Young, his nephew and confidential clerk and his probable successor in business, who is ready to give his services without seeking any appointment as tutor; (2) the said Mr Peter Hunter, who has for twenty years held a power of attorney from the deceased in connection with the management of his business; (3) Messrs Linklater & Company, the deceased's London solicitors; and (4) Mr Charles Boyd, solicitor, Coupar-Angus, his solicitor in Scotland. The respondent on 12th October last applied for appointment to the office of executrix-dative *qua* relict of the deceased, and in that capacity she will find caution for the whole amount of the moveable estate. Her own personal interests are co-incident with those of the pupil. In these circumstances the present petition to have a tutor appointed to act along with the respondent, or to have her ordained to find caution is unnecessary and vexatious. Any appointment made under the petition would lapse by the pupil's attaining to minority in less than a year."

Argued for the petitioners—Two questions were involved—the present custody of the child, and the custody of her estate. The widow was well qualified for the first office, but not for the second, in which she required the assistance of a business man.

Argued for the respondent—The widow was qualified to act alone, and nothing was alleged

against her which if she had been appointed by her husband would have caused the Court to remove her from office. Whoever was appointed to wind up the deceased's estate would require to call in professional aid.

At advising—

LORD PRESIDENT—The Court are of opinion that in the present case someone ought to be appointed to act along with the widow as tutor to the pupil. They desire if possible to adopt some nominee of the petitioners, and had it not been for what has taken place no more suitable person than Mr Young could have been found. It has, however, been explained that Mr Young has an interest somewhat adverse to that of the pupil, and in that state of matters his appointment would not be desirable. If the respondent is prepared to name any suitable person, the Court would be inclined to receive favourably her nomination.

The Court appointed Mr Ferguson, farmer and manure merchant, Perth (above mentioned), to act as tutor along with Mrs Stewart.

Counsel for the Petitioners—Vary Campbell—W. Campbell. Agent—Thomas Hart, Solicitor.

Counsel for the Respondents—D. F. Mackintosh—M'Lennan. Agent—P. H. Cameron, S.S.C.

Saturday, December 1.

FIRST DIVISION.

AITKEN AND OTHERS, PETITIONERS.

Company—Liquidation—Supervision Order in Voluntary Winding-up—Companies Act 1862 (25 and 26 Vict. c. 89), sec. 147.

By this section it is enacted that "when a resolution has been passed by a company to wind up voluntary, the Court may make an order directing that the voluntary winding-up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories, or others to apply to the Court, and generally upon such terms and subject to such conditions as the Court thinks just."

A petition was presented for the winding-up of a company by the Court, and was duly intimated, served, and advertised in terms of an interlocutor, by which also a provisional appointment of a liquidator was made. Thereafter at an extraordinary meeting of the company an extraordinary resolution was passed for winding-up the company voluntarily, and a liquidator was nominated. He thereupon presented a note in the process under the petition, craving that the voluntary winding-up of the company might be continued subject to the supervision of the Court, that the appointment of the provisional liquidator might be recalled, and his own appointment as liquidator confirmed. The Court granted the prayer of the note.

On the 15th November 1888 a petition was presented to the Court by Thomas Aitken and others, creditors, directors, and shareholders of the Leith

Heritages Company (Limited), praying for the winding-up of the said company by the Court. On 16th November the Court ordered intimation service, and advertisement, and appointed Mr Molleson, C.A., provisionally official liquidator of the estate and effects of the company. The petition was thereafter intimated, served, and advertised in terms of the interlocutor.

On 29th November an extraordinary general meeting of the company was held, at which the following extraordinary resolutions were passed:—“(1) That it has been proved to the satisfaction of the Leith Heritages Company (Limited) that the company cannot by reason of its liabilities continue its business, and that it is advisable to wind up the same. (2) That the Leith Heritages Company (Limited) be wound up voluntarily.” Further resolutions were also passed as follows—“(1) That the meeting proceed to appoint a liquidator for the purpose of winding-up the affairs of the company, and distributing the property thereof in terms of the Companies Act 1862, and the Acts amending and extending the same. (2) That John Frederick Moffat, chartered accountant, Edinburgh, be and is hereby appointed liquidator of the said company. (3) That it be an instruction to the liquidator to apply or concur in applying to the Court of Session to have the voluntary liquidation of the said company continued subject to the supervision of the Court. (4) That a committee of shareholders be appointed to advise with the liquidator in relation to all matters or questions arising in the liquidation, and that the following gentlemen be and are hereby appointed a committee accordingly, viz., Thomas Aitken, Esquire, residing at No. 5 Grosvenor Crescent, Edinburgh; Robert Clark, Esquire, printer, Edinburgh; and James Macdonald, Esquire, Solicitor in the Supreme Courts of Scotland, Edinburgh.”

Following on these resolutions Mr Moffat, the liquidator appointed at the meeting on 29th November, presented a note in the process under the petition, in which, after setting forth the facts above narrated, he craved the Court, *inter alia*, to order the voluntary winding-up to be continued subject to the supervision of the Court, to recall the appointment of Mr Molleson, and to confirm his appointment as liquidator.

By section 147 of the Companies Acts 1862 it is provided—“When a resolution has been passed by a company to wind up voluntarily, the Court may make an order directing that the voluntary winding-up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories, or others to apply to the Court, and generally upon such terms and subject to such conditions as the Court thinks just.”

In support of the application the following authorities were cited—Buckley on the Companies Acts (5th edition), 316; *Owen's Patent Wheel Company*, 29 L.T. 672, 22 W.R. 151; *Simons' Reef Company*, 31 W.R. 328.

The Court, without further proceeding or intimation, on 1st December 1888 pronounced the following interlocutor:—

“Direct and ordain that the voluntary winding-up of the Leith Heritages Company (Limited), resolved on by the extraordinary resolutions passed at the extraordinary