lished, any bill or other notice." So that any person putting up any notice on a tree or dyke within the county of Midlothian, without the consent of the owner and occupier, is to be subject to a penalty of 40s.

Is it within the power of the County Council to make such an enactment? There is nothing said here about nuisance. I quite appreciate the desirability of putting a stop to what is popularly called the bill-sticking nuisance, and I do not think it would require any very great skill to frame an enactment to suppress it, but to say that anybody who puts up a bill upon any fence at the side of the road within the county of Midlothian is to be liable to a penalty of 40s., and in default to imprisonment, is extravagant as a piece of serious legislation. Nuisance may be brought into any case of bill-sticking by the character or size of the bill, the place selected for putting it up, or other reasons, but to say that every bill stuck upon a fence by the roadside is a nuisance is to say what cannot be maintained as a legal proposition. A notice put up on a fence by the roadside that a charity sermon is to be preached in the parish church for behoof of the destitute sick would be a bill put up in the county of Midlothian, and probably the owner and occupier of the lands enclosed within the fence might not have been convened to give their consent to the putting up of the notice, so that that would be an offence under this section. I may notice that the announcement of such a sermon would of itself be an offence under another of these bye-laws, viz., the 5th. That section provides that "Every person found begging," (it is not said where, except within the county of Midlothian), "or placing themselves, or otherwise acting so as to induce, or for the purpose of inducing the giving of alms," is to be liable to summary conviction, and a penalty of 40s. The purpose of a charity sermon is to induce the giving of alms, and the notice might make the person who put it up liable for the penalty. Now, I think the provisions of the 5th section are just as clearly beyond the powers of the county council as those of the first, although it is not necessary for the Court to decide that point. The practical conclusion I arrive at is, that if the County Council are going to penally legislate upon bill-sticking which may be a nuisance, they must really resort to some-one with intelligence enough to frame the enactment. Bill-sticking may subject those transgressing to a penalty and imprisonment, and may be put down by a bye-law applicable to the case. This bye-law, however, is not limited to any case. It refers to the county of Midlothian, and if the Convener of the county were to ask in his library for charity in support of any object, he would be liable in a penalty upon the law as so expressed.

There is another enactment—the 2nd—to which I should like to call attention (although it is not within the case), which has regard to what may be called the paper nuisance—a very serious one. It is a very serious one, especially in the streets of Edinburgh, where whole newspapers seem to be thrown down and allowed to blow about, and its suppression is worthy of attention. The 2nd enactment runs thus—"Every person who causes any hand-bill, waste or soiled paper, rags, or other similar material to be strewn, laid down, or to fall upon any street, road, or other thoroughfare or adjoining fences," is to be liable in a penalty.

One of the first cases which occurs to one is that of a paper chase. Any boy laying down paper as scent at the part of a fence leading into a field and adjoining a thoroughfare could, under the enactment, be punished by fine or imprisonment although there was no nuisance whatever. That is altogether unreasonable, and the enactment might be quite easily expressed so as to repress the paper nuisance without using language which would comprehend such a case as that.

Therefore, upon the case before us, my opinion is that this local bye-law was beyond the powers given to the Act of 1889 to the County Council to suppress nuisances by means of a bye-law. That is sufficient to dispose of the case, and to set aside the conviction.

LORD TRAYNER—I am of opinion that this bye-law is beyond the powers of the County Council.

The LORD JUSTICE-CLERK concurred.

The Court quashed the conviction.

Counsel for the appellants — Rhind. Agent—John Veitch, Solicitor.

Counsel for the Respondent—Gillespie. Agent—George M. Wood, S.S.C.

COURT OF SESSION.

Thursday, July 14.

FIRST DIVISION.

STEWART *v.* BOWIE AND OTHERS.

Trust — Sequestration of Trust-Estate — Appointment of Judicial Factor.

Where a deadlock occurred in the administration of a trust in consequence of the trustees being equally divided in opinion in regard to the choice of a law-agent, the Court, on the petition of the party entitled to the liferent of the trust-estate, without removing any of the trustees from office, *sequestrated* the estate and *appointed* a judicial factor.

Miss Agnes Dalgleish Stewart died on 28th January 1892 leaving a trust-disposition and settlement, whereby she disponed her whole estate to the Reverend David Morrison, John Hunter Bowie, William Hunter Bowie, and William Alexander, the acceptors and survivors or acceptor and survivor, in trust for the purposes mentioned in the deed. In the third place, she directed the trustees to pay the liferent of the whole

residue of her estate to her niece Dorothea Gordon Stewart, and upon her death to pay and convey the capital to her sisters Mrs John Hunter Bowie and Mrs M'Laren equally, whom failing to their children, declaring that the fee of the residue should vest at the death of the liferentrix.

At a meeting of the relatives of Miss Stewart held shortly after her death, for the purpose of having her will read, Mr J. H. Bowie, who was the only trustee present, intimated that he had decided to put the affairs of the trust into the hands of Messrs A. & A. Jenkins, solicitors, Stirling, and on 5th February he requested the Messrs Jenkins to call a meeting of the trustees for the 9th. Mr Morrison was at this time on the Continent, and Mr Alexander did not attend the meeting. The only trustees accordingly present at the meeting were the Messrs Bowie, who accepted office, and passed a resolution appointing Messrs A. & A. Jenkins agents of the trust, and empowering them to take the usual steps to procure confirmation, and to apply to Mr Alexander, who had been Miss Stewart's agent, for the documents belonging to her in his possession.

Mr Morrison having returned from abroad on 13th February, Mr Alexander thereafter called a meeting of trustees for the 1st March, which was attended by all the trustees. At this meeting Mr Morrison and Mr Alexander accepted office, and Mr Morrison having moved that Mr Alexander should be appointed agent in the trust, Mr Alexander intimated his acceptance of the appointment. The Messrs Bowie did not agree to this appointment.

Mr Alexander subsequently, with Mr Morrison's consent, in order to remove the deadlock which had occurred in the administration of the trust, wrote to the Messrs Bowie waiving his own appointment, and offering to concur with them in the appointment of any of four law-agents named, but to this proposal the Messrs Bowie would not accede.

On 29th June a petition was presented by Miss Dorothea Stewart, who was entitled to the liferent of the trust-estate, craving the Court to sequestrate the trust-estate, and if necessary to remove the trustees from office and to appoint a judicial factor.

The petitioner stated that in consequence of the difference which had occurred among the trustees nothing had yet been done by them in the administration of the trust; that confirmation had not been taken out, and that the revenue accruing on the trust-estate was not being uplifted, with the result that she was being kept out of the enjoyment of her liferent, and that she believed that there was no prospect of the deadlock which had occurred being removed.

Mr Morrison and Mr Alexander lodged answers. They admitted the truth of the statements made in the petition, and stated that to allow Messrs Bowie's nominees to be appointed law-agents in the trust would be, in their opinion, to virtually surrender the management of the trust into the hands of the Messrs Bowie; that there were special reasons why this should not be; that both the Bowies were undischarged bankrupts, and that Mr W. H. Bowie was indebted to the trust. He therefore submitted that unless the Messrs Bowie would adopt a more reasonable course of conduct, the only alternatives left were either to appoint a judicial factor or to remove the Messrs Bowie from office.

The Messrs Bowie, along with Mr J. H. Bowie and Mrs M'Laren, the presumptive fiars of the trust-estate, also lodged answers. They objected to the petition being granted, and submitted that there was no good reason for removing the trustees from office, and that the appointment of a factor was neither necessary nor expedient, as there had been no undue delay on the part of the Messrs Bowie, and they were willing to take whatever steps might be necessary for the due administration of the trust.

The petitioner argued—A deadlock had occurred in the administration of the trust, and the petitioner was entitled either to have the estate sequestrated — *Adie* v. *Mitchell*, December 19, 1835, 14 S. 185; *Forbes* v. *Forbes*, February 14, 1852, 14 D. 498; or to have the trustees, whose unreasonable conduct had caused the deadlock, removed from office—*M'Whirter* v. *Latta*, November, 15, 1889, 17 R. 68. The Bowies should not have transacted important trust business without giving Mr Morrison a reasonable opportunity of being present—*Wyse* v. *Abbot, &c.*, July 19, 1881, 8 R. 983.

Argued for the respondents Bowie and others—The question was merely as to the choice of an agent for the trust. These respondents thought that the Messrs Jenkins had been properly appointed, but if they were wrong they would give way. The mere fact, however, that trustees could not act harmoniously was not a sufficient ground for removing the trustees or for sequestrating the trust-estate — *Hope* v. *Hope*, October 29, 1884, 12 R. 27: *Neilson & Others*, February 23, 1865, 3 Macph. 559; *Lynedoch* v. *Ochterlony*, February 15, 1827, 5 S. 358; *Laird* v. *Miln & Mitchell*, December 7, 1833, 12 S. 187.

Counsel for the respondents Morrison and Alexander was also heard.

At advising—

LORD PRESIDENT — I think the proper course to take is to sequestrate the estate. It is not necessary to enter minutely into the merits of the dispute between the two sets of trustees. It is probably sufficient to say that a deadlock has occurred in the administration of the trust, and I think the liferentrix—more especially as the cost of the factory will fall upon her—is well entitled to say that it cannot go on, and that the knot should be cut by the appointment of a judicial factor. But perhaps it is right to say that I think the responsibility for the present state of matters rests with the Messrs Bowie. They took up, it seems to me, with precipitation

at the outset a position which boded ill for the management of a trust where there were diverse and possibly conflicting interests. Accordingly, I think the other two gentlemen were right in not retiring from the trust, and in resisting the course taken by their colleagues, which was of an arbitrary nature and not likely to inspire confidence in their management. I think Mr Morrison and Mr Alexander were further justified in not leaving this estate, in which there are, as I have said, diverse interests, in the hands of gentlemen who are undischarged bankrupts, and whose interests are identified with those of the presumptive fiars of the estate. I should not therefore contemplate the resignation of Mr Morrison and Mr Alexander as a satisfactory solution of the difficulty which has arisen, and on the whole matter I think the best course is to sequestrate the estate and appoint a judicial factor.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court sequestrated the trust-estate and appointed a judicial factor.

Counsel for the Petitioner—Sym. Agents—Cumming & Duff, S.S.C.

Counsel for the Respondents Morrison and Alexander—C. N. Johnston. Agents—Cumming & Duff, S.S.C.

Counsel for the Respondents Bowie and Others—Wilson. Agents—James Forsyth, S.S.C.

Friday, July 15.

FIRST DIVISION.

[Lord Low, Ordinary.

GREAT NORTH OF SCOTLAND RAILWAY COMPANY *v.* MANN.

Trade Name — Hotel — Distinguishing Variation of Name.

Held that a person who had come as tenant to the "Palace Hotel" after it had been so named by the landlord, and had occupied it for thirteen years, was not entitled, to the prejudice of the business to be carried on there by the landlord's representatives, to take that name with him to other hotel premises in the same city; and that the prefixing of his own name did not constitute a sufficiently distinctive addition.

The late John Keith, merchant, Aberdeen, erected a block of buildings upon ground situated at the corner of Union Street and Bridge Street there. These buildings were called Palace Buildings, and a portion of them has been all along occupied as an hotel, and known by the name of the "Palace Hotel," which name was given to it by John Keith, and was laid in tiles in the main lobby of the hotel. Upon 4th June 1878, on the bankruptcy of the then tenant, Charles Mann obtained from the proprietors a lease of the premises which, after renewal, expired at Whitsunday 1891. At the time when he took the lease Mr Mann purchased from the proprietors of the premises the goodwill, furniture, fittings, and stock-in-trade, and purchased and took over the business as a going concern. During his tenancy the hotel was called the "Palace Hotel," and also "Mann's Palace Hotel." Of the four large signboards, placed one on each of the four sides of the building, two bore "Mann's Palace Hotel," and the other two "Palace Hotel." Large and prominent brass plates affixed to each side of the hotel's two windows opening from Union Street and Bridge Street respectively bore each "Mann's Palace Hotel," and the note-paper supplied for the use of the residents in the hotel was headed "Mann's Palace Hotel." Mr Mann's telegraphic address in Aberdeen was "Palace Hotel."

The Great North of Scotland Railway Company purchased from Mr Keith's trustees, with entry at Whitsunday 1890, the whole of the Palace Buildings, for the purpose of carrying on the said Palace Hotel and hotel business upon the expiry of Mr Mann's lease. Previous to Whitsunday 1891 Mr Mann took a lease of the Bath Hotel, as from that date, and prior to his removal he took down from that hotel its name and sign and put up on the front and gable respectively two signboards which he had removed from the Palace Hotel, bearing the words "Mann's Palace Hotel" on three separate pieces, one below the other. In removal notices also he advertised his new premises as "The Palace Hotel" and as "Mann's Palace Hotel."

Upon 6th May 1891 the Great North of Scotland Railway Company lodged a note of suspension and interdict against Mr Mann complaining of the respondent's actings, and praying the Court "to suspend the proceedings complained of, and to interdict, prohibit, and discharge the respondent Charles Mann, and his agents, servants, and all others acting for him, from publishing, or causing to be published, notices or advertisements of removal in terms set out in statements hereto annexed, or terms of a like import and effect, and from exhibiting or using the name 'Palace Hotel," or 'Mann's Hotel,' or any name framed so as to be a colourable imitation of the name by which the complainers' said hotel is commonly known, or mislead the public, as the name of any hotel carried on or to be carried on by him in the premises lately occupied by the Bath Hotel Company, Limited, or in any premises situated in Aberdeen, and from using the name 'Palace Hotel' as his registered telegraphic address in Aberdeen, except while tenant of and in connection with the Palace Hotel in Palace Buildings, owned by the complainers; and to ordain the respondent forthwith to take down and remove the two signboards bearing the name 'Palace Hotel,' put up by him on the front and gable respectively of the said