that keeping in view the manner in which the conveyances were executed, this is a proper case for the intervention of the Court. If the conveyances be not approved of, the question may some day arise whether they have not been rendered null by the supervision order, and the alleged irregularity of the mode in which they have been executed may be made the ground of objection to the title, which it would be impossible to remove after the close of the liquidation and the completed dissolution of the company. To approve of the conveyances therefore can in the circumstances do no possible harm to the company in liquidation, and it may have the effect of obviating trouble and loss to the purchasers who have accepted the deeds in *bona fide* and in full reliance upon the validity which they possessed at the time.

"These views are entitled to great weight, but after careful consideration I have come to be of opinion that your Lordship should not approve of the conveyances unless you shall come to be of opinion that such approval is legally necessary to protect the deeds from the invalidity provided by section 153 of the Act. My reasons for arriving at this conclusion are two—(1) after the close of the liquidation (which will in all likelihood happen immediately) there is no one who will have an interest to insist in the objection, and so no danger to the title will arise, and (2) if the approval asked be not legally necessary, and if it be given for any reason except that the conveyances were irregularly executed, it is to be apprehended that it may give rise to unnecessary trouble and loss to persons who have purchased properties from liquidators in the voluntary winding up of other companies.

"I do not think that the legal profession in Scotland are under the impression that the effect of section 153 of the Act is to render null dispositions granted in the circumstances explained in this application. It is to be feared that if this be the true effect of the enactment there must be many titles to heritable properties in Scotland granted by liquidators in voluntary liquidations which have been rendered null by the subsequent granting of supervision orders, and have not been validated by the approval of the Court. Were the present application to be granted without determining the legal point, and simply on the ground that it is expedient to do so, the existence of the question would, no doubt, come to be understood, and might give rise to groundless objections to titles if approval be really unnecessary.

"In the whole circumstances I am of opinion that the approval asked is unnecessary and should not be granted. If, however, your Lordship shall be of a contrary opinion either on the general ground of the effect of section 153 of the Act or the supposed irregularity in the execution of the conveyances, I beg humbly to repeat that the sales of the properties have been regularly and properly conducted and that the prayer of the note, as regards the conveyances thereof may be granted."

The Lord Ordinary (STORMONTH DARLING) pronounced the following interlocutor:—"The Lord Ordinary having heard counsel . . . having resumed consideration of the note, along with the report by Mr Archibald Oliver, and the Auditor's report on the account, Approves of the dispositions mentioned in the prayer annexed to said note: Fixes the remuneration of the liquidators at £26, 5s. sterling: Approves of the said Auditor's report taxing the said account at £314, 13s. 1d. sterling: Authorises payment of the said sums of £26, 5s. and £314, 13s. 1d. out of the estate of the Scottish National Heritable Property Company Limited: Authorises the liquidators to distribute the surplus assets among the existing shareholders rateably, and decerns.

"*Note.*—I do not intend, by approving of the dispositions in this particular case, to imply that in a liquidation under supervision, conveyances of property by the liquidator granted before the date of the supervision order are void unless sanctioned by the Court.

"On the contrary, I agree with the able argument of the reporter, that it cannot have been the intention of the statute first to make such dispositions lawful, and then to put it in the power of a liquidator by obtaining a supervision order to nullify the deeds which he himself has granted. Such a construction of section 153 would, I think, be most unfortunate, as tending to paralyse voluntary liquidations, and to destroy confidence in deeds made and taken in good faith, and in reliance on the terms of other sections of the statute. But the present case is very peculiar, inasmuch as the dispositions run in the name of the directors and secretary without any reference to the fact of the company being in liquidation. I am satisfied that this is a peculiarity not at all affecting the substance of the transactions, but it is a flaw in form which might afterwards give rise to objection, unless cured by the approval of the Court. On this ground—and on this ground alone—I think the prayer of the petition ought to be granted."

Counsel for the Noters—Lorimer. Agent—R. Ainslie Brown, S.S.C.

Friday, January 20.

FIRST DIVISION.

FOGGO, PETITIONER.

Trustee—Removal—Sequestration of Trust-Estate and Appointment of Judicial Factor.

The sole acting trustee on a trust-estate became insolvent and suddenly left the country. His administration had previously been unsatisfactory, and he was found to be largely indebted to the trust-estate. About the time of his departure he executed a deed of assumption by which he assumed two new trustees, and at the same time

granted a power of attorney in favour of the same two persons to enable them to wind up his affairs. They proceeded to act in both capacities. A petition was presented by the mother of one of the beneficiaries praying for the sequestration of the trust-estate, the removal of the trustees, and the appointment of a judicial factor. *Held* that trustees appointed under such circumstances could not continue to administer the estate, and without removing the trustees the Court sequestrated the trust-estate and appointed a judicial factor.

By trust-disposition and settlement, dated 13th December 1883, Thomas Carroll, spirit-merchant, Dumfries, nominated Dean William Turner, parish priest, Dumfries, Hugh Cunningham, doctor of medicine, Dumfries, and Samuel Brown, writer in Dumfries, as his trustees, and conveyed his whole estates and effects to them in the ordinary form. He directed his trustees, *inter alia*, (1) to pay to his wife, should she survive him, the free annual proceeds of the trust-estate, along with the use of his household furniture during her lifetime, or until she should marry again; (2) upon her death or re-marriage, to hold the trust-estate for behoof of his son Patrick William Carroll, and any other lawful child or children he might leave; and (3) to divide the trust-estate equally among the said children upon the youngest of them attaining the age of twenty-one years. He also appointed the trustees to be tutors and curators to his children during their respective pupilarities and minorities.

The truster died in April 1885, leaving two children, viz., the above-named Patrick William Carroll, aged eleven, and Thomas John Carroll, the only child of his marriage with the petitioner Elizabeth Cairns. She was subsequently married to John Foggo, builder, Newton-on-Ayr.

All the above-named trustees accepted office, and acted in the trust till 1888, when they all resigned. Prior to their resignation they assumed two new trustees, of whom one only, James Smith Bell, solicitor, Dumfries, accepted office. Bell acted as sole trustee until November 1892, when he suddenly left this country for New Zealand. It was admitted that his management of the trust-estate had been unsatisfactory, and that legal proceedings had been taken to compel him to carry out the purposes of the trust. After his departure from Dumfries he was rendered notour bankrupt, and it was admitted at the bar that he had applied part of the trust-funds to his own purposes.

Before quitting the country Mr Bell executed two deeds, both in favour of Mr Thomas M'Gowan, solicitor, Dumfries, and Mr James Maxwell, solicitor, Dumfries—the one a power of attorney to enable them to wind-up his affairs, the other a deed of assumption whereby he assumed them as trustees under the said settlement of Thomas Carroll.

The present application to the Court of Session was made by Mrs Elizabeth Cairns or Carroll or Foggo, sometime wife of the truster, now wife of John Foggo, as tutor and administrator-in-law of her pupil son Thomas John Carroll. She stated, in addition to the facts above set forth, that in consequence of the want of proper management of the trust property the heritable creditors had entered into possession of the heritable subjects under a decree of maills and duties; and submitted that it was neceessary for the protection of the trust-estate and the interests of the beneficiaries that Messrs Bell, M'Gowan, and Maxwell be removed from the office of trustees, and that a judicial factor be appointed.

Answers to the petition were lodged by M'Gowan and Maxwell as trustees, and also by William Patrick Carroll as a beneficiary entitled to one-half of the trust-estate.

The trustees stated that the two deeds in question were sent from Teneriffe by Mr Bell without any previous knowledge or arrangement on their part, and were only received on 15th November last, at which date they knew nothing of the condition of Mr Bell's estate or of the trust. They submitted that the petition was premature and unnecessary, in respect that it was presented before they had reasonable time to consider whether they would accept the trust, and without notice being given to either of them, and further in respect that they had never been asked for information about the estate.

The beneficiary in his answers submitted that no allegation was made or could be made against the integrity and capacity of the trustees assumed by Mr Bell.

Argued for the petitioner — She objected to Bell's nominees acting at once as trustees and as his attorneys to administer his private affairs, because there might be a competition of interests between them in these two capacities. It was objected in the answers that the application was at the sole instance of the mother, and was not concurred in by two of the original trustees who were appointed tutors to the pupil under his father's settlement, and still held that office notwithstanding their resignation of their position as trustees—*Johnston* v. *Henry-Anderson*, November 16, 1892, 30 S.L.R. 97, was referred to on this point. [LORD KINNEAR—But even assuming that, is it suggested that the mother has not a sufficient interest to appeal to the Court for the protection of the pupil's interests? Mr JAMESON then stated that he withdrew his objection to the title.]

Argued for the trustees—There was no connection between Bell and his nominees. They got the nomination and power of attorney sent them from Teneriffe, and accepted office in order to conserve the interests of the trust and save any assets of Bell's when this petition was at once launched against them. They were competently named by the sole trustee, and were supported by one of the beneficiaries. The estate would be put to considerable expense if it were to be judicially managed by the nominee of the widow, who had re-

married and had an adverse interest. They were quite willing to resign the office of attorneys, but thought they should first communicate with Bell; but they objected to being removed from the trusteeship as *quasi*-suspect. There was no allegation against either of them to warrant removal.

Argued for W. P. Carroll—No defence was offered for Bell's conduct in the administration of the trust. But he was *in titulo* to make this appointment. The estate was in no peril, and there was no necessity to saddle it with the expenses of judicial management.

At advising—

LORD PRESIDENT—I do not think these trustees can continue to hold and administer this office. The circumstances under which they were appointed were very singular, and certainly not such as to command any confidence on the part of the beneficiaries. It is not disputed that when Mr Bell left the country he was insolvent, and left a large blank in the funds of the trust-estate. Having fled the country, he pauses in London and there appoints two gentlemen in his confidence as his attorneys for the better winding-up of his own affairs, and at the same time to act as his nominees in the trust. They are thus put in the position at once of debtors and creditors of the trust by the act of a fugitive bankrupt who has embezzled part of the trust-estate. It seems impossible to expect the beneficiaries to have any confidence in such an appointment. I am sorry that the new trustees have put themselves in such a position as to incur a certain shadow of suspicion; but it is right to say that I do not think that, beyond showing a doubtful discretion in accepting the office, there is anything to be said against them. I am of opinion we should relieve them of this double capacity, and we are prepared to sequestrate the estate without removing the trustees, and to appoint a judicial factor. We shall allow the petitioner her expenses out of the trust-estate, as it would be necessary to have judicial intervention to set the trust going.

LORDS ADAM, M'LAREN, and KINNEAR concurred.

Petition granted, with the exception of the prayer for the removal of the trustees.

Counsel for the Petitioner — Cullen. Agents—Emslie & Guthrie, S.S.C.

Counsel for the Trustees—Jameson—Constable. Agent—W. J. Johnstone, S.S.C.

Counsel for W. P. Carroll—W. Campbell. Agents—J. & J. Galletly, S.S.C.

Thursday, January 20.

FIRST DIVISION.

SLEIGH *v.* SLEIGH.

Parent and Child—Custody of Children—Guardianship of Infants Act 1886 (49 *and* 50 *Vict. cap.* 27), *sec.* 5.

Where a husband refused to live with his wife, and, in a pending action of adherence at her instance, declared his intention not to adhere, the wife was *held* not entitled to the custody of two boys, pupil children of the marriage, on the ground that the father had not by his conduct abdicated his position as head of the family, and, there being no allegation against his moral character, that he ought to have the custody in the interests of the children.

Observations per Lord M'Laren on the effect of section 5 of the Guardianship of Infants Act 1886.

James Hume Sleigh, a Scotsman, in the employment of the Bank of Bombay, was married to Marie Erard, a native of Clarens in Switzerland, on 9th December 1878. Two sons were born of the marriage in 1880 and 1882, and a daughter in 1885. From 1878 to 1892 the home of the spouses was in Bombay, though occasional visits were paid to Europe for the sake of the health and education of the children.

Early in 1885 Mrs Sleigh brought her sons to Clarens from India, and thereafter sent them to reside with their grandfather George Slight, 11 Dryden Place, Edinburgh, where they remained till November 1888, when their mother removed them to a school in Germany; but in 1890, with the sanction of both parents, they were brought back to Edinburgh, where they were placed at school as day pupils, and entrusted to the care of their grandfather and their aunt Miss Jane Slight, who resided with him.

Mrs Sleigh returned to Bombay in the end of 1890, and it was admitted that the relations between her and her husband became very unhappy from that time, with the result that Mr Sleigh left his house in Bombay on 18th March 1892, and did not thereafter live with his wife.

Mrs Sleigh left Bombay in May 1892 with her daughter. After settling her daughter in Switzerland she proceeded to Edinburgh. Differences at once arose between her and her husband's relatives as to the custody of her two sons.

On 25th July 1892 she presented a petition to the Lord Ordinary on the Bills for custody of or access to her sons, and she was allowed a certain amount of access under the orders of the Court until 13th August 1892, when her husband arrived in Edinburgh from India, and took the custody of the two boys. In October Mr Sleigh placed them at a suitable boarding-school, and the Court, on a renewed application by Mrs Sleigh, which was finally disposed of by