

The Court adhered to the Dean of Guild's interlocutor.

Counsel for the Appellants—W. Campbell—Graham Stewart. Agents—Irons, Roberts, & Company.

Counsel for the Respondents—H. Johnston—C. K. Mackenzie. Agent—A. Sholto Douglas, W.S.

Thursday, March 16.

FIRST DIVISION.

SEDDON, PETITIONER.

(*Ante*, vol. xxix. p. 100, and 19 R. 101.)

Minor and Pupil—Maintenance and Education—Payment of Trust Funds belonging to Children Resident with Father Abroad.

A father domiciled in a foreign country, by the law of which he was not the legal guardian of his children's estate unless so appointed by the Court, presented a petition for himself and his pupil children, craving the Court to ordain Scots testamentary trustees, who held a fund belonging to the children, to pay to the petitioner for their behoof part of the annual revenue of the fund. The application was concurred in by the trustees. The amount of the fund was about £8000, and the annual income over £300. The Court at first refused to grant the order craved, on the ground that the children had no legal guardian, but on the father being appointed guardian of his children's estate by the court of the country in which he resided, the Court *ordained* the trustees to pay him a sum of £278 which he had expended for the children's behoof, and thereafter to make him an annual payment of £150 for their maintenance and education.

In September 1891 Thomas Rowley Seddon presented a petition on behalf of himself and his two pupil children, craving the Court to ordain certain Scots testamentary trustees, who were in possession of a fund belonging to the children, to pay him for behoof of his said children the whole or a part of the annual income of the fund. The application was concurred in by the trustees.

The fund had been liferented by the children's mother, who died on 13th May 1891. It had not been realised, but was estimated at between £7500 and £8500, and the free annual income at between £300 and £400. The petitioner was in this country at the date when the application was presented, but was about to return to New Zealand, where he had resided for thirteen years. He was domiciled either in England or New Zealand. He stated that he was "not at present in a position out of his own funds to maintain and educate his said children suitably to their position."

The children were respectively three and one year old.

By the law of England and New Zealand a father is not the legal guardian of his children's estate unless he is so appointed by the Court.

On the 13th November 1891 the Court refused to grant the order craved, but intimated that they would be prepared to reconsider the application on being informed by the petitioner that steps were being taken to have the children provided with a legal guardian.—(*Ante*, vol. xxix. p. 100.)

On 25th March 1892 the petitioner was appointed by the Supreme Court of New Zealand, Canterbury District, guardian of the estates of his children during their respective minorities or until further order, and thereafter he renewed the application made in the foresaid petition.

He stated that he had expended the sum of £278 for the maintenance and travelling expenses of the children between 13th May 1891, the date of their mother's death, and 14th November 1892, the date of their arrival in New Zealand, and he expressed the desire that he should be paid this sum, and a further sum of £150 yearly from and after 14th November 1892 out of the income of the fund held by the trustees. He further stated that the trustees had no objection to his being allowed a liberal allowance for the maintenance and education of his children, and that they approved of the payments suggested.

The Court pronounced this interlocutor:—

"Authorise and ordain the trustees acting under the trust-disposition and settlement of the deceased Stephen Adam, mentioned in the petition, to make payment to the petitioner out of the income of the estate in their hands, as trustees foresaid, belonging to Richard Stephen Rowley Seddon and Helen Priscilla Seddon, the petitioner's children—First, of the sum of £278, being the outlay made on account of the said children from 13th May 1891 to 14th November 1892; and second, of the yearly sum of £150 as from and after the said 14th November 1892 for the maintenance and education of the said children until the further orders of the Court: And further, authorise and ordain the said trustees to make payment out of the said income of the expenses incurred in the present proceedings," &c.

Counsel for the Petitioner — Adam.
Agent—Arthur Adam, W.S.