

by himself. Accordingly, he has a right to legitim if there is any fund out of which legitim can be paid. The only question therefore is, whether there is a legitim fund? The answer to that question apparently depends upon whether the goodwill of certain public-houses is to be regarded as heritable or moveable. Mr Fraser tells us that the Sheriff has held this goodwill to be heritable, and that there is therefore no legitim fund. But in a statement of legitim produced by the trustees themselves I find that it is set down at £422, 18s. 6d., and one-sixth of that sum, being the share to which the pursuer would have right, is £70, 9s. 9d. Under these circumstances I do not think that it would be reasonable to require the pursuer to sist a mandatory as a condition of obtaining an accounting from his father's trustees. It therefore appears to me that the motion should be refused.

LORD ADAM concurred.

LORD M'LAREN—I concur, and desire to add that I am much impressed by the reasoning of Lord Deas in the case cited to us (*Simla Bank v. Home*, 8 Macph. 781) as to the position of a man who is abroad in the public service. It is often said that if a man is unable to find a mandatory who would be willing to represent him, he may at least return to this country and prosecute his suit. But a man who is absent on the public service may be unable to return, and on that ground deserves some consideration. The prominent point in the case is that this is a suit for the administration of an estate in the hands of defenders who are trustees. According to their own statement the pursuer is entitled to legitim; and I do not think that in claiming it he is making a claim contrary to the scope of his father's settlement, because it appears from the condescendence that the trustees were expressly directed to pay him his legitim. In these circumstances I cannot hold that this is a case in which the pursuer should be obliged to sist a mandatory.

LORD KINNEAR concurred.

The case was sent to the roll.

Counsel for the Pursuer and Appellant—W. L. Mackenzie. Agent—H. H. Macbean, W.S.

Counsel for the Defenders and Respondents—M. P. Fraser. Agent—James Reid, W.S.

Tuesday, October 15.

SECOND DIVISION.

[Lord Low, Ordinary.]

DAVIES v. DAVIES.

Process — Reclaiming-Note — Reclaiming-Note Signed by Party only—Competency. Circumstances in which the Court repelled an objection taken to the competency of a reclaiming-note on the

ground that it was signed by the party reclaiming and not by counsel.

Mrs Rebecca Ash or Davies, wife of Simon Davies, tailor and clothier, Edinburgh, raised an action of separation and aliment against her husband on the ground of cruelty.

Defences were lodged by the husband. These defences were signed by counsel. After the closing of the record the defender ceased to be represented by counsel or agent, and he conducted the defence on his own behalf.

After proof the Lord Ordinary (Low) found that the defender had been guilty of cruelly maltreating the pursuer, and granted decree of separation and aliment.

The defender presented a reclaiming-note signed by himself and not by counsel.

The pursuer objected to the competency of the reclaiming-note, and argued—The note was not signed by counsel, and no attempt had been made by the defender to get the signature of counsel. There being no special circumstances in this case the Court should refuse to receive the reclaiming-note—*Hawks v. Donaldson*, November 16, 1889, 2 F. 95, 37 S.L.R. 70; *Whyte's Judicial Factor v. Whyte*, June 19, 1900, 37 S.L.R. 784.

Argued for the defender—It was unnecessary for the defender to obtain the signature of counsel. He was a poor man and could not afford to employ counsel. By the law of Scotland a party was entitled to conduct his case in any court of law and to sign the necessary documents.

LORD JUSTICE-CLERK—It is the opinion of the Court that in the circumstances of this case the objection taken by the claimer should not be sustained.

LORD YOUNG was absent.

The Court sent the case to the roll.

Counsel for the Pursuer and Respondent—J. A. Christie. Agent—Geo. Meston Leys, Solicitor.

Counsel for the Defender and Reclaimer—Party. Agent—Party.

Friday, October 18.

FIRST DIVISION.

C D v. INCORPORATED SOCIETY OF LAW-AGENTS.

Administration of Justice—Law-Agent—Restoration to Roll—Forgery.

A law-agent was found guilty in 1894 of forging and uttering a copy of a pretended interlocutor of court, having the forged signature of a clerk of court appended thereto, with the object of uplifting certain money consigned in bank, and was sentenced to fifteen months' imprisonment. In 1896, on his own application, his name was removed from the Register of Law-Agents, and

in 1897 from the rolls of law-agents practising in the Court of Session and the local Sheriff Court. In 1901 he presented a petition to the Court of Session for an order restoring his name to the said register and rolls. He averred that since June 1896 he had been employed as clerk to a law-agent, and he produced a certificate in his favour signed by twenty-one law-agents, together with various letters testifying to the honesty of his conduct in recent years. Answers were lodged for the Incorporated Society of Law-Agents, in which they objected to the prayer of the petition being granted, and stated that the Society of Procurators in the local Sheriff Court had intimated that their council also disapproved of the application. The Court *refused* the prayer of the petition.

C D, an enrolled law-agent, pleaded guilty, on July 20, 1894, to an indictment alleging (1) That he did utter as genuine a document bearing to be a certified copy of a pretended interlocutor by the Honourable Lord Low, granting warrant upon the Bank of Scotland for payment to the panel of the several sums of money therein mentioned, amounting in all to the sum of £35, 19s. 11d., on which document the name of 'James D. Fraser' bore to be signed, as the party certifying said document to be a true copy, such signature being forged by the panel, by presenting said document to a clerk to the Accountant of Court for the purpose of the panel receiving from him the deposit-receipt referred to in said pretended interlocutor, to enable the panel to draw said sums, which deposit-receipt the panel received. (2) That in the head office of the Bank of Scotland, Bank Street, Edinburgh, the panel did utter as genuine another document, also bearing to be a certified copy of said pretended interlocutor, the signature 'James D. Fraser' thereon being forged by the panel, by presenting said document in said bank for the purpose of the panel receiving payment from said bank of the sum of £35, 19s. 11d.

Sentence of fifteen months' imprisonment was pronounced.

On 23rd June 1896 C D addressed a letter to the Registrar of Law-Agents, instructing him to remove his name from the register, which he accordingly did.

On 22nd January 1897, on his own application, the name of C D was removed from the roll of law-agents practising in the Court of Session, and from the roll of law-agents practising in the Sheriff Court of the Lothians and Peebles.

In 1901 C D presented a petition in the Court of Session, in which he prayed the Court "to re-admit the petitioner as a law-agent . . . and to decern and ordain the Registrar of Law-Agents to restore the name of the petitioner to the Register of enrolled Law-Agents kept in terms of the statute thereanent; and also to decern and ordain the Keeper of the Register of Law-Agents practising in the Court of Session, and the Keepers of the Registers

of Law-Agents practising in the Sheriff Courts of the Lothians and Peebles, to restore the petitioner's name to the said registers."

The petitioner averred that since the expiry of his sentence he had acted as a clerk to a law-agent. He produced a number of letters in his favour from his employer and other persons with whom he had been connected in business and otherwise, besides a certificate in support of his application signed by twenty-one law-agents practising in Edinburgh.

Answers were lodged by the Incorporated Society of Law-Agents, submitting that the prayer of the petition should be refused, and stating that they had received a letter from the secretary of the Society of Procurators of Midlothian intimating that the council of that body had unanimously resolved that they disapproved of the petitioner's application.

The following authorities were cited:—For the Petitioner—*A B v. Incorporated Society of Law-Agents*, July 9, 1895, 22 R. 877, 32 S.L.R. 660; *Robins*, 1865, 31 L.J. Q.B. 121; *Unwin*, 1882, 72 L.T. 388; *Brandreth*, 1891, 60 L.J., Q.B. 501. For the Respondents—*Society of Solicitors of Elginshire v. Shepherd*, February 16, 1881, 18 S.L.R. 303; *Parker*, 1882, 73 L.T. 216; *Garbutt*, 1856, 18 C.B. 403.

LORD PRESIDENT—The petitioner was on his own confession found guilty on 20th July 1894 of forging and uttering a forged document. The forgery was of a somewhat peculiar kind, and one which probably no person who had not been trained as a law-agent would have been able to commit. It consisted first in fabricating an interlocutor purporting to have been pronounced by Lord Low. I use the word "fabricating," because there was no forgery of Lord Low's signature—but the document contained a recital of a pretended interlocutor of Lord Low. This interlocutor purported to grant warrant to the Bank of Scotland for payment to the petitioner of certain sums of money, and he adhibited to it the forged signature of James D. Fraser, one of the clerks of court.

The forgery thus consisted in fabricating an interlocutor purporting to have been pronounced by a judge, and forging to that interlocutor, as authenticating it, the signature of a clerk of court. That seems to me to have been an audacious as well as a somewhat ingenious forgery. The uttering consisted in presenting the document to the Accountant of Court in order to get from him a deposit-receipt. That uttering was successful, and having got the receipt from the Accountant, petitioner uttered as genuine another document, bearing to be a certified copy of the same interlocutor, also authenticated by a forged signature purporting to be the signature of James D. Fraser. The petitioner uttered that document by presenting it at the bank, but apparently suspicion was aroused and payment was not made.

The question is, whether we should, under these circumstances, make an order under

this petition which would have the effect of again allowing the petitioner to practise as a law-agent. I do not think it is necessary to express, or even to form, any opinion as to whether the crime of forgery is, for the purposes of such a question as the present, indelible in the sense in which that term was used in the argument; but it is not a little striking that, so far as is known, an order reinstating a law-agent who had been guilty of forgery has never been pronounced either in England or Scotland. It is sufficient for the purposes of the present case to say that after the expiry of only seven years it would be out of the question to make an order allowing the petitioner to resume the practice of an honourable profession. In a question of this kind great weight ought to be attached, and always has been attached, to the opinion of the society or societies of law-agents with whose members a person in the position of the petitioner would be brought into contact if he was allowed to resume practice. Their position is not merely that of sitting in judgment upon the moral aspects of the question; they have to consider more practical matters. The effect of the order which is asked for would be to force back among legal practitioners a person who had been convicted of forgery, as one with whom they would have to do business, and to trust in the ordinary conduct of that business. In the work of a law-agent there is, and must be, a considerable amount of mutual confidence, without which the business could not be carried on. The members of the profession are therefore well entitled to be heard in a matter of this kind; and the attitude taken up both by the Incorporated Society of Law-Agents and the Society of Procurators of Mid-Lothian confirms the view, which I would have arrived at upon independent grounds, that no adequate cause has been shown for granting the prayer of this petition.

LORD M'LAREN—I concur, and have only one observation to add. While an application of this kind is made to the Court, and must be disposed of according to the opinion of the Court, great weight will always be attached to the recommendation of the professional body to which the petitioner belonged. Even if a recommendation in his favour had been obtained, his restoration would not necessarily follow. In the present case the Society strongly object to the prayer of the petition being granted; and I agree with your Lordship that the petition should be refused.

LORD KINNEAR concurred.

LORD ADAM was absent.

The Court refused the prayer of the petition.

Counsel for the Petitioner—Lorimer.
Agent—James Andrews, Solicitor.

Counsel for the Respondents—Macfarlane.
Agents—Carmont, Wedderburn, & Watson,
W.S.

Saturday, October 19.

FIRST DIVISION.
MAGISTRATES OF ABERDEEN,
PETITIONERS.

Burgh—Statute—Clause Saving Local Acts—Town Councils (Scotland) Act 1900 (63 and 64 Vict. c. 49), sec. 117—Aberdeen Corporation Act 1891 (54 and 55 Vict. c. ccciv.)

The Town Councils (Scotland) Act 1900 enacts (section 117)—“Nothing in this Act contained shall supersede, prejudice, or affect the provisions of any local Act applicable to any burgh, or the forms of prosecutions and procedure in use therein under such Act.”

The tenure of office of magistrates in the burgh of A. was regulated by a local Act of 1891 in a manner inconsistent with the provisions on that subject of the Town Councils (Scotland) Act 1900. *Held* that section 117 prevented the regulations of the local Act from being superseded by the regulations contained in the general Act of 1900.

This was a petition at the instance of the Lord Provost, Magistrates, and Town Council of Aberdeen for an order under section 113 of the Town Councils (Scotland) Act 1900.

The following facts were set forth:—“The tenure of office of the Magistrates of Aberdeen has since 1871 been regulated by special legislation, and differs from that of the other Scotch burghs. The regulating enactment, which is or otherwise until the 31st December 1900 was in force, is contained in section 15 of the Aberdeen Corporation Act 1891, which re-enacts a similar provision in the preceding local Acts of 1871 and 1883. The said section is as follows:—“The Lord Provost and Treasurer of the city shall respectively remain in office for the period of three years. The bailies and other office-bearers shall be elected annually and remain in office for the period of one year only. The bailies shall take precedence in the order of their election, and any bailie or other office-bearer going out of office may be re-elected.”

The Town Councils (Scotland) Act 1900 contains, *inter alia*, the following provisions:—Section 33—“The existing town council or commissioners and magistrates of every burgh shall be the town council and magistrates under this Act, and the existing commissioners of a police burgh shall individually be the councillors thereof, but the retirement and filling up of vacancies shall be regulated by this Act.” Section 56—“The magistrates shall be elected by the town council from among their own number. The provost shall hold office from the date of his election as such until the expiry of three years from the first Tuesday of November immediately preceding his election, and during that period he shall (provided he continues to hold the office of provost) continue to hold office as a councillor, and be held at each