

These are the facts of the case, and the questions of law which we are asked are, whether the sum of £4000, being the proceeds of the policy, falls to be dealt with under the fourth purpose of the trust, or whether it forms part of the general residue of the truster's estate.

It will be observed that in the former case daughters or their issue would receive an equal share with sons or their issue, whereas in the latter case daughters or their issue would be entirely excluded, hence the conflict of interest. I do not think it doubtful that the legacy contained in the fourth purpose of the trust is a special or specific legacy; it is not a legacy of a sum of £4000 payable out of the truster's estate generally, but a legacy of the proceeds of the policy of assurance therein mentioned, and of nothing else. But when upon the truster's death the settlement came to take effect there was neither policy nor proceeds on which it could take effect, the policy having been discharged and the proceeds merged in his general estate during his lifetime.

That the sum due under the policy was received by the curator and administered by him is of no materiality. It had become due and payable, and formed part of his ward's estate, and as such was properly received and administered by him.

It is clear that the truster under the fourth purpose of the trust provided only for the case of his own predecease of his wife, and that he did not contemplate or provide for the case, which has occurred, of her predeceasing him. He very possibly may have thought that it was unnecessary to do so, because in that event he would come into possession of the money, and would be in a position then to dispose of it as he might desire, and probably but for the unfortunate state of mental health in which he was that would have been done in this case.

I am accordingly of opinion that the said sum of £4000 formed part of the truster's residuary estate, and that the first question should be answered in the negative, and the second in the affirmative.

LORD KINNEAR concurred.

LORD ADAM intimated that LORD MONCRELF, who was present at the hearing, also concurred.

The LORD PRESIDENT and LORD M'LAREN were not present at the hearing.

The Court answered the first question in the negative and the second in the affirmative.

Counsel for the First Parties—Macphail. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for the Second Parties—Chree. Agents—John C. Brodie & Sons, W.S.

Counsel for the Third Parties—A. O. M. Mackenzie. Agents—E. A. & F. Hunter & Co., W.S.

Thursday, November 14.

FIRST DIVISION.

UNIVERSITY COURT OF ABERDEEN, PETITIONERS.

Process—Nobile Officium—Bill Chamber—Jurisdiction of Lord Ordinary on Bills during Vacation—Scheme under Educational Bequest.

In a petition for the settlement of a scheme under an educational bequest, intimation and advertisement were ordered by the Lord Ordinary on the Bills during vacation. The Court ordered intimation and advertisement to be made of new.

The University Court of the University of Aberdeen presented a petition in the Court of Session for the settlement of a scheme for the administration of a bequest made to them by the late Dr F. W. Lyon.

On 6th April 1901 an interlocutor ordering intimation and advertisement was pronounced by the Lord Ordinary on the Bills during vacation.

No answers were lodged.

On 14th May 1901 the First Division remitted to Mr J. H. Millar, Advocate, to report upon the facts and circumstances set forth in the petition, and the regularity of the procedure.

On November 13, 1901, Mr Millar lodged a report, from which the following is an excerpt:—"It is to be observed, however, that the aforesaid interlocutor ordering intimation and advertisement was pronounced by the Lord Ordinary on the Bills during vacation. By section 10 of the Distribution of Business Act 1857 the same powers are conferred upon the Lord Ordinary on the Bills during vacation, with respect to a certain class of petitions, as are by the same statute conferred upon the Junior Lord Ordinary. Again, section 16 of the Trusts (Scotland) Act 1867, enacts that the power of a Lord Ordinary, before whom a petition in terms of that Act is enrolled, may be exercised by the Lord Ordinary on the Bills during vacation. But the present application appears to fall under neither of these statutes. It is a petition invoking the *nobile officium* of the Court, and is presented in the Inner House. No ground of urgency is apparent to bring it within the limited class of cases in which, apart from statutory provisions, and according to custom and practice, the exercise of the *nobile officium* of the Court is held to be delegated to the Lord Ordinary on the Bills during vacation. The reporter has accordingly thought it right to direct your Lordships' attention to the question whether intimation and advertisement should not be ordered of new, and in this connection he begs respectfully to refer to the cases of *Stewart v. Chalmers*, June 14, 1864, 2 Macph. 1216, and *Greig*, July 20, 1866, 4 Macph. 1103."

The Court, without delivering opinions, ordered intimation and advertisement to be made of new.

Counsel for the Petitioners—Lorimer.
Agents—Morton, Smart, & Macdonald,
W.S.

Saturday, November 16.

FIRST DIVISION.

BORLAND v. ANDERSON'S JUDICIAL
FACTOR.

*Expenses—Proving the Tenor—Judicial
Factor on Estate of a Person who had
Illegally Removed an IOU Defending
a Proving of its Tenor.*

In an action of proving of the tenor of an IOU alleged to have been granted in favour of the pursuer by the late Mrs A, the *casus amissionis* alleged was that Mrs A had wrongfully removed the IOU from the pursuer's repositories. The action was defended by a judicial factor appointed on Mrs A's estate. After proof had been led, and the Court had intimated that decree would be granted, the pursuer moved for expenses against the judicial factor on the ground that, as the action had been rendered necessary by the illegal proceedings of Mrs A, her estate ought to bear the expense—*Brown v. Orr and Others*, January 21, 1872, 10 Macph. 397, 9 S.L.R. 232.

[LORD ADAM—Here no additional expense was caused by the defence.]

The Court decreed in terms of the conclusions of the summons, but found no expenses due.

Counsel for the Pursuer—M'Lennan.
Agents—Miller & Murray, S.S.C.

Counsel for the Defenders—M'Clure.
Agent—F. J. Martin, W.S.

Thursday, November 21.

FIRST DIVISION.

THE INCORPORATION OF TAILORS
IN GLASGOW v. THE TRADES
HOUSE OF GLASGOW.

*Incorporation—Trade Incorporation in
Burgh—Sanction of Court to Bye-Laws
—Burgh—Glasgow Trades House—Burgh
Trading Act 1846 (9 and 10 Vict. cap. 17),
sec. 3.*

Section 3 of the Burgh Trading Act 1846 makes it lawful for a trading incorporation to make bye-laws "relative to the management and application of its funds, and relative to the qualification and admission of members," and to apply to the Court for its sanction to such bye-laws. It further provides for the Court hearing objections to such applications by parties "having an interest."

The incorporations of Glasgow elect members to a separate incorporation known as the Trades House, which was constituted by Letter of Guildry in 1605. Section 40 of the Letter of Guildry provides that the chairman of these representatives, with the advice of the others, is to "make acts and statutes for good order among" the incorporations.

In 1857 the Incorporation of Tailors in Glasgow passed a bye-law by which it was provided that "the members of the Incorporation shall have power to make bye-laws when confirmed by the Trades' House."

The Incorporation of Tailors presented a petition to the Court for its sanction to certain new bye-laws by which, *inter alia*, a residential qualification was placed upon all applicants for admission, and power was given to the Master Court of the Incorporation to consider the eligibility of all such applicants. The petition was opposed by the Trades House on the ground (1) that they had not confirmed the bye-laws, and that such confirmation was essential under the section of the Letter of Guildry and bye-law quoted above, and (2) that the proposed changes were inexpedient and inequitable. The Court *repelled* the objections stated, and *granted* the petition.

This was a petition presented by the Incorporation of Tailors in Glasgow under section 3 of the Burgh Trading Act 1846 for the sanction of the Court to certain additional bye-laws. The petition was opposed by the Trades House of Glasgow, and by certain members of the Tailors Incorporation, upon the ground (1) that the Trades House of Glasgow had not approved of the proposed bye-laws, and (2) that on the merits they ought not to be sanctioned.

By the Burgh Trading Act 1846 (9 and 10 Vict. cap. 17), which was passed for the abolition of the exclusive privilege of trading in burghs in Scotland, it was enacted—Section 1—"That from and after the passing of this Act all such exclusive privileges and rights shall cease, and it shall be lawful for any person to carry on or deal in merchandise, and to carry on or exercise any trade or handicraft in any burgh and elsewhere in Scotland, without being a burghess of such burgh, or a guild brother, or a member of any guild, craft, or incorporation." Section 2—"That notwithstanding the abolition of the said exclusive privileges and rights, all such incorporations as aforesaid shall retain their corporate character, and shall continue to be incorporations with the same names and titles as heretofore, and nothing herein contained shall in anywise affect the rights and privileges of such incorporations, or of the office-bearers or members thereof," except as regards the abolition of the said exclusive privileges. Section 3—"And whereas the revenues of such incorporations as aforesaid may in some instances be affected, and the number