

Respondents' Authorities.—Mirrie, July 17. 1731, (397.); Stuart, June 24. 1780, (398.); Speid, June 14. 1806, (F. C.); Reid, March 10. 1809, (F. C.)

ALISTON and HUNDEBIE—SPOTTISWOODE and ROBERTSON,—
Solicitors.

No. 22. THOMAS WATSON and Others, Trustees of JAMES STORMONTH,
Appellants.

Mrs STORMONTH or DARLING, Respondent.

Husband and Wife—Trustee.—A husband and wife, along with other parties, having been named trustees under a deed of settlement;—Held, (affirming the judgment of the Court of Session), That the wife was entitled to act and vote as a trustee.

May 11. 1825.

2D DIVISION.
Lord Pitmilley.

ON the 17th October 1803, James Stormonth of Lednathy, writer in Edinburgh, executed a trust-deed and settlement, by which he conveyed his estates to ‘ James Darling, writer in ‘ Kelso, Margaret Stormonth his wife, my niece, Robert Wilson, accountant in Edinburgh, Thomas Watson, farmer at ‘ Laurieston, and James Adamson, writer in Edinburgh, my ‘ nephew, and to the survivors or survivor of them, in trust;’ and thereafter, by another deed of settlement, executed on the 18th of February 1805, he disposed his estates ‘ to the said ‘ James Darling, writer in Kelso, Margaret Stormonth his ‘ spouse, Robert Wilson, Thomas Watson, and James Adamson, and to the surviving acceptors or surviving acceptor of ‘ them, the major part of such surviving acceptors being always ‘ a quorum, in trust, for the uses, ends, and purposes after-mentioned.’ These purposes were then enumerated, of which the most material were to entail his estate of Lednathy upon his nephew, James Stormonth Darling, son of Mr Darling, and for selling the rest of his heritable property, of which three-fourth parts of the price were to be paid to the other children of Mr and Mrs Darling, and the remaining fourth to James Adamson, one of the trustees. He also further declared, that the trustees should not be liable for omissions, nor the insolvency of factors, ‘ nor shall they be answerable for the intromissions of one ‘ another, but each of them allenary for his or her own actual ‘ intromissions.’

After executing three different codicils (which were not material to the present question) Mr Stormonth died in October

1817. Two days thereafter a minute of acceptance was executed by James Darling, James Adamson, and Thomas Watson, as trustees, who were thereafter infeft in the property disposed to them in virtue of the trust-disposition. May 11. 1825.

Some disputes having taken place between Mr Darling and Mr Adamson; and Mrs Darling having hitherto been under the impression that she could not lawfully act during the life of her husband, but never having refused to accept, and being advised that this idea was erroneous, she brought an action of declarator in the month of April 1822, to have it found that she 'is entitled to act and vote as a trustee under the said trust-deed and settlement of the said deceased James Stormonth; and that she is entitled to exercise and enjoy all the rights, privileges, and authorities conferred upon the trustees by the said trust-deed and settlement.'

In defence, Adamson and Watson, the two other trustees, contended,—

1. That it had been settled, by a series of decisions, that a married woman could neither be a curator nor a tutor, and that, as she could not effectually incur any personal obligation, it was not competent for her to act as a trustee, in which character she must of necessity incur obligations of a personal nature, which a married woman could not legally do; or that, at all events, her appointment must be superseded until the death of her husband, till which period she was under his curatory.

2. That from the mode in which Mr Stormonth had appointed her a trustee, and particularly by not excluding the *jus mariti* and power of administration of her husband, it was his intention, either that they should have only one vote between them, or that the exercise of her power should, in the meanwhile, be suspended; and that, accordingly, such had been the interpretation which she and her husband had put upon the appointment; and in that view she had never acted. And,

3. That although she was present on the occasion when the other trustees accepted, yet she had not declared her acceptance; and as she had allowed them for nearly five years to act under the trust, on the faith that she had declined to accept, she was not now entitled to insist on exercising the office.

To this it was answered,—

1. That as her husband not only did not object to her acting as a trustee, but expressly sanctioned it; and as it had been found in the case of *Stoddart v. Rutherford*, that a married woman might be lawfully appointed and act as a trustee, and

May 11. 1825. as there was no authority to the contrary, there could be no objection to her appointment.

2. That it was manifest from both the deeds executed by Mr Stormonth, that he was desirous that she should act as a trustee; that accordingly she was expressly named in both of them, and that the chief interest under the trust was bestowed upon her family. And,

3. That she had never declined to accept, but had been led to believe by Adamson (who was a professional person) that she could not lawfully act during the life of her husband; and therefore there was no bar to her now accepting the office, the more especially as she was willing to confirm every thing which had been hitherto done by the trustees.

The Lord Ordinary decerned in terms of the libel, and the Court, on the 25th of November 1823, adhered, 'in respect it has been judicially admitted, that the respondent is ready to confirm all the former actings of the trustees;' and thereafter, on the 14th of January 1824, refused a petition without answers.*

Lord Glenlee was of opinion that nothing had occurred to prevent Mrs Darling from acting; but he had some doubts whether she and her husband were entitled to separate votes.

The Lord Justice-Clerk expressed a similar opinion; but was clear that she was bound to confirm the former acts of the trustees.

Lord Craigie thought that she was entitled both to act and vote as one of the trustees.

Lord Robertson observed, that the case of Stoddart settled the present one, as to a married woman being qualified to act as a trustee; and was of opinion that Mrs Darling was entitled to a vote.

Lord Pitmilley was of the opinion he had formed as Lord Ordinary. The point as to the vote had not been argued before him in the Outer-House, but he was clear it was not well founded.

Watson and Adamson having appealed, the House of Lords 'ordered and adjudged, that the appeal be dismissed, and the interlocutors complained of affirmed.'

Appellants' Authorities.—1. Ersk. 6. 19.; 1. Stair, 4. 13.; 1. Bank. p. 126.; 1. Ersk. 6. 25.; Watson, Dec. 10. 1772, (5976.); 1. Ersk. 7. 12.; 1. Stair, 6. 24.; 1. Bank. p. 178.; 1. Ersk. 7. 29.

* 2. Shaw and Dunlop, 584.

Respondent's Authorities.—Stoddart, June 30. 1812, (F. C.) ; Bell, March 10. 1784, (16,374.) ; Campbell, July 6. 1627, (16,246.)

SPOTTISWOODE and ROBERTSON—MONCREIFF and WEBSTER,—
Solicitors.

WILLIAM GUTHRIE, Appellant.—*L' Amy—Ro. Bell.*

No. 23.

J. CURL, J. DOUGLAS, and CLAUD GIRDWOOD and Company,
Respondents.—*Greenshields.*

Bankrupt—Sequestration—Agent and Client.—Circumstances under which it was held, (affirming the judgment of the Court of Session), That an agent in a sequestration was not entitled, after the bankrupts had been discharged on payment of a composition, and finding security for payment of expenses, to claim the amount of his account from the creditors.

MALCOLM PATERSON and Company, merchants in Glasgow, having become bankrupts, a mandate in the following terms, subscribed by them, by the individual partners, and by Claud Girdwood and Company, creditors to the extent required by law, was transmitted to the appellant, William Guthrie, writer in Edinburgh :—‘ October 27. 1820.—We hereby authorize you to apply ‘ to the Court of Session for sequestration of the estates, real and ‘ personal, of the subscribers, Malcolm Paterson and Company, ‘ and individual partners; for doing whereof this shall be your ‘ mandate.’ In virtue of this authority, the appellant applied for and obtained a sequestration of the estates, on which Gilbert Sanders, accountant in Glasgow, was afterwards elected and confirmed trustee, and by whom the appellant (who was himself a creditor) was employed as agent in the sequestration. On the 20th of January 1821, the bankrupts offered a composition of 6s. 8d. per pound on the debts due by the Company, and of 6d. per pound on the debts due by Malcolm Paterson as an individual, which offer was entertained by the creditors, who instructed the trustee to call a meeting, for the purpose of finally deciding on it. At the meeting which was held for the purpose, the bankrupts renewed their offer, and proposed Charles M’Kidd, brick-maker in Glasgow, as cautioner, both for payment of the composition and the expenses of the sequestration. To this the creditors present agreed, with the exception of a Mr Kennedy, who declined to accede unless additional security was granted. In consequence of this, and of the extent of Mr Kennedy’s claims, the meeting ‘ unani-

May 13. 1825.

1ST DIVISION.