

SOLICITOR-GENERAL and BIRNIE, for the reclaimers, argued that trustees were not bound to denude till offered exoneration for their whole actings with reference to the trust-estate; that the trustees here had not sufficient funds in their hands or deposited in Court to secure them against the result of the threatened reduction; and that they were not safe to denude in favour of the heir in heritage until the issue of the appeal as to the moveables should be ascertained. Farther, that if the heirs in moveables were held not to have been the nearest relations of the deceased, and therefore to have been wrongously preferred to the moveables, their brother, the heir in heritage, must have been wrongously preferred to the heritage. (*Elliot's Trustees v. Elliot*, 1828, 6 S. 1058; *Edmond v. Blaikie and Anderson*, 1860, 23 D. 21.)

WATSON and JOHNSTONE, for the respondents, replied that after the heir had obtained decree in his favour, the trustees could no longer lawfully withhold from him the disposition to the heritage; that they had acted *ultra vires* in granting a lease of the heritage after the case was in the hands of the Court, and that, therefore, they could not claim exoneration for actings subsequent to the date when the action was brought into Court.

At advising—

LORD JUSTICE-CLERK—Had the trustees raised a question of this nature before the date of the multiplepointing, the case would have been different. But by that action the entire property in dispute was lodged in the hands of the Court, after which the trustees ceased to be proprietors in the ordinary sense, and they have, therefore, no right to withhold the heritable property from the heir, who has obtained a decree in his favour. With regard to the lease granted by the trustees, it may turn out advantageous to the heir, or it may turn out to have been granted by them *ultra vires*. In any event, the heir is entitled to get possession of the estate; and the question whether the administration of the trustees subsequent to the raising of the action of multiplepointing has been beneficial is a mere question of accounting, and must be settled afterwards. With regard to expenses, in a matter in which the trustees have been litigating for their own interest, and have been unsuccessful, I see no reason why they should not be held personally liable.

LORD COWAN—I think it was a somewhat extraordinary act on the part of the trustees to grant the lease in question without the authority of the Court, in whose hands the whole estate was placed, but I cannot at present say whether that act was *ultra vires* or not. I am clearly of opinion that the disposition must be given up by the trustees, but that they are entitled to exoneration for their administration of the trust-estate previous to the raising of the action.

LORD BENHOLME—I am of opinion that the trustees must give up the disposition to the heir *de plano*.

LORD NEAVES concurred.

The Court pronounced the following interlocutor:—"Find that the reclaimers are entitled to be exonerated and discharged of their whole actings and intromissions up to the date of bringing the action into Court, and exonerate and discharge them accordingly, and decern. *Quoad ultra*, adhere to

the Lord Ordinary's interlocutor: Find the reclaimers liable in expenses since the date of that interlocutor, and remit," &c.

Agents for Reclaimer—Tods, Murray, & Jamieson, W.S.

Agent for Respondents—T. J. Gordon, W.S.

Wednesday, May 22.

M'ALLEY, PETITIONER.

Poor's Roll.

Held that an applicant for the benefit of the poor's roll, who adduced no evidence as to his circumstances but his own statement, and was alleged by the kirk-session to be a person unworthy of credit, must prove his poverty in some other manner satisfactory to the Court.

This was a petition by William M'Alley, residing at Cupar Fife, for admission to the benefit of the poor's roll, with a view to enable him to raise an action in the Court of Session. The petitioner produced a certificate from the kirk-session of Cupar, containing his own declaration as to his circumstances, unsupported by farther evidence, and a statement by the members of the kirk-session that they regarded him as a person unworthy of credit. The petitioner admitted that his earnings as a tile-maker amounted to 16s. per week during five and a-half months of the year; that during the remainder of the year he earned about 12s. a week by letting lodgings; and that his wife, from whom he was separated, and his adult children, were not maintained by him.

KIRKPATRICK for the petitioner.

ASHER and MILLIE for the respondents.

At advising—

LORD JUSTICE-CLERK—The applicant cannot obtain the benefit of the poor's roll unless he establish his poverty in some satisfactory manner. The kirk-session report that his credibility is not to be relied on, and we therefore cannot grant his petition on his own *ex parte* statement. Assuming, however, the applicant's statement to be true, I should be inclined to hold that his circumstances are not such as to entitle him to be admitted to the poor's roll.

The other Judges concurred.

Agent for Petitioner—R. A. Veitch, S.S.C.

Agents for Respondents—Leburn, Henderson, & Wilson, S.S.C.

Thursday, May 23.

FIRST DIVISION.

SPECIAL CASE—EDWARD SNELL AND

OTHERS.

Succession—Heritage—Vesting.

A testator conveyed his whole heritable estate to his spouse, for her lifeferent use alienarily, whom failing by decease to his daughter, also in lifeferent, for her lifeferent use alienarily; and to and in favour of the children of the said daughter, procreated or to be procreated of her existing or any future marriage, and the survivors or survivor of them; and failing the said children, to and in favour of three nephews and a niece, and the survivors or survivor of