

Saturday, March 16.

FIRST DIVISION.

GULLAND (HENDERSON'S FACTOR),
PETITIONER *v.* HENDERSON.

Parent and Child—Custody of Pupil where Father dead and Mother guilty of Misconduct.

Where the factor *loco tutoris* of a child whose father was dead presented a petition to the Court praying that the child should be removed from the custody of the mother, who had had two illegitimate children since the death of her husband, the Court *ordained* the mother to give up the child to the petitioner, and appointed him to submit to the Court a scheme for the maintenance and residence of the child.

Mr Charles Gulland, factor *loco tutoris* to Robina Henderson, the child of the deceased Robert Henderson, presented this petition to have her removed from the custody of her mother Margaret Henderson, and to have her given into his custody. Mr Henderson had died about five years previously, he having at that time been married about six months. He left property to the value of about £700. The child Robina Henderson was born after his death. The mother continued to live where she had resided previously to her husband's death, since which date she had given birth to two illegitimate children.

Mrs Henderson in her answers to the petition admitted that she had given birth to the illegitimate children, but stated that she was desirous to conduct herself for the future in an exemplary manner, and she accordingly craved the Court to refuse the petition. It was further mentioned at the bar that she had not lived, and did not now live, with the paramour.

Petitioner's authorities—Fraser's Parent and Child (2d ed.) 214; *Walker*, March 10, 1824, 2 S. 651; *A B v. C*, June 30, 1837, 9 Jur. 536; *Paul*, March 8, 1838, 16 S. 822; *Denny v. M'Nish*, January 16, 1863, 1 Macph. 268; *Muir v. Wylie*, July 13, 1868, 6 Macph. 1125.

Respondent's authority—*Kennedy v. Steel*, Nov. 16, 1841, 4 D. 12.

At advising—

LOD PRESIDENT—Undoubtedly the question in this petition is one for the discretion of the Court, but in exercising that discretion we must have regard to precedent, and it is impossible to resist the cases cited by the petitioner. The factor has only done his duty in bringing the question before the Court, and I am of opinion that we must pronounce an order for the delivery of the child. But that order must be accompanied, as in the case of *M'Nish*, 1 Macph. 268, by an order on the factor to submit a scheme to the Court for the residence and maintenance of the child.

LOD DEAS concurred and remarked—There are funds here, and if the child is to be left with the mother, she must have the funds too, and they will very likely be spent for the benefit of the bastards.

LOD MURE and SHAND concurred.

When the proposals for the board and place of residence of the child were submitted by the factor to the Court—

LOD PRESIDENT—In the event of a change of circumstances, such as the girl going to school, the factor will understand that he will have to come back again to the Court for authority, but he may do that by motion so as to avoid additional expense.

Counsel for Petitioner—Gebbie. Agents—Adamson & Gulland, W.S.

Counsel for Respondent—Moody Stuart. Agents—Boyd, Macdonald, & Co., S.S.C.

Saturday, March 16.

SECOND DIVISION.

[Sheriff of Lanarkshire.

STRONG (LECK, COWAN, & CO.'S TRUSTEE)
v. PHILIPS & CO. (M'MURRAY & CO.'S
ASSIGNEES).

Retention—Packers' Lien—Proof of Usage.

A firm of dyers were in the habit of sending goods to calenderers or packers in Glasgow for the purpose of being packed. The dyers failed, and in a question with the trustee upon their sequestered estate, held that the packers had a right of retention over goods in their hands in security of a running account which had been previously incurred for packing, a usage to this effect in Glasgow having been established by proof.

Observations per Lord Justice-Clerk upon the law relating to packers' lien.

This was an appeal from the Sheriff Court of Lanark. John Roxburgh Strong, the petitioner and appellant, was trustee on the sequestered estate of Leck, Cowan, & Co., Turkey-red dyers, Strathclyde Works, near Glasgow; the respondents were William Philips & Co., yarn merchants in Paisley and Glasgow, as assignees of John M'Murray & Co., calenderers and packers in Glasgow.

The petition stated that upon 26th April 1875 Leck, Cowan, and Co. had placed in the hands of M'Murray & Co., for future order and disposal, 2040 lbs. of Turkey-red yarn. On the same date Leck, Cowan, & Co. suspended payment, and sequestration was awarded on the 12th of May following. The petitioner had applied for delivery of the yarn, as forming part of the bankrupt estate, but delivery had been refused except upon payment of an account due by the bankrupts to M'Murray & Co. for former packing work done. Hence the petition to the Sheriff to grant warrant of delivery. M'Murray & Co., in answer, claimed a right of retention or lien over the goods in their hands in security of the general balance which they said was due to them.

From the proof allowed by the Sheriff-Substitute (GALBRAITH) it appeared that Leck, Cowan, & Co. were in the habit of sending goods to M'Murray & Co. for the purpose of being packed. They also used M'Murray's premises as a "house of call," and to a certain extent as a store. Evidence was led that when goods were sent to