

and consequently refused the petition, adding this note— . . . . "It is always a delicate matter to authorise the anticipation of a period appointed for the sale of subjects in the neighbourhood of a place like Port-Glasgow; and the truster may have had very good reasons for providing, as he did, that the subjects should be retained during the lifetime of his children (subject to a power of granting leases for nineteen years), and should be sold on the death of the last survivor of them. The question is, Whether the granting at present of the proposed lease for 999 years would be consistent with the intention of the trust-deed, as regards the management and disposal of the property. And the Lord Ordinary feels bound to answer that question in the negative. The case seems to him to belong to the same class as that of *Anderson*, May 13, 1876, 3 R. 639." . . . .

The petitioners reclaimed, and argued—The expediency of the proposed lease was clear, and the Lord Ordinary did not doubt it. His sole ground was that the lease was inconsistent with the purposes of the trust. But long leases were not prohibited, either expressly or by implication. It was not possible to extract a prohibition of a lease like that proposed, from the direction to sell at the expiry of the liferenters. It was not a case in which the truster desired the subjects to be retained *in forma specifica*.

Authorities—*Hay's Trustees*, June 13, 1873, 11 M. 694; *Anderson*, May 13, 1876, 3 R. 639; *Weir's Trustees*, June 13, 1877, 4 R. 876; *Downie*, June 10, 1879, 6 R. 1013.

At advising—

Lord President—In this case there cannot be much doubt as to the expediency of the proposal made by the petitioners. The subjects at present yield £30 less than they would yield if this long lease were granted. There is therefore an important immediate increase in the value of the estate if the power which is asked for is granted, and there is no reason to suppose that the subjects are of such a nature, or so situated, that they are likely to become much more valuable in future. The present advantage does not seem to be subject to any possible future disadvantage. The only question therefore is, whether the proposal is inconsistent with the intention of the truster—that is, with his main design and object in this trust-settlement. Now, there is fortunately no difficulty in understanding what the main designs and objects of the truster were. His widow is to have the liferent of his estate, and after her death the income is to be divided among his children, and that until the last survivor of the children dies. The income, and that only, is to be given to the children and the last survivor of them. Then after the death of the last survivor the property is to be sold and the proceeds divided among the truster's grandchildren. Now, it does not appear to me that the granting of this long lease will interfere in any way with the intention of the truster. It enhances the value of the subjects, and does not restrict the rights of the liferenters or the fiars. Everything will go on in the execution of the trust just as if the lease had never been granted, with the benefit of the additional income I have mentioned. It is said that what is asked is a sale, and that the only sale which the deed authorises is a sale after the death of the longest liver of the children,

for the purpose of dividing the proceeds among the grandchildren; and that this implies a prohibition against selling in any other circumstances. But it is important to observe that there is not, as there was in some former cases, a direct prohibition against selling the estate; on the contrary, the estate is only to continue in *forma specifica* until a certain event shall occur, and is then to be sold. The intention is not to preserve the estate entire, but simply to keep it as an income-yielding subject in order to sell it at the death of the liferenters. Then it must further be observed that to give a power of sale on the death of the liferenters can hardly imply an intention on the part of the truster to prohibit such a sale as this. This is not such a sale as the truster could grant. Their duty is to sell the estate in such a way as to get money in order to divide it among the grandchildren. They could never grant a long lease like that which we are here asked to authorise. A long lease is an essentially different kind of power from that conferred by the trust-deed. It is therefore not what the truster calls a power of sale. On the whole matter, I think we should be aiding rather than frustrating the intention of the testator by granting this petition.

The Court recalled the interlocutor of the Lord Ordinary and granted the prayer of the petition.

Counsel for Petitioner—Trayner—Guthrie.  
Agents—Duncan & Black, W.S.

Wednesday, February 16.

## FIRST DIVISION.

### SOCIETY OF SOLICITORS OF ELGINSHIRE, PETITIONERS.

*Process—Law Agents Act 1873 (36 and 37 Vict. cap. 63)—Petition to Strike Name off Rolls.*

On the petition of the Society of Solicitors of the county of E., the Court ordered the name of an enrolled law agent, who had been convicted of forgery and imprisoned, to be struck off the register of enrolled law agents, and off the roll of law agents practising in the Sheriff Court of said county.

James Shepherd, an enrolled law agent, practising in the Sheriff Court of Elginshire, was convicted of forgery on 8th September 1880, and sentenced to twelve months' imprisonment. The document which he had fabricated was a petition to the Sheriff Court of Elginshire for discharge of a sequestrated bankrupt, who was his client, to which he adhibited a forged signature of the Sheriff-Clerk-Depute.

The Society of Solicitors of Elginshire presented a petition to the Court craving their Lordships to "decern and ordain the Registrar of Law Agents to strike the name of the said James Shepherd out of the register of enrolled law agents, and also to decern and ordain the Sheriff-Clerk of the Sheriff Court of Elginshire to strike the name of the said James Shepherd off the roll of law agents practising in the said Sheriff Court."

In the petition it was stated that the petitioners are a society of procurators in the county of

Elgin, incorporated under the Act 28 and 29 Vict. cap. 85 (The Procurators (Scotland) Act 1865), and entitled to sue and be sued in their corporate name. The said Act is repealed by the Act 36 and 37 Vict. cap. 63 (The Law Agents Act of 1873), sec. 25, which, however, provides that "such repeal shall not prevent societies which prior to the passing of this Act were formed under the said Act from continuing to exist as incorporated societies." That the said last-recited Act provides (section 11) that "it shall be the duty of the registrar to keep an alphabetical register of all enrolled law agents; and enrolment in such register shall be deemed to be enrolment under this Act, and he shall strike out the name of any law agent on an order of the Court" (the words "the Court" being declared to mean the Court of Session); section 13—that "a roll of agents practising in any Sheriff Court shall be kept by the Sheriff-Clerk in such form as the Lord President of the Court of Session may direct, and every enrolled law agent who has paid the stamp-duty exigible by law on admission to practise as an agent before a Sheriff Court shall be entitled to subscribe the said roll;" section 14—that "the name of any person shall be struck off the said rolls (1) in obedience to the order of the Court, upon application duly made, and after hearing parties, or giving them an opportunity of being heard;" and section 22—that "every enrolled law agent shall be subject to the jurisdiction of the Court in any complaint which may be made against him for misconduct as a law agent, and it shall be lawful for the Court, in either Division thereof, to deal summarily with any such complaint, and to do therein as shall be just."

Answers were lodged for the respondent, in which he craved the Court to consider the peculiar circumstances of the case, the trifling amount of any possible gain to himself or loss to his client arising from the offence, and the punishment which had already been inflicted on him, and to refuse the prayer of the petition, at least to the extent of allowing his name to remain on the register of enrolled law agents.

The case was disposed of in Single Bills.

The Petitioners' counsel stated that this was the first instance of an application of this kind in Scotland. With regard to English practice he referred to Archbold's Practice (last ed.), 150.

At advising—

LORD PRESIDENT—The Court, though it certainly has discretion in matters like this, can hardly, I think, have much discretion in this particular case. A law agent who has been convicted of forgery and sentenced to twelve months' imprisonment is plainly unfit to remain on the roll of any practitioners in any Court. I am therefore for granting the prayer of this petition.

LORD MURE and LORD SHAND concurred.

LORD DEAS was absent.

The Court granted the prayer of the petition.

Counsel for Petitioners—Begg. Agents—Rhind, Lindsay, & Wallace, W.S.

Counsel for Respondent—D. J. Mackenzie. Agents—Cumming & Duff, S.S.C.

Wednesday, February 16.

## SECOND DIVISION.

[Lord Craighill Ordinary.]

MILLER v. HUTCHISON & DIXON.

*Retention—Lien—Whether an Auctioneer Employed to Sell Goods on Commission is entitled to Factor's Lien for a General Balance.*

Course of dealing held (diss. Lord Craighill) to establish that an auctioneer employed to sell horses on commission was entitled, as a general agent, on the bankruptcy of his customer, to a lien over horses in his hands for a general balance due to him on his transactions with the customer.

The estates of George Neilleay, horse-dealer in Beith, were sequestrated under the Bankruptcy Act on 20th June 1879. This was an action at the instance of Alfred Arthur Miller, his trustee in bankruptcy, against Hutchison & Dixon, auctioneers, Glasgow, concluding for £42, 3s., being the price, deducting expenses of livery and sale, of two geldings which belonged to the bankrupt, and were sold by the defenders at one of their sales by auction on 22d June 1879. The defenders admitted that they had received the geldings in question on 22d May 1879 in order that they might be sold for the bankrupt, they keeping them at livery until sold. They averred, however, that there had existed for some time between themselves and the bankrupt a course of dealing, whereby they from time to time received horses from him for sale on which they made advances, he incurring livery charges to them for the horses, on the mutual understanding that the defenders should have the security of the horses at any time in their hands for the sums due to them from time to time. They alleged that at 22d June, when the horses were sold, reserving all questions between them and the trustee, there was a balance due to them on their transactions with the defenders which exceeded the price which the geldings brought at the sale.

A proof was led, from which it appeared that the defenders were not livery stable-keepers except in so far as they kept at livery horses awaiting sale at their sales by auction. It was also proved that the bankrupt had for a number of years prior to 1879 been in the practice of dealing with the defenders. A partner of the defenders' firm deponed that they had been in the practice of making advances to him against horses in their hands, and that the understanding between the bankrupt and the defenders was that when he took away horses and left others the defenders were to retain possession of those which he left until the money advanced to him was refunded. He also deponed that the stablemen at the defenders' stables were instructed not to allow any horses to go out of the stables without his consent. The bankrupt deponed on this point—"If I were owing him (defenders' managing partner) a good sum of money, I would like to consult with him before I removed horses."

The two horses to which this case related were part of a lot of six horses which the bankrupt had brought over from Ireland for sale.

In evidence of the course of dealing between the bankrupt and themselves, the defenders produced,