have been made in a course of conduct familiar and habitual to this person;" and (p. 153), that certain instances of failure of defendants' endeavours to induce certain women to commit adultery with him "furnish a strong corroboration to the conclusion to be drawn from the other cases where it is evident that no such resistance was to be apprehended." Dr Lushington's opinion to the same effect will be found in the case of *Taylor* in the 6th volume of Thornton's Notes.

I think, therefore, that both according to the general rules of evidence, and according to authority, the Lord Ordinary is right in his view on this part of the case.

On these grounds I have come to the conclusion that adultery with Margaret Young is established.

The Lord President and Lord Shand concurred.

Lord Deas was absent.

The Court recalled the interlocutor of the Lord Ordinary in so far as it found the charge of adultery with Janet Marshall proved, but adhered with regard to the charge of adultery with Margaret Young.

Counsel for Pursuer and Respondent—Scott—Strachan. Agents—Miller & Murray, S.S.C.

Counsel for Defender and Reclaimer—Graham Murray—C. K. Mackenzie. Agents—Mitchell & Baxter, W.S.

Friday, March 7.

FIRST DIVISION.

ORR EWING AND OTHERS *v.* ORR EWING'S TRUSTEES (NOTE FOR GEORGE AULDJO JAMIESON, JUDICIAL FACTOR).

(*Ante*, p. 423).

Judicial Factor—Trust-Estate—Sequestration—Powers.

A trust-estate having been sequestrated, a judicial factor was appointed thereon "with power to him to take full and complete possession" of the estate. The Court thereafter, on a note being presented for the factor stating that the trustees would not deliver over the trust-estate, *granted* to him warrant to "take full and complete possession of all sums belonging to the trust-estate . . . . and of the whole writs, titles, and securities, books, papers, and documents of and concerning the same," and granted warrant to and ordained the bank in which sums were at the credit of the estate, to pay to him as factor the sums lying at the credit of the trust-estate on deposit or on account-current, and also on various companies to transfer to his name, as factor, the amounts of their stocks, shares, or debentures belonging to the trust-estate, but on its being stated for the defenders that the granting of such an order would, if it were obeyed by them, render them liable to be proceeded against for contempt of the Court of Chancery, which had ordained them to lodge accounts in Chancery, *refused hoc statu* to ordain the defenders to deliver up the estate and the titles thereof.

Ante, p. 423. George Auldjo Jamieson, C.A., the judicial factor on the trust-estate of the deceased John Orr Ewing, appointed by interlocutor of 29th February 1884, as previously reported, presented this note, in which he stated that having called upon the defenders, the trustees, to put him in full possession of the trust-estate, he was satisfied that they would not, without a direct compulsitor, deliver over to him the trust-estate and effects. The prayer of the note was as follows:—"To grant warrant to, authorise, and empower the said George Auldjo Jamieson, as judicial factor foresaid, to take full and complete possession of all sums of money belonging to the trust-estate of the said deceased John Orr Ewing, and of the whole writs, titles, and securities, books, papers, and documents of and concerning the same, wheresoever or in whose hand soever the same may be found; and to grant warrant to, authorise and ordain the said defenders, and the said M'Grigor, Donald, & Company, their agents, and all other persons acting for them or on their behalf, and all bankers and others in whose hands there are sums of money belonging to the said trust-estate, forthwith to deliver up to the said George Auldjo Jamieson, as judicial factor foresaid, all such sums of money, and all writs, titles, and securities, books, papers, and documents of and concerning the said trust-estate and effects; and without prejudice to the generality of the prayer of this note, to grant warrant to and ordain the Royal Bank of Scotland to pay to the said George Auldjo Jamieson, as judicial factor foresaid, the following sums of money belonging to the said trust-estate, viz.:—[*here followed a list of certain sums*], and to grant warrant to and ordain the following companies to transfer to the name of the said George Auldjo Jamieson, as judicial factor foresaid, the following amounts of their stocks, shares, or debentures now belonging to said trust-estate, and for which the certificates or other vouchers bear to be in name of 'William Ewing, Archibald Orr Ewing, James Ewing, William Ewing Gilmour, Henry Brock, and Alexander Bennet M'Grigor, and the survivors and survivor of them, as trustees of the late John Orr Ewing,' or are otherwise expressed in favour of the defenders, or one or more of them as trustees foresaid, and are of the several dates and registered numbers after mentioned, viz.:—[*here followed a list thereof*], and to decern; to allow interim extract of the deliverance to be pronounced hereon, and to dispense with the reading in the minute-book, and allow extract to be issued forthwith."

The trustees, respondents in this application, asked for delay until further proceedings in the Chancery Division, in view of a letter from the solicitors for the plaintiff in the English suit, intimating that if the trustees did any act to divest themselves of their trust-estate, without previously obtaining the authority of the Chancery Division, they would be committing a contempt of that Court.

Authorities—*Young* v. *Collins*, Feb. 24, 1852, 14 D. 540, 746, 811—*rev.* March 14, 1853, 1 Macq. 385.

At advising—

Lord President—On the 29th of last month, in the action of declarator at the instance of the parties entitled to the residue of Mr John Orr

Ewing's estate, we took the course of sequestrating the estate, and appointed Mr Jamieson judicial factor on the said estate and effects, "with power to him to take full and complete possession of the said estate and effects, and to hold and administer the same till the further orders of the Court, with all the usual powers," and we granted interdict against the defenders "until the said estate and effects are fully vested in and taken possession of by the said judicial factor, from removing the said estate and effects, or any part thereof, or of the titles, writs, and evidents of the same, beyond the jurisdiction of this Court, and from delivering, paying, or accounting therefor to any person or persons other than the said judicial factor." We abstained from pronouncing any order ordaining the defenders to deliver up the writs or evidents of the estate to the factor. We are now asked to do that, and that I am not prepared to assent to. The form of our previous interlocutor, and the sequestration of the estate, was a course we took in the interest not only of the pursuers of the action but also of the defenders, the object of the Court being to do as little as possible to aggravate the difficulties in which the defenders find themselves placed. And if we did grant the prayer of this note in so far as it asks for an order against the defenders to deliver up the estate, we should be doing that very thing which we purposely abstained from doing in the interlocutor of 29th February. Therefore I am against the order asked in the second branch of the prayer of this note, but as regards the remainder of the prayer, I think the judicial factor is quite entitled to get the warrant and authority therein asked. Indeed, it is impossible for him to perform his duties without having it. The sequestration would be a mere farce, and the appointment of the judicial factor would be of no avail at all so far as the conservation and administration of the estate is concerned, unless he has given him the means of carrying out our judgment in such a manner. Therefore, as regards the first portion of the first part of the prayer of the note, authorising the factor to take full and complete possession of all sums of money belonging to the trust-estate, and of the whole writs concerning the same, that is in some degree a repetition of what has been done already, for our interlocutor authorises him to take possession of the estate, and the addition is thereby to take possession of the writs, titles, and securities, books, papers, and documents, which I think is a power indispensable to the performance of his duties.

As regards the remainder of the prayer, the defenders do not profess to have any interest to oppose the granting of that part of the prayer. There is a warrant asked for as against banks to deliver up money deposited with them belonging to the trust-estate, and against companies to transfer shares and debentures belonging to the trust-estate into the name of the judicial factor, and as regards that I think it is only a proper carrying into execution of the order we have already pronounced.

Lord Deas being absent during the argument gave no opinion.

Lord Mure concurred.

Lord Shand—I entirely concur in the course proposed by your Lordship.

It appears to me to be merely a necessary result of the last part of the order of 29th February, by which we sequestrated this estate and appointed a judicial factor thereon, that we should give him the means of taking possession of the estate. I agree with your Lordship that a warrant should be granted authorising Mr Jamieson to take possession of money belonging to the estate held by the banks, and of stocks in the various companies named in the note. As to that part of the prayer which asks the Court to ordain the defenders actively to assist in the delivery of the estate to the judicial factor, by themselves granting transfers to enable Mr Jamieson more easily to carry out the orders of the Court, I wish to add that I should have been disposed to grant that also, had it not been for the fact which was brought under our notice by the letter from the agents of the plaintiff in the Chancery proceedings, that if the trustees divested themselves of the trust-estate without having previously obtained the authority of the Chancery Division they would be committing a contempt of Court.

In these circumstances, and in consequence of the embarrassing position in which the trustees would be placed, or at any rate those who are residing in England, I think that warrant ought not to be granted.

The prayer of the note was amended by deleting that portion of it which asked for warrant on the defenders, and the Court then granted the prayer.

Counsel for the Judicial Factor—J. P. B. Robertson—G. W. Burnet. Agent—F. J. Martin, W.S.

Counsel for Respondents—Pearson—W. C. Smith. Agents—Murray, Beith, & Murray, W.S.

Saturday, March 8.

FIRST DIVISION.

[Lord Kinnear, Ordinary.

M'KINNON, PETITIONER.

Judicial Factor—Curator Bonis—*Cautioner—Public Company—Company Incorporated by Act of Parliament—Pupils Protection Act* 1849 (12 *and* 13 *Vict. c.* 89), *sec.* 27—*Companies Act* 1862 (25 *and* 26 *Vict. c.* 89).

A *curator bonis* proposed as cautioner a public company registered with limited liability under the Companies Acts and carrying on guarantee business. The Accountant of Court reported the company to be in a good financial position. *Held* (1) that such a company was a public company incorporated by Act of Parliament in the sense of the Pupils Protection Act, section 27, and that its bond might be accepted as caution for the petitioner, and (2) that apart from the Pupils Protection Act the Court had discretion to accept such security for its officer.

Lauchlan M'Kinnon junior, advocate, Aberdeen,