

Counsel for Pursuers—H. Johnston—Gillespie. Agents—Mackenzie & Kermack, W.S.

Counsel for the Defender—Sir C. Pearson—Law. Agents—Menzies, Coventry, & Black, W.S.

Thursday, June 26.

FIRST DIVISION.

PATERSON, PETITIONER.

Process—Judicial Factor—20 and 21 Vict. cap. 56, sec. 4.

Held that a petition for appointment of a judicial factor on a trust-estate, where the trustees had ceased to be able to act in terms of the trust-deed, was properly presented to a Division of the Court, and not to the Junior Lord Ordinary.

Maurice Paterson, John Wordie, and Alexander Donaldson were appointed to act as trustees under an antenuptial contract of marriage, dated 10th October 1874, entered into between William Macpherson and Miss Ann Amelia Boswell. It was *inter alia* declared in the contract "that so soon as the acting trustees under these presents are reduced to two, they shall be obliged to nominate and appoint at least one other trustee to act along with them in the management of the said trust; and there are hereby conferred upon the said trustees who may be assumed from time to time the whole powers, privileges, and exemptions conferred upon the trustees hereby named."

The trustees accepted the office conferred on them, but Alexander Donaldson died on 23rd August 1889.

The present petition was presented by Maurice Paterson on June 24th 1890 to the First Division. He averred that since the death of Alexander Donaldson he and the other surviving trustee had been endeavouring in terms of the marriage-contract to obtain the consent of some person to act as trustee under the said antenuptial contract, but had been unable to find anyone willing to accept the office. He accordingly craved the Court to appoint a judicial factor on the trust-estate.

The petitioner argued—That petition was competently presented to a Division of the Court—Distribution of Business Act; *Dixon's Tutor*, July 17, 1867, 5 Macph. 1052.

The Court, holding that the petition was competently presented to a Division of the Court, ordered intimation and service, and appointed a judicial factor *ad interim*.

Counsel for Petitioner—Shaw. Agents—Cairns, M'Intosh, & Morton, W.S.

Saturday, June 28.

FIRST DIVISION.

[Sheriff of Forfarshire.

CLARK v. CLARKES.

Bankruptcy—Cessio—Sale of Heritable Estate.

Held that the trustee in a *cessio* has power to sell the heritable estate of the debtor without making application to the Sheriff under sec. 15 of the Act of Sederunt anent Process of Cessio (22nd December 1882).

Cessio of the estates of David Wilkie Clarke was granted by the Sheriff of Forfarshire and James Constable Robertson, accountant, Dundee, was appointed trustee in the *cessio* by deliverance dated 7th and extracted 23rd May 1889. On 29th May David Wilkie Clarke granted disposition *omnium bonorum* in favour of the trustee. On 27th September 1889 the trustee exposed for sale by public roup certain heritable property in Dundee belonging to the cessioned estate. The property was purchased by George Clark, and the subjects were disposed to him by disposition dated 30th November, 2nd, 6th, 7th, and 13th December, and recorded 30th December 1889.

The present action was raised by George Clark against David Wilkie Clarke and his son James Clarke for the purpose of obtaining warrant to eject them from certain premises included in the subjects disposed to him by the trustee in David Wilkie Clarke's *cessio*.

The defenders averred that the only competent mode in which the trustee on a cessioned estate could sell heritable property belonging to the estate was by making application to the Sheriff under sec. 15 of the Act of Sederunt anent Processes of Cessio (22nd December 1882), which provides that "on an application by the trustee or by any creditor, the Sheriff may at any time call a meeting of the creditors to consider and dispose of any matters specified in such application." Mr Robertson had not conformed to this procedure in selling to the pursuer. He had made no application to the Sheriff under the section quoted, nor had any creditor done so. He had not obtained the authority or consent of the Sheriff, or even of the general body of creditors. The pretended sale to the pursuer and disposition following thereon were therefore null and void.

The defenders pleaded—(1) The pursuer has no title to sue.

On 28th March the Sheriff-Substitute (CAMPBELL SMITH) found that the defences were not relevant, therefore repelled them, and granted warrant of ejection as craved.

The defenders having appealed, the Sheriff (COMRIE THOMSON) on 16th April dismissed the appeal and adhered to the interlocutor appealed against.

"Note.—It appears to me that the defender here is a mere squatter or tenant at will, and that he has set forth no title, and