

may have been, was committed in the course of his employment by them. I entirely concur with your Lordships that if that is so, the direction which the learned Judge was asked to give was not proper. But apart altogether from the question of fact, I think the direction itself would have been altogether misleading. The language in which it is expressed would not have been sufficient explanation to the jury what was the true legal formula upon which the Judge refused to give that direction.

LORD LOW—I take the same view of this case as that which has been stated by Lord Adam.

LORD M'LAREN was absent.

The Court disallowed the exception, discharged the rule, and refused to grant a new trial.

Counsel for the Pursuer—Comrie Thom-son—Abel. Agents—Gill & Pringle, W.S.

Counsel for the Defenders—Jameson—Wilton. Agent—John Rhind, S.S.C.

Wednesday, December 20.

FIRST DIVISION.

EDGAR, PETITIONER.

(Ante, p. 76.)

Tutor—Factor loco tutoris.

An aunt and her pupil niece were the only beneficiaries in a trust-estate. The aunt being one of the trustees, and under the trust-deed the sole tutor and curator of her niece *quoad* said estate, removed the child out of the jurisdiction of the Court, and failed to comply with an order of Court to appear personally at the bar. Her estates were thereupon sequestrated, and a judicial factor appointed.

In a petition at the instance of the child's father to have the aunt removed from the office of testamentary tutor and curator, and a factor *loco tutoris* appointed, or to have the child's interest committed to himself as her tutor curator, and administrator-in-law, the Court appointed the judicial factor on the aunt's estate to be factor *loco tutoris* to the child.

Sequel to case reported *supra*, November 10, p. 76.

Upon 28th November 1893 James Edgar presented a petition setting forth that the trustees under Mr and Mrs Foster's trust-disposition and settlement were thereby appointed tutors and curators to such of the beneficiaries under the settlement as might be in pupillarity or minority, and that Miss Margaret Brown Fisher, as the only survivor of the original trustees, was sole tutor of the petitioner's daughter *quoad* all interest which she had in said trust-estate, and praying the Court in the

circumstances "to remove the said Margaret Brown Fisher from the office conferred upon her by the said mutual trust-disposition and settlement of the said George Fisher and Mrs Everina Burns or Fisher, dated and recorded as aforesaid, of testamentary tutor and curator to the said Everina Burns Edgar, and, in the discretion of your Lordships, either to appoint such fit person as your Lordships may select to be factor *loco tutoris* of the said Everina Burns Edgar, with the usual powers, but only in so far as concerns her share and interest in the said trust-estate, he always finding caution before extract; or otherwise to abstain from making such appointment and to commit the care of the child's share and interest in said estate to the guardianship of the petitioner, her father, as her tutor, curator, and administrator-in-law."

No answers were lodged by Miss Fisher, but the other trustees lodged answers submitting that the petition was unnecessary, and respectfully urging that if an appointment were made it should be conferred on Mr Macleod, the judicial factor upon Miss Fisher's estate.

Upon 20th December 1893 the Court pronounced the following interlocutor:—

"Appoint Mr John M. Macleod, chartered accountant in Glasgow, to be factor *loco tutoris* to Everina Burns Edgar, mentioned in the petition, with the usual powers, including power to uplift and discharge all sums and estate due or to become due to her, he always finding caution before extract; and decern."

Counsel for Petitioner—Dickson—Christie. Agents—Simpson & Marwick, W.S.

Counsel for Trustees—Lees. Agents—Macpherson & Mackay, W.S.

Thursday, December 21.

SECOND DIVISION.

[Lord Stormonth Darling,
Ordinary.]

HUNT v. HUNT.

Process—Expenses—Husband and Wife—Wife's Expenses of Reclaiming—Note Refused.

In an action of divorce by a husband against a wife, where the wife reclaimed against decree of divorce pronounced by the Lord Ordinary, and the Court adhered to the interlocutor without calling upon pursuer's counsel for a reply—*held* that the wife was not entitled to the expenses of the reclaiming-note.

Husband and Wife—Condonation by Husband of Adultery by Wife—Proof of Condonation—Cohabitation.

Opinion (per Lord Stormonth Darling) that condonation by a husband of his wife's adultery could not be in-