Tuesday, July 11.

SECOND DIVISION.

EDMISTON, PETITIONER.

Trust-Settlement—Pupil's Maintenance and Education—Administrator-in-Law. In a petition at the instance of a father of three pupil children, an advance from the interest of money belonging to them authorised to be made to him as an individual for their maintenance and education, he, although in embarrassed circumstances, being stated by the trustees in charge of the money as the most proper person to have charge of the children.

Observed (*per* Lord Neaves), that, as administrator-in-law, he was a creditor, and could not apply to the equitable jurisdiction of the Court by petition, but must proceed by ordinary action.

Mr Edmiston's three pupil children were entitled under the trust-deed of their maternal grandfather to a sum of about £22,000, yielding a free income of £880, subject to a deduction of £150, paid to Mr Edmiston under his marriage-contract. During Mrs Edmiston's lifetime this money was liferented by her, and the whole income was paid to her by her father's trustees. For some time after her death they paid to Mr Edmiston £500 a-year for his children, but latterly refused to do so without judicial authority. The children had all along resided with him. He accordingly presented this petition "for himself, and as administrator-in-law" for the children, stating that some years ago he met with reverses in business, and that the income of the children's means was necessary to enable him to maintain and educate them in the manner in which they had lived during their mother's lifetime. He therefore prayed the Court to ordain Mr Miller's trustees to make payment to him, "as administrator-in-law for his children, and for their behoof," of the free annual income, or otherwise to ordain them to make payment to him of such portion of the free income as to the Court should seem proper for the suitable maintenance and education of the children.

The trustees lodged answers, in which they stated that they were advised that the petitioner might be held to be domiciled in England, and that, if so, they were not authorised to continue the payment without the authority of the Court. They stated at the bar that they considered the petitioner the most proper person to have the charge of his children, and to disburse any money that might be advanced for their maintenance and education.

Lancaster for petitioner.

Balfour for respondents.

At advising—

Lord Benholme—I have considerable doubts as to the rights of this father as administrator-in-law. We have no sufficient evidence as to his guardianship in England, and in respect of his domicile, and that of the children, we cannot look on him as a Scotch guardian. But in our position as protectors of all minors we can surely authorise the trustees to draw on this fund for what is necessary for the children, and pay the money to him, as a proper person to have charge of the children, and a trustworthy dispenser of the money.

Lord Neaves—I am of the same opinion. I could not countenance this petition as at the instance of this father as administrator in-law. As administrator-in-law he is a creditor, and ought to have brought an ordinary action. But he applies, not only in that capacity, but for himself, and he applies to us as a court of equity, and says, my circumstances are embarrassed, and my children cannot be supported in a manner becoming their position and prospects unless you allow them an allowance out of their money. There is no objection to him,—so far from that the trustees state that he is the proper person to educate and bring up his children, and I can see no objection to giving him an allowance for their maintenance and education, as suggested.

Lord Justice-Clerk and Lord Cowan concurred.

Agents for Petitioner—Webster & Will, S.S.C.

Agents for Respondents—Jardine, Stodart & Frasers, W.S.

Saturday, July 15.

FIRST DIVISION.

PAGAN *v.* PAGANS & FORDS.

Process—Expenses—New Trial. Circumstances in which the defenders were found entitled to the expenses of the first trial, though the pursuer had been successful in it, the pursuer having abandoned the action after the verdict in the first trial had been set aside, and a new trial granted.

In this case, which was brought for reduction of the trust-deed and settlement of the late Mr Pagan of Clayton, writer and banker in Cupar-Fife, an issue was sent to a jury, on which they returned a verdict in favour of the pursuer, who was the deceased's eldest son. The defenders (Fords) moved for a rule to show cause why a new trial should not be granted. After a hearing upon the rule, which was granted, their Lordships came to be of opinion that the rule should be made absolute and a new trial granted. When the case came up on the defenders' motion to fix the day for the new trial, the pursuer appeared, and put in a minute, stating that in the first trial he had effected the only object he had in view, and cleared his own reputation as a man of business from certain imputations which he had considered put upon it, and he did not intend to prosecute the action farther, but would consent to absolvitor going out.

The case thereafter came up on a motion for absolvitor, with expenses, on the part of the defenders.

Solicitor-General (Clark), with him Lee and Watson, for the defenders, contended that the expenses of the first trial, which had been reserved by their Lordships upon granting a new trial, in accordance with the general usage of the Court in such cases, should now be given him. They urged that where the first trial failed through the miscarriage of the jury, the practice was to give no expenses to either party. But here the pursuer, taught by the experience of the first trial, did not think proper to go to a second, but consented to absolvitor going out, on the verdict in the first being set aside. Referring to the pursuer's minute, he endeavoured to show that the pursuer had not brought the action so much to get his father's deed set aside as to free himself personally from what he considered a