

Saturday, July 10.

SECOND DIVISION.

PETITION—BROCKIE.

*Petition to appoint Trustees—Jurisdiction.*

An English deed appointed certain trustees, who predeceased the truster. The deed applied to the whole means of the truster, both in England and Scotland. *Held* that it was *ultra vires* of the Court to appoint new trustees in place of those deceased, the proper Court of resort being in England.

This case came up by reclaiming note against an interlocutor pronounced by the Lord Ordinary (Young), in a petition presented by Mrs Jane Lord or Brockie, and George William Brockie for the appointment of trustees. The circumstances were as follows—Thomas Brockie, on November 14 1850, by deed of settlement conveyed and assigned to Walter Anderson, general carrier, Edinburgh, and James Lord, cotton-spinner, Bacup, in the county of Lancaster, the hereditaments and premises situated in the barony of Portsburgh and sheriffdom of Edinburgh; also his share and interest in a certain annual rent-charge of £12, payable out of certain hereditaments, also situated in Portsburgh; and also two policies of insurance, amounting together to £999, 19s., but in trust always for the purposes therein mentioned, viz:—

- (1) That so long as the truster was not bankrupt or insolvent the trustees were to pay the rents and profits of the trust-estate to him.
- (2) That in the event of his becoming bankrupt or insolvent, the rents and profits should be paid to his wife on her own receipt.
- (3) That if the truster survived his wife, the rents and profits were to be paid and applied to his own benefit and that of his children.
- (4) That if his wife Jane Brockie survived him, the rents and profits were to be applied to her use during her life.
- (5) That after the death of both, the subjects were to be held for the children of the marriage, in such shares as the spouses jointly or the survivor might direct by any deed executed by them, and failing such directions in equal shares.
- (6) That in the event of there being no child or children of the marriage, or issue of such child or children surviving the term of payment, the estates were to be held for the next of kin of the truster.

Both Mr Lord and Mr Anderson accepted the trust, and the conveyance of the policies of assurance was duly intimated to the two assurance companies, but no title was made up in the persons of the trustees to the heritable estate. The trustees both predeceased the truster, who died at Southport on 14th October 1874. The petition set forth that it had therefore become necessary that new trustees should be appointed to carry out the purposes of the deed of settlement. The petitioner George William Brockie has attained majority.

The application was presented under section 12 of "The Trusts (Scotland) Act 1867," and section 3 of the "Titles to Land Consolidation (Scotland) Amendment Act, 1869."

The interlocutor of Lord Young was as follows—

"3d July 1875—The Lord Ordinary having considered the petition, and heard counsel for the petitioners—Refuses the prayer of the petition, and decerns.

"*Note*—The indenture of 14th November 1850 is an English deed, the meaning and legal effect

of which this Court is incompetent to determine without the aid of an English Court or of counsel learned in English law. Assuming that a trust is thereby well constituted, and that there are interests thereby created which require the protection of some judicial interposition to supply trust machinery in lieu of that which has failed according to the representation in the petition, I am of opinion that this is not the Court to resort to for that purpose. It is an English trust created by an English deed for behoof of English beneficiaries, and it is for the English Court having jurisdiction in the matter to afford any remedy which the circumstances may require. This Court may have to determine whether or not the indenture is efficacious to carry real property in Scotland, but under this petition the only question is about repairing the machinery of the trust which is said to have broken down, and it appears to me that this is a question for the determination of the proper Court in England. With respect to any property in Scotland which the deed may be held effectually to carry, we shall certainly recognise the validity of any appointment which the English Court having jurisdiction in the matter of the trust may be fit to make. In the case of a Scotch trust we should not hesitate to supply a failure of trustees in circumstances which seemed to us to require that this should be done, although part or all of the property affected by the trust happened to be in England, and I think it improbable that an English Court would interfere or hesitate about leaving the matter to our determination. By interfering in this case we might do great injustice, and an appointment by us might be disregarded by the Court in England which has jurisdiction in the trust, and is undoubtedly competent to make any appointment that may be required."

The petitioners reclaimed; and after hearing counsel the Court refused the reclaiming note, and adhered to the Lord Ordinary's interlocutor.

Counsel for the Petitioners—Burnet. Agents—Mason & Smith, S.S.C.

Tuesday, 13th July.

SECOND DIVISION.

[Lord Shand, Ordinary.]

EAGLESHAM & CO. v. GRANT.

*Principal and Agent—Partnership—Agreement for Commission on Profits—Cash Advances.*

By minute of agreement A (a shopkeeper) in consideration of B's guaranteeing a composition to A's creditors, bound himself to transfer his whole business and estate to B with power to B to realize the estate and carry on the business in any way he might direct. A was likewise bound to devote his entire time and energies to the business, but was prohibited from ordering goods without B's express written authority. B was further to receive a commission of 7½ per cent. on all monies recovered by him, and was to account to A for the balance after fulfilment of the purposes of the agreement. A having ordered goods, but without B's authority as stipulated, *held* that the terms of the minute and the subsequent actings of the parties did not import that A and B stood to one another in the