

Saturday, January 26, 1889.

SECOND DIVISION.

[Lord Wellwood, Ordinary.]

BALFOUR, PETITIONER.

Judicial Factor—Special Powers—Insanity—Aliment to Next-of-Kin out of Ward's Surplus Income—Nobile Officium.

An application by the curator bonis of a person *incapax* for authority to make alimentary allowances out of the surplus income of the ward's estate to first cousins of the wards, who were in destitute circumstances, *refused*.

Upon 17th December 1872 James Balfour, W.S., Edinburgh, was appointed *curator bonis* of James Robert Lloyd, who was of unsound mind, upon the petition of his uncle Mr Joseph Lloyd.

He now presented a note for special powers under the Pupils Protection Act (12 and 13 Vict. cap. 51), sec. 7, to pay a certain portion of the surplus income of the ward to certain of his relations. The circumstances under which the application was made were as follows:—

At the time of the curator's appointment the estate of the ward amounted to £46,977, 2s. 5d. Upon 31st March 1887 the amount of the estate was £77,017, 17s. 2d. The annual revenue was £25,665, 5s. 11d., and the expenses of the wards' maintenance, management, &c., amounted to £609, 13s. 6d., leaving a surplus revenue of £1956, 12s. 5d. The ward had thus been under curatory since 1872. He had always been of weak intellect, having inherited this from the families of both his father and mother. He was forty-eight years of age, unmarried, and in good health. A request was made to the curator by the ward's next-of-kin, who were in poor circumstances, for an annual allowance out of the free surplus. These next-of-kin were stated to be the ward's cousins, children of his uncles, William Evans Lloyd and Joseph Lloyd, both deceased. The children of William Evans Lloyd were—1. Alfred Lloyd, cabinetmaker, 16 Copley Street, London, wages £1, 15s. per week; 2. Mrs Lucretia Sarah Lloyd or Saunders, a widow, residing in Globe Road, Mile End, Old Town, London, income £30 per annum, derived from leasehold property, the leases of which expired in five years; 3. Mrs Eliza Lloyd or Merman, residing at Leatherdale Street, Mile End, Old Town, London, income £26 per annum. She had a son aged seventeen, then earning 8s. per week.

There were two children of Joseph Lloyd, a boy aged fourteen and a girl aged eleven, who were supported by their mother, whose income amounted to £36, 8s. per annum, derived from leasehold property, the leases of which expired in three years.

The Accountant of Court reported—"The accountant is not aware of any case where allowances have been granted to next-of-kin so distantly removed as cousins.

"The son of William Evans Lloyd is in receipt of good wages as a tradesman, and both the daughters have for the present an income on

which they have been able to live; but it is stated in a letter by the said Alfred Lloyd, dated October 1888, and addressed to the agents for the curator, that both Mrs Saunders and Mrs J. Lloyd have received notices from the freeholder to repair their respective houses, and that neither of them have the means of meeting the cost of such repairs; and further, that if they are obliged to give up the houses they will be left nearly destitute.

"The curator has not stated any amount he would suggest as an annual allowance, and until judgment has been given on the principle involved, it may be premature to consider that."

The Junior Lord Ordinary (WELLWOOD) reported the matter to the Second Division of the Court. In his note he stated—. . . "I have not been referred to, and I do not know of any case in which the Court has in similar circumstances authorised payment of an allowance to collaterals out of a ward's estate. The only cases in which, so far as I know, such payments to persons, other than those whom the ward was legally bound to support, have been sanctioned, have been where the ward himself, when sane, was in use to make alimentary payments to the persons in question, or had clearly expressed his intention to do so. In the present case these elements are wanting—see *Dunbar*, March 7, 1876, 3 R. 554, and authorities there quoted in the accountant's opinion."

The petitioner argued—This was a case in which the Court could exercise its discretion. In former cases the Court had exercised a similar discretion, as they had given payments out of the ward's estate which were not authorised by the terms of the Act under which such petitions were presented—*Allan*, November 13, 1869, 8 Macph. 139. Here there was a large surplus revenue, the persons to be benefited were in poor circumstances, were the near relatives of the ward, and were the persons entitled to succeed to the estate upon his death. It was not probable that the ward would ever recover his mental health. In the case of *Dunbar* there were other persons whose interests had to be considered besides the brother of the ward, whom it was proposed to benefit.

The Court remitted the cause back to the Lord Ordinary with instructions to refuse the note.

Counsel for the Petitioner—Kermack. Agents—Mylne & Campbell, W.S.

Saturday, January 26.

SECOND DIVISION.

GRANT AND OTHERS, PETITIONERS.

Nobile Officium—Guardian and Pupil—Authority to Grant Bonds and Dispositions in Security over Ward's Estate.

A pupil proprietor of a fee-simple estate succeeded thereto under burden of certain provisions for the younger children of the disponent, payable one year after the death of the latter, and bearing interest at 5 per cent. The interest amounted to £689, 10s. 11d. per annum.

The tutors and curators of the pupil presented a petition to the Court for authority to raise by bonds and dispositions in security over his estate a sum sufficient to pay off these provisions. It appeared that the interest payable on such a loan would amount to £482, 13s. 8d. per annum, and the annual saving to the ward would therefore be £206, 17s. 3d. for the period of eight years.

The Court granted the prayer of the petition.

This was a petition at the instance of Mrs Mary Jane Jackson or Grant, widow of the late Henry Alexander Grant, of Western Elchies, and others, tutors and curators of James William Hamilton Grant, now of Wester Elchies, for authority to grant bonds and dispositions in security for younger children's provision.

The late Mr Grant of Wester Elchies, formerly heir of entail in possession, and thereafter heritable proprietor of these lands, executed a disposition thereof in favour of himself in liferent, and to James W. H. Grant and his heirs in fee, of date 14th June 1884. Mr Grant reserved power to grant a bond or bonds of provision in favour of his child or children who should not succeed to the lands and estates, under such terms as he should think proper—if one child one year's free rent or value, if two such children two years' free rent or value, and if three or more children three years' free rent or value of the said entailed estates, to be ascertained in the manner prescribed by the Statute 5 George IV., chap. 87, entitled "An Act to authorise the proprietors of entailed estates in Scotland to grant provisions to the wives or husbands and children of such proprietors," and payable therein mentioned, and to charge the same upon the estate by bond or bonds and dispositions in security in ordinary form when the amount had been ascertained and fixed; it being declared by the foresaid disposition that any such bond or bonds of provision already granted by the disponent should be as valid and effectual as if granted after the execution of the disposition.

Mr Grant by bond of provision executed on 26th day of January 1878, and recorded in the Books of Council and Session the 25th January 1888, bound and obliged himself and the heirs of entail succeeding to him, to make payment to the child or children procreated or to be procreated of his body who should be alive at his death, and should not succeed to the said entailed

estates, the following provisions bearing interest at the rate of 5 per centum per annum, and payable one year after his death, viz., if one such child one year's free rent, if two such children two years' free rent or value, if three or more such children three years' free rent or value of the said entailed estates.

By declaration dated 19th November 1884, annexed to the said bond of provision, and recorded along with it, Mr Grant declared that the bond of provision should remain in full force and effect against him and the heirs succeeding to him in the said estates of Wester Elchies and others.

Mr Grant died on 7th July 1886, survived by his widow, the petitioner, and seven children, including James W. H. Grant, and leaving a settlement by which he appointed the petitioners tutors and curators to his children.

The petitioners, *inter alia*, averred—"James William Hamilton Grant was born on the 3rd day of April 1876, and now is 12 years of age. Henry Alexander Grant having been survived by six younger children, the provision to which they were entitled was three years' free rent of the said estate of Wester Elchies, which has been found to be £13,790, 18s. 3d. Said provision was payable one year after the death of the said Henry Alexander Grant, viz., on 7th July 1887, and under the said bond of provision, interest is payable at the rate of 5 per centum per annum until the said provision is paid. As money could now be borrowed at a less rate of interest if the tutors and curators of the said James William Hamilton Grant could grant bonds and dispositions in security over his estates for the amount of said provisions, a large saving of interest would in this manner be effected. The present application is therefore made for authority to grant bonds and dispositions in security for £13,790, 18s. 3d.—the amount of his brothers' and sisters' provisions."

The Court remitted to Mr George M'Intosh, W.S., to report on the circumstances set forth in the petition.

The reporter, after narrating the circumstances as already set forth, proceeded:—"As Master James William Hamilton Grant, who is now proprietor of the lands and estate of Wester Elchies, is a pupil, he is not in a position to implement the obligation upon him in the said bond of provision by making payment to his brothers and sisters of the amount of their provision, and the petitioners as his tutors-nominate have no power, without obtaining the authority of the Court, to borrow money on their ward's estate for the purpose of making payment of the provision. . . . Master James William Hamilton Grant is not possessed of any moveable estate from which he can pay the amount of his brothers' and sisters' provisions. . . . The petitioners do not set forth in the petition that there is any urgent necessity for their obtaining such authority in order to save their ward's estate, but they state that the amount of the younger children's provisions can now be borrowed at a less rate of interest than 5 per centum per annum if they are empowered to grant a bond and disposition in security over the estate for the amount, and a large saving of interest will in this manner be effected to the ward. . . . Interest at the rate of 5 per cent. on the sum of £13,790, 18s. 3d. is