

shall apply to all factories brought under the supervision of the Accountant of Court. That section refers to factories brought under the supervision of the Accountant for the first time, and applies to old factories in which it may be inadvisable to incur the expense of an exhaustive audit from the beginning of the factory. That inadvisability may arise from the fact that the factor is not asking for a judicial discharge, or from the fact that minute investigation into all the details of the factory is not desirable.

The exigency which is said to have arisen here is therefore completely provided for by the Act, and it is for the Accountant of Court to consider whether in the special circumstances of the case he will dispense with a full audit, either because a discharge by the beneficiary has been produced or because the amount of the estate does not warrant the expense of such an audit. That discretionary power being left to the Accountant of Court in exceptional circumstances, I see no ground for the Court, who have no knowledge of such circumstances, interfering to dispense with the necessity of submitting these accounts to the Accountant of Court.

The LORD PRESIDENT and LORD KINNEAR concurred.

The Court adhered.

Counsel for the Petitioner—Tait. Agent—F. J. Martin, W.S.

Friday, November 10.

FIRST DIVISION.

EDGAR, PETITIONER.

Parent and Child—Custody of Child—Petition—Competency in Bill Chamber in Vacation.

Held by Lord Kinnear that it was competent for the Lord Ordinary on the Bills in vacation to deal with a petition for the custody of a child.

Parent and Child—Custody of Child—Sequestration of Estate to Enforce Compliance with Orders of Court.

A father presented a petition for the custody of his child which had been taken away from him by its aunt. The Court granted the petition, but before the interlocutor was pronounced the aunt absconded, taking the child with her. The aunt was thereafter charged at her usual residence to implement the decree, but without effect. The father then presented a second petition craving the Court to ordain the child's aunt to compare personally at the bar, and in the event of her failing to appear to sequester her estate. The aunt having failed to appear, the Court, being of opinion that she was acting in manifest contempt of Court, granted sequestration of her estate.

James Glen Edgar was married to Mary Tollance Fisher on 29th July 1881. Mrs Edgar died on 24th June 1884. There was one child of the marriage, Everina Burns Edgar, born on 26th May 1882.

After Mrs Edgar's death the child was sent by her father to reside with her maternal grandmother Mrs Fisher, and her aunt Margaret Fisher, at 2 Morris Place, Glasgow. Mrs Fisher died on 25th August 1893, predeceased by her husband. By mutual trust-disposition executed between them their whole estate was bequeathed to their children as trustees for behoof of the survivors of such children, and the issue of any who might have predeceased. At the date of Mrs Fisher's death Margaret Fisher was the only surviving child of Mr and Mrs Fisher, and accordingly she was the sole trustee under the mutual trust-disposition. The only other person interested as a beneficiary under the mutual trust-disposition was Everina Burns Edgar. In 1892, prior to Mrs Fisher's death, Margaret Fisher assumed John M'Killop and Michael Dunbar to act along with her under the mutual trust-disposition.

On 1st September Mr Edgar, who had married again in 1887, removed the said child Everina Burns Edgar from the care of her aunt Margaret Fisher, to his own home at 6 Hampden Terrace, Glasgow. On 3rd September, while the child was out for a walk, she was taken away by a youth, and Mr Edgar was unable to ascertain where she had been taken to.

Mr Edgar thereafter presented a petition in the Bill Chamber for recovery of the custody of his child, wherein he set forth the above facts, and stated that he had removed the child from the care of her aunt Margaret Fisher because he had ascertained that she was being brought under Roman Catholic influences, whereas he desired that she should be brought up as a Protestant, and further, that he had reason to believe that the youth who had taken her away was Archibald Fisher, a cousin of Margaret Fisher.

On 5th September intimation and service was ordered by the Lord Ordinary on the Bills, and the petition was thereafter duly intimated, and on 7th September was served personally on Margaret and Archibald Fisher. No answers were lodged, and on 21st September the Lord Ordinary on the Bills (KINNEAR) heard counsel for the petitioner on the question whether the Lord Ordinary on the Bills had power to exercise in urgent cases the functions of the Court in such applications. (Authorities cited—Fraser's Parent and Child, 222; *Buchan v. Cardross*, May 27, 1842, 4 D. 1268.) The Lord Ordinary thereafter granted an order for delivery of the child to the petitioner.

On 20th October Mr Edgar presented a second petition to the Court, in which he made the following statements:—"That after the service upon her of the said petition, and while the matters therein were *sub judice*, the said Margaret Fisher left her home at 2 Morris Place aforesaid, taking with her the said child. The pursuer has

reason to believe that she has removed the child outwith the jurisdiction of the Court, and is presently residing in England or elsewhere outwith the jurisdiction, and is also concealing her address from the petitioner and his agents with the intention of defeating the orders of the Court. The petitioner has used every effort to discover where she and the child are, but without success. The said Margaret Fisher was duly charged upon 26th September at her last known residence to implement the said decree of 21st September 1893, and the said Archibald Fisher junior was on same date personally charged to the like effect. The days of charge have now expired, but neither of the said respondents has done anything to implement the orders of the Court. . . . That the petitioner has reason to believe that the known agent of the said Margaret Fisher, Joseph Shaughnessy, writer in Glasgow, has been in communication with her since her departure from home, and is still in a position to communicate with her. The petitioner has, through his agent, applied to the said Joseph Shaughnessy for the address of his said client, but this he has declined to furnish. The petitioner also believes that the said John M'Killop and Michael Dunbar, the co-trustees of the said Margaret Fisher as aforesaid, are aware where she and the said child are to be found. That the said Margaret Fisher is possessed of or entitled to participate largely in the following heritable and moveable property, means, estate, and effects situated in Scotland in the hands of the following parties, viz., the trust estate of the said deceased George Fisher and Mrs Everina Burns or Fisher, at present standing vested in the said Margaret Fisher, John M'Killop, and Michael Dunbar as trustees. . . . The said Margaret Fisher is also possessed of other property in the hands of parties to the petitioner at present unknown. That portions of the said property, means, and estate and effects, and of the proceeds thereof, and the rents or income derived therefrom, is in whole or in part being remitted to the said Margaret Fisher by the said co-trustees, or by her said agent, who is also agent for said co-trustees, or otherwise in manner unknown to the petitioner, in order that she may support herself while continuing to detain the said child in hiding either within or without the jurisdiction of the Court, and to withhold the said child from the petitioner's lawful custody, and while herself continuing in open contempt of the authority of the Court. The only way of compelling the said Margaret Fisher to surrender herself to the authority of the Court and give obedience to the said interlocutor of 21st September 1893, and to such other interlocutors as the Court may pronounce in this or the petition herein referred to, is to sequestrate the whole property, means, estate, and effects within the jurisdiction which may be found to belong to her, together with the income thereof, and to interdict all parties by whom such property, means, estate, and effects or any part thereof is payable from parting in

any way with the same, or the income and proceeds thereof, except as hereinafter mentioned, until the further orders of the Court. The domicile of the petitioner, of his said child, and of the said Margaret Fisher is in Scotland."

The petitioner accordingly craved the Court "to appoint this petition to be intimated on the walls and in the minute-book in common form, and to be served upon the said Margaret Fisher by serving a copy hereof upon her personally in case she can be found, and if she cannot be found, by leaving a copy for her at No. 2 Morris Place aforesaid, which is her ordinary dwelling-house, and by delivery of a copy hereof for her to her known agent the said Joseph Shaughnessy, or in such other manner as your Lordships may order, and to be served in common form upon the said Archibald Fisher junior, John M'Killop, and Michael Dunbar, and to ordain the said Margaret Fisher, Archibald Fisher junior, John M'Killop, and Michael Dunbar to compare personally at the bar of the Court on such day as your Lordships may appoint, the said Margaret Fisher and Archibald Fisher junior to bring with them and deliver up to the petitioner the said Everina Burns Edgar, and the said John M'Killop and Michael Dunbar to disclose to the Court any information in their possession as to the present abode of the said Margaret Fisher or Everina Burns Edgar; and to ordain the whole respondents foresaid, if so advised, to lodge answers before the day appointed for compareance, or within such other short period as to your Lordships may seem fitting; and on resuming consideration hereof, with or without answers, to conjoin this petition with the petition by the present petitioner presented on 5th September last and hereinbefore referred to, and to deal with the said Margaret Fisher, Archibald Fisher junior, John M'Killop, and Michael Dunbar, on their appearing at the bar, as to your Lordships shall seem good; and in the event of the said Margaret Fisher failing to appear on the day appointed, then to sequestrate the whole property, means, estate, and effects situate in Scotland belonging to her and held as aforesaid or otherwise to the pursuer unknown, and the rents, income, or proceeds thereof, and to appoint such fit person as your Lordships may select to be judicial factor to receive said rents and income of the said property, means, estate, and effects, and so much of the capital or proceeds thereof as may from time to time become due and payable by parties indebted therein, and to discharge the parties liable in payment thereof, and to retain the same until your Lordship's further orders, he always finding caution before extract, but with special power to him to advance to the said Margaret Fisher on her request in writing, such sum out of the said estate coming into his hands as may be necessary to bring her and the said child from their present place of abode to Edinburgh; and further, to interdict the said Margaret Fisher, John M'Killop, and Michael Dunbar, and all other parties in possession of

estate in Scotland belonging to the said Margaret Fisher, from carrying away or otherwise parting with any of the said property, means, estate, and effects, or the rents, income, or proceeds thereof, otherwise than to the judicial factor to be appointed as aforesaid until the recall of the said sequestration."

On 21st October the Court ordered the petition to be intimated and served as craved, and this was done. As Margaret Fisher could not be found, personal service upon her was not effected. - No answers were lodged by Margaret or Archibald Fisher, but Mr M'Killop and Mr Dunbar put in a minute containing the following statements—"The minuters have taken and desire to take no part in the controversy between the petitioner and Miss Fisher. . . . Miss Fisher's disappearance, as also the removal of the child, occurred without the knowledge of these minuters. She did not consult them, nor has she informed them of her address. They have had no communication from her, and they have had no communication with her, nor have they sent her any money. They applied to Mr Shaughnessy, her and their agent, for information as to her address, but he informed them that he also was not aware where Miss Fisher was living. The said trustees are willing to retain or consign in bank Miss Fisher's share of the trust income if the Court makes the necessary order on them."

Counsel for the petitioner thereafter craved the Court on 4th November to conjoin the two petitions, and, without ordaining the said Margaret Fisher to appear at the bar, at once to grant sequestration as craved. He stated that personal service of the petition on Margaret Fisher had not been effected as she could not be found, and continued to conceal her present residence. He was, however, informed that she had been seen, just before presentation of the second petition, at 2 Morris Place aforesaid, her usual dwelling-place in Glasgow as stated in the petition. In acting as she was doing, her object was evidently to evade compliance with the orders of the Court, and to retain the child until she ceased to be a pupil. Sequestration should therefore be granted forthwith. Authority—*Ross v. Ross*, July 18, 1885, 12 R. 1351. This course was adopted in England in similar circumstances—*Miller v. Miller*, 1869, L.R., 2 Prob. and Div. 13, Daniel's Chancery Practice, i. 908.

The Court thereupon pronounced an interlocutor ordaining Margaret Fisher to appear personally at the bar on 10th November, and further interdicting the minuters from making any payment to her out of the trust funds until the further order of Court.

Owing to Margaret Fisher's whereabouts remaining unknown it was found impossible to intimate this order to her personally. It was, however, intimated to her agent and to M'Killop and Dunbar, her co-trustees, and a copy was left at her usual residence. She did not appear in Court on 10th November, and counsel for

the petitioner then renewed his previous motion.

At advising—

LORD PRESIDENT—I think the respondent in this petition is in manifest contempt of Court, and she appears to have gone away for the purpose of avoiding the orders of Court. In these circumstances I think the Court has power to sequester her estate.

LORDS ADAM, M'LAREN, and KINNEAR concurred.

The Court pronounced the following order:—

" The respondent Margaret Fisher having failed to appear in obedience to the order of the Court contained in the interlocutor of 4th November 1893, on the motion of counsel for the petitioner, conjoin herewith the petition at the instance of the present petitioner, dated 5th September 1893, sequester the whole property, means, estate, and effects situate in Scotland belonging to the respondent Margaret Fisher in terms of the prayer of the petition of date 20th October 1893, and the rents, income, or proceeds thereof, and nominate and appoint J. M. M'Leod, chartered accountant, Glasgow, to be judicial factor on the said sequestered estates, with power to him to receive said rents and income of the said property, means, estate, and effects, and so much of the capital or proceeds thereof as may from time to time become due and payable by parties indebted therein, with power to discharge the parties liable in payment thereof, and to retain the same until the further orders of Court, the said judicial factor always finding caution before extract, but with special power to the said judicial factor to advance to the said Margaret Fisher, on her request in writing, such sums out of the said estate coming into his hands as may be necessary to bring her and the petitioner's child Everina Burns Edgar from their present place of abode to Edinburgh: Further, of new interdict and prohibit the said Margaret Fisher, John M'Killop, and Michael Dunbar, trustees acting under the mutual settlement of the late George Fisher and Mrs Everina Burns or Fisher, his wife, from making any payment out of the trust funds in their hands to or on behalf of the said Margaret Fisher except to the said judicial factor, and interdict and prohibit the said Margaret Fisher, John M'Killop, and Michael Dunbar, as trustees foresaid, and all other parties in possession of estate in Scotland, belonging to the said Margaret Fisher from carrying away or otherwise parting with any of the said property, means, estate, or effects, or the rents, means, income, or proceeds thereof, otherwise than to the said J. M. M'Leod, as judicial factor foresaid, until the fur-

ther order of Court, and decern: Find the said Margaret Fisher liable to the petitioner in the expenses of both petitions now conjoined, and authorise the said John M. M'Leod, as judicial factor foresaid, to make payment of the taxed amount thereof to the petitioner: Find the said Margaret Fisher also liable to the said John M'Killop and Michael Dunbar in the expenses incurred by them, and authorise them to retain the amount thereof out of the share of the estate in their hands falling to her," &c.

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

Counsel for the Minuters—Graham Murray, Q.C.—Lees. Agent—Macpherson & Mackay, W.S.

Tuesday, November 14.

FIRST DIVISION.

[Lord Low, Ordinary
on the Bills.

KECHANS v. BARR.

Bill—Suspension of Charge—Caution.

In a case where the suspender of a charge on a bill produced a genuine signature utterly unlike that on the bill, and where the holder of the bill could not allege that the signature thereon was genuine, and had to admit that it differed from that on two other valid bills held by him—held that the note should be passed without caution.

Thomas Barr, wine and spirit merchant, Glasgow, was charged at the instance of William Kechans, merchant, Haywood, Lanark, to pay £1000, being the amount of a bill upon which his name appeared as an acceptor. Of this charge he brought a suspension, on the ground that the alleged signature was not genuine and was unauthorised.

Upon 28th June 1893 the Lord Ordinary on the Bills (Low) ordered answers, and appointed "the charger to produce the bill charged on, and the suspender to produce genuine subscriptions in real transactions bearing his signature of date prior to the charge."

In his answers the charger did not allege that the signature on the bills was genuine, but only that he "had no room to doubt the genuineness of the signature, . . . and that if the complainer did not in fact admit his signature, . . . he authorised this signature to be admitted." He also explained that he had held two other bills purporting to be signed by the complainer which had been acknowledged as valid, but he admitted that the signatures on them differed widely from that on the bill now produced and from the signature of the complainer now exhibited.

The complainer produced a sheet of paper

with his signature upon it subsequent to the date of the charge, but with the explanation that he was a very old man, who had not been in the habit of signing documents, and that consequently he had no earlier signatures to exhibit, that in the case of the other bills he had authorised the signature, which was written by his wife, but that here he had given no authority.

The Lord Ordinary on 18th July 1893 passed the note without caution.

The charger reclaimed, and argued—There was an invariable practice in such cases to require caution—*Ross v. Millar*, December 2, 1831, 10 Sh. 95 (Lord Cringletie's opinion); *Renwick*, November 24, 1891, 19 R. 163. If the complainer admitted that he had authorised the signing of the other bills, the *onus* was on him of proving he had not authorised the signature here.

The complainer argued—The Lord Ordinary was right. In the special circumstances caution should not be required. The signature in question was admittedly quite different from that now exhibited, and genuine—*Wilson v. Hart*, February 25, 1826, 4 Sh. 504; *Paterson v. Mitchell*, November 25, 1826, 5 Sh. 43; *Bruce v. Borthwick*, March 3, 1827, 5 Sh. 517; *Ross v. Millar*, *supra*.

At advising—

LORD PRESIDENT—I think we may adhere to the Lord Ordinary's interlocutor without infringing any of the general rules applicable to cases of this kind.

The complainer alleges that the document in question is a forgery, and upon the Lord Ordinary requiring him to produce several subscriptions in real transactions bearing his signature of date prior to the charge, he makes an explanation which accounts for the absence of documents of that character. He says that he is a very old man, that he does not write well, and that he is not in the habit of signing documents of the character required by the Lord Ordinary. He, however, produces in default a sheet of paper on which he has written his signature, and it is manifestly unlike the signature upon the bill on which the charge proceeded.

Now, the attitude of the respondent turns out to be more complicated than it appeared to be on record. The respondent is in possession of two bills dated prior to the one in question, each of which he held or holds as a valid instrument, and on both of them there is something which purports to be the signature of the complainer, and the respondent is constrained to say that the two signatures do not resemble the signature upon the bill upon which the charge proceeded.

That being so, and looking to the tone of the record, I cannot say that I read the case upon the ordinary footing of a man asserting that the signature upon a bill in his possession is a genuine signature, and that, coupled with the explanations made at the bar, seems to warrant the Lord Ordinary in passing the note without caution.