structed by the members of the association to carry it out. I think it is clear that it was anticipated that the funds collected would be expended once and for all upon that object. There might be a surplus, and if so, it would be given once and for all to some similar object. The existence of a continued trust to hold the funds for carrying on a charitable scheme seems to me to have been altogether outwith the purpose of the subscribers. But it humbly appears to me that the question whether the committee have in the past carried out the instructions of the subscribers, and whether by handing over the surplus to a new set of trustees to be administered as they propose they will now be carrying out these instructions, in the exercise of the discretion given to them, is one which very possibly your Lordships will not feel called upon to decide." He referred to the case of *The Edinburgh Young Women's Christian Institute*, June 24, 1893, 20 R. 894.

With regard to the details of the proposed scheme, the reporter suggested, *inter alia*, that the words "The accounts of the fund shall be annually audited and" should be added at the beginning of article 6 of the proposed trust purposes.

LORD PRESIDENT—This case seems somewhat peculiar at first sight, but the explanations which have been given show that the petition relates not to a mutual benefit society, but to a charity in the nature of a trust, the funds having been invited and obtained on the faith of the resolution read to us. The object of the fund was primarily to provide for the particular case of the sufferers by the shipwreck of the 'Celerity,' but in the words of the resolution any surplus of the fund was to be devoted "to any similar object." That provision distinguishes this case from cases where people have given money for a special purpose which has failed, and in which this Court has held that it has no jurisdiction.

The question, however, remains, whether the Court should exercise its jurisdiction in the particular circumstances of the case. The petitioners say that they are getting old, and that they do not wish the trust to fail. They therefore naturally desire to be relieved of their duties. These seem to me to be reasonable grounds for making the application. The purposes set forth in the proposed scheme appear to be in accordance with the general resolution. The body of trustees proposed is a little large, and there might be a difficulty in getting a quorum if some of the trustees did not accept. I think therefore the last paragraph of the third clause should be altered so as to read "A majority of the accepting trustees for the time being shall constitute a quorum." The suggestion which the Reporter makes that there should be an audit seems a very proper one, and I understand the petitioners are willing to accept it. With these slight alterations I think we should approve of the scheme.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

Some slight amendments having been made on the proposed scheme, the Court pronounced the following interlocutor:—

"The Lords having resumed consideration of the petition, together with the proposed scheme annexed thereto, for the application and administration of the trust fund of £1890, 4s. 3d. sterling, with the interest that has accrued or may yet accrue thereon, referred to in the petition, with also the report thereon by Ewan Macpherson, Esq., advocate, and heard counsel for the petitioners, Settle the scheme No. 19 of process as the amended scheme for the application and administration of the said fund: Find the expenses of this application and incident thereto chargeable against the trust fund, as the same shall be taxed by the Auditor, and decern."

Counsel for the Petitioners — Watt — Duncan Smith. Agents—Ronald & Ritchie, S.S.C.

Tuesday, July 17.

FIRST DIVISION.

[Lord Pearson, Ordinary.

M'ALLEY'S JUDICIAL FACTOR.

Judicial Factor—Trust—Refusal of Trustee to Deliver over Documents—Warrant to Search for Documents and Open Lockfast Places—Nobile Officium.

Two trustees were appointed under a trust-disposition and settlement which came into operation in January 1893. In November 1899 a petition was presented by one of the trustees and three out of the four beneficiaries under the trust praying for sequestration of the trust estate, removal of the two trustees if necessary, and appointment of a judicial factor. It was stated by the petitioners that the other trustee, who was the fourth beneficiary, while claiming to be an acting trustee, had refused to take any part in the trust administration. The Court, without removing the trustees, sequestrated the trust-estate and appointed a judicial factor. The judicial factor entered upon the duties of his office, and applied to the recalcitrant trustee for delivery of certain documents connected with the trust-estate which were in his possession. The trustee took no notice of the request, and the judicial factor raised an action for delivery of the documents, obtained decree in absence, and charged him upon the decree. The trustee paid no attention to the charge, and the judicial factor presented a note to the Junior Lord Ordinary craving the Court to ordain the trustee to appear and bring the writs in question, or alternatively to grant warrant to messengers-at-arms to search for and take possession

of them, and if necessary to open shut and lockfast places. The Lord Ordinary reported the note to the First Division, and the Court (following *Orr Ewing's Judicial Factor*, 11 R. 682) *granted* warrant in terms of the second alternative of the prayer.

On 29th November 1899 William M'Alley and others presented a petition praying (1) for sequestration of the trust-estate of the deceased Mrs Isabella Balfour or M'Alley, who died in January 1893, (2) for removal if necessary of the two trustees appointed by her, and (3) for the appointment of a judicial factor. The petition was presented to the Inner House, as it contained a prayer for the removal of the trustees.

By her trust-disposition and settlement Mrs M'Alley directed her trustees to realise the trust-estate and divide the residue into five shares. One of such shares was to be paid to each of her four children, William, Margaret, Annie (Mrs Robert Barr), and Catherine (Mrs William Stoddart). The remaining share was to be held by the trustees for behoof of the children of her deceased daughter Helen (Mrs Hardie). The trustees were two in number, Mr Robert Barr, clerk in Grahamston, and Mr William Stoddart, warehouseman in Selkirk, each of whom had married a daughter of the testatrix.

The petition was presented by the son and two daughters of the testatrix, and Mr Robert Barr as one of the trustees. It set forth that, although nearly seven years had elapsed since Mrs M'Alley's death, no steps had been taken for the administration of the trust; that William Stoddart, while claiming to be an acting trustee, had refused to take any part in the administration; and that the trustees, who were nominated executors, had not taken out confirmation to the moveable estate nor completed a title to the heritable estate. It was further averred that Mr and Mrs William Stoddart had retained the household furniture of the deceased and the cash in the house at her death, and a deposit-receipt in her name for £40, and that they had also collected the rents of a heritable property, one-fourth *pro indiviso* share of which had belonged to the deceased, and retained the titles to that property in their possession. It was also stated that Mrs William Stoddart had intimated a claim against the estate amounting to £290 for board of her deceased mother to the time of her death.

On 14th December 1899 the First Division of the Court, without removing the trustees, sequestrated the trust estate, appointed Mr John Dalziel, C.A., to be judicial factor thereon, and remitted to the Lord Ordinary on the Bills for further procedure.

The judicial factor having found caution and entered on the duties of his office, learned that the deposit-receipt and the title-deeds above mentioned, as well as Mrs M'Alley's trust-disposition and settlement itself, were still in the hands of William Stoddart. No notice being taken of several applications for delivery of them, the factor raised an action against him for delivery, *inter alia*, of those writs, and for count, reckoning, and payment. In that action no appearance was made for the defender, and decree in absence was obtained against him on 1st March 1900, *inter alia*, ordaining him to deliver up the said writs to the judicial factor. On this decree William Stoddart was charged on 31st March, but he paid no attention to the charge, notwithstanding repeated applications made to him on the subject.

The judicial factor thereafter presented a note in the factory to the Junior Lord Ordinary (Pearson), in which he stated that Stoddart pretended he had handed all the papers to his wife, but that this was merely a subterfuge to evade implementing the decree of Court.

The prayer of the note was as follows:— "May it therefore please your Lordship to ordain the said William Stoddart and Mrs Catherine M'Alley or Stoddart to appear personally before your Lordship on a date to be fixed by your Lordship, and that within the Parliament House, and to bring with them, exhibit, and produce before your Lordship the writs above mentioned; or otherwise to grant warrant to messengers-at-arms to search for, recover, and take possession of (1) the deposit-receipt, (2) the trust-disposition and settlement, and (3) the title-deeds above mentioned, and, if necessary for that purpose, to open all shut and lockfast places, and to deliver the said writs to the said John Dalziel, judicial factor foresaid, and to decern."

The Lord Ordinary reported the case to the First Division.

Note.—[*After stating the facts as above set forth*]—"The judicial factor could, I suppose, imprison Stoddart on the decree *ad factum præstandum*. But that would probably lead to delay, and moreover there is no certainty that it would lead to the recovery of the writs, which after all is the urgent matter.

"The first alternative of the prayer of the note might possibly have the desired effect, notwithstanding the factor's previous experience in this case. But if Mr and Mrs Stoddart did not compear in obedience to the order, or compearing did not produce the writs, they could but be imprisoned.

"The writs being what are wanted, there seems to be direct authority for the alternative prayer in the case of *Orr Ewing's Judicial Factor*, 1884, 11 R. 682, page 686. In the present case it may be thought that the foundation for a warrant to open lockfast places is fully laid by the ample notice already given to the trustee William Stoddart, by his disregard of the charge on the decree, and by the explanation given by him that he has handed the documents to his wife.

"My reason for reporting the case is that the remedies proposed appear to lie within the *nobile officium* of the Court, and that it being at least arguable that they do so, it is desirable that the validity of the strong measures which appear to be called for should be beyond question."

The judicial factor referred to the case of *Orr Ewing's Judicial factor*, March 7 and 12, 1884, 11 R. 692, and maintained that the present case was *a fortiori* of that one.

LORD PRESIDENT—This is happily a very exceptional case. Indeed I do not recollect seeing one exactly like it.

The respondent was appointed a trustee under a trust-disposition and settlement, and for more than seven years he has succeeded in evading his duty and doing nothing in the administration of the trust. He has defied the trustee who desired to act and the persons interested in having the trust duly administered. When a judicial factor was appointed and sought to get possession of certain writs, with a view to putting the trust into a working condition, the respondent would do nothing to aid him. Then the judicial factor very properly—it was the only thing he could do—raised an action against him, concluding for delivery of the writs and for count, reckoning, and payment. In this action he obtained a decree in absence ordaining the respondent, *inter alia*, to deliver up the writs to him. This decree was extracted and the respondent was duly charged thereon, but still he does nothing and pays no attention to the charge. He has thus absolutely defied the decree of the Court and has taken no notice of its order, and the question is, "What is now to be done? It is clear that the Court cannot allow its orders to be thus disregarded. The factor in his present note prays alternatively either (*first*) that the respondent shall be ordained to appear personally and bring the writs with him, or (*second*) that warrant shall be granted to messengers-at-arms to search for and take possession of the writs. It is suggested by Mr Pearson—and it very probably is the case—that if we made the first order, the respondent would hand the writs to someone else and then say that he cannot get them. The better course, therefore, it appears to me, will be to grant the order sought in the second alternative prayer. It is a strong order no doubt, but not unprecedented. In the case of *Orr Ewing* there was not the same persistent disregard of the decree of the Court as there has been in this case. Then in that case there was a great difference of opinion between the English and the Scotch Courts as to their respective jurisdictions, and there was no question of the writs being destroyed or improperly put away, as they were exhibited to the judicial factor in an office in Glasgow. I think Mr Pearson is well founded in saying that the present case is *a fortiori* of that case, and therefore that the order should be granted.

LORD M'LAREN — I am of the same opinion. If this had been a question of withholding delivery of documents by one private individual from another, the remedy would have been imprisonment of the recalcitrant person till he restored them. But this trust is under the control of the Court and administered by its factor, and the judicial factor has already raised an action against the respondent, obtained decree against him, and has given a charge on that decree. As the holder of the documents still declines to deliver them up, I have no doubt that we are entitled to grant what is equivalent to a second diligence against him. This has been done before, and I agree that this is a proper case for exercising our power.

LORD ADAM and LORD KINNEAR concurred.

The Court granted warrant in terms of the second alternative of the prayer of the note.

Counsel for the Petitioner — Pearson. Agents—Beveridge, Sutherland, & Smith, S.S.C.

HIGH COURT OF JUSTICIARY.

Wednesday, July 18.

(Before Lord Young, Lord Trayner, and Lord Moncreiff.)

MARTIN *v.* ANDERSON.

Justiciary Cases — Complaint — Relevancy — Specification — Modus—Burgh Police (Scotland) Act (55 *and* 56 *Vict. c.* 55), *secs.* 87 *and* 477.

In a suspension, *held* that in a complaint under the Burgh Police (Scotland) Act 1892, a description of the offence charged in the words of the Act founded on is sufficient, and that, contrary to the general rule, it is not necessary, where an Act describes an offence in general terms, to specify the *modus* in which the offence so described has been committed.

Section 87 of the Burgh Police (Scotland) Act 1892 enacts—"If any person shall . . . attempt to rescue, or aid or incite any person to rescue or attempt to rescue, any prisoners whom a constable shall have in custody, or be aiding to secure, such person so offending shall, for every such offence, be liable to a penalty."

Section 477 of the Act enacts — "In describing any offence against this Act or other Act under which the magistrate may have jurisdiction, it shall be sufficient to refer to the section of the Act founded on, without setting forth the enactment in words at length, and the description of any offence against the Act founded on in the words of such Act shall be sufficient at law."

Peter Johnston Martin, painter, Charlotte Place, Lerwick, was charged in the Police Court, Lerwick, at the instance of William John Anderson, Burgh Prosecutor, upon a complaint under the Burgh Police (Scotland) Act 1892, setting forth that Martin "did, on the morning of the 3rd day of June 1900, in North Commercial Road, Lerwick, attempt to rescue Robert Walter Peterson Christie, a prisoner whom William John Anderson and John Hay, constables of the Lerwick Burgh Police, had in custody; as also at the time and place aforesaid, and on