

## The Legal News.

Vol. VII.

APRIL 5, 1884.

No. 14.

### THE ORR EWING CASE—CONFLICT BETWEEN THE SCOTCH AND ENGLISH COURTS.

A case has occurred in Scotland, which has attracted a great deal of attention, and has brought up an interesting question as to the jurisdiction of the courts in that country. The facts as we find them stated in the judgment of the Court of Session are in substance as follows:—John Orr Ewing, a merchant of Glasgow, died on the 15th of April, 1878, domiciled in Scotland. His settlement was executed according to the forms of Scotch conveyancing. He was the owner of a landed estate in Dumbartonshire, and the great bulk of his moveable property was at his death situated in Scotland, the proportions being £435,314 (or fifteenth-sixteenths) in Scotland, and £25,235 (one-sixteenth) in England. All the trustees are Scotchmen, but two of them are resident in England. The testator had no English creditors, and none of the purposes of the estate required to be performed in England. The trustees proceeded to make up their title to the personal estate by presenting an inventory in the Commissary Court of the county of Dumbarton, including the English as well as the Scottish moveables, and having obtained confirmation from the Commissary, in terms of section 9 of 21 and 22 Vict., c. 56, and had the confirmation stamped with the seal of the Probate Court in England, under section 12 of the same Act, they reduced the personal estate into possession. They were thus duly vested by a decree of the Judge of the Commissary Court of Dumbartonshire, pronounced under express statutory authority, with the whole personal estate of the deceased, and having brought the English assets to Scotland, they proceeded to administer the trust according to the usual practice in that country. Such administration by the laws of Scotland required no further legal proceedings after the title of the trustees had been completed by confirmation as executors.

While the trustees and executors were in the course of administering the estate according to the directions of the testator, an "administration suit" was instituted in the Chancery Division of the High Court of Justice in England, and was afterwards carried on in the name of Mr. Malcolm Hart Orr Ewing, a minor interested in the residue, and orders have been pronounced against the defenders in that suit, the effect of which would be to supersede the trustees in the performance of the duties entrusted to them by the testator, and to put the management and distribution of the estate entirely in the hands of the Chancery Division. The other persons interested in the residue then brought suit in Scotland, and averred that the effect of the orders pronounced by the Chancery Division will be to cause the making up of accounts, which are altogether unnecessary, to transfer the personal estate in the defenders' hands from Scotland to England, together with the writs, evidents, and securities thereof, and so place them beyond the control of the defenders as trustees, and beyond the jurisdiction of the Courts of Scotland, and thereby defeat the diligence and process otherwise competent to the plaintiffs, and tend to lessen, if not destroy, the value of their interests in the estate. They further averred that these proceedings will cause great and unnecessary expense to the estate, and diminish the amount of the residue to which they are entitled. Lastly, they averred that the defenders, in obedience to the orders of the English Court, hold themselves not to be entitled to make any payment out of the estate without the special authority of the English Court, or some official thereof.

On these allegations the plaintiffs or "pursuers" asked that the trust estate be administered in Scotland according to Scotch law, and subject to the jurisdiction and control of the Scotch Courts, and that no part be removed beyond the jurisdiction of the Court. They also asked that a judicial factor (whom we should term a "sequestrator") be appointed, to supersede the action of the trustees until they should be relieved from the difficulties in which they are at present placed by the orders of the English Court.

The Court of Session unanimously main-