

COURT OF SESSION.

Wednesday, February 26.

SECOND DIVISION.

M'KIDD, PETITIONER.

Process — Nobile Officium — Diligence — Arrestments—Adjudication—Dispensing with Induciae.

A distillery company having disposed their heritable estate in security of advances with a reversionary interest to the disponents, the heritable creditors advertised the subjects for sale on February 27th. A, a creditor of the company, on February 25th raised an action for payment of his debt, and arrested on the dependence. The *induciae* would expire on 10th March. He meanwhile learned that B, another creditor, in order to secure a preference over the reversionary interest of the company, had raised a summons of adjudication which had been called on February 18th, and of which the usual twenty days' intimation had been made on February 22nd; and further, had also rendered the reversionary interest litigious by recording a notice of litigiosity in terms of the statute, and maintained that his right as adjudger would affect the reversion preferentially to arrestments used subsequent to the sale. In these circumstances A desired to raise and execute prior to the sale of the heritable subjects a summons of adjudication which might be conjoined with the adjudication at B's instance, and in order to raise such a summons he required to obtain decree of constitution in his action against the company.

A petition by A to dispense with the *induciae* on his action against the company, and calling days, and to remit to the Lord Ordinary to pronounce decree thereon to the effect of adjudication, reserving objections *contra executionem*, and to dispense with reading in the minute-book, was granted.

The Gerston Distillery Company (Limited), incorporated under the Companies Acts, carried on business as distillers at Gerston, Halkirk, Caithness, and had a right to the heritable subjects upon which their distillery was erected. By disposition dated 22nd November 1886 the Distillery Company disposed the heritable subjects belonging to them to the Caledonian Banking Company by an *ex facie* absolute disposition, which, however, was admittedly granted in security of advances, and left the Distillery Company a reversionary interest in the subjects. The Distillery Company fell into difficulties and the Caledonian Banking Company entered into possession of the heritable subjects disposed to them, and advertised them to be sold on 27th February.

James M'Kidd, ironfounder and engineer, Millbank, Thurso, was a creditor of the Dis-

tillery Company, and upon 25th February he raised an action against the Distillery Company, concluding for payment of the sum of £295, with interest and expenses. The summons contained a warrant to arrest upon the dependence, was served edictally upon the defenders, and the *induciae* thereon would not in ordinary course expire till 10th March; meanwhile M'Kidd learned that William Swanson, joiner, Thurso, who was the creditor of the Distillery Company to a large amount, was taking steps to secure a preference over the reversionary interest by adjudication, and that he had raised a summons of adjudication, which was called in Court on 18th February, and in which the Lord Ordinary (KINCAIRNEY) on 22nd February ordered the usual twenty days' intimation of the summons to other creditors, the same being the first summons of adjudication. Swanson also rendered the said reversionary interest litigious by recording a notice of litigiosity in terms of the Statute 31 and 32 Vict. c. 101, sec. 159.

In these circumstances M'Kidd presented a petition to the Inner House. He averred that Swanson was "understood to maintain that even although he should not obtain decree of adjudication until after the sale of the said subjects, his right as adjudger will affect the reversion preferentially to arrestments used subsequent to the sale, in respect that, so far as concerns his right, the reversion will be a *surrogatum* for the lands previously rendered litigious. Should this contention be upheld, the petitioner will be seriously prejudiced in his efforts to recover his debt, unless he is put in a position to raise and execute, prior to the sale of the said heritable subjects, a summons of adjudication, which may be conjoined with the adjudication at the instance of the said William Swanson. The sale, as above mentioned, is announced to take place on Thursday 27th February current. In order to raise such a summons the petitioner must first obtain a decree of constitution in the said action pending at his interest against the Gerston Distillery Company, Limited, the *induciae* on which have not expired. In similar circumstances where special despatch has been required in order to secure the *pari passu* ranking of adjudgers, your Lordships have been in use, by exercise of your *nobile officium*, to dispense with the *induciae*, and with the period allowed for appearance, and to remit to the Lord Ordinary with instructions to pronounce decree immediately to the effect of adjudication, reserving all objections *contra executionem*, and to allow the decree to go out and be extracted *ad interim*, dispensing with reading in the minute-book. The petitioner humbly craves your Lordships to intervene in the present case to the effect of enabling him to obtain an immediate decree of constitution in similar terms."

Authorities—Bell's Comm. 725 (5th ed.), i. 762 (Lord M'Laren's ed.); *Bontine v. Graham and Others*, November 19, 1829, 8 S. 87, and December 17, 1829, 8 S. 263; *Scott v. Scott*, January 28, 1832, 10 S. 253; *Gregg*,

Petitioner, February 21, 1890, 1 D. 544; Parker on Adjudications, 36, 42.

At advising—

LORD JUSTICE-CLERK—Looking to the precedents I think we may grant the prayer of this petition.

LORD RUTHERFURD CLARK and LORD KYLLACHY concurred.

The Court pronounced this interlocutor:—

“Dispense with the *induciae* of the summons at the instance of the petitioner set forth in the petition; authorise the same forthwith to be called by the clerks of the Lord Ordinary to whom the same shall be marked, without abiding the course of the printed roll: Further, dispense with whole term allowed for seeing the summons when called: Grant warrant for the immediate enrolment of the said summons in the roll of the said Lord Ordinary, and remit to and authorise his Lordship to call the same if necessary without an hour, and to pronounce thereon immediately decree for Two hundred and ninety-five pounds sterling in terms of the conclusions of the summons to the effect of adjudication, reserving all objections *contra executionem*: Dispense with reading in the minute-book the decree so to be pronounced, and grant warrant to the Extractor of Court to give immediate extract *ad interim* of the decree to be pronounced, and decern.”

Counsel for the Petitioner—M'Lennan.
Agents—Philip, Laing, & Company, S.S.C.

Wednesday, February 26.

SECOND DIVISION.

[Sheriff of the Lothians.

LIDLAW AND ANOTHER *v.* THE PROVIDENT PLATE-GLASS INSURANCE COMPANY (LIMITED).

Jurisdiction—English Company with Agent in Edinburgh.

An English Insurance Company whose chief office was at Perry Barr, Birmingham, appointed a solicitor in Edinburgh as their district manager. They issued handbills describing his office as their Edinburgh branch office and agency. The form of interim covering-note contained a similar description. The district manager transmitted proposals for insurance to the head office, and when he received therefrom the policies he stamped them with the words “Edinburgh Office” and his business address.

Held that the company had no place of business in Scotland, and an action against them dismissed, on the ground of no jurisdiction.

This was an action by Andrew Laidlaw,

assignee of James Fletcher, against the Provident Plate Glass Insurance Company (Limited) for payment under a policy of the defenders, of loss sustained by Fletcher.

The pursuer averred—“The defenders the Provident Plate Glass Company (Limited) have their chief office at Perry Barr, Birmingham, and carry on business in Edinburgh, where they have a district office at 122 George Street there, and have appointed as district manager, George Palfrey, solicitor there. . . . George Palfrey has power to make and fulfil contracts made in pursuance of the defenders' business by him.”

The defenders answered—“Admitted that the defenders' chief office is at Perry Barr, Birmingham. Denied that they carry on business, or have a district office in Edinburgh, or that Mr Palfrey is their district manager. Explained that he carries on business as a solicitor at No. 122 George Street, Edinburgh, which is his own address, and that the defenders pay him a commission, in the same way as their other agents throughout Great Britain, on any business he may introduce.”

The defenders pleaded no jurisdiction.

Service had been made on Palfrey personally at 122 George Street, and upon the defenders by registered letter addressed to their place of business at Birmingham.

The Sheriff-Substitute allowed a proof.

James Fletcher deponed—“Up till January last I was a tobacconist, and carried on business at 11 South St Andrew Street, Edinburgh. I purchased from Mr J. M. Glass, accountant, George Street, the fittings in the shop, and the plate-glass in it. I remember being in the office of Mr Glass on one occasion sometime before I effected an insurance with the defenders' company, when he spoke about effecting an insurance on the plate-glass in the shop through Mr Palfrey, 122 George Street. Mr Palfrey came and gave me a handbill similar to the one now shown me. In that handbill there was a list of branch offices, among these being the branch office at 122 George Street. After some negotiations I received a policy of insurance from the defenders. . . . Sometime after the insurance was effected the plate-glass in the door was broken. I looked up the policy of insurance. On it I remember seeing the words ‘Branch Office, 122 George Street.’”

George Palfrey deponed—“I am in business as a solicitor at 122 George Street, Edinburgh. I also act as agent for various insurance companies. I am district manager of defenders' company. I produce my letter of appointment. It is dated 13th October 1888. In it the word ‘agent’ is scored out, and ‘district manager’ is put above. It is signed by the manager.

. . . In effecting the insurance with Mr Fletcher I don't remember giving him a handbill like the one shown me, but it is likely I would give him one. I called upon him, and he would ask to see the prospectus. I would give him a copy in order that he might see who the directors were, and that it was a *bona fide* company. These forms are meant for distribution among the pub-