

*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-

lic. I produce a copy of the covering notes which were sent to me along with the proposal forms. My office is there entered as 'Edinburgh Branch—district manager, George Palfrey, 122 George Street.' I have power to issue these interim covering notes without consultation with the head office, and so have all the agents of the office. The contract commences to run from the issue of the covering note, provided the proposal is ultimately accepted. . . . When I receive policies of insurance from the head office I stamp them with the words 'Edinburgh Office, 122 George Street, Edinburgh, before issuing them. (Q) There is no doubt that you stamped the one in the pursuer's case?—(A) If I had the stamp at the time I would do it. . . . I remember the policy being effected by Mr Fletcher quite well. I think it would be among one of my first policies. I think I had been agent for perhaps a month. I don't think I would give Mr Fletcher a covering note. If I remember right they did not come from the head office till near Christmas time. They did not issue many prospectuses. I have always had a very small supply. I make out states of the sub-agents' accounts, which I send to them quarterly. They send me the premiums, minus their commissions, and I transmit them to the head office. I have no salary for being district manager. I am paid entirely by commission. The company pay no rent for the premises which I occupy. On the board at the entrance to the office at 122 George Street are the words 'George Palfrey, solicitor,' and immediately below are the words 'The Provident Plate Glass Insurance Company.' On the Edinburgh Post Office Directory for the present year, under the letter P, there is the following entry—'Provident Plate Glass Insurance Company, 122 George Street, George Palfrey, solicitor, district manager. . . . Cross.—I have no more power than an ordinary agent of the company. The company has no district office in Edinburgh except my own. They did not authorise me to put the name in the directory or on the door of the office. (Q) You did that on your own responsibility?—(A) Yes. I would put my name in the Directory for anything where I was agent if I thought it would bring business.'

The following is an excerpt of the handbill issued by the defenders:—

"Branch offices and agencies have been opened in various parts of the United Kingdom, including—

"EDINBURGH—122 George Street. District manager—George Palfrey. . . .

"Immediate Replacements.—When a breakage requires immediate attention the insured may go direct to the glass warehouse, or otherwise communicate with the agent or manager."

The interim covering note was under this heading—

"Provident Plate Glass Insurance Company, Limited, Perry Barr, Birmingham.

"EDINBURGH BRANCH—District Manager, George Palfrey, 122 George Street."

The letter of appointment of Mr Palfrey was as follows:—

"Provident Plate Glass Insurance Company, Limited.

"Managing Director—William B. Winckle, Perry Barr, Birmingham.

(Stamp 6d.) Birmingham, 13th Oct. 1888.

"Dear Sir,—I have the pleasure to inform you that the directors have appointed you District Manager to this company at Edinburgh.

"You will be allowed commission upon all premiums paid through your agency, at the rate of £25 per cent. upon new premiums, and £25 per cent. upon renewal premiums, out of which you will pay sub-agents their commission.

"One month's notice to be given on either side of discontinuance or alteration.—I am, dear sir, yours faithfully,

"George Palfrey, Esq. WM. B. WINCKLE, 122 George St., Edinburgh. (SEAL.)

Upon 13th July 1889 the Sheriff-Substitute (RUTHERFURD) issued this interlocutor—

"Finds that the defender is a foreign company, whose chief office is at Perry Barr, Birmingham, in England, and that the said company has not been cited within the jurisdiction of the Court: Finds that in these circumstances the defender is not amenable to the jurisdiction of this Court: Therefore sustains the defender's first plea-in-law, dismisses the action, and decerns."

"Note.—If the defenders were a Scottish company, having a place of business in Edinburgh, but whose head office were in another county in Scotland, it would have been amenable to the jurisdiction of this Court under the 46th section of the Sheriff Courts Act of 1876; but that section of the statute has no application to the case of a defender resident abroad (*M. Bey v. Knight*, 1879, 7 R. 255), and the Sheriff-Substitute thinks there can be no doubt that the Sheriff Court has no jurisdiction over foreigners residing furth of Scotland unless they are cited within the jurisdiction (*Pirrie & Sons v. Warden*, 1867, 5 Macph. 497)."

Upon appeal the Sheriff (CRICHTON), by interlocutor of 18th October, dismissed the appeal, and adhered to the judgment of the Sheriff-Substitute.

The pursuer appealed, and argued—There was prorogation of the jurisdiction. The defenders issued a handbill by which they announced that Palfrey was their district manager. That showed they had an office in Edinburgh at which they transacted business. The manager was not a mere agent. He had the power to receive proposals, and if accidents occurred to the plate-glass insured under proposals made to him, he had the power to order it to be replaced without getting instructions from headquarters. (2) The defenders had held themselves out to the public as having an office in Edinburgh, and a district manager there, and so had misled the public. The persons who wished to insure in this office had no right to inquire who paid the office rent, or on what terms Palfrey stood to the company; he appeared as their representative. They had therefore done enough to

make them liable to the jurisdiction of the Sheriff—*St. Patrick Insurance Company v. Brebner*, November 14, 1829, 8 S. 51; *Bishop, &c., v. Mersey and Clyde Navigation Steam Company*, February 19, 1830, 8 S. 558. The qualifications in Palfrey's position, as they appeared after a proof, could not have been known to the public, who looked upon him as a manager, and the defenders were barred by personal exception from now saying that Palfrey was only an agent and not a manager—*Bell's Prins. 27A*; *Young v. Livingstone*, March 13, 1860, 22 D. 983.

Counsel for the respondent was not called upon.

At advising—

LORD JUSTICE-CLERK—We have heard the whole case clearly stated by Mr Mackintosh, but I can see no grounds on which we should interfere with the Lord Ordinary's judgment.

This Mr Palfrey is just in the same position as many agents for insurance companies in this country who carry on their own business as solicitors and act as agents for insurance companies also. They receive proposals from persons desiring to insure, and transmit the proposals to the head office, and if the directors see fit to entertain them, then a policy is issued from the head office.

This company which is said to be carrying on business in Edinburgh has no place in which to carry on the business. All the business that was done was done by Palfrey as agent for the company.

LORD RUTHERFURD CLARK—I agree. I think this man Palfrey was merely a stalking-horse to obtain premiums.

LORD TRAYNER—I also agree. I think there is no evidence in this case that the defenders had any place of business in Scotland.

It was suggested by the counsel for the pursuer, that the defenders by issuing the handbill referred to bearing that "branch offices and agencies" had been opened at various places including Edinburgh, had done something that amounted to prorogation of jurisdiction. I do not think so; the terms of the handbill do not establish that the defenders had, or ever represented that they had, a place of business of their own, at any of the addresses mentioned, but merely indicated where people might apply if they wanted to do business or be put in communication with the defenders' company.

The Court in their judgment repeated the findings in the Sheriff-Substitute's interlocutor of 13th July 1889, and adhered to the interlocutor reclaimed against.

Counsel for the Appellant—J. Mackintosh. Agents—Douglas & Miller, S.S.C.

Counsel for the Respondent—Wm. C. Smith—Crole. Agents—Edward Nish, Solicitor.

Thursday, February 27.

## FIRST DIVISION.

(Sheriff of Aberdeen, Kincardine, and Banff.)

PITHIE (INSPECTOR OF TULLYNESSLE AND FORBES PARISHES) v. PRIMROSE (INSPECTOR OF ROTHIE MAY PARISH) AND MILNE (INSPECTOR OF NEWHILLS PARISH).

Poor — Settlement — Pupil Illegitimate Pauper.

The mother of a pupil illegitimate daughter married, and shortly thereafter died, leaving her child chargeable on the rates.

Held that the pauper was chargeable to the parish of her mother's settlement, which was that of her husband.

The Rev. James M. Pithie, Inspector of Poor of the united parishes of Tullynessle and Forbes, brought an action in the Sheriff Court of Banff against James Primrose, Inspector of Poor of the parish of Rothiemay, and John Milne, Inspector of Poor of the parish of Newhills, for payment of sums advanced and for relief of future advances for the maintenance of Mary Ann Middleton Taylor, a pupil illegitimate pauper.

The pursuer averred that Barbara Taylor, the mother of the pauper, was born at Coldhome in the parish of Rothiemay on 14th May 1861, that her illegitimate child was born in August 1881, that sometime thereafter Barbara Taylor was married to Alexander Mackie, farm-servant, but that she died soon after the marriage survived by her husband. He further averred that in December 1887 application was made to him for parochial relief on behalf of the said Mary Ann Middleton Taylor, who was then residing in his parish with a sister of her mother, that the pauper was a proper subject of parochial relief, the residence of her reputed father being unknown, and that the pursuer had advanced the sum of £5, 7s. 6d. for her relief. Alexander Mackie had a birth settlement in the parish of Newhills.

The Inspector of Poor of the parish of Newhills admitted the pursuer's averments, but refused to admit liability, on the ground that the derivative settlement which the deceased's mother had through her husband in the parish of Newhills while she was alive did not inure to her child after her death, and that her death had the effect of relieving the husband and the parish of the husband's settlement.

The Inspector of Poor of Rothiemay admitted pursuer's averments, but averred that the parish of Alexander Mackie's birth settlement was liable for relief.

The pursuer pleaded, *inter alia*—“(1) In respect that the mother of this pupil illegitimate pauper had a settlement by birth in the parish of Rothiemay, the pursuer is