

of opinion that it does not appear that the holder abandoned his right to enforce the decree, and I think the defender in the Small Debt Court was bound to go to the Court of Justiciary or pay the sum due, taking whatever obligation the holder was willing to give her in order to prevent her being made subject to a second claim for the same debt.

LORD KINNEAR—I am of the same opinion. I agree that it is clear that a decree pronounced under the Small Debt Act cannot be reviewed in this Court, and at the same time I also agree that a decree of the Small Debt Court, though it cannot be reviewed, may be brought under the consideration of this Court by reason of facts emerging after the date of the decree, which make it contrary to justice and the true meaning of the decree to enforce it, as in the cases suggested by your Lordship as illustrations.

The only point which appears to me to require consideration in this case is, whether such facts have emerged here, and whether the respondent's letter can be construed as an admission that he obtained the judgment in the small-debt decree on a false statement of the facts, but that he meant to enforce it, on the ground that he would have got it all the same if the facts had been truly stated. I do not know whether that might not be a good ground for staying the execution of the decree if it was admitted that it had been obtained by something like fraud. It is quite clear, however, that that is not the meaning of the letter. The only admission made is that there was a clerical error in the statement of claim, and I do not see that that in any respect invalidates the decree, or affords a ground for reviewing it, or staying execution.

Even if substantial justice had not been done in the case, we could not review the decree, as the Act explicitly excludes the jurisdiction of this Court; but it is satisfactory to see that no substantial injustice has been done, as the complainer does not dispute that the sum decerned for is due under the contract of lease between her and the respondent. I therefore cannot see any reason why we should stay execution of this decree.

The Court recalled the interlocutor of the Lord Ordinary, repelled the reasons for suspension, and refused the note.

Counsel for the Complainer—M'Lennan.
Agent—James Skinner, S.S.C.

Counsel for the Respondent—G. Watt.
Agent—John Macmillan, S.S.C.

Saturday, November 22.

SECOND DIVISION.

[Commissariat of Edinburgh.

TOD, PETITIONER.

Settlement—Executor—Confirmation.

A testator by holograph settlement appointed a person "judicial factor, to carry out the purposes of this trust."

Held that the clause conferred the powers of executor upon the person named, and confirmation as executor-nominate *allowed*.

Archibald Henderson, watchmaker and jeweller, Edinburgh, left a holograph will, by which he divided his property among certain persons mentioned therein. The will concluded with this clause—"I appoint Mr Henry Tod, 45 North Castle Street, or his partner Mr Rutherford, judicial factor, to carry out the purposes of this trust." Mr Tod presented a petition in the Sheriff Court of the Lothians and Peebles at Edinburgh for confirmation "as executor-nominate of the deceased Archibald Henderson."

The Sheriff-Substitute (RUTHERFURD) refused the prayer of the petition.

Note.—The objection to grant this petition is not that the petitioner has not been expressly named 'executor,' but that he has been named something else. It is not uncommon in practice to confirm as executor-nominate a person upon whom executorial powers are conferred though not expressly named executor by the deceased. But in this case the testator has named a 'judicial factor,' whose office differs from that of executor-nominate in this important respect, that the factor finds caution, while the executor-nominate does not."

The petitioner appealed.

The Court pronounced this interlocutor—
"Recal the interlocutor of the Sheriff-Substitute appealed against, and remit the cause to the Sheriff with instructions to grant the prayer of the petition, and decern."

Counsel for the Petitioner—Craigie.
Agent—J. Stuart Watson, W.S.

Tuesday, November 25.

SECOND DIVISION.

[Lord Kinneer, Ordinary.

WOOD v. NORTH BRITISH RAILWAY COMPANY.

Reparation—Railway Accident—Nervous Shock—Discharge of all Claims for Inadequate Consideration.

A person was injured in a railway accident. Nine days after he accepted £27 from the railway com-