

ferred to a remark of the Lord Justice-Clerk in *Joel v. Gill*—"I would state it as a general rule that the proper designation of any person is a statement of his present occupation and residence." No doubt that is the general rule, but I cannot say that residence must necessarily form part of the designation, which is given for the purpose of identification. In many cases no designation at all is needed. The instance of the *Bank of Scotland* was suggested in argument, and it has all along sued without an address or designation, and I have no doubt that a person like the Duke of Buccleuch could sue without an address being given. If an incorporated company gives its title under the Act there can be no room for doubt as to its identification. I am far from suggesting that a convenient practice should be departed from, but I do not think that as a matter of strict law the present petition ought to be dismissed. The objection therefore fails.

LORD M'LAREN—I agree with all that your Lordship has said. We were not referred to the clause in the Sheriff Court Act, but it requires the name and designation to be set forth. That explains why the address is given as a general rule, because the identification of an individual is imperfect without it. In the case of societies incorporated by Special Acts there was never any doubt that they could sue and be sued without the addition of a designation. The case of the *Bank of Scotland* is peculiar, because it is the oldest trading corporation in Scotland, but we often have actions before us by corporations such as railway companies which are never designed otherwise than by their names. Where a company is incorporated under a general Act you must look to its nature. I think that in the case of companies under the Building Societies Act 1874 the corporate name includes both name and designation.

LORD KINNEAR—I agree. The objection is founded on section 6 of the Sheriff Court Act 1876, which provides that actions in the ordinary Sheriff Court shall be commenced by petition setting forth the name and designation of the parties. The question here is whether the pursuers have complied with this provision of the Act. I have no doubt that they have. The description of the pursuers is quite sufficient, because it identifies the particular society that is suing, and distinguishes it from everybody else.

LORD PEARSON concurred.

The Court dismissed the appeal, affirmed the interlocutor of the Sheriff and Sheriff-Substitute, and of new found, declared, decerned, and ordained in terms of the conclusions of the petition, with expenses.

Counsel for the Defenders and Appellants—A. A. Fraser. Agent—Stirling Craig, S.S.C.

Counsel for the Pursuers and Respondents—C. D. Murray. Agents—A. & A. S. Gordon, S.S.C.

Thursday, June 14.

FIRST DIVISION.

[Lord Dundas, Ordinary.]

GLEN'S TRUSTEES v. THE LANCASHIRE AND YORKSHIRE ACCIDENT INSURANCE COMPANY, LIMITED.

Contract—Insurance Policy—Construction—Grammatical Error—A Negative in Proviso to a Condition Nullifying Whole Intention of Condition—Reading Proviso as if there were No Negative therein.

A policy of insurance against accident stipulated that the right to recover under it should be forfeited on the expiry of . . . from the date of the accident "unless within these periods a settlement with the insured or his representatives has been agreed upon, or his claim referred to arbitration, or in the absence of notice from the company requiring the matters in difference to be referred to arbitration, legal proceedings have not been taken by the insured against the company. . . ."

Held that as the whole intention of the condition was to impose a limit of time on claims, and as the presence of the word "not" in the proviso was to nullify this intention, the clause must be read omitting the "not."

On July 10, 1905, Francis Walter Allan, shipowner in Glasgow, and others, trustees and executors of the late Thomas Glen, calico printer, Glasgow, raised an action against the Lancashire and Yorkshire Accident Insurance Company, Limited, 5 West Regent Street, Glasgow, to recover, with interest from April 24, 1897, the sum of £500, contained in a policy of insurance against accident, dated October 8, 1895, which had been effected with the defenders by the deceased William James Glen, civil engineer, Main Street, Donegal, Ireland. The insured was drowned on April 24, 1897, and by his holograph settlement, dated March 2, 1890, he bequeathed to his father Thomas Glen his whole means and estate. Thomas Glen applied to the defenders for payment of the sum due under the policy immediately after the death of the insured, without effect, and died in 1898 without having raised an action against them.

The policy contained, *inter alia*, the following condition:—" (10) The right to recover payment of any capital sum insured under this policy shall be forfeited and extinguished on the expiry of six months from the date of the accident, and the right to recover payment of the weekly compensations shall be forfeited and extinguished on the expiry of nine months from the date of the accident, on the completion of which periods the liability of the company in respect of such accident shall cease and determine, unless within these periods a settlement with the insured or his representatives has been agreed upon, or his claim referred to arbitration, or, in the

absence of notice from the company requiring the matters in difference to be referred to arbitration as within provided, legal proceedings have not been taken by the insured against the company in respect of such claim."

The defenders, *inter alia*, pleaded—“(1) The right to recover under the policy founded on having lapsed, and being barred by the terms of the policy, the action ought to be dismissed.”

On November 4, 1905, the Lord Ordinary (DUNDAS) pronounced the following interlocutor:—“Sustains the first plea-in-law for defenders, dismisses the action, and decerns: Finds the defenders entitled to expenses against pursuers,” &c.

“*Opinion.*—Mr William James Glen, who was insured with the defenders, conform to policy dated 8th October 1895, was drowned on 24th April 1897. It seems that he left a holograph settlement conveying his whole means and estate, which would doubtless include his claim, if any, against the defenders, to his father Thomas Glen, whom he also appointed to be his sole executor. Mr Thomas Glen is also now deceased, and the pursuers, who are the trustees and executors under his trust-disposition and settlement, now sue the defenders upon the policy above mentioned. The only question which I have to consider at this stage is whether or not the pursuers' claim is barred by the terms of article 10 of the conditions annexed to and forming part of the policy. The substantive purpose of article 10 is clearly to establish in favour of the company a six (or a nine) months' limit, after the expiry of which the right to recover under the policy is to be forfeited. But three exceptions to this limitation follow, presumably in favour of the insured, which are thus expressed . . . ‘unless within these periods a settlement with the insured or his representatives has been agreed upon, or his claim referred to arbitration, or . . . legal proceedings have not been taken by the insured against the company in respect of such claim.’ The first and second of these exceptions are intelligible enough, but they do not apply to this case. The question is as to the meaning of the third exception, and whether it can be held so to apply. The pursuers' counsel maintained that the words used were in themselves unambiguous and intelligible, however difficult it might be to account for their presence, looking to the scope of the article as a whole, and that the Court must therefore construe this exception as meaning that, by the simple expedient of refraining from legal proceedings against the company for six months from the date of accident, an insured might safely delay making any demand upon the policy short, I suppose, only of the period of the long negative prescription. I do not think that I am bound to adopt this reading of the policy, and I decline to do so, because the construction suggested seems to me to be absolutely irrational, and would result in the defeat, by this third exception, of the substantive purpose and effect of the entire article. If it were legitimate to conjecture,

one might well suppose that the words of the third exception may have originally been prefaced by an ‘if,’ and that the draughtsman observing that the word ‘unless,’ stood before the preceding exceptions, deleted the ‘if,’ and failed, *per incuriam*, to strike out the ‘not’ which follows shortly after. But taking, as I think that I am bound to take, the words as they stand, I confess that I am unable to put any intelligible or effective meaning upon them, and it appears to me that the exception must be simply held *pro non scripto*. The pursuers' counsel contended that if this view was adopted the whole of article 10 of the conditions must be read out of the policy and totally disregarded. I cannot agree with this contention. In my opinion, if the language of the third exception is, as I think it is, unintelligible, and must be held as of no effect, the substantive portions of article 10 still stand good, with the result that the sum insured under the policy is forfeited and extinguished, and the liability of the company has ceased and determined on the expiry of six months from the date of the accident, unless (which has not here happened) a settlement had been agreed upon, or the claim referred to arbitration. In my opinion, therefore, the first plea-in-law for the defenders falls to be sustained, and the action dismissed with expenses.”

The pursuers reclaimed, and argued—Looking to the terms of the policy the main purpose of this contract of insurance was to bind the company to pay within a certain time a sum of £500 to the legal representatives of the person insured in the event of his death. This obligation was qualified by a time limit expressed in article 10. This time limit was again subject to three qualifications or exceptions. The third of these, which was here in question, read literally, took the pursuers outside the bar imposed by the time limit. Taken by itself the qualification could only have one meaning, the language being quite unambiguous. If on the other hand the clause in question were held to be meaningless, then the whole of article 10 must be read out of the policy, since the company intended to impose a qualified time limit, and it was impossible to discover what one of the qualifications was. Such stipulations in a contract of insurance should be absolutely clear, failing which they fell to be read against the company.

Counsel for the defenders were not called upon.

LORD PRESIDENT—In this case the holder of a policy in the defenders' company was drowned in 1897 leaving a settlement conveying his whole means and estate to his father. His father applied to the defenders for payment of the sum due under the policy, which was refused, and died in 1898 without raising an action on the policy. The present action is at the instance of the father's trustees. The defenders stated a preliminary plea that the action was barred by the stipulations of article 10 of the policy. The whole question is as to the

meaning of that article. It is clear that as it stands, if taken literally, it is meaningless, but reading it as a whole, as I think we are entitled to do, it is also clear that the confusion is due to a grammatical error. In my opinion the Court is entitled to correct such an error. The word "not" was evidently inserted in the third stipulation of the article by failing to notice that the conjunction preceding was "unless" and not "if." I think we should read the stipulation as if the word "not" was deleted. If we do so it is clear that the action is barred by the stipulations of this article, and I prefer to base my judgment on this ground rather than that of the Lord Ordinary.

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

The Court adhered.

Counsel for the Pursuers and Reclaimers—Scott Dickson, K.C.—W. J. Robertson. Agents—Davidson & Syme, W.S.

Counsel for the Defenders and Respondents—Hunter, K.C.—Hon. W. Watson. Agents—Gill & Pringle, W.S.

Saturday, June 23.

FIRST DIVISION.

MURRAY, PETITIONER.

Bankruptcy—Sequestration—Gazette Notice—Clerical Error—Date—Nobile Officium—Bankruptcy (Scotland) Act 1856 (19 and 20 Vict. cap. 79), sec. 48, and Schedule (B).

A notice of sequestration in the form of Schedule B of the Bankruptcy (Scotland) Act 1856 was inserted in the *Edinburgh Gazette* of 5th June 1906, but owing to a clerical error the date of the deliverance was stated to be 5th June instead of 9th May. The corresponding notice in the *London Gazette* was correct. The Sheriff having difficulty in confirming the election of the trustee, a petition was presented on 23rd June 1906 by the agent in the sequestration craving the Court to authorise the insertion of a correct notice.

The Court authorised the petitioner to insert a notice setting forth the error and correct date, and authorised the Sheriff upon proof of such notice having been duly inserted to confirm the election of trustee and commissioner as if the date of the first deliverance had been correctly notified.

The Bankruptcy (Scotland) Act 1856, sec. 48, *inter alia*, enacts—"... the party applying for sequestration shall, within four days from the date of the deliverance awarding sequestration if awarded in the Court of Session, or if it is awarded by the Sheriff, within four days after a copy of the said deliverance could be received in course of post in Edinburgh, insert a notice

in the form of Schedule (B) hereunto annexed in the *Gazette*, and also one notice in the same terms within six days from the said date in the *London Gazette*."

Schedule (B) is as follows:—

"Notice to the *Gazettes*."

"The estates of A B (*name and designation*) were sequestrated on (*date, month, and year*) by the (*Court of Session or Sheriff of*).

"The first deliverance is dated the (*date*).

"The meeting to elect the trustee and commissioners is to be held at (*hour*) o'clock on the (*day of the week*) the (*date, month, and year*) within (*specify particular place*) in (*town*). . . ."

On May 9th, 1906, the Lord Ordinary officiating on the Bills pronounced the first deliverance in a petition at the instance of Alfred Alexander Murray, W.S., Edinburgh, for sequestration of the estates of Charles Oscar Northwood, residing at Rosslyn, Holmfild Road, Blackpool. As required by section 48 of the Bankruptcy (Scotland) Act 1856 an abbreviate was duly presented to the Keeper of the Register of Inhibitions at Edinburgh, and recorded. Notices in the form of Schedule B, were also inserted in the *London Gazette* of 8th June 1906, and in the *Edinburgh Gazette* of 5th June 1906, intimating the award of sequestration and the date of the first deliverance, and calling the meeting to elect the trustee and commissioners, and mentioning the last date for lodging claims. The meeting was duly held and a trustee and commissioner elected. The process was thereupon transmitted to the sheriff-clerk by the preses, with a view to the Sheriff confirming the election of the trustee in terms of section 70 of the Act. The Sheriff, however, had difficulty in confirming the trustee's election, or proceeding further with the sequestration owing to the date of the first deliverance having been erroneously stated by a clerical error in the notice in the *Edinburgh Gazette* as 5th June 1906 in place of 9th May 1906.

On 23rd June 1906 Murray presented a petition appealing to the *nobile officium* of the Court, in which he narrated these facts and made the following crave:—"May it therefore please your Lordships to authorise the petitioner to insert in the *Edinburgh Gazette* within four days from the date of your Lordship's deliverance, a notice in the following terms:—

'Charles Oscar Northwood's Sequestration.

"Notice is hereby given by authority of the First Division of the Court of Session in Scotland that the estates of Charles Oscar Northwood . . . were sequestrated on 5th June 1906 by the Court of Session.

"The first deliverance is dated the 9th May 1906.

"The meeting to elect the trustee and commissioners is to be held at three o'clock on Wednesday the 13th day of June 1906 within Dowell's Rooms, 18 George Street, Edinburgh. A composition may be offered at this meeting, and to entitle creditors to the first dividend their oaths and grounds of debt must be lodged on or before the 5th October 1906.