

Tuesday, March 13.

SECOND DIVISION.

ADAMSON'S M.-C. TRUSTEES,
PETITIONERS.

Trust—Assumption of New Trustees—Trusts (Scotland) Act 1861 (24 and 25 Vict. cap. 84), sec. 1.

By an antenuptial marriage contract power was given to the trustees to assume new trustees with the consent of the spouses. The assumption of a new trustee having become expedient, the consent of the surviving spouse could not be obtained owing to her mental incapacity. On a petition the Court *dispensed* with the consent of the spouse.

The Trusts (Scotland) Act 1861 (24 and 25 Vict. cap. 84), sec. 1, enacts—“All trusts constituted by virtue of any deed or local Act of Parliament under which gratuitous trustees are nominated shall be held to include the following provisions, unless the contrary is expressed—that is to say . . . Power to such trustee, if there be only one, or to the trustees so nominated, or a quorum of them, to assume new trustees. . . .”

Thomas Nicol Johnston and John Millar, two of the trustees acting under the antenuptial marriage contract between Charles Henry Adamson and Margaret Fraser Johnston or Adamson, presented a petition craving the Court, *inter alia*, (1) to remove Mrs Adamson from the office of trustee under the marriage contract, and (2) to find the trustees entitled during Mrs Adamson's mental incapacity to assume a new trustee or trustees without her consent, and otherwise to dispense with the necessity of her consent to such assumption.

The marriage contract conferred on the trustees this power to assume new trustees:—“It is hereby declared that it shall be in the power of the trustees, with the consent of the said spouses during their joint lives, or the life of the survivor of them, to nominate and appoint a trustee or trustees to act in the trust hereby created in addition to the trustees before named, or in place of one or more of them, who may die or resign or become incapable to act, together with all other usual powers as are conferred on gratuitous trustees by the law of Scotland.”

The petitioner Millar was desirous owing to advanced age of demitting office, and Mrs Adamson, who had been assumed as a trustee in 1903, had in 1914 become insane with, as the petitioners had been advised, no prospect of her recovery.

No answers to the petition were lodged.

Counsel for the petitioners cited the following authorities:—*Allan's Trustees v. Hairstins*, (1878) 5 R. 576, 15 S.L.R. 301; *Munro's Trustees v. Young*, (1887) 14 R. 574, 24 S.L.R. 392; Trusts (Scotland) Act 1861 (24 and 25 Vict. cap. 84), sec. 1.

The Court without delivering opinions pronounced this interlocutor—

“Remove Mrs Margaret Fraser Johnston or Adamson, designed in the peti-

tion, from the office of trustee under the antenuptial contract of marriage between Charles Henry Adamson, M.B., C.M., F.R.C.S.E., and the said Mrs Margaret Fraser Johnston or Adamson, dated 2nd October, and registered in the Books of Council and Session 4th December both 1899: Further, dispense with the consent of the said Mrs Margaret Fraser Johnston or Adamson during her mental incapacity to the assumption of a new trustee or trustees in the trust created by the said contract of marriage, and authorise and empower the petitioners and such other person or persons assumed as trustee or trustees, and the survivors and survivor of them, and such of them, one or more, as may be remaining and acting, to assume, during her mental incapacity, a new trustee or trustees in the said trust from time to time without her consent being obtained thereto.”

Counsel for the Petitioners—Henderson.
Agents—Fyfe, Ireland, & Company, W.S.

Wednesday, June 6.

FIRST DIVISION.

[Lord Anderson, Ordinary.]

T. D. McNEILL & SON v. INNES,
CHAMBERS, & COMPANY.

Bill of Exchange—Summary Diligence—Presentment for Payment—Act 1681, cap. 20—Bills of Exchange Act 1882 (45 and 46 Vict. cap. 61), secs. 45 and 98—Competency of Summary Diligence where no Presentment for Payment on Due Date but within Six Months thereafter.

The Bills of Exchange Act 1882 enacts—Section 45—“Subject to the provisions of this Act, a bill must be duly presented for payment. If it be not so presented the drawer and indorsers shall be discharged. A bill is duly presented for payment which is presented in accordance with the following rules:—(1) Where the bill is not payable on demand presentment must be made on the day it falls due. . . .” Section 98—“Nothing in this Act, or in any repeal effected thereby, shall extend or restrict or in any way alter or affect the law and practice of Scotland in regard to summary diligence.”

Held (dub. Lord Johnston) that summary diligence was competent against the acceptor of a bill although the bill was not presented for payment on the due date but within six months thereof, as such presentment was due presentment according to the law and practice of Scotland prior to 1882.

The Bills of Exchange Act 1882 (45 and 46 Vict. cap. 61), secs. 45 and 98, is quoted *supra in rubric.*

T. D. McNeill & Son, tailors and clothiers, and Thomas Day McNeill, sole partner