

process whenever the summons is executed; that the new Act did not apply, because the new Act dealt with appeals, and this was an advocacy; and that, on the failure of the advocator to produce a report from the lawyers for the poor, the respondent was entitled, without putting up protestation, to ask the Lord Ordinary upon that ground to dismiss the action. The Court adhered to the interlocutor of the Lord Ordinary.

Counsel for Advocator—Mr W. A. Brown.

Counsel for Respondent—Mr Trayner.

Agent for Advocator—James Bell, S.S.C.

Agent for Respondent—Scott & Mann, S.S.C.

## COURT OF LORDS ORDINARY.

Thursday, October 29.

MACKENZIE & CO. v. HUTCHISON & DIXON.

*Moveable Property—Transference—Auctioneer—Diligence—Arrestment—Poinding.*—M gave to F, a creditor, a letter addressed to an auctioneer, empowering him to take certain moveables belonging to the writer and sell them, and pay the proceeds to F. F gave the letter to the auctioneer. Held that when the auctioneer took possession of the moveables under the letter, M's control over them ceased, and the auctioneer held for F. *Opinions*—that the proper diligence for other creditors of M to use in the hands of the auctioneer was arrestment, and not poinding.

This was an advocacy from the Sheriff-court of Lanarkshire. In January 1865 Metcalf addressed to Hutchison and Dixon, auctioneers in Glasgow, a letter in these terms:—

"Gentlemen,—You are hereby requested to take possession of and sell the whole of my household furniture and plenishing in the cottage occupied by me at Campsie Junction, called Glen Bank or Holly Lodge. You are to use your discretion whether to make the sale at the cottage or to remove the articles and sell them in Glasgow: and I request and authorise you to pay over the free proceeds of the sale to Mr John Finlay, ironmonger, Glasgow."

This letter was given by Metcalf to Finlay, and by him delivered to Hutchison & Dixon, who sold the furniture in terms of the letter. Mackenzie & Co., arresting creditors of Metcalf, now brought this action of multiple poinding, in name of Hutchison & Dixon, the fund *in medio* being the sum realised by the sale of the furniture, and the claimants being Finlay and also certain creditors of Metcalf, besides Mackenzie & Co., who had used arrestments in the hands of the holders of the fund. The Sheriff (BELL) held that as the letter in favour of Finlay was admittedly granted for onerous considerations, and there was no proof that at the date of the letter Metcalf was notour bankrupt, or in such circumstances as to prevent him from granting the letter, so soon as Hutchison & Dixon took possession of the furniture Metcalf ceased to have any control over it, and the money obtained by the sale was held by Hutchison & Dixon for Finlay, and not for Metcalf; that the arrestments were therefore inept; and that, even supposing Finlay had no vested right in the furniture and value, the arrestments were worthless, the proper diligence in the circumstances being poinding; and preferring Finlay for the amount of his claim.

Mackenzie & Co. advocated.

YOUNG and SHAND for advocators.

CLARK and R. V. CAMPBELL for respondents.

The Court, while of opinion that the Sheriff had gone wrong in holding that in the circumstances poinding was the proper diligence instead of arrestment, came substantially to the same result as that expressed in the Sheriff's judgment.

Agents for Advocator—J. & R. D. Ross, W.S.

Agent for Respondents—J. Webster, S.S.C.

## REGISTRATION COURT.

Monday, October 26.

(Before Lords Benholme, Ardmillan, and Manor.)

### APPEALS FROM NORTHERN BURGHS.

JAMES ARCHIE.

Act. Clarke, Shand and Black.

Alt. Gifford and Mackintosh.

*Tenant and Occupant—31 and 32 Vict., c. 48, § 3—Burgh Franchise—Dwelling-House—Part of a House—Interpretation Clause—Separate Rating.* Held (affirming judgment of Sheriff)—(1) that the occupant of one-half of a house was occupant of a dwelling-house in the sense of the New Reform Act; (2) that not being separately rated to the relief of the poor he had not the qualification for the franchise under the 3d section of the Act.

The first case that came before the Court was that of James Archie, cooper, Cromarty, who appealed against a judgment of the Sheriff of Ross and Cromarty, respecting his claim to be admitted on the roll of voters. The following special case was stated by the Sheriff:—

"At a Registration Court for the burgh of Cromarty, held by me at Cromarty on the 5th day of October 1868, under and in virtue of the Act of Parliament 31 and 32 Vict. cap. 48, intituled 'The Representation of the People (Scotland) Act 1868,' and the other statutes therein recited, James Archie, cooper in Cromarty, claimed to be enrolled on the register of voters for the said burgh, as tenant and occupant of one-half of house in Church Street, Cromarty. The following facts were proved:—(1) That the claimant was, and had been for the requisite period, tenant and occupant of the premises in respect of which he claimed; (2) that there was an assessment for relief of the poor in the parish of Cromarty upon owners and occupants of lands and heritages; (3) that the claimant was not rated to the relief of the poor, either in respect of the premises occupied by him as aforesaid, or in any other character; (4) that the claimant had paid no poor-rates in respect of said premises; (5) that he had never been required to pay such poor-rates, either by demand-note or otherwise.

"Donald Mackenzie, nurserymen in Cromarty, a voter on the roll, objected to the said claim, on the grounds—(1) That a claim to be admitted to the roll as tenant and occupant of part of a house, was not a relevant form of claim; (2) that assuming the claim to be unobjectionable in point of form, the qualification on which the voter claimed was in the circumstances insufficient to entitle him to be enrolled.

"I rejected the claim on the ground stated in the second objection. Whereupon the said James Archie required from me a special case for the Court