

ever. His character appears now to be unimpeachable, and I cannot think that we ought to impose upon him a burden which would inevitably involve him in ruin. I therefore concur in the opinions that have been delivered.

Agents for Pursuers—A. Duncan & G. V. Mann, S.S.C.

Agents for Respondents—Keegan & Welsh, S.S.C.

Saturday, June 15.

FIRST DIVISION.

BILDSTEIN v. BOCK & CO.

Arrestment—Ship—Register—Jurisdiction.

Arrestments on a foreign ship used *ad fundandam jurisdictionem* and on the dependence of an action against a person who had been the owner, recalled at the instance of a party who, *ex facie* of the foreign register, was now the owner.

This was a petition by Alexander Bildstein, Odessa, praying for recall of certain arrestments at the instance of E. Bock & Co., Glasgow, on the Russian ship 'D. Jex,' of which the petitioner was, *ex facie*, the registered owner.

The petitioner set forth that he had purchased the vessel from her former owner, Carl Adolphus Busch, merchant, Odessa, in September 1870, and produced the necessary documents to instruct the transference. On 3d October 1871 the vessel sailed from Odessa for Glasgow, with a cargo for which she had been chartered by Busch. On her arrival at Glasgow Bock & Co. procured letters of arrestment *ad fundandam jurisdictionem* against Busch, in virtue of which they arrested the ship, on the allegation that Busch was the sole or part owner thereof. Thereafter, on 7th February 1872, Bock & Co. raised an action against Busch in the Court of Session for certain sums, and, in virtue of the warrant contained in the summons, arrested the vessel in security.

Messrs Bock & Co. lodged answers, in which they denied that the petitioner was the true owner of the vessel, and averred that Busch had all along continued to be the owner, and acted as such. They averred that the petitioner was a clerk at Odessa, and that the registration of the ship in his name was a mere device on the part of Busch for preventing the ship from being made answerable for their just claims. In support of these averments the respondents produced a letter from Busch after the date of the alleged sale, which showed that he still acted as owner.

SOLICITOR-GENERAL and STRACHAN, for the petitioner, argued that a creditor could not use arrestments on a ship which did not, *ex facie* of the register, belong to his debtor; *Duffus*, Feb. 13, 1857, 19 D. 430; *Schulz*, Dec. 5, 1861, 24 D. 120; *Grant*, Dec. 14, 1867, 6 Macph. 155.

WATSON and MACLEAN for the respondents.

At advising—

LORD PRESIDENT—It seems to be taken for granted that if a creditor cannot use arrestments on a foreign ship his remedy is gone. The proper course for the respondents is to sue Busch at the port of Odessa, his domicile. It happens to be convenient to the respondents, being resident in Glasgow, to sue him in the Courts of this country, and they may be able to do so if they can find means to found jurisdiction. But we must not

strain our rules to enable parties to found jurisdiction. The rule laid down in the case of *Duffus*, and followed in the subsequent cases, is a most salutary and proper rule.

The other Judges concurred, observing that the respondents had not made out so strong a case of fraud as was done in the case of *Grant*, in which, nevertheless, the arrestments were recalled.

The Court recalled the arrestments.

Agent for Petitioner—William Duncan, S.S.C.
Agents for Respondents—J. & R. D. Ross, W.S.

Saturday, June 15.

SECOND DIVISION.

SPECIAL CASE—GRANT, AND MURRAY AND
COUTTS.

Succession—Liferent and Fee—Vesting.

A testator bequeathed £500 to his daughter, "in liferent only, and not affectable by her debts or deeds," and to her children in fee, and also a share of the residue of his estate to his daughter, in "liferent, and not affectable by her debts or deeds," and to her children in fee. He likewise declared that no legacy should be payable till the majority of the party entitled thereto, and that the share of any son or daughter who should predecease ("without leaving issue") before the term of payment should revert to the estate. The daughter and her children having perished at sea in the same vessel—*held* that the £500 had vested in the children immediately on their birth; that the share of the residue had likewise thus vested in them, notwithstanding the omission of the restrictive word "only" in the provision of the liferent of that share to their mother; and that neither of these sums reverted to the estate.

This was a Special Case for the opinion and judgment of the Court, between William Grant, Twin Cottage, Chapel Street, Aberdeen, executors of the deceased Rev. George Grant, sometime of Aberdeen, and executor of the deceased children of the said Mr Grant, of the first part; and Mrs Elspet Ogilvie or Murray, widow of Alexander Murray, Whitehills, parish of Boyndie, county of Banff, and William Coutts, solicitor, Banff, a majority and quorum of the trustees of the said deceased Alexander Murray, of the second part. By a trust-disposition and settlement, dated 17th May 1860, and with codicil annexed, dated 1st October 1860, Alexander Murray, residing in Whitehills, in the parish of Boyndie and county of Banff, conveyed to trustees for the purposes therein specified, his whole estate, heritable and moveable, and he nominated his trustees his sole executors. Among the purposes of the trust-deed were the two following:—"(12th) I bequeath to each of my daughters Elspet Murray, Ann Murray, Barbara Murray, Margaret Jane Murray, and Helen Murray, the sum of £600 sterling, and in case of any of them predeceasing leaving issue, such issue shall succeed to the parent's share, but specially providing and declaring that there shall be paid to each of my said daughters, within six months after my death, the sum of £100 sterling, being part of the before-mentioned £600, which provision of the balance of £500 to each, in favour of my said daughters