

due during his life. It is evident he is not to be allowed to handle the money; he is to dispose of it by *mortis causa* settlement, and if not, then it goes to his heirs. This was evidently what was in the mind of the parties when the marriage-contract was made.

LORD SHAND was absent from illness.

The Court found that the first parties were not entitled or bound to denude in favour of the second party of any surplus of the marriage-contract funds in their hands beyond the sum of £12,000.

Counsel for the First Parties—Gloag—H. Johnston. Agents—Henderson & Clark, W.S.

Counsel for the Second Party—Mackay—Martin. Agent—F. J. Martin, W.S.

Saturday, December 24, 1887.

### FIRST DIVISION.

DICK v. RUSSELL AND ANOTHER.

*Arrestments—Recall—Colliery Labourer—Precarious Wage—Alimentary Provision.*

The wages of a colliery labourer were 12s. per week, but his employment was precarious owing to an accident. Under his father's settlement he was entitled, as an alimentary provision, to the income of a share of residue, which yielded on an average 12s. per week. He was unmarried. Arrestments were used; upon a decree for expenses, to attach the latter sum. In a petition for recall of these arrestments—*held* that the petitioner's income was not more than sufficient for his support, and arrestments recalled.

This petition was presented by John Dick, colliery labourer, Hamilton, for the recall of arrestments used in the hands of the trustees acting under his father's settlement.

This settlement directed the trustees to hold the residue for the life of the testator, and for the surviving children, and to pay to them the interest half-yearly, which provision was declared to be for their alimentary use, and not affectable by their debts or deeds, or liable to the diligence of creditors.

In an action at the instance of the petitioner against the trustees for the reduction of this settlement he was unsuccessful, and the defenders obtained a decree against him for £290, 13s. 2d. of expenses. Mrs Dick, the defender's stepmother, was one of the trustees, and a defender in the action. She died during the dependence of the action, and her executrices, Mrs Margaret Dick or Russell and Annie Dick, were sisted in her place. Upon this decree arrestments were used in the hands of the trustees by Mrs Dick's executrices.

John Dick then presented this petition for recall of the arrestments, in which he averred—“That in December 1879 the petitioner, while employed in a tanyard in Hamilton, fell into a vat containing a boiling liquid, and was so seriously injured that he was bedfast for

six months, and he has not yet recovered, and never will entirely recover from the shock which his system then sustained. He is besides suffering from a dropsical affection in his feet and legs which prevents him from working save at light labour. His employment is accordingly precarious, and when working he only earns about 12s. a-week or thereby. That the petitioner, while he is anxious to meet the heavy obligations incurred by him under the said decree, is unable to set aside towards that object any portion of the alimentary income from his father's estate, and he at present depends upon it for his support. The said alimentary income is not of an excessive amount, as it only averages about 12s. per week, and the action of the said Mrs Margaret Dick or Russell and Annie Dick in endeavouring to attach the same by arrestment is incompetent, unreasonable, and oppressive.”

The respondents lodged answers, in which they stated—“The petitioner is a fletcher by trade, and is at present employed as a fletcher in Hamilton. He is unmarried, able-bodied, and is subject to no incapacity, physical or mental. The respondents are unaware of any accident having happened to the petitioner as stated in the petition. The respondents believe and aver that the petitioner is in receipt of a wage sufficient to aliment and maintain him suitably to his position and station in life, and they therefore submit that the petition should be refused with expenses.”

At advising—

LORD PRESIDENT—There is no doubt that the fund held by the trustees is alimentary. The only doubt is whether the man's income is excessive, his aggregate income being about 24s. per week. I cannot say that I think that is more than is necessary for the support of a man in his position. If he were able to earn larger wages the case would be different, but it is evident that he is not, in the proper sense of the term, able-bodied, and that he cannot earn more than 12s. a-week, and that even that is somewhat precarious. He is a labourer in the pits, and his work is apt to be interrupted owing to the state of his health. His wages therefore depend on his being constantly in employment. In these circumstances I am for recalling the arrestments.

LORDS MURE and ADAM concurred.

LORD SHAND was absent from illness.

The Court recalled the arrestments.

Counsel for the Petitioner—Guthrie. Agents—Fodd, Simpson, & Marwick, W.S.

Counsel for the Respondents—Deas. Agent—Robert D. Ker, W.S.

Saturday, February 4, 1888.

FIRST DIVISION.

M'MURPHY v. EMSLIE & GUTHRIE.

*Arrestments—Recall—Wages Arrestment Limitation (Scotland) Act 1870 (33 and 34 Vict. cap. 62), sec. 1 and 2.*

The Wages Arrestment Limitation (Scotland) Act 1870 provides by section 1 "that the wages of all labourers, farm servants, manufacturers, artificers, and work people shall cease to be liable to arrestment for debts contracted subsequent to the passing of this Act, save as hereinafter mentioned." Section 2 provides—"If the amount of wages earned exceeds 20s. per week any surplus above that amount shall still be liable to arrestment as before the passing of this Act."

Under an agreement with his employers, a lamplighter's wages amounted during the summer months to 18s. per week. During the winter months he received £2, 4s. per week, out of which he was bound to pay the wages of two assistants which reduced his own wages to 19s. per week. *Held* that he was a workman in the sense of the statute, that the agreement in reference to the winter months did not put him in the position of a contractor, and that his wages were not arrestable.

This petition was presented by Donald M'Murphy, lamplighter, Oban, for the recall of arrestments of his wages used in the hands of the Police Commissioners of the burgh of Oban.

The petitioner stated that he came under an engagement for lighting, extinguishing, and cleaning the lamps of the burgh of Oban for a year from 18th August 1887, by acceptance of an offer of the Police Commissioners of the burgh.

Under his engagement he undertook to light, extinguish, and keep clean the lamps from 18th August to 20th April 1888 for the weekly sum of £2, 4s., from which sum he had to pay the wages of two assistants whom, under his engagement, he was bound to employ. The wages of these assistants amounted to the sums of 15s. and 10s. per week respectively, so that his actual income during the period of his engagement was 19s. per week. From 20th April to 18th August 1888, during the lighter work of the summer months, the services of the assistants were dispensed with, he himself doing the work at the wages of 18s. per week.

The petitioner averred that these weekly payments from the Police Commissioners were the only source of income which he possessed, and that from these payments he had to meet the expenses of maintaining a wife and four children.

In the beginning of 1887 the petitioner raised an action of damages for slander in the Court of Session against Peter Campbell, lately Inspector of Police in Oban, and J. C. MacLulich, Procurator-Fiscal for the county of Argyle, and residing at Inverary. In this action he was unsuccessful, and in connection with it incurred liability to Messrs Emslie & Guthrie, S.S.C.,

Edinburgh, who acted as agents for the defender Campbell, to the extent of £31, 10s., the amount of their account.

Upon 20th July 1887 Messrs Emslie & Guthrie obtained decree for this sum as agents disburseurs, and upon this decree used arrestments in the hands of the Police Commissioners, of date 11th and 26th November 1887, by which they claimed to have attached the whole wages of the petitioner under his engagement, and the Police Commissioners accordingly, since 26th November, refused to pay the petitioner the sum of £2, 4s. under their contract.

The petitioner stated that, while anxious to discharge his liabilities to the arresters, he was yet unable to set apart from his weekly wages of 18s. or 19s. a sum to that end, as his wages were barely sufficient to secure the necessaries of life for himself, his wife, and family. Further, that he was suffering great inconvenience and hardship from the use of these arrestments, as he was unable to employ and pay for two assistants, whom he was bound to employ in terms of his engagement with the Police Commissioners, and thus he might be driven, by the action of the arresters, to an infringement of his contract, and the consequent deprivation of such means of livelihood as he possessed. In these circumstances he averred that the use of the arrestments was unreasonable and oppressive, and the arrestments themselves were incompetent, and he prayed for their recall.

The respondents denied that the proceeds of the contract constituted the petitioner's sole income. They averred that besides receiving remuneration for lighting private lamps from residents, he had the whole day at his disposal for other employment, as his contract involved the discharge of no duties during the day, and any assistants he might employ were also then free to do any work they liked. They submitted that it was incompetent in a petition for recall to determine or affect their rights under the arrestments, and in any view, that the petitioner had not set forth relevant grounds showing them to be incompetent or stated circumstances instructing that their use was unreasonable and oppressive.

Argued for the petitioner—The arrestments were not competent under the Wages Arrestment Limitation (Scotland) Act 1870. The Court was in a position to say that they should never have been used at all—*Vincent v. Lindsay*, November 2, 1877, 5 R. 43; *Dick, Petitioner*, December 24, 1887, ante p. 281.

Argued for the respondents—The petitioner's income was larger than he admitted. He was in the position of a contractor, and was not a workman in the sense of the Act. This was an arrestment in execution following upon a decree, and there was no authority for the Court interfering—*Erskine*, iii. 6, 12.

At advising—

LORD PRESIDENT—The question here is, whether the petitioner is within the first section of the Act, and to be within that section he must be a labourer or workman, for the other descriptions used by the Act do not apply to a man of his class of occupation. If he is a labourer or workman, then he is within the statute. The only other question is, whether his wages are under 20s. per week. It is clear that as regards what