

The bank has brought this action for the removal of these show cases, and the prayer of the petition is "to ordain the defender to remove two show cases which she has fixed on the front walls of the shop No. 119 High Street, Ayr, of which the pursuers are the proprietors and the defender is the tenant, and to restore the front of the property belonging to the pursuers to the condition in which it was prior to the defender's interference therewith." Both the Sheriff-Substitute and the Sheriff have given decree in terms of the prayer of the petition. The case which the learned Sheriffs had to consider was entirely based on custom of trade, and the plea to that effect is the second plea for the defender, which is, "The defender having, in accordance with custom of trade, a right to erect show cases on the outside walls of her shop, the petition should be dismissed with expenses." The learned Sheriffs have found that the defender has failed to prove her averment of custom of trade. The defender's counsel here, feeling that it would be difficult to maintain that plea, has given it up, and has fallen back on the argument that this was reasonable use of the premises let, and so impliedly allowed by the lease, and he has used the evidence to show that this was a reasonable use to make of the outside wall. This new argument must rest on the proposition that, when erections attached to the outer wall of the premises let are found to be useful and convenient to the tenant, and not materially injurious to the landlord, they are therefore within the lease, and impliedly authorised by it. I find myself unable to assent to that proposition. I do not say there might not be such attachments. For instance—and this is probably the instance which would occur to everyone—a signboard bearing the name of the shopkeeper, is so universally recognised as part of the equipment of a shop, that the law would hold it to be authorised by implication. But that is not the case here. The defender's witnesses do not say that the show cases were necessary for the shop, but merely that they were convenient. If that is all that can be said in their favour I do not think we can hold that there is any implication that the tenant may thus interfere with the outer structure of the building without the consent of the landlord. On this ground I concur with the conclusion to which the Sheriffs came.

LORD KYLLACHY—I agree with Lord Stormonth Darling that the alleged custom has not been proved. On the question whether the affixing of these show-cases on the outside of the defender's shop was, apart from custom, so reasonable a use of the premises let to her as to be impliedly authorised by her lease, I also agree with Lord Stormonth Darling.

LORD KINCAIRNEY—I have considerable doubt as to this case, but I am not prepared to dissent from your Lordships' decision. I agree that there is no sufficient proof of custom. As to the sanction of the burgh authorities, I do not know what their posi-

tion really is. The question comes to be whether what the defender did was so impliedly within the lease that she was entitled to do it. It is not said that what she did was injurious to the proprietor, and it is said that it was in accordance with the purposes for which the premises were let. What, then, are the things which a tenant of a shop may do to the shop as being within the scope of the lease? Some things undoubtedly the tenant may do without special sanction. He may, for example, put up his name on the shop. Such a use of the subject of lease would be sanctioned by universal custom, and there may be other uses of a like kind. It is said that what was done here was going a long way beyond that, and certainly no such custom in support of it has been proved.

I am not prepared to say that she can put up these show-cases. There is no authority to the effect that she can. But I am very averse to saying that she cannot.

The LORD JUSTICE-CLERK was absent.

The Court dismissed the appeal and affirmed the interlocutors appealed against.

Counsel for the Pursuers and Respondents—M'Clure, K.C.—G. C. Steuart. Agents—Mackenzie & Kermack, W.S.

Counsel for the Defender and Appellant—Deas—Spens. Agent—J. A. Kessen, S.S.C.

Saturday, July 8.

SECOND DIVISION.

THOMSON v. THOMSON.

Alimentary Provision—Diligence—Excess over Suitable Aliment.

A, a retired master mariner, was entitled to an alimentary provision of £200 a-year from his deceased father's trust estate. His first wife, in an action of divorce at her instance, had obtained an interim decree for £20 to account of expenses, and subsequently her agents, as agents disburseurs, had obtained decree for £33, being the balance of the taxed amount of her expenses. The wife and her agents having thereafter laid on arrestments in the hands of the trustees, whereby they sought to attach the alimentary provision, A, who had married again since the divorce, and had one child by his second wife, presented a petition for recall. The Court granted the prayer of the petition to the extent of £150 per annum.

John Durham Thomson, retired master mariner, Inglewood, Byfleet, Surrey, presented a petition for recall of arrestments in the following circumstances:—The petitioner, who was married, was in receipt of an alimentary provision of about £200 a-year, being the income of a certain fund held for him in liberent by the testamentary trustees of Alexander Thomson, wholesale stationer, Bank Street, Dundee, the petitioner's father. In 1904 his first wife had raised an action of divorce against

him, in which she obtained interim decree for a sum of £20 to account of expenses. Decree of divorce was subsequently pronounced in her favour, and decree for £33, 7s. 2d., being the balance of the taxed amount of the expenses of her action was granted in favour of Messrs Gordon, Petrie, & Shand, S.S.C., as agents disbursers. The total amount of expenses in which the petitioner was thus found liable with dues of extract was £56, 2s. 2d. Arrestments were laid on by the petitioner's wife and by Messrs Gordon, Petrie, & Shand against the petitioner, in the hands of his father's trustees, whereby it was sought to attach the income payable to the petitioner as stated above.

Answers were lodged in the present petition by Mrs Thomson and by Messrs Gordon, Petrie, & Shand.

At the date of the petition the petitioner, who had no means of subsistence other than the provision referred to, was married to a second wife, by whom he had one child. There were four children of the first marriage. It was stated at the bar that the petitioner was about 60 years of age.

At the calling of the petition in Summar Roll, argued for the petitioner—The alimentary provision was of reasonable amount and the arrestments should therefore be recalled—*Livingstone v. Livingstone*, November 5, 1886, 14 R. 43, 24 S.L.R. 30; *Dick v. Russell*, December 24, 1887, 15 R. 261, 25 S.L.R. 281; *Blackwood v. Boyd*, 1877, M. 10,390. The provision could not be cut down without inquiry, and the onus was on the respondents to show that it was excessive.

Argued for the respondents—The onus was on the petitioner to justify the amount of the provision in question, which could not be protected from creditors so far as beyond reasonable aliment—*Haydon v. Forrest's Trustees*, 3 S.L.T. 286; *A B v. Sloan*, June 30, 1824, 3 S. 133 (195); *Leslie v. Cumming & Spence*, February 20, 1900, 2 F. 643, 37 S.L.R. 444; *Hurst v. Beveridge*, March 3, 1900, 2 F. 702, 37 S.L.R. 501, Bell's Com. i. 125. £1 a-week had been fixed by statute as a reasonable allowance for a working man and the petitioner required little more—Wages Arrestment Limitation (Scotland) Act 1870 (32 and 33 Vict. c. 63).

Without delivering opinions the Court (LORDS KYLLACHY, KINCAIRNEY, and STORMONTH-DARLING, the LORD JUSTICE-CLERK absent) pronounced an interlocutor in the following terms:—

“Recall the arrestment to the extent of £150 per annum, to which sum the petitioner is entitled as a suitable alimentary provision for him out of the annual income derived from the trust estate held for behoof of the petitioner in liferent by the trustees of the deceased Alexander Thomson.”

Counsel for the Petitioner—Campbell, K.C. — Sandeman. Agent — George H. Boyd, S.S.C.

Counsel for the Respondents—Constable. Agents—Gordon, Petrie, & Shand, S.S.C.

Tuesday, July 11.

SECOND DIVISION.

GALLOWAY v. CAMPBELL'S TRUSTEES.

Trust—Testamentary Trust—Administration—Specific Legacy—Direction to Trustees to Hold Specified Stock for a Liferenter and Fiars—Railway Stock Held for a Liferenter and Fiars Ceasing to Yield Income—Power to Sell.

A testatrix directed her trustees to hold in their own name certain shares, and to pay the dividends or annual income thereof to G. during his lifetime, and immediately after G.'s decease to realise the said shares and to pay the price in accordance with a certain destination. The testatrix further authorised her trustees in general terms “to sell and realise . . . any part of my estate, heritable or moveable, in so far as may be necessary or proper, in their discretion.” The testatrix acquired the shares in question in March 1898, and she died in January 1899, having received half-yearly dividends on the shares in June and December 1898. In June 1905 the shares referred to having yielded no dividend subsequent to that last received by the testatrix, G. requested the trustees to realise them, reinvest the proceeds, and pay him the annual income thereof. The trustees were advised by their stockbrokers that it would be proper to realise the shares in question. *Held (diss. Lord Stormonth Darling)* that the trustees had power to realise the shares during G.'s lifetime.

Mrs Jessie Galloway or Campbell, widow of John Campbell, sometime wine and spirit merchant, Caledonian Railway Inn, Slateford, died on 13th January 1899.

Mrs Campbell was survived by a nephew George William Galloway, and she left a trust-disposition and settlement whereby she provided, *inter alia*, as follows:—“(Third) I direct my trustees to hold in their own name my shares of the Great Central Railway Company, and pay the dividends or annual income thereof to the said George William Galloway during his lifetime, and immediately after the decease of the said George William Galloway I direct my said trustees to realise the said shares and to pay the price or value thereof to such child or children of the said George William Galloway, at such ages or times, in such shares, and in such manner and form, as the said George William Galloway shall by a writing under his hand direct and appoint, and failing such direction and appointment, to and in favour of the lawful child or whole children of the said George William Galloway, equally among them, share and share alike; and failing children of the said George William Galloway, to and in favour of his heirs, executors, or successors whomsoever.”