same way. The decision, although a narrow one, was in the end that by the law of Scotland the promises could be proved only by writ, and, with a gleam of humour which does not always appear in the reports, it is stated in Lord Hailes' report that the end of it was that "Millar did not reclaim. He told his counsel that he would not give the Court any further trouble; and at the same time declared that he would not put his father-in-law upon oath lest he should perjure himself."

That case was followed by the case of *Edmondston* (23 D. 995), which, so far as a promise is concerned, is very like the present case. There the promise was to leave money by will, and the consideration upon the other side was that the other person, who was a medical man, should settle himself in practice in the district. The decision there was to the same effect as in *Millar's* case. These cases settle the law, and settle it quite conclusively. I have no doubt, of course, that it is perfectly possible for one to bind himself in his lifetime to leave something in his will. I think that was also settled by a series of cases of which the most recent is *Paterson* (20 R. 484), and this is recognised in the case of *Mackenzie* (1909 S.C. 472). But although it is quite possible for one to so bind himself, I do not think it has ever been suggested that proof of his doing so could be by anything except writ, and—although this is not perhaps entirely conclusive—it would certainly be a most extraordinary result if at one and the same moment the law was that a nuncupative will for more than one hundred pounds Scots was not good, but that nevertheless it was possible to prove by parole a promise to make a will. The rule may in individual cases cause hardship, but it is a salutary rule on the whole, because if it was allowable to prove by parole that a person had promised to leave a sum by will, there might be no end to the imposture which might be practised on the Court. In this particular case one feels sure there is no imposture, and one's sympathies are very naturally with the people who spent money on the faith of this promise, and so far as the deceased lady is concerned I think it is quite evident she meant to carry it out in her codicil. Unfortunately she did not sign her codicil, and when a person does not sign a codicil the law will not go into the motives but will presume that she changed her mind.

Accordingly I think that the interlocutor of the Lord Ordinary is right, and should be adhered to.

LORD KINNEAR—I am entirely of the same opinion.

LORD SALVESEN—I concur. I think the case is ruled by the two decisions to which your Lordship has referred.

LORD JOHNSTON was absent.

The Court adhered.

Counsel for Pursuers (Reclaimers)—Dean of Faculty (Dickson, K.C.) — Howden. Agent—William Considine, S.S.C.

Counsel for Defender (Respondent) — Murray, K.C—Pringle. Agents — Pringle & Clay, W.S.

---

*Tuesday, November 22.*

## SECOND DIVISION.

## DAMPSKIBSELSKABET "NORDSOEN" *v.* MACKIE, KOTH, & COMPANY.

*Arrestment—Recall—Freight—Petition for Recall by Third Party on Averment that Freight Arrested Belonged to Him—Competency.*

A brought an action against B, a foreign shipowner, and to found jurisdiction, and on the dependence of the action, used arrestments in the hands of C. D brought a petition for their recall, averring that certain freight arrested belonged to him, and that B, the defender in the action, had no right or title thereto. He moved for a proof of his averments.

The Court *dismissed* the petition, holding that the ownership of the money said to have been attached could only be determined in a process to which all the competing parties were convened.

In October 1910 Mackie, Koth, & Company, coal exporters and shipping agents, Leith, raised an action in the Court of Session against Alfred Christensen, shipowner, Copenhagen, as managing owner of the s.s. "Sirius" of Copenhagen, and as an individual. To found jurisdiction against him, and on the dependence of the action, they arrested in the hands of Macpherson & M'Laren, Limited, Grangemouth, two sums of money amounting in all to £600, "due and addebted by them" to the defender.

Dampskibselskabet "Nordsoen" brought a petition for recall of the arrestments, averring, *inter alia*, "that the said Alfred Christensen is now managing director of the petitioning company. That the petitioners were not owners of the s.s. 'Sirius' at the time when the debt alleged to be due by the said Alfred Christensen, as managing owner thereof or as an individual, was contracted, and never have owned that vessel. The petitioners understand that the 'Sirius' belonged to the Dampskibselskabet 'Urania.' . . . . . That the petitioners are the registered owners of the s.s. 'Kronprins Frederick,' and that that vessel arrived at Grangemouth on 22nd October 1910, and there discharged her cargo, the consignees entitled thereto taking delivery thereof. The whole freight due in respect of said cargo belongs to the petitioners, and the said Alfred Christensen has no right or title thereto. That on 25th October 1910 the said Mackie, Koth, & Company, to found jurisdiction, and on the dependence of the said action against the said Alfred Christensen, used arrestments in the hands of Macpherson & M'Laren,

Limited, Forth Saw Mills, Grangemouth, receivers of the cargo of the s.s. 'Kronprins Frederick,' arresting thereby freight to the extent of £600 due to the petitioners by the said receivers. These arrestees refuse to pay to the petitioners the freight so attached."

Mackie, Koth, & Company lodged answers, in which they denied that the petitioners had any interest in the arrestments.

Argued for petitioners—The arrestments should be recalled. It had been decided that where a ship was arrested which did not belong to the debtor, the shipowner was entitled to have the arrestment recalled—*Duffus & Lawson* v. *Mackay and Others*, February 13, 1857, 19 D. 430; *Grant* v. *Grant*, December 14, 1867, 6 Macph. 155, 5 S.L.R. 119; *Schulz* v. *Robinson & Niven*, December 5, 1861, 24 D. 120. Freight followed the ownership of the vessel; the petitioners therefore were entitled to recall. There was a presumption that the hire of a ship went to the owner. The case of *Brand* v. *Kent*, November 12, 1892, 20 R. 29, 30 S.L.R. 70, relied on by the respondents, was inapplicable. At all events the petitioners were entitled to a proof of their averments.

Argued for respondents—A third party was not entitled to obtain the recall of arrestments on the dependence on the ground that the subjects alleged to have been arrested belonged to him—*Brand* v. *Kent* (*sup. cit.*); *Vincent* v. *Chalmers & Company's Trustee*, November 2, 1877, 5 R. 43, 15 S.L.R. 27. The case of *Duffus & Lawson* v. *Mackay* (*sup. cit.*) was inapplicable, for in the case of ships the register was conclusive as to ownership. A multiplepoinding was the appropriate process for determining to whom the sums in question belonged. A decision binding upon all parties would thus be obtained. *Esto* that the ship and freight belonged to the petitioners, that did not entitle them to the recall of a general arrestment of sums of money; there was no arrestment of freight as such.

LORD ARDWALL—I am of opinion that this petition must be dismissed as incompetent. We have had no decision cited to us where arrestments on the dependence of an action have been recalled on a petition by a third party alleging that the subjects said to have been arrested truly belong to him, except where ships have been the subject of the arrestments. These cases were decided on the ground that all ships are registered, and that registration is conclusive proof to whom they belong, and that no further evidence is required. In the case of *Schulz* (24 D. 120) it is true that inquiry was allowed, but the inquiry consisted merely in a remit to a Prussian lawyer on a point of law regarding the transfer of a ship by the law of Prussia.

I think the present case is ruled by the decision in *Brand* (20 R. 29), and I may observe with regard to the argument that an arrestment of freight is in the same position as an arrestment of a ship—first, that freight does not necessarily follow the ship or belong to the shipowner, and second, that it is not freight *eo nomine* that has been arrested here, but debts and sums of money. Further, I may observe that the question here seems to be one of some little complexity, and there are a number of parties interested—Mackie, Koth, & Co., by whom the arrestments have been laid on, Macpherson & M'Laren, in whose hands they are used, Alfred Christensen, against whom they are used, and the petitioners. In order to expiscate the matter there will require to be a process in which all these parties can be convened, and, without giving any advice as to the proper procedure to follow, I am quite clear that the facts cannot competently be ascertained in this petition, and that the motion for a proof must be refused and the petition dismissed.

LORD DUNDAS—I am of the same opinion. I think that the cases cited, and especially that of *Brand*, are conclusive against the petition for recall.

LORD SALVESEN—I agree. It seems to me that the ownership of the money which is said to have been attached by this arrestment must be determined in a process to which all the competing claimants can be convened. That cannot be done in this petition, and it must therefore be dismissed.

The LORD JUSTICE-CLERK was absent.

The Court dismissed the petition.

Counsel for Petitioners—Sandeman, K.C. —C. H. Brown. Agent—F. J. Martin, W.S.

Counsel for Respondents — Constable, K.C. — Armit. Agent — A. J. Simpson, S.S.C.

## HIGH COURT OF JUSTICIARY.

*Friday, December 2.*

(Before the Lord Justice-Clerk, Lord Ardwall, and Lord Salvesen.)

### TRAYNOR *v.* MACPHERSON.

*Justiciary Cases—Statutory Offence—Betting—Keeping a "Betting House"—Edinburgh Municipal and Police Act* 1879 (42 *and* 43 *Vict. cap. cxxxii*), *sec.* 284—*Betting Acts* 1853 (16 *and* 17 *Vict. cap.* 119), *sec.* 1, *and* 1874 (37 *and* 38 *Vict. cap.* 15), *sec.* 4.

A complaint charged a contravention of the Edinburgh Municipal and Police Act 1879, sec. 284, by keeping certain premises as a betting house. It was proved that no persons resorted to the premises for the purpose of betting; that no bets were made otherwise than by letters, telegrams, or telephone messages; and that no money was deposited or paid by clients until after the event on which the bet was made.