

tration completes the right in the assignee which was previously in the granter of the assignation. The right of the party who gives the assignation is transferred to the registered assignee just as if he had expedie sasine. There is nothing as to a transfer which does not proceed from a party in the real right to the security; and, as the necessary effect of registering the assignation is to put the assignee in the position of a party whose right has been completed by sasine, so it must be that the party who transfers has a real right in him previous to the transfer, which, being communicated and followed by registration, gives a real right to the assignee. The transmission of inchoate rights to be made complete not, in the person of the assignee but of some party who may have a title from the assignee uninfert, is not within the statute.

The possibility of transmitting a right to securities in the old form, so that, after a series of transmissions of the original precept, an infertment, taken at last, would complete the right, cannot affect the construction of this Act. It may be that a larger remedy might have been desirable; and that a holder of a merely personal right should have had the power of communicating such a right as would have placed the last holder registering in the position of the first of a series of intermediate holders, *different and more complete than that* of the immediate granter. I cannot find any such thing in the statute. The statute contemplates a transfer from a party vested in the real right to a party who becomes, by registration of the conveyance, a party holding the same quality of right which the granter of the conveyance had.

Reference was made to the schedules. Schedule No. 1 presupposes infertment in the granter, "all as specified in the bond and disposition in security, and instrument of sasine thereon." Note (a) requires a statement of all the intermediate holders after the first. The assignees, if the statute is of the import stated, must mean registered assignees.

In Schedule No. 3 the case is given of an instrument in favour of an heir of a creditor who is assumed to die infert in the security, and as to whom it is said that he acquired right by general or special service. It is plain that some peculiar meaning or effect is attached to the words "general service." They can hardly be said to justify the inference that a personal right must be contemplated, as a general service is the appropriate mode of service in reference to such rights. In the case supposed the ancestor is infert; and, where infert, special service is necessary. The words must there, I think, be either disregarded or read as Mr Guthrie suggested—as applicable to the case where a general service is used, not as taking up a right, but to fix and ascertain who is in a particular relation. I think that we must adhere to the Lord Ordinary's interlocutor.

The other Judges concurred.

The interlocutor of the Lord Ordinary was accordingly adhered to.

Agent for Objector—John Ross, S.S.C.

Agent for Respondent—D. J. Macbrair, S.S.C.

Saturday, June 15.

FIRST DIVISION.

M'ALLISTER v. DUTHIE.

Retention—Interim Decree—Charge—Suspension.
Suspension of charge on interim decree in an

action for payment of money, on the ground that the complainer had a right of retention in respect of having subsequently in the action obtained a judgment against the charger for a sum of expenses, which judgment was under review, refused.

Duthie sued M'Allister for £96, the balance remaining due of a larger debt. M'Allister admitted a balance of £52. The Lord Ordinary (MURE) decerned against M'Allister *ad interim* for the admitted balance, and this judgment became final. The Lord Ordinary then, after a proof, found M'Allister liable to Duthie in a farther sum, but gave him expenses, subject to modification. Duthie reclaimed. Duthie then charged M'Allister on the decree for £52. M'Allister suspended, and pleaded a right of retention over the sum charged for to the extent of the expenses to which he was found entitled by decree of the Lord Ordinary. He offered to consign the amount.

The Lord Ordinary (MURE) refused the note of suspension, and added this note to his interlocutor:—"The Lord Ordinary is not aware of any principle or authority applicable to the law of retention which can entitle a debtor to suspension of a final decree for payment of a debt, in respect of a claim arising out of a mere finding for expenses of process which has been reclaimed against, and which expenses, even if ascertained, would be subject in the first instance to the hypothec of the complainer's agent, and liable to be carried off by him to meet his account incurred on behalf of the complainer."

M'Allister reclaimed.

SCOTT for him.

FRASER and SKELTON, for respondent, were not called on.

The Court adhered.

The LORD PRESIDENT said—I cannot imagine any doubt in this case. When the Court award an interim decree in an action for payment of money, the footing on which it goes out is, that the sum decerned for ought to have been paid, leaving the disputed balance to be the subject of after deliberation. There may be cases in which very nice questions may arise as to whether interim decree, even in the case of an admitted balance, should be given. But whenever interim decree is given, there is an end of all such considerations. It is then a settled matter that the defender is bound instantly to pay the sum decerned for. All that is very elementary and hardly worth stating, but for the strenuous contention of the complainer. But he says that the pursuer having failed to enforce the interim decree until a further interlocutor in this cause was pronounced, he has lost his right to enforce it; and the ground on which he puts that is, that he has now got an interlocutor, in which he is found entitled to expenses, subject to modification. That is under review, and he says he may come to get a decree for the sum against the respondent. That gives him, he says, a right to retain the sum decerned for long before, and which it was his duty to pay immediately on the decree. All I can say is, that that appears to be founded on a total misapprehension of the doctrine of retention. There is no foundation for retention in such a prospective and possible claim of debt.

LORD CURRIEHILL concurred.

LORD DEAS—There are some circumstances where, when parties litigate, the Court may equitably interfere to stop a party from enforcing even a legal right while the proceedings are going on. But it

is not necessary to consider that here, for here the complainer does not plead any equitable considerations, but grounds his claim on the legal right of retention. If he has it, we have no discretion. If he has it not, then we cannot give it him. But whatever equitable claim he might have had, he cannot plead any legal right of retention.

LORD ARDMILLAN concurred.

Agent for Complainer—W. Officer, S.S.C.

Agent for Respondent—Lockhart Thomson, S.S.C.

HIGH COURT OF JUSTICIARY.

Saturday, June 15.

HAMILTON v. GIRVAN.

Complaint—Summary Procedure Act—Poisoned Grain and Flesh Acts—English Summary Procedure Act—Prosecutor—Informer—Penalty—Title to Complain—Interest—Relevancy. Held, in a suspension of a conviction under the "Poisoned Flesh Act 1864," that any one of the public had title and interest to bring a complaint under the Act. Objections to relevancy of complaint repelled.

John Girvan, farmer, Kildonnain Mains, in the parish of Colmonell, and county of Ayr, presented a complaint in the Justice of Peace Court at Girvan, under the Summary Procedure Act 1864, against Hill Hamilton, Esq. of Kildonnain, and his gamekeeper, John M'Pherson, charging them with contravention of the "Poisoned Grain Prohibition Act 1863," 26 and 27 Vict., c. 113, and the "Poisoned Flesh Prohibition Act 1864," 27 and 28 Vict., c. 115.

27 and 28 Vict., c. 115, enacts—

"§ 2. Every person who shall knowingly and wilfully set, lay, put, or place, or cause to be set, laid, put, or placed, in or upon any land, any flesh or meat which has been mixed with or steeped in or impregnated with poison or any poisonous ingredient, so as to render such flesh or meat poisonous and calculated to destroy life, shall, upon a summary conviction thereof, forfeit any sum not exceeding ten pounds, to be recovered in the manner provided by The Poisoned Grain Prohibition Act 1863.

"§ 3. Nothing in this Act shall make it unlawful for the occupier of any dwelling-house or other building, or the owner of any rick or stack of wheat, barley, oats, beans, peas, tares, seeds, or of any cultivated vegetable produce, to put or place or cause to be put or placed in any such dwelling-house or other building, or in any enclosed garden attached to such dwelling-house, or in the drains connected with any such dwelling-house, provided that such drains are so protected with gratings or otherwise as to prevent any dog from entering the same, or within such rick or stack, any poison or poisonous ingredient or preparation for the destruction of rats, mice, or other small vermin.

"§ 4. This Act shall not apply to any grain, seed, or meal within the provisions of The Poisoned Grain Prohibition Act 1863, and the provisions of the fifth section of the said Poisoned Grain Prohibition Act 1863, shall apply to any proceedings instituted under this Act, and shall come into operation on the first October one thousand eight hundred and sixty-four."

26 and 27 Vict., c. 113, enacts—

"§ 5. All penalties imposed by this Act may be recovered in *England* and *Ireland* before two justices of the peace, and in *Scotland* before two justices of the peace or the sheriff; and for that purpose in *England* and *Scotland* the provisions of the Act of the eleventh and twelfth years of Her present Majesty, chapter forty-three, and in *Ireland* the 'Petty Sessions (*Ireland*) Act 1851' shall extend and apply to this Act, and to all proceedings in relation thereto; and it shall not in any such proceedings be necessary to allege or prove the ground or other place where an offence is committed to be the property of or occupied by any person: Provided always, that the convicting justices or sheriff may, if they or he shall think fit, award to the informer or prosecutor (not being a police constable or peace officer) in any such proceedings any portion not exceeding one moiety of any penalty recovered under the aforesaid enactments: Provided also, that every informer or prosecutor, and every person who shall give evidence against any other person proceeded against under this Act, shall be freed and discharged from any such penalty which he may have incurred for or by reason of his having participated or aided in the commission of the offence with respect to which he shall so inform or prosecute or give evidence, provided the information against such other person has been laid, or such evidence has been given, before the laying of any information (if any) against such informer, prosecutor, or witness, for the recovery of any penalty he may have so incurred."

11 and 12 Vict., c. 43 (English Summary Procedure Act 1848), enacts—

"§ 1. That in all cases where an information shall be laid before one or more of Her Majesty's justices of the peace for any county, riding, division, liberty, city, borough, or place within *England* and *Wales*, that any person has committed, or is suspected to have committed, any offence or act within the jurisdiction of such justice or justices for which he is liable by law, upon a summary conviction for the same before a justice or justices of the peace, to be imprisoned or fined, or otherwise punished, and also in all cases where a complaint shall be made to any such justice or justices upon which he or they have or shall have authority by law to make any order for the payment of money or otherwise, then, and in every such case, it shall be lawful for such justice or justices of the peace to issue his or their summons, directed to such person, stating shortly the matter of such information or complaint, and requiring him to appear at a certain time and place before the same justice or justices, or before such other justice or justices of the same county, &c., as shall then be there, to answer to the said information or complaint, and to be farther dealt with according to law."

27 and 28 Vict., c. 53, enacts—

"§ 4. All proceedings for summary conviction for any offence, whether at common law or under any Act of Parliament, and all proceedings for the recovery of any penalty which may be sued for or recovered in a summary form, whether such proceedings are at the instance of a public or private prosecutor or complainer, may be instituted by way of complaint in one or other of the forms set forth in the Schedule (A.) to this Act annexed; and it shall not be necessary to mention in any complaint any Act of Parliament other than the Act declaring the Offence for which a conviction is sought, or imposing the penalty or forfeiture which is claimed;