

LORD TRAYNER—I am substantially of the same opinion. I think the Lord Ordinary correctly states that the question in this case as presented at the discussion is a question not as to an unlawful appropriation of the complainers' property or as to infringement of the complainers' trade-mark. The whole case turns on what the name embossed on the bottle means to the public. The cases quoted to us were cases of goods bearing a trade-mark or a trade-name which indicated that the contents of the bottles were manufactured by one person, when in point of fact they were manufactured by another. There is no such case here. The name embossed on the bottle might have been indicative of the ownership of the bottle, but gave no indication as to the manufacturer of the contents, because in each case the bottle bore a separate label to indicate who was the manufacturer. But apart from this, this is not a case for interdict. The respondent's position is quite frank. He acknowledges that he may have sold the bottles bearing the name of the complainers, but says that such a sale was accidental, and that had he been asked he would have been willing to take reasonable precautions against a recurrence of it. When a man comes into Court in this position, it cannot be said that he is to be subjected to interdict. On these grounds I think that the prayer of the note should be refused.

LORD MONCREIFF—I am of the same opinion, and for the reasons stated by the Lord Ordinary

LORD YOUNG was absent.

The Court adhered.

Counsel for the Complainers and Reclaimers—Campbell, K.C.—A. A. Fraser. Agent—George Arnott Eadie, S.S.C.

Counsel for the Respondent—C. D. Murray—J. H. Henderson. Agents—Kelly, Paterson, & Co., S.S.C.

Saturday, February 27.

SECOND DIVISION.

[Lord Pearson, Ordinary.]

GORDON'S TRUSTEES v. FORBES.

Process—Multiplepinding—Claimant as Creditor Resident Abroad—Mandatory.

Circumstances in which a claimant in an action of multiplepinding who claimed as a creditor and who was resident abroad held (reversing judgment of Lord Pearson) not bound to sist a mandatory.

An action of multiplepinding was raised in February 1902 by the trustees acting under the trust-disposition and settlement of the deceased William Gordon, solicitor, Aberdeen, in connection with the distribution of the deceased's estate. The pursuers called as defenders all the persons so far as known to them who had any interest

under certain testamentary writings left by Mr Gordon.

A claim was lodged by Miss Jessie Forbes, 69 Crown Street, Aberdeen, as a creditor of the deceased.

Miss Forbes was not called as a defender in the action, but she averred that in consideration of her abandonment of a certain claim against a third party in whom the deceased took an interest, he had bound himself to pay her an annuity of £25 per annum during all the years of her life. This obligation she averred "was undertaken in a document in the following terms:—'35 Albany Place, 29th April 1898.—My dear Miss Jessie—I am sorry that I am still unable to give you such a reply as you would wish, and I need scarcely again remind you of what I have so often expressed as to difficulties in the way. All I can say at present is, that I guarantee, from whatever source it may ultimately come, £25 a-year, say at Whitsunday yearly. I know it is not much, but it will, I trust, be of a little use.—Believe me, with best wishes, yours very sincerely, WILLIAM GORDON.'

On 7th May 1898 Mr Gordon sent the claimant a letter in the following terms:—'My dear Miss Jessie—With reference to my last letter I send you enclosure, being £25, to be continued at Whitsunday yearly.—With best wishes, believe me, yours very sincerely, WILLIAM GORDON.' The claimant further averred that she "received the £25 mentioned in said letter, and thereafter Mr Gordon made payment to her during his life of the said annuity of £25 at the usual half-yearly terms." She claimed "to be ranked and preferred upon the fund *in medio* for an annuity of £25 a-year during all the years of her life; or alternatively to be ranked and preferred upon said fund for such sum as will enable her to purchase an annuity of this value."

On 18th July 1903 the Lord Ordinary (PEARSON) pronounced an interlocutor containing findings with regard to all the claims lodged except Miss Forbes'. With regard to that claim his Lordship said in the course of the opinion which he delivered that he was prepared to find it irrelevant as it stood, but that he would give Miss Forbes an opportunity of amending it.

In the end of September 1903 Miss Forbes went to South Africa on account of her health, and in order to seek a livelihood, *animo remanendi*.

On 19th November 1903, an amendment of Miss Forbes' claim having been lodged, the Lord Ordinary, on the motion of the pursuers and real raisers, ordained Miss Forbes to sist a mandatory within fourteen days.

On 8th December the Lord Ordinary, in respect that Miss Forbes had failed to sist a mandatory, repelled her claim. His Lordship granted leave to reclaim.

Miss Forbes reclaimed, and argued—The present difficulty had been created by the deceased, and the claimant was not bound to sist a mandatory—*North British Railway Company v. White, &c.*, November 4, 1881, 9 R. 97, 19 S.L.R. 59.

Argued for the pursuers and real raisers—The claimant was not called as a defen-

der; she claimed as a creditor, and being resident abroad she could only insist in her claim if she sisted a mandatory.

LORD JUSTICE-CLERK—I think this is rather a hard case for the reclamer. The litigation has been going on for about two years, and nothing has been accomplished so far as this lady's claim is concerned. The claimant is apparently unable to support herself, and has gone to South Africa to seek a livelihood.

The question of sisting a mandatory is one for the discretion of the Court, and that discretion should be exercised with greater care where the question relates to a defender. In this case I think that discretion will be exercised best by not requiring that a mandatory be sisted.

LORD TRAYNER—I am of the same opinion. This lady's claim is not one that is absolutely without foundation. There is at least a question to try upon the letters to which we have been referred, and the circumstances of the claimant induce me to share the opinion which your Lordship has expressed. The case has gone on so long without any determination upon this lady's claim that I think she cannot be shut out at present from insisting in it, and that without sisting a mandatory.

LORD MONCREIFF—I am of the same opinion. It is always a question of circumstances for the discretion of the Court whether a mandatory should be sisted. I think this would be a hard case in which to require a mandatory, and therefore I agree with your Lordships.

LORD YOUNG was absent.

The Court recalled the interlocutor reclaimed against, and remitted to the Lord Ordinary to proceed.

Counsel for the Pursuers (Real Raisers) and Respondents—Hon. W. Watson. Agents—Scott Moncrieff & Trail, W.S.

Counsel for the Claimant and Reclaimer—G. Watt, K.C.—A. M. Anderson. Agents—Wylie & Robertson, W.S.

Tuesday, March 1.

SECOND DIVISION.

[Lord Stormonth Darling,
Ordinary.]

PARISH COUNCIL OF GLASGOW v. PARISH COUNCIL OF KILMALCOLM

Poor—Settlement—Capacity to Acquire Residential Settlement—Maintenance in Charitable Institution—Irrelevant Defences—Mental Weakness and Chronic Physical Disease—Educational Institution—Domicile of Charitable Institution—Continuous Residence—Forisfiliation—Poor Law (Scotland) Act 1898 (61 and 62 Vict. c. 21), sec. 1.

In an action by the Parish of Glasgow against the Parish of Houston and

the Parish of Kilmalcolm as to the liability for the support of M. G., a female pauper, the following facts were admitted on record:—The pauper was born in Houston in 1881, the illegitimate daughter of a farm servant; in 1887 she was admitted to Quarrier's Homes, a charitable institution in Kilmalcolm, and she remained there till 1901, when she was removed to Glasgow Poorhouse.

In their defences the Parish of Kilmalcolm averred that (1) during her stay at Quarrier's Homes the pauper "suffered from mental weakness and chronic physical disease which made her incapable of maintaining herself;" (2) the Homes were entirely for the education and training of children; (3) the head office and domicile of the Homes were in Glasgow; (4) the pauper's residence in the Homes had not been continuous, she on one or more occasions having been removed to the seaside Home at Dunoon; and (4) the pauper had never been forisfiliated.

Held that the defences were irrelevant, and that the pauper had acquired a settlement in Kilmalcolm.

The Poor Law (Scotland) Act 1898 (61 and 62 Vict. c. 21), enacts—sec. 1—"From and after the passing of this Act no person shall be held to have acquired a settlement in any parish in Scotland by residence therein unless such person shall either before or after, or partly before and partly after the commencement of this Act, have resided for three years continuously in such parish, and shall have maintained himself without having recourse to common begging either by himself or his family, and without having received or applied for parochial relief."

In April 1903 the Parish Council of Glasgow raised an action against the Parish Council of Houston and Killellan and the Parish Council of Kilmalcolm, concluding for declarator that on 30th March 1901, when Mary Gillespie, then an inmate of Glasgow City Poorhouse, became a proper object of parochial relief, the parish of Houston and Killellan in respect of her birth, or alternatively the parish of Kilmalcolm in respect of her having acquired by residence a parochial settlement in that parish, was her parish of settlement, and as such one or other of the defenders was liable to relieve the pursuers of all sums incurred on account of the pauper; and for decree ordaining one or other of the defenders to make payment to the pursuers of £26, 13s., being the amount expended on behalf of the pauper.

The following averments on record were admitted by all parties:—That the pauper was born in the parish of Houston on 18th February 1881, and was the illegitimate daughter of a farm servant Catherine Gillespie, whose whereabouts were unknown; that on 12th October 1887 she was admitted to Quarrier's Homes in Kilmalcolm Parish; that she continued in that institution till March 1901, when she