

to receive the minute and accept the same as timeously lodged, and to proceed.

LORD JOHNSTON—I agree with your Lordship. But I have to say that I think it is time now that this Act of Sederunt was made more explicit.

What your Lordship has said embodies the spirit of what has already been enacted, but it is, I think, for consideration whether it is not now desirable to add a little to the letter. I would suggest to your Lordship that what is required is this. I read from the Codifying Act of Sederunt, I, xiii, 11. The second sub-section bears this—"An award by a Sheriff under the Act, or a certified copy thereof, shall be forthwith recorded by the sheriff-clerk in the said register as if it were a memorandum, and written notice of such recording and of the terms of the award shall be forthwith sent by him to the parties interested." I think if there were added, without alteration of what I have read, these words, "by registered letter, and the date of the transmission of such notice shall, for the purposes of this Act of Sederunt, be held to be the date of issue of such award," the enactment would be more complete.

That would represent more fully the intention of the Act of Sederunt; and looking to the fact that this is not the first occasion in the last six weeks on which we have had to deal with this matter, I think that it would be desirable to make the Act of Sederunt so explicit that there shall not be imposed upon intending appellants the necessity of coming here, at some expense to them and trouble to the Court, to obtain redress against irregularity or negligence in the sheriff-clerk's office.

LORD MACKENZIE concurred.

LORD SKERRINGTON was absent.

The Court pronounced this interlocutor—

"Ordain the Sheriff-Substitute at Hamilton as arbitrator to receive the minute on behalf of the petitioner referred to in the petition, to accept the same as timeously lodged, and thereafter to proceed as accords: Further, appoint the process in the arbitration proceedings to be transmitted to the Sheriff-Clerk of the County of Lanark at Hamilton as craved."

Counsel for the Petitioner—Moncrieff, K.C.—Burnet. Agents—Simpson & Marwick, W.S.

Saturday, December 23.

FIRST DIVISION.

GRIEVE'S TRUSTEES v. JAPP'S TRUSTEES AND OTHERS.

Writ—Title—Property—Subscription—Discrepancy between Signature of Granter and Name of Granter in Body of Deed and in Testing Clause—Conveyancing (Scotland) Act 1874 (37 and 38 Vict. cap. 94), sec. 39.

A disposition of heritable subjects was subscribed "Isabella C. Moncur," whereas the body of the deed bore that the deed was granted by, and the testing clause that the deed was subscribed by, "Mrs Isabella Williamson or Moncur." Another disposition of heritable subjects was subscribed "Joan Colville Brown," whereas the body of the deed bore that the granter was Mrs Joan Colville or Brown, and the testing clause made no reference to the discrepancy. The subjects of the titles, of which those deeds formed part, came into the hands of trustees, who sold the subjects. The buyer took exception to the dispositions as being informally executed, and the trustees brought a petition under the Conveyancing (Scotland) Act 1874, section 39, craving declarator that the deeds were duly subscribed by the granters thereof. *Held* that the petition was unnecessary and must be *dismissed*.

The Conveyancing (Scotland) Act 1874 (37 and 38 Vict. cap. 94) enacts—section 39—"No deed, instrument, or writing subscribed by the granter or maker thereof, and bearing to be attested by two witnesses subscribing, and whether relating to land or not, shall be deemed invalid or denied effect according to its legal import because of any informality of execution, but the burden of proof that such deed, instrument or writing so attested was subscribed by the granter or maker thereof, and by the witnesses by whom such deed, instrument or writing bears to be attested, shall lie upon the party using or upholding the same, and such proof may be led in any action or proceeding in which such deed, instrument, or writing is founded on or objected to, or in a special application to the Court of Session, or to the sheriff within whose jurisdiction the defender in any such application resides, to have it declared that such deed, instrument, or writing was subscribed by such granter or maker and witnesses."

Frank Hunter and others, testamentary trustees of the deceased John Grieve, *petitioners*, brought a petition under the Conveyancing (Scotland) Act 1874 (37 and 38 Vict. cap. 94), section 39, craving the Court to allow a proof of the averments contained in the petition, and thereafter to declare that the deeds after mentioned were duly subscribed by the granters.

Answers were lodged by James Thomas Japp and others, testamentary trustees of the deceased William Japp, solicitor, Alyth,

who prepared the first of the deeds after mentioned, and by Messrs Japp & Yeaman, solicitors, Alyth, who prepared the second of the deeds after mentioned, and another, respondents, against whom the petitioners craved the expenses of their application.

The petition set forth—"1. That the late John Grieve purchased from Thomas Adam, farmer, Shanley, in the parish of Lintrathen and county of Forfar, with entry at the term of Whitsunday 1898, the following subjects, viz.—[then followed a description of the subjects]; conform to disposition granted by the said Thomas Adam in favour of the said John Grieve, dated 22nd and recorded in the Division of the General Register of Sasines applicable to the county of Perth 28th, both days of June 1898. 2. In the progress of titles of the said subjects there is a disposition in favour of James Adam, farmer, Clintlaw, dated 6th and 13th November 1883. This disposition bears to be granted with consent of John Skeen, feuar, Alyth, by Mrs Isabella Williamson or Moncur, then residing at Clifton near Bristol, widow of the deceased David Moncur, sometime manufacturer in Blairgowrie, as factor and commissioner for John Rait Moncur, coffee planter, then residing at Ashambro in the Presidency of Madras, conform to factory and commission in her favour therein mentioned. The testing clause states that the disposition was subscribed 'by me the said Mrs Isabella Williamson or Moncur at Gibraltar on the 6th day of November 1883, before these witnesses, William Turner, doctor of medicine in the Civil Hospital there, and William Moncur, my son.' The disposition is signed 'Isabella C. Moncur,' and there is nothing in the deed to show that Isabella C. Moncur is the same person as Mrs Isabella Williamson or Moncur. The disposition was prepared by William Japp, solicitor, Alyth. 3. The said John Grieve purchased from Mrs Joan Colville or Brown, widow, and Miss Isabella Colville, both residing at Park Cottage, Meethill, Alyth, with entry at the term of Whitsunday 1900, the following subjects, viz.—[then followed a description of the subjects]; conform to disposition granted by the said Mrs Joan Colville or Brown and Miss Isabella Colville in favour of the said John Grieve, dated 26th April and recorded in the said Division of the General Register of Sasines 1st May 1900. The testing clause states that the deed was subscribed by 'us both at Alyth on the 26th day of April 1900, before these witnesses, James Smart, burgh surveyor, Alyth, and the Reverend Patrick Gorthy Gilruth, residing at Angle Villa near Alyth.' The disposition is signed 'Joan Colville Brown,' and there is nothing in the deed to show that Joan Colville Brown is the same person as Mrs Joan Colville or Brown. The disposition was prepared by Messrs Japp & Yeaman, solicitors, Alyth. 4. The petitioners as trustees foresaid made up titles to the above two subjects and are infett therein. 5. The petitioners as trustees foresaid sold the above two subjects along with other subjects with entry at the term of Whitsunday 1915 to James Adam Hunter, Kilfinichen,

Aros, Mull, and presently residing at Barony Hall, Alyth, retired planter, and his agents have taken exception to the two last-mentioned dispositions in consequence of informalities in the execution thereof, and express doubt as to the probative character of the said two deeds. 6. That the said Mrs Isabella Williamson or Moncur and the said Mrs Joan Colville or Brown are both now dead. 7. The writers of the respective deeds both being alive the petitioners' agents suggested to the purchaser's agents that on the assumption that there are informalities in the deeds these might be cured by adding to the testing clause of the disposition granted by Mrs Isabella Williamson or Moncur a declaration to the effect that she signed the deed with her usual signature 'Isabella C. Moncur,' and to the testing clause of the disposition granted by the said Mrs Joan Colville or Brown and Miss Isabella Colville a declaration that the deed was signed by the said Mrs Joan Colville or Brown with her usual signature 'Joan Colville Brown,' but they refused to accept this on the ground that any informalities could only be cured by a petition to the Court under section 39 of the Conveyancing (Scotland) Act 1874. 8. That the said William Japp is also now dead. That James Thomas Japp, solicitor, Alyth, and William Buchan Japp, Writer to the Signet, residing sometime at Craiglea Cottage, Alyth, and now in Edinburgh, are the trustees acting under his trust-disposition and settlement to which his wife Mrs Catherine Fenton or Japp was a party, dated 1st and 11th August 1888, and codicil, to which his wife was also a party, dated 26th February 1892, and both registered in the Books of Council and Session 10th October 1913. 9. That John Yeaman, solicitor, Alyth, is the sole surviving partner of the said firm of Messrs Japp & Yeaman."

The answers set forth—"The respondents submit that the petition is unnecessary, and that the averments therein contained are irrelevant.

"They submit that each of the deeds objected to contains a proper testing clause bearing that the same was subscribed by the granter, and also bears to be signed by the granter thereof.

"It is admitted that Mrs Isabella Williamson or Moncur is dead, but denied that Mrs Joan Colville or Brown is dead. She at present resides in Alyth.

"As regards the first-mentioned deed it is submitted that it bears to be signed by Isabella Moncur, the granter thereof, and that the addition of a central initial does not amount to an informality. The said deed has not been registered in the register of sasines. The title was completed, *inter alia*, under said deed by a notarial instrument recorded in the Division of the General Register of Sasines applicable to the county of Perth on 16th March 1893, being more than twenty years before the present time, and the title offered is accordingly good and sufficient notwithstanding the alleged informality.

"As regards the second-mentioned deed it bears to be signed by Joan Colville or

Brown, using both her maiden and her married name. It is submitted that she was entitled to do so, and that her doing so does not constitute an informality.

"The respondents accordingly submit that the petition should be dismissed as unnecessary."

Argued for the petitioners—There was an informality of execution in the sense of the Conveyancing (Scotland) Act 1874 (37 and 38 Vict. cap. 94), sec. 39, for the signatures did not correspond with the testing clause, and might be of quite other persons than those in the testing clause—*Richardson's Trustees*, 1891, 18 R. 1131, 28 S.L.R. 889. Further, the notarial instrument referred to in the answers was not the title, but proceeded upon the title in which the informality was, and it was on the title that prescription ran—*Kerr's Trustee v. Yeaman's Trustee*, 1888, 15 R. 520, *per* Lord Rutherford Clark at p. 530, 25 S.L.R. 378; *Glen v. Scales' Trustee*, 1881, 9 R. 317, 19 S.L.R. 201. The prayer of the petition should be granted.

Counsel for the respondents was not called upon.

LORD PRESIDENT—I do not think that the procedure prescribed by the 39th section of the Conveyancing (Scotland) Act 1874 was ever intended to be applied in a case such as this. The objection that has been taken to this title seems to me to be absurd and frivolous. There is no suggestion that there is any person other than the two persons who signed these deeds whose identity could be confused. These two persons are alleged to have signed, and they certainly did in fact sign, the deeds.

I do not think we ought to grant the prayer of this petition, and accordingly I propose that we dismiss it as unnecessary.

LORD JOHNSTON—I concur with your Lordship on one ground only, viz., that although this is a proper means of clearing up this question, frivolous though it be, because it is a question which stays the hand of the seller in recovering the price of his property, yet the buyer who has raised this frivolous question is called and does not appear. He therefore has run away from the objection which he has taken and gives no reason for his course of action.

In these circumstances I think it is quite justifiable to dismiss the petition. Had it not been for the terms in which the crave for expenses in the prayer of the petition is framed I should have had no hesitation in finding him liable to the petitioners in expenses.

LORD MACKENZIE—I agree with your Lordship that the objection taken here to these two dispositions is quite untenable. The persons who are liable for this are not disclosed in the process before us otherwise than in statement 5 of the petition. They are there described as "agents for James Adam Hunter." They in my opinion are the persons responsible for the unnecessary proceedings that have been taken.

LORD PRESIDENT—In reference to what my brother Lord Johnston has just said, I think that in the interlocutor we ought to

Put what reason we have given for pronouncing it, and that will be sufficient intimation to the buyer what we think of the objection he has taken.

The Court dismissed the petition as unnecessary.

Counsel for the Petitioners—Chree, K.C.—Brown. Agents—E. A. & F. Hunter & Company, W.S.

Counsel for the Respondents—Hamilton. Agents—Morton, Smart, Macdonald, & Prosser, W.S.

Tuesday, December 12.

SECOND DIVISION.

M'SHERRY v. GLASGOW CORPORATION.

Reparation—Negligence—Tramway—Failure of Tramcar to Stop—Accident to Passenger Preparing to Alight who has Gone to the Platform and thence on to the Step—Relevancy of Averment.

An action of damages for personal injury was brought against a tramway authority on averment that the pursuer, being a passenger on a tramcar and wishing to alight at a stopping-place, got up and went on to the platform, intimated her desire to the conductress, who rang the bell to warn the driver, and then as the car was slowing down got on to the step; that the car did not stop, but passing the stopping-place began to accelerate its pace; that the pursuer being unable to get back on to the platform and being afraid of being jerked off, tried to alight, fell, and was injured. *Held* (*rev.* Lord Ordinary Anderson) that the averments were irrelevant. *Per* the Lord Justice-Clerk—"It is news to me to learn that any passenger on a car is entitled to ride on the step of a car."

Alice Mallon or M'Sherry, wife of and residing with Peter M'Sherry, 12 Kidston Street, S.S., Glasgow, *pursuer*, brought an action with the consent and concurrence of her husband against the Corporation of the City of Glasgow, *defenders*, in which she concluded for £250 damages in respect of injuries sustained by her in falling off one of the defenders' tramcars.

The pursuer *averred*—" (Cond. 2) On or about the evening of 1st December 1915 the pursuer was an inside passenger on one of the defenders' electric tramway cars from Preston Street to Kidston Street, Glasgow. When the car approached the stopping-place in Crown Street, almost opposite the end of Kidston Street, the pursuer left her seat in good time and went on to the platform. When the pursuer came on to the platform the conductress rang the bell to warn the driver to stop at said stopping-place and the car slowed down. The pursuer got on to the step of the car to be ready to get off the moment the car stopped.