Tuesday, May 19.

CHARLES *v.* CHARLES' TRUSTEES.

Jurisdiction—Foreign—Heritable—Executor—Husband and Wife. In an action by a widow against the trustees and executors of her husband, who died a domiciled Scotchman, the defenders stating a preliminary plea of no jurisdiction, in respect of their being resident furth of Scotland—plea *repelled*, in respect the defenders stood vested in Scotch heritage conveyed to them by the truster.

Mrs Charles, widow of John Charles, a domiciled Scotchman, who died in Edinburgh in 1862, brought this action in order to have it found that she was entitled to enforce her legal claim of *jus relictæ* against her husband's estate, and to have an alleged deed of agreement. by which she was said to have discharged this claim, set aside. The deed sought to be reduced was said to have been engaged in at Edinburgh, within about a fortnight of Mr Charles' death in that city, between the pursuer and the trustees acting under two several deeds of trust executed by Mr Charles.

These deeds of trust were both executed on the same day (4th July 1861), and in favour of the same persons as trustees. The first of these, or what is called the trust-disposition and assignation, conveyed to the trustees certain stocks and other moveable funds belonging to Mr Charles for the granter's liferent enjoyment, and after his death for division amongst certain individuals specifically named. The other deed, or what is called for distinction the trust-disposition and settlement, conveyed to the same trustees a certain heritable property in Edinburgh, to be held for behoof of two daughters of Mr Charles, and also nominated the trustees executors of the truster. It was admitted that confirmation was carried through by the trustees on this nomination. It was also admitted that the heritable property in Inverleith Row remained vested in their person.

The defenders called in the action were the surviving trustees and executors, and also the beneficiaries under the trust-deeds. In the defences it was alleged that one of the trustees had resigned office, and that the others were not resident in Scotland, and a preliminary plea was stated of "no jurisdiction."

The Lord Ordinary (KINLOCH) repelled the plea, holding that the fact of the defenders, the trustees, being presently vested in the heritable property in Edinburgh, was sufficient by itself to give jurisdiction to the Court in a question arising out of a transaction expressly engaged in by them in their trust capacity.

The defenders reclaimed.

CLARK and BALFOUR for them.

SHAND and KEIR for respondent.

The following authorities were cited:—*Ferrie*, 9 S., 854; *Magistrates of Wick*, 12 D., 299; *Cruickshank*, 5 D., 733; *Kirkpatrick*, 16 S., 200.

At advising—

LORD PRESIDENT—The parties called as defenders in this action are, in the first place, the trustees and executors of the late John Charles, and, in the second place, the beneficiaries under the first trust-deed. The object of this action is to secure to the pursuer, as widow, her *jus relictæ*, and the objection that is taken to the jurisdiction of the Court is that the parties, except one of the executors named Paterson, are resident in England, and are therefore not subject to the jurisdiction of the Court *ratione domicilii*. It may be quite true that they are not subject to the jurisdiction of the Court *ratione domicilii*, but it is alleged that they are all, both trustees and beneficiaries, subject to the jurisdiction of the Court in respect of their being owners of heritable estate in Scotland. It appears to me that the simple question is, Whether they are or are not owners of heritable estate in Scotland. There may be other grounds on which the jurisdiction of the Court may be sustained, but that single ground, if established, is sufficient. Now, how do the facts stand? There are no doubt two trust-dispositions by Charles; one of them, the first, called a disposition and assignation, is to a certain extent a deed intended to come into operation during the life of the truster, and vested certain rights and interests in certain beneficiaries. The other, which conveys his heritable estate and nominates the defenders as executors, is a testamentary deed. It has been said that there are here two separate trust-writings, and that it is incompetent in this question to confuse them, or take them together, as if there could arise out of these two deeds a single deed; and that, on the contrary, the trusts to be administered are totally separate. To a certain extent the purposes of the two deeds are separate. The purposes of the first deed are to give certain special funds to particular beneficiaries, and after that to hold the residue for behoof of two of the defenders in this action, Jane and Mary Charles. The second deed, which contains a conveyance of his heritable property, gives it to these trustees for the sole benefit of these two ladies. Now, under the combined effect of these two deeds, it appears to me that the trustees hold, for behoof of Jane and Mary Charles, the residue of the truster's moveable estate and the heritable estate in question. The interests in these two subjects are identical, and the question is, whether the trustees, in that state of circumstances, are not owners of that heritable estate so far as the formal title is concerned, and Jane and Mary Charles the beneficial proprietors? It seems to me incontrovertible that they are so; and if that be the case, these parties, as trustees and beneficiaries, owners of heritable estate in Scotland, are necessarily subject to the jurisdiction of this Court as trustees and beneficiaries. That is my simple ground of judgment, and I think there is not much room for doubt. My only difficulty is in adopting the Lord Ordinary's interlocutor as it stands. I am not sure whether he thinks there is room for any farther discussion before satisfying the production. I see no necessity for that. The other defences all resolve into the same question, or else they are not objections to satisfying the production at all, and the proper course will be to refuse them all as against satisfying the production. I am therefore inclined to repel the preliminary pleas as pleaded by the defenders against satisfying the production, and to appoint the production to be satisfied.

LORD CURRIEHILL—I am of the same opinion. One thing is clear, that this Court is the proper *forum* for trying this ultimate question, namely, whether this pursuer, the widow of a domiciled Scotchman, can enforce payment of her *jus relictæ*, that is, of the one-third of the executry left by her husband, which she says is hers by law. Certain deeds granted by the husband are said to stand in her way, and she has accordingly quite competently and properly brought a reduction of these

deeds. The executors and the parties in whose favour the deeds have been granted say they are not subject to the jurisdiction of the Court. I think they are subject to the jurisdiction, on the ground stated by your Lordship. The trust-estate is vested in these parties. They are heritors in Scotland, owners of heritable property which is liable for satisfaction of this onerous claim on the trust-estate. The amount of the claim, no doubt, must be computed from the amount of the executry, but, the amount being once established, the claim may be enforced against the executry or against the heritage.

Lord Deas—I concur. It is necessary to attend to the shape of the question. This is an action of reduction, with certain conclusions for payment. By Statute, in actions of reduction, no defences can be lodged at the outset but preliminary defences, and those of two kinds, (1) pleading a title to exclude, and (2) pleas against satisfying the production. No other defence can be stated at this stage. Accordingly, what was done was to lodge preliminary defences, and the question is, Whether any of them is sufficient to prevent the usual order to satisfy the production. All the pleas hinge on the plea of no jurisdiction. It must be kept in mind that, in going on one ground in repelling the plea of no jurisdiction, it does not follow that there are no other grounds for coming to that result, but I agree in holding the one ground sufficient. Whether we are entitled or not to have the deeds produced, we are entitled to look at the narrative of them set forth on record, and that shows the substance well enough; and on the face of the narrative we see that whether these two deeds were separate or no, these trustees entered into an agreement with this lady on the footing of these being substantially one trust.

Lord Ardmillan—I am clearly of opinion that the objection to the jurisdiction argued *in hoc statu* is not well founded. The death of this gentleman took place in Scotland. His domicile was Scotch, and I am quite satisfied that the local situation of the funds of a party dying domiciled in Scotland, is of no consequence. In the next place, the confirmation was Scotch, and at that date four out of the five executors then alive were Scotchmen. The deeds themselves are relative, and are plainly intended to embrace a disposition of the trustee's whole estate. The trustees are the same in both, the parties interested in the residue are the same as those interested in the heritage, and that heritage, held by these trustees, is in Scotland. Putting all these things together, it is impossible to refuse to sustain the jurisdiction, especially at this stage when the only point is as to satisfying the production.

Agents for Pursuer—Dundas & Wilson, C.S.

Agents for Defenders—Hill, Reid, & Drummond, W.S.

Tuesday, May 19.

PATERSON *v.* BARCLAY.

Charge on Bill—Suspension—Trust-Deed for Creditors—Bankrupt. Terms of trust-deed for creditors which *held* not to bar a creditor, trustee on the estate, from diligence against the bankrupt.

For several years Barclay, a wholesale dealer, was in the habit of supplying Paterson with materials used by him in his business. Paterson got into difficulties, and in December 1867 executed a trust-deed in favour of Barclay. The deed conveyed only what then belonged to Paterson, and provided "that as the object of this deed is to effect a speedy distribution of my present means and effects among my creditors, without prejudice to their right to recover the balance of their claims by diligence against me, and any estate I may hereafter acquire, it is specially provided that my said creditors, or any of them, shall in no way, by their accession to these presents, or the claiming benefit under the same, be prevented or prejudiced from instituting any action, or using any diligence competent at their instance against me, or any property which I may hereafter acquire or become possessed of, for payment of their debts so far as not satisfied by the property hereby conveyed, or against any person or persons bound with or for me in payment of any of the debts owing by me to them; but that, notwithstanding their accession hereto, or the claiming under the same, it shall be in their power, at any time they think fit, to use all manner of diligence, real and personal, against me and my said other estate, or against such co-obligants, for payment of the debts due to them, as may by law be competent."

Barclay, in February 1868, charged Paterson on two bills, dated in May and June 1867, whereupon Paterson suspended and pleaded that the "complainer having executed in favour of the respondent the trust-deed above mentioned, and the latter having accepted of, and acceded to, the same, and having acted under it by collecting and discharging accounts due to the complainer, and selling off and realising the proceeds of the complainer's household furniture and effects, he is, in the circumstances stated, barred from resorting to summary diligence upon bills signed anterior to the date of the said trust-deed."

The Lord Ordinary (Mure) refused the note of suspension, adding this note:—"It is not without hesitation that the Lord Ordinary has refused this note. For it appears to him, as at present advised, that the clause in the trust-deed, relative to the reservation of diligence founded on by the respondent, when fairly construed, was intended to apply only to diligence for any balance that might be due after distribution of the effects made over to the trustee; and if, in this case, the respondent had allocated a dividend, under the powers given him by the trust-deed to that effect, of so much per pound on his own and the other claims, the Lord Ordinary would have been disposed to pass the note, even without caution, to the extent of the amount of the dividend effeiring to the bills charged on; because, to that extent the charge would, it is thought, have been bad, in respect that the dividend would have operated as the extinction of so much per pound on every pound of the bills; *Balmanno*, 24th Feb. 1826, 2 W. & S., p. 7. And had caution now been offered, the Lord Ordinary would also have been disposed to pass this note, in order that the precise amount due upon the bills might have been ascertained. But as there has not as yet been any allocation or declaration of a dividend, and there are bills produced tending *ex facie* to instruct that there may still be a balance due to the charger, after a dividend has been declared larger than the amount of the bills charged on, the Lord Ordinary, having regard to the terms of the reservation as to diligence in the trust-deed, does not consider that he