

Wednesday, July 14.

FIRST DIVISION.

SIMMIES v. BURNET & REID (GORDON'S TRUSTEES).

*Process—Jury Trial—Motion for Postponement.*

The defenders in an action set down for trial by jury in the Summer Vacation moved the Court to postpone the trial until the Christmas following, in order that the result of a commission to recover letters in India might be learned. *Held* that there had been undue delay in the inquiry as to the existence of the documents in question, and motion *refused*.

*Observations* by Lord President and Lord Ardmillan on the circumstances in which the Court would grant such a motion.

The defenders in this action, which was for the reduction of a codicil executed by the late Miss Gordon in favour of Mr Reid, advocate, Aberdeen, moved the First Division of the Court for a postponement of the trial. The case was set down in the list of Jury Trials for the ensuing vacation, but under the motion it would have been delayed until the Christmas recess. In support of the motion it was urged that it had become necessary to learn the result of a commission granted *in causa* for the purpose of recovering any letters bearing on the case which might be in the possession of a person now in India. On the other hand the pursuers opposed the motion, and *inter alia* stated that one of their witnesses was now very aged and infirm, and that there might be considerable risk of his not surviving until another recess.

At advising—

LORD PRESIDENT—This is a question for the exercise of the discretion of the Court. Now, before the Court can exercise its discretion in favour of such an application we must feel satisfied that the party making it has been reasonably diligent, for a pursuer in such a case as the present might suffer by any unnecessary postponement.

The summons in the action before your Lordships was executed on the 23d of March last, and it may fairly be supposed that there had been intimation of an intention to challenge the deed made to the defenders before that date; but even were that not so, the defenders put off to the very last moment any enquiry as to whether any letters exist of the nature alleged, and now, at the eleventh hour, it occurs to them that this person in Calcutta may have such letters. I am not disposed to encourage such dilatory proceedings, and I am therefore for refusing the motion.

LORD DEAS—I concur.

LORD ARDMILLAN—I have come to the same conclusion. This case is not on the same footing as one in which the evidence to be recovered under the diligence is *known* to exist, but the delay is asked in respect of an enquiry for the purpose of *ascertaining* whether any such evidence does exist.

LORD MURE—I quite concur. The parties here might, by telegram or otherwise, have had more information.

The Court refused the motion.

Counsel for Pursuers (Simmies) — Dean of Faculty (Clark), Q.C., and Balfour. Agents—J. & R. D. Ross, W.S.

Counsel for Defenders (Gordon's Trustees)—Solicitor-General (Watson), Asher, and Keir. Agents—Pearson, Robertson, & Finlay, W.S.

Friday, July 16.

FIRST DIVISION.

PETITION—MACKENZIE.

*Appeal to House of Lords—Loss of Evidence pending Appeal.*

This was a petition for leave to appeal to the House of Lords.

The petitioner stated that the only question of law in the case arose on the title to sue, and that there was really nothing else appealable. The objection taken was on the ground that valuable witnesses might die during the time the appeal was pending, and it was stated that, provided it were agreed in such an event to take the judge's notes of evidence at the last trial, no further opposition would be offered. A letter to that effect having been put in process, the Court granted the prayer of the petition.

Counsel for Petitioner—Dean of Faculty (Clark), Q.C., and Balfour. Agents—Drummond & Reid, W.S.

Counsel for Respondents — Solicitor-General (Watson), and Trayner. Agent—P. S. Beveridge, S.S.C.

Friday, July 16.

FIRST DIVISION.

[Lord Curriehill, Ordinary.]

PETITION—JAMES GORDON OSWALD.

*Entail—Lands Clauses (Scotland) Act, 1845—Consigned Money.*

In a petition by an heir of entail for authority to purchase an estate with compensation money for land taken compulsorily by a railway company,—*Held (First)* that it was no objection that the estate proposed to be purchased was situated at a distance from the original estate; (*second*) that the value—(1) of the mansion house; (2) of timber necessary for the protection and beauty of the mansion house; and (3) of the shooting, could be competently paid out of the consigned fund; (*third*) that it was not competent to pay out of the consigned fund—(1) the value of houses other than the mansion house, or (2) of growing timber.

This was a petition by James Gordon Oswald, Esq. of Scotstoun, for authority to uplift and apply money received from the North British Railway Company and the Clyde Navigation Trustees, in compensation for a portion of the entailed estate of Scotstoun compulsorily taken by them. The case was reported to the First Division by the Lord Ordinary, and the circumstances appear