

LOED RUTHERFURD CLARK concurred.

The Court adhered.

Counsel for Appellant (Respondent)—J. P. B. Robertson—Jameson. Agents—Dundas & Wilson, C.S.

Counsel for Respondents (Reclaimers)—Trayner—W. C. Smith. Agent—P. Adair, S.S.C.

Wednesday, March 12.

### FIRST DIVISION.

ORR EWING AND OTHERS v. ORR EWING'S TRUSTEES (NOTE FOR GEORGE AULDJO JAMIESON, JUDICIAL FACTOR).

(*Ante*, pp. 423 and 475).

*Judicial Factor—Possession of Estate—Diligence.*

A judicial factor presented a note to the Court stating that he was unable to obtain possession of the trust-estate on which he had been appointed factor, and craved the Court to grant warrant to messengers-at-arms to open lockfast places and recover and deliver to him the documents belonging to the estate. Circumstances in which the Court granted the prayer of the note.

*Ante*, pp. 423, 475. This was a further application by Mr Auldjo Jamieson, as judicial factor on John Orr Ewing's trust-estate, in which he stated that he had exhibited to Messrs M'Grigor, Donald, & Co., the defenders' agents, an extract of the decree of 7th March, and requested delivery of the several documents belonging to the trust-estate; that the documents were shown to him and a list of them made, but that delivery had been refused, and that he then took instruments in the hands of a notary-public; that the Royal Bank had refused payment, on the ground that they could only pay the balance on the current-account on the cheque of Messrs M'Grigor, Donald, & Co., and the sums contained in the deposit-receipts on delivery thereof duly endorsed; that the several companies in which stocks and shares were held had refused to make the transfers required, and to issue any certificate in favour of the factor without delivery to them of the certificates or other vouchers of their respective stocks, shares, and debentures.

The judicial factor therefore craved the Court "to grant warrant to messengers-at-arms to search for, recover, and take possession of the several books, certificates, bonds, and other documents specified in the schedule hereto annexed, and, if necessary for that purpose, to open all shut and lockfast places, and to deliver the said several books, certificates, bonds, and other documents, when recovered, to the said George Auldjo Jamieson, judicial factor forsaid, and to decern; to allow interim extract of the deliverance to be pronounced hereon, and to dispense with the reading in the minute-book, and allow extract to be issued forthwith."

The trustees contended that there was no precedent for such a prayer. A warrant to open lockfast places was only granted as a means of enforcing a decree, but no decree had been here pronounced against them.

At advising—

**LORD PRESIDENT**—As to the difficulty suggested by Mr Pearson, that this order is not sought for the ordinary purpose of enforcing implement of a decree against the respondents, I do not see that there is any difficulty at all. We instructed the judicial factor to take possession of all "sums of money belonging to the trust-estate, and of the whole writs, titles, and securities, books, papers, and documents of and concerning the same, where-soever or in whose hands soever the same might be found." He now reports to us that he has ascertained where they are, that he has seen them, and demanded delivery of them from the persons in whose custody they are. Delivery was refused, and thereupon he took instruments in the hands of a notary-public. He now asks us to give him the means of compelling the delivery that was refused, and I do not see how we can possibly refuse his request. If we did, the effect, as Lord Shand has pointed out during the argument, would simply be, that after having ordered him to take possession of these things, he is not to do so, and that is a result that we cannot contemplate for a moment. I am for granting the prayer.

**LORD MURE** and **LORD SHAND** concurred.

The Court granted the prayer of the note.

Counsel for Judicial Factor—J. P. B. Robertson—G. Wardlaw Burnet. Agent—F. J. Martin, W.S.

Counsel for Respondents—Pearson—W. C. Smith. Agents—Murray, Beith, & Murray, W.S.

Counsel for Royal Bank (Compears)—Mackintosh—Dundas. Agents—Dundas & Wilson, W.S.

Wednesday, March 12.

### FIRST DIVISION.

[Exchequer Cause.]

LLOYD v. INLAND REVENUE.

*Revenue—Income Tax—Residence in United Kingdom—Foreign Merchant—Property Tax Act 1842 (5 and 6 Vict. cap. 35), sec. 1, sched. D—Income Tax Act 1853 (16 and 17 Vict. cap. 34), sec. 2, sched. D—Customs and Inland Revenue Act 1882 (45 and 46 Vict. cap. 41), secs. 9 and 10.*

A person was assessed for the year 1883-84 under sec. 2, sched. D, of the Income Tax Act 1853, in respect of his profits from trading as a merchant in Italy. He was the proprietor of an estate in Scotland, which he had purchased in 1875, and where he and his family resided during the year of assessment from 6th July till 31st October. He and his family had been settled at Leghorn for many years, where he had a town and a country house, and where he carried on business. He had no place of business in Britain. Held that he was a person "residing in the United Kingdom" within the meaning of schedule D, and that the assessment had been properly made.

*Observations (per Lord President and Lord Shand) on section 39 of the Property Tax Act 1842 (5 and 6 Vict. cap. 35).*