pregnant fact that the quantity sold and the quantity bought by each party is exactly the same, laying aside these sales which are disputed, and the parties were charged respectively with the difference on the market price at the period of delivery. Heiman himself puts it thus. He is asked—"What is the difference [between compensation and delivery]?—(A) In compensating the article is always understood to be delivered, only there are exceptions in cases where persons stand out for it. If Hardie had compensated the 32,000 centners mentioned for the April-May contract 1883, then I would have sold to him 116,000 centners in all and the quantities would have been squared. The only difference then would be the difference on the rise or fall of the market. (Q) And that difference depends on time bargains?—(A) No. (Q) What then is the meaning of delivery September-October, and so on?—(A) The meaning is from 1st September till the end of October. When a compensation takes place, the party against whom the market goes is charged with the difference." Thus in all these transactions the party against whom the bargain went was charged with the difference, and the difference was against Heiman to the extent of £500 or £600 except in those two contracts which we are now considering. In these the market was against Hardie. I do not know anything about his reasons for repudiating these two contracts—the Lord Ordinary does not enter upon them. But the market went against him as to these, and what we are asked to do is to adjust the account for differences between these two dealers, and decern for the balance of—the market having gone against one or other of them—£2000 in the one case and something like £600 in the other.

Now, it is very difficult—without referring to the correspondence—to resist the conclusion that these parties were engaged with each other in bargains depending for gain or loss to either of them upon which of them the market should go against at the time—whichever the market happened to go against the most frequently or to the greatest extent having to bear the most loss. That is not perhaps the form of the contract, but that was the nature of the dealings between the parties, and the Lord Ordinary has been satisfied with that as showing that what they did was what they meant—that there should be pure loss or pure gain to one or the other according as the market went one way or the other. That is what the Lord Ordinary thinks. I cannot say the case is abundantly clear, but I do say that there is reasonable evidence to support his view, and nothing to satisfy me that it is wrong. That being so, the logical result must be, that, as far as my own judgment goes, I must decline to interfere with it, and therefore, as the verdict is against the pursuer, I must apply the law, which is clear, to the facts, and the result is what the Lord Ordinary has determined.

Lord Craighill concurred.

Lord Rutherfurd Clark—I confess I have very considerable doubts about the propriety of the judgment proposed by your Lordships. At the same time I do not think it is necessary for me to say much. My doubts are on the point whether there is any evidence to show that the transactions between these parties were really colourable transactions, and not real sales as they appear from the correspondence between the parties to be. The difficulty I have in finding any evidence on that point arises from this, that the parties never met, and that therefore there could not have been any understanding between them except what is expressed in the letters, so that we cannot suppose there was any private agreement between them which is not expressed in the letters. And if I look at the writings which we have I cannot think any inference is to be drawn that they had agreed on the one side and on the other that this contract was not to be treated as a contract of sale, but that they were to abandon the rights of buyer on the one hand, and of seller on the other, and to transact only on the footing of settling differences. It may be that your Lordships have taken the right view of the case, but I cannot get rid of my doubts whether there is evidence to support the conclusion to which you have come.

The Lord Justice-Clerk was absent.

The Court adhered.

Counsel for Pursuer (Reclaimer)—J. P. B. Robertson—Salvesen. Agents—Boyd, Jameson, & Kelly, W.S.

Counsel for Defenders (Respondents)—M'Kechnie—Hay. Agent—William Lowson, Solicitor.

Wednesday, January 7.

FIRST DIVISION.

[Sheriff of Lanarkshire.

BASTOW (RICARDO'S TRUSTEE) *v.* DILL, WILSON, & MUIRHEAD.

Process—Multiplepoinding — Arrestment of Bill —Double Distress.

Arrestments were used in the hands of the holders of a bill and cheque, whilst delivery was demanded by the person who alleged he was owner. *Held* that in these circumstances the holders were justified in raising a multiplepoinding, and therefore entitled to their expenses.

Observations (*per* Lord Shand) on *Mitchell* v. *Strachan*, Nov. 18, 1869, 8 Macph. 154.

This was an action of multiplepoinding in the Sheriff Court at Glasgow, in which Dill, Wilson, & Muirhead, writers in Glasgow, were the pursuers and real raisers. The fund *in medio* condescended on was (1) a bill for £266, 5s., dated 26th July 1883, drawn by Joseph Ricardo & Company upon and accepted by Robert Park; and (2) a cheque, dated 26th July 1883, for £166, 5s., drawn by Robert Park, payable to Joseph Ricardo & Co. or bearer.

These documents were sent to the pursuers by Joseph Ricardo & Company in August and September 1883 respectively, with instructions to recover payment.

In October and November 1883 arrestments, purporting to attach bills and cheques, were used in their hands by William Simpson and J. S. Black.

F. S. Bastow, as trustee on the sequestrated estates of Ricardo & Company, thereafter called on

the pursuers to deliver the bills and cheque to him, and a similar demand was made by Robert Park. The multiplepoinding was then raised. Bastow appeared and pleaded that a bill or cheque not being arrestable there was no double distress.

The Sheriff-Substitute (ERSKINE MURRAY) repelled this plea, and thereafter pronounced this interlocutor:—"Finds the pursuers liable only in once and single delivery of the documents *in medio*: Finds them entitled to expenses: Finds that the only claim lodged is that for F. S. Bastow: Finds the said claimant entitled to delivery of the documents *in medio*, but that only on payment to the pursuers of their expenses as taxed," &c.

Bastow appealed to the Court of Session, and argued—On the authority of the case of *Mitchell* v. *Strachan*, Nov. 18, 1869, 8 Macph. 154, as well as on the well-known principle of law that bills and cheques are not arrestable, the pursuers were not entitled to raise this multiplepoinding, and were therefore not entitled to their expenses.

At advising—

LORD PRESIDENT—I have no doubt that the judgment of the Sheriff-Substitute in this case is right.

These gentlemen were subjected to double distress. On the one hand, certain parties were demanding delivery of a bill and cheque which they alleged was theirs; while on the other hand arrestments were used by other parties in the hands of the holders of these documents. If that is not double distress, I do not know what is.

In these circumstances the undoubted right of the holders was to raise a multiplepoinding, and they are entitled to recover the expenses of that action from the person who was found entitled to delivery.

LORD MURE—This is a clear case of double distress. The raisers could get the question of the right to these documents settled only by raising a multiplepoinding.

LORD SHAND—Messrs Dill, Wilson, & Muirhead did not hold the bill and cheque which are the subject of the action as their own property, but as belonging to the English firm of Joseph Ricardo & Company. A creditor used arrestments in their hands, the effect of which was to require them to retain the documents subject to that diligence. It is said that Dill, Wilson, & Muirhead should have ignored the arrestments, and handed over the bill and cheque to the owner. But I do not think they were bound to take that course or to run any risk by settling for themselves the question whether the diligence had the legal effect of laying a *nexus* on the documents, and entirely disregarding the arrestments. The owner might have presented a petition to get the arrestments loosed. An application to the Court at his instance would have been at once granted. Without taking this step he or his trustees demanded that his documents should be delivered to him. In these circumstances I think the holders were entitled to raise this action. I confess I am not prepared to follow the decision in the case of *Mitchell* which has been cited, and could not have concurred in the opinions of the majority of the Court in that case. If it could have been made out that the real raisers had been acting collusively with the arresters, and had induced them to come forward in order to prevent the owner from getting up the documents, and that this had been done for the purpose of causing embarrassment or expense, it would have been different. But there is nothing of that sort here.

The Court refused the appeal with expenses.

Counsel for Bastow—W. C. Smith—Salvesen. Agent—Thomas M'Naught, S.S.C.

Counsel for Pursuers and Real Raisers—Begg. Agents—Morton, Neilson, & Smart, W.S.

Thursday, January 8.

FIRST DIVISION.

COWPER, PETITIONER

Public Records—Authentication—Burgh Register of Sasines.

Authority *granted* to a town-clerk as keeper of the Burgh Register of Sasines to collate and subscribe in the said register deeds not collated and subscribed during his predecessor's term of office, and to authenticate certificates of registration of such deeds.

This was a petition presented by William Cowper, town-clerk of Kirkwall, which set forth that Peter Sinclair Heddle was town-clerk of Kirkwall from October 1861 till his death in September 1884, and that the petitioner was then appointed; that on entering on the duties of his office the petitioner found that certain deeds specified in a schedule appended to the petition, which had been engrossed in the Register of Sasines while Mr Heddle was town-clerk, had not been collated or authenticated by him and were not authenticated by certificate of registration written at the conclusion of the record, although the certificate had in most cases been written on the deeds.

The prayer of the petition was "to authorise the petitioner to collate and subscribe in the foresaid Register of Sasines the record of the said deed specified in the schedule annexed hereto, and of any other deed or deeds which may hereafter be discovered not to have been so collated and subscribed during Mr Heddle's term of office, and to make, subscribe, and authenticate certificates of registration of such deeds in the same manner and to the same effect as the said Peter Sinclair Heddle might have done himself; and to authorise the petitioner to record this petition and any warrant following thereon in the said Burgh Register of Sasines."

The Court granted the prayer of the petition.

Counsel for the Petitioner—Strachan. Agent—John Walls, S.S.C.