

the pursuers to deliver the bills and cheque to him, and a similar demand was made by Robert Park. The multiplepounding 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 multiplepounding, 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 multiplepounding, 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 multiplepounding.

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 *nerus* 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.