

twenty-one years, but why should the direction not receive effect? The only objection stated is of this nature—It is said that at the end of the twenty-one years it will be found that the accumulation has been all in vain, and that there will be an unworkable will still to be dealt with. Like your Lordship and the Lord Ordinary I do not see my way to affirm that proposition. If I could I would. If I were sure that there would then be no will capable of execution, I should find that now and interpose, but it may then turn out that there are certain persons then in existence who may be entitled to the interest of the funds so accumulated.

I therefore agree with your Lordship that the interlocutor of the Lord Ordinary should be affirmed.

LORD RUTHERFURD CLARK—I agree with your Lordships in thinking that the only question at present before us is as to whether this is a good will or not, and on that question I concur in the opinions expressed by your Lordships. It is impossible for us to hold that the accumulation directed by the testator can be of no possible avail. On the contrary, there may at the end of the twenty-one years be persons entitled to take the benefit of the provisions of this will, even although they may no longer have the capacity to enjoy them. I do not think anyone is pointed out to take the fee, and I think the accumulation can only be for the benefit of the persons named in the will, and under it entitled to take the benefit of the income at the end of fifty years, but whatever may be my impressions upon these matters I cannot decide such questions now. They may possibly have to be decided in a new multiple-pounding then to be raised, but I may say that surely it is possible for these people to come to an arrangement by which they may get the benefit of this not very large sum now.

LORD TRAYNER—I concur entirely in the views stated by Lord Young.

The Court adhered.

Counsel for the Trustees (Pursuers and Real Raisers) and for the Claimants John Ogilvy and Mrs Jessie Ogilvy or Fyfe—Baxter. Agent—Archibald Menzies, S.S.C.

Counsel for the Claimant Charles Smith Edward (Reclaimer)—Dickson—Aitken. Agents—Webster, Will, & Ritchie, S.S.C.

Counsel for the Claimants—John Young and William Young—D.-F. Balfour, Q.C.—Salvesen. Agent—Alexander Stewart, S.S.C.

Counsel for the Claimant Mrs Jane Young or Adam—Law. Agent—John Rhind, S.S.C.

Counsel for the Claimant Miss Jane Edward—Hay. Agent—Archibald Menzies, S.S.C.

Friday, February 6.

FIRST DIVISION.

[Sheriff of Banff.

WALKINGSHAW AND OTHERS (MACDONALD'S TRUSTEES) v. STEWART.

Process—Application for Order to Sist Mandatory where Defender had Left the Country.

Circumstances in which the Court refused *in hoc statu* to ordain a defender who had left the country to sist a mandatory.

This was an action by Alexander Walkingshaw and others, the trustees of James Macdonald for behoof of his creditors, to have Elsie Stewart interdicted from selling two stots pointed by her upon the farm of Newley, the stocking of which, according to the averment of the pursuers, belonged to the trust-estate.

The Sheriff having granted the interdict sought for, Elsie Stewart appealed, but pending the appeal she left this country for America.

Thereafter counsel for pursuers applied to the Court to ordain the defender to sist a mandatory, stating that, according to his information, the defender had gone out to a sister in America, and intended to settle there, and founding on the case of *Taylor v. Kerr*, December 1, 1829, 8 S. 151.

Counsel for the defender stated that the defender had left this country for the merely temporary purpose of nursing her sister in America, who was unwell, but her agent was unable to say whether she intended to return to this country or not. He submitted that *Taylor* was an old and peculiar case, and was not a sufficient authority for the present application, which should therefore be refused.

At advising—

LORD PRESIDENT—I think we should refuse this motion *in hoc statu*. Whether we would refuse it absolutely on another occasion would depend a good deal on whether the defender does return to this country, or what we should hear of her intentions.

LORD ADAM—I am of the same opinion. The defender's representative should be aware of her intention. He says he knows nothing about it, and cannot say that she intends to come back to this country. If the motion is repeated, and he cannot give the Court a more explicit answer, I do not say what may be the result.

LORD M'LAREN—If the defender has only gone to nurse her sister, she will probably be home before the case comes on for hearing, and I think therefore it would be premature to require her to sist a mandatory. I agree that we should refuse the motion *in hoc statu*, but before the case is put out for hearing I should expect the representative of the defender to give us some further information.

LORD KINNEAR—If the motion is repeated, it will be the duty of the defender's representative to make a more specific statement than he is at present able to do.

The Court accordingly refused the motion *in hoc statu*.

Counsel for the Pursuers—W. C. Smith.
Agent—Alex. Morison, S.S.C.

Counsel for the Defenders—Rhind.
Agent—William Officer, S.S.C.

Friday, February 6.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.]

POTTER & COMPANY v. THE BRAÇO DE PRATA PRINTING COMPANY, LIMITED.

Copyright—Copyright of Design—Infringement—Patents, Designs, and Trade-Marks Act 1883 (46 and 47 Vict. cap. 57)—Relevancy.

The protection given to a copyright in design under the Patents, Designs, and Trade-Marks Act 1883 has no extra-territorial effect, and such a copyright can only be infringed by the application of the registered design to goods, or the sale of goods bearing such a design, in this country.

The proprietors of certain designs registered under the Patents, Designs, and Trade-Marks Act 1883 brought a suspension and interdict against a company registered in Glasgow, to have the respondents interdicted from infringing the said designs. The complainers failed to aver distinctly that the designs had been applied to goods, or that goods bearing the designs had been sold by the respondents in this country, and the respondents averred that they had never either used the designs or sold goods bearing them except in Portugal.

Held (rev. Lord Kyllachy) that the complainers had not relevantly averred any infringement by the respondents of their rights in the registered designs.

Edmund Potter & Company, calico printers, Manchester, for protection of certain designs registered under the Patents, Designs, and Trade-Marks Act 1883, raised this action of suspension and interdict against the Braço de Prata Printing Company, Limited.

In 1884 William Graham & Company, merchants, 55 Cathedral Street, Glasgow, with four other persons, carried on in Lisbon, Portugal, under the firm of William Graham junior & Company, the business of calico printers and dyers. In 1884 William Graham junior & Company transferred the plant, goodwill, and stock of the business to the respondents' company, which was incorporated in that year, and of which the principal shareholders were the partners of

William Graham junior & Company. The registered office of the company was at 55 Cathedral Street, Glasgow.

The complainers craved the Court (1) to interdict the respondent from infringing the complainers' rights in certain designs registered in the years 1887, 1888, and 1889 under the Patents, Designs, and Trade-Marks Act 1883, and which were specified and described by their registered numbers; and (2) "to interdict, prohibit, and discharge the respondents, by themselves or others acting for them, without the licence or written consent of the complainers, from applying or causing to be applied the said registered designs or any of them, or any fraudulent or obvious imitation of them or any of them, to goods in the foresaid class 13 for the purposes of sale, and from selling, publishing, or exposing for sale any article in the foresaid class to which such designs or any one or more of them, or any fraudulent or obvious imitation thereof, shall have been applied, other than goods manufactured by the complainers, and that during the existence of the complainers' copyright of said designs."

The complainers averred in statement 3—"The complainers have recently ascertained and they aver that in breach of their rights as proprietors of the sixteen registered designs enumerated in the prayer of the note of suspension, and without their licence or written consent, the respondents have applied or caused to be applied to goods in the said class 13 the said registered designs, or fraudulent or colourable imitations thereof, and have manufactured such goods bearing said designs, and have exposed for sale and sold in Lisbon and other markets in Portugal, Brazil, and elsewhere goods in the said class 13, to which the said registered designs, or fraudulent or obvious imitations thereof, have been applied, knowing that the same have been applied without the consent of the complainers. The complainers produce herewith a sheet containing a specimen of each of the said sixteen registered designs, and sixteen specimens of the goods which the respondents have printed or caused to be printed and sold in infringement of the complainers' rights as proprietors of these designs. The said goods, bearing the complainers' said designs so wrongfully and illegally applied, have been publicly offered for sale and sold, and are now being sold by the respondents, by themselves directly and through William Graham junior & Company, in Portugal, Brazil, and elsewhere; and the respondents have also carried on a considerable trade in this country for the sale and disposal of goods to which the complainers' said designs have been illegally and wrongfully applied as aforesaid. In this way the respondents undersell the complainers, so that there has been an almost total stoppage of orders from the Portuguese market, and from other markets supplied therefrom, for the complainers' goods, printed with their said sixteen registered designs, which prior to the infringement thereof by the respondents sold well in