

LORD TRAYNER—I also agree. I think the complaint indicates that the complainers did not properly appreciate what are their rights and what are the rights of the respondent. The prayer of the petition is not just so broad as to cover everything complained of in the condescendence, and although it is broad enough, I am not surprised that it does not cover all that is complained of, because in the condescendence the first thing that is complained of is that the respondent is removing or has removed almost every article of furniture which he has in the Golden Lion Hotel, including a billiard table, to Lennox's Station Hotel. Why should he not? He must take his furniture and his billiard table with him, but that is surely no ground of complaint against him. In the last article of the condescendence it is said that the respondent has been ordered, and has refused, to remove the figure of a lion from its position upon the Station Hotel, and to return it to its place on the Golden Lion Hotel. He was certainly not bound to return it to the Golden Lion Hotel, for it is his own property. Although it may not be material to the decision of this case that the figure of the golden lion in question is the property of the respondent, seeing that it is certainly not the property of the complainers, it is just material enough to lead me to observe that the complainers are asking us to interdict a man from using his own property. The respondent acquired it for all the purposes to which he might legitimately put it, therefore it just comes to the question whether the use of it is such as to misrepresent to the public that the respondent's hotel in Murray Place is the Golden Lion Hotel. I think there is no room for such an idea. The respondent has not put the lion over the porch in the same position in which it stood over the Golden Lion Hotel; he has not put it over the porch in connection simply with the word "hotel," so that the figure of the golden lion and the word "hotel" might be read together, but he proclaims to the public as plainly as he can that this is Lennox's Station Hotel. That is the only sign over the door—a sign which is repeated on that side of the house which would most readily catch the eye of the passenger or traveller coming from the railway station. But the lion is not only not over the porch, it is on the top of the roof as a piece of ornamentation, and I think it is no more objectionable there as ornamentation than if, instead of putting it outside, the respondent had put it inside in the hall. I am satisfied that what has been done is a legitimate use of the respondent's own property, and is not calculated to mislead anyone into the idea that by going into that house, so well labelled as Lennox's Station Hotel, they are going into the Golden Lion Hotel.

LORD MONCREIFF—I agree. The fact that the golden lion is the respondent's property, and the fact that he does not call the Station Hotel the Golden Lion Hotel, are not conclusive in the respondent's favour, because it is conceivable that he

might so use the sign as to deceive the public, as, for instance, by placing the lion over the door, or printing the words "Station Hotel" in such small characters that they would not be readily deciphered. But the photograph shows that not only is the lion not placed immediately above the door, but the words "Station Hotel" are in quite legible letters, and further that the words "Lennox's Station Hotel" appear in large letters on the side of the house. I am therefore unable to see that anything which the respondent has done would lead anyone to suppose that in entering the Station Hotel he was entering the Golden Lion Hotel.

The Court sustained the appeal, recalled the interlocutor appealed against, refused the interdict craved, and dismissed the petition with expenses in the Court of Session and in the Inferior Court.

Counsel for the Pursuers—Guthrie—Cullen. Agent—James Forsyth, S.S.C.

Counsel for the Defender—Jameson—R. L. Orr. Agents—Duncan & Black, W.S.

Friday, March 6.

OUTER HOUSE.

[Lord Low.

CARRON COMPANY v. CURRIE & COMPANY AND ANOTHER.

Arrestment—Shipowner—Shipbrokers as General Managers of Shipping Company.

A shipped coals in a ship belonging to a shipping company whose business was entirely conducted by a firm of shipbrokers. While the ship was still at the port of loading a creditor of A arrested the coals *jurisdictionis fundandæ causa* in the hands of the shipbrokers. *Held* that as the shipbrokers had the entire management of the affairs of the shipping company, they were not mere agents, but factors and commissioners, and that the arrestments were rightly used in their hands.

Error in Schedule of Arrestment which *held* not to invalidate it.

The Carron Company having obtained decree in absence against James Stevenson, Stettin, used arrestments in execution against him on 24th July 1895 in the hands of the defenders, who were designed in the schedule of arrestment as "James Currie & Company, 16 Bernard Street, Leith, owners or managing owners of the s.s. 'Orient.'"

The "Orient" formed one of a fleet of vessels belonging to the Leith, Hull, and Hamburg Steam Packet Company, a joint-stock company registered under the Companies Acts, but was, in terms of a resolution of the company, registered in name of James Currie and other two shareholders of the company, James Currie being the registered managing owner under the Shipping Acts.

By No. 22 of the company's articles, James Currie was appointed to the office of manager and head agent of the company, with power to conduct the agency under the firm or style of James Currie & Company. Under his appointment Mr Currie had very wide powers of management, including the chartering of the company's vessels and the sole power of appointing and removing their masters, officers, and crews. He formed a firm of James Currie & Company, all the partners of which were shareholders of the Packet Company. The firm had no other business than that of managing the Packet Company's vessels, for which it was paid a salary.

At the time when the arrestment was laid on, the "Orient" was lying in Leith docks, and had on board 290 tons 3 cwt. of coal belonging to Mr Stevenson, which was to be carried under a contract for the season. The missives constituting the contract had passed between James Stevenson and the defenders, who, although writing on paper belonging to the Packet Company and bearing the printed heading "Leith, Hull, and Hamburg Steam Packet Company, James Currie & Company, managers," did not sign as managers but simply in their firm's name. Some little time after the arrestments were laid on, the defenders signed a bill of lading for the coal in name of David Dewar, who was Stevenson's shipping agent in Leith, but it was ultimately admitted that they knew that the coal was Stevenson's.

Argued for the pursuers—James Currie & Company were really managing owners of the "Orient." James Currie in point of fact was registered as such; he was allowed to carry on the business in name of James Currie & Company, who were managers, and every one of the partners was a part owner of the vessel—*Hibbs, L.R., 1 Q.B. 534; Abbot, p. 1155*. In any event, the defenders were sufficiently designed in the schedule of arrestment apart from the description "owners or managing owners." These words were merely meant to point out that the arrestment was used in their hands as being connected with the "Orient," and the error, if it was one, was too slight to invalidate the arrestment. The defenders being in the sole and exclusive control of the "Orient," the arrestments were properly used in their hands—*Stair, iii, 1, 24; Ersk. iii, 6, 4; 2 Bell's Com. p. 70; M'Donald v. Wingate, 3 S. 494; Johnston v. Dundas' Trustees, 15 S. 904; Kellas v. Brown, 18 D. 1089; Matthew v. Fawns, 4 D. 1242; Craig v. Thomson, 9 D. 409; Telford's Executors v. Blackwood, 4 Macph. 369; Young v. Aktiebolaget Ofverum Bruk, 18 R. 163; 1 Bell's Com. 552*.

Argued for the defenders—The defenders were not managing owners of the "Orient." They were merely managers. The position of managing owners was statutory, and was defined by the Merchant Shipping Act 1894, 57 and 58 Vict. cap. 60, sec. 59. The arrestment was therefore bad—*Henderson's Executors and Others, 9 S. 618; Graham v. Macfarlane & Company, 7 Macph. 640*. The arrestment of goods on board ship could

only be in the hands of the owners or of the master. If pursuers' argument was sound, arrestments might be used in hands of brokers for several fleets of goods on board any vessel of the fleet. Arrestments must be in hands of principal, the only exception being the case of the ship captain. Arrestment in the hands of the agent of the debtor of the common debtor is bad—*Graham v. Macfarlane & Company, 7 Macph. 640; Hay v. Dufourcet & Company, 7 R. 972; Young v. Aktiebolaget Ofverum Bruk, 18 R. 163; Muirhead v. Miller, M. 732; Donaldson v. Cockburn, M. 735; Hunter v. Lees, M. 736; Campbell v. Fairkney, M. 742*.

On 6th March 1896 the Lord Ordinary (Low) pronounced the following interlocutor:—"Repels the defences stated for the arrestees James Currie & Company, and decerns against the said arrestees for payment to the pursuers of the sums of £24, 0s. 7d. and £84, 1s. 3d. respectively, making together £108, 1s. 10d. sterling, being the value of the coals mentioned in the invoices Nos. 138 and 140 of process conform to joint minute of admissions for the parties No. 150 of process: Finds the pursuers entitled to expenses," &c.

Opinion.—"The pursuers obtained decree against the defender James Stevenson of Stettin for the sum of £461, 5s., and they then used arrestments in the hands of James Currie & Company of Leith as owners or managing owners of the s.s. 'Orient.'

"There were on board the 'Orient,' which was lying in the harbour of Leith when the arrestments were used, some 300 tons of coal, which it is not now disputed belonged to Stevenson, and the question is whether the coals were validly arrested in the hands of Currie & Company.

"The 'Orient' is one of a fleet of vessels belonging to the Leith, Hull, and Hamburg Steam Packet Company, which is an unlimited company registered under the Companies Acts.

"All the partners of Currie & Company are shareholders in the Steam Packet Company, and the sole business of Currie & Company is to manage the ships of the Packet Company. James Currie senior is the registered managing owner of the Packet Company, and the position of his firm is shewn by the articles of association of the company. By art. 22nd James Currie is appointed to the joint office of manager and head agent, and by art. 23rd it is provided that 'he shall be entitled to conduct the agency under the firm or style of James Currie & Company.' The remuneration which James Currie receives from the company is divided among the partners of his firm under an arrangement among themselves.

"The firm of James Currie & Company manage the whole affairs of the Packet Company, and they are in the habit of entering into charters and other contracts in their own name. In the spring of 1895 they made a contract with Stevenson whereby he agreed to fill with coal the spare room in the regular steamers from

Leith to Stettin during the shipping season of 1895.

“The way in which the contract was carried out appears to have been this—Sometime before the sailing of a ship, Currie & Company told Stevenson’s agent in Leith what spare room would probably be available, and he ordered the necessary amount of coal from colliery companies with whom Stevenson had contracts. The coal was then forwarded by rail, and one of Currie & Company’s clerks arranged for its being put on board. That was what was done in regard to the consignment of coals in question. The bill of lading was brought by Stevenson’s agent to Currie & Company’s office, where it was signed by one of their clerks ‘pro Master.’ The arrestments were used before the bill of lading was signed.

“It is clear that Currie & Company were not owners of the ‘Orient,’ and I do not think that they can be properly described as ‘managing owners’ because although each of the individual partners was a part owner, and James Currie was managing owner, the firm, as a firm, was not an owner at all. The firm was head agent or manager for the owners and nothing more. It therefore seems to me that Currie & Company were not accurately designed in the schedule of arrestment. I do not, however, think that that is sufficient to invalidate the arrestment if it was otherwise properly used against Currie & Company. The object of the designation was to show that the arrestment was used in the hands of Currie & Company only in the capacity of being the person having control of the steamer, and not in any other capacity in which the firm might be in possession of money or goods. If they had been designed as ‘managers’ of the steamer, I do not think that arrestment could have been impugned on the ground of misdescription, and looking to the purpose which the designation was intended to serve—namely, to specify the capacity in which the arrestment was laid on—I think that to hold the arrestment bad on the ground of misdescription would be to give undue weight to a mere technicality.

“The first question therefore comes to be, whether the coal can be regarded as having been in the possession of Currie & Company when it was put on board the steamer. I think that it is clear that so long as the steamer was at the port of Leith taking in cargo, the coal continued to be under the control of Currie & Company. No doubt there may be a power of control without the possession requisite to found arrestment—*Hunter*, M. 736; *Young*, 18 R. 163. But the power of control is an important element in considering whether there is or is not possession.

“Further, it was Currie & Company who, as I have already said, took possession of the coal when it was brought forward by the railway company, in that they undertook the arrangements for having it put on board.

“It was further proved that the master of the ship has nothing to do with the loading, and does not go on board until

the ship is ready to sail, and he does not grant bills of lading.

“It was also argued by the pursuers that Currie & Company had contracted with Stevenson in their own name, and that they were parties who were liable to him.

“The terms of the contract are stated in a letter dated 28th January 1895, written by Currie & Company to Stevenson’s agent in Leith. It runs thus:—‘That you will fill the spare room for cargo with coals as required by us in our regular steamers from Leith or Grangemouth to Stettin during the shipping season of 1895.’ The contract was confirmed by a letter from Stevenson himself to Currie & Company dated 2nd February 1895. Now, no doubt Currie & Company’s letter is expressed as if they were making a contract for themselves as principals, and it is signed with the firm’s name without any addition of such words as manager or agent for the Packet Company. Unfortunately the original letter is not produced but only a copy. If, however, the letter was written—as no doubt it was—on Currie & Company’s ordinary business paper, there would appear at the top in print, the words ‘Leith, Hull, and Hamburg Steam Packet Company. James Currie & Company, managers.’ Now, if that were so it might be sufficient notification that Currie & Company were acting only as agents, and in that case Stevenson’s contract would be with the principals. That question however was not argued, and I do not express any opinion upon it, but I cannot assume that Currie & Company came under any direct obligation to Stevenson in regard to the coal.

“The position of matters appears to me to have been this. The vessel was lying in harbour under the sole control of Currie & Company, and was being loaded under their directions and superintendence, and the coal when it was brought alongside was taken possession of and put on board by them.

“In these circumstances it seems to me that Currie & Company had the custody of the vessel and the cargo. As I have said, the master was not on board, and the crew are the servants of Currie & Company in this sense, that under the articles of association the manager has the sole power of appointing and removing the masters, officers, and crews of the company’s vessels. I therefore think that Currie and Company had sufficient possession to warrant the use of arrestment in their hands, and the next question is, whether it is competent to use arrestments in the hands of an agent.

“Mr Bell in his Commentaries (vol. 2, p. 71) after stating the general rule that an arrestment is not good in the hands of a factor or steward, says—‘But where the arrestment is used in the hands of a commissioner to whom the general management of one’s affairs are committed, it will be as effectual as if used in that person’s own hands.’ That is a proposition which although it does not seem to have been illustrated by decision, has, I think, always been regarded as a sound statement of the law. Now, I think that Currie & Company

were in the position of a commissioner to whom the general management of the affairs of the Packet Company were committed. The powers of the manager of the company are defined by article 28 of the articles of association. The whole ordinary business of the company is entrusted to the manager, and (as is shown by article 30) it is only such matters as the increase or diminution of the company's capital, the selling of vessels, or the building of new vessels, which are reserved for the determination of a general meeting of the company. It is also to be observed that there are no directors, and that the manager is responsible only to the shareholders convened in a general meeting.

"I may refer to the case of *Matthew v. Fawns*, 4 D. 1242, which approaches more nearly than any other of which I am aware to the present case. There certain packages of furniture addressed to Fawns arrived in Dundee by one of the ships of the Dundee, Perth, and London Shipping Company, of which Matthew was manager in Dundee. On the day on which the ship arrived in port the furniture was arrested in the hands of Matthew as belonging to one Crom. Delivery of the furniture was demanded by Fawns which Matthew refused without judicial authority. In proceedings taken by Fawns to enforce delivery it was held that Matthew was warranted in refusing delivery in face of the arrestment. Now, of course, there was no direct decision as to the validity of the arrestment, but there was no suggestion that it was bad because it was made in the hands of the manager of the Shipping Company and not of the company itself. As Fawns was claiming that the furniture which was addressed to him should be delivered to him, it is plain that the question whether arrestment was competent in the hands of an agent for the Shipping Company was material to the issue raised. The argument, however, was directed entirely to the question whether Matthew was or was not entitled to disregard an arrestment used by a creditor, not of Fawns but of a third party, and as I have said, it was not suggested either in the pleadings or in the opinions of the Judges that the arrestment was invalid because used in the agent's hands. I may add that I have looked at the session-papers, and I gather that the arrestment was used after the ship had arrived in harbour but before the goods arrested were discharged. I observe also that in the case of *Kellas v. Brown* (18 D. 1089) Lord Neaves quotes the case of *Matthew* as an authority for the proposition that the manager of a carrier having the actual charge and custody is a proper person to receive arrestments.

"In the case of *Kellas* the question was whether arrestments used in the hands of a shipmaster were good, and the Court held that they were. It seems to me that all the considerations which led Lord Neaves (whose judgment was affirmed) to hold that the arrestment was good in the hands of the shipmaster are applicable to the case of Currie & Company.

"The defenders contended that if the arrestment in this case was held to be good it would not only introduce a novelty into the law but would have very far reaching and serious results. They argued that it would result in this, that if a shipbroker had (as often happens) the management of all the liners of some large company, arrestments might be used in his hands of cargo on board any of the ships wherever they might be. I do not think that would be the result at all. I do not think that the arrestment in this case would have been good if the ship had set sail, because neither the ship nor the cargo would then have been in the charge or custody of the defenders. My grounds for holding that the arrestment was good are (1) that the defenders had the sole and uncontrolled management of the ordinary affairs of the Packet Company, and (2) that so long as the 'Orient' was in harbour and taking in cargo, the cargo was under the control and charge of the defenders and of no one else."

Counsel for the Pursuer—Guthrie—Chree.
 Agents—John C. Brodie & Sons, W.S.

Counsel for Defenders—Dickson—Salvesen.
 Agents—Beveridge, Sutherland, & Smith, S.S.C.

HIGH COURT OF JUSTICIARY.

Thursday, May 7.

WESTERN CIRCUIT, GLASGOW.
 (Before Lord M'Laren.)

H. M. ADVOCATE v. ABERCROMBIE.

Justiciary Cases—Murder—Child Murder—Culpable Homicide—Insanity—Mental Derangement consequent on Child-Birth.

In a case of child murder it is an element in the question between murder and culpable homicide that the offence was committed immediately after child-birth, and without apparent premeditation, as leading to the legitimate inference that the panel was then in a mental state which, though not warranting an acquittal on the ground of insanity, was such as to make her only partially accountable for her acts.

Ellen Abercrombie, domestic servant, was indicted for the murder of her illegitimate child by choking it immediately after its birth.

She pleaded not guilty, and specially that she was insane at the date of the alleged crime.

It was proved that the accused had never previously been confined, and had concealed her pregnancy and made no preparations for her confinement. It appeared from a confession made by her that the child was born during the night, that it was alive when born, that she placed her fingers either in its mouth or on its throat in order