

“Adhere to the said interlocutor of 16th December 1897: Recal the interlocutor of 8th February 1898: Find that the respondent Peter M’Kissock is liable for the whole amount due to the estate of John Rose Kelso, and decern: Find the reclaimer entitled to expenses since 8th February 1898, the date of the last-mentioned interlocutor,” &c.

Counsel for the Reclaimer—Ure, Q.C.—C. K. Mackenzie. Agent—R. Ainslie Brown, S.S.C.

Counsel for the Respondent—Jameson, Q.C.—Christie. Agents—Clark & Macdonald, S.S.C.

Wednesday, February 23.

SECOND DIVISION.

[Sheriff-Substitute at Glasgow.]

CORPORATION OF GLASGOW v. WATSON JUNIOR.

Arrestment—Competency of Arrestment—Arrestment in Hands of Corporation—Act 1540, c. 75—Sheriff Court Act 1876 (39 and 40 Vict. cap. 70), sec. 12, sub-sec. 5.

Held that an arrestment used in the hands of a city corporation was well executed by being delivered to a servant of the corporation within the city chambers—*diss.* Lord Trayner, who was of opinion that in order to make the service effectual a copy of the schedule should also have been posted to the corporation at the city chambers in terms of section 12, sub-section 5, of the Sheriff Court Act 1876.

An action of multiplepinding was raised for the purpose of determining the persons entitled to a sum of £209, 4s. 9d. due by the nominal raisers, the Corporation of the City of Glasgow, acting under the Glasgow Corporation Waterworks Acts 1855 to 1895, to the common debtor, George Watson junior, builder, Glasgow. Claims for a ranking *primo loco* were lodged by four creditors of George Watson junior, who had used separate arrestments in the hands of the Corporation, viz., Sir Archibald Edmonstone, who claimed £80; James Rankin, who claimed £16, 17s. 8d.; the Garscube Brick Company, Limited, who claimed £20, 12s. 7d.; and Henry Campbell, who claimed (a) £51, 1s. 4d., with interest thereon from 20th August 1896 till paid, and (b) £7, 15s. 11d. A claim was also lodged by Dugald M’Alister, accountant, Glasgow, as trustee on the sequestrated estates of George Watson junior, in which he admitted the claim of Sir Archibald Edmonstone, but questioned those of the other three claimants, on the ground that their arrestments were invalid and had attached nothing.

The nature of the arrestments and the contentions of the parties are fully set forth in the note to the Sheriff-Substitute’s interlocutor.

On 11th November 1897 the Sheriff-Substitute (BALFOUR) pronounced the fol-

lowing interlocutor:—“Repels the claim for Henry Campbell, the Garscube Brick Company, Limited, and James Rankin: Ranks and prefers the claimant Sir Archibald Edmonstone *primo loco* on the fund *in medio* for £80, in terms of his claim; and *secundo loco* ranks and prefers the claimant Dugald M’Alister to the balance of the fund *in medio*; and authorises the Clerk of the Court to pay over said fund accordingly: Finds no expenses due.”

Note.—“In this multiplepinding questions arise among the competing claimants as to the validity of the arrestments used in the hands of the arrestees against the common debtor. The common debtor (George Watson junior) had a contract with the Corporation of the City of Glasgow, acting in execution of the Glasgow Corporation Waterworks, and it is the balance due under that contract which the claimants have sought to arrest in the hands of the Corporation. There are three arrestments to which objections have been taken. There is a fourth arrestment, at the instance of Sir Archibald Edmonstone, but it seems to be conceded on all sides that that arrestment is valid, and it affords a remarkable contrast to the other arrestments, and illustrates the defects in them. That arrestment is laid in the hands of the Corporation of the City of Glasgow, and Robert Wilson, their treasurer, and it has been executed by leaving for the Corporation in the hands of their treasurer, within their place of business in Corporation Buildings, a copy of the arrestment directed for them for their behoof, and by sending a copy of the arrestment to the Corporation in a letter addressed to them to their place of business, and by delivering a copy to Robert Wilson personally. This appears to me to be an unassailable arrestment.

“The other three arrestments are somewhat like one another. The first is at the instance of Henry Campbell, and it is laid in the hands of the Lord Provost, Magistrates, and Council of the City of Glasgow, Water Department, City Chambers, Glasgow, and it is executed by leaving a copy in the hands of a servant within the business place of the arrestees in City Chambers, and by transmitting a duplicate contained in a postal letter addressed to the arrestees at their business place.

“The second arrestment is at the instance of the Garscube Brick Company, Limited, and it is laid in the hands of the Corporation of the City of Glasgow, acting under the Corporation Water Trust, and it is executed by leaving a copy with a servant within the arrestees’ place of business in the Municipal Chambers, George Square, Glasgow, town clerk’s office, and by posting a copy to the arrestees to their said place of business; and the execution contains an intimation that the arrestment is meant to attach all funds due to George Watson junior, under a contract executed by him, for work done at the Hydraulic Power Station, High Street, Mr Gale engineer.

“The third arrestment is at the instance

of James Rankin, and is laid in the hands of the Lord Provost, Magistrates, and Councillors of the City of Glasgow, as Commissioners for the Glasgow Corporation Waterworks, and it is executed by leaving a copy for the arrestees in the hands of a servant within their treasurer's office, Municipal Buildings, Glasgow, and there was no copy posted.

"The first objection taken to the first and third arrestments is that the designation of the arrestees is wrong. According to the Police Act of 1895, the Corporation means 'The Lord Provost, Magistrates, and Council of the City,' and the Corporation is thereafter to be known and called as 'The Corporation of the City of Glasgow,' and it was maintained that the designation 'The Lord Provost, Magistrates, and Council (or Councillors) of the City of Glasgow,' is erroneous, and invalidates the arrestments. There is not much in this objection, as the arrestees are distinctly enough defined by naming the body which the statutory title is said to mean, viz., 'The Lord Provost, Magistrates, and Council of the City,' and the objection was not seriously insisted on.

"Another objection was stated to the three arrestments, viz., that they were in the hands of a servant, and it was maintained that the arrestments ought to have been laid either in the hands of the arrestees in Council assembled, or in the hands of the treasurer or town clerk. There is a great deal of authority as to the proper mode of laying arrestments in the hands of a corporation. In *Keir v. Menzies*, M. 738, it was held that arrestment in the hands of the treasurer of an incorporation is a competent mode of affecting a fund in the hands of the incorporation; and in *Dalrymple v. Bertram*, M. 752, it was held that in arresting in the hands of a corporation the legal method is to cite the representatives by delivering a copy to them at their meeting, or by executing against each of them singly and separately. In Bell's Principles, section 2276, note (h), it is stated that in the case of corporations arrestments should be laid in the same way as intimations of assignations, and at 1464 a it is stated that intimation ought to be made to the treasurer, and the case of *Keir v. Menzies* is cited. If the intimation of an assignation is a correct test of the validity of an execution of arrestment, it is clear beyond doubt that intimation of an assignation to the servant of a corporation has no effect whatever, unless he is the proper representative of the arrestees in the matter to which the arrestment relates. To the same effect are the dicta in Bell's Commentaries, ii., page 71, Bell's Dictionary, page 67, Bell's Lectures on Conveyancing, page 313, and Green's Encyclopædia, page 315. The case of *Macdonald v. Reid*, 9 R. 211, shews that an arrestment against the commissioners of police for a burgh must be laid in the hands of the official who has a right to pay away the funds of the burgh. This was to a certain extent a special case, because it was based on the construction of the Police Act of 1850; but it throws light upon the party in whose

hands an arrestment should be laid as representing a corporation, and the general remarks of the Lord President are of importance. The arrestment of Sir Archibald Edmonstone has been laid in the hands of the treasurer, following the lines of the above-mentioned cases, and I know of no authority for holding that an arrestment in the hands of a servant, without stating who the servant is, is a valid arrestment. The servant might be any person ranging from an office boy or a hall attendant to the treasurer or town clerk, and if such an arrestment was held to be good, it would lead to the greatest informality and looseness. The use of arrestments in the hands of a servant can have no effect, as the corporation or their treasurer might pay away the funds without the knowledge of the arrestee.

"It was maintained that the posting of the letters in the cases of Campbell and the Garscube Brick Company validated the arrestments, in terms of sub-section 5 of the 12th section of the Sheriff Courts Act 1876. That sub-section provides that an arrestment shall be ineffectual when the schedule of arrestment shall not have been personally served on the arrestee, unless a copy of the schedule shall also be sent to the arrestee through the post. It is clear, however, that the posting in that case is only supplementary to the first arrestment, which has not been personally served on the arrestee, and if that first arrestment is bad, the posting does not cure it.

"The result is that Sir Archibald Edmonstone falls to be preferred *primo loco* to the fund, and the trustee on Watson's estate to the balance of the fund."

The claimants, Campbell, the Garscube Brick Company, Limited, and Rankin, appealed, and argued—The three arrestments were valid. They were all practically alike except in this particular, that the arrestment of James Rankin had not been posted. The reason of this was that the action was in the Debts Recovery Court, and the Sheriff Court Act 1876 applied only to proceedings in the ordinary Sheriff Court and not to actions in the Debts Recovery Court. But even if the posting had been omitted in all the cases, the arrestments would have been valid. It was common practice that arrestments were made in the hands of firms and private companies by delivering the arrestment to the servant of the firm or company and it would be an absurd result if the same procedure was invalid in the case of an incorporation. In *Keir v. Creditors of Menzies*, January 10, 1739, M. 738, it was held that arrestment in the hands of the treasurer of a corporation was a proper method, but this case was no authority for the proposition that arrestment in any other mode was invalid. In the case of *Dalrymple v. Bertram*, June 23, 1762, M. 752, it was difficult to determine whether the statement at the end of the case was the judgment of the Court or the opinion of the reporter. If the former, the decision was not only inconsistent with *Keir* but had been abrogated by legal practice ex

tending over a long period—*Bishop v. Mersey and Clyde Steam Navigation Company*, February 19, 1830, 8 S. 558; *Aberdeen Railway Company v. Ferrier*, January 28, 1854, 16 D. 422. The case of *Macdonald v. Reid*, November 18, 1881, 9 R. 211, founded on by the Sheriff-Substitute, was not in point. In that case arrestment was used in the hands of the wrong official of the corporation; in the present case the fund was arrested in the hands of the corporation itself. In the case of a corporation the arrestments could not be served personally in a literal sense, and the servant stationed at the proper place of domicile to receive letters and documents addressed to the corporation was the proper representative of the corporation. In any event, in the case of the claimants Henry Campbell and the Garscube Brick Company, Limited, as service through the post had also been made, in terms of the Sheriff Court Act 1876, sec. 12, sub-sec. 5, their arrestments were valid.

Argued for the claimant M'Alister—The Act 1540, cap. 75, did not allow an arrestment of money in the hands of an individual to be effectively made by leaving it with a servant at his house without first attempting to find him. In the same manner there was no authority for the proposition for which the appellants contended that an arrestment would be effectually laid on in the hands of a corporation which was simply handed to an officer of the corporation without any endeavour to interview anyone representing the corporation or to see the corporation themselves. The cases of *Dalrymple, Keir*, and *Macdonald* established this, that in order to make an effectual arrestment of funds in the hands of a corporation you must either serve it upon the corporation when they were sitting, or serve it upon the treasurer, who was the custodian of the funds of the corporation. The Sheriff Court Act 1876, sec. 12, sub-sec. 5, did not apply to corporations, as it contemplated a search being made for a person and that search failing. The arrestments of the appellants were therefore invalid, and the judgment appealed against was right. Even if it was held to apply, the arrestment of James Rankin was bad, as no copy of the arrestment had been made through the post, and the Sheriff Court Act applied to all proceedings in the Sheriff Court, including those under the Debts Recovery Act.

At advising—

LORD JUSTICE-CLERK—The question before us is, whether the judgment of the Sheriff-Substitute by which he has rejected certain arrestments as being invalid is sound. These arrestments were used in the hands of the Corporation of Glasgow. The Sheriff Court Act of 1876 regulates the procedure. By sec. 12, sub-sec. (5), it is enacted—"An arrestment shall be ineffectual when the schedule of arrestment shall not have been personally served on the arrestee, unless a copy of the schedule shall also be sent to the arrestee at his last known place of abode through the

post by the officer serving the same." There can, of course, be no actual personal service in such a case as this any more than in the case of a railway company or a limited liability company. The service can only be at the business domicile as distinguished from a personal domicile. It is not contended in this case that the service was not at the proper place. One objection to the service is, that where the service is on a corporation, the case must be held the same as that of non-personal service on an individual, and that in such case a written notice must be posted to the arrestee after the service under the enactment I have quoted. That is a question which is, I think, not a very easy one to answer. I have come, although not without hesitation, to the opinion that if service is made properly on a corporation at its business domicile, that that must be held to be the equivalent of personal service in the case of the individual. It is the only service possible, and there is no alternative as there is in the case of the individual. Where an individual is to be served, and this cannot be done personally, then the alternative may be adopted, if notice in addition be sent through the post to the last known dwelling-place of the individual. But in such a case as this, if the alternative applied, the notice would be posted to the same place at which the service was used. I am not able to say that the service at the place of business of a corporation corresponds to the alternative mode of service allowed in the case of an individual. It appears to me that service on a corporation corresponds more to personal service, being the only mode in which service can be effected against an impersonal holder of funds. As I have already said, I do not come to this conclusion with any great confidence, but I have not been able to come to any other.

If this view be sound, then it only remains to consider whether in the cases in dispute the service was duly made. The executions bear that it was by leaving a copy with a servant of the Corporation, in one case in the hands of a servant in the Treasurer's department, and in the two other cases in the hands of a servant in the Town-Clerk's department. I am of opinion that such service was sufficient service upon the Corporation. There is no statutory officer appointed, as in the case under statute, as regards certain public bodies, and I see no ground for holding that service cannot be made by leaving a copy with a servant of the arrestee in such a case. I am therefore in favour of recalling the Sheriff's interlocutor and pronouncing findings upon the footing that all the arrestments were duly executed.

LORD YOUNG—I am substantially of the same opinion. The question is one of general importance, and it is this, How are arrestments of funds in the hands of corporations to be made? I put the question, How are arrestments generally made in the hands of a company? and I was told, just by an arrestment handed to the servant

at the proper place of business. In the present case the Corporation's proper place of business was the City Chambers, and the arrestments were handed to the servant of the Corporation placed there to receive documents on their behalf. I am disposed to think that without doubt that is a good way of using arrestments. The messenger might ask to be introduced into the office of a superior officer of the Corporation, and hand the arrestments to him, but I know of no law to that effect. Letters are well delivered if they are well addressed to the Corporation, and if they are delivered at their place of business into the hands of the servant who is waiting there for the purpose of receiving them. It is the same in the case of arrestments.

We have been referred to a clause in the Sheriff Court Act 1876 which provides that where an arrestment is used on a decree in a Sheriff Court process, if the arrestment is not put into the hands of the arrestee personally, a copy of the schedule must be sent through the post to the arrestee at his last known place of residence. When an arrestment was handed in at the door of a house to a servant, who might chance not to transmit it to his master, it seemed to the Legislature that it would be safe and useful to send a copy of the letter addressed by post to the arrestee. I do not think, however that this applies to any body like the Corporation of Glasgow. The arrestments in such cases were not handed in at the door to a mere domestic servant. They were handed to a servant of the Corporation, who was in the proper place to receive anything that was brought to be delivered to the Corporation. If a letter was sent by post addressed to the Corporation it would be the same person who would receive it. I think I am entitled to assume that this servant of the Corporation who received the communication addressed to them, would take it according to his instructions to the proper official. We are not dealing with the case of an individual to whose last place of residence a copy of the schedule should be sent.

I am therefore of opinion that the safe and expedient rule of law is that arrestments in the hands, figuratively speaking, of a corporation, are well executed by being delivered to the servant of the Corporation in the proper place, to be handed by him according to his duty to the official of the Corporation empowered to receive them. I think the judgment of the Sheriff-Substitute should be altered to that extent.

LORD TRAYNER—In the judgment appealed against the Sheriff-Substitute has refused effect to three arrestments on the ground that they have not been duly laid on.

To be effectual an arrestment must be used in the hands of the person who is debtor in the sum sought to be arrested, the schedule of arrestment correctly setting forth the name and designation of the arrestee, and that schedule must be duly served on the arrestee. In the present

case the arrestments in question comply with the first of these requisites. The arrestee is designed as the "Corporation of the City of Glasgow" or the "Lord Provost, Magistrates, and Council of the City of Glasgow," who constitute the Corporation. In this respect I think the arrestments in question are not open to objection, and although objection appears to have been taken to them before the Sheriff-Substitute on the ground that the arrestee was not properly designed, that objection he says was not seriously insisted on. Before us I think this objection was not insisted on at all, and I have no difficulty in repelling it. It is admitted that the Corporation of Glasgow was the proper debtor in the money sought to be arrested.

The next requirement is that the schedule of arrestment shall be duly served upon the arrestee. Apart from the provisions of the Sheriff Court Act 1876, which I shall notice hereafter, there is no statutory or other authoritative rule as to the mode in which arrestments must be laid on. By invariable practice, however, it has come to be recognised that the service of schedules of arrestment must be attended with the same formalities as are observed in the service of a summons, and these are regulated by the Act 1540, cap. 75. That Act requires the officer serving the summons to go to the dwelling-place of the person to be summoned, and if he cannot then get "the party personally" he is to deliver the copy summons "to any of the servants." Accordingly the practice has been, in the case of service on an individual, to serve by delivering the copy to the person interested personally, or by leaving the copy in the hands of a servant at his dwelling-place; and in the case of a company to deliver the copy to a member of the firm at their place of business (which is the company's dwelling-place or domicile) or to give it to a servant of the company there. Service on a corporation (where not specially provided for by statute) is effected in the same way as service on a company. The purpose of serving personally, or at the dwelling-place, is (as the Act of 1540 inferentially states) to ensure that the writ or summons shall be brought to the knowledge of the person interested—it has no other purpose.

It is undoubted that the mode adopted of serving the schedules of arrestment in question accomplished that purpose. But, notwithstanding that, the objection is taken that the arrestments were not duly served. I think no good objection can be taken to the service. The arrestments were all delivered at the only domicile which the arrestees have, to a servant of the arrestees to be given to them. It was maintained, however, by the respondent that the only way in which a summons or schedule of arrestment could validly be served upon a corporation was by service of a copy on each of its constituent members. In support of this contention reference was made to the case of *Dalrymple*, M. 752. In the report of that case it is stated that "in citing a corporation, or in arresting in their hands, the legal method is to execute against the

representatives, which can only be done either by citing them in a body by delivering them a copy where they are met for managing the affairs of the corporation or by executing against each of them singly and separately." I am not prepared to accept that statement as conclusive of the question before us. In the first place, it is not clear whether the view so expressed is the view of the reporter or of the Court. In the second place, it is opposed to the decision in the case of *Keir*, M. 738, where it was held, "after inquiry made into the practice of arrestments of corporation debts," that an arrestment in the hands of the treasurer of an incorporation was a proper arrestment, but which plainly was not an arrestment laid on in either of the modes in which (according to the report of *Dalrymple's* case) it could "only be done." In the third place, the question of serving summonses or schedules of arrestment has been different from that pointed out in *Dalrymple's* case for a very long time.

So far as my knowledge goes, the present arrestments were laid on according to the mode and practice now invariably followed. But by the Sheriff Court Act of 1876 it is provided (sec. 12, sub-sec. 5) that no arrestment proceeding upon a Sheriff's warrant, as the arrestments in question did, shall be effectual "when the schedule of arrestment shall not have been personally served on the arrestee unless a copy of the schedule shall also be sent to the arrestee at his last known place of abode through the post by the officer serving the same." In the case of one of the arrestments in question, no such copy was posted to the arrestee. It was questioned whether this statutory provision applied in the present case, because *prima facie* it applies to the case of an individual arrestee upon whom a schedule of arrestment could be personally served, and who had a "known place of abode." But I think it has application to the present case. I am inclined to think that a schedule of arrestment cannot be personally served on a corporation. Even personal service on each constituent member of the corporation would not be personal service on the corporation, for the corporation has a *persona* separate and distinct from its constituent members. But the statutory provision covers every arrestment which, from whatever cause, has not been personally served, and therefore covers the arrestment with which I am now dealing. Then as regards the place to which the posted copy is to be sent, I think the place where the corporation meets to transact its affairs is its place of abode. Place of abode is just place of residence, and the corporation abides and has its seat at the place where it meets, as I have said, for the transaction of business. That place is its domicile, just as a company's office or place of business is the domicile or residence of the firm. On the ground that the statutory direction has not been complied with, I must hold the arrestment at the instance of James Rankin to be ineffectual.

Quoad ultra I think the appeal should be sustained.

LORD MONCREIFF was absent.

The Court pronounced the following interlocutor:—

"Recal the said interlocutor in so far as it repels the claims for Henry Campbell, the Garscube Brick Company, Limited, and James Rankin, and in place thereof, find that the said claimants are entitled to be ranked and preferred along with the claimant Edmonstone in terms of their respective claims: Therefore rank and prefer the said claimants to the fund *in medio* in the following order, viz., (1) the said James Rankin for the sum of £16, 17s. 8d.; (2) the said Garscube Brick Company, Limited, for the sum of £20, 12s. 7d.; (3) the said Henry Campbell for (a) the sum of £51, 1s. 4d., with interest thereon at 5 per centum thereon from 20th August 1896 till paid; and (b) the sum of £7, 15s. 11d.: Further, rank and prefer the claimant Dugald M'Alister to the balance of the said fund: Direct and ordain the Clerk of the Sheriff Court to pay over the said fund to the said claimants Edmonstone and the others above mentioned accordingly: Find the said Dugald M'Alister liable in expenses to the appellants James Rankin, Garscube Brick Company, Limited, and Henry Campbell from 11th November last, and remit the same to the Auditor to tax and to report: *Quoad ultra* adhere to the said interlocutor, and decern."

Counsel for the Claimants Campbell, the Garscube Brick Company, Limited, and Rankin—Salvesen—Horn. Agents—Wylie & Robertson, W.S.

Counsel for the Claimant M'Alister—Ure, Q.C.—Younger. Agents—Cairns, M'Intosh, & Morton, W.S.

Friday, February 25.

SECOND DIVISION.

[Sheriff of Inverness,
Elgin, and Nairn.]

SUTHERLAND v. SQUAIR.

Process—Remit—Remit to Ascertain Position of Work on House in Course of Building—Warrant to Complete House in Course of Building.

A petition was presented in the Sheriff Court in which the pursuer called the various tradesmen who had contracted to do the work required in building a house for him, and craved the Court to remit to a man of skill named by the pursuer, or to such other person of skill as to the Court might seem proper, to ascertain the present condition of the house and pertinents, to report as to the amount of work done by each of the defenders under the contract, and as to the amount