writers' offices to execute a contract by a writing which is neither holograph nor tested, and then for the obligant to add in his own hand the words "adopted as holograph." That means nothing more than this—"Here is a deed which is not binding on me as it stands and I agree that it shall be binding on me." But I entertain great doubt as to the possibility of extending that principle to future deeds. In the case of codicils it has been held by this Court, and affirmed by the House of Lords, that the statutory and common law requirements of execution may be dispensed with by a clause in the will. That perhaps is an example of the favour which the law shows to wills. But I doubt very much whether it is competent for a party to say that he will be bound by any future deed although it should be neither holograph nor tested. I only mention this point because I desire to reserve my opinion as to the extension of what is a convenient working rule when confined to wills.

LORD KINNEAR—I agree, and would only add that I think the question raised depends entirely upon whether the trust-disposition and settlement of Mr Campbell is so attested as to comply with the conditions which the marriage-contract requires for the execution of the power of appointment. The trust-disposition directs the trustees to pay certain sums of money, and to fulfil the purposes contained in the paper of directions. That paper of directions is quite a valid document in itself according to the law of Scotland although it is not effectual in terms of the power; and I think that if the trust-disposition and settlement, which expressly adopts it, had been executed according to the formalties required by the marriage-contract there would be no difficulty in holding that the power of appointment had been well exercised, not by the paper of directions, but by the trust-disposition. But then the trust-disposition is not executed with the formalities required by the marriage-contract, because it is not signed before three witnesses. The formalities prescribed are not those prescribed by the law of Scotland, but it is perfecly legal for parties to contract among themselves that a deed should not be well executed unless it is executed with formalities which the law does not demand. Here they have made such a contract in clear terms, and if they have prescribed certain formalities as necessary for the valid execution of the power of appointment I think the power must be exercised *modo et forma* as the contract prescribes.

I do not consider the argument that was addressed to us on the supposed identity of the formalities prescribed with those required at that time for the execution of a valid will by the law of England, because for this court the law of England is not matter of law but matter of fact; and we can take no fact into consideration in the disposal of a special case except those which are embodied in the case itself. I therefore agree with Lord Adam that we cannot regard what has been said with regard to the law of England, because on that law we have no information. But I also agree with your Lordship that even if we were to assume that the law of England is what it was stated to be, the argument founded upon it would not be maintainable.

The Court answered the question in the case in the negative.

Counsel for the First and Second Parties—Chisholm—Grainger Stewart. Agents—J. A. Campbell & Lamond, W.S.

Counsel for the Third Party—Dundas, K.C.—Chree. Agent—Hugh Patten, W.S.

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*Friday, January* 30.

## SECOND DIVISION.

[Sheriff Court of Lanarkshire at Glasgow.

## M'FADZEAN *v.* CORPORATION OF GLASGOW.

*Reparation — Public Authority — Public Authorities Protection Act* 1893 (56 *and* 57 *Vict. cap.* 61), *sec.* 1.

In an action of damages raised in April 1902 against the Corporation of Glasgow the pursuer averred that on 13th March 1901 two persons employed by the defenders as collectors, who were also sheriff-officers, forcibly entered his house for the purpose of executing a summary warrant for recovery of the rates payable in respect of his occupancy, notwithstanding that the rates had been paid two days previously. The defenders pleaded that the action was excluded by section 1 of the Public Authorities Protection Act 1893. *Held* that, assuming the action to be relevant, it was excluded by the Act.

The Public Authorities Protection Act 1893 (56 and 57 Vict. cap. 61), enacts, sec. 1, "Where after the commencement of this Act any action, prosecution, or other proceeding is commenced in the United Kingdom against any person for any act done in pursuance or execution or intended execution of any Act of Parliament, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such act, duty, or authority, the following provisions shall have effect:—(*a*) The action, prosecution, or proceeding shall not lie or be instituted unless it is commenced within six months next after the act, neglect, or default complained of, or, in case of a continuance of injury or damage, within six months next after the ceasing thereof."

On 22nd April 1902 Neil M'Fadzean, 5 Sawmill Place, Garscube Road, Glasgow, raised an action in the Sheriff Court of Lanarkshire against the Corporation of the City of Glasgow, whereby he sought to recover damages for fault on the part of the defenders.

The pursuer averred that on 13th March 1901, notwithstanding that the rates due in respect of his occupancy of a house had been paid two days previously, two persons employed by the defenders as collectors, who were also sheriff-officers, forcibly entered his house for the purpose of poinding his furniture under a summary warrant granted for recovery of said rates. The pursuer further averred that though warned by a police constable before they went to the pursuer's house, and also informed by the pursuer's wife, that the assessments had been paid, the officers forcibly entered his house, disturbed and removed his furniture, and used violence and abusive language to his wife, who had to call in the police to get them to leave the house.

The pursuer pleaded—"(1) The pursuer having suffered loss, injury, and damage through the fault and neglect of defenders, or of those for whom they are responsible, is entitled to reparation therefor."

The defender pleaded—"(3) The action is excluded by the provisions of the Act 56 and 57 Vict. cap. 61."

On 18th June 1902 the Sheriff-Substitute (STRACHAN) allowed a proof before answer.

The defenders appealed to the Sheriff (BERRY), who on 6th November 1902 sustained the defenders' third plea-in-law, and assoilzied them.

"*Note.*—I think this case falls within the rule of the Public Authorities Protection Act 1893, requiring that any action in respect of 'an act done in pursuance or execution or intended execution of any Act of Parliament, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such act, duty, or authority,' shall be brought within six months next after the act, neglect, or default complained of. If not brought within that time it is provided that the action or proceeding shall not lie or be instituted.

"The acts in respect of which the present action is brought are alleged to have been committed by the defenders' officers on 13th March 1901, while the action was not brought till 22nd April 1902. The pursuer avers that on the former date, two days after he had paid the rates in respect of his house, two of the defenders' servants employed to collect rates, and who are enrolled as sheriff-officers, proceeded on the defenders' instructions to his house for the object of poinding the furniture for payment, and that although the men had been warned by the police constable that the rates had been paid. It is said that notwithstanding that warning they forcibly entered the house, conducted themselves in an abusive and reckless manner, and disturbed and removed the pursuer's furniture, and that it was only on the pursuer's wife calling in the police and the neighbours interfering that the men were induced to leave the house. The men themselves are not sued, and in that respect the case does not raise the question as to the position of the men which was raised and discussed in *M'Ternan* v. *Bennett*, 1 F. 333. In that case the magistrates' committee as well as the police officers were originally called as defenders, but the case against the committee is stated to have been abandoned, and although the ground of the abandonment is not stated it was in all probability the consideration that they were protected by the Act of 1893, and that the action as directed against them could not be proceeded with. It was there pointed out by Lord Low in his note as Lord Ordinary, that in using the words 'intended execution of a public duty' the Act introduces an element of motive or intention, and that neither here nor in that case could it be suggested that the corporation or the magistrates were acting maliciously in what was done as under their authority. It was not averred here that the Magistrates knew that the pursuer had paid his rates, or did not believe that the rates remained unpaid, and if such was their belief they were acting in *bona fide* discharge of their public duty in directing execution of the warrant for their recovery. It is said that the previous payment of the rates took all force out of the warrant so as to render it ineffectual, and that consequently the Magistrates had no protection from the statute. I think, however, that the protection extends to acts done by persons in *bona fide* intended execution of their duty, and such, it seems to me, was the position of the Corporation in the present case. I am therefore of opinion that the defenders must be assoilzied."

The pursuer appealed to the Court of Session, and argued—The Act of 1893 did not apply to the case of a grossly illegal proceeding such as was here complained of—*Sutherland* v. *Magistrates of Aberdeen*, November 27, 1894, 22 R. 95, 32 S.L.R. 81. The Act applied only to cases of informality in proceedings otherwise legal.

The respondents were not called upon.

LORD JUSTICE-CLERK — This Act is intended to protect public authorities and their officers from actions raised beyond the limit of time specified in the Act. In this case it so happened that the necessity for the warrant was removed after it was issued by payment of the pursuer's rates. But after payment of the rates, and in ignorance thereof, the defenders' servants proceeded to execute the warrant. If that mistake was a wrong, then the case is just such a case as the statute applies to.

I do not think the case of *Sutherland* is at all analogous to this. That was a case of a corporation taking proceedings for which there was no warrant.

LORD YOUNG—I agree, but I think it proper to state that I proceed on the assumption, without expressing any opinion, that the action would have been well founded if brought in time. I desire to guard myself against expressing an opinion that a ratepayer who does not pay his rates until after a warrant for poinding his goods has been issued has a good ground of action for execution of the warrant in error after payment.

LORD TRAYNER—I also doubt the relevancy of this action, but assuming it to be relevant, I concur in the view that it is excluded by the terms of the statute.

The case of *Sutherland* is not analogous. In that case the ground upon which the Court went was that the proceedings out of which the action arose were not within but contrary to the statute on which the defenders relied as protecting them from the consequences of irregular proceedings.

LORD MONCREIFF—I am of the same opinion. I proceed upon the protection afforded to the defenders by the Act of 1893. If the action had been brought in time there might have been a case for inquiry.

The Court dismissed the appeal and affirmed the interlocutor appealed against.

Counsel for the Pursuer and Appellant —Gunn. Agents—Mackay & Young, W.S.

Counsel for the Defenders and Respondents—Lees, K.C.—M. P. Fraser. Agents—Campbell & Smith, S.S.C.

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*Saturday, January* 31.

## FIRST DIVISION.

[Lord Stormonth Darling, Ordinary.

## BENNET *v.* BENNET.

*Arbitration — Claim Partly Relating to Matters Outside Reference — Reference Clause in Partnership Contract — Interdict of Arbiter before Decision.*

By a clause in a contract of copartnery it was provided that should any difference arise between the partners "as to the meaning or the implement of these presents, or in the prosecution of the business of the firm or in the winding up of said business, or in any way touching the premises," the same should be referred to arbitration, and that parties should be "debarred from resorting to any court of law on any pretext whatever." Disputes having arisen between the partners, one of them called for the intervention of the arbiter and submitted a claim by which, *inter alia*, he asked the arbiter to declare that it was necessary that the business should be wound up. Answers were lodged to this claim by the other partners, in which they maintained, *inter alia*, that some of the questions raised were not covered by the arbitration clause. The arbiter repelled certain of these pleas so far as preliminary, and allowed a proof. The respondent partners then brought a note of suspension and interdict to restrain the arbiter from dealing with the items of the claim to which they objected. They did not aver that the arbiter had not jurisdiction to deal with some of the questions submitted to him. *Held* that even on the assumption that some of the items of the claim related to matters which fell outside the arbitration clause, no grounds had been shown for the interference of the Court before the arbiter had pronounced any final decision on the matter.

In 1898 four brothers—Charles, Robert, George, and James Bennet—entered into a contract of copartnery for the purpose of carrying on a business known as the Bennet Furnishing Company. The contract contained the following clause:— "*Lastly*, Should any difference arise between the parties or between the surviving and solvent partners and the representatives of a deceasing or creditors of a bankrupt or insolvent partner as to the meaning or the implement of these presents, or in the prosecution of the business of the firm, or in the winding up of said business, or in any way touching the premises, such differences shall be and the same are hereby submitted and referred to the decision of William Lucas, writer, Glasgow, whom failing from any cause David Murray, LL.D., writer, Glasgow, as sole arbiters, in their order foresaid, whose decisions in their order foresaid by decree or decrees-arbitral, interim or final, partial or total, shall be final and binding on all parties, who are hereby debarred from resorting to any court of law on any pretext whatever."

Disputes having arisen between James Bennet and the other three partners, the former requested Mr Lucas to act as arbiter under the clause quoted above, and lodged a claim in which, after a narrative of various grounds of complaint against his copartners, including a complaint that certain charges and expenses had been improperly charged against the firm, he claimed as follows:—"(*First*) That Charles Bennet, Robert Bennet, and George Bennet have wilfully caused serious loss and injury to the firm, and have been guilty of such conduct towards the claimant and the firm as is wholly inconsistent with the duty of partners to each other and to the firm, and that such conduct makes it impossible to carry on the partnership any longer. *Second*, That if the arbiter holds that the partnership must be continued, it is necessary that he should pronounce an order for the proper and regular conduct of the business, and for defining the respective positions and duties of the partners. *Third*, That the improper charges and expenditure complained of, incurred not in the interest of the firm but from improper motives, should be disallowed as charges against the firm, and should be debited to the individual partners who caused such charges and expenditure to be incurred. *Fourth*, Failing the said Charles Bennet, Robert Bennet, and George Bennet appearing before the arbiter in the reference and submitting to his judgment in the matter in dispute and differences which have arisen among the partners, the arbiter should find that the partnership cannot be carried on by the parties, and that it is necessary to have the partnership dissolved and the business placed