

and the said Charles Gale, liable to the compearers in the expenses incurred by them in consequence of the said Charles Gale having settled their name on the list of contributories of the said company."

Answers were lodged to this note by the company and the liquidator, but on 3rd June 1903 they were found liable in such expenses.

The interlocutor giving decree, of date 29th January 1904, was as follows:—"Approves of the Auditor's report dated 21st October 1903, on the account of expenses for the compearers James Ogilvie & Company, and decerns against the company the Star Fire and Burglary Insurance Company, Limited, and the liquidator, for payment to the said compearers of the sum of £43, 3s. 3d., the taxed amount thereof; Finds the said compearers entitled to the expenses of the objections to the Auditor's first report: Modifies the same to the sum of £2s. 2s., for which sum also decerns against the said company and the liquidator: On the compearers' motion that the liquidator should forthwith pay the sum above decerned for out of the assets of the company, appoints the liquidator within one week from the date hereof to state what assets of the company he has recovered and has in his hands."

And on 5th February the Lord Ordinary pronounced this interlocutor—"Having heard counsel on the motion of the liquidator that the time allowed him to state what assets of the company he has recovered and has in his hands be extended, Refuses the said motion, and without prejudice to the decerniture against the liquidator personally, Ordains the liquidator to hand and pay over out of the assets of the company to the agents of Messrs Ogilvie, within one week from the date hereof, the expenses decerned for in the preceding interlocutor, and interest thereon, and decerns."

The company and liquidator reclaimed. On the reclaiming-note appearing in the Single Bills objection was taken to its competency.

Counsel for the respondents argued that the interlocutor reclaimed was in its nature executorial, and fell under the rule established by the case of *Stirling Maxwell's Trustees*, 11 R. 1, 21 S.L.R. 1.

Counsel for the reclaimers argued that the interlocutor reclaimed against was not executorial but substantive, and did not fall under the rule of *Stirling Maxwell's Trustees*. It was not a mere finding of expenses, but a decree *ad factum prestandum*.

LORD ADAM—No doubt the Lord Ordinary has made an order on the defender to hand and pay over a certain sum to the respondents' agents within a certain time. But that is not an ordinary executorial decree. This case is not like *Maxwell* at all. I think the reclaiming-note is competent, and that the case should go to the summar roll.

LORD M'LAREN and LORD KINNEAR concurred.

The LORD PRESIDENT was absent.

The Court sent the case to the summar roll.

Counsel for the Reclaimers—Cooper. Agents—Clark & Macdonald, S.S.C.

Counsel for the Respondents—Younger. Agents—Cameron & Orr, S.S.C.

Saturday, February 20.

OUTER HOUSE.

[Lord Low.]

WILSON v. HORN.

Husband and Wife—Nullity of Marriage—Misrepresentation—Personation.

A racing tipster, who resided at Brighton, the son of a postilion, but at the time was an absconding bankrupt passing under an assumed name and representing himself to be a landed proprietor and the son of a landed proprietor in Ireland with means and prospects, induced a lady to contract an irregular marriage with him at Aberdeen. The marriage was subsequently registered.

In an undefended action of declarator of nullity of marriage at the instance of the lady, decree *granted* on the ground of false and fraudulent representations and personation by the defender.

Madeline Kate Elizabeth Daisy Wilson, Blingery, Caithness-shire, raised an action of declarator of nullity of marriage against Walter Edward Horn, at the time of the raising of the action a prisoner in the prison of Aberdeen, on the ground that she was circumvented and induced to contract a pretended marriage with him by means and in consequence of false and fraudulent representations and personation used by him towards her, and in particular by his falsely pretending to be Walter Erby Hamilton of Foxhall Park, near Letterkenny, County Donegal, Ireland.

The action was undefended, and the following facts were proved:—The pursuer was twenty-one years of age and resided with her mother at Blingery. She had considerable pecuniary interest in the estate of an aunt of her mother. In December 1902 she saw the following advertisement in a newspaper:—"Young English gentleman (30), with large country estate and mansion thereon in England, wishes to meet young lady, fond of country life and sport generally. Must have at least £5000 or a fair income. Replies, with few particulars, treated in strict confidence." She replied to the advertisement, and in February 1903 went by arrangement with the advertiser to Aberdeen, where she met him. He called himself W. Erby Hamilton; said he owned a small property in the north of Ireland, and that in addition his mother made him

an allowance, and that after her death he would have an income of £600 a-year. On 4th March 1903 they went through a form of irregular marriage by a declaration before witnesses, in which he called himself "Walter Erby Hamilton, bachelor, of independent means." A petition was afterwards presented to the Sheriff for registration of the marriage, and the petition was granted and the marriage registered. A child, of which the defender was the father, was born in December 1903.

It was found that as a matter of fact the defender's true name was Walter Horn; that he had no settled occupation, but had kept himself for some time as a betting tout; that he had started a lodging-house in Brighton, got furniture on credit, and sold it and absconded with the proceeds. After imprisonment and examination in bankruptcy at Brighton he was sentenced, on a plea of guilty, to six months' imprisonment in Aberdeen for making a false declaration at the registration of his marriage in breach of the Registration Acts. His father had been a postilion in Bedford; his mother, who was alive, kept a small beer shop there.

LORD LOW granted decree, and pronounced the following interlocutor:—"Finds and declares that the pursuer was on or about the 4th day of March 1903 circumvented and induced to contract a pretended marriage with the defender by means and in consequence of false and fraudulent representations and personation used by the defender towards the pursuer, and in particular by his falsely pretending to be Walter Erby Hamilton of Foxhall Park, Letterkenny, County Down, Ireland: Finds and declares the said pretended marriage betwixt the pursuer and defender to have been from the beginning, to be now, and in all time coming of no avail, force, strength, or effect, and that the pursuer is free to marry any free man as if she had never been married to the said defender or as if he were naturally dead, and decerns."

Counsel for the Pursuer—M'Lennan—Ingram. Agents—Purves & Barbour, S.S.C.

Saturday, February 20.

SECOND DIVISION.

[Lord Kincairney, Ordinary.]

THE GOVERNORS OF GEORGE HERIOT'S TRUST v. CALEDONIAN INSURANCE COMPANY.

Superior and Vassal—Casualty—Composition—Composition Payable by Corporation—Conveyancing (Scotland) Act 1874 (37 and 38 Vict. c. 94), sec. 5.

By disposition dated and recorded in 1868 a vassal who was entered with the superior sold his feu to a corporation. He died in 1877. No composition

was demanded from the corporation by the superior till 1900, in which year a composition was demanded and paid. *Held* that a second composition was not due till 1925.

By section 5 of the Conveyancing (Scotland) Act 1874 it is provided—"Unless where it has been or shall be otherwise stipulated, corporations shall pay at the date at which the first composition would have been payable if this Act had not been passed, and every twenty-fifth year thereafter, a sum equal to what but for the passing of this Act would have been payable on entry by a singular successor."

The Governors of George Heriot's Trust were the superiors of certain heritable subjects in West Maitland Street and West Coates, Edinburgh.

In 1866 Robert Matheson was the vassal in these subjects and was duly entered with the superior.

By dispositions dated and recorded in 1866 and 1868 Matheson disposed the subjects to the Caledonian Insurance Company, incorporated by royal charter and Act of Parliament.

Matheson died on 5th March 1877. No demand for a composition was made by the superiors from the Caledonian Insurance Company till 16th May 1900, when a composition was paid by the latter.

In October 1902 the superiors raised an action against the Caledonian Insurance Company for payment of £544, 3s., being the amount of a second composition which they alleged was due by the defenders.

The pursuers contended that the date at which the first composition due by the defenders was payable was the date of Matheson's death, and that although this composition had not been demanded and paid till 16th May 1900, the twenty-five years at the expiry of which a second composition was due must be held to run from 5th March 1877.

The defenders on the other hand contended that the first composition was not due till demanded, that the twenty-five years should therefore run from 16th May 1900, and that no second composition was due till 1925.

On 21st July 1903 the Lord Ordinary (KINCAIRNEY) pronounced the following interlocutor:—"Finds (1) that on a sound construction of the fifth section of the Conveyancing Act 1874, the first composition was not payable by the defenders to the pursuers until 16th May 1900; and (2) that the second composition is not due until twenty-five years thereafter: Therefore dismisses the action as premature and decerns," &c.

Note.—"The Governors of Heriot's Hospital are superiors of certain property in West Maitland Street and West Coates, Edinburgh, and by this action they sue the Caledonian Insurance Company, their vassals in these subjects, for payment of £544, 3s., which they make out to be the amount of the composition payable for the subjects. This form of action is specially authorised by the Conveyancing Act.

"The defenders' author was Robert