

places, and to deliver the said policy of assurance to the petitioner Charles Simon Romanes, as *curator bonis* to the said John Scotland Ferguson."

Counsel for the Petitioner—A. M. Anderson. Agents—Balfour & Manson, S.S.C.

Tuesday, July 4.

FIRST DIVISION.

BARON DE BILDT, PETITIONER.

Process—Proof—Evidence Required by Foreign Tribunal—Petition for Appointment of Sheriff-Substitute to Examine Witnesses—Competency—Foreign Tribunals Evidence Act 1856 (19 and 20 Vict. c. 113), sec. 1.

A petition under the Foreign Tribunals Evidence Act 1857, section 1, having been presented, in which it was asked that the examination of certain witnesses should be ordered before a certain Sheriff-Substitute, whom failing such person as their Lordships should appoint, *held* that the appointment of the Sheriff-Substitute was not competent, as the Act did not contemplate the examination before a court, and *remit made* to a member of the bar.

The Foreign Tribunals Evidence Act 1856 (19 and 20 Vict. c. 113), section 1, enacts—“Where, upon an application for this purpose, it is made to appear to any court or judge having authority under this Act that any court or tribunal of competent jurisdiction in a foreign country before which any civil or commercial matter is pending is desirous of obtaining the testimony in relation to such matter of any witness or witnesses within the jurisdiction of such first-mentioned court, or of the court to which such judge belongs, or of such judge, it shall be lawful for such court or judge to order the examination upon oath, upon interrogatories or otherwise, before any person or persons named in such order, of such witness or witnesses accordingly. . . .” Section 2—“A certificate under the hand of the ambassador, minister, or other diplomatic agent of any foreign power, received as such by Her Majesty, . . . that any matter in relation to which an application is made under this Act is a civil or commercial matter pending before a court or tribunal in the country of which he is the diplomatic agent, . . . and that such court or tribunal is desirous of obtaining the testimony of the witness or witnesses to whom the application relates, shall be evidence of the matters so certified.” . . . Section 6—“Her Majesty’s Superior Courts of common law at Westminster and in Dublin respectively, the Court of Session in Scotland, and . . . shall respectively be courts and judges having authority under this Act. . . .”

Baron de Bildt, Minister Plenipotentiary of His Majesty the King of Sweden and Norway to the Court of St James, pre-

sented a petition to the Court of Session, in which he stated that in an action in regard to a civil or commercial matter presently pending in the Town Court of Halmstadt, in the kingdom of Sweden, being a Court of competent jurisdiction, between James Stiven of Dundee, plaintiff, and Alfred Johansson of Halmstad aforesaid, defendant, the said Court was desirous of obtaining for use in such action the testimony upon oath of the following persons, viz.—John Sorby of Millhouse, Tayport, Fife, and David Ferguson of Ogilvy Street, Tayport, Fife; and, after narrating the provisions of the Foreign Tribunals Evidence Act 1856, that he made application to have the said witnesses examined before the Sheriff-Substitute at Dundee, whom failing such other person as their Lordships might appoint.

The petition had appended to it a certificate, as required by the Act, signed by the petitioner. The prayer was—“May it therefore please your Lordships to order the examination of the said John Sorby and David Ferguson upon oath before the said Sheriff-Substitute, whom failing such other person as your Lordships shall appoint; and further, to appoint the said Sheriff-Substitute or such other person to examine the said witnesses upon the questions contained in the Letter of Request by said Town Court of Halmstad, and translation thereof, and to command the attendance of the said witnesses at such place and at such time or times and at such hour or hours as the said Sheriff-Substitute may fix, upon giving the said witnesses forty-eight hours’ previous notice of the day and hour fixed, to give evidence in the said suit, and also to bring with them, exhibit, and produce before the said Sheriff-Substitute, upon oath, all such writings and documents as they may have in their hands, custody or keeping, which they may be required so to exhibit and produce in evidence of any of the matters at issue, and to declare where and in whose hands, custody, or keeping all or any of said writings and documents are or may be; and further, to dispense with the adjustment of interrogatories, and to grant authority to messengers-at-arms to cite the said witnesses to appear at the place and date so fixed and give evidence in the said suit; or to do further or otherwise in the premises as as your Lordships may seem proper.”

LORD PRESIDENT—This petition raises a question of practice which I think ought to be dealt with, because it involves a proceeding which might be appealed to as a precedent for the practice to be followed in similar cases. The petition is presented by the Baron de Bildt, who is Envoy Extraordinary and Minister Plenipotentiary of His Majesty the King of Sweden and Norway to the Court of St James, and the object of it is to obtain the testimony of two witnesses, who appear to be Scotsmen, and who are easily available at Dundee. Their testimony is required for a civil action which is at present in dependence in

the Town Court of Halmstad, a court of competent jurisdiction. The application is made under the first section of the Foreign Tribunals Act 1856, which provides that where the testimony of witnesses is required in relation to civil and commercial matters pending before foreign tribunals, and an application is made to a court having authority under the Act, it shall be lawful for such court "to order the examination upon oath, upon interrogatories or otherwise, before any person or persons named in such order, of such witness or witnesses," and then follow appropriate provisions for securing the attendance of such witnesses. Now, the criterion for determining whether the application is in relation to a civil or commercial matter is provided in section 2, which enacts that the certificate of the ambassador, minister, or other diplomatic agent of the foreign power to this effect shall be evidence of the matter so certified. We have that evidence here, for we have a certificate from Baron de Bildt, who, as your Lordships are judicially aware, is the Minister of the King of Sweden, requesting the Court to grant this application, and testifying that the evidence is required in a civil or commercial matter pending in a tribunal having competent jurisdiction.

So far, then, this application is competent and in order, and I am sure that I am expressing the feelings of your Lordships when I say that we should always be anxious, in accordance with the comity of nations, to do all in our power to facilitate the granting of an application presented by the Minister of a friendly Power. But there is a small point of practice raised here by the fact that the prayer of the petition asks that the examination should take place before the Sheriff-Substitute at Dundee, and we are informed that this is done because the foreign court has specially desired it. I have here a translation of the application by the foreign court, and an examination of that document makes it plain that the foreign court has made this particular request under a misapprehension. They seem to have thought that they were entitled to apply to this Court, or to any inferior court, to examine these witnesses before them as a court. Now, that is, of course, a misapprehension, because this examination has to be conducted in accordance with the provisions of the Foreign Tribunals Act, and that Act does not provide for any such procedure. So we are not doing any injury, or even discourtesy to the foreign court by not carrying out that part of their application which requests that this inquiry should proceed before a particular individual. We must treat the application as a good application, and the only question we have to consider is to whom this inquiry is to be remitted. I do not treat the request that it should be sent to the Sheriff-Substitute as part of the prayer, but merely as a suggestion. I do not think it is a suggestion that we can follow, for, in my view, it is not in accordance with the provisions of the Foreign Tribunals Act. It would have been easy for that Act to say, had such been the in-

tention, that these inquiries should take place before this Court or before the Lord Ordinary of the Bounds, but it does not do so. It seems to me, then, that such an inquiry is just like an ordinary commission, and, as some questions of evidence may arise in the course of this examination, I think it would be proper to remit it in the usual way to a member of the Bar.

LORD ADAM and LORD KINNEAR concurred.

LORD M'LAREN was absent.

The Court pronounced this interlocutor—

"Order the examination on oath of the witnesses named in the petition before R. A. Lee, Esq., Advocate, and for that purpose command the attendance of the said witnesses in Dundee, at such place there and at such time or times and at such hour or hours as the said R. A. Lee may fix upon, giving the said witnesses forty-eight hours' previous notice of the day and hour fixed for said examination: Grant commission to the said R. A. Lee for said examination, and grant authority to messengers-at-arms to cite the said witnesses to appear at the place or places and date or dates and hours fixed by the commissioner, to be examined on the questions contained in the Letter of Request by the Town Court of Halmstad in the kingdom of Sweden, and translation thereof, and also to bring with them, exhibit, and produce before the said commissioner upon oath all such writings and documents as they may have in their hands, custody, or keeping which they may be required so to exhibit and produce in evidence of any of the matters at issue and to declare where and in whose hands, custody, or keeping all or any of said writings and documents are or may be: Further, dispense with the adjustment of interrogatories, and discern."

Counsel for the Petitioner—MacRobert.
Agents—Hope, Todd, & Kirk, W.S.

Thursday, July 6.

FIRST DIVISION.

[Lord Stormonth Darling,
Ordinary.

LORD ADVOCATE v. MAGISTRATES
OF EDINBURGH.

(Ante, October 15, 1903, 41 S.L.R. 1, 6 F. 1.)

Revenue—Income-Tax—Deduction of Income-Tax—Liability for Income-Tax not Deducted—Customs and Inland Revenue Act 1888 (51 and 52 Vict. c. 8), sec. 24 (3).

The Customs and Inland Revenue Act 1888 (51 and 52 Vict. c. 8), sec. 24 (3), enacts—"Upon payment of any interest of money or annuities charged with