

The complainer reclaimed, and argued—To warrant summary diligence a bill must be unconditional or absolute, or for payment of a sum certain in money, but where a bill was granted to a money-lender as here the bill was exposed to the risk of being cut down in virtue of the provisions of the Money-lenders Act 1900 (63 and 64 Vict. cap. 51), section 1 (1) and (2). It was exactly in the same position as if it had borne on its face the words "subject to the conditions of" that Act. Consequently a bill granted to a money-lender for a money-lending debt could never support summary diligence. The Bills of Exchange Act 1882 (45 and 46 Vict. cap. 61), section 98, left the law of summary diligence unaffected. Under section 100 parole evidence was competent to prove certain facts relating to a bill, but owing to section 98 the bill would nevertheless warrant summary diligence. If there had been a provision similar to section 98 of the Act of 1882 in the Act of 1900 summary diligence would have been competent, but without such a provision the moment it was alleged that the bill was granted to a money-lender for a loan then the right to exact payment became not absolute but subject to examination by the Court. If not, the object of the Money-lenders Act (*cit. sup.*) would not be achieved. If, in England, the debt was a money-lending debt, summary judgment, the English equivalent of summary diligence, was not granted—*Wells v. Allott*, [1904] 2 K.B. 842. In any event caution should be restricted to the sum which the respondent was actually out of pocket. *Renwick v. Stamford, Spalding, and Boston Banking Company, Limited*, 1891, 19 R. 163, 29 S.L.R. 144, was referred to.

Counsel for the respondent were not called on.

LORD PRESIDENT (CLYDE)—This is a reclaiming note against the interlocutor of the Lord Ordinary on the Bills passing a note of suspension of a charge which proceeded on an extract registered protest upon a promissory-note granted by the suspender in favour of the respondent, a money-lender. The note is passed on consignment or caution limited to £1750.

The argument presented to us is one which if well founded would dispose of the suspension, and is really an argument going to the merits of the case. It is to the effect that whereas the Money-lenders Act enables a debtor, when proceedings are taken by a money-lender to enforce a bill or promissory-note granted in his favour, on proof of certain facts, to have the transaction opened up, therefore a bill which is in fact granted to or held by a money-lender cannot be used as the foundation of summary diligence, because though it bears to be an unconditional obligation to pay a sum certain, the provisions of the Money-lenders Act expose it to restriction or qualification if steps are taken to enforce it and if certain facts are proved. That argument leads to very startling results. In the case of all bills the obligation to pay is subject to any defence which is competent at common law or by statute, but that does not make it any the less an unconditional obligation to pay a sum cer-

tain in money. If the claimer's argument were sound any bond in favour of a money-lender would be deprived of its legal character, because it is possible that if proceedings are taken to enforce it the liability under it may be examinable, and may be restricted or even negatived. It is, I think, impossible to give effect to that argument. [*His Lordship then dealt with the amount of caution.*]

LORD MACKENZIE, LORD SKERRINGTON, and LORD CULLEN concurred.

The Court altered the Lord Ordinary's interlocutor by substituting the sum of £1000 for the sum of £1750 occurring therein, and with that alteration adhered.

Counsel for the Complainer—Moncrieff, K.C.—J. Stevenson. Agent—James Gibson, S.S.C.

Counsel for the Respondent—Fraser, K.C.—Paton. Agents—Clark & Macdonald, S.S.C.

COURT OF TEINDS.

Friday, June 11.

TRUSTEES OF CHURCH AND PARISH OF BLYTHSWOOD AND OTHERS, PETITIONERS.

Church — Annexation — Union of Two Quoad Sacra Parishes.

A petition was brought by the trustees, not *ex officio*, acting under the respective deeds of constitution of two *quoad sacra* churches, with consent of (1) the Procurator of the Church for the General Assembly and the *ex officio* trustees; (2) the moderator and clerk of the presbytery to which the churches belonged, for the presbytery; and (3) the moderators and session-clerks respectively of the two kirk-sessions of the churches in question for the kirk-sessions, craving the union of the two *quoad sacra* parishes. The Court granted the prayer of the petition.

The Act 1707, cap. 9, gives to the Court power to judge, cognosce, and determine in all affairs and causes whatsoever which by the laws and Acts of Parliament of the Kingdom of Scotland were formerly referred to and did pertain and belong to the jurisdiction and cognisance of the Commissions formerly appointed for Plantation of Kirks and Valuation of Teinds, and in particular power "to disjoin too large parishes, to erect and build new churches, to annex and dismember churches as they shall think fit, conforme to the rules laid down and powers granted by the 19th Act of the Parliament of 1633, the 23rd and 30th Acts of the Parliament of 1690, and the 24th Act of the Parliament of 1693 in sua far as the same stands unrepealed."

Alexander Whitelaw and another, trustees other than those *ex officio* of the *quoad sacra* church and parish of Blythswood, Glasgow, acting under the deed of constitu-

tion for the church, and James Fergusson Dickie and others, a majority and quorum of the trustees other than those *ex officio* of the *quoad sacra* church and parish of Saint Matthew's, Glasgow, acting under the deed of constitution for the church, with consent and concurrence of (1) the Procurator for the Church of Scotland, as representing the General Assembly, and as representing the *ex officio* trustees of the churches and parishes referred to; (2) the moderator and clerk of the presbytery of Glasgow, as representing the presbytery; (3) the moderator of the kirk-session and the session-clerk of the parish of Blythswood, on behalf of the kirk-session of the parish; and (4) the moderator of the kirk-session and the session-clerk of the parish of Saint Matthew's, on behalf of the kirk-session of the parish, *petitioners*, presented a petition to the Court of Teinds craving the Court, *inter alia*, "to find and declare that it is proper that the said two *quoad sacra* parishes of Saint Matthew's and Blythswood should be united; and to decern and join the said two parishes accordingly as one *quoad sacra* parish to be called Saint Matthew's-Blythswood Parish *quoad sacra*, in connection with the Church of Scotland, to declare the present church of Blythswood to be the church of the said proposed united parish, and to declare that the said Reverend Alexander Spark shall become the minister, and the members of the respective kirk-sessions of Saint Matthew's and Blythswood the kirk-session of the proposed united parish. . . ."

The *petition* set forth—"That by an Act passed in the Parliament of Scotland in the year 1707 (cap. 9) your Lordships had transferred to you the jurisdiction and powers formerly possessed by the Commissioners appointed for the Plantation of Kirks and Valuation of Teinds, including power to annex churches. That under the Act 7 and 8 Vict. cap. 44, the said parish of Saint Matthew's *quoad sacra* was erected in 1852 and the said parish of Blythswood *quoad sacra* in 1876—both being disjoined from the Barony Parish of Glasgow. The parishes are contiguous, and are both of limited extent—forming together a block, almost square, extending less than half-a-mile in each direction. . . . That the population of both parishes has during the last few years been steadily declining. According to last census the population in Saint Matthew's Parish was then only 394, and in Blythswood Parish 5119. Since then they have both further greatly decreased owing to the continued conversion of residential buildings into places of business. The Parish Church of Saint Columba (Gaelic) is situated within the bounds of Blythswood parish, and there are in addition other six parish churches in the immediate vicinity, besides a large number of United Free churches and several churches of other Protestant denominations. That the congregations of both churches of Blythswood and Saint Matthew's are finding it increasingly difficult adequately to support a minister and to carry on independently aggressive Christian work in the district. That the

Reverend Alexander Spark is minister of the parish of Saint Matthew's. On 25th October 1918 a vacancy occurred in the parish of Blythswood, and not having been filled up in view of the negotiations hereinafter mentioned, the right of appointment to said parish has now fallen to the Presbytery of Glasgow *tanquam jure devolutio*. That when said vacancy occurred the office-bearers of Saint Matthew's Parish approached the office-bearers of Blythswood Parish regarding a union of the parishes, being convinced that such a step would be for the benefit of both parishes and the greater good of the Church of Scotland. Meetings of the congregations of both churches took place at which the proposal was generally approved, and the office-bearers of both were instructed to enter into conference. Subsequently a scheme of union was drawn up and a copy sent to each member of both congregations, along with a voting paper on which the member was desired to vote for or against the proposed union. In Blythswood, the membership of which numbers 698, there voted for union 356 and against 26; and in Saint Matthew's, the membership of which numbers 520, there voted for union 354 and against 27. Of those who voted against 17 members in Blythswood and 10 in Saint Matthew's signified their willingness to acquiesce in the decision of the majority. The members of both congregations who voted were therefore almost unanimous in favour of union. That by said scheme of union it is proposed that the present Church of Blythswood, which is seated for 72L, and is conveniently situated in Bath Street, Glasgow, should be the church of the united parish, to be called Saint Matthew's-Blythswood, and that the Reverend Alexander Spark, the present minister of Saint Matthew's Parish, should be the first minister of the united parish. It is further proposed that meantime the present church of Saint Matthew's should be made a centre for Christian work in the district, for which certain trust funds in the hands of the kirk-session of Saint Matthew's would be available, but in the event of that building being subsequently found inconvenient for this purpose, application will in that case be made to your Lordships for power to sell the same, the proceeds thereof to be applied for religious work in the proposed united parish in such way as your Lordships may authorise or direct."

The petition was duly intimated and no answers were lodged. The Court remitted to the Teind Clerk to inquire into the facts set forth in the petition and to report thereon, and as to any other matter that might be involved through the union.

The report of the Teind Clerk contained the following:—"The present petition is the first application for a union of two *quoad sacra* churches and parishes erected in terms of the Statute 7th and 8th Vict. cap. 44, and the erection of the same into a parish *quoad sacra*. There is no authority under that statute to unite parishes erected thereunder, but in a petition at the instance of the trustees, the kirk-session, and managers of the *quoad sacra* parish of Kelvinhaugh, Glas-

gow, for an extension of the boundaries of that parish by separating and disjoining a district or area forming part of the Barony Parish of Glasgow and uniting and annexing the same *quoad sacra* to the said parish of Kelvinhaugh *quoad sacra*, the Court held (1) that the petition was competent under the Statute of 1707; (2) that the consent of a major part of the heritors was not required; and (3) that in the circumstances the petition should be granted—*Baird and Others, Petitioners*, 1893, 20 R. 973, 30 S.L.R. 829.”

The Court without delivering opinions granted the prayer of the petition.

Counsel for the Petitioners—Watson, K. C. D. M. Wilson. Agents—J. Douglas Gardiner & Mill, S.S.C.

COURT OF SESSION.

Friday, July 2.

SECOND DIVISION.

HUDSON'S TRUSTEES v. M'INTOSH AND OTHERS.

Succession—Trust—Construction—Revenue—Income Tax—Specified Annuity Payable out of “Free Income and Proceeds”—Incidence of Income Tax.

A testator directed his trustees “to hold, invest, and manage the whole residue and remainder of my means and estate in their own names, and from the free income and proceeds thereof (*primo*) to pay to each of my brother Robert and my sister Margaret during their respective lives the sum of £250 sterling per annum as from the date of my death . . . and (*secundo*) so long as my said brother Robert and sister Margaret shall be alive, to divide and pay any surplus income or revenue . . .” to certain beneficiaries, “or to retain and accumulate such surplus income or any part thereof with capital as my trustees shall determine.”

Held (dub. Lord Ormidale) that the terms of the deed did not take the case out of the general rule that a person who gets a benefit under a deed such as the foregoing must pay the tax which is exigible in respect of that benefit, and accordingly that the trustees were bound to deduct income tax from the annual payments of £250 to the testator's brother and sister.

Smith's Trustees v. Gaydon, 1919 S.C. 95, 56 S.L.R. 92, distinguished.

Robert M'Intosh and others, the testamentary trustees of the late Mrs Isabella M'Intosh or Hudson, London, *first parties*; the said Robert M'Intosh and Mrs Margaret Agnes M'Intosh or Gibson, a brother and sister of the testatrix, *second parties*; and Mrs Annie Holmes M'Intosh or Young and others, the residuary legatees under the trust-disposition and settlement of the testatrix, *third parties*, brought a Special Case on a question as to the incidence of the income tax

payable in respect of a bequest to the second parties.

By her *trust-disposition and settlement* the testatrix conveyed her whole estate to trustees for, *inter alia*, the following purposes—“*Fourth*. I direct my trustees to hold, invest, and manage the whole residue and remainder of my means and estate in their own names, and from the free income and proceeds thereof (*primo*) to pay each of my brother Robert and my sister Margaret during their respective lives the sum of £250 sterling per annum as from the date of my death, and that half yearly at the usual terms or at such times, in such sums, and in such manner as shall be suitable and convenient; declaring that the above provisions in favour of my said brother and sister shall be strictly alimentary to them respectively and shall not be assignable nor capable of anticipation, nor affectable, attachable, nor arrestable by the diligence of their creditors; and in the event of the total free annual income of my estate held under this article being or exceeding the sum of £1000 per annum in any year or years the said provisions shall both be increased to £300 for or in respect of such year or years when said free annual income shall be or exceed £1000; and in the event of such free annual income being in any year or years insufficient to yield the said provisions of £250 to each of my said brother and sister such provisions shall suffer diminution *pari passu*, but the shortage of any year shall be made up out of income in later years (but not from capital) if and when income shall be available, and my trustees shall be the sole judges of what the free annual income actually is in any year or years, and their judgment thereupon shall decide whether my said brother and sister shall have £250 each or £300 each in any year or whether their said provisions of £250 each shall suffer any deduction, and if so the amounts thereof, and my trustees' judgment shall be absolute and unchallengeable; and (*secundo*) so long as my said brother Robert and sister Margaret shall be alive, to divide and pay any surplus income or revenue that may remain in any year or years after satisfying the foregoing provisions to them contained in this fourth purpose among and to the beneficiaries mentioned in the fifth purpose hereof in proportion to their shares mentioned therein, but excluding the children of my said sister Margaret so long as both my said brother Robert and sister Margaret shall be alive, but admitting the children of my said sister Margaret to participate with the others in the event of the death of either of my said brother Robert or sister Margaret, or to retain and accumulate such surplus income or any part thereof with capital as my trustees shall determine. . . . *Sixth*. That all legacies and bequests excepting bequests of residue or of or from income shall be paid free of Government duties, which shall be paid out of the residue of my estate.”

The Case stated—“6. The free annual income of the trust has varied in amount, but it has not in any year reached the sum of £1000. It is all subject to income tax,