

jection. It is quite true that hitherto upon this very point there has not been any precise decision, but the sooner there is a decision the better. It would rather seem to me that a postnuptial deed of this nature is, if possible, more indefeasible than an antenuptial one, for in the latter case the marriage may never come off, and then there are only two persons having a possible interest, whereas in the former case the marriage has already taken place and the position of parties is beyond recall. The trustees here could not have given up the funds without some authority, and they have therefore acted most prudently in coming to the Court to obtain its opinion and judgment. I do not think the wife's consent would empower them to pay over this money to Mr Low, and I am therefore of opinion with your Lordship in the chair that the question must be answered in the negative.

LORD GIFFORD—I concur in the opinions expressed by your Lordships. The question argued to the Court was, Whether this postnuptial deed was to have the same force as an antenuptial deed of the same nature would have possessed?

It was conceded (indeed upon the authorities it could scarcely have been denied) that an antenuptial deed could not in these circumstances have been revoked, and I think that all the considerations which weigh with the Court in refusing to allow a wife to defeat her own interests, weigh equally in the case of postnuptial and antenuptial provisions.

The Court therefore answered the question in the negative.

Counsel for First Parties—A. Gibson. Agents—Mitchell & Baxter, W.S.

Counsel for Second Parties—Taylor Innes.

Wednesday, November 21.

## FIRST DIVISION.

M'NEILL v. STARK.

*Expenses—Where an Appeal is Dismissed upon Joint Minute.*

Where an appeal is dismissed in terms of a joint minute for the parties after it has gone to the roll, the Court will modify the expenses at £4, 4s.

Counsel for Appellants—Goudie. Agents—Adam & Sang, W.S.

Counsel for Respondent—Lang. Agents—Dove & Lockhart, S.S.C.

Wednesday, November 21.

## FIRST DIVISION.

CARLBERG AND OTHERS v. BORJESSON AND MANDATORY.

*Diligence—Arrestment—Execution—Ship—Nature and Extent of the Powers of a Messenger-at-Arms under a Warrant to Arrest a Vessel.*

Arrestments were used upon a vessel lying in Glasgow harbour, for the purpose of founding jurisdiction. A messenger-at-arms who was employed to execute a second warrant of arrestment upon the dependance of the action, when he found that the vessel had in the meantime sailed from harbour, pursued her on board a tug-steamer with thirty men, overtook, seized, and brought her back to port when she was some way down the Clyde and fairly started on her voyage. *Held (dub. Lord Deas)* that as the mode of executing the second warrant of arrestment was clearly illegal, the arrestments fell to be recalled, and without caution.

*Observations (per Lords Mure and Shand)* on the limits of the powers of a messenger-at-arms in the execution of such a warrant.

This was a petition for recall of arrestments presented by August Carlberg, managing owner of the barque "Edgar Cecil" of Gothenburg, Gustaf Robert Andersson master of said vessel, and various other parties, who, along with the respondent Borjesson, were the whole owners of that vessel. All the petitioners were Swedes. The vessel in September and up to 5th October 1877 lay in the port of Glasgow. Borjesson, who was part-owner to the extent of 2/100th shares of the ship, made in September 1877 various claims in connection with the vessel against the petitioners. These were—(1) The sum of £200, being the amount alleged to have been advanced by him for disbursements; (2) the sum of £100 for wages alleged to be due to him, as having acted as master; and (3) the sum of £500, as his alleged share of her profits or earnings. He then raised letters of arrestment against the petitioners *ad fundandam jurisdictionem*, under which he arrested in the hands of Edmiston & Mitchell, brokers, Glasgow, a sum of £250 belonging to the petitioners, and he also on 3rd October 1877 arrested the vessel.

Thereupon Borjesson raised a Court of Session summons against the petitioners to have these claims enforced, which contained a warrant to arrest, and the summons was endorsed by the Lord Ordinary with his concurrence and authority for putting the arrestments into execution upon maritime subjects. Meantime the vessel had been chartered to proceed to New York to receive a cargo of grain, and on the 5th of October started on her voyage. She had sailed from Glasgow and passed Greenock at the time when the warrant to arrest her had reached that place, and the respondents' agents thereupon instructed a messenger-at-arms to follow her. He took with him a crew of thirty men on board a steam-tug, overtaking her "between Toward Point and Skelmorlie," on the river Clyde, at one o'clock on the 6th October. He exhibited the Court of Session warrant as his authority for arresting her,