Tuesday, July 16.

SECOND DIVISION.

[Sheriff Court at Ayr.

ROSSLUND CYCLE COMPANY AND OTHERS *v.* M'CREADIE.

Diligence—Bill of Exchange—Bill Granted by All Members of Partnership Individually — Diligence against Partnership Property.

When all the partners of a firm carrying on business under a descriptive name grant a bill, the bill is a good ground of diligence against the assets of the firm if it was in fact granted for the purposes of the firm, and this will be presumed unless the granters prove the contrary.

Thomas Ross and Simon Lundy, who were the sole partners of the Rosslund Cycle Company, otherwise the Roselund Cycle Company, cycle agents and repairers, 24 Bridge Street, Girvan, on 1st April 1905 accepted a bill of exchange drawn upon them by Andrew M'Creadie, and payable three months after date. The bill bore the individual signatures of Ross and Lundy, and contained no reference to the Rosslund Cycle Company. On 4th July M'Creadie protested the bill for non-payment. On 10th July under an extract registered protest and warrant, dated 7th July, M'Creadie charged Lundy and Ross to pay him the sum contained in the bill, and on 18th July, the days of charge having expired, he poinded a quantity of goods at 24 Bridge Street, Girvan, the property of the company.

Thereafter the Rosslund Cycle Company, otherwise the Roselund Cycle Company, Cycle Agents and Repairers, 24 Bridge Street, Girvan, and Thomas Ross and Simon Lundy as the sole partners of said company, brought a petition in the Sheriff Court of Ayrshire at Ayr against M'Creadie, craving the Court to "interdict the defender, and all others acting for him, or under his instructions, from selling, removing, disposing of, or in any way interfering with the goods, gear, and effects, or any of them, belonging to the pursuers, and in the premises at 24 Bridge Street, Girvan, under and in virtue of (1), an extract registered protest from the Sheriff Court books of Ayrshire, and warrant of the Sheriff of Ayrshire thereon, dated 7th July 1905, and (2), warrant of sale, granted by the Sheriff-Substitute of Ayrshire at Ayr on 27th July 1905, following upon the foresaid extract registered protest and warrant thereon, and expired charge given thereunder."

The pursuers averred that the bill was accepted by Ross and Lundy in their individual capacities.

They pleaded, *inter alia*—"(2) The effects in question being the property of the pursuers the Rosslund Cycle Company, otherwise the Roselund Cycle Company, and they not being the debtors named in the said extract registered protest and warrant thereon, and warrant of sale following thereupon, the poinding of said effects is illegal and unwarrantable, and their sale ought to be interdicted and decree granted in terms of the prayer of the petition."

In the course of a proof taken by the Sheriff-Substitute (SHAIRP), it was proved that the bill was granted in consideration of an advance made by M'Creadie to enable Ross and Lundy to obtain stock-in-trade and tools for their business.

On 17th July 1906 the Sheriff-Substitute pronounced the following interlocutor:—"Finds in law (1) That in terms of the Bills of Exchange Act 1882, section 100, it is competent to prove by parole evidence whether in granting the bill the pursuers intended to bind themselves both as individuals and as the sole partners of the 'Rosslund' or 'Roselund' Cycle Company, carrying on business in Girvan: (2) Finds in fact that it has been proved by the evidence adduced that the pursuers granted the bill in question with the intention of binding themselves both as individuals and as sole partners of the foresaid firm, and did so bind themselves and said firm: (3) That the subsequent procedure taken by the defender upon said bill has been regular, and that the poinding which followed was duly executed and attached the effects of said firm. . . . Therefore refuses the prayer of the petition."

The pursuers appealed, and argued—The poinding and sale were illegal. The debt was the debt of the individuals Ross and Lundy, and the goods were the goods of the company—*Jack* v. *M'Caig*, January 16, 1880, 7 R. 465, at 468, 17 S.L.R. 351. Under the Debtors (Scotland) Act 1838 (1 and 2 Vict. cap. 114) it was illegal to sell a debtor's goods without having first charged him to pay. It was now proposed to sell the company's goods, the company never having been charged, the only persons charged being the two individuals Ross and Lundy. Diligence was a matter *strictissimi juris* and could only proceed where nothing was doubtful and everything regular *ex facie*—*M'Rostie* v. *Halley*, March 2, 1850, 12 D. 816; *Whitehead* v. *Henderson*, February 19, 1836, 14 S. 544; *Summers* v. *Marianski*, December 16, 1843, 6 D. 286; *Fraser* v. *Bannerman*, June 21, 1853, 15 D. 756. It could not be left to a messenger-at-arms to decide for himself such a question as whether or not the company and the two individuals were the same. That was the class of question which could only be proved in a separate action—*British Linen Company* v. *Alexander*, January 14, 1853, 15 D. 277. The case of *Plotzkers* v. *Lucas*, 1907, S.C. 315, 44 S.L.R. 245, was also referred to by way of illustration.

Argued for the respondent—All the cases referred to by the appellants were cases in which there was some defect on the face of the bill. Here there was none, and there was nothing to prevent him doing diligence against any property which was the joint property of the two individuals, and the two individuals only. If there had been a third partner in the company the

matter would have been different—*Parnell* v. *Walter*, July 3, 1889, 16 R. 917, Lord Kinnear at 924, 27 S.L.R. 1. The fact that they chose to call themselves the Rossland Company was quite immaterial. But in any event the present action was incompetent. The Sheriff having granted a warrant to sell it was incompetent to ask him to interdict proceedings under that warrant. The pursuers should have appeared in the poinding and objected there—*Lamb* v. *Wood*, July 20, 1904, 6 F. 1091, 41 S.L.R. 825. Thereafter the only competent action would have been a suspension and interdict in the Court of Session—Mackay's Practice, vol. ii, 211; Graham Stewart on Diligence, p. 354, and cases there cited.

LORD LOW—The main ground upon which the appellants seek to have the interlocutor of the Sheriff recalled and interdict granted in terms of the prayer of the petition is that the articles which were poinded, and which are enumerated in the prayer, were the property of the Rosslund Cycle Company, and not of the individual appellants.

The appellants Ross and Lundy were joint acceptors of the bill in question, and of course are jointly and severally liable thereon, and they carry on business together under the name of the Rosslund Cycle Company, of which they are the sole partners. Now, when all the partners of a firm carrying on business under a descriptive name grant a bill, I see no reason in principle why the bill should not be a good ground of diligence against the assets of the firm if it was in fact granted for the purposes of the firm. In such a case I think that the presumption rather is that the bill is granted for trade purposes (*Yorkshire Building Company*, 5 C.P. Div., p. 109), but it is open to the granters to prove the contrary. That is what the appellants undertook to do in this case, because they aver in the condescendence that the bill was accepted by them in their individual capacities. Not only have they failed to prove that averment, but it is established, and is not now disputed, that the bill was granted in consideration of assistance which the respondent gave them for the purpose of enabling them to obtain stock-in-trade and tools for their business. I am therefore of opinion that the interlocutor of the Sheriff-Substitute should be affirmed.

The LORD JUSTICE-CLERK and LORD STORMONTH DARLING concurred.

The Court adhered.

Counsel for Pursuers—Hamilton. Agents—Gardiner & Macfie, S.S.C.

Counsel for Defender—Morison, K.C.—MacRobert. Agent—James Ayton, S.S.C.

Wednesday, July 17.

SECOND DIVISION.

[Sheriff Court at Ayr.

BAIRD & COMPANY, LIMITED *v.* STEVENSON.

Process—Review by Whole Court—Refusal.

A case raised a question under an Act of Parliament which had been repealed, a new Act with varied provisions being substituted. The new Act allowed an appeal to the House of Lords, which had not been competent under the old one. The question had already been decided by both Divisions in the same way, but there had been a dissent in each Division, and the result was the opinion of four Judges against two, a decision in England being also in favour of the minority.

The Court *refused* to send the case to the whole Court and *followed* the previous decisions.

Master and Servant — Workmen's Compensation Acts — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *Sched. I, sec.* 12—*Review of Weekly Payment—Date from which Payment may be Ended, Diminished, or Increased.*

The Workmen's Compensation Act 1897, Schedule I, 12, provides—"Any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review may be ended, diminished, or increased, subject to the maximum above provided, and the amount of payment shall in default of agreement be settled by arbitration under the Act."

Held that when an application under the above section to review a weekly payment under the Act is brought before an arbitrator, he can only end, diminish, or increase the payments from the date of his decision in the application.

Steel v. *Oakbank Oil Company*, December 16, 1902, 5 F. 244, 40 S.L.R. 205; and *Pumpherston Oil Company, Limited* v. *Cavaney*, June 23, 1903, 5 F. 963, 40 S.L.R. 724, *followed*.

Opinions touching the authority of the decisions in connection with the new Workmen's Compensation Act of 1906.

Master and Servant — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *Sched. II, sec.* 8—*Registration of Memorandum of Agreement—Rectification of Register by Sheriff—Limits of Rectification—Petition to Expunge admittedly Correct Memorandum on Ground that Agreement had Terminated at Date of Registration.*

The Workmen's Compensation Act 1897, Schedule II, 8, provides—"Where the amount of compensation under this Act shall have been ascertained, ... by agreement, a memorandum thereof shall be sent to the (in Scot-