their deceasing parent had he or she survived the period when the succession opened thereto,' do not in any way affect the conclusion arrived at as to vesting. The words 'when the succession opened' just simply mean when the money became payable, which was to be at the death of the liferenter if the children had arrived at majority, and if they had not, then at the day they did so."

Counsel for Pursuer—Salvesen. Agents—Boyd, Jamieson, & Kelly, W.S.

Counsel for Defender—Lorimer. Agent—David Crole, Solicitor for Inland Revenue.

Friday, December 10.

FIRST DIVISION.

[Lord Fraser, Ordinary.

ENGLISH'S COASTING AND SHIPPING COMPANY (LIMITED) *v.* THE BRITISH FINANCE COMPANY (LIMITED).

(*Ante*, vol. xxiii. p. 289.)

Foreign—Jurisdiction—Judgments Extension—Judgments Extension Act 1868 (31 *and* 32 *Vict. cap.* 54)*—Arrestments—Reduction.*

Held (1) that a certificate of judgment by the High Court of Justice, Liverpool District Registry, could competently be registered in the Books of Council and Session, and diligence be done thereupon in Scotland as on a decree of the Court of Session, such Court being, in respect of the Judgments Extension Act 1868 and the Judicature Act of 1873, a Court of which the judgments may be enforced in Scotland; and (2) that it is unnecessary to the doing of diligence in Scotland on a certificate of judgment by a Court of England or Ireland, registered in Scotland under the Judgments Extension Act, that the debtor is otherwise subject to the jurisdiction of the Court of Session.

On 4th November 1884 the British Finance Company (Limited) obtained (after appearance, and in default of delivery of a defence) a judgment against English's Coasting and Shipping Company (Limited) for a sum, including costs, of £74, 16s. in an action raised in the High Court of Justice, Queen's Bench Division, Liverpool District Registry.

The British Finance Company registered in the Books of Council and Session, in the manner provided by the Judgments Extension Act 1868, sec. 2, a certificate of judgment under the hand of Mr Paget, district registrar at Liverpool of the Queen's Bench Division of the High Court of Justice, and obtained an extract registered certificate of judgment. Thereafter, on 15th November 1884, they obtained the concurrence and authority of the Lord Ordinary on the Bills for putting the warrant of arrestment contained in the extract registered certificate of judgment into execution, so far as regarded maritime subjects, and caused the vessel "Magdala," of Bristol, in which English's Coasting and Shipping Company (Limited) had a beneficial interest, and which was at Grangemouth, to be arrested and dismantled on 5th December 1884, with the result, as was averred in this action, that she lost the benefit of a charter which she was then under to proceed to Demerara.

English's Coasting and Shipping Company (Limited) then raised this action against the British Finance Company (Limited), concluding for reduction of the "extract registered certificate of judgment and warrant of the Lords of Council and Session thereon, dated 10th November 1884, at the instance of the said defenders against the said pursuers, having concurrence and authority by Lord Kinnear, Ordinary officiating on the Bills, thereon, for putting the warrant of arrestment contained in said extract into all due and legal execution in so far as regards maritime subjects, dated 15th October 1884," with all that had followed thereon, and also concluding for £250 as the damages suffered owing to their ship losing her charter.

The pursuers averred that the judgment was not registrable under the Judgments Extension Act 1868 or any other Act, and the whole proceedings connected therewith were illegal; at all events, that it was not registrable against them, they having no place of business in Scotland, and the Courts in Scotland having no jurisdiction over them They also averred and maintained that the "Judgments Extension Act 1868 assumes that there is jurisdiction in Scotland before registration in Scotland of an English judgment. It does not create jurisdiction."

The pursuers pleaded—"(1) The said registration in the Books of Council and Session at Edinburgh of said judgment, and the arrestment and whole proceedings thereon, being incompetent, wrongous, and illegal, the pursuers are entitled to decree of reduction as craved."

The defenders pleaded, *inter alia*, that their whole proceedings having been orderly and legal, they ought to be assoilzied.

By interlocutor of 9th June 1886 the Lord Ordinary (Lord Fraser) assoilzied the defenders from the conclusions of the summons.

"*Opinion.*—The 2d section of the Judgments Extension Act 1868 (31 and 32 Vict. c. 54), provides that when a judgment of any of the English or Irish Courts therein mentioned has been pronounced, a certificate of such judgment in the form annexed by the statute may be registered at the office in Edinburgh kept for the registration of deeds, bonds, &c., 'in like manner as a bond executed according to the law of Scotland, with a clause of registration for execution therein mentioned, and every certificate so registered shall, from the date of such registration, be of the same force and effect as a decreet of the Court of Session, and all proceedings shall and may be had and taken on an extract of such certificate as if the judgment of which it is a certificate had been a decreet originally pronounced in the Court of Session on the date of such registration.' Thus the registered certificate is to be taken as having the same effect as a decree of the Court of Session. Everything can be carried out under it which could be done in virtue of a decree pronounced by the latter Court against a domiciled Scotsman. Now, let us see what such a decree authorises.

"It was long ago settled that an arrestment

may be used upon a decree without a previous charge—*Weir* v. *Falconer*, February 2, 1814, F.C., and the Personal Diligence Act (1 and 2 Vict. c. 114, sec. 1) gives effect to this law, and the Schedule No. 1 attached to that statute states it thus—'And the said Lords grant warrant to messengers-at-arms, in Her Majesty's name and authority, to charge the said A personally or at his dwelling-place, if within Scotland, ... [*if to pay money, specify the sum, interest, and expenses*], . . . and that to the said B [*specify the name of the person in whose favour the decree is pronounced*] within [*insert the appropriate days*] next after he is charged to that effect, under the pain of poinding and imprisonment. . . . and also grant warrant to arrest the said A's readiest goods, gear, debts, and sums of money in payment and satisfaction of the said sum, interest, and expenses.' The debtor's goods are not to be poinded except after a charge, but arrestment may be laid on at once on the decree being extracted. There was consequently no good ground of objection to the ship of the pursuers being arrested without a previous charge. But then it is said that in order to justify the execution of diligence in virtue of the decree of the Scottish Court the Court must have jurisdiction over the defender, and such jurisdiction, it is maintained, is not had merely because the foreigner is owner of moveables in Scotland. The objection thus stated is in the opinion of the Lord Ordinary untenable. The Court to whom any objection founded upon want of jurisdiction must be stated, is the Court that granted the original decree—*Wotherspoon & Birrell* v. *Conolly*, February 10, 1871, 9 Macph. 510. That Court in the present case was the High Court of Justice, Queen's Bench Division, Liverpool District Registry. The Courts of Scotland, whose assistance is now invoked in order to carry out this decree, must proceed upon the footing that it was a decree granted by a Court having jurisdiction to make it, and such being the case, the only question that can be raised is, whether the ship could be arrested under a decree of the Court of Session, the ship belonging to a foreigner, but against whom a decree of the Court of Session had been competently pronounced? In these circumstances it is out of the question to maintain that before this English decree can be put to execution in Scotland there must be an arrestment to found jurisdiction, as in the case where an action is to be intented against a foreigner. The Court in such a case can only entertain the suit upon jurisdiction being constituted by such an arrestment. But such is not the present case, for the Court that entertained the suit had jurisdiction *ratione domicilii*, and all that then requires to be done is to apply the forms of execution in use in the other part of the United Kingdom where property of the defenders can be found.

"The extract certificate of judgment has appended to it an interlocutor by the Lord Ordinary officiating on the Bills, in the following terms:—'Edinburgh, 15th November 1884—The Lord Ordinary grants concurrence and authority for putting the within warrant of arrestment into all due and legal execution so far as regards maritime subjects, and grants warrant to dismantle arrested vessels if necessary.' In the event of the answer made by the creditor (the British Finance Company) to the objection of want of jurisdiction, stated by the pursuers of this action of reduction, not being sustained, the creditor maintains that this sanction or concurrence of the Lord Ordinary on the Bills to the arrestment of the ship supplies any defect if such existed. It is right, therefore, that this point should be considered. The concurrence of the Lord Ordinary on the Bills gives no additional force to the certificate, and to the warrant appended to the extract, which is in these terms—'And the said Lords grant warrant for all lawful execution hereon.' So far as the Lord Ordinary can see, the Bill Chamber concurrence is without any legal authority, and was unnecessary. It has no doubt been the practice for a considerable time back to apply for the sanction or approval of the Lord Ordinary on the Bills, but this has arisen from misapplication of an old practice. When the Admiralty Court was in existence in Scotland it was necessary, when arrestment was to be made of a ship, proceeding upon an extract registered protest or upon a horning, that the concurrence of the Judge Admiral should be obtained, and such concurrence was given in the terms of the concurrence of the Lord Ordinary on the Bills in this case,—Smith's Maritime Practice, p. 59. The matter is thus noted in the Juridical Styles, vol. iii. of the edition of 1828, p. 993, published before the abolition of the Admiralty Court—'The Judge Admiral must be applied to for his concurrence when the person or effects of any debtor to be apprehended or attached by the above diligence are aboard of the ship, or otherwise situated within the precincts of the jurisdiction of the High Court of Admiralty. This is obtained of course upon production of a caption, or of a horning, or other letters containing warrant of arrestment, duly signeted, and a deliverance suited to the nature of the diligence is granted accordingly.' But all this is now unnecessary, because the whole powers of the Admiralty Court were transferred to the Court of Session and the Sheriff Court by the Act 1 Will. IV., cap. 69, secs. 21 and 22, and any decrees or warrants by them have the same effect as decrees or warrants of the Judge Admiral. Accordingly the ordinary warrant to arrest contained in a summons has been held sufficient for the arrestment of a ship without any concurrence by the Lord Ordinary on the Bills—*Clark* v. *Loos*, June 17, 1853, 15 D. 750. The ordinary summons in the Admiralty Court (which was in that Court called a 'precept') contained, as a usual conclusion, one to arrest all ships, and 'to take the rudders and anchors from the said vessels (the same being always in a safe harbour), to remain under sure fence and arrestment at the instance of the said complainer aye and while sufficient caution and surety be found acted in the books of our said High Court of Admiralty that the same shall be made forthcoming to the complainer, as accords of the law'—Boyd's Judicial Proceedings, p. 17. Now, what the Judge Admiral's precept could do, without concurrence from anyone, the Court of Session, which has got all the Judge Admiral's powers, can also do; and it is very absurd to have an extract whereby 'the said Lords grant warrant for all lawful execution hereon,' backed up and sanctioned by one of their number, and as a matter of course, too, the Lord Ordinary on

the Bills. Perhaps the ordinary warrant to arrest may not include the further right to dismantle. The practice in the Admiralty Court was to insert a conclusion to that effect in the summons—a conclusion both to arrest and dismantle. Now, as already stated, it was enacted by 1 Will. IV. cap. 69, sec. 21, that 'the High Court of Admiralty be abolished, and that hereafter the Court of Session shall hold and exercise original jurisdiction in all maritime civil causes and proceedings of the same nature and extent in all respects as that held and exercised in regard to such causes by the High Court of Admiralty before the passing of this Act.' In virtue of this enactment the Court of Session can issue all writs in the same way and manner as the former Admiralty Court could do, and there seems to be no good reason why the conclusions of a summons should not be as extensive in the Court of Session —now the Admiralty Court—as they were in the former Admiralty summonses or precepts—that is, containing a warrant both to arrest and dismantle. Dismantling a vessel is simply completing an arrestment and making it efficient.

"If no such conclusion be inserted in the summons, but merely a conclusion to arrest, and it should be sought further to dismantle, there might be some ground for applying to the Lord Ordinary on the Bills for a warrant to that effect, because, after the passage already quoted from the Act of Parliament, it is enacted that 'all applications of a summary nature connected with such causes may be made to the Lord Ordinary on the Bills,' and a warrant to dismantle where such a warrant is not concluded for might perhaps competently be asked for in virtue of this clause.

"But all this has reference merely to arrestment and dismantling on the dependence. It has no application to the case when final decree has been pronounced, and when execution of it is sought. In such a case the decree carries along with it full power to dismantle, and perform everything else that was competent, in virtue of a final decree of the Judge Admiral.

"The result of all this is, that if the arrestment of the pursuer's vessel was invalidly effected in virtue of the warrant in the extract certificate, it was not made valid by anything that was done by the Lord Ordinary on the Bills. The pursuers are entitled to this expression of opinion by the Lord Ordinary."

The pursuers reclaimed, and argued—(1) The Judgments Extension Act specified certain Courts (viz. the Courts of Queen's Bench, Common Pleas or Exchequer, at Westminster or Dublin respectively), the decrees of which were, when presented properly authenticated, to be registered in Scotland. This was not a decree of one of these Courts, being merely a decree of the Liverpool District Registry, and therefore the Act did not apply. (2) The registration of an English decree in the Scottish Courts would not *create* jurisdiction if the Scottish Courts had not otherwise had jurisdiction. On either of these grounds the pursuers were entitled to have this decree reduced.

Authorities — *Wotherspoon* v. *Conolly*, February 10, 1871, 9 Macph. 510; Mackay's Practice, vol. i. p. 67; Campbell on Citation, p. 160; Inferior Courts Judgments Extension Act 1882 (45 and 46 Vict. cap. 31), sec. 10; *Fraser* v. *Fraser*, January 14, 1870, 8 Macph. 400.

Replied for respondents—The decree was still one of the High Court of Justice though obtained in the Liverpool District Registry. By the Judicature Act of 1873 the Courts specified in sec. 2 of the Act of 1868 were consolidated into the High Court of Justice, so that a decree by the latter had all the weight of a decree by one of the Courts specified in the prior Act. The High Court of Justice was not confined to any one locality. The certificate was one of a competent Court, and it bore to be signed by a proper officer. The policy of the Judgments Extension Act was to enable a creditor holding a decree against his debtor to put it in force in any part of Great Britain. They referred to the Inferior Courts Judgment Extension Act 1882 (45 and 46 Vict. c. 31), sec. 5.

At advising—

Lord President—The proceedings challenged in this action of reduction were taken under sec. 2 of the Judgments Extension Act 1868.

The first objection taken by the pursuers of the reduction is that the certificate which was registered in the Books of Council and Session in November 1884 does not bear on its face that the judgment was pronounced by any of the Courts specified in sec. 2 of the statute.

Now, that section provides that "when judgment shall hereafter be obtained or entered up in any of the Courts of Queen's Bench, Common Pleas or Exchequer, at Westminster or Dublin, respectively, for any debt . . . on production at the office kept in Edinburgh for the registration of deeds . . . of a certificate of such judgment, it is to be registered in the register of English and Irish judgments," then proceedings are to be taken on an extract of this certificate as if the decree had originally been pronounced in this Court.

Now this certificate—of which an extract is in process—was made by Mr Paget, the proper officer to grant such a writ, provided that it is otherwise in form. The certificate bears that the British Finance Company on 4th November 1884 obtained a judgment in default against English's Coasting and Shipping Company (Limited) for £74, 16s. in an action raised in the High Court of Justice, Queen's Bench Division, Liverpool District Registry.

By the Judicature Acts of 1873 and 1875 the High Court of Justice in England comes in place of the various Courts mentioned in sec. 2 of the Act of 1868, and though there is no direct evidence of this before us it would be the merest pedantry were we to ignore the fact.

Seeing, then, that we have before us the evidence of a judgment having been pronounced by the High Court of Justice in England, we must pay the same attention to it as if it had been pronounced by one of the Courts enumerated in sec. 2 of the Act of 1868. That being so, we cannot give any effect to the objection that the judgment was pronounced in the Liverpool District Registry of the High Court of Justice, as it is not our province to inquire into the mode in which judgments are entered up in the English Courts. All that we have to deal with is, that upon a certain day a judgment was pronounced by a competent Court in England, and that a certificate of that judgment, properly authenticated, has been presented to the Courts of this

country, and was duly registered. That being the state of matters, all objections taken by the pursuers on this part of the case clearly fail.

But it was further urged that this Court has no jurisdiction against the pursuers of this reduction, and that if the present defenders had brought an action against the pursuers in the Courts of this country it would have been thrown out on the ground of want of jurisdiction, and that no steps had been taken to found jurisdiction.

Now, this raises a rather important question under the Act of 1868.

If it is meant that such a decree of an English Court registered in Scotland can only be enforced against a domiciled Scotchman, or upon one over whom the Scottish Courts have otherwise jurisdiction, that would very much limit the operation of the statute.

It seems to me that the policy of the statute points to a much wider construction. It comes, I think, to this, that a person holding a decree pronounced by a competent Court in Great Britain can make this decree good both against the person and property of the debtor wherever found in Great Britain, and that any kind of execution which could lawfully follow a decree of this Court would also follow on the decree competently pronounced by another Court, and properly registered here. Upon that ground I think the arrestments here used were in proper form.

I am therefore for adhering to the Lord Ordinary's interlocutor, as I think that both the objections which have been taken to this decree are ill-founded.

Lords Mure and Shand concurred.

Lord Adam—One of the objections taken by the pursuers of the reduction to the proceedings in the English Courts was that the decree should have borne that it had been entered up at Westminster, and that the absence of this was fatal to it. I think, however, that the word "Westminster," in the Act of 1868, applies to the High Court of Justice, and that it does not apply to its locality, and upon that account I think there is nothing in the first objection taken by the pursuers.

As to the other point, that before a decree can be enforced in a country other than the one in which it is pronounced, there must be jurisdiction in that country, such a construction would in my opinion be to limit very much the operation of the statute, and I cannot adopt it.

The Court adhered.

Counsel for Pursuers — Comrie Thomson — Watt. Agents—Clark & Macdonald, S.S.C.

Counsel for Defenders—Darling. Agents—Dalgleish & Lumsden, S.S.C.

Tuesday, December 14.

FIRST DIVISION.

WILLIAMSON *v.* WILLIAMSONS.

Succession—Presumption of Life—Presumption of Life Limitation (Scotland) Act 1881 (44 *and* 45 *Vict. c.* 47), *sec.* 8

The Presumption of Life Act 1881 provides that where no presumption arises from the facts proved in a petition under it that the absentee died at any particular time, he shall be held, for the purposes of the Act, to have died at the expiry of seven years from the date of his disappearance. In a petition under the Act the petitioner established facts which showed a probability that the absentee died on a particular journey, but also left it quite a reasonable deduction from the facts that he did not. *Held* that the question not being one of mere probability, there was no "presumption arising from the facts" that he died on the journey in question, and *therefore* that the presumption of the Act, that he died seven years after his disappearance, must be applied.

By disposition dated 27th March 1844 Mrs Jessy Stewart Dingwall Fordyce, relict of Arthur Dingwall Fordyce of Culsh and Brucklay, disponed to and in favour of Dr Benjamin Williamson, physician in Aberdeen, in liferent, and to Arthur Stewart Williamson, his youngest son, in fee, a portion of the lands of Pulmuir, called Arthur-seat, on the north side of the river Dee, in the immediate vicinity of Aberdeen. Dr Williamson died on 23d August 1850, and Arthur Williamson entered into possession and enjoyment of the said heritable estate. In 1857 Arthur Williamson left Scotland for Australia, and was between 1862 and 1865 partner with his brother John Burnet Williamson in various sheep transactions, and other business. The brothers parted in July 1865 at Peak Down Mines, Northern Queensland, from which place Arthur Williamson intended to proceed with horses overland to Sydney, while John Williamson was to go to the same place by sea. John Williamson never saw or heard of his brother again, nor was he heard of again by any of his friends or relatives. Arthur Williamson was about twenty-six years of age when he disappeared. He was unmarried, and was aware of his rights. In these circumstances the present application was made by the said John Burnet Williamson, as the person entitled to succeed to the heritable estate, for authority to make up title to the estate of his brother under the Presumption of Life Limitation (Scotland) Act 1881. The heritage had been compulsorily taken by a public body under the Lands Clauses Act 1845, but the consigned price (£6000) remained heritable in a question of succession, and the petitioner, as heir-at-law, claimed it and also the accumulated rents. These had been accumulated by the agents for the absentee by a factor *loco absentis*.

The petitioner averred that at the time the absentee disappeared he knew that he was the owner of the heritable property above referred to, and also that he was entitled to certain moveable property. He also averred that the ab-