had been discounted; whereas, on the contrary, he now produced that bill, which the defendant had not been enabled to get discounted. Norden v. Cauvin.

Cloete, for the plaintiff, stated that he had offered to discount the bill, provided the defendant produced to him the second and third bills of the set, alleging that the bill had been drawn in a set of three. Defendant denied this, and alleged that the bill was only drawn in a set of two, and offered to produce the second of the set.

The Court, without regard to the facts alleged, refused provisional sentence in respect of the illiquid nature of the document sued on.

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1. REVIVAL OF SENTENCE—IN ITS TERMS NULL.
2. —— —— AGAINST SURVIVING WIDOW.

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1. THOMSON & CO. *v.* DE KOCK.

[3d June, 1834.]

Sentence of Revival refused on a Superannuated Provisional Sentence, which had been erroneously granted.

This was a provisional claim for the revival of a provisional sentence of the Supreme Court, dated 29th September, 1832, the extract of which produced was in the following terms:— Thomson & Co. v. De Kock.

"The Court granted provisional sentence for such sum and interest as the Master shall find to be due, on the examination of the accounts annexed to the bond and vouchers, subject to such deductions as the defendant shall be found entitled to.

"By the Court, "T. H. BOWLES."

Thereafter the Master made out the following certificate:

"December 1, 1832.

"I certify that I have examined the accounts herein referred to, between the parties, and in their presence respectively; and I find the sum of £3174 11s. 9d., with interest on £2174 11s. 9d. from the 26th September, 1832, on £300 from the 25th July, 1831, on £300 from the 25th August, 1831, and on £300 from the 25th September, 1831,—to be due from the above-named defendant to the above-named plaintiffs. "CLERKE BURTON,

"Master of the Supreme Court."

On hearing the Attorney-General, for the plaintiffs, and Cloete, for the defendant, the Court held that the provisional

Thomson & Co. v. De Kock.

sentence of the 29th September, 1832, in the terms in which it had been drawn up, was one which it was not competent for the Court to have given, in respect that it did not refer to the Master any matter of fact or of account which it was competent to refer to the Master, to be by him ascertained, but delegated to him the entire jurisdiction of the Court in the case; consequently that this sentence, as drawn up, could not be given effect to, but must be held as null and as never having been given; and therefore they refused to revive the provisional sentence; but the Court revived the original provisional summons on which that sentence had been erroneously given, and postponed giving judgment thereon until the 4th June, when the Master's report on the state of the account should be received.

NOTE.—On the 4th June the Attorney-General moved for provisional sentence, in respect of the bond granted by the defendant in favour of the plaintiffs, specified in the original summons, and dated 3d May, 1831.

Provisional sentence was given, as prayed, the mortgage being declared executable, with costs.

There could be little doubt that the finding of the Court of the 29th September, 1832, was loosely and improperly worded, and that nothing more had been intended than to refer to the Master to calculate the amount due to the plaintiffs after deduction of the sum admitted in the summons, and of the interest due on the balance, in terms of the bond.

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2. BUCK *v.* BARKER.

[1st May, 1838.]

Provisional Sentence of Revival refused against a Surviving Widow and Heiress on a Superannuated Provisional Sentence against her Deceased Husband.

Buck v. Barker.

In this case, the Court found that the production of a provisional sentence against the deceased husband of the defendant, which had become superannuated, is not sufficient to entitle the plaintiff to obtain provisional sentence of revival against the defendant, although she be proved or admitted to be the surviving *widow and heiress* of the deceased, because the mere fact of her being *widow and heiress* afforded no *primâ facie* evidence that, as possessing this capacity, she was necessarily liable to pay this debt,—nor any ground for presuming that, if it had been paid, the voucher of payment should be in her possession, or under her control (*vide* Burton *v.* Vivier, p. 72).