

straw delivered, only four were passed over a public steelyard; the previous nine cart-loads were weighed only at the private steelyard of Marshall & Co., who had purchased the straw from the defenders. The Sheriff thinks the whole should have been weighed at the public steelyard, which lay in the way of the carts; but he has not found in the commercial law either of Scotland or England any authority for holding that, in such a case as the present, the use of a public steelyard is imperative. He cannot, therefore, throw aside the actual weighing, which seems to have been gone about fairly and carefully, and was acquiesced in by the defenders for their settlement with Marshall & Co. On the other hand, it is impossible to feel entirely assured that the estimates and calculations of the witnesses are free from latent sources of error; and it is the more difficult to accept of such evidence from the pursuer, as it is thought he should have done something in the way of stipulation or otherwise to ascertain the correct weight of the straw. The Sheriff does not think the pursuer has had such a measure of success as to entitle him to expenses of process."

Both parties appealed.

GLOAG for appellant.

GIFFORD in answer.

The Court adhered.

Agents for Pursuer—Wilson, Burn & Gloag, W.S.

Agents for Defenders—G. & H. Cairns, W.S.

Friday, November 19.

### FIRST DIVISION.

WILLCOX AND GIBBS' SEWING MACHINE CO.  
v. STIRLING & SONS.

*Expenses—Counsel—Precognition—Scientific Witness.*

In a trial for breach of patent, the successful parties were allowed the expenses (1) of three counsel; (2) of precognosing a scientific witness, whose own charge for drawing his report had been allowed; (3) of passage-money, maintenance and fee to a principal witness, who, though not a party to the action on the record, was in fact the party upon whose information the case mainly depended, and was interested in the case; but (4) were not allowed the expense of precognosing him.

This was a discussion on a note of objections to the auditor's report in regard to the expenses of a jury trial last July, in which the pursuers were successful in an action against the defenders for breach of patent. The pursuers are a company carrying on business as manufacturers of sewing-machines at No. 135 Regent Street, London, and in New York. The company was duly incorporated according to the laws of the State of New York; and Mr Willcox is president of the company. It was stated that Mr Gibbs, who resides in Virginia, invented the machine; but that, being unable to carry on his patent, he sold it to the company, retaining, however, a small interest as a shareholder of the company. His precognition began—"I am one of the pursuers"; but he was not one of the parties on the record. From the nature of the machinery it was essential to have his evidence, as the decision of the case mainly turned upon it; but the defenders maintained that his evidence should have been taken by commission, as being less costly than bringing him over here. They also

objected to the pursuers' account for precognosing a scientific witness, whose evidence was necessary, but who had had his own charges for drawing his report allowed. They also objected to the charge for precognosing Mr Gibbs; and to the expense of three counsel for the pursuers, they having had only two.

BALFOUR for the pursuers.

WATSON in reply.

The Court, considering Mr Gibbs' presence essential, allowed a guinea a-day for thirty-five days for the time he was away from Virginia as a witness at the trial; six guineas for expenses between New York and Virginia; and £52 for passage-money between New York and England (including maintenance); they also allowed the expenses of precognosing the scientific witnesses, and of three counsel to the pursuers; but disallowed the charge for Mr Gibbs' precognition.

Agents for Pursuers—Macnaughton & Finlay, W.S.

Agent for Defenders—James Webster, S.S.C.

Saturday, November 20.

### SCOBIE & OTHERS v. CHRISTIE.

*Bankruptcy Act 1856—Creditors—Interdict—Notice—State—Trustee.* A bankrupt having failed duly to lodge a state of his affairs, his trustee only sent notices to those creditors who had claimed. Other creditors, whose names were on the state as eventually lodged, received no special notice; and their claims when lodged were rejected by the trustee as being too late. *Held* the trustee should not have proceeded in the matter till the state was lodged; and interdict against payment of the dividend granted.

On 9th September 1868 the estates of James Hill, farmer at Cramflat, Moneydie, Perthshire, were sequestrated by the Sheriff of Perthshire on a petition by his brother David Hill, one of his creditors. Advertisements thereof appeared in the Edinburgh and London Gazettes, the Perthshire and Dundee Advertisers, the Perthshire Courier and Edinburgh papers; and also a notice fixing the first meeting of creditors for 18th September at Perth, &c. On 26th September the trustee sent a circular to the creditors who had lodged claims, stating what had occurred and what was to take place. On 29th September notice appeared in the Edinburgh Gazette that James Christie, miller at Huntingtower, had been elected trustee, and certain parties commissioners. The notice also specified the date of the bankrupt's examination, and a date for the meeting of the creditors. And the same notice was given in other papers. On 5th October the diet for further examination was adjourned till the 2d November, on which day the bankrupt, as ordered, gave in a state of his affairs. The Edinburgh Gazette of 26th January contained the following notice:—"James Christie, miller, Huntingtower, near Perth, trustee on the sequestrated estate of James Hill, farmer at Cramflat, near Redgorton, and in the parish of Moneydie, hereby intimates that accounts of his intromissions with the funds of the estate, brought down to 9th January current, with states of the funds recovered and property outstanding, have been made up and examined by the commissioners, in terms of the statute; that he has examined the claims of the several creditors who had lodged their