

Wednesday, June 9.

FIRST DIVISION.

[Sheriff of Lanarkshire.

FORSYTH v. HEATHERYKNOWE COAL COMPANY.

*Master and Servant—Colliery Manager—Dismissal—Notice—Wages.*

The manager of a colliery company, whose salary was £3, 15s. per week, was discharged in consequence of the discontinuance of the colliery. His employers offered him a fortnight's salary in lieu of notice. *Held*, looking to the nature of the relation between a colliery manager and his employer, and the practice in the neighbourhood, that three months' notice on either side was what was reasonable.

Thursday, June 10.

SECOND DIVISION.

[Lord Curriehill, Ordinary.

YOUNG AND OTHERS v. FERGUSSON SMITH AND OTHERS (COMMISSIONERS OF HARBOUR OF DUMFRIES AND NAVIGATION OF THE RIVER NITH).

*Process—Extract—Expenses—Separate Action—Litigation by Trustees.*

It is incompetent where a decree reserving questions of personal liability for expenses against statutory trustees has been extracted, to raise the question of their personal liability in a supplementary action—the proper course being that the question should be decided in the same process and by the same Judges.

*Statute—Bond and Assignment of Rates—Liquidated Damages.*

A body of statutory commissioners were authorised by their Act to borrow money, and to assign and make over the rates and duties authorised by this Act to be taken and levied as a security for repayment of the money so borrowed. Money having been borrowed and the rates assigned in terms of the statute, *held* (*rev. judgment* of Lord Curriehill) that a sum subsequently found due by the trustees in name of damages for a breach of their Act was not preferable to the security held by the assignees of the rates.

On 1st February 1876 Lord Shand (Ordinary) pronounced decree in favour of the pursuer in an action at the instance of Robert Young and Others, owners of the steam-tug "Arabian" against Thomas Fergusson Smith, Provost of Dumfries, and others, Commissioners of the harbour of Dumfries and the river Nith, acting under the Statute 51 Geo. III. c. 147 (a local and personal Act, but declared to be public and to be judicially noticed), and Thomas Anderson, their clerk. The

ground of action was injury sustained to the "Arabian" by having struck against a stone dyke erected by the defenders in the channel of the river Nith, and covered at high-water, and which they had failed to mark by a buoy. His Lordship, besides finding the pursuers entitled to damages, which he estimated at £150, found the defenders "as Commissioners and clerk foresaid, and also the defenders, Commissioners foresaid, personally liable in expenses." On a reclaiming note the Second Interlocutor on 6th July 1876, while adhering to this interlocutor on the merits, pronounced this interlocutor—"Recal the finding as to expenses: Find the pursuers entitled to expenses against the defenders *qua* Commissioners, reserving all questions of personal liability in the event of the funds of the trust being insufficient to implement this decree." The expenses in the action were taxed at £171, 2s. 11d. The pursuer on 20th July 1876 extracted the decree, and in the months of December and January following charged the defenders thereon, and in the former month used arrestments in the hands of the collector of the Commissioners.

The Commissioners had no funds wherewith to meet the demand of the pursuers. They represented to them that besides their claim they were indebted to the representatives of Lord Herries in a sum of £3300, with interest as at July 1876 to £1138, and to Mr Maxwell Witham in a sum of £2200, with interest amounting at that date to £848.

These sums had been lent to the Commissioners, who were engaged in carrying out operations authorised by their Act, by Lord Herries and by Mr Maxwell Witham in 1861 and 1863 respectively, and bonds had been granted for them by the Commissioners with assignments in security of the rates and duties leviable by them. The 55th section of the Act is as follows—"And be it enacted that it shall and may be lawful to and for the said Commissioners to borrow and take up, at a rate of interest not exceeding five pounds per centum per annum, any sum or sums of money not exceeding Sixteen thousand pounds in the whole: and to assign and make over the rates and duties authorised by this Act to be taken and levied as a security for the repayment of the money so borrowed; and upon the repayment of the said money, or any part thereof, again to borrow and assign as aforesaid, so that the said debt does not at any time exceed the said sum of Sixteen thousand pounds." The assignments contained in these bonds were in the following terms—"And for the said William Lord Herries and Robert Maxwell Witham and their foresaids, their further security and more certain payment of the said sums of money—principal, interest, and penalty—above specified, we, as Commissioners foresaid, and authorised and empowered as aforesaid, hereby assign, convey, and make over to and in favour of the said William Lord Herries and Robert Maxwell Witham and their foresaids the rates and duties authorised by the said Act to be taken and levied, with power to demand and receive the same from the parties liable therefor; and also with power to demand and receive from the person or persons who may for the time be appointed and in exercise of the offices of collector and treasurer of the said rates and duties leviable under the said Act, or other person receiving the same, and to call them to