

Tuesday, March 20.

FIRST DIVISION.

BROAD v. THE EDINBURGH NORTHERN
TRAMWAYS COMPANY.

*Process—Judicial Factor—Vacation—Companies
Clauses Consolidation (Scotland) Act 1845 (8
and 9 Vict. cap. 17), sec. 57.*

The powers conferred by the 57th section of the Companies Clauses Consolidation (Scotland) Act 1845 for the appointment of an interim judicial factor, cannot be exercised by the Lord Ordinary on the Bills during vacation.

On 19th March 1888 a petition was presented to the Court by Mr Warrington Evans Broad, the holder of certain mortgages for £3370 and other sums of the Edinburgh Northern Tramways Company incorporated under the Edinburgh Northern Tramways Act 1884, for the appointment of an interim judicial factor upon the undertaking in terms of the provisions of the 56th and 57th sections of the Companies Clauses Consolidation (Scotland) Act 1845.

The 57th section of that Act provides—"Every application for a judicial factor in the cases aforesaid shall be made to the Court of Session, and on any such application so made, and after hearing the parties, it shall be lawful for the said Court, by order in writing, to appoint some person to receive the whole or a competent part of the tolls or sums liable to the payment of such interest, or such principal and interest, as the case may be, until such interest, or until such principal and interest, as the case may be, together with all costs, including the charges of receiving the tolls or sums aforesaid, be fully paid." . . .

It was argued for the petitioner that the decision in the case of the *Glasgow, Garnkirk, and Coatbridge Railway Company*, May 28, 1850, 12 D. 944, in which it was held that such an appointment could not be made in vacation did not now apply, in view of the provisions of the 4th and 10th sections of the Distribution of Business Act 1857 (20 and 21 Vict. c. 56).

The 4th section of that Act provides (sub-sec. 4) that "Petitions and applications for the appointment of judicial factors" should be disposed of before the Junior Lord Ordinary, and the 10th section provides that "the Lord Ordinary on the Bills during vacation shall have the same powers in regard to petitions for the appointment of . . . judicial factors as are by this Act conferred in relation thereto on the Junior Lord Ordinary as aforesaid."

The Court held that the provisions of the Distribution of Business Act 1857 could not be held to apply to the present case which involved the exercise of a kind of diligence, but in respect that the company were represented at the bar and gave their consent they pronounced an interlocutor holding intimation and service to be granted as prayed for, and of consent appointed Mr D. N. Cotton to be interim judicial factor.

Counsel for the Petitioner—Graham Murray.
Counsel for the Respondents—Sir L. Grant.
Agents—Graham, Johnston, & Fleming, W.S.

Tuesday, March 20.

OUTER HOUSE.

[Lord Trayner, Ordinary.

HARLEY, PETITIONER.

*Judicial Factor—Curator Bonis—Cautioner—
Bond of Caution by a Limited Company.*

Petition granted in which a *curator bonis* prayed the Court to authorise the bond or policy of the Sickness and Accident Assurance Association (Limited) to be accepted instead of a bond of caution by a private individual.

James Harley, tailor, Leven, Fifeshire, was appointed, on 25th February 1888, *curator bonis* to his niece Agnes Elder Scott, and factor *loco tutoris* to his nephews James Harley Scott and John Lindores Scott.

The petition for the appointment was presented by their mother, their uncle John Scott, and their uncle the said James Harley.

Their father Robert Scott, wine and spirit merchant, 1 Hope Street, Edinburgh, had left moveable property of the value of about £2300, and heritable property of the value of about £2000, but he had died intestate without having made any appointment of tutors or curators to his children, and their mother, who had been appointed executrix-dative *qua* relict, had an interest in the estate adverse to that of her children.

By the interlocutor making the appointment the Lord Ordinary (TRAYNER) fixed £3000 as the amount of caution to be found by the factor, and authorised a bond or policy for that amount of the National Guarantee and Suretyship Association (Limited) to be accepted and taken for him instead of a bond by a private individual.

Upon 17th March 1888 the factor presented a note to the Lord Ordinary, in which he stated that the National Guarantee and Suretyship Association (Limited) had declined to grant said bond or policy at a lower rate than 7s. 6d. per cent., or an annual premium of £11, 5s., which would absorb the greater part of his commission, and craved that a bond or policy for the same amount of the Sickness and Accident Assurance Association (Limited), with its head office at 1 St Andrew Square, Edinburgh, which had offered to grant a bond or policy in similar terms to that granted by the said Guarantee Association, or in such other terms as his Lordship might approve, and that at an annual premium of 5s. per cent., or £7, 10s., might be accepted on his behalf.

Authorities cited—*M'Kinnon, Petitioner*, March 8, 1884, 11 R. 676; *M'Kinnon, Petitioner*, November 26, 1884, 12 R. 184.

The Lord Ordinary remitted the note to Mr John Galletly, S.S.C., to inquire and report.

Mr Galletly reported upon the Sickness and Accident Assurance Association (Limited) as follows:—"The company was incorporated on 17th April 1885 with a subscribed capital of £60,000, consisting of 12,000 shares of £5 each, whereof £1 per share is paid up, leaving an uncalled liability of £48,000. The reporter has gone carefully over the list of shareholders, 340 in number, and considers them a substantial body. There are only two or three holders of large numbers of shares, and these shareholders, so far as the re-

porter is aware, are men of considerable means, and quite good for any calls that may be made upon them. The directors are gentlemen of acknowledged ability and integrity, one-half of them being personally known to your reporter. The company has not yet been three years in existence, but it already appears to have established a safe and remunerative business. The premium income for last year as shown by the report amounted to over £14,500, whereof upwards of £330 consisted of premiums on guarantee policies. A dividend of three per cent. is payable to the shareholders within the next few days. The present selling price of the shares (£1 being paid as before mentioned) is about par. In addition to the uncalled capital of the company, amounting to £48,000, the policy holders have the further security of the invested funds of the company which amounted at 31st December last to about £6500. The bonds of the company have already been accepted by two Government Boards as guarantee (the Board of Inland Revenue and Local Government Board) for the intromissions of public officers, and also by the Court of Chancery in England, the Probate and Matrimonial Division of the High Court of Justice in Ireland, and by different public boards, school boards, and parochial boards in Scotland. Having been so recently established, the reporter cannot say the company is of equal standing with the National Guarantee and Suretyship Association, whose bonds have been previously accepted by your Lordship, but he has no doubt of the sufficiency of the Sickness and Accident Assurance Association to meet all obligations undertaken by it, and is humbly of opinion that your Lordship may authorise a bond or policy by the company to be accepted on behalf of the curator as craved."

Upon 20th March 1888 the Lord Ordinary (TRAYNER) pronounced this interlocutor:—
"Authorises a bond or policy for £3000 of the Sickness and Accident Assurance Association (Limited), carrying on business in Scotland, to be accepted and taken for the *curator bonis* and factor *loco tutoris* instead of a bond by a private individual."

Counsel for the Petitioner—Lorimer. Agent—George Inglis, S.S.C.

HIGH COURT OF JUSTICIARY.

Tuesday, March 20.

(Before Lord Young, Lord M'Laren, and Lord Rutherford Clark.)

CAMPBELL v. M'LENNAN.

Judiciary Cases—Theft—Finding and Appropriating—Relevancy.

Held (diss. Lord Rutherford Clark) that a complaint, in which the charge against a person was that having, time and place libelled, "found in money one pound, he did deny having found the same, and did appropriate and thus steal the same," was irrelevant.

A complaint was brought on 2nd December 1887 against John Campbell, residing at Kilmuir, Dunvegan, Duirinish parish, Inverness-shire, in the Sheriff Court, Portree, at the instance of Joshua M'Lennan, Procurator-Fiscal of Court. The charge against him was that "having, on the 14th November 1887, within the inn at Dunvegan, found in money one pound, he did deny having found the same, and did appropriate and thus steal the same."

On 9th December 1887 the accused appeared and pleaded not guilty. After evidence had been led, the Sheriff-Substitute (GLEGG) found the accused guilty of the crime of theft as libelled, and sentenced him to be imprisoned for fourteen days.

Campbell appealed to the High Court of Justiciary by case stated.

The Sheriff-Substitute stated that no objection had been taken to the relevancy of the complaint, and that he had found the following facts proved, viz.—"That John Campbell, shoemaker, Hamuravven, Glendale, had lost a £1 note on 14th November, which was a public market day, in or about the hotel at Dunvegan; that on the same day the appellant found a £1 note in one of the public drinking rooms of said hotel in which the said John Campbell, with others, had previously been; that the finding of the £1 note had been witnessed by several persons, one of whom asked the appellant to report his having the note; that on 17th November the appellant denied to the said John Campbell having found a £1 note in said hotel on said day; that on the 18th November the appellant denied to one of the witnesses present at the finding that he had found a £1 note on said occasion; that prior to this on said 18th November the appellant's brother Murdo Campbell had told the said John Campbell that the appellant had found the money; that the appellant never returned a £1 note to Campbell; that on the last mentioned date the appellant's brother Donald Campbell, on hearing that the police were making inquiries into the matter, sent a £1 note by the appellant's son to the said John Campbell."

The question in law for the opinion of the Court was—"Whether the facts above stated amounted to the crime of theft?"

At advising—

LORD M'LAREN—This is an appeal on a case stated under the Summary Prosecutions Appeals Act 1875, and the question which we are asked to consider is, whether the charge, upon which a conviction has followed, is a relevant charge? The complaint charges the theft of a £1 note, and under the recent statute it seems perfectly clear that a case of that sort might have been tried on a complaint which simply set forth that the accused did steal a £1 note without saying that it was the property of anyone, but it appears to me that on a fair reading of the charge that the Procurator-Fiscal has not availed, or attempted to avail, himself of the forms provided by the new Act, and, on the contrary, that he has in framing the charge preferred to set forth those circumstances of time and place which are essential to the definition of theft. The charge states that the accused "having, on the 14th November 1887, within the inn at Dunvegan, found in money one pound, he did deny having found the