

retrospective effect." Finally, in the important passage read by Lord Mure he says—"I am of opinion that the charging order converted the inchoate right of Messrs Eldred & Bignold at common law into an actual charge, and made them the owners in equity of the sum due from Mr Welsh to the extent of their claim against Colonel North."

What, then, was the right of North at the date when the arrestments were used, and what was the arrester's claim? According to Mr Finlay's opinion, North's right was of a defeasible nature. If the arrestee had thought fit to pay North, North could have received payment, and could have given a good discharge, but till payment his right could be defeated by a charging order obtained and intimated. If that be so, can the arrester get a higher right than there was in the person of the arrestee. Suppose North had assigned his right, the assignee could only take the right as it stood in the assigner. An arrestment gives no higher right than an assignation, and the arrestment in this case only attached the right as it stood in the person of Colonel North. Now, the right which he had was of a defeasible nature, as I have said, and was defeated by the charging order. I am therefore of opinion that the Lord Ordinary was right in preferring the claim of Eldred & Bignold.

LORD ADAM concurred.

The Court adhered.

Counsel for Stewart—Murray—Wilson. Agents—J. & A. Hastie, S.S.C.

Counsel for Colonel North and the Claimants Eldred & Bignold—Gloag—Kennedy. Agent—Alexander Campbell, S.S.C.

Saturday, July 6.

FIRST DIVISION.

[Lord Trayner, Ordinary.

STEWART v. GUTHRIE AND OTHERS.

Process—Reclaiming-Note—Competence—Court of Session Act 1868, secs. 53, 54.

An interlocutor repelling an objection to the competency of a multiplepinding on the ground that there has been no double distress can only be reclaimed against within ten days, and with the leave of the Lord Ordinary.

This was an action of multiplepinding and exoneration raised by Charles Frederick Crewes, Bank of Victoria, Melbourne, and his attorneys in this country. The pursuer and nominal raiser was Robert Stewart, solicitor, Glasgow, judicial factor on the trust-estate of the deceased William Rae Wilson of Kelvinbank, near Glasgow. Charles Frederick Crewes, the real raiser, and a number of other persons were called as defenders. The nominal raiser and holder of the fund lodged objections to the competency of the action on the ground that he had not been doubly distressed, and the record was closed on the summons and objections.

On 20th February 1889 the Lord Ordinary (TRAYNER) pronounced this interlocutor:—"Repels the objections to the competency of the multiplepinding, and appoints claimants on the fund *in medio* to lodge their condescendences and claims within the next fourteen days, reserving all questions of expenses: Further appoints intimation of the dependence of this action to be made to all concerned by advertisement twice for two successive weeks in the *Scotsman* and *Glasgow Herald* newspapers."

On 14th June the Lord Ordinary pronounced this interlocutor:—"Finds the real raiser entitled to the expenses of raising and executing this cause, bringing the same into Court, and conducting it, and remits the account thereof, when lodged, to the Auditor to tax and report: Finds Stewart, the judicial factor, liable in expenses in connection with the preliminary defences, and remits the account thereof, when lodged, to the Auditor, to tax and report."

Against this interlocutor the nominal raiser and pursuer reclaimed, but the reclaiming-note was not lodged till July 5th.

The respondent, the real raiser, objected to the competency of the reclaiming-note, on the ground that the interlocutor reclaimed against disposed merely of preliminary defences, and was in no sense a final interlocutor, and therefore could only be reclaimed against with the leave of the Lord Ordinary, and within ten days—Court of Session Act 1850 (13 and 14 Vict. cap. 36), sec. 11; Court of Session Act 1868 (31 and 32 Vict. cap. 100), secs. 52, 53, and 54.

The claimer argued—That a multiplepinding was a congeries of actions. The Lord Ordinary's interlocutors disposed of the only question in the cause on which the record had been closed, viz., the question of double distress—*Walker's Trustee v. Walker*, February 20, 1878, 5 R. 678.

At advising—

LORD PRESIDENT—The real raiser of this multiplepinding is not the holder of the fund, but a person who is going to claim in the competition, and who is called as a defender. The nominal raiser, and the holder of the fund, is the judicial factor on the trust-estate of the deceased William Rae Wilson. There are a number of other persons called as defenders besides the real raiser, who are supposed to have an interest in the fund.

The nominal raiser was of opinion that he had not been doubly distressed, and he lodged an objection or preliminary defence to the competency of the action, and that preliminary defence was disposed of by the Lord Ordinary on 20th February 1889 by being repelled, and by an interlocutor which he has now pronounced disposing of the expenses of the discussion. A reclaiming-note has been lodged on the footing that the judicial factor is entitled to reclaim against this last interlocutor, and thereby bring up the interlocutor of 20th February for review on a twenty-one days' reclaiming-note.

It appears to me that this reclaiming-note is not competent without leave of the Lord Ordinary, nor with leave after the expiry of ten days, because it is simply a reclaiming-note against the judgment of a Lord Ordinary repelling a preliminary defence.

LORD MURE—I am entirely of the same opinion. The interlocutor of the 14th of June on the face of it bears to be an interlocutor dealing with the expenses incurred in connection with a preliminary defence, and with that question only.

LORD SHAND—My opinion is that this is a reclaiming-note against a judgment of the Lord Ordinary disposing not of the whole merits of the cause, but only a part of it, and that it must be reclaimed against within ten days, and even then, only with the leave of the Lord Ordinary. I think it is evident that when this objection has been disposed of, the cause between the nominal raiser and the other claimants will go on to the effect of the nominal raiser being next required to lodge a condescendence of the fund *in medio*, with regard to which there may be very considerable discussion, and till all this is finished there can be no concluded cause between the nominal raiser and the claimants.

I am of opinion therefore that the reclaiming-note now presented is incompetent, the leave of the Lord Ordinary not having been obtained.

LORD ADAM—As I understand the matter, the claimer says that the interlocutor of 20th February was an interlocutor disposing of the whole merits of the case as between the nominal raiser and the claimants, except in so far as it did not dispose of the question of expenses, and that if it had disposed of these it would have been a final interlocutor, which might be reclaimed against within twenty-one days. He now says that the present interlocutor does dispose of expenses, and that therefore the whole merits of the cause are now disposed of. I think he is mistaken. The preliminary defence which has been repelled is the same as a preliminary defence in an action of reduction. There is a great deal of necessary procedure to go on between the nominal raiser and the claimants. The first thing will be an order upon the nominal raiser to lodge a condescendence of the fund. If any questions arise on that, they will all be between the nominal raiser and the claimants. I think therefore that the interlocutor of the Lord Ordinary was one disposing of a strictly preliminary defence, and could not be reclaimed against without leave.

The Court refused the reclaiming-note as incompetent.

Counsel for the Reclaimer—C. S. Dickson.
Agents—Macandrew, Wright, & Murray, W.S.

Counsel for the Respondent—Guthrie. Agents
—Cumming & Duff, S. S. C.

Wednesday, July 10.

FIRST DIVISION.

HIGHLAND RAILWAY COMPANY v. SPECIAL COMMISSIONERS OF INCOME TAX.

Revenue—Income-Tax—Railway—Expenditure on Improvements—Deductions from Profits.

A railway company in making their return for assessment under the Income-Tax Act claimed as deductions from the revenue of the year of assessment (1) a sum expended upon the improvement of the permanent way of one section in order to bring it up to the standard of the rest of the line; and (2) a sum representing the cost of the extra weight in relaying another portion of the line with steel in place of iron rails, and with chairs of additional weight. In the books of the company these sums were charged against capital.

In an appeal by the railway company, held that the sums so expended were properly charged against capital, and a determination of the Special Commissioners disallowing the said sums as deductions from revenue affirmed.

The Highland Railway Company in making their return to the Income-Tax Act of 1888-89, based on the profits of the preceding year, as shown by their printed accounts for the two half-years ended 31st August 1887 and 29th February 1888, claimed to deduct in addition to the several items charged as the expenditure of the year in working the railway, four sums of £9119, £755, £1555, and £878. These amounts were entered under the following heads in the said accounts of the company for the half-years ended 31st August 1887 and 29th February 1888—

<p>£9119, August 1887 £1555, February 1888</p>	<p>{ Improvement of Sutherland and Caithness section, to bring it up to the standard of the rest of the main line.</p>
<p>£755, August 1887 £878, February 1888</p>	<p>{ Cost of extra weight. Relaying with steel rails and heavier chairs, &c.</p>

The Special Commissioners, in assessing the profits of the Highland Railway liable under the Income-Tax Act of 1888-89, disallowed these four sums, on the ground that they were properly charged to capital, as shown in their own printed accounts, duly certified to by their auditors, and they added the amounts to the sum returned by the company's secretary, against which notice of objection was given on the 5th November 1888.

The company appealed, and the appeal was heard by the Special Commissioners at Edinburgh on 6th March 1889.

The company contended that the sums of £755 and £878, £9119 and £1555, before mentioned, expended for extra weight, &c., in relaying the railways, and improvement of the Caithness section, represented the extra cost necessitated by the inferior condition of the permanent way of the original line, and also that of Caithness line when amalgamated with the Highland Railway in 1884. The expenditure on