

sec. 67 were ambiguous, but the intention of the statute that notice such as had been given here would be sufficient was shown by the language of the clause. If six clear days had been essential this would have been clearly required, and in the absence of any such words the opposite might be presumed—2 Bell's Comm. 197; *Scott v. Rutherford*, December 7, 1839, 2 D. 206; *Greig v. Anderson*, February 23, 1883, 20 S.L.R. 241.

No answers were lodged and no appearance was made on behalf of other creditors.

At advising—

LORD PRESIDENT—The Court hold that the terms of sec. 67 of the Bankruptcy (Scotland) Act of 1856 are such as to require that an interval of six days must elapse after the close of the day of the *Gazette* notice, and before the commencement of the day of meeting.

The meeting to which the petition relates was therefore not legal, and the Court will appoint a fresh meeting to take place.

Counsel for the Petitioners—Goudy.
Agents—Carmichael & Miller, W.S.

Tuesday, December 1.

FIRST DIVISION.

THE MAGISTRATES OF STROMNESS, PETITIONERS.

Burgh — Burgh of Barony — Election of Magistrates — Police and Improvements Scotland Act 1862 (25 and 26 Vict. cap. 101)—Failure to Elect Magistrates.

A burgh of barony under the powers of its Crown charter elected its magistrates and councillors on the first Wednesday in September every third year, the electors being male owners or tenants of land of the annual value of £10.

In 1863 the burgh adopted the General Police Act of 1862, but in spite of the extension of the franchise under the Amendment Act of 1868 to occupiers of land of the yearly value of £4, and under the General Police Act 1882 to female occupiers of the same value, the elections continued to be conducted under the charter, the last being held in September 1888.

In November 1891, after the date of the election for that year under both the Charter and the Burgh Election Acts had elapsed, the Court was asked to direct the town-clerk of the burgh to make up the roll of electors, including male occupiers of lands or premises of the yearly value of £4 and upwards as appearing in the valuation roll, and female occupiers of lands or premises as aforesaid who were not married, or, being married, did not live in family with their husbands, or otherwise, including only persons qualified in

terms of the said charter of Stromness, and to appoint a returning officer to hold the election under the provisions of the Ballot Act.

The Court *refused* to do more than appoint a returning officer to act at the election to be held on December 18th following.

The town of Stromness, in the county of Orkney, is a burgh of barony, incorporated by a Royal charter dated 18th February 1817, and written to the seal, registered and sealed at Edinburgh 21st March 1817, with all powers whatever pertaining to any free and independent burgh or barony, and in particular with power to the burgesses to elect their own magistrates and councillors, viz., two bailies and nine councillors, it being declared that all male inhabitants within the burgh, being of lawful age and infert in any heritable subject within the said limits, or possessing as tenants any heritable subject within the same of a rent of £10 sterling yearly or upwards, should have the right of burgesses and be entitled to vote at the elections. By the charter provision was made for the first election by the burgesses of two bailies and nine councillors, who should continue in office till the first Wednesday of September 1819, when the burgesses should again meet for the purpose of electing magistrates, councillors, and town-clerk in like manner as in the original election, and it was declared that the like election should take place on the first Wednesday of September in every third year thereafter.

The first election of the Magistrates and Council of the burgh of Stromness was held as provided by said charter in the year 1817, and subsequent elections have been held on the first Wednesday of September in 1819, and every third year thereafter, the last having been held on the first Wednesday in September 1888.

In 1863 the burgh of Stromness adopted the General Police and Improvement (Scotland) Act 1862, but notwithstanding that fact and the extension of the franchise under the General Police Improvement Act Amendment Act of 1868 to male occupiers of premises of the value of £4 per annum, and under the Improvement Act of 1882 to female occupiers, no change was made in the municipal qualifications, and elections continued to be made every third year, and voting by ballot was not introduced in spite of the passing of the Ballot Act of 1872, as it had been considered that these statutes did not apply to the burgh of barony.

In a petition presented by the acting Magistrate and Councillors of the burgh, however, they stated that "when preparing for the election, which according to former practice would have taken place in September last, doubts arose in the minds of the petitioners on the subject, and, upon advice, they resolved not to hold the election in September on the old qualification, but that effect should be given to the changes above indicated, and

the election held in conformity with the Ballot Act 1872, and the other relative statutes. The authority of the Court for this purpose is accordingly desired by the petitioners. With this view it will be necessary to make up from the valuation roll a correct list of voters, including such females as are pointed out by the Act of 1882. It will also be necessary to fix a day for the election, and to have some fit person appointed as returning officer in order to conduct the election under the Ballot Act, seeing that the senior Bailie (Mr James Spence), on whom the duty is thrown by the Ballot Act, has left Stromness and become resident in Aberdeen, and has demitted office, and that the petitioner Mr John Aim Shearer, the other Bailie, is a candidate for re-election." The prayer of the petition was that the Court should "authorise and ordain the petitioner, John Stanger Copland, Town-Clerk, Stromness, and treasurer to the Police Commissioners thereof, to make up and certify a list or roll of electors of the said burgh of Stromness, duly qualified in terms of law, including male occupiers of lands or premises of the yearly value of £4 and upwards as appearing in the valuation roll, and female occupiers of lands or premises as aforesaid who are not married, or, being married, do not live in family with their husbands, or otherwise, including only persons qualified in terms of the said charter of Stromness; and to authorise and appoint the Sheriff-Substitute of Orkney, at Kirkwall, whom failing William Cowper, Esq., Town-Clerk of Kirkwall, to act as returning officer at the election of magistrates and councillors, on Tuesday the 3rd day of November next, or on such other day as your Lordships may appoint, due intimation thereof being given as your Lordships may direct, with all the statutory and other powers competent and necessary for the discharge of the said office in manner provided by the General Police and Improvement Scotland Act 1862, and the other Acts regulating municipal election in Scotland."

When the petition was heard in Single Bills on 10th November, the date of elections named in the charter, and the first Tuesday in November specified by 3 and 4 Will. IV., c. 76, amended by the Municipal Elections Amendment Acts of 1868 and 1870, had both elapsed, and the Court refused to consider the petition if it involved a determination of the question whether the roll should be made up under the charter or under the Municipal Elections Acts, and whether vote by ballot applied, and stated that the parties must decide these questions for themselves or bring a declarator. The Court, however, consented to appoint a returning officer and continued the hearing for fourteen days.

The petitioners lodged a minute stating that they were advised that the election of magistrates for the burgh of barony of Stromness fell to be made in terms of the charter of the burgh of 1817 except as regards the manner of taking the poll, to which the provisions of the Ballot Act applied.

The Court thereafter appointed the Sheriff-Substitute to act as returning officer at the election to be held on the 18th December, but refused to insert in the interlocutor that he was vested with the statutory powers provided by the Ballot Act 1872.

Counsel for Petitioners—Lorimer. Agent
—William Graham, Solicitor.

Tuesday, December 1.

SECOND DIVISION.

[Sheriff of Aberdeenshire.

GORDON v. PYPER.

Reparation — Personal Injury — Seaman Injured by Defective Rope—Relevancy.

A seaman employed on board a trawler sued the owner for damages for personal injury, and alleged that he had been ordered to take off the slack of a rope at the steam winch while the trawl was being hauled. Part of the covering of the splicing of the rope had become frayed, and on a previous occasion on which he had been similarly engaged the ragged end had been caught by the winch, causing a check which proved dangerous to the other seamen who were hauling the trawl. On the present occasion he saw the frayed end again approaching the winch, and seized it in order to prevent an accident, with the result that his hand was crushed by the winch. He did not allege that the rope had been supplied in a defective state.

Held that it was the duty of the master of the trawler to have repaired the defective rope, and that the owner was not responsible for his failure to do so.

John Gordon, seaman, Aberdeen, who had been employed as cook on board the trawler "North Coast," sued the owner, William Pyper, merchant, Aberdeen, for damages for personal injury incurred.

He alleged that he had been "asked to lend a hand at hauling the trawling gear, which he did. The gear consists of a large bag net, which is suspended from a long beam, at each end of which there is an iron chain, known as a bridle, by which the beam and trawl are towed through the sea. In order to bring the beam up to the level of the deck in hauling the gear, there is attached to a short chain fixed about six feet from the after head a wire rope known as the dandy bridle. This dandy bridle passes through a small davit on the quarter of the vessel, is carried across the deck to a snatch block, and thence forward along the deck to the drum of a steam winch, which is situated in front of the fore hatchway. In order to bring the dandy bridle to the steam winch when the trawl is down, it is necessary to connect it in the first place with another wire rope, known as a messenger. On hauling the gear on