

Lothians at Edinburgh, under the provisions of the Rivers Pollution Prevention Act 1876 against the Pumpherston Oil Company, Limited, praying that the said Company be ordained to abstain from polluting the river Almond, which flows partly through Midlothian.

Similar petitions were presented in the Sheriff Court at Linlithgow by the County Council of Linlithgow against the Pumpherston Oil Company; the Oakbank Oil Company, Limited; and the United Collieries Company, Limited, having reference to the portion of the river Almond which flows through the county of Linlithgow.

In all these petitions defences were lodged. The various defenders in these petitions presented notes to the Lord Justice General, under section 11 of the Act (quoted *supra*).

The prayer of the note at the instance of the Pumpherston Oil Company was in the following terms:—"May it therefore please your Lordship to move the Court to grant leave and order that the said petitions against the Pumpherston Oil Company, Limited, and the proceedings therein, be removed into the Court of Session, and to order that the processes be transmitted by the Sheriff-Clerks at Edinburgh and Linlithgow respectively to the Clerk of the First Division of the Court of Session, and that the cases be tried in the first instance in the Court of Session, and proceed henceforward as actions before the Court of Session."

In the Single Bills counsel for the County Council submitted that the prayer of the note should not be granted, in respect that different questions might be raised by the several companies in respect of their prescriptive rights.

This interlocutor was pronounced:—

"The Lord President having heard counsel for the parties on the note for the respondents, grants leave to the respondents in the petition against the Pumpherston Oil Company, Limited, specified in the said note, to remove the said petition into the Court of Session, and to have the same tried in the first instance in either Division of the Court of Session."

Similar interlocutors were pronounced in the notes at the instance of the Oakbank Oil Company and the United Collieries Company.

By subsequent interlocutors the Court ordered that the respective processes be transmitted by the Sheriff-Clerk to the Clerk of the First Division, and sent the case to the Summar Roll.

Counsel for the County Council—Macphail. Agent—J. A. B. Horn, S.S.C.

Counsel for the Companies—M'Lennan—Younger—Moncreiff. Agents—Cairns, M'Intosh, & Morton, W.S.

Wednesday, July 16.

SECOND DIVISION.

[Sheriff Court at Aberdeen.

STAR FIRE AND BURGLARY INSURANCE COMPANY v. C. DAVIDSON, & SONS.

Process—Caution for Expenses—Company—Appeal by Defender from Sheriff Court in Action by a Company—Intervening Liquidation of Company—Expenses—Companies Act 1862 (25 and 26 Vict. c. 89), sec. 69.

The Companies Act 1862, section 69, enacts as follows:—"Where a limited company is plaintiff or pursuer in any action, suit, or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by any credible testimony that there is reason to believe that if the defendant be successful in his defence the assets of the company will be insufficient to pay his costs, require sufficient security to be given for such costs, and may stay all proceedings until such security is given."

A limited company having been the successful pursuers of an action in the Sheriff Court, the defenders appealed to the Court of Session, and, the company having gone into liquidation, moved the Court to ordain the respondents in the appeal to find caution. The Court refused the motion on the ground that in the appeal the company was in the position of defending itself.

The Star Fire and Burglary Insurance Company, Limited, 248 West George Street, Glasgow, brought an action in the Sheriff Court at Aberdeen against C. Davidson & Sons, Limited, Mugiemoos, Bucksburn, Aberdeen.

The Sheriff-Substitute (ROBERTSON), and on appeal the Sheriff (CRAWFORD) granted decree as craved.

The defenders appealed to the Court of Session.

Shortly before the judgment appealed from was pronounced the pursuers had gone into liquidation, and the appellants lodged a note in the appeal craving the Court to ordain the respondents to find caution, under the 69th section of the Companies Act 1862 (25 and 26 Vict. cap. 89), which is quoted in the rubric.

Argued for the appellants—The respondents were pursuers of the action, and the fact that they had gone into liquidation was sufficient testimony that there was reason to believe that if the defenders were successful in the appeal the assets of the respondents would be insufficient to pay expenses. The appellants were therefore entitled to the protection of the 69th section of the Act—*Northampton Coal, Iron, and Waggon Company v. Midland Waggon Company*, 1878, 7 Ch. D. 500; *Pure Spirits Company v. Fowler*, 1890, 25 Q.B.D. 235.

Argued for the respondents—A bankrupt defender was not bound to find caution,

The respondents, though pursuers in the action, were defenders in the appeal. The provision of section 69 that the judge might "stay proceedings" showed conclusively that the condition of finding caution was to be imposed only on the pursuers of the issue before the Court.

LORD JUSTICE-CLERK—I think this motion must be refused. The company is, in their appeal, in the position of defending itself. I do not think there is anything in the statute requiring a company in such circumstances to find caution.

LORD YOUNG and LORD TRAYNER concurred.

LORD MONCREIFF was absent.

The Court refused the motion.

Counsel for the Pursuers and Respondents—Graham Stewart. Agents—Clark & Macdonald, S.S.C.

Counsel for the Defenders and Appellants—Macfarlane. Agents—Tawse & Bonar, W.S.

Thursday, July 3.

SECOND DIVISION.

[Lord Kincairney,
Ordinary.

SUTHERLAND v. STANDARD LIFE ASSURANCE COMPANY.

Title to Heritage—Heritable Securities (Scotland) Act 1894 (57 and 58 Vict. c. 44), secs. 8 and 10—Irregularity in Sheriff Court Proceedings—Objection to Citation of Proprietor—Purchaser from Creditor—Citation.

A petition presented in the Sheriff Court at the instance of heritable creditors under section 8 of the Heritable Securities (Scotland) Act 1894, for the purpose of converting their security right into an absolute title, was served on the proprietor by a messenger-at-arms who was not a sheriff-officer. Decree having been granted under the Act, the creditors sold the estates to certain purchasers. The original proprietor thereafter brought an action of reduction of the dispositions in favour of the purchasers, on the ground, *inter alia*, that as the petition had not been properly served, the decree with all that followed thereon was inept.

Held (aff. the judgment of Lord Kincairney, Ordinary) that assuming the objection to the citation to be valid, this was an irregularity in the Sheriff Court proceedings within the meaning of section 10 of the Heritable Securities Act 1894, and that consequently it could not affect the title of the purchasers.

Question whether the objection to the citation was well founded.

Opinion by Lord Kincairney, Ordinary, that it was not.

This was an action of reduction at the instance of Evan Charles Sutherland, formerly proprietor of Skibo, in the county of Sutherland, and of Aberarder, in the county of Inverness, against Spencer Campbell Thomson, as manager of and as representing the Standard Life Assurance Company, Edinburgh, the Royal Bank of Scotland, Andrew Carnegie of Skibo as an individual, and as curator and administrator-in-law of his wife Mrs Carnegie, and Beckwith Smith, proprietor of Aberarder.

The question in the case was whether the dispositions of Skibo in favour of Mr and Mrs Carnegie, and of Aberarder in favour of Mr Beckwith Smith, were reducible upon the ground that the petition in Sheriff Court proceedings under the Heritable Securities (Scotland) Act 1894 at the instance of heritable creditors, who had subsequently granted the dispositions in question, had been served upon the original proprietor by a messenger-at-arms who was not a sheriff officer.

In 1876 Mr Sutherland, the proprietor of Skibo and Aberarder, granted various bonds and dispositions in security over these estates. One of these bonds was granted in favour of the defenders the Standard Life Assurance Company, and the others were acquired by the defenders the Royal Bank of Scotland conform to assignations in their favour duly recorded.

In 1889 Mr Sutherland granted a trust-deed for behoof of his creditors in favour of George Auldjo Jamieson, chartered accountant, Edinburgh, and disposed to him his whole estates, including Skibo and Aberarder, for the purposes therein mentioned.

Thereafter the estates of Skibo and Aberarder were exposed for sale under articles and conditions of roup signed by the heritable creditors and by Mr Jamieson, but no offers were received.

The Standard Life Assurance Company and the Royal Bank of Scotland, Limited, as heritable creditors, then resolved to adopt proceedings under the Heritable Securities Act 1894 for the purpose of converting their right in security into an absolute title.

A petition was accordingly presented by them in the Sheriff Court at Dornoch, praying for decree as provided for in the Act, and on 18th October 1895 the Sheriff-Substitute pronounced decree in conformity with Schedule D of the Act, whereby the estates of Skibo and Aberarder passed to the heritable creditors subject to the burdens affecting them.

The estates were possessed under that title by the heritable creditors till 1898, when the estate of Skibo was sold by them to Mr and Mrs Carnegie. In 1900 the estate of Aberarder was sold to Mr Beckwith Smith. Dispositions were granted in favour of these purchasers, which were duly recorded in the Register of Sasines.

The pursuer now sought reduction (1) of the citation and execution of service upon him of the petition under the Heritable Securities (Scotland) Act 1894, (2) of the decree pronounced upon that petition, and