

ter as that constituted by the personal bond or bonds of A, B, and C. Nor is it of a different character although it should be also fortified, say, by assignations, duly intimated, to debts or obligations due to A by B, C, or D.

The question therefore is, whether "personal security" means and covers only a security constituted by way of real right over moveable property? And to that question an affirmative answer does not appear to me to be possible.

For one thing I do not quite follow how a security can be called "personal" which, as regards the nature of the right conferred by it, is real, and which is only personal in the sense that the subject of it consists of moveable property. Further, it seems to me that if from the category of "personal securities" there are to be excluded all securities depending on personal obligation as distinguished from real right, two things would follow, each of which would be contrary to all received ideas. In the first place, the category would be confined to a very limited class of securities, viz., pledges of corporeal moveables—a class of securities which are *hardly* in practice within the range of investment at all. In the next place it would, on the other hand, fail to cover a class of securities its extension to which has never been questioned, viz., loans, say, upon assigned policies of insurance, or upon collateral obligations by third parties bound as co-principals with, or as cautioners for, the primary debtor.

Apart therefore from authority, I should be quite prepared to concur with the Lord Ordinary's judgment; but I may add that I think it is clear that the point in question is settled in England in the defenders' favour, and has long been so, and that it is also so settled in Scotland, if not quite expressly, at least by necessary implication. I refer in particular to the Scotch cases cited by the Lord Ordinary, and as regards the English rule to Lewin on Trusts, p. 317 (8th edition), and to the cases there cited, which seem fairly conclusive.

LORD STORMONTH DARLING, LORD LOW, and the LORD JUSTICE-CLERK concurred.

The Court refused the reclaiming note and adhered to the interlocutor reclaimed against.

Counsel for the Pursuers (Reclaimers)—A. R. Brown. Agents—Alex. Morison & Company, W.S.

Counsel for the Defenders (Respondents)—Hunter, K.C.—Chapel. Agents—Bruce & Black, W.S.

Thursday, July 19.

FIRST DIVISION.

[Sheriff Court at Inverness.

WARRANT *v.* WATSON AND OTHERS.

(See *ante* December 14, 1905, 42 S.L.R.

252, 7 F. 253).

Fishings — Salmon-Fishing — Trespass — Parties Nominally Fishing for Trout — Facts Held Sufficient to Warrant Interdict.

A *pro indiviso* proprietor of salmon-fishing having the exclusive right on seven out of every eight week days, raised an action of interdict against certain persons, the townsmen of a town which was the other *pro indiviso* proprietor of the salmon-fishing having the exclusive right on the eighth day and which exercised its right by leaving it open to the townsmen, to have them prohibited from unlawfully trespassing on his fishing. The defenders averred that they were fishing for brown trout, which class of fishing was in fact open to them.

Interdict *granted* where it was established, though no salmon had actually been taken, that the defenders (1) had made no difference in their method of fishing on the days when they were not entitled to fish for salmon, and (2) had used minnow-tackle or large sized flies (though not technically salmon flies), and (3) had fished in the months of August and September, months when, broadly speaking, only salmon and sea trout are taken with the rod.

This case is reported *ante ut supra*.

Captain Redmond Bewley Warrant of Bught, residing at Ryefield House, Conon-bridge, *pro indiviso* proprietor of the salmon-fishings on the river Ness from the Stone of Clachnahagaig to the sea, with exclusive right on seven out of every eight week days, having brought an action to interdict Donald Watson, fishing tackle maker, Inglis Street, Inverness, and others, indwellers of Inverness, the other *pro indiviso* proprietor having exclusive right on the eighth day, which right it left open to its indwellers, from unlawfully trespassing on his fishing, the defenders averred, *inter alia*, that they were not unlawfully trespassing on the fishing but were fishing for brown trout, which fishing it was not questioned was open to them.

On 14th December 1905, the case having been appealed from the Sheriff, the First Division allowed a proof, which was led before Lord M'Laren on 21st March 1906. The nature of the evidence adduced appears from his Lordship's opinion *infra*.

At a hearing on the evidence, argued for the pursuer—Trout-fishing was not an independent right—Rankine on Landownership, p. 508—and must be exercised subordinately to the higher right of salmon-fishing. Any reasonable apprehension of an invasion of the pursuer's rights justified an application

for interdict. The proof established that the right was likely to be, if indeed it had not actually been infringed, for the trout-fishing was merely an excuse. That was shown by the same method of fishing being always used, the tackle employed, and the season of the year.

Argued for the defenders—In only one of the cases referred to on record had a salmon been actually caught. Therefore the onus lay on the pursuer to prove that each respondent had been endeavouring though unsuccessfully to take fish of the salmon kind. This he had failed to do, for the bulk of the evidence established the fact that brown trout of large size and in numbers sufficient to attract anglers were taken in the river throughout the season. The evidence as to tackle was extremely vague, owing to the fact admitted by the pursuer's chief witness that he had regarded all fishing whether for trout or salmon on any other day than that "eighth lawful day" on which the townsmen had right to fish for salmon, as unlawful. The respective rights of salmon and trout-fishing were defined in *Somerville v. Smith*, December 22, 1859, 22 Dunlop 279, *per* Lord Colonsay 287. The pursuer had failed to establish a case for granting interdict as sought.

At advising—

LORD M'LAREN—In this action the complainer claims to interdict the respondents from interfering with his rights as heritable proprietor of fishings in the Ness. The Town Council of Inverness hold a *pro indiviso* right of salmon-fishing along with the complainer, but as their right is limited to one-eighth of the salmon fishing estate, by an arrangement which is still in force the Town Council have the exclusive right of fishing within the territorial limits of the fishing right on every lawful eighth day, while the complainer by the agreement has the exclusive right of fishing on the remaining seven out of each period of eight lawful days. It is in evidence that so far as regards the action of the complainer and his tenants this agreement has been faithfully observed.

The Town Council of Inverness has not made use of its right of salmon-fishing for purposes of profit, but has left the fishing open to the townsmen for their amusement. In so doing I cannot doubt that the Town Council was entirely within its rights, although the effect of what they have done may be to lessen the value of the other seven-eighths of the fishing estate to the other *pro indiviso* proprietor. Captain Warrand does not dispute the right of the inhabitants of Inverness to fish for salmon on each eighth day which has been appropriated to the use of the town. The ground of action is that the respondents have fished for salmon on the days in which the exclusive right is vested in the complainer.

The respondents give a general denial to the allegations against them, but the substance of their defence is that on the occasions when they are proved to have

fished on the Ness in apparent contravention of the complainer's rights they were only fishing for trout.

I may here observe that the law does not take cognisance of anything in the nature of a right of trout-fishing apart from the ownership of lands, but if the respondents were in a position to prove that they had in good faith fished only for trout, and with trouting tackle, from the bank lying within the burgh of Inverness, their defence would be established, because it does not appear that the Corporation of Inverness has taken any action to restrain the exercise of the right of trout-fishing from their banks. Whether they should in the future attempt to put a restriction on their right during the salmon-fishing season is a matter for their own consideration, and it is evident that such a restriction would not be very easily enforced.

The immediate question is, what is the value of the respondent's defence as to trout-fishing? On this subject two observations are suggested by the evidence. First, if the parties complained of are proved to have fished in the manner and by the means usually employed by salmon-fishers in the locality, they do not displace the allegation of infringement of the complainer's rights by saying that they were only fishing for trout. Secondly, it is in evidence that during the salmon-fishing season, and particularly in the months of August and September, when the complainer's tenants come to the Ness for sport, there has been a practice of indiscriminate fishing on all week days without distinction, to the injury of the complainer's rights. This has been carried to such an extent that the complainer's tenants have demanded and received from him a substantial abatement of rent on the ground that their sporting rights were rendered comparatively valueless through the action of a section of the inhabitants of Inverness who persist in the practice of indiscriminate fishing.

On the evidence before us I cannot doubt that the complainer was fully justified in resorting to legal measures for the protection of his rights against the persons who can be proved to have fished in his waters for salmon without a title.

The application for interdict is directed against fifteen individuals. After a preliminary hearing of the case a proof was allowed by the Court and taken by myself, and was thereafter reported to the Court. At the hearing on the evidence the complainer withdrew the complaint against two of the parties and moved for interdict against the others.

I may here observe that in order to support an application for interdict, the complainer has to establish such action on the part of the respondents as will justify a reasonable apprehension that they are going to interfere with his rights. The best evidence of this is proof that the respondents have exercised the art of salmon-fishing in the near past, and in a case of this kind I should be unwilling to

proceed on anything short of the best evidence. But it is not necessary to prove in each case that salmon were actually taken; if this were the law it would be very difficult ever to prove a case for interdict against infringers.

As regards each of the respondents, I have examined all the passages in the evidence to which we were referred by counsel, and have also considered the bearing of the evidence as a whole on each case, and the excuses which were offered by the respondents who gave evidence on their own behalf. The general body of the evidence is to this effect—(first), as regards these respondents who are proved to have been in the practice of fishing the Ness, that they made no difference in their mode of fishing on the days when they were not entitled to fish for salmon; (second), that minnow tackle or flies of large size (though not technically salmon flies) were used; (third), that while the early summer months are the months in which trout are taken, these respondents fished in the months of August and September, when, broadly speaking, only salmon and sea-trout are taken with the rod.

I do not think there would be any advantage in examining the evidence as to each separate act of fishing which has been proved against individual respondents, but I may say that in my examination of the evidence I have given the benefit of a doubt to those respondents against whom I think the three points just mentioned have not been all established. All the persons to whom I propose that the interdict should be made to apply have fished in the months of August and September on days that are not open to the public. They have fished in a manner adapted for the taking of salmon, and so far as I am able to judge have fished with the same tackle and lines which they were in the habit of using on days when salmon-fishing was open.

The respondents against whom I propose that interdict should be granted are nine in number, viz., . . .

The LORD PRESIDENT, LORD KINNEAR, and LORD PEARSON concurred.

The Court granted interdict against the respondents named by Lord McLaren.

Counsel for the Pursuer—Johnston, K.C.—D. Anderson. Agents—Skene, Edwards, & Garson, W.S.

Counsel for the Defenders—Hunter, K.C.—Constable. Agents—Morton, Smart, Macdonald, & Prosser, W.S.

Friday, July 20.

FIRST DIVISION.

SMITH (LIQUIDATOR OF THE UNION CLUB, LIMITED) v. EDINBURGH LIFE ASSURANCE COMPANY.

Lease—Renunciation—Hypothec—Lease at a Yearly Rent for a Period Beginning at a Martinmas and Terminating at a Whitsunday—Year of Lease Current—Whether Lease runs from Martinmas to Martinmas or from Whitsunday to Whitsunday.

A let certain premises to B "for the period from the term of Martinmas 1903 to the term of Whitsunday 1913." B undertook to pay a yearly rent of £1000 "at two terms in the year, by equal portions, beginning the first term's payment . . . at the term of Whitsunday 1904, when the sum of £500 will be payable for the half-year preceding, and the next term's payment of £500 at Martinmas thereafter, and so forth half-yearly and termly during the currency" of the lease. B having renounced the lease as at Whitsunday 1906, a question arose in connection with A's right of hypothec, whether the year of the lease current at the date of renunciation was from Martinmas 1905 to Martinmas 1906 or from Whitsunday 1905 to Whitsunday 1906.

Held that the lease was a Martinmas to Martinmas lease, and that A's hypothec covered the rent for the year from Martinmas 1905 to Martinmas 1906.

Assignment—Company—Bankruptcy—Assignment of Uncalled Capital—Intimation of Assignment—Statement by Committee of Management Made at General Meeting that Uncalled Capital had been Assigned in Security—Sufficiency of Intimation—Club.

A club incorporated under the Companies Acts assigned in security the uncalled capital on its shares, issued and to be issued. A statement that this had been done, contained in a report by the committee of management, was read by the secretary at a general meeting of the club, but no other intimation was given. The club having thereafter gone into voluntary liquidation, the assignee claimed a preference *quoad* the capital assigned. *Held* that the assignment had not been validly completed, and that no preference had been thereby constituted in the assignee.

On 28th June 1906 Adam Davidson Smith, C.A., Edinburgh, liquidator of the Union Club, Limited, registered under the Companies Acts 1862 to 1890, presented under section 138 of the Companies Act 1862 a petition praying the Court to determine certain questions which had arisen in the voluntary liquidation of the said Union Club, Limited.

The petition set forth—" . . . The liability