

that a majority of the Judges are in favour of the view taken by the Second Division.

LORD DEAS—I agree so far with Lord Ardmillan that the case of the *Shotts Iron Company* is quite a case in point as to the question of the competency of this appeal. The circumstances of the two cases are very similar, in fact there is no substantial difference between them. Now, I am unable to see any good reason for holding that that case was badly decided; on the contrary, I think that all the authorities are in favour of it. I have no hesitation, therefore, in agreeing with the majority of the other Division.

LORD PRESIDENT—I have arrived at an opposite opinion from that of your Lordship, and agree with Lord Kinloch and Lord Ardmillan, and have nothing to add to what they have said. The authorities are, I consider, all on the other side, with the exception of the case of *Shotts Iron Company*. When that case was first mentioned to us, it was unreported, and it was difficult to ascertain what had passed before the Court. But undoubtedly the decision arrived at was contrary to my opinion. The question was, however, fully deserving of reconsideration, as we find one of the Judges of the Second Division, who decided the *Shotts'* case, changing his views. I regret that I cannot agree with the majority, but it is, at any rate, satisfactory to have a point of practice like this definitely decided.

Competency of appeal sustained.

Counsel for Appellant—J. D. Grant. Agent—James Barton, S.S.C.

Counsel for Respondent—Mair and Rhind. Agents—D. Crawford & J. Y. Guthrie, S.S.C.

Tuesday, July 16.

RIGBY AND BEARDMORE v. DOWNIE.

(*Ante*, p. 360.)

*Expenses—Taxation—A. S., 19th December 1835.*

The Court pronounced an interlocutor “finding the pursuers entitled to expenses, subject to a deduction of £25 from the taxed amount thereof, in respect of the proceedings in which they were unsuccessful between the 17th June and the end of November 1871. The Auditor taxed off the whole of the pursuers' expenses (amounting to about £49) during the period mentioned, and from the taxed amount deducted £25. The pursuers objected that the true meaning of the interlocutor was that they should be entitled to their whole expenses, less £25. Objection *repelled*.”

The LORD PRESIDENT said—There is an important Act of Sederunt, dated 19th December 1835, which provides, “that notwithstanding a party shall be found entitled to expenses generally, yet if, on the taxation of the account, it shall appear that there is any particular part or branch of the litigation in which such party has proved unsuccessful, or that any part of the expense has been occasioned through his own fault, he shall not be allowed the expense of such parts or branches of the proceedings.” Keeping in view this general rule, we have to construe our interlocutor of March 8th. We found the pursuer en-

titled to expenses. If no more had been said, it was the duty of the Auditor to consider whether, in any part of the case, the pursuer, the successful party on the whole, had been unsuccessful. On this we have a very plain statement in the interlocutor. It was the Auditor's duty to strike off the part of the pursuers' account for the period between 17th June and 2d November 1871. But then we found the pursuers entitled to expenses, “subject to a deduction of £25, in respect of the proceedings, &c.” This is represented as a modification, a fixing, without any remit to the Auditor, of the amount to be deducted from the pursuers' account, as representing the amount of expenses for the period in which they were unsuccessful. It is not expressed as a modification. The true meaning is that we must first take the taxed account, and then deduct £25 from the taxed account. I am satisfied that it was the intention of the Court, as well as the proper meaning of the interlocutor, that the £25 should be paid to the defender for his expenses during the period in which the pursuers were unsuccessful.

The other Judges concurred.

Counsel for Pursuers — Solicitor-General and Lancaster. Agents—Jardine, Stodart, & Frasers, W.S.

Counsel for Defender—Watson and J. A. Reid. Agent—P. S. Malloch, S.S.C.

Wednesday, July 17.

LINDSAY (TOD'S TRUSTEE), PETITIONER.

*Bankruptcy—Bankruptcy Act, 1856, § 90—Trustee—Examination relative to Bankrupt's Estate.*

*Held* that the only questions which can, in terms of the Bankruptcy Act 1856, be put to persons examined on oath under section 90, are such as relate to the bankrupt's estate or affairs.

Mr Lindsay, accountant, Edinburgh, trustee on the sequestrated estate of William James Tod, builder, Edinburgh, presented a petition to the Sheriff, praying him to grant warrant, under the 90th section of the Bankruptcy Act 1856, to the said trustee to examine upon oath certain persons who, he averred, were able to give information relative to the estate of the bankrupt, who had absconded, taking his books and papers with him.

The Sheriff (HAMILTON) granted the prayer of the petition, and the examination was accordingly proceeded with. In the course of the examination William Officer, S.S.C., formerly agent for the bankrupt, but not his agent in the sequestration, was asked—“When did you see the bankrupt last?—A. I saw him about the beginning of June current. Q. Where?—A. In London. Q. Do you know where he is now?—A. I decline to answer that question on the ground of confidentiality, unless directed to do so by the Sheriff.” The Sheriff-Substitute (HAMILTON) ruled that the witness was not bound to answer the question, in respect that it had no reference to the bankrupt's affairs. The witness was then asked—“Have you received any letters from the bankrupt since he left Edinburgh?” The witness stated that he had received no letters from the bankrupt relative to his affairs, and declined to make any further answer upon that ground, and also on the ground of confidentiality. The Sheriff-Substitute disallowed the question.