

his personal friends since 1860. There is therefore no ground for disturbing the judgment of the Sheriff on this matter; and, on the whole, my view is to remit *simpliciter* to the Sheriff.

The other Judges concurred.

The judgment of the Sheriff was accordingly adhered to.

Agents for Advocators—Jardine, Stodart & Fraser, W.S.

Agents for Respondents—Campbell & Smith, S.S.C.

Saturday, June 29.

FIRST DIVISION.

YOUNG, APPELLANT.

Bankruptcy—Recal of Sequestration—Liberation.

Circumstances in which held that a bankrupt was entitled to liberation.

Thomas Mackenzie Young was imprisoned on the 7th of May 1867, in the prison of Forfar, under diligence at the instance of John Young, for a debt of £11, 18s. 4d. He petitioned for sequestration with concurrence of a creditor to the extent required by law, and on 11th May sequestration of his estates was awarded by the Sheriff-substitute. The bankrupt petitioned for liberation under section 45 of the Bankrupt Act, 1856. The Sheriff-substitute, after hearing the incarcerating creditor, who opposed the liberation, on 6th June granted warrant of liberation. On 18th June John Young, the incarcerating creditor, presented to the Court a note of appeal against this interlocutor; which note of appeal was sent to the summar roll. Thereafter, on 21st June, he presented a petition for recal of the sequestration.

SHAND was this day heard in support of this note of appeal against the interlocutor of 6th June. He contended that the I. O. U. founding the claim of the concurring creditor in the sequestration was signed as a mere fraudulent device to enable the bankrupt to get sequestration. A petition for recal of the sequestration had been presented. In the circumstances the liberation ought to have been refused.

MAIR, for the bankrupt, was not called on.

LORD PRESIDENT—The best ground for objecting to the liberation of a bankrupt under the 45th section of the statute is, that there is something fraudulent in his proceedings; and if there were anything of that here, apart from what is said to be the ground of presenting the petition for sequestration, there might be something to be said for the reclamer. But the only thing said is, that the bankrupt has presented this petition as a device to obtain liberation. If that be so on the one hand, it seems to me on the other that the proceedings of the reclamer are for the purpose of keeping the bankrupt in prison. It is just a case of diamond cut diamond. The sequestration here still subsists, and we must assume that it was properly awarded. If the reclamer had timeously presented his petition for recal, that would have been before us, and we would have considered its merits; but standing the sequestration, it would be inexpedient to interfere with the discretion which has been exercised by the Sheriff-substitute in this case.

LORD CURRIEHILL—This is an appeal against an interlocutor pronounced on 6th June, and the question is, Whether it should have been pronounced?

As matters then stood, it was properly pronounced. The ground on which the appeal is now presented is because of an *ex post facto* proceeding, viz., the presentation of an application for recal of the sequestration presented on 29th June, eleven days after this note of appeal against the Sheriff-substitute's interlocutor granting liberation was presented and appointed to be sent to the roll. I cannot hold that to be a good ground for recalling an interlocutor, which was well founded when it was pronounced.

LORD DEAS—I am of the same opinion. When the case came before the Sheriff-substitute, he pronounced an interlocutor on 6th June. There had been a sequestration awarded three weeks before, on 14th May. No objection was taken to that interlocutor at that time, in the only proper way, by applying for recal. But the objection pleaded to the Sheriff-substitute against the petition for liberation was, that the bankrupt had behaved in such a dishonest manner that he was not entitled to liberation; but the Sheriff-substitute thought that objection unfounded, and that is admitted now. The ground now taken by the reclamer is, that six weeks after the sequestration, and three weeks after the interlocutor under review was pronounced, he had applied for recal of the sequestration, and expects to succeed; and he asks us to delay this case till it appear if he can get it recalled or not. I think, if he manage adroitly, the case may not be decided until the Winter Session; and meanwhile, the bankrupt is to be kept in jail. We could only do that on some strong equitable ground, if the reclamer had been using all possible speed. But he has been going on as slowly as he could. The question itself, whether the sequestration ought to be recalled, is one with which we have nothing to do.

LORD ARDMILLAN concurred.

Agent for Appellant—Henry Buchan, S.S.C.

Agent for Respondent—William Officer, S.S.C.

Saturday, June 29.

CUNNINGHAM, NOTE FOR POORS' ROLL.

Poors' Roll. Application for admission to the poors' roll refused.

Walter Cunningham, labourer, asked to be admitted to the benefit of the poors' roll, for the purpose of enabling him to raise an action of damages, for the death of his son, against the proprietors of a brickfield, in whose employment his son was working at the time of his death. The reporters on the *probabilis causa* reported in favour of the petitioner.

A. Nicolson, for the petitioner, grounded his application on poverty and ill-health. The petitioner was now earning 14s. a week; he had four children, two of whom, respectively nine and eleven years of age, were dependent on him for support. The petitioner's health was bad, and his income therefore precarious.

JOHN MARSHALL, for defenders, opposed.

The Court unanimously refused the application.

LORDS DEAS and ARDMILLAN were inclined to hold that where the action to be raised was an action of damages for loss of life by the fault of the defenders, a case which would be one of trouble and difficulty, the application could not be viewed in the same light as if the action were to be one in breach of contract, or one in which the pursuer sought to establish a valuable right of succession.