

be deprecated. It was contended that the only account which could be audited, and the only remuneration that could be fixed, and the only accounts or expenses that required to be paid or provided for under the 141st section of the Act, were those which were due to the existing trustee at the time when the audit took place. Nothing could be more unreasonable than such a construction of the statute. In what particular time the accounts of a previous trustee should be audited was a matter of little importance. His Lordship should think the only way would be for the existing trustee to present them along with his own accounts, and that the whole should be considered together, and the accounts provided for before the sequestration was brought to an end. His Lordship therefore thought the interlocutor of the Sheriff would not do. The Sheriff seemed to have been impressed himself with the difficulty of this clause of the statute, but he had been satisfied by what was done. Now, that which was done was not that which was required. The statute required the Commissioners to audit the accounts, to ascertain the balance which was due to the trustee, if any, and to fix his remuneration; and further, after that was fixed, it was to be paid or provided for to the satisfaction of the trustee or Commissioners before deliverance was pronounced. Now, what had been done here was this—the Commissioners met and considered the accounts of the former trustee, and offered him £20 in full of his claim of £60, 5s. 5d., and granted a bill at four months from the date of the bankrupt's discharge for the amount. Mr Miller did not accept that offer, and it would have been very strange if he had, looking to the amount of his claim. The only question that remained was whether the report of the Commissioners contained what was a sufficient discharge of duty under the 141st section. The Commissioners had not done one of the things required by that section. They had allowed the bankrupt and a commissioner to dictate to the former trustee what he was to receive; and his Lordship was therefore of opinion that the Court must find that the former trustee's accounts had not been audited, the balance had not been ascertained, and his remuneration had not been fixed, and there had been no payment or provision made for payment of the balance due to him in terms of the 141st section of the Bankruptcy Act; and that therefore the offer could not be accepted.

LORD DEAS and LORD ARDMILLAN concurred.

Counsel for the Appellant—Trayner. Agent—L. Macara, W.S.

Counsel for the Respondent—Scott. Agent—Macqueen, S.S.C.

Tuesday, December 3.

## SECOND DIVISION.

BOARD OF SUPERVISION *v.* LOCAL AUTHORITY  
OF MONTROSE.

*Petition and Complaint—Local Authority—Public Health (Scotland) Act.*

The Board of Supervision having presented a petition and complaint against the Local Authority of a burgh, under the Public Health

Act, calling upon them to introduce a proper system of drainage—*held* (1) that such a petition was the proper ultimate remedy under the Act; but (2) that sufficient time must be allowed to mature a comprehensive scheme of drainage.

The Board of Supervision presented a petition and complaint against the Local Authority of the burgh of Montrose, in which they set forth that the drainage of that burgh is exceedingly defective and that consequently the health of the locality is seriously affected by the effluvium from the sewage thereof. Further, that the question of a drainage scheme has been frequently considered by the Magistrates and Police Commissioners of Montrose, and that various reports from engineers have shown that the burgh may be effectually relieved from the noxious effects produced by the present state of matters. To effect these objects the Public Health (Scotland) Act provides for the introduction of a proper system of drainage. The complainants stated moreover that the efforts of those who wished a thorough system of drainage established have been hitherto foiled, and in consequence they on 23rd January 1871, ordered an inspection of the burgh, and received a report specifying the defects, and adding that the disposal of the sewage by means of irrigation could be profitably arranged. A copy of this report was sent on February 11th to the Local Authority, and subsequently there was considerable correspondence on the subject, but as yet nothing has been done. Finally the petitioners sought the authority of the Court to enforce the obligations of the Local Authority as to drainage, contending that in the circumstances the failure to proceed with the drainage was a "refusal and neglect" to fulfil the requirements of the Act, and an "obstruction" to the carrying out thereof.

The respondents denied all neglect or obstructive measures, and stated they were willing and anxious to obtain a drainage system for the burgh, but that they required to act with care and deliberation in order to arrive at the best scheme for that end.

At advising—

LORD JUSTICE-CLERK—I am sure your Lordships have no desire to assume the functions of the Local Authority, nor to do anything which might appear to be unreasonable towards a body of that nature. But the statutory right, which the Board of Supervision have in this application exercised for the first time, is one very important for the public interest, and I do not find that there is any question raised in the answers about its competency. An application such as this is, however, only the ultimate remedy. The respondents, in their answers, state that they, a newly elected body, are willing and anxious to promote a complete system of drainage, and ask us to allow them a reasonable time to take steps for that purpose. I think that course is a proper one. We are aware that a popularly constituted body like the Local Authority cannot move with great expedition in such a matter. We cannot dismiss the application, but, after the assurances we have received, I think we should appoint them within three months to report what steps they have taken, with this important object.

LORD COWAN—The power conferred on the petitioners to apply to this Court, in order to enforce proper drainage, is of the utmost importance to the

public; and the operations sought to be enforced by this petition require to be well considered, and it is right to see if the application is justifiable and that they are properly executed. Mr Shand argues that the Board of Supervision have no power to come to this Court unless there is obstruction to the drainage operations being carried through. The words of the Act, however, are—"in case any local authority shall refuse or neglect to do what is herein or otherwise required by law of them." "Neglect" is sufficient to entitle the Board to come forward. That there has been delay here in doing what is necessary for the sanitary condition of the burgh there can be no doubt, but the causes of that delay have been fully stated on the part of the Local Authority; and the course which your Lordships propose will bring matters into the condition which the health of the community requires. Since a specific scheme is referred to, we will delay to see how it is being carried out.

**LORD BENHOLME**—This petition raises a question of great importance. It is the first application of the kind presented by the Board of Supervision. I cannot object to what your Lordship proposes, and in making an observation as to the peculiar position in which this Local Authority is placed, I must not be held as differing from the course proposed.

The burgh of Montrose has been always considered a peculiarly healthy place of residence. It has a remarkable basin of water in its neighbourhood, filling and emptying with the tide, causing a great body of water to pass up and down alternately with great force and rapidity through a narrow channel, which is spanned by a draw bridge. This creates a sort of natural drainage, or, at least, a motion of the atmosphere, to which some think the peculiar healthiness of the burgh is due. I do not make that observation to suggest a doubt as to the propriety, or even necessity, of a regular system of drainage, or to insinuate that the Board of Supervision have been premature in their application; but to show that we should proceed with peculiar tenderness in dealing with these Police Commissioners, because it may be extremely difficult for men to determine what, on the whole, is the best system of drainage for the burgh. The basin to which I have referred, while it seems to suggest a facility of drainage, also suggests an inconvenience; for while the sewage at one time of the tide would be rapidly swept down into the sea, at another it might be swept up into the basin and be deposited at low tide upon its dry area. It will be extremely difficult to connect the proposed drainage with the sea.

Farther, I understand that some attempt is being made to utilise the drainage by irrigating some extensive links of sandy surface belonging to the town, which might afford a remuneration to the expense of the drainage operations. The practicability or possibility of this seems another reason why full time should be given to the local authority to consider the best mode in which the thing can be done. The question of time is not of much consequence in this case, as the burgh is exceptionally healthy. The Commissioners, I feel satisfied, will not propose any scheme which would be insufficient or abortive, but will, within a reasonable time, bring forward one complete and effectual scheme, whether in combination with irrigation or not. We cannot dismiss this petition; that is out of the

question. But we can pause so as to allow the Commissioners a reasonable time to consider what scheme they may advance.

**LORD NEAVES**—I have arrived at the same conclusion. There is no doubt that there has been practical obstruction by the Local Authority, and that this petition has been properly brought by the Board of Supervision, but at the same time every sinner who repents ought to be treated with leniency, especially when he admits his sin. The Court has been told that there is a proposal for a united scheme of drainage, but, whatever kind of system may be thought of, the Court will see that it is thorough and complete. It may be that the intention is to drain the town properly, but your Lordships must see that there is not linked to the proposed scheme some provision calculated to delay it or diminish its efficacy.

The Court pronounced the following interlocutor—

"Appoint the respondents to report within three months from this date what steps they have adopted to carry out the objects referred to in the answers: *Quoad ultra* supersede consideration of the case."

Counsel for Petitioners—Miller, Q.C., and Gloag. Agents—Murray & Falconer, W.S.

Counsel for Respondents—Lord Advocate and Shand. Agents—Webster & Will, S.S.C.

Friday, December 6.

## FIRST DIVISION.

[Lord Gifford, Ordinary.

**ROBERTSON v. STEWART AND LIVINGSTON.**

*Nuisance—Pollution—Water, property and use of—Remit—Liability of Landlord.*

Circumstances in which it was held—(1) that a nuisance was occasioned by both a smell or unpleasant and offensive odours emanating from a farina manufactory, and by the pollution of a burn occasioned by the said operations; (2) that the said burn was not a stream dedicated to manufacturing purposes, and that it had not for the prescriptive period been so polluted as to be unfit for primary uses; and (3) that the defenders were not entitled so to carry on the manufacture of farina as to cause a nuisance to the pursuer, either by offensive smell or by pollution of the stream.

Remit made to a chemist to examine the farina manufactory, and water courses and works therewith connected, and to report whether the smell emitted from the said manufactory, and the pollution of the stream occasioned by the said manufactory, could be prevented or abated, and in what manner.

One of the defenders was proprietor of the farina mill, and of the property on which it was situated, and the stream polluted was the boundary of the property. He averred that he had not caused or authorised the nuisance, and stated that he had let the mill under the condition that the tenant should not have anything about the farina works or elsewhere that should be a nuisance to the property or the