

Thursday, October 15.

FIRST DIVISION.

[Sheriff of Lanarkshire.

PARK v. WEIR.

*Appeal—Act of Sederunt, 10th March 1870, sec. 3.*

Where an appellant failed to lodge a copy of the papers with the Clerk of Court, and was not reponed within the statutory time,—*held* that the Sheriff's judgment was final.

An appeal in this case was received on July 14, 1874, six days before the end of Session. The appellant printed the papers and boxed them on the first box-day, which was August 27, but failed to lodge within fourteen days after the appeal a copy of the papers with the Clerk of Court, as required by sec. 3, sub-section 2. The process was re-transmitted to the Sheriff-court in respect of the abandonment of the appeal. The appellant was not reponed within eight days, as required by sub-section 3, and the Court held that the judgment of the Sheriff had become final, in terms of sub-section 5.

Counsel for Appellant—Alison. Agent—William Livingstone, S.S.C.

Counsel for Respondent—M'Kechnie. Agent—Thomas Carmichael, S.S.C.

Friday, October 16.

FIRST DIVISION.

[Sheriff of Midlothian.

SIR DAVID BAIRD v. PETER GLENDINNING.

*Appeal—Sheriff Court Act 1853, § 24.*

An interlocutor by a sheriff granting warrant to a judicial manager under a sequestration to make payment of rent due to the landlord, *held* to be appealable under the Sheriff Court Act 1853, sec. 24.

The question in this case was whether an interlocutor of the Sheriff granting warrant to the judicial manager of a farm which had been sequestrated to pay the rent due to the landlord, was an interlocutor which was appealable under the Sheriff Court Act 1853, sec. 24.

The interlocutor was as follows:—

"Haddington, 30th April 1874.—The Sheriff-Substitute having resumed consideration of this case, with the interim state of the intromissions of the judicial manager, approves of said state of intromissions so far as the judicial manager charges against the proceeds of the sales of the crop sequestrated the outlays made by him in labouring the farm in preparation for said crop. In respect the judicial manager has in his hands funds more than sufficient to meet the rent sequestrated for, due at the term of Candlemas last, Grants warrant to pay said rent to the petitioner, with the interest thereof, at the rate of £5 per centum per annum from the date at which the same became due till payment; appoints the judicial manager to state in his account of intromissions any bank interest he is paid or is charged with, and appoints this cause to be enrolled for further procedure when the whole sequestrated effects have been realized.

"*Note.*—The Sheriff-Substitute would refer to

his note to his interlocutor pronounced in the process of sequestration for the rent of the same lands for crop 1872, for a statement of the grounds on which he is of opinion that the cost of labouring the farm for crop 1873 falls to be charged against the proceeds of that crop, and also for the reason why he has ordered the judicial manager to add to his account of intromissions in this process any sums of bank interest he has received or been charged. The judicial manager having admittedly in his hands sufficient to pay the rent sequestrated for, due at the term of Candlemas last, an order for payment thereof has been granted.

The LORD PRESIDENT—(*After reading the interlocutor.*)—It is objected that this is not an interlocutor which is appealable under section 24 of the Sheriff Court Act 1853. On the other hand, it is said that a warrant such as this to an officer of Court authorising him to pay, is equivalent to an interim decree for payment. Strictly speaking, no doubt the interlocutor does not fall under sec. 24, but then the question comes to be whether under the words "interim decree," "interim warrant" is not intended to be included. It seems to me that to read it so is quite within the policy of the statute. This is the proper,—indeed it is the only—form of proceeding when money is in the hands of an officer of Court. The Court does not give decree against its own officer, but simply authorises or ordains him to do what is necessary. It would be very inconvenient if the statute did not apply to an interlocutor of this kind.

Counsel for Appellant—Robertson. Agent—T. White, S.S.C.

Counsel for Respondent—Blair. Agents—Hunter, Blair, & Cowan, W.S.

Saturday, October 17.

SECOND DIVISION.

[Lord Mure, Ordinary.

MUIR v. FLEMING.

*Process—Reclaiming Note—6 Geo. IV. c. 120—A.S. 1828, sec. 77.*

A reclaiming note with extensive manuscript additions to the closed record appended, *refused* as incompetent.

Friday, October 23.

FIRST DIVISION.

[Lord Gifford, Ordinary.

ROBERTSON v. LAWSON.

*Sale—Contract—Rei Interventus.*

An owner of a house let it to a tenant for one year, with option to the latter to buy it at the end of the lease for a price to be fixed by valuers mutually chosen, the contract being by missives of lease *ex facie* regular. During the currency of the lease the owner sold the property to a third party. The tenant raised an action against the seller and buyer, which was not defended by the seller, and the buyer agreed to implement the contract so far as to refer the matter to two valuers, and to sell the subject for the price fixed by