

Friday, December 22, 1876.

SECOND DIVISION.

PETITION—F. E. VON ROTBERG.

Sequestration—Meeting of Creditors—Intimation in Gazette.

Where *per incuriam* notice of sequestration in the Gazette omitted to give the hour fixed for the statutory meeting of creditors, the Court, upon a petition presented by the bankrupt with concurrence of a principal creditor, appointed the corrected intimation to be made in a later number of the Gazette.

This was a petition by Fortunat Edwardo Von Rotberg, and Anthony Watson, a creditor to the extent required by law for intimation of sequestration. The circumstances under which the application was made were as follows:—The Lord Ordinary on the Bills (ADAM) granted sequestration on 18th December 1876, and appointed a meeting of creditors to be held in Dowell's Rooms, 18 George Street, Edinburgh, on Wednesday, December 27th, at 2 p.m., for the election of a trustee and commissioner, that being not less than 6 or more than 12 days from the date of the Gazette notice that sequestration had been awarded. Notice of the interlocutor appeared in the Edinburgh and London Gazettes, quite correctly in the latter, whereas in the former the hour of meeting *per incuriam* was omitted. The petitioner accordingly prayed the Court either to appoint the correct intimation to be made in a later number of the *Edinburgh Gazette*, or to discharge and postpone the meeting to Friday 29th December; and to appoint intimation in the Gazettes of the meeting as so fixed.

The Court granted the first alternative prayer of the petition.

Counsel for Petitioner—Thoms. Agents—Drummond & Reid, W.S.

Saturday, January 13, 1877.

SECOND DIVISION.

BUCHANAN v. DAVIDSON & STEVENSON.

Process—Defence—Relevancy—Law Agent.

In an action by law agents against a client for payment of an account incurred in defending the client in a former action—*question* as to the relevancy of a defence founded upon alleged breach of instructions committed by the law agents in defending the former action.

This was an appeal from the Sheriff-Court of Perthshire, at Dunblane, in an action at the instance of Davidson & Stevenson, solicitors in Stirling, against Thomas Buchanan, merchant, Callander, concluding for payment of two business accounts—one of £50, 3s. 5d. for law business performed and moneys disbursed for Buchanan in defending certain actions for payment of *legitim*, brought against him and his brother Walter Buchanan as surviving and accepting

trustees of their father, the deceased Walter Buchanan, saddler, Callander, or as vitious intruders with his estate; and another account of £11, 3s. 7d., incurred in defending a process of interdict brought against the same parties by a tenant. The final decision of the action for *legitim* was adverse to Thomas Buchanan and his brother Walter as trustees foresaid. It is reported 7th March 1876—*ante*, *Buchanan v. Buchanan's Trustees*, vol. xiii. p. 353, and 3 *Rettie*, p. 556. In the present action for payment of the accounts, Davidson & Stevenson averred that they were not the regular agents of the trust, but had been separately employed solely by Thomas Buchanan, who gave them all the instructions they received. In particular, they averred that he instructed them to defend the action for *legitim* by a denial of vitious intromission, in respect the deceased Walter Buchanan had divided his estate previous to his death, and had so left no succession. The action was accordingly defended on these grounds. Thomas Buchanan pleaded, with reference to the first account, that he had given explicit instructions that the action for *legitim* should be defended on the ground that he had not accepted or acted as one of his father's trustees. This was not done, and Buchanan averred that the action was lost in consequence of his instructions being neglected. He also averred gross mismanagement in not having stated the defence, which was the subject of his special instructions. With reference to the second account sued for, Buchanan denied that he had employed the pursuers. The Sheriff having allowed a conjunct proof, Buchanan, the defender, appealed to the Court of Session. The pursuers and respondents objected to the case being sent to a jury, and asked for a proof before answer on the relevancy of the defence, or that the defences should be *de plano* dismissed as irrelevant.

The following issues were proposed by the pursuers in the event of the case being sent to a jury:—“(1) Whether the defender employed the pursuers to perform the services and disburse the outlays charged for in the account annexed to the summons, No. 1 of process, commencing 2d June 1873 and ending 4th November 1875, or any and what part thereof? and whether, in respect thereof, the defender is indebted and resting owing to the pursuers in the sum of £50, 3s. 5d., or any and what part thereof, with interest thereon from the 15th day of July 1876 till payment thereof? (2) Whether the defender employed the pursuers to perform the services and disburse the outlays charged for in the second account annexed to the summons, No. 1 of process, commencing 11th March and ending June 14th, both in the year 1875, or any and what part thereof? and whether, in respect thereof, the defender is indebted and resting-owing to the pursuers in the sum of £11, 3s. 7d., or any and what part thereof, with interest thereon from the 15th day of July 1876 till payment thereof?”

The counter-issues by the defender were:—“(1) Whether the defender instructed the pursuers to conduct his defence to the actions at the instance of his brother James Buchanan, charged in the account first annexed to the said summons, No. 1 of process, on the ground that the defender had not accepted or acted as a trustee under his father's trust-disposition and settlement, dated on or about 16th June 1869, and had