

Saturday, November 15.

FIRST DIVISION.

[Sheriff of Renfrewshire.

REID v. DRUMMOND.

*Bankruptcy—Competition for Trusteeship—Affidavit and Claim—Diligence to Enable Vouching of Claims.*

Circumstances where (following *Tennent v. Crawford*, Jan. 12, 1878, 5 R. 433, 16 Scot. Law Rep. 265) a diligence was granted for the recovery of documents in the hands of specified persons in order to the vouching of claims of parties seeking to vote in the election of a trustee in bankruptcy.

James Drummond, C.A., had a majority in number and value of the creditors in competing for the trusteeship on the sequestrated estate of Manson & Auld, wrights, Crossmyloof. He applied to the Sheriff for a "diligence against havers to recover from the bankrupts, their clerk R. . . M. . . or other third parties in possession of the following documents, which will instantly verify the following claims in said competition" (for trusteeship), "and which claims are admitted by the bankrupts in their state of affairs made up in terms of the statute. Said documents are out of the possession of and entirely beyond the respective claimants' control, and delivery thereof cannot be obtained without warrant of Court." A detailed specification followed specifying the names of the claimants and the documents sought to be recovered. The claimants referred to were three in number, tradesmen who had done work for the bankrupts. On 18th October 1879 the Sheriff-Substitute (Cowan) granted the diligence as craved.

Against this interlocutor Robert Reid, a competitor for the trusteeship, appealed. He objected to the validity of the votes tendered in support of Drummond, on the ground that the accounts on which the various claims rested were totally unvouched, in respect that there were not produced the contracts, estimates, measurements, and details of the work charged for. The affidavit in each case declared that the bankrupts were "and still are justly indebted and resting-owing to the deponent the sum of £                    sterling, conform to account or state of debt annexed and subscribed by the deponent as relative hereto."

The appellant argued—The affidavits were bad, because the work charged for was insufficiently vouched in the annexed state of debt. This case did not fall within *Tennent v. Crawford*, for there the document (apart from the matter of stamping) showed no *ex facie* objection; but here the affidavits were *ex facie* defective. The estimates and offers, &c., should have been produced; they must either be in the possession or control of the claimants, or if not, they should under sec. 50 of Bankruptcy Act have shown cause why not. [LORD SHAND—That section refers to payment of dividend—not to competing for trusteeship.] If this diligence was granted, the claimants might simply allege debt £                    conform to note annexed, and the note might only state, "to work done £                   ", and any after inquiry into the details would be very much against the "least possible delay" prescribed by sec. 71.

Authorities—*Tennent v. Crawford*, Jan. 12, 1878, 5 R. 433; *Woodside v. Esplin*, July 15, 1847, 9 D. 1486; *Aitken v. Stock*, Feb. 14, 1846, 8 D. 509; *Wiseman v. Skene*, Mar. 5, 1870, 8 Macph. 661.

At advising—

LORD PRESIDENT—I am quite clearly of opinion that this case is within the principle of *Tennent v. Crawford*, but it is necessary to be cautious in sanctioning the granting of diligences for such purposes. It would never do to allow any sort of proof to be led in support of affidavits, else those delays would infallibly occur which it is the very object of the statute to prevent; but if a person brings forward a relevant statement of claim, and an account or note of the items, and says the vouchers are in the hands of A, B, and C, and that he wishes to recover them in order to verify an affidavit, I think it is quite competent and only just that he should be entitled at once and without delay to summon such persons as havers for the production of the vouchers. It is indispensable, however, that the statement should be very specific who has the documents, or one or other of which parties, and what are the documents to be recovered. Now, Mr Drummond in his specification has asked a diligence against certain persons distinctly named, and then he says the documents are outwith the possession and beyond the control of the claimants, and the documents are then specified at length. I think this is quite within *Tennent's* case, and in conclusion I have only to add that I am not prepared to go further than we did in that case, but that I do not think we are doing so here.

LORD DEAS—I quite agree with your Lordship that it is necessary to be cautious in granting diligence in these competitions. The processis meant to be a very summary one. But I think this case is clearly within *Tennent's* case, and I therefore assent to the judgment proposed.

LORD SHAND concurred.

LORD MURE was absent.

The Court refused the appeal.

Counsel for Appellant—Dickson. Agent—W. Elliot Armstrong, S.S.C.

Counsel for Respondents—Alison. Agents—Macbrair & Keith, S.S.C.

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FIRST DIVISION.

[Lord Curriehill, Bill Chamber.

WELDON v. FERRIER (WELDON'S TRUSTEE).

*Bankruptcy—Bankruptcy (Scotland) Act 1856 (19 and 20 Vict. cap. 79), secs. 139 and 169—Consent of Commissioners to Offer of Composition by Bankrupt.*

The consent of the commissioners is, by section 139 of the Bankruptcy Statute 1856, necessary before the trustee can call a meeting of creditors to consider an offer of composition made by a bankrupt subsequent to