

is therefore, I hold, within the meaning of the terms of the statute. But apart from the statute, I think this Court has a discretionary power to limit the liability of a cautioner. In like manner, at common law this Court in appointing its own officers has a latitude in fixing not only the amount but also the nature of the caution which it may require to be found.

The Court pronounced the following interlocutor:—

“On the report of the Junior Lord Ordinary, having heard counsel, remit to his Lordship to grant the prayer of the petition to the effect of accepting as sufficient caution a bond or policy of the National Guarantee and Suretyship Association (Limited) for £10,000.”

Counsel for Petitioner—Sol.-Gen. Asher, Q.C.
—Begg. Agents—Morton, Neilson, & Smart,
W.S.

Tuesday, March 11.

SECOND DIVISION.

[Sheriff of Argyllshire.

BANNATYNE v. M'LEAN.

Process—Expenses.

Decree having been given in a Sheriff Court appeal for a sum of damages and expenses, pursuer moved for approval of the Auditor's report and decree for the taxed amount. The defender stated that payment of expenses in full had been already tendered coupled with a personal undertaking to pay the expenses of extract should that become necessary, and moved for deduction of the expense of the motion. The Court, following the case of *Allan v. Allan's Trustees*, July 1, 1851, 13 D. 1270, gave decree for the amount of the account as taxed, less the expense of the motion for approval and decree.

Tuesday, March 11.

SECOND DIVISION.

[Lord Kinnear, Ordinary.

M'FADYEAN (TODD'S TRUSTEE) v. CAMP-
BELL AND OTHERS.

Bankruptcy—Sequestration—Motion for Removal of Trustee—Notice of Meeting—Bankruptcy Act 1856 (19 and 20 Vict. c. 91), secs. 74, 98, and 99.

Held that a meeting of creditors called by a commissioner on a bankrupt estate for the purpose of removing the trustee under section 74 of the Bankruptcy (Scotland) Act 1856, must be specially intimated to the trustee at least not later than the date of the advertisement calling the meeting.

Opinion that the special intimation to the trustee must precede the advertisement.

A trustee having obtained interim interdict

against a commissioner—who had given notice of a motion for his removal—holding, or constituting, or taking part in the meeting, certain of the creditors held the meeting and passed a motion for removal of the trustee; other creditors, forming a majority in value, and the trustee, absented themselves, relying on the fact that the interim interdict had been granted. Held that they were justified in doing so, and that the resolution for the removal of the trustee must be recalled.

The estates of John Todd, manure merchant, Stranraer, were, on his own petition, with concurrence of the Royal Bank as a creditor, sequestrated by the Lord Ordinary on the Bills in November 1883. At the first meeting of creditors Andrew M'Fadyean, solicitor, Newton-Stewart, was, after a competition with William M'Harrie, accountant, Stranraer, elected trustee, and three creditors residing in or near Stranraer were at the same time elected commissioners. The election was duly confirmed by the Sheriff, who on 21st December fixed the 31st December as the diet for the bankrupt's examination. On the date of the Sheriff's deliverance the trustee received a letter from Mr W. G. Belford, solicitor, Stranraer, dated the previous day, as follows:—“*John Todd's Seqn.*—Dear Sir,—As agent for, and authorised by the three commissioners on this sequestrated estate, I send you on the other side copy of a notice which will appear in the *Edinburgh Gazette* to-morrow.”—and enclosing a copy of a notice which appeared in the *Edinburgh Gazette* on 21st December, signed by the three commissioners, intimating that a general meeting of the creditors was to be held within the Court-house, Wigtown, on 29th December 1883, “for the purpose of removing Andrew M'Fadyean, solicitor, Newton-Stewart, from his office as trustee on the above sequestrated estate, in terms of section 74 of the Bankruptcy (Scotland) Act 1856.” The meeting was held accordingly, and the motion to remove the trustee was negatived by a majority in value of the creditors present.

On 10th January 1884 Mr M'Fadyean received from Mr Belford, as agent for Mr M'Math, one of the commissioners, the following letter dated 9th January:—“*John Todd's Seqn.*—Dear Sir,—At the request of Mr M'Math, one of the commissioners on this estate, I send you annexed copy of a notice that appeared in yesterday's *Gazette*, to which you will no doubt attend.” The *Gazette* notice, which was signed by M'Math, intimated that a general meeting of Todd's creditors would be held on 16th January for the purpose of removing M'Fadyean from his office of trustee in terms of section 74 of the Bankruptcy (Scotland) Act 1856.

The Bankruptcy (Scotland) Act 1856 provides (section 74)—“A majority in number and value of the creditors present at any meeting duly called for the purpose may remove the trustee or accept of his resignation.” . . . Section 98 provides—“The trustee, or any commissioner, with notice to the trustee, may at any time call a meeting of the creditors.” . . . Section 99 provides—“Notice of the day, hour, place, and purpose of all meetings of creditors under this Act shall be advertised in the *Gazette* seven days at least before the day of the meeting.” . . .