

I think, that the decisions rest upon sound principles, and that the present case is ruled by the previous case of *Beattie v. Stark*.

LORD ADAM—There is no doubt that the present case goes further than any of the previous decisions upon the subject, and certainly leads to somewhat startling results. The present case was foreseen and commented upon by the Lord President in the case of *Beattie v. Stark*. I can only say that I am unable to distinguish this case from any of the previous decisions, and think, therefore, that we should adhere to the interlocutor of the Sheriff.

LORD DEAS and LORD MURE were absent.

The Court affirmed the judgment of the Sheriff.

Counsel for Defender (Appellant)—Mackay—Wallace. Agent—Adam Shiell, S.S.C.

Counsel for Pursuer (Respondent)—Comrie Thomson—Dickson. Agents—R. R. Simpson & Lawson, W.S.

Tuesday, June 17.

FIRST DIVISION.

ESSON (ACCOUNTANT IN BANKRUPTCY)
v. DAVIE.

Bankruptcy—Procedure where Trustee Removed—Trustee—Removal of Trustee—Meeting of Creditors to be Called by Accountant in Bankruptcy—Bankruptcy (Scotland) Act 1865 (19 and 20 Vict. c. 79), secs. 159, 161.

On 9th December 1880 James Davie, merchant, Dundee, was appointed trustee on the sequestrated estates of William Ireland, merchant, Dundee. On 24th May 1882 Mr George Auldjo Esson, Accountant in Bankruptcy, reported to the First Division of the Court of Session, under sections 159 and 161 of the Bankruptcy (Scotland) Act 1865, that the trustee had failed to perform his duties—“First, in so far as he has failed for over three years to take possession of the bankrupt’s estate and effects, and to realise and recover the same, as provided by section 80 and the other sections of said Bankruptcy Statute.” “Second, that he never called a second meeting of the creditors, or prepared and submitted to them a report, in terms of section 96 of said statute.”

Intimation was made to the trustee, who lodged answers, but did not appear at the hearing.

The Court, after hearing counsel for the Accountant, pronounced this interlocutor:—

“The Lords having considered the report of the Accountant in Bankruptcy and heard counsel thereon, remove the said James Davie mentioned in the report from the office of trustee on the sequestrated estates mentioned in the Accountant’s report, and decern: Appoint the said Accountant to call a meeting of the creditors for the election of a new trustee, at Dundee, on Friday 27th curt. at 1 o’clock p.m., and appoint the Sheriff-Substitute to preside at the said meeting:

Find the said James Davie liable in expenses to the Accountant in Bankruptcy,” &c.

Counsel for the Accountant in Bankruptcy—Mackay. Agents—Mackenzie, Innes, & Logan, W.S.

Friday, June 20.

FIRST DIVISION

[Lord Kinnear, Ordinary.]

MAGISTRATES OF ELGIN v. THE HIGHLAND RAILWAY COMPANY.

Superior and Vassal—Casualty—Railway Company—Statutory Title—Lands Clauses Consolidation (Scotland) Act 1845 (8 Vict. c. 19), secs. 80, 107, 111, 126—Conveyancing (Scotland) Act 1874 (37 and 38 Vict. c. 94), sec. 4, sub-sec. 4.

Section 126 of the Lands Clauses Act provides—“The rights and titles to be granted in manner herein mentioned in and to any lands taken and used for the purposes of this Act shall, unless otherwise specially provided for, in nowise affect or diminish the right of superiority in the same, which shall remain entire in the person granting such rights and titles; but in the event of the lands so used or taken being a part or portion of other lands held by the same owner under the same titles, the said company shall not be liable for any feu-duties or casualties to the superiors thereof, nor shall the said company be bound to enter with the said superiors.”

Under powers in their Act, a railway company acquired certain lands which were parts or portions of other lands held by the same owners under the same titles. The title of the company to these lands was taken in the form prescribed by the 80th section of the same statute, by which they obtained a complete and valid feudal title. An action at the instance of the superiors of the lands so taken against the company, under sec. 4, sub-sec. 4, of the Conveyancing (Scotland) Act 1874, for declarator and payment of a casualty, held excluded by section 126, and dismissed.

This was an action under the Conveyancing (Scotland) Act 1874, section 4, sub-section 4, at the instance of the Lord Provost, Magistrates, and Council of Elgin, as superiors of the various parcels of land after referred to, and duly infeft therein, against the Highland Railway Company, incorporated by Act of Parliament, to have it found and declared that in consequence of the deaths of the several vassals last vest and seised in the said various parcels of land, casualties of one year’s rent, amounting *in cumulo* to £3300, had become due and payable to the pursuers, and that the defenders should be decerned to make payment of the said sunn.

These parcels of land were acquired compulsorily by the Inverness and Aberdeen Junction Railway Company, under powers conferred by their Act in 1856, in which were incorporated the provisions of the Lands Clauses Act 1845, and the Railway Clauses Act 1845, and compensation was made to the owners and occupiers.