the Court for the winding-up of the company. Three days after the petition was presented the Registrar of Joint-Stock Companies struck it off the register as a company "not carrying on business or in operation," in terms of section 7 of the Companies Act 1880.

That section provides that where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation he shall, after certain demands for information, and after certain notices in the *Gazette* and to the company itself, unless cause be shown to the contrary, strike it off the register, and publish notice thereof in the *Gazette*, "and on the publication in the *Gazette* of such last-mentioned notice the company whose name is so struck off shall be dissolved; provided that the liability (if any) of the directors, managing officers, and members of the company shall continue, and may be enforced, as if the company had not been dissolved." By sub-section (5) of the same section, "if the company or any member feel aggrieved at the name being so struck off, 'the company or member' may apply to the Court in which the company is liable to be wound up, and such Court may order the name to be restored to the register, and thereupon the company 'shall be deemed to have continued in existence as if the name thereof had never been struck off.'"

On the petition again appearing in the Single Bills, counsel for petitioner stated that no answers were lodged, but that the Registrar had struck the company off, as above stated; that it could not be restored except by the application of the "company" or a "member" (sub-sec. (5), *supra*); that as a public company cannot be sequestrated (*Standard, &c., Company* v. *Dunblane, &c.*, Dec. 12, 1884, 12 R. 328), the petitioner, as a creditor, had no remedy except a winding-up order, to which he submitted he was now entitled as the company had been ostensibly an existing company when he presented the petition, and no application might ever be made to restore it to the register.

The Court granted the petition and appointed a liquidator.

Counsel for Petitioner—Alison. Agent—T. F. Weir, S.S.C.

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*Saturday, November 6.*

## FIRST DIVISION.

[Sheriff of the Lothians.

## SCOTT *v.* COOK.

*Lease—Removing—Citation—Peace-warning to Leave Urban Tenement.*

*Held* that a peace-warning served upon the tenant of a shop and a dwelling-house, which were separate subjects, at the shop, was a good citation as regarded both subjects, on the ground that the tenant was at the time living at the shop.

*Sheriff—Process—Exception—Sheriff Courts Act* 1877 (40 *and* 41 *Vict. c.* 50), *sec.* 11.

The 11th section of the Sheriff Courts Act 1877 provides that "when in any action competent in the Sheriff Court a deed or writing is founded on by either party, all objections thereto may be stated and maintained by way of exception without the necessity of bringing a reduction thereof."

*Opinion* (*per* the Lord President) that a sheriff-officer's execution is a "deed or writing" in the sense of those words as used in this section.

Misses Harriet Scott, Jane Scott, and Magdalen Scott were the proprietors of a shop situated in St Andrew Street, and a dwelling-house in Smeaton's Close, Leith. This house and shop were separate, but near each other. Isabella Cook was tenant of both house and shop, under missives of lease from Whitsunday 1885 to Whitsunday 1886. The proprietors called upon Cook to remove at Whitsunday 1886 under a peace-warning, of which the executions were dated 3d April 1886, but Cook refused to remove, and a petition for her ejection was accordingly presented in the Sheriff Court of the Lothians and Peebles at Edinburgh.

This was a process of summary ejection from both premises.

The pursuers stated that on 3d April they had given the defender peace-warnings to remove at Whitsunday, but she had failed to do so, and they produced (1) an execution of warning applicable to the shop, and (2) an execution of warning applicable to the house, as evidence that warning was duly given.

The defender denied that she had been "peace-warned," and alleged that the "executions referred to are false and fabricated. It is not true that on 3d April last, or on any other date, James Lindsay, sheriff-officer, Leith, served upon the defender or her husband, or any servant for them, any intimation to the effect as therein stated." She further averred that she was married to a man called Henry Ayre, and that he not being called the action should be dismissed.

The pursuers, *inter alia*, pleaded—"(3) The executions in question cannot be pleaded by way of exception in the Sheriff Court." . . .

The Sheriff-Substitute (HAMILTON) repelled the pursuers' third plea, and allowed a proof.

"*Note.*—. . . . The question is, whether the defender is entitled to maintain this defence by way of exception under the 11th section of the Sheriff Court Act 1877, which provides—'When in any action competent in the Sheriff Court a deed or writing is founded on by either party, all objections thereto may be stated and maintained by way of exception, without the necessity of bringing a reduction thereof.' The Sheriff-Substitute is of opinion that the words 'deed or writing' used in this section are wide enough to embrace the executions here founded on, and that it would be against the policy of the Act of 1877 to compel the defender to bring an action of reduction in the Court of Session."

At the proof James Lindsay, the sheriff-officer, deponed—"The peace-warnings in question were given in writing, and therefore what I served was in writing. They were served in only one place—the shop. There was a house at the back. There was no one in the house when we went there." . . . "I think it was defender's mother that we found in the shop." . . . "The two citations were served in the shop because we could not get into the house, the door being locked. The house and shop were separate, but they were

quite close to each other. I gave to defender's mother the papers relating to both the house and shop." The defender deponed that Lindsay had never been in her house on 3d April; that she had been in bed in a room at the back of her shop the whole of that day, and had never heard of his coming to the shop. Her mother also denied that Lindsay had been to the shop. On the other hand, a witness deponed that she saw Lindsay go to defender's house on April 3d, and directed him to the shop.

On 15th July 1886 the Sheriff-Substitute found that defender was duly warned to remove, and granted warrant of ejectment as prayed for. The defender appealed to the Sheriff. On 2d August 1886 the Sheriff (CRICHTON) adhered.

The defender appealed, and argued—(1) The citation was bad both as regarded the shop and the house, for the Act required either personal service or by means of a servant. The citation was made upon the defender's mother, which was not good, it not being enough to serve it on anyone who happened to be in the house — Act 1540, cap. 75; Campbell on Citation, p. 25. (2) The action was incompetent, because the defender's husband was not called as a party—Bell's Prin. sec. 1610; Mackay, i. 342; Fraser on Husband and Wife, i. 582.

Argued for the pursuer—(1) The defender entered appearance as "Isabella Cook," not "Isabella Ayre." It was vain at this stage of the proceedings to assume the *status* of a married woman. (2) The citation was good, and in any case the solemnities of the Act were not required in the warning of tenants from urban tenements—Ersk. ii. 6, 47; *Chirnside* v. *Park*, 1843, 5 D. 864; *Macdonald* v. *Sinclair*, 1843, 5 D. 1253.

At advising—

LORD PRESIDENT—There is no difficulty in this case, and without doubt the Sheriff is right. The only question is, whether a warning was given in the case both of the shop and of the house? It is undoubted that these are separate subjects, but it is not essential to a warning to quit that it be given on the premises. The important thing is, that the warning be given to the party, and that may be done either by personal service or at the party's residence. Now, I am satisfied upon the evidence that this woman was living at the shop. It was not a shop merely, but a shop and dwelling-house.

As to the *status* of the defender, she cannot be heard, at this stage of the case, to say that she is a married woman.

It is not necessary to decide the point under the 11th section of the Sheriff Court Act of 1877. But if it were necessary, I should have little hesitation in affirming that a warning is a writing under that statute.

LORDS MURE, SHAND, and ADAM concurred.

The Court pronounced this interlocutor:—

"Find that the appellant (defender) was tenant of the shop and dwelling-house in question for the year ending Whitsunday last, and find that she was duly warned to remove at said term: Therefore dismiss the appeal, and affirm the judgments of the Sheriffs appealed against: Find the appellant liable in expenses," &c.

Counsel for Pursuer—Henderson Begg—Napier. Agents—Tait & Johnston, S.S.C.

Counsel for Defenders—Rhind. Agent—Robert Broatch, L.A.

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*Wednesday, November* 10.

## FIRST DIVISION.

[Lord M'Laren, Ordinary.

## ELGIN COUNTY ROAD TRUSTEES *v.* INNES.

*Road—Road Trustees—Fence—Title to Sue.*

Road trustees have the right at common law to take action to have a proprietor who has erected between his lands and the road a fence dangerous to the public or to bestial, ordained to remove the same or make it safe.

*Road—Road Trustees—Fencing of Public Road—Barbed Wire.*

Where a proprietor had erected at the side of a public road a fence composed for the greater part of barbed wire, the Court, being satisfied on the complaint of the road trustees that the fence was dangerous for travellers and bestial, intimated that unless the proprietor agreed to remove the barbed wires, which were from their position dangerous to persons and cattle using the road, they would direct such wires to removed.

This was an action of declarator and interdict raised by the Elgin County Road Trustees against the Rev. John Brodie Innes of Milton Brodie, in the county of Elgin, by which they sought to have it declared "that the erection of fences composed wholly or partly of barbed or pointed wire, extending along the side of a public road, is illegal," and to have the defender ordained to remove a fence composed of barbed wire, which he had recently erected on his property on the side of the public road leading from Forres by Kinloss to Burghead; then followed a general conclusion that the defender should be interdicted from placing any fences composed of barbed wire alongside the public roads in the county of Elgin.

By the Elgin and Nairn Roads and Bridges Act 1863 the public roads and highways of the county of Elgin were vested in the pursuers. They averred that at a certain place on the public road leading from Forres to Burghead the defender had erected recently a fence composed of barbed wire; that the fence separated the public road from the defender's property; that it was on the level of the road, and not separated from it. They further averred that the barbed wire was dangerous to travellers along the public road, and to cattle and sheep; that it interfered with the ordinary traffic, and constituted an obstruction to the road.

The defender admitted the erection of the fence, and as to its position and construction he explained as follows:—"It stands entirely on the defender's ground. At no part of the road