

Friday, December 3.

SECOND DIVISION.

THE LIQUIDATOR OF THE BRITISH CANADIAN LUMBERING AND TIMBER COMPANY (LIMITED).

Public Company—Winding-up—Liquidator—Supervision Order—Companies Act 1862 (25 and 26 Vict. cap. 86), sec. 100.

The liquidator of a land company, the property of which consisted of timber lots in America, and which was being wound up under a supervision order of the Court of Session, applied to the Court (1) under the Companies Act 1862 for an order on an alleged creditor of the company, who resided in America, to deliver to the liquidator there certain books and papers, the property of the company, which he retained in respect of an alleged lien over them; (2) for authority to the liquidator to give his concurrence to sales of the timber lots by private bargain, and not by public auction, as the former was more advantageous for the estate. *Held* that intimation of the order must be given to the person against whom the first part of the prayer was directed, and that the second part of the prayer should be granted.

The Companies Act 1862, sec. 100, provides—“The Court may at any time, after making an order for winding-up a company require any contributory for the time being settled on the list of contributories, trustee, receiver, banker, or agent or officer of the company, to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the Court directs, to or into the hands of the official liquidator, any sum or balance, books, papers, estate, or effects which happen to be in his hands for the time being, and to which the Company is *prima facie* entitled.”

On 21st April 1884 the British Canadian Lumbering and Timber Company (Limited) adopted a resolution for the voluntary winding-up of the company in terms of the Companies Act. Geo. Todd Chiene, C.A., Edinburgh, was appointed liquidator. On 3d July 1884 the Court of Session pronounced a supervision order in common form.

The liquidator now presented a note to the Court, in which he stated that since his appointment he had found that the greater part of the lands of the company, consisting of timber lots situated in Canada, and to a small extent in the United States of America, were in the hands of creditors in those countries. These creditors claimed to be secured in the various properties by deeds granted by the company before the liquidation; that he was unable to discover the true position of the company for want of various books and papers which were in the hands of Mr Allan Grant, now or lately lumber merchant, Ottawa, Canada, and formerly an agent of the company there, who had got these books, &c., in that capacity, but who declined to give them up or exhibit them to the representative of the liquidator in Canada, on the ground that he had a lien over them for a debt due by the company to him personally in respect of a transaction connected with the purchase of right to cut

timber on certain lands. The liquidator further stated that he had been advised by Canadian counsel that proceedings should be taken in the Canadian Courts to compel Mr Grant to deliver up the said books and papers, but that antecedently an order should be given by the Court under the supervision of which the liquidation was proceeding under section 100 of the Companies Act of 1862 calling upon Mr Grant to deliver up the said documents. He therefore prayed the Court, as he was by the want of the said books prevented from proceeding with the settlement of the company's affairs, to order Mr Grant to deliver up to the liquidator in Canada all books and papers belonging to the company that were in his possession, and in the event of his failing to comply with that order to authorise the liquidator to proceed against him in the High Court of Justice in Canada. The liquidator further stated that the property of the company in America consisted principally of “timber limits”—*i.e.*, the right acquired from proprietors to cut down the timber on a piece of ground; that he had endeavoured to sell these lots by public auction, but had been unsuccessful; and that he was informed by his Canadian advisers the better way was to sell by private bargain, after advertising and giving the option of foreclosing at a particular figure, within a specified period intended to give an opportunity of examination; and he therefore prayed the Court to approve of his giving concurrence to the sale of these “timber lots” by private bargain instead of by public auction.

The Court granted the second part of the prayer of the petition, but ordered that intimation should be given to Mr Grant of that part of the prayer which was directed against him.

Counsel for Liquidator—Graham Murray.
Agents—Graham, Johnston, & Fleming, W.S.

Friday, December 3.

FIRST DIVISION.

THE INCORPORATED SOCIETY OF LAW-AGENTS IN SCOTLAND *v.* CLARK.

Law-Agent—Law-Agents (Scotland) Act 1873 (36 and 37 Vict. cap. 63), sec. 14—Petition to Strike Name off Roll.

A person practising as a law-agent, who had been convicted of an offence under the Criminal Law Amendment Act, sec. 11, and been, on the petition of the S.S.C. Society, struck off the roll of that body, was proceeded against by petition in name of the Incorporated Society of Law-Agents to have his name struck off the roll. Circumstances in which the Court *refused* to direct the Keeper of the Roll of Law-Agents to strike the name off the roll.

Observations on the nature of the jurisdiction of the Court in such proceedings.

This was a petition by the Incorporated Society of Law-Agents in Scotland praying the Court to direct the Keeper of the Roll of Law-Agents to strike the name of the respondent off the roll. The circumstances under which the application was made are sufficiently set out, *ante*,

vol. xxiii. p. 829, when the Court dealt with an application by the Society of Solicitors in the Supreme Courts in Scotland against the same respondent.

The petitioners averred that they were incorporated by royal charter; that by the Law-Agents (Scotland) Act 1873, sec. 14, sub-sec. 1, it is provided that the name of any person may be struck off the rolls "in obedience to the order of the Court upon application duly made, and after hearing parties, or giving them an opportunity of being heard;" that the statements contained in the petition of the S.S.C. Society in the proceedings above referred to were true in point of fact, and that the Court in that application granted the prayer of the petition; that the respondent's name still stood on the roll of law-agents entitled to practise in the Court of Session, made up and kept under the provisions of the Law-Agents Act; and that in the circumstances the respondent was not a fit person to be allowed to continue to practise as a law-agent.

Answers were lodged for the respondent. He denied that he was a member of the Incorporated Society of Law-Agents in Scotland, or that it had any jurisdiction over him or interest in the present matter, or that the Society had authorised the petition. He alleged that the re-opening of the matter by the present proceedings was unjust and oppressive, and that even assuming his guilt, which, however, he denied, he had already been sufficiently punished; that the Society had no title or interest to present the application; and that in any event punishment by expulsion as craved was excessive.

A memorial was presented, signed by 166 Writers to the Signet, Solicitors before the Supreme Courts, and law-agents, expressing their opinion that the respondent had been already sufficiently punished, and that his name should not be struck off the roll of law-agents.

Argued for the petitioners—The offence of which the respondent had been found guilty warranted the present application, and sec. 14 of the Law-Agents (Scotland) Act 1873 specified the procedure to be followed before the name of a member was struck off the roll. The procedure had been regular, and the prayer of the petition should be granted—*Solicitors of Elgin v. Shepherd*, February 16, 1881, 18 S.L.R. 303.

Replied for respondent—It was not desired to raise any technical points on the question of title, as the respondent desired to have the matter determined on its merits. The membership of the Society was 500, of whom only 17 were resident in Edinburgh, while of these 8 had signed the memorial for the respondent. The respondent had already, in any view, been sufficiently punished.

At advising—

LORD PRESIDENT—[who delivered the judgment of the Court]—The Lord Advocate, on behalf of the respondent, has withdrawn the objection to the title of the petitioners to make the present application, and therefore it is not necessary for the Court to dispose of the points raised in the answers affecting the title. I think it right to say, however, that I should be very slow indeed to reject the title of any person having an in-

terest to make an application of this kind to the Court. The jurisdiction of the Court in this matter is not created by the Law-Agents Act. It is altogether independent of it, and the title to make a complaint of this kind is sufficient if the person who makes the complaint is himself an enrolled law-agent, and thus has an interest to see that the roll is kept pure.

With regard to the merits of this application, and the statements made in answer, the duty of the Court is undoubtedly a delicate one. We have to consider, among other things, what effect ought to be given to a statement which has been put into process signed by 166 gentlemen known to the Court as practitioners.

In some cases in a certain class of offences I do not think the Court would be inclined to listen to any such statement, because there are offences of such a description as would completely disqualify the person who committed them from acting in the profession of a law-agent in future, and no concurrence of opinion or sympathy with the party complained of could be allowed to interfere with the duty of the Court in putting an end to the connection between the Court, so far as concerns the right to practise before it, and the person so offending.

But the offence of which the respondent here was convicted is of a peculiar kind, and seeing that so many gentlemen who are practising in this Court, or at least following the profession of law-agent within this district of country, are desirous that the punishment already inflicted upon the respondent should be held as sufficient, and imply, although they do not expressly state, that they would be willing to associate with him in future as a professional brother, the Court has come to be of opinion that in the circumstances they will not strike the respondent's name off the roll, and further that they will not make any order in the matter of expenses.

Petition refused.

Counsel for Petitioners—Guthrie. Agents—Carment, Wedderburn, & Watson, W.S.

Counsel for Respondent—Lord Adv. Macdonald, Q.C.—Rhind—Hay. Agent—Party.

Tuesday, December 7.

FIRST DIVISION.

[Lord Kinnear, Ordinary.]

HONEYMAN & WILSON v. ROBERTSON AND OTHERS.

Husband and Wife—Provision to Wife—Reservation by Husband—Competition between Widow and Creditors.

A husband while solvent purchased heritable subjects, and took the title in name of himself and his wife in conjunct liferent for her liferent use allanarly, and certain children of theirs in fee, but under a reserved power at any time during his life, and without the consent of his wife, "to sell, burden, wadset, and affect with debt, or even gratuitously dispone, the subjects as if he