

The Court pronounced this interlocutor:—

“Find in fact (1) that on the occasion libelled, when a horse belonging to the pursuer was pulling a lorry loaded with grain across a line of rails at the harbour of Aberdeen, the property of the defenders, one of its hind feet slid into and became wedged in one of the rails, and was thereby injured; (2) that the said rails were laid down by the defenders under statutory authority, and are of the form and quality approved of and customary at the time and still in use, and at the date of the said accident were in good and sufficient order and repair; (3) that the accident was not caused by fault or negligence on the part of the defenders: Therefore dismiss the appeal,” &c.

Counsel for Pursuer—Comrie Thomson—Watt.  
Agent—Andrew Urquhart, S.S.C.

Counsel for Defenders (Respondents)—Dickson.  
Agents—Morton, Neilson, & Smart, W.S.

Wednesday, February 2.

## SECOND DIVISION.

[Lord Fraser, Ordinary.]

M'LEAN v. ANGUS BROTHERS.

*Husband and Wife — Wife's Separate Estate — Married Women's Property (Scotland) Act 1881 (40 and 41 Vict. c. 29)—Bill.*

Held that the Married Women's Property (Scotland) Act 1881 does not alter the rule of the common law that a married woman having separate estate cannot competently bind either herself or her separate estate by granting a bill.

In December 1885 the firm of Duncan M'Lean & Sons, wholesale provision merchants, Glasgow, finding themselves in financial difficulties, convened a meeting of their creditors, and offered them a composition of 8s. in the pound, payable by four instalments of 2s. 6d. at two months, 2s. 6d. at four months, 2s. 6d. at six months, and the remaining 6d. at eight months. Mrs M'Lean, the wife of Duncan M'Lean, a partner of the firm, signed promissory-notes along with the firm for the third instalment. The creditors, amongst whom were Angus Brothers, produce merchants in Glasgow, accepted the offer. The firm thereafter resumed business, but in March 1886 they were obliged to stop payment, and sequestration was awarded on 19th March. The promissory-note granted to Angus Brothers became due on 17th July 1886, when Angus Brothers caused it to be protested for non-payment, recorded the protest, and gave Mrs M'Lean a charge thereon.

Mrs M'Lean brought this suspension of the charge for payment on the following ground, which was thus stated in her second plea-in-law—“The complainer as a married woman could not validly sign the promissory-note charged on, and the charge ought therefore to be suspended.”

The respondents pleaded—“(2) The said Mrs M'Lean being possessed of means and estate exclusive of the *jus mariti* and right of administration of her husband at the date of granting said

promissory-note and now, the said promissory-note constitutes a valid obligation against her and her estate.”

The Married Women's Property (Scotland) Act 1881 (40 and 41 Vict. c. 29), by section 1, sub-section 2, enacts—“Any income of such estate” (*i.e.*, the whole moveable or personal estate of a wife married after the date of the Act) “shall be payable to the wife on her individual receipt or to her order, and to this extent the husband's right of administration shall be excluded, but the wife shall not be entitled to assign the prospective income thereof, or, unless with the husband's consent, to dispose of such estate.” Section 2 enacts—“Where a marriage is contracted after the passing of this Act, the rents and produce of heritable property in Scotland belonging to the wife shall no longer be subject to the *jus mariti* and right of administration of the husband.” Section 8 enacts—“This Act shall not affect any contracts made or to be made between married persons before or during marriage, or the law relating to such contracts, or the law relating to donations between married persons, or to a wife's non-liability to diligence against her person, or any of the rights of married women under the recited Act.”

The Bills of Exchange Act 1882 (45 and 46 Vict. c. 61), section 22 (1) enacts—“Capacity to incur liability as a party to a bill is co-extensive with capacity to contract.”

The Lord Ordinary (FRASER) suspended the charge *simpliciter*, and whole grounds and warrants thereof.

The respondents reclaimed, and argued—The Married Women's Property Act 1881, sec. 1, sub-section 2, enacts that the income of a married woman's moveable estate should be payable on her individual receipt or to her order. That implied that she might grant a bill good against her moveable estate, and as section 2 of the Act must be interpreted along with the above sub-section, the rents and produce of her heritable estate were in the same position. Further, section 1, sub-section 2, gave her capacity to contract to any extent provided she had the consent of her husband. Then section 8 declared that a married woman's person should not be subject to diligence, and the inference was that her property was subject. The Bills of Exchange Act 1882, section 22, construes this result by making a capacity to incur liability as a party to a bill co-extensive with capacity to contract. If the married woman could contract with reference to her moveable estate, she could grant a bill against it.

At advising—

LORD YOUNG—I think the judgment is right here. By the common law of Scotland a married woman having separate estate is nevertheless not entitled to grant, or rather is protected from granting, a bill as cautioner for debt. The Married Women's Property Act, which was intended to give her further protection, it is argued, has here deprived her of the protection which she already had. I cannot assent to that argument. The Bills of Exchange Act was referred to. In it, it is true, the general principle is announced—and announced superfluously—that the power to grant a bill of exchange is commensurate with the power to contract. That, however, was

the common law before the passing of the Act, and consequently the Act leaves the question exactly where it was. I therefore think we should adhere to the Lord Ordinary's judgment.

The LORD JUSTICE-CLERK, LORD CRAIGHILL, and LORD RUTHERFURD CLARK concurred.

The Court adhered.

Counsel for Suspenders—Rhind—A. S. D. Thomson. Agent—Martin J. Brown, S.S.C.

Counsel for Respondents (Reclaimers)—Shaw—Craigie. Agents—Winchester & Nicolson, S.S.C.

Thursday, February 2.

### FIRST DIVISION.

THOM (CLERK TO POLICE COMMISSIONERS OF LINLITHGOW), PETITIONER.

*Burgh—Administration of Burgh Property—Nobile officium—Authority to Sell—General Police and Improvement (Scotland) Act 1862, (25 and 26 Vict. c. 101).*

In a petition presented by the clerk to the commissioners of police of a burgh constituted under the General Police and Improvement (Scotland) Act 1862, the Court granted authority to sell by public roup part of the burgh property acquired by the commissioners under section 125 of the said Act.

John Thom, Clerk to the Commissioners of Police of the burgh of Linlithgow, presented this petition, in which he averred that the Royal Burgh of Linlithgow was also a burgh constituted under the General Police and Improvement (Scotland) Act 1862 (25 and 26 Vict. c. 101) and the General Police and Improvement (Scotland) Act 1868 (31 and 32 Vict. c. 102); that under section 125 of the first recited Act the Commissioners had in 1877 purchased certain heritable subjects; that these had since that date been partly let to tenants and partly used as a fire-engine house and lamp store, and that the Commissioners were desirous to obtain power to sell the same.

He further averred that the statutes referred to contained no general power of sale, and that the powers of sale specially conferred by sections 161 and 373 of the Act of 1862 would not authorise a sale of the subjects in question, and referred to the petition of Alexander Tait, Clerk to the Commissioners of Police of the burgh of Grangemouth, 1st July 1884 (not reported), in which warrant to sell the old Town Hall of Grangemouth by public roup had been granted.

The petitioner accordingly prayed for authority to sell, by private bargain, that portion of the subjects not required for the purposes of the Commissioners.

The Court, on the petition being amended so as to embrace an alternative prayer for warrant to sell the subjects in question by public roup, granted warrant to sell by public roup.

Counsel for Petitioner—Wilson. Agent—Petitioner.

Wednesday, February 2.

### SECOND DIVISION.

[Lord M'Laren, Ordinary.]

MORRISON v. NEILSON.

*Agreements and Contracts—Volunteer—Volunteer Act 1863 (25 and 26 Vict. c. 65), secs. 24, 25, and 27.*

Held that subscriptions to the funds of a volunteer corps, made payable by rules made under the Volunteer Act 1863, and approved by the War Office in terms of that Act, are debts which may be recovered in a court of law.

A volunteer corps made in March 1885, and obtained approval of rules which, *inter alia*, provided that the honorary colonel's subscription should be a certain sum, and that all subscriptions should fall due on 31st October in each year for the twelve months preceding, and that a member should be liable for a subscription provided he had been a member for one month in any year. Held that the rule, though dated in March 1885, made the honorary colonel legally liable for a subscription at the rate fixed by it, for the year ending 31st October 1885. Lord Young *dissented*, holding that the rule ought not to apply to the year in which it was passed, but only to the twelve months which began to run after 31st October 1885.

The Act 26 and 27 Vict. c. 65, provides, sec. 24—“The officers and volunteers belonging to a volunteer corps may from time to time make rules for the management of the property, finances, and civil affairs of the corps, and may alter or repeal any such rules, but any such rules shall not have effect unless and until the commanding officer of the corps thinks fit to transmit the same to the lieutenant of the county to which the corps belongs, and such lieutenant thinks fit to submit the same for Her Majesty's approval, and such approval, signified through one of Her Majesty's Principal Secretaries of State, is notified by such lieutenant to the commanding officer of the corps, to be by him forthwith communicated to the corps, whereupon the rules so approved shall be binding on all persons.”

Section 25, which is quoted in the opinion of Lord Craighill *infra*, provides that all money subscribed for the use of volunteer corps, and all effects belonging to it, and not the property of any individual volunteer, shall, along with the exclusive right to sue for and recover current subscriptions and other money due to the corps, vest in the commanding officer for the time being.

Section 27—“If any person belonging or having belonged to a volunteer corps . . . neglects or refuses to pay any money subscribed or undertaken to be paid by him towards any of the funds or expenses of such corps . . . or due under the rules of such corps, and actually payable by him, or to pay any fine incurred by him under the rules of such corps, such money or fine shall (without prejudice to any other remedy) be recoverable from him with cost at any time within twelve months after the same becomes due and payable as a penalty under this Act is recoverable,” &c.

This was an action in which the pursuer was Adam Morrison, the Lieutenant-Colonel and