

Friday, January 9.

FIRST DIVISION.

RAMSBOTHAM v. SCOTTISH AMERICAN INVESTMENT CO., LIMITED.

Process—Special Case—Court of Session Act 1868, sec. 3.

A limited company and one of its shareholders presented a special case for the opinion and judgment of the Court on a question which affected the shareholders in general, namely, whether it was within the company's powers to increase its capital by the creation of new stock of a certain character. Held that the special case was competent, as the question raised therein could have been tried between the parties thereto in some other form of process.

Samuel Ramsbotham, M.D., a shareholder in the Scottish American Investment Company, Limited, and the said Scottish American Investment Company, submitted a special case to the First Division of the Court as first and second parties thereto respectively.

The question on which the opinion of the Court was desired was, Whether the increase of the company's capital by the creation of a number of new shares of a certain character was within the company's powers, and whether certain special resolutions purporting to increase the capital by the creation of such shares were valid?

When the case was called in Single Bills some doubt was expressed from the bench whether the question raised in the case, affecting as it did the whole body of shareholders, could competently be tried in the form of a special case to which the company and only one shareholder were parties, and the case was continued to allow the parties to look into the matter.

When the case was again called, it was submitted for the parties that the case stood the test of competency laid down in the case of *The Parochial Board of Bothwell v. Pearson*, February 6, 1873, 11 Macph. 399, as the question raised could have been tried between the parties in some other form of process; and reference was also made to the following cases—*Commissioners of Kirkintilloch v. McDonald and Others*, October 31, 1890, 28 S.L.R. 57; *Bruce v. Ratepayers of Fordoun*, March 7, 1889, 16 R. 568.

At advising—

LORD PRESIDENT—I rather think that Mr Lorimer is right in saying that the present case stands the test of which he spoke, and that a single shareholder has a good title to challenge the proceedings of the company by suspension, declarator, or other form of process, and therefore that the provisions of the 63rd section of the Court of Session Act 1868 apply.

LORD ADAM and LORD KINNEAR concurred.

LORD M'LAREN was absent.

The case was sent to the roll.

Counsel for the First Party—D. F. Balfour, Q. C.—H. Johnston. Agents—Crombie, Bell, & Bannerman, W. S.

Counsel for the Second Parties—Lorimer. Agents—Menzies, Black, & Menzies, W. S.

Tuesday, January 13.

SECOND DIVISION.

[Sheriff of the Lothians.

WOOD v. CRANSTON & ELLIOT AND OTHERS.

*Bankruptcy—Notour Bankruptcy—Pari passu Ranking—Bankruptcy (Scotland) Act 1856 (19 and 20 Vict. c. 79), sec. 12—Debtors (Scotland) Act 1880, sec. 6.*

Under the Debtors (Scotland) Act 1880, sec. 6, notour bankruptcy is constituted "by insolvency concurring with a duly executed charge for payment, followed by the expiry of the days of charge without payment."

The Bankruptcy (Scotland) Act 1856, sec. 12 provides—"Arrestments and poidings which shall have been used within sixty days prior to the constitution of notour bankruptcy, or within four months thereafter, shall be ranked *pari passu* as if they had all been used of the same date," . . . provided "that any creditor judicially producing in a process relative to the subject of such arrestment or poiding liquid grounds of debt or decree of payment within such periods shall be entitled to rank as if he had executed an arrestment or a poiding."

A creditor charged his debtor on a decree under the Debts Recovery Act, and the charge expired without payment upon 7th February. He then poided his debtor's goods, and carried through a sale of them upon 27th May. Upon 20th June following other creditors of the common debtor judicially produced liquid grounds of debt against him, but held that they were not entitled to a *pari passu* ranking, as the date of the notour bankruptcy was 7th February, and they had failed to produce their grounds of debt within four months thereof.

Under the Debtors (Scotland) Act 1880, sec. 6, notour bankruptcy is constituted "by insolvency concurring with a duly executed charge for payment, followed by the expiry of the days of charge without payment."

The Bankruptcy (Scotland) Act 1856 (19 and 20 Vict. c. 79), provides, sec. 9—"Notour bankruptcy shall be held to commence from the time when its several requisites concur, and when it has once been constituted shall continue in case of a sequestration till the debtor shall obtain his discharge, and in other cases until