

Friday, November 13.

FIRST DIVISION.
THE UNION BANK OF SCOTLAND,
PETITIONERS.

Sequestration—Petition for Warrant to Hold Meeting of Creditors.

On November 3rd 1891 the Sheriff-Substitute of Kirkcudbright, on the petition of the Union Bank of Scotland, sequestrated the estates of Thomas Porter Campbell, and appointed the creditors to hold a meeting on 12th November for the election of a trustee and commissioners. On 6th November the usual notices were inserted in the *Edinburgh* and *London Gazettes*, but no meeting was held on the 12th, it being thought that sufficient notice had not been given in terms of the Bankruptcy Act. The Union Bank then presented a petition to the First Division of the Court, praying the Court to appoint a meeting of creditors to be held on a certain date for the election of a trustee and commissioners, and to grant warrant for advertising the meeting in usual form.

The Court granted the prayer of the petition, but found that the expenses of the petition were not to be made a charge against the bankrupt's estate.

Counsel for the Petitioners—Dewar.
Agents—Ronald & Ritchie, S.S.C.

Friday, November 13.

FIRST DIVISION.
[Sheriff of Aberdeen, Kincardine, and Banff.]
DIVERALL v. GOVERNORS OF
STRICHEN ENDOWMENTS.

Process—Appeal—Competency—Interlocutory Judgment—Court of Session Act 1868 (31 and 32 Vict. cap. 100), sec. 53.

In an action of multiplepointing raised in a Sheriff Court, the Sheriff-Substitute pronounced an interlocutor finding that the pursuers and real raisers were entitled to be ranked on the free fund *in medio*, to the extent of the said free fund, in terms of their claim, and *quoad ultra* continuing the cause. On an appeal being taken to the Sheriff, a joint minute was lodged for all the claimants stating that they were agreed, in order to curtail the expense of litigation, and enable parties to obtain the judgment of the Inner House, to crave the Sheriff to dismiss the appeal, and find all the claimants entitled to their expenses out of the fund. The Sheriff granted decree as craved in the joint minute.

Held that an appeal to the Court of

Session was incompetent, in respect that a final judgment had not been pronounced in the Sheriff Court.

In an action of multiplepointing raised by the Governors of the Strichen Endowments in the Sheriff Court at Peterhead, the Sheriff-Substitute (GRIERSON) on 1st August 1891 pronounced this interlocutor:—"Having considered the cause, together with the productions, Finds, under reference to the annexed note, that the pursuers and real raisers are entitled to be ranked on the free fund *in medio*, to the extent of the said free fund, in terms of their claim: *Quoad ultra* continues the cause."

Mrs Diverall and certain other unsuccessful claimants appealed to the Sheriff, and on 13th October a joint minute was lodged for all the claimants to the effect that they "concurred in stating that they were agreed, in order to curtail the expense of litigation, and enable the parties to obtain the opinion of the Inner House, to crave, and hereby crave, the Sheriff-Principal to dismiss the appeal, and to find the whole of the claimants entitled to their expenses, including the expense of competition, out of the fund *in medio*."

On 15th October the Sheriff (GUTHRIE SMITH) pronounced this interlocutor:—"Having considered the joint minute, dismisses the appeals, and finds the whole of the claimants entitled to their expenses, including the expenses of competition, out of the fund *in medio*: Allows accounts to be lodged, and remits the same for taxation, and decerns."

By the 53rd section of the Court of Session Act 1868 it is provided as follows—"It shall be held that the whole cause has been decided in the Outer House when an interlocutor has been pronounced by the Lord Ordinary, which, either by itself or taken along with a previous interlocutor or interlocutors, disposes of the whole subject-matter of the cause, or of the competition between the parties in a process of competition, although judgments shall not have been pronounced upon all the questions of law or fact raised in the cause; but it shall not prevent a cause from being held as so decided that expenses, if found due, have not been taxed, modified, or decerned for; and for the purpose of determining the competency of appeals to the Court of Session this provision shall be applicable to the causes in the Sheriff and other inferior courts, the name of the sheriff or other inferior judge or court being read instead of the words 'the Lord Ordinary,' and the name of the Sheriff Court or other inferior court being read instead of the words 'Outer House.'"

Mrs Diverall and certain of the other claimants then appealed to the First Division.

When the case was called in Single Bills doubts were expressed by the Court as to the competency of the appeal, and the case was continued for a day that the point might be argued, though the respondents stated that they did not desire to raise any objection to the competency of the appeal.