

Thursday, June 15.

FIRST DIVISION.

GAFF AND OTHERS, PETITIONERS.

Process—Petition—Judicial Factor—Petition for Appointment of Judicial Factor on Building Society's Estate—Nobile Officium.

Certain members of a building society presented a petition in the Inner House, stating that circumstances had rendered it impossible to wind up the society under the Building Societies Act 1874, and craving the appointment of a judicial factor.

Held that the petition should be presented to the Junior Lord Ordinary.

In 1890 an instrument of dissolution of the Second Edinburgh and Leith 493rd Starr-Bowkett Building Society was executed, and in March 1891 the trustee appointed under this instrument raised an action against Aitken, a member of the society, for a debt alleged to be due by him to the society. Aitken pleaded "No title to sue," and this plea was sustained and the action dismissed, on the ground that the instrument of dissolution had not been validly executed in terms of section 32 of the Building Societies Act 1874—(*vide* vol. xxix. 456, and 19 R. 603).

Thomas Gaff, and other members of the society, thereafter presented a petition to the First Division for the appointment of a judicial factor on the estate of the society, so far as not already ingathered or distributed.

The petitioners stated that there was now no trustee or board of management or other officer of the society who could demand payment of the debt due by Aitken; that under the rules no one could now call a meeting; and that it was "impossible to terminate or dissolve the society under section 32 of the Building Societies Act 1874."

The petitioner argued that the petition, being an appeal to the *nobile officium* of the Court, was properly presented in the Inner House.

The Court declined to entertain the petition, on the ground that it should have been presented in the Outer House.

Counsel for the Petitioners—Galloway.
Agent—Robert John Calver, S.S.C.

Saturday, June 17.

FIRST DIVISION.

KELLY *v.* GLEBE SUGAR REFINING COMPANY.

Reparation—Master and Servant—Duty of Fencing Machinery—Factory and Workshops Act 1878 (41 Vict. cap. 16), sec. 5, sub-sec. 3—Factory and Workshops Act 1891 (54 and 55 Vict. cap. 75), sec. 6.

A violation of the provisions of the Factory and Workshops Acts 1878 and 1891, in relation to the fencing of machinery, is fault on the part of the owners of the factory, which will *prima facie* entitle the workmen belonging to the factory to damages if they have been injured in consequence of the violation of the statutory provisions, although they may not have been actually engaged in the performance of the duties of their employment at the time of the injury.

In December 1892, William Kelly, foreman labourer, Mill Street, Greenock, brought an action in the Sheriff Court at Greenock for damages for the death of his son William, a boy of fifteen, who was employed by the defenders, the Glebe Sugar Refining Company, and was killed by being caught by an unfenced shaft which was in motion in an apartment of the defenders' factory.

The pursuer averred—(Cond. 4) "In said apartment on said top flat there stands a small horizontal engine with a horizontal shaft projecting from it. The said shaft, which is about 4 inches in diameter, extends along the floor of the said apartment for about 5 feet at a height of about 18 inches above the floor. At the end of the shaft there are two pulleys with leather belts round them, used for the purpose of driving an elevator with buckets attached thereto, which raises raw sugar from the ground floor of the refinery to said flat. The said shaft stands exposed on the floor of said apartment, without being fenced or guarded in any way. The buckets in the elevators are emptied into a hopper, from which the sugar is transferred into barrows, and it was deceased's duty to sweep up all sugar that might fall on the floor from the buckets, hoppers, and barrows, and generally to keep the floor clean. The deceased was never warned of any danger arising from the said shaft. The statements in answer, so far as inconsistent herewith, are denied. The position of the shaft, belting, and pulleys is not such as to render fencing unnecessary. Reference is made to concordance 6." To this the defenders answered—(Ans. 4) "Admitted that there is in the top flat the machinery stated. The engine, elevator, and buckets are fenced, the shaft, belting, and pulleys are in such a position as not to require fencing. *Quoad ultra* denied. The sugar from the buckets in the elevator falls into a hopper and thence into barrows, which are placed beneath it by two barrow men. The duty of the deceased was