

of the sea fishing-boat to which the defender belongs, and her tackle, apparel, and furniture, and any property on board thereof or belonging thereto, or any part thereof," and that if this enactment remains in force the finding of the Sheriff and the warrant granted by him for recovery of the sum of £435, 4s., by distress or pouding and sale of the sea fishing-boat "Oceana" and her tackle, apparel, and furniture, and any property on board thereof, or belonging thereto, would be competent, but it was maintained that the provision of section 20 (2) of the Act of 1883 just quoted, was repealed by the Sea Fisheries Amendment (Scotland) Act 1885.

That Act of 1885 contains no express repeal of the provisions of the Act of 1883 now in question, and it is declared by section 1 of it (the Act of 1885) that it "shall be read and construed along with the Sea Fisheries Act 1883."

I agree with the Lord Ordinary in thinking that the effect of this section is to provide that the enactments in the Acts of 1883 and 1885 shall be read and construed as if they had been one Act, so that the provisions of both Acts remain in force, unless there is some plain inconsistency between them which makes it necessary to hold that the provisions of the earlier Act have been repealed or modified by those of the later Act. I concur, however, with his Lordship in thinking that there is no such discrepancy or inconsistency in the present case, and I am therefore of opinion that the provisions of section 20 (2) of the Act of 1883, that the compensation awarded may be recovered by distress or pouding and sale of the offending boat, her tackle, apparel, and furniture, and any property on board of or belonging to her, still remain in force, and that the Lord Ordinary's interlocutor should be adhered to.

LORD ADAM and LORD KINNEAR concurred.

LORD M'LAREN was absent.

The Court adhered.

Counsel for the Complainers and Reclaimers—Salvesen, K.C.—Lippe. Agents—Erskine, Dods, & Rhind, S.S.C.

Counsel for the Respondents—The Lord Advocate (Dickson, K.C.)—Pitman. Agent—Henry Smith, W.S.

Wednesday, June 15.

## SECOND DIVISION.

[Lord Kyllachy, Ordinary.]

### SINCLAIR v. THE GLASGOW AND LONDON CONTRACT CORPORATION, LIMITED.

*Company—Process—Expenses—Caution for Expenses by Limited Company—Reclaimers—"Pursuer in Legal Proceeding"—Companies Act 1862 (25 and 26 Vict. cap. 89), sec. 69.*

The Companies Act 1862, section 69, enacts—"Where a limited company is plaintiff or pursuer in any action, suit, or other legal proceeding, any judge having jurisdiction in the matter may, if it appears by any credible testimony that there is reason to believe that if the defendant be successful in his defence the assets of the company will be insufficient to pay his costs, require sufficient security to be given for such costs, and may stay all proceedings until such security is given."

Where a limited company, who were defenders in an action, reclaimed against the decision of the Lord Ordinary, held that by reclaiming the company did not become pursuers within the meaning of section 69 above quoted.

In August 1903 Sir John George Tolle-mache Sinclair raised an action against the Glasgow and London Contract Corporation, Limited, for payment of over £600 as arrears of rent under a lease to the defenders of a slate-quarry belonging to the pursuer, which lease the pursuer averred had come to an end.

In December 1903 the Glasgow and London Contract Corporation, Limited, raised an action against Sir J. G. T. Sinclair for declarator that they were still his tenants under the lease.

In the first action the Lord Ordinary (KYLACHY) on 5th February 1904 decerned against the defenders in terms of the conclusions of the summons, and found the pursuer entitled to expenses.

In the second action the Lord Ordinary on 20th February 1904 pronounced the following interlocutor:—"Finds it sufficiently instructed that if the defender is successful in his defence, the assets of the company will be insufficient to pay his costs: Finds therefore that in these circumstances the provisions of the 69th section of the Companies Act 1862 are applicable: Therefore appoints the pursuers to consign or find security for the sum of £100 to cover the expenses of the defender up to the stage of the allowance of proof." The pursuers found security as ordered and the action proceeded, and on 8th June 1904 the Lord Ordinary assoizied the defender and found him entitled to expenses.

The Glasgow and London Contract Corporation, Limited, reclaimed against the judgment of the Lord Ordinary in both actions.

In the second action, on a note being presented by the respondent, the Court ordained the pursuers and reclaimers to consign or find security for £100 within ten days as a condition of being allowed to proceed with the reclaiming-note.

In the first action the respondent also presented a note to the Court asking that the reclaimers should be ordained to consign or find security for £100 as a condition of proceeding with the reclaiming-note.

Argued for the respondent in support of his note. The reclaimers, although defenders in the first action, became on reclaiming pursuers within the meaning of section 69 of the Companies Act 1862—*Star Fire and Burglary Insurance Company v. Davidson & Sons*, July 16, 1902, 4 F. 997, 39 S.L.R. 768. The finding of the Lord Ordinary in the second action showed that there was evidence that the assets of the company would be insufficient to pay costs in the event of the defenders being unsuccessful in their reclaiming-note.

Without calling upon counsel for the reclaimers, the Court (LORD JUSTICE-CLERK, LORD YOUNG, and LORD TRAYNER) refused the prayer of the note.

Counsel for the Pursuer and Respondent—M'Clure. Agents—Hamilton, Kinnear, & Beatson, W.S.

Counsel for the Defenders and Reclaimers—Chree—J. A. Christie. Agents—M'Neill & Sime, S.S.C.

*Tuesday, June 7.*

## FIRST DIVISION.

[Sheriff Court of Ayrshire  
at Ayr.

**STRANNIGAN v. WILLIAM BAIRD & COMPANY, LIMITED.**

*Master and Servant—Workmen's Compensation Act 1897 (60 and 61 Vict. c. 37), sec. 1, sub-sec. (3)—First Schedule, secs. 3 and 11—Medical Examination of Workman—Discontinuance of Payment under Unrecorded Agreement—Competency of Arbitration.*

A workman in receipt of a weekly payment under an agreement not recorded in terms of the Workmen's Compensation Act 1897 was examined by a medical practitioner provided by the employers, who granted a medical certificate as to his condition. This medical certificate was communicated to the workman, who was dissatisfied therewith, but declined to submit himself to examination by one of the medical practitioners appointed for the purposes of the Act. Thereupon the employers stopped the weekly payments. Subsequently the workman instituted an arbitration under section 1 (3) of the Act, claiming compensation. The Sheriff-Substitute found that the

workman was precluded from having his claim for compensation dealt with in the arbitration in respect that he had failed to submit himself for examination to one of the medical practitioners appointed for the purposes of the Act. The workman appealed. *Held* that the workman, having submitted to an examination by a medical practitioner provided by his employers, was not precluded by his failure to submit himself for examination by one of the medical practitioners appointed for the purposes of the Act from having his claim for compensation dealt with in the arbitration instituted by him.

*Niddrie and Benhar Coal Company, Limited v. M'Kay*, July 14, 1903, 5 F. 1121, 40 S.L.R. 798, *followed*; *Davidson v. Summerlee and Mossend Iron and Steel Company, Limited*, June 10, 1903, 5 F. 991, 40 S.L.R. 764, *disapproved*.

The Workmen's Compensation Act 1897 (60 and 61 Vict. c. 37), enacts—sec. 1, subsection (3)—“If any question arises in any proceedings under this Act as to the liability to pay compensation under this Act, or as to the amount or duration of compensation under this Act, the question if not settled by agreement shall, subject to the provisions of the First Schedule to this Act, be settled by arbitration in accordance with the Second Schedule of this Act.”

First Schedule (3)—“Where a workman has given notice of an accident, he shall, if so required by the employer, submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, and if he refuses to submit himself to such examination or in any way obstructs the same, his right to compensation, and any proceeding under this Act in relation to compensation, shall be suspended until such examination takes place—(1) Any workman receiving weekly payments under this Act shall, if so required by the employer, . . . from time to time submit himself for examination by a duly qualified medical practitioner provided and paid by the employer, but if the workman objects to an examination by that medical practitioner, or is dissatisfied by the certificate of such practitioner upon his condition when communicated to him, he may submit himself for examination to one of the medical practitioners appointed for the purposes of this Act, . . . and the certificate of that medical practitioner as to the condition of the workman at the time of the examination shall be given to the employer and workman, and shall be conclusive evidence of that condition. If the workman refuses to submit himself to such examination, or in any way obstructs the same, his right to such weekly payments shall be suspended until such examination has taken place.”

This was an appeal, on a case stated by the Sheriff-Substitute (SHAIRP) at Ayr, under the Workmen's Compensation Act 1897, between Matthew Strannigan, miner, Kilwinning, claimant and appellant, and