

Counsel for the Pursuers and Reclaimers—G. C. Steuart. Agents—Mackenzie & Kermack, W.S.

Counsel for the Defenders and Respondents—Orr Deas. Agent—James Reid, W.S.

Friday, July 15.

SECOND DIVISION.

[Sheriff Court, Peterhead.

LAMB v. WOOD.

Process — Sheriff — Poinding — Whether Poinding a Process—Objector Appearing by Minute—*Sheriff Court Act 1876 (39 and 40 Vict. c. 70), sec. 6.*

Held that a poinding having been executed, there was a depending process in the Sheriff Court, in which it was competent for an objector to appear by minute of compearance with note of objections annexed.

On 27th April 1904 a poinding of the goods of George B. Davidson, fishcurer, Peterhead, was executed at the instance of Robert Lamb junior, sawmiller, Logiegreen Works, Beaverhall, Edinburgh. The poinding proceeded on a warrant of the Sheriff of Aberdeen, Kincardine, and Banff.

Among the goods poinded were certain articles which had been purchased from Davidson on 27th April by Alexander Wood, fishcurer, Peterhead, as Wood alleged.

Wood lodged with the Sheriff-Clerk at Peterhead a minute of compearance and note of objections in process of poinding at the instance of Lamb against Davidson, and craved the "Court to recal" the poinding *quoad* the articles in question.

On 13th May 1904 the Sheriff-Substitute (HENDERSON BEGG) appointed the poinding creditor "to lodge answers to the foregoing note of objections."

Lamb lodged answers to the note of objections, and a statement of facts which was answered by Wood.

Wood pleaded—"The goods having been sold and purchased in good faith prior to alleged poinding, the same is invalid to attach them, and *separatim* the minuter having acquired the ownership of the goods in ordinary course of business and paid for same is entitled to have the poinding recalled."

Lamb pleaded—"(1) The minute being incompetent, the prayer ought to be refused with expenses."

On 20th May 1904 the Sheriff-Substitute pronounced the following interlocutor:—Sustains the objections for Alexander Wood, and prefers him to the goods mentioned in the minute of compearance and note of objections for the said Alexander Wood."

Lamb appealed to the Court of Session, and argued—There was no pending process in which the objector could lodge a minute; that which was lodged was therefore

inept. The procedure was ruled by *M'Dermott v. Ramsay*, December 9, 1876, 4 R. 217, 14 S.L.R. 153. The appropriate remedy was by presentation of a petition in which a record could be made up and the question of property tried on a condescendence and note of pleas-in-law—*Crozier v. Macfarlane*, June 15, 1878, 5 R. 936, 15 S.L.R. 630; Sheriff Courts (Scotland) Act 1876 (39 and 40 Vict. c. 70), sec. 6; *Hunter v. Anderson*, January 19, 1831, 9 S. 289. The practice relied on by the respondent could not prevail against the statutory provisions. The Court would remit to the Sheriff to make up a record.

Argued for the respondent—Though not in accordance with the Act of 1876 the procedure was proper according to practice—Bell's Prin., 2287, note (f); Dove Wilson's Sheriff Court Practice (4th ed.), 340. The case of *M'Dermott v. Ramsay*, *cit. sup.*, only decided that a separate action was competent notwithstanding an alternative remedy. There was already a record, and there was no need to remit back to the Sheriff.

At advising—

LORD JUSTICE-CLERK—The main dispute in the debate before us in this case was as to the competency of the procedure, the appellant maintaining that it was imperative that such proceedings must be by petition and answers, as in the case of an ordinary action. The contention was that poinding was not a process, and that therefore there was no depending process. The contention on the other side is that this is not an initial writ but a minute of compearance. I am satisfied that the Sheriff can dispense with the formalities in such a summary application as this, in which appearance is made where exceptional despatch is required, and that what was done by the respondent was only a step in proceedings already existing and not the raising of a new cause. Having considered the matter I adopt the latter contention as tenable, being satisfied that it is according to accepted and general practice. Mr Dove Wilson and Mr Graham Stewart all lay it down as well understood practice. It is quite evident that it is in the highest degree convenient that it should be so, and therefore as no case is made on the merits, which turn upon law only, no relevant facts being stated and no proof asked for, I would propose to your Lordships to adhere to the interlocutor of the Sheriff-Substitute.

LORD YOUNG concurred.

LORD MONCREIFF—The appellant maintains that this process is incompetent in respect that it is not framed in conformity with the provisions of the Sheriff Court Act 1876, which require every action brought in the ordinary Sheriff Court to be commenced by a petition containing a prayer, and having annexed an articulate condescendence and note of pleas-in-law.

If this were or intended to be a petition for interdict, the appellant's criticism

would probably be well founded, but the respondent's counsel points out that that is not its character. It is not an initial writ, but merely a minute of compearance in a depending process of pointing to which the provisions relating to the ordinary Sheriff Court do not apply. Such procedure is in accordance with the practice as stated by all the writers of authority on the subject that I am familiar with. Up to a certain point the Sheriff's duties in a pointing are ministerial; but when the pointing is reported they become judicial, and one competent form of raising the question of property in the goods pointed is compearance in the pointing.

Sheriff Guthrie, who has had large experience in Lanarkshire, so states the practice in note *f* to section 2287 of Bell's Prin., 10th ed.

Mr Dove Wilson, whose experience was equally great as Sheriff-Substitute in Aberdeenshire (from which county this case comes), states the practice to the same effect at p. 40 of the 4th ed. of his work on Sheriff Court Practice.

In the latest work on diligence, namely, that of Mr Graham Stewart, the practice is stated to the same effect at p. 354.

On the question whether the pointing is a process or merely a diligence I may refer to Lord Shand's remarks in *Clark v. Hinde, Milne, & Company*, December 18, 1884, 12 R. 347, at p. 354, 22 S.L.R. 237; and lastly in the older work of Mr M'Glashan, section 1907, p. 358, the practice is so stated.

I may also refer to the case of *Scotland v. Lawrie*, June 12, 1828, 6 Sh. 961, and to the analogous cases of sequestration for rent, of which the case of *Lindsay v. Earl of Wemyss*, May 18, 1872, 10 Macph. 708, 9 S.L.R. 458, is an example.

[His Lordship then proceeded to deal with the merits.]

LORD TRAYNER was absent.

The Court dismissed the appeal, "of new sustain the objections for Alexander Wood and prefer him to the goods mentioned in the minute of compearance and note of objections for the said Alexander Wood."

Counsel for the Appellant—Campbell, K.C.—Hunter. Agents—P. Morison & Son, S.S.C.

Counsel for the Respondent—Lippe. Agent—William Croft Gray, S.S.C.

Friday, July 15.

SECOND DIVISION.

[Sheriff Court at Airdrie.]

SNEDDON v. ROBERT ADDIE & SONS' COLLIERIES, LIMITED.

Master and Servant—Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37), sec. 7 (2), and First Schedule sec. 1 (a) (1)—Dependants—Wholly Dependent—Husband and Wife—Wife Deserted by Husband and Supported by Mother.

In order to constitute total dependency of a wife on the earnings of her husband in the sense of the Workmen's Compensation Act 1897, it is not essential that the husband was at the date of his death supporting his wife.

In an arbitration under the Workmen's Compensation Act 1897, in which the widow of a workman claimed compensation from his employers on account of the death of her husband while in the course of his employment, it was proved that in July 1901 the husband had deserted his wife and contributed nothing to her support; that from July 1901 to October 1903 the wife was supported by her mother, with the exception of a fortnight spent at a convalescent home; that in October 1903 she became housekeeper to a friend of the family, and remained with him until February 1904, but after a few weeks in his service she became ill with bronchitis and pains in the legs so as to be unfit for the proper discharge of her duties, and received pecuniary assistance to a small amount from her mother; that in February 1904 she returned to her mother; and that she suffered from chronic bronchitis and varicose veins to an extent which incapacitated her from any work requiring ordinary exertion.

Held (dub. Lord Justice-Clerk) that the claimant at the time of her husband's death was wholly dependent on his earnings within the meaning of the Workmen's Compensation Act 1897.

Cunningham v. James M'Gregor & Co., May 14, 1901, 3 F. 775, 38 S.L.R. 574, followed.

Turners Limited v. Whitefield, June 17, 1904, 41 S.L.R. 631, distinguished.

The Workmen's Compensation Act 1897, sec. 7 (2), enacts, *inter alia*—“Dependants’ means . . . (b) in Scotland such of the persons entitled according to the law of Scotland to sue the employer for damages or *solatium* in respect of the death of the workman as were wholly or in part dependent upon the earnings of the workman at the time of his death.”

This was an appeal upon a stated case in the Sheriff Court at Airdrie in an arbitration under the Workmen's Compensation Act 1897 between Margaret Russell or Sneddon, Orchard Street, Hamilton, widow of John Sneddon, miner, Rosehall, Lanark-