

Thursday, December 21.

FIRST DIVISION.

BLACKBURN v. SHARP & ANOTHER.

*Process—Reclaiming Note—Competency—Expiry of Reclaiming Days on a Day on which Clerk's Office not Open—Court of Session Act 1868 (31 and 32 Vict. c. 100), sec. 54.*

Section 54 of the Court of Session Act 1868 enacts that where the leave of the Lord Ordinary has been obtained, "a reclaiming note, presented before the whole cause has been decided in the Outer House, may be lodged within ten days from the date of the interlocutor granting leave with one of the clerks of the Division of the Court in which the cause depends, without transmission of the process or any part thereof."

Where the time for lodging a reclaiming note under section 54 of the Court of Session Act 1868 expired on a day when the clerk's office was not open, held that the reclaiming note was competently lodged on the first day thereafter on which the clerk's office was open.

In an action pending in the Outer House the Lord Ordinary (DUNDAS) pronounced an interlocutory judgment on 6th December 1905, and on the same day granted leave to the defenders in the action to present a reclaiming note against this interlocutor.

The ten days within which, under the provisions of section 54 of the Court of Session Act 1868, a reclaiming note might be lodged expired on Saturday 16th December. The clerk's office in the Register House is not open on Saturdays.

The reclaiming note was boxed on Saturday, 16th December, but was not lodged till the following Monday.

On December 21 the reclaimers enrolled the case in the Single Bills for the purpose of moving that it be sent to the Summar Roll.

Counsel for the respondent moved the Court to refuse the reclaiming note as incompetent in respect that it had not been timeously lodged. He argued that the provisions of section 54 of the Court of Session Act 1868 requiring the reclaiming note to be lodged within ten days were imperative—*Ross v. Herde*, March 9, 1882, 9 R. 710, 19 S.L.R. 481; *Watt's Trustees v. More*, January 16, 1890, 17 R. 318, 27 S.L.R. 259.

The reclaimers argued that the cases founded on by the respondent had no application, as in both these cases there had been a failure to box within the required number of days from the date of the interlocutor reclaimed against. In this case the reclaiming note was timeously boxed on Saturday, 16th December, and it was not lodged on that day simply because the clerk's office was closed on Saturdays. That being so, the provisions of section 54 of the Act were sufficiently complied with by the reclaiming note being lodged on the

first day thereafter on which the clerk's office was open—*Henderson v. Henderson*, October 17, 1888, 16 R. 5, 26 S.L.R. 11.

The Court repelled the respondent's objection to the competency of the reclaiming note.

Counsel for the Pursuer and Respondent—Blackburn. Agents—Mackenzie & Black, W.S.

Counsel for the Defenders and Reclaimers—W. T. Watson. Agents—Reid & Crow, Solicitors.

Tuesday, November 28.

FIRST DIVISION.

[Lord Ardwall, Ordinary.]

SAWREY-COOKSON v. SAWREY-COOKSON'S TRUSTEES.

*Reduction—Minority—Misrepresentation—Essential Error—Trust Conveyance by Lady in Contemplation of Marriage—Averments—Relevancy.*

In an action of reduction of a trust-conveyance raised by a lady with consent of her husband against the trustees, the pursuer averred that when she executed the deed she was a minor and knew nothing of business; that she was told by her father, whom she trusted, that she had better sign it, and that the deed was merely a testamentary arrangement of her fortune; that she now discovered that it was alleged to be an irrevocable deed under which she had tied up her whole fortune, even as against herself. Held that her averments were relevant.

*International Law—Conflict—Trust-Deed Executed by Scotchwoman in Intuitu of English Marriage—Deed in Scottish Form and Majority of Trustees Scottish—Revocability of Trust Conveyance—Power to Revoke.*

Prior to her marriage a Scotchwoman executed a trust conveyance by which she conveyed her estate to trustees. The deed was executed *in intuitu* of an English marriage, but it was in Scottish form, and two of the three trustees nominated in it were Scotch. Held (1) that the question of the revocability of the deed fell to be determined by Scotch, and not by English law; but (2) that averments that "by the law of England the effect of marriage is to incapacitate a wife from affecting or revoking, even with the consent of her husband, rights already created by her by any unilateral deed or settlement in contemplation of the marriage," were relevantly made by the defenders and must be the subject of inquiry.

*Trust—Revocation—Married Woman—Deed Executed in Contemplation of Marriage—Subsequent Marriage—Power to Revoke.*

In contemplation of marriage a lady executed a trust conveyance conveying