

meaning of that article. It is clear that as it stands, if taken literally, it is meaningless, but reading it as a whole, as I think we are entitled to do, it is also clear that the confusion is due to a grammatical error. In my opinion the Court is entitled to correct such an error. The word "not" was evidently inserted in the third stipulation of the article by failing to notice that the conjunction preceding was "unless" and not "if." I think we should read the stipulation as if the word "not" was deleted. If we do so it is clear that the action is barred by the stipulations of this article, and I prefer to base my judgment on this ground rather than that of the Lord Ordinary.

LORD M'LAREN, LORD KINNEAR, and LORD PEARSON concurred.

The Court adhered.

Counsel for the Pursuers and Reclaimers—Scott Dickson, K.C.—W. J. Robertson. Agents—Davidson & Syme, W.S.

Counsel for the Defenders and Respondents—Hunter, K.C.—Hon. W. Watson. Agents—Gill & Pringle, W.S.

Saturday, June 23.

FIRST DIVISION.

MURRAY, PETITIONER.

Bankruptcy—Sequestration—Gazette Notice—Clerical Error—Date—Nobile Officium—Bankruptcy (Scotland) Act 1856 (19 and 20 Vict. cap. 79), sec. 48, and Schedule (B).

A notice of sequestration in the form of Schedule B of the Bankruptcy (Scotland) Act 1856 was inserted in the *Edinburgh Gazette* of 5th June 1906, but owing to a clerical error the date of the deliverance was stated to be 5th June instead of 9th May. The corresponding notice in the *London Gazette* was correct. The Sheriff having difficulty in confirming the election of the trustee, a petition was presented on 23rd June 1906 by the agent in the sequestration craving the Court to authorise the insertion of a correct notice.

The Court authorised the petitioner to insert a notice setting forth the error and correct date, and authorised the Sheriff upon proof of such notice having been duly inserted to confirm the election of trustee and commissioner as if the date of the first deliverance had been correctly notified.

The Bankruptcy (Scotland) Act 1856, sec. 48, *inter alia*, enacts—"... the party applying for sequestration shall, within four days from the date of the deliverance awarding sequestration if awarded in the Court of Session, or if it is awarded by the Sheriff, within four days after a copy of the said deliverance could be received in course of post in Edinburgh, insert a notice

in the form of Schedule (B) hereunto annexed in the *Gazette*, and also one notice in the same terms within six days from the said date in the *London Gazette*."

Schedule (B) is as follows:—

"Notice to the *Gazettes*."

"The estates of A B (*name and designation*) were sequestrated on (*date, month, and year*) by the (*Court of Session or Sheriff of*).

"The first deliverance is dated the (*date*).

"The meeting to elect the trustee and commissioners is to be held at (*hour*) o'clock on the (*day of the week*) the (*date, month, and year*) within (*specify particular place*) in (*town*). . . ."

On May 9th, 1906, the Lord Ordinary officiating on the Bills pronounced the first deliverance in a petition at the instance of Alfred Alexander Murray, W.S., Edinburgh, for sequestration of the estates of Charles Oscar Northwood, residing at Rosslyn, Holmfild Road, Blackpool. As required by section 48 of the Bankruptcy (Scotland) Act 1856 an abbreviate was duly presented to the Keeper of the Register of Inhibitions at Edinburgh, and recorded. Notices in the form of Schedule B, were also inserted in the *London Gazette* of 8th June 1906, and in the *Edinburgh Gazette* of 5th June 1906, intimating the award of sequestration and the date of the first deliverance, and calling the meeting to elect the trustee and commissioners, and mentioning the last date for lodging claims. The meeting was duly held and a trustee and commissioner elected. The process was thereupon transmitted to the sheriff-clerk by the preses, with a view to the Sheriff confirming the election of the trustee in terms of section 70 of the Act. The Sheriff, however, had difficulty in confirming the trustee's election, or proceeding further with the sequestration owing to the date of the first deliverance having been erroneously stated by a clerical error in the notice in the *Edinburgh Gazette* as 5th June 1906 in place of 9th May 1906.

On 23rd June 1906 Murray presented a petition appealing to the *nobile officium* of the Court, in which he narrated these facts and made the following crave:—"May it therefore please your Lordships to authorise the petitioner to insert in the *Edinburgh Gazette* within four days from the date of your Lordship's deliverance, a notice in the following terms:—

'Charles Oscar Northwood's Sequestration.

"Notice is hereby given by authority of the First Division of the Court of Session in Scotland that the estates of Charles Oscar Northwood . . . were sequestrated on 5th June 1906 by the Court of Session.

"The first deliverance is dated the 9th May 1906.

"The meeting to elect the trustee and commissioners is to be held at three o'clock on Wednesday the 13th day of June 1906 within Dowell's Rooms, 18 George Street, Edinburgh. A composition may be offered at this meeting, and to entitle creditors to the first dividend their oaths and grounds of debt must be lodged on or before the 5th October 1906.

‘The sequestration has been remitted to the Sheriff of the Lothians and Peebles at Edinburgh.

‘All future advertisements relating to this sequestration will be published in the *Edinburgh Gazette* alone.

‘ALFRED A. MURRAY, *W.S.*, Agent,
‘23 St James Square, Edinburgh.’

And to substitute said notice for that published in the *Edinburgh Gazette* on 5th June 1906, and to hold the same as equivalent thereto, and to authorise the Sheriff of the Lothians and Peebles, upon proof of such notice having been duly inserted, to confirm the election of the trustee and commissioner, and proceed in the sequestration as if the date of the first deliverance had been correctly notified in said *Edinburgh Gazette*; or to do further or otherwise in the premises as to your Lordships shall seem fit.”

Counsel for the petitioner in the Single Bills stated that the error was purely clerical; that the advertisement had been correctly inserted in the *London Gazette*; that the date of the first deliverance was not an essential fact (being inserted merely to give creditors notice of the proceedings), and had no effect in fixing the date of notour bankruptcy or in determining preferences. He referred to *Lipman & Co.'s Trustee*, June 14, 1893, 20 R. 818, 30 S.L.R. 729.

The LORD PRESIDENT having intimated that the Court was disposed to aid the petitioner, but that the prayer of the petition could not be granted as it stood, the petitioner was allowed to amend the prayer, which then read as follows:—“May it therefore please your Lordships to authorise the petitioner to insert in the *Edinburgh Gazette*, within four days from the date of your Lordships’ deliverance, a notice in the following terms:—

“*Charles Oscar Northwood's Sequestration.*

“Whereas on 5th June 1906 the following intimation was inserted in the *Edinburgh Gazette*:— . . . [here followed the notice originally inserted.] . . . Notice is hereby given by authority of the First Division of the Court of Session in Scotland that the date of the first deliverance was by a clerical error stated in said intimation to be 5th June 1906 instead of 9th May 1906, and this intimation is now inserted to give notice to all concerned that the correct date of the first deliverance was 9th May 1906.’

And to authorise the Sheriff of the Lothians and Peebles, upon proof of such notice having been duly inserted, to confirm the election of the trustee and commissioner, and proceed in the sequestration as if the date of the first deliverance had been correctly notified in said *Edinburgh Gazette*, or to do further or otherwise in the premises as to your Lordships shall seem fit.”

The Court (the LORD PRESIDENT, LORD KINNEAR and LORD PEARSON) pronounced the following interlocutor:—

“The Lords having considered the petition as amended at the bar, and

heard counsel for the petitioner, Authorise the petitioner to insert in the *Edinburgh Gazette*, within four days from this date, a notice in the terms set forth in the prayer of the petition, and authorise the Sheriff of the Lothians and Peebles at Edinburgh, upon proof of such notice having been duly inserted, to confirm the election of the trustee and commissioner on the sequestrated estate of Charles Oscar Northwood mentioned in the petition, and proceed in the sequestration as if the date of the first deliverance had been correctly notified in the *Edinburgh Gazette*, and decern.”

Counsel for Petitioner—Burt. Agents—
J. & A. Murray, W.S.

Tuesday, June 26.

FIRST DIVISION.

[Sheriff Court at Dundee.]

KENNEDY *v.* CALEDON SHIP-BUILDING AND ENGINEERING COMPANY, LIMITED.

(*Ante*, March 13, 1906, *supra*, p. 430.)

Master and Servant—Workmen's Compensation Act 1897 (80 and 61 Vict. cap. 37), sec. 1, sub-sec. (3)—Arbitration—Application for Arbitration before Master has had Time to Consider Claim, and before Date of First Weekly Payment has Arrived—Competency.

A workman met with an accident entitling him to compensation under the Workmen's Compensation Act. On 31st October he wrote intimating a claim against his master under the Employers' Liability Act or alternatively under the Workmen's Compensation Act. The first weekly payment under the latter statute fell due on 4th November. On 2nd November the workman lodged a petition for arbitration. The master pleaded that the application was incompetent and premature inasmuch as there was no question between the parties when it was presented and no time had been given him to consider the claim as made. The Sheriff-Substitute found the defences irrelevant, and awarded compensation.

Held on appeal that as there was no dispute between the parties when the petition was lodged as to the liability to pay compensation or its amount or duration, the compensation payable not being at the time of the application in arrear, no question had arisen within the meaning of section 1, sub-sec. (3), of the Act, and consequently that the condition-precident to an arbitration was wanting, and the Sheriff-Substitute ought to have dismissed the petition.