

“The Lords having considered the reclaiming note for the pursuers against the interlocutor of Lord Johnston dated 2nd April 1906, and heard counsel for the parties, Recal the said interlocutor, open up the record, allow the amendments for the pursuers and for the defender contained in their minutes of amendment, and said amendment having been made, of new close the record and remit to the Lord Ordinary to allow a proof, and to proceed as accords, reserving all questions of expenses, including the expenses of the reclaiming note, with power to the Lord Ordinary to dispose of said expenses.”

Counsel for the Pursuers and Reclaimers
Hunter, K.C.—J. A. Christie. Agents—St
Clair Swanson & Manson, W.S.

Counsel for the Defender and Respondent
—Guthrie, K.C.—J. R. Christie. Agents—
Macpherson & Mackay, S.S.C.

Saturday, January 12.

SECOND DIVISION.

[Lord Dundas, Ordinary.]

KER (LIQUIDATOR OF THE
MILLHALL FLOCK AND FIBRE
MANUFACTURING COMPANY,
LIMITED) v. HUGHES.

*Company — Winding-up — Contumacy —
Refusal of Secretary to Deliver Docu-
ments—Warrant to Search for and Seize
Books and Papers.*

The official liquidator of a company ordered to be wound up by the Court under the provisions of the Companies Acts 1862 to 1900, presented a note to the Lord Ordinary, to whom the liquidation proceedings were remitted, stating that he was unable to obtain possession of the books and papers of the company.

Circumstances in which the Lord Ordinary reported the case to the Court, who granted warrant and authority to officers of Court to search for and seize the books and papers of the company.

By the Companies Act 1862, section 115, it is provided—“The Court may, after it has made an order for winding-up the company, summon before it any officer of the company, or person known or suspected to have in his possession any of the estate or effects of the company, or supposed to be indebted to the company, or any person whom the Court may deem capable of giving information concerning the trade, dealings, estate, or effects of the company; and the Court may require any such officer or person to produce any books, papers, deeds, writings, or other documents in his custody or power relating to the company, and if any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the

time appointed, having no lawful impediment (made known to the Court at the time of its sitting, and allowed by it), the Court may cause such person to be apprehended and brought before the Court for examination; nevertheless, in cases where any person claims any lien on papers, deeds, or writings, or documents produced by him, such production shall be without prejudice to such lien, and the Court shall have jurisdiction in the winding-up to determine all questions relating to such lien.”

Charles Ker, chartered accountant, Glasgow, presented a note to Lord Dundas, Ordinary, in circumstances which he thus narrated—“On August 2, 1906, the Millhall Flock and Fibre Manufacturing Company, Limited, Eaglesham, by Glasgow, was, upon the petition of the Calico Printers' Association, Limited, Mosley Street, Manchester, ordered to be wound up by the Court under the provisions of the Companies Acts 1862 to 1900, and the applicant was appointed official liquidator of the company, with all powers conferred by statutes. The official liquidator found caution and extracted his appointment. Thereafter on September 28, 1906, he wrote to Mr Thomas B. Hughes, 34 Circus Drive, Dennistoun, Glasgow, the secretary of the Millhall Flock and Fibre Manufacturing Company, Limited, in the following terms:—

‘Glasgow, 28th September 1906.

‘The Millhall Flock and Fibre Manufacturing Company, Limited.

‘Dear Sir—I have been appointed official liquidator of the above company, and I am informed that you acted as secretary. I shall be obliged if you will let me know by return where the books and other documents of the company are to be found, so that I may obtain possession of them.—
Yours truly, CHARLES KER, Liquidator.’

“The official liquidator having received no answer to the foregoing letter, of this other date again wrote to the said Thomas B. Hughes in the following terms:—

‘Glasgow, 3rd October 1906.

‘The Millhall Flock and Fibre Manufacturing Company, Limited.

‘Dear Sir—I have had no reply to my letter of 28th ult., asking you as secretary of the company for information regarding its books, &c. I have now to inform you that unless I hear from you satisfactorily before Monday the 8th inst., it will be my duty to take steps under the Companies Acts to obtain the necessary information, and you will be good enough to note that unless the information is forthcoming no further notice will be given you before instructing the law agents accordingly.—
Yours truly, CHARLES KER, Liquidator.’

“Beyond a telephone message from Mr Hughes stating that he had received the last-mentioned letter, no further notice has been taken of either of the letters, and the request for information has not been acceded to.

“On October 17, 1906, the liquidation proceedings were remitted to your Lordship.”

The note then set forth section 115 of the Companies Act 1862, above quoted, and

prayed the Lord Ordinary "to appoint a copy of this note to be intimated to the said Thomas B. Hughes, and ordain him to lodge answers thereto, if so advised, within a limited time, and upon resuming consideration hereof, with or without answers, to ordain the said Thomas B. Hughes to deliver to the official liquidator all books, papers, and other property of the said Millhall Flock and Fibre Manufacturing Company, Limited, in the possession or power or under the control of the said Thomas B. Hughes, and that within such limited time as your Lordship shall fix, and failing the said Thomas B. Hughes implementing the said order, to grant warrant and authority to officers of Court to search for and seize the said books, papers, and other property, and to cite the said Thomas B. Hughes to appear before your Lordship to answer all relevant questions in regard thereto, and to find the said Thomas B. Hughes liable in the expenses of the present note and proceedings thereunder."

On 19th October 1906 the Lord Ordinary appointed the note to be intimated to Thomas B. Hughes, and ordained him to lodge answers, if so advised, within six days after service.

On 2nd November 1906, no answers having been lodged, the Lord Ordinary pronounced this interlocutor:—"Ordains Thomas B. Hughes, 34 Circus Drive, Dennistoun, Glasgow, the secretary of the Millhall Flock and Fibre Manufacturing Company, Limited, to deliver to the official liquidator within eight days from this date all books, papers, and other property of the said Millhall Flock and Fibre Manufacturing Company, Limited, in the possession or power or under the control of the said Thomas B. Hughes."

Thereafter the following letters were sent to T. B. Hughes by Charles Ker:—

"28th November 1906.

"*Millhall Flock and Fibre Company, Limited (in Liquidation).*

"Dear Sir—I have received the books which your brother mentioned would be sent, but no copy of the memorandum and articles of association. I shall be glad if you will send these, also list of debtors, with an approximate note of the amount of their account, at your earliest convenience.—Yours truly, CHARLES KER."

"5th December 1906.

"*Millhall Flock and Fibre Company, Limited (in Liquidation).*

"Dear Sir—I have not yet received the list of debts which were promised, or the memorandum and articles of association. Please let me have these at your earliest convenience. I have the enclosed statement from Messrs Alexander Cross & Sons, Limited, of their account, amounting to only £29, 18s. I was told that £70 to £100 was due. Can you throw any light on this?—Yours truly, CHARLES KER."

"15th December 1906.

"*Millhall Flock Company, Limited (in Liquidation).*

"Dear Sir—Please let me have a reply to my letters of 28th ult. and 5th inst.—Yours truly, CHARLES KER, p. A. C. M."

"24th December 1906.

"*Millhall Flock Company.*

"Dear Sir—I have had no reply to my letters of 28th ultimo and 5th and 15th instant. Unless I hear by return of post, I shall have to report the position to the law agents again with a view to obtaining the instructions of the Court. How much was realised for the stock in hand at the date when Mr Newns entered into possession of the property, and who got the money?—Yours truly,

"CHARLES KER, *Liquidator.*"

On 14th November 1906 the Lord Ordinary pronounced this interlocutor:—"The Lord Ordinary having heard counsel for the official liquidator of the Millhall Flock and Fibre Manufacturing Company, Limited, on his motion under the alternative crave of the note for him, and having considered the cause, reports the same to the Second Division of the Court; appoints the liquidator to print this interlocutor and relative note, with such papers as may be necessary, and box the same to the Court, and grants warrant for enrolling the cause in the Inner House rolls."

Note.—"The existing state of matters as regards procedure under this note presented by the liquidator will be readily seen by reference to my interlocutors of 19th October and 2nd November 1906, and relative executions of service. I am now asked to grant the remaining part of the prayer of the liquidator's note, which is in the following terms, viz.—'To grant warrant and authority to officers of Court to search for and seize the said books, papers, and other property, and to cite the said Thomas B. Hughes to appear before your Lordship to answer all relevant questions in regard thereto.' In my opinion the best and most appropriate course at this stage of the proceedings would be to grant warrant as craved, but not at this juncture to cite Mr Hughes. His position appears to be one of contumacy, and may require to be dealt with as such. But the primary point is, in my judgment, to recover the books and papers, and I think that this object will be better and more expeditiously attained by an order of the kind above indicated than by citing Mr Hughes to appear at the bar, or by a diligence for recovery of documents such as is asked for and granted in ordinary cases. But section 115 of the Companies Act 1862, upon which the present note is based, does not specifically authorise a warrant 'to search for and seize,' such as is here craved, and I do not think that I, sitting in the Outer House, have power to grant it. I therefore report the matter without delay to the Inner House, in order that their Lordships may, if they think fit, in the exercise of their *nobile officium*, grant warrant in such terms as they think right, or issue such other order or direction as in the circumstances they consider proper. I may refer, by way of precedent, or at least of analogy, to the cases of *M'Alley's Judicial Factor*, July 17, 1900, 2 F. 1198, 37 S.L.R. 919; *Ferguson's Curator Bonis*, July 4, 1905, 7 F. 898, 42 S.L.R. 689; and *Orr Ewing's Judicial*

Factor, March 7 and 12, 1884, 11 R. 682, 21 S.L.R. 475 and 482."

In the Inner House counsel referred to the cases cited in the Lord Ordinary's note.

LORD JUSTICE-CLERK—I am very clearly of opinion that we have power to make the order which is asked. It would be most unfortunate if we had not, for the secretary might, in that case, obstruct the liquidator in carrying out his duty to the Court, and ignore the orders to deliver up the property of the company.

LORD STORMONTH DARLING—The important matter for the Court in such a case as this is to see that its orders should be obeyed, and it is not necessary for us at present to consider whether the Lord Ordinary might or might not have himself pronounced this order. The Lord Ordinary has not decided that he could not pronounce it, but he has thought it better that it should be done by us under powers we undoubtedly possess. It is important that we should act along with the Judge who is supervising the liquidation, and that we should give him our assistance in such matters if he desires it. He is of opinion that this order should be made at this stage of the proceedings, and I think therefore that we should make it.

LORD LOW—I am of the same opinion.

The Court pronounced this interlocutor:—

"Grant warrant to messengers-at-arms to search for and recover the books and documents of the said company, and if necessary for that purpose to open all shut and lockfast places, and to hand over the documents which are recovered to the said liquidator and decern: Of new remit the petition to the said Lord Ordinary, with power to him to deal with the expenses of, and incident to, the said interlocutor and note."

Counsel for the Liquidator—A. Moncrieff.
Agents—Webster, Will, & Company, S.S.C.

REGISTRATION APPEAL COURT.

Saturday, January 12.

(Before Lord Stormonth Darling, Lord Pearson, and Lord Johnston.)

MILNE v. MURRAY.

Election Law—Inhabitant—Occupier as Tenant—Sub-Tenant—Husband as Sub-Tenant of Wife—Occupation of House by Wife during Employment—Representation of the People (Scotland) Act 1868 (31 and 32 Vict. c. 48), sec. 3—Representation of the People Act 1884 (48 and 49 Vict. c. 3), secs. 2, 3, and 7.

By the Representation of the People Acts 1884, secs. 2 and 7 (4), and 1868, 3,

the franchise is given to every "inhabitant-occupier as owner or tenant of any dwelling-house" in a county, provided he is not merely a joint-occupier.

A married woman was employed by a railway company as gatekeeper at a level crossing, and occupied a house belonging to the company, in virtue of and conditionally on the continuance of such employment. The railway company, in a letter addressed to the husband's agent, stated that, with a view to enabling men in his client's position to exercise the franchise, there would be no objection "to let the houses occupied by them to their wives, with power to them to sub-let the houses to their husbands, subject to the conditions contained in the missive, one of which would be a condition that, should they cease at any time to be servants of the company, they and their sub-tenants will immediately vacate the houses." No such missive by the railway company to the wife was in fact granted. The wife by an agreement in writing let the house to her husband, who paid rent. He claimed to have his name entered on the roll of voters for the county *qua* inhabitant-occupier as tenant.

Held that the claimant's wife being tenant of the house in question in return for her services, there could not be constituted between him and her a sub-tenancy effective in law to afford him a qualification.

Opinion per Lord Stormonth Darling that, even on the assumption that the husband was a duly constituted sub-tenant of his wife, he was not the sole, but only a joint occupier along with her, and therefore not entitled to the franchise.

The Representation of the People (Scotland) Act 1868 (31 and 32 Vict. c. 48), sec. 3, enacts—"Every man shall . . . be entitled to be registered as a voter at elections for a member or members to sit in Parliament for a burgh who, when the Sheriff proceeds to consider his right to be inserted or retained in the register of voters, is qualified as follows:— . . . (2) Is and has been for a period of not less than twelve months next preceding the last day of July an inhabitant-occupier as owner or tenant of any dwelling house within the burgh. . . . Provided also that no man shall under this section be entitled to be registered as a voter by reason of his being a joint-occupier of any dwelling-house."

The Representation of the People Act 1884 (48 and 49 Vict. c. 3), sec. 2 enacts—"A uniform household franchise and a uniform lodger franchise at elections shall be established in all counties and burghs throughout the United Kingdom, and every man possessed of a household qualification or a lodger qualification shall, if the qualifying premises be situate in a county in England or Scotland, be entitled to be registered as a voter, and, when registered, to vote at an election for such county or burgh."