

an action of reduction of the entry while also appealing to the Sheriff.

Held that the action of reduction, while competent, inasmuch as the proceedings complained of were *ultra vires*, must be dismissed as premature.

This case is reported *ante ut supra*, and was heard along with the immediately preceding case of *Hamilton and Others v. Nisbet*.

The Caledonian Railway Company, the pursuers, appealed to the House of Lords.

At delivering judgment—

LORD CHANCELLOR—I have already expressed my concurrence with the judgment of the Lord President in this case—*vide* judgment in *Nisbet v. Hamilton and Others*—and I have nothing to add to it. I think the appeal should be dismissed with costs.

LORD MACNAGHTEN—I agree.

LORD ROBERTSON—I concur.

LORD ATKINSON—I also concur.

Appeal dismissed with costs.

Counsel for the Appellants (Pursuers)—Clyde, K.C.—Cooper, K.C.—King. Agents—H. B. Neave, Glasgow—Hope, Todd, & Kirk, W.S., Edinburgh—Grahames, Currey, & Spens, Westminster.

Counsel for the Respondents (Defenders)—The Dean of Faculty (Campbell, K.C.)—M. P. Fraser. Agents—Campbell & Smith, S.S.C., Edinburgh—Martin & Leslie, Westminster.

COURT OF SESSION.

Thursday, February 21.

FIRST DIVISION.

(SINGLE BILLS.)

M'LEOD (LIQUIDATOR OF ALEXANDER FORRESTER, LIMITED).

Company—Liquidator—Caution—Bond of “Approved Guarantee Company” Authorised—Premium on Bond Charged against Company's Estate, but to be Considered in Fixing Liquidator's Remuneration—Act of Sederunt 15th July 1904.

In a note presented by the liquidator in a liquidation under supervision, the Court authorised the acceptance of a bond of caution by an “approved guarantee company,” *i.e.*, a company approved for the purposes of judicial factories under the Act of Sederunt of 15th July 1904, the premium on such bond to be charged against the liquidation, but such charge to be considered in fixing the liquidator's remuneration.

Company—Liquidator—Caution—Amount.

Where the assets of a company in liquidation amounted to about £6000 the

Court fixed the amount of caution to be found by the liquidator at £3000.

The Act of Sederunt of 15th July 1904, as to the finding of caution in judicial factories and the procedure therein, and as to the remuneration of factors, provides—Sec. 2 (d) “The Accountant shall, in January yearly, prepare and submit a list of approved guarantee companies for the consideration and approval of the Court.” Sec. 3—“The Accountant of Court shall allow as a charge against the factory estate (1) the premium paid by the factor where a company bond of caution has been accepted, or such part thereof as he deems proper, and (2) the expense of the necessary procedure in obtaining the approval of a bond of caution or the limitation of the amount; but the fact of such charge shall be taken into account by the Accountant of Court in fixing the factor's remuneration.” Sec. 5—“This Act shall not affect the procedure as to bonds of caution in bankruptcy and in the liquidation of public companies.”

On 21st February 1907 John M. M'Leod, C.A., Glasgow, the liquidator of Alexander Forrester, Limited, boot manufacturers, Glasgow, presented a note stating that on 5th February 1907 their Lordships of the First Division had placed the winding up of the company under supervision and appointed him liquidator; that the assets amounted to £5995, 1s. 10d.; and that he was willing to take out a bond of caution with the National Guarantee and Suretyship Association for such sum as the Court might fix. The prayer of the note was “to restrict the caution to be found by the said John M. M'Leod, as liquidator foresaid, to a sum to be fixed by the Court, and to authorise a bond of caution of the National Guarantee and Suretyship Association for that amount to be accepted; and further, to authorise the premium on the said bond of caution to be paid by the liquidator out of the estate of the said company; and further, to direct that the expenses of and in connection with this note shall be expenses in the liquidation . . .”

Counsel for the liquidator referred to secs. 2 (d), 3, and 5 of the Act of Sederunt, 15th July 1904, as to the finding of caution in judicial factories, &c., and argued that while the case of a liquidator was not provided for therein, still the analogy between his office and that of a judicial factor rendered the provisions applicable. He further stated that the National Guarantee and Suretyship Association was one of the companies approved of in terms of sec. 2 (d) of the Act of Sederunt.

LORD PRESIDENT—This note is at the instance of the liquidator recently appointed in the liquidation of Alexander Forrester, Limited, and asks the Court to restrict the caution, and to authorise a bond of caution by a company to be accepted, “and further to authorise the premium on the said bond of caution to be paid by the liquidator out of the estate of the company, and to direct that the expenses of the note should be expenses in

the liquidation. It was admitted that there is no direct authority, but it was urged that there is a strong analogy in the provisions of the Act of Sederunt, 15th July 1904, as to the finding of caution in judicial factories. Section 3 of that Act of Sederunt provides—[*His Lordship read the section*]. It seems to me that the analogy is a true one. But both branches of the section are equally analogous. Accordingly, while I move your Lordships to grant the prayer of the note, it is understood that this is done subject to the fact of the charge being taken into account by the Lord Ordinary when he fixes the remuneration of the liquidator.

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

The Court pronounced this interlocutor:—

“The Lords having considered the note for John M. M'Leod, the liquidator, . . . fix £3000 as the amount for which caution shall be found by him, and authorise the clerk to accept a bond for that amount by the National Guarantee and Suretyship Association, Limited: Further authorise the liquidator to charge the premiums payable in respect of such bond against the liquidation, but declaring that such charge shall be taken into account at the fixing of his remuneration as liquidator: Also authorise the expense of said note to be charged against the liquidation. . . .”

Counsel for the Liquidator—Macmillan.
Agents—Dove, Lockhart, & Smart, S.S.C.

Saturday, February 23.

SECOND DIVISION.

[Lord Salvesen, Ordinary.]

VEITCH v. THE NATIONAL BANK OF SCOTLAND, LIMITED.

Cautioner—Bank and Customer—Cash-Credit Bond—Interpretation—Extent of Cautioner's Liability.

By a bond of cash credit between a bank and A, B, and C, on the narrative that the bank had agreed to allow A, B, and C a credit on a current account to be operated on by A, “and that to the extent of £1500 sterling,” A, B, and C bound themselves to repay to the bank on demand “the foresaid principal sum of £1500, or whatever portion thereof may appear to be due on the foresaid current account,” and also all advances which the bank had made or might make in a variety of specified ways to A, or on his account, or in his credit, “such advances and engagements not exceeding in all the said sum of £1500 of principal beyond any balance which may be at the credit of the said A on said current account, . . . and in

general to refund to the said bank whatever loss and expense, not exceeding said sum of £1500 of principal, the said bank may sustain or incur through these transactions with the said A, all which sums, losses, and expenses the bank may debit to the said current account without losing any right, remedy, or claim against other obligants, it being the express meaning of these presents that this bond shall, to the extent foresaid, be a covering security to the said bank against any ultimate loss that may arise on the transactions of the said A with said bank.”

A at his death was indebted to the bank in the sum of £5855, 8s. 11d., and the bank recovered from his estate the sum of £3903, 17s. 3d., being a composition of 13s. 4d. in the pound.

Held, upon a construction of the bond, that the cautioners had guaranteed only a debt of £1500, and not a debt of an indefinite amount, to the extent of £1500, and that accordingly they were only liable to pay £500 to the bank, being the sum of £1500 under deduction of the amount of the composition recovered from A's estate effecting to that sum.

Archibald Veitch, cattle dealer, Jedburgh, had been charged at the instance of the National Bank of Scotland, Limited, to make payment of the sum of £1500 with interest.

He brought a note of suspension.

The following narrative of facts is taken from the opinion of Lord Low—“In 1902 the complainer and one Robert Hunter became cautioners for the now deceased William Rutherford, cattle dealer in Hawick, in a bond of cash credit for £1500 granted by these parties to the respondents.

“Rutherford was at his death indebted to the respondents in the sum of £5855, 8s. 11d., and they recovered from his estate the sum of £3903, 17s. 3d., being a composition of 13s. 4d. in the pound. The balance of Rutherford's debt therefore still remaining due to the respondents is £1951, 11s. 8d., and accordingly they claim that the complainer as cautioner is bound to pay the full amount of £1500 for which he undertook liability in the bond. The complainer, on the other hand, contends that he is only bound to pay £500 to the respondents, being the sum of £1500 under deduction of the amount of the composition recovered from Rutherford's estate effecting to that sum.”

The bond was in the following terms—“We, William Rutherford, cattle dealer and meat salesman, Hawick, Archibald Veitch, cattle dealer, Jedburgh, and Robert Hunter, farmer, Chapelhill, Hawick, considering that the National Bank of Scotland, Limited, have agreed to allow us credit on a current account, to be kept in the books of said bank in name of me, the said William Rutherford, and to be operated on by me or by anyone duly authorised by me, and that to the extent of £1500 sterling, on these presents being granted, have there-