

son in the position of this defender, before defending the action, shall find caution for violent profits.

I do not say that a person holding heritable subjects without a title may not be liable for violent profits when the rights of parties have been determined; but liability on a final determination is one thing, and liability to find caution beforehand is a totally different thing, which cannot be imposed except by virtue of some statutory enactment or long established practice.

I am therefore of opinion that the Sheriff's interlocutor should be recalled.

LORD JOHNSTON—I agree that this lady must succeed in her appeal. It may be that under some other enactment the Sheriffs might have competently dealt with caution for violent profits, but the pursuers here have founded on section 5 of the Heritable Securities Act 1894 and section 34 of the Act of Sederunt of 10th July 1839. The Act of Sederunt was of no force of itself. It depended on the Act (Sheriff Court Act of 1838) which authorised it. Now section 12 of that Act contained a very distinct proviso that in summary actions of removing raised under the authority of the Act the Sheriff "shall in all such cases where the defences cannot be instantly verified ordain the defender to find caution for violent profits." That was a distinct enactment having reference to removings in general. That provision, however, is no longer in force, for the Sheriff Courts Act of 1907 repealed the Act of 1838, with the exception of certain sections which are not in point, and therefore swept away the foundation of the Act of Sederunt in question. No doubt new provisions have been put in its place, but these deal with a limited class of removals of which this is not one. I think the Sheriffs have gone wrong in not adverting to the fact that the Act of 1907 repealed the Act of 1838, and therefore also the Act of Sederunt of 1839, and have put nothing in their place governing the matter of caution for violent profits in other than a limited class of cases.

LORD SALVESEN—I entirely agree with both your Lordships and have nothing to add.

The LORD PRESIDENT and LORD M'LAREN were absent.

The Court sustained the appeal, recalled the interlocutors of the Sheriff and the Sheriff-Substitute dated 13th July 1909 and 3rd June 1909 respectively, and remitted the cause to the Sheriff to proceed as accords.

Counsel for Defender (Appellant) — Party.

Counsel for Pursuers (Respondents)—James Stevenson. Agents—P. Gardiner Gillespie & Gillespie, S.S.C.

Wednesday, November 10.

FIRST DIVISION.

(SINGLE BILLS.)

DUNNACHIE, PETITIONER.

Husband and Wife—Wife's Separate Estate—Married Women's Property (Scotland) Act 1881 (44 and 45 Vict. c. 21), sec. 5—Wife Living Apart from Husband—Husband in Lunatic Asylum and Incapable of Giving Consent.

The Married Women's Property (Scotland) Act 1881, section 5, enacts—
"Where a wife is deserted by her husband, or is living apart from him with his consent, a Judge of the Court of Session or Sheriff Court, on petition addressed to the Court, may dispense with the husband's consent to any deed relating to her estate."

A wife, whose husband was confined in a lunatic asylum, presented a petition to the Court for authority to dispense with her husband's consent to any charge over or sale of certain heritable property belonging to her. The Court *granted* the prayer of the petition.

On October 27, 1909, Mrs May or Mary Hargrieve or Dunnachie, Milngavie, near Glasgow, wife of John Dunnachie, then an inmate of the Stirling District Asylum, Larbert, presented a petition under the Married Women's Property (Scotland) Act 1881 (44 and 45 Vict. cap. 21), sec. 5, in which she craved the Court to dispense with her husband's consent to any bond and disposition in security for a loan to her on the security of Grasmere Cottage, Loanhead, or to any disposition or other deed of transfer of the said property by her in favour of a lender or purchaser.

The petitioner averred—“(2) On or about 23rd July 1909, in consequence of the deranged state of mind of the said John Dunnachie, it was found necessary to remove him to Stirling District Asylum at Larbert. He was discharged on 17th September 1909, but in consequence of a relapse he was again committed to the said Asylum on 29th September 1909, and is now an inmate there. Owing to his suspicious and delusional condition of mind he is incapable of giving consent to any deed by the petitioner.

“(3) The late David Hargrieve, sometime merchant, Loanhead, thereafter residing there, by his trust-disposition and settlement, dated 12th January 1891, and recorded in the Books of Council and Session, 31st July 1894, *inter alia*, directed his trustees to convey to his niece Margaret M'Allister, in liferent for her liferent use allanarly, and to the petitioner, then unmarried, and her heirs and assignees in fee, his heritable property in Loanhead, called Grasmere Cottage, according as the same is described in the title-deeds, and the said David Hargrieve declared, by his said trust-disposition and settlement, that the legacies or provisions therein mentioned, so far as payable

to females, should be for their own separate use and benefit, and exclusive of the *jus mariti* and right of administration of any husband they had married or might respectively marry, and that the same should not be subject to the debts or deeds of such husbands, or liable to the legal diligence of their creditors, but that it should be competent for such female legatees or beneficiaries by themselves alone, and without the consent of their husbands, to discharge these said legacies or provisions. The trustees of the said David Hargrieve accordingly, by disposition dated 23rd March, and recorded in the Division of the General Register of Sasines applicable to the County of Edinburgh, 3rd May, both in the year 1895, conveyed to the said Margaret M'Allister in liferent, and to the petitioner and her heirs and assignees in fee, the said heritable property in Loanhead called Grasmere Cottage. The said Margaret M'Allister died on 26th April 1895. The disposition contained no declaration that the conveyance to the petitioner is exclusive of the rights of any husband she might marry.

"4. The petitioner has one child, a boy of fourteen years of age, and she is thrown upon her own resources to earn a livelihood for herself and her boy. She proposes in the meantime to borrow a sum of £200 upon the security of her said property of Grasmere Cottage, and to sell the same, if a purchaser at a suitable price can be found. Being a married woman, she is unable to grant a bond and disposition in security in the ordinary way, or to sell and convey her heritable property without the consent of her husband, unless she is authorised by the Court to do so, and the present petition is therefore rendered necessary."

The petitioner in Single Bills moved the Court to grant the prayer of the petition and cited the case of *M'Lennan v. M'Lennan*, 1908 S.C. 164, 45 S.L.R. 167.

The Court granted the prayer of the petition.

Counsel for the Petitioner — Forbes, Agents—T. & J. C. Sturrock, S.S.C.

Friday, November 12.

SECOND DIVISION.

[Sheriff Court at Airdrie.

BOAG v. LOCHWOOD COLLIERIES, LIMITED.

Master and Servant—Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37), Sched. I, secs. 2, 12—Weekly Payment—Review—Partial Incapacity—Inability to Find Suitable Light Work—No Change in Physical Condition.

A workman who was in receipt of 6s. a-week from his employers as compensation under the Workmen's Compen-

sation Act 1897 in respect of partial incapacity resulting from an accident arising out of and in the course of his employment in May 1907, presented in 1909 an application for review of the weekly payments, in terms of section 12 of Schedule I of the Act. The workman did not aver any change in his physical condition, but maintained that he must be held in law to be totally incapacitated in respect that his employers were unable to give him suitable light work, and that he was unable to find light employment elsewhere.

Held that the workman had failed to state any grounds on which the arbiter would be entitled to review the compensation, and application *dismissed*.

The Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37), First Schedule, sec. (2), enacts—"In fixing the amount of the weekly payment regard shall be had to the difference between the amount of the average weekly earnings of the workman before the accident and the average amount which he is able to earn after the accident. . . ."

Sec. 12—"Any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review may be ended, diminished, or increased. . . ."

In an arbitration in the Sheriff Court at Airdrie under the Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37), between Robert Boag and Lochwood Collieries Limited, the Sheriff-Substitute (GLEGG) refused an application by Boag for review of the weekly payments under a memorandum of agreement between the parties, and at the request of Boag stated a case for appeal.

The case gave the following narrative—"This is an arbitration under the Workmen's Compensation Act 1897, in which the arbitrator is asked by the appellant to review the weekly payments of 6s. of partial compensation agreed to be paid by the said Lochwood Collieries, Limited, to the said Robert Boag in respect of injuries by accident sustained by him in the course of his employment as a miner in the employment of the Lochwood Collieries, Limited, at their Lochwood Colliery, Bargeddie, on 23rd May 1905, and to increase said weekly payments by such amount and from such date as the arbitrator may think fit in terms of section 12 of the 1st Schedule of the Workmen's Compensation Act 1897. The appellant avers that he is entitled in law to be held as totally incapacitated for work in respect that the said Lochwood Collieries, Limited, are unable to give him suitable light work and he is unable to obtain light employment elsewhere.

"The respondents plead that the ground of review is incompetent, and in any event the respondent's earning capacity is such that he is not entitled to any greater weekly payment of compensation than 6s."

The Sheriff-Substitute found that no relevant grounds were stated for reviewing the weekly payments under the recorded