

of the Court of Session Act of 1868. In my opinion that section is applicable only where the statutory remedy to which I have alluded is not applicable, and that is why it was allowed in the case of *Gairdner*, 1915 S.C. 589. That is what I have to say on the point of the procedure in the case. [*His Lordship then dealt with the merits of the case.*]

The Court refused the defender's motion.

Counsel for the Pursuer and Appellant—
J. S. C. Reid. Agent—W. Melvin Ross,
S.S.C.

Counsel for Defender and Respondent—
Macgregor. Agents—Steedman, Ramage,
& Co., W.S.

Wednesday, January 10.

FIRST DIVISION.

TRAIN & M'INTYRE, LIMITED,
PETITIONERS.

Bankruptcy—Sequestration—Failure to Record Abbreviate of Petition in Register of Inhibitions—Application for Authority to Record—Expenses—Bankruptcy (Scotland) Act 1913 (3 and 4 Geo. V. cap. 20), sec. 44.

Petitioners for sequestration of a debtor's estates having omitted *per incuriam* to record an abbreviate of the petition in the Register of Inhibitions within the statutory period, the Court on the application of the petitioners granted warrant to the Keeper of the Register to record the abbreviate, reserving all objections to parties interested against the validity of the sequestration, the expenses of the application not to be charged against the estate.

The Bankruptcy (Scotland) Act 1913 provides—Section 44—"The party applying for sequestration shall present, before the expiration of the second lawful day after the first deliverance if given by the Lord Ordinary, or present or transmit by post before the expiration of the second lawful day after the said deliverance if given by the Sheriff, an abbreviate of the petition and deliverance, signed by him or his agent, in the form of Schedule (A, No. 1) hereunto annexed, to the Keeper of the Registers of Inhibitions and Adjudications at Edinburgh, who shall forthwith record the said abbreviate in the said Registers, and write and subscribe a certificate thereof on the said abbreviate in the form also specified in the said Schedule (A, No. 2). . . ."

On 5th January 1923 Train & M'Intyre, Limited, wholesale wine and spirit merchants, 60 Wellington Street, Glasgow, creditors of Neil Robinson, wine and spirit merchant, 10 Camden Street, Glasgow, presented a petition to the First Division craving the Court to grant warrant to and authorise the Keeper of the Register of Inhibitions at Edinburgh to receive and record in the said

register an abbreviate of the petition for sequestration and the first deliverance thereon, and to write and subscribe a certificate thereof on the said abbreviate in the prescribed form.

The petition stated—"That on 20th December 1922 the petitioners presented to the Sheriff of Lanarkshire at Glasgow a petition for sequestration of the estates of the said Neil Robinson, and of the same date the Sheriff-Substitute pronounced a first deliverance thereon, granting warrant to cite the bankrupt.

Thereafter on 3rd January 1923 the Sheriff-Substitute awarded sequestration of the said estates. . . . That *per incuriam* the petitioners omitted to present or transmit to the Keeper of the Register of Inhibitions an abbreviate of the petition and first deliverance within the time allowed by the Statute. The present application is therefore made for authority to transmit the abbreviate, and to the Keeper of the Register of Inhibitions to record the same."

On the petition appearing in the Single Bills, counsel for the petitioners cited the case of *Stark and Hogg, Petitioners*, 1886, 23 S.L.R. 507, and moved the Court to grant the authority craved.

The Court without delivering opinions pronounced this interlocutor—

" . . . Allow the petition to be amended as proposed at the bar: Grant warrant to the Keeper of the Register of Inhibitions at Edinburgh within three days from this date to receive the abbreviate of the petition for sequestration and deliverance thereon mentioned in the petition signed by the petitioners or their agents and in the form mentioned in the petition, and to record the said abbreviate in the Register of Inhibitions, and to write and subscribe a certificate thereof on the said abbreviate, all in conformity with and as prayed for in terms of the Bankruptcy (Scotland) Act 1913, sec. 44, and decern; reserving all objections to parties interested against the validity of the sequestration and all answers to such objections as accords; and declaring that the expenses of the present application and procedure connected therewith are not to be allowed against the estate."

Counsel for Petitioners—Grainger Stewart.
Agents—Simpson & Marwick, W.S.

Friday, January 19.

FIRST DIVISION.

[Sheriff Court at Perth.

PERTH GENERAL STATION
COMMITTEE v. STEWART.

Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), sec. 1 (4), and Sched. II, par. (17) (b)—Unsuccessful Action of Damages at Common Law against Employer—Assessment of Compensation after Defenders Assolizied, but before they had Obtained a Decree for their Expenses as Taxed—Appeal—Review by Stated Case—Competency.

A workman raised an action in the Sheriff Court for damages at common law in respect of injuries received by him while at work in the defenders' employment. The defenders having been assolizied, the workman shortly thereafter, and before the defenders had moved for and obtained a decerniture for their expenses as taxed, moved the Sheriff-Substitute to award compensation under section 1 (4) of the Workmen's Compensation Act 1906. The Court assessed compensation, whereupon the defenders asked for and obtained a stated case. *Held* that the Sheriff in assessing compensation had not acted as an arbitrator within the meaning of Schedule II, paragraph (17) (b), of the Act, and accordingly that the stated case was incompetent.

Opinion per Lord Sands as to whether all review was excluded *reserved*.

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) enacts—Section 1 (4)—“If within the time hereinafter in this Act limited for taking proceedings an action is brought to recover damages independently of this Act for injury caused by any accident, and it is determined in such action that the injury is one for which the employer is not liable in such action, but that he would have been liable to pay compensation under the provisions of this Act, the action shall be dismissed; but the court in which the action is tried shall, if the plaintiff so choose, proceed to assess such compensation, but may deduct from such compensation all or part of the costs which in its judgment have been caused by the plaintiff bringing the action instead of proceeding under this Act. In any proceeding under this sub-section, when the court assesses the compensation it shall give a certificate of the compensation it has awarded and the directions it has given as to the deduction for costs, and such certificate shall have the force and effect of an award under this Act.” Schedule II, paragraph (17), provides—“In the application of this schedule to Scotland— . . . (b) Any application to the sheriff as arbitrator shall be heard, tried, and determined summarily in the manner provided by section fifty-two of the Sheriff Courts (Scotland) Act 1876, . . . subject to the declaration that it shall be competent to either party within the time and in accord-

ance with the conditions prescribed by Act of Sederunt to require the sheriff to state a case on any question of law determined by him, and his decision thereon in such case may be submitted to either Division of the Court of Session, who may hear and determine the same and remit to the sheriff with instruction as to the judgment to be pronounced, and an appeal shall lie from either of such Divisions to the House of Lords.”

On 12th July 1920 James Stewart, labourer, 17 St Katherine's Court, Perth, *pursuer*, brought an action of damages at common law in the Sheriff Court at Perth against the Perth General Station Committee, *defenders*, in respect of an accident sustained by him on 30th June 1919. The defenders having been assolizied on 25th April 1921, the pursuer on 7th June 1921 moved the Court to assess compensation under section 1 (4) of the Workmen's Compensation Act 1906. On 10th August 1922 the Court assessed compensation, whereupon the defenders asked for and obtained a Stated Case, which bore to be presented in an arbitration under the Act.

The Case, *inter alia*, stated—“This is an arbitration arising out of the following facts:—On 12th July 1920 the respondent raised an action of damages at common law against the appellants, his employers, in respect of an accident sustained by him on 30th June 1919. By interlocutor of 25th April 1921 the appellants were assolizied with expenses, the decision being as usual issued in writing and not given in open Court. The said interlocutor contained no finding that the injury was one for which the appellants would have been liable to pay compensation under the Workmen's Compensation Act 1906, and contained no express reservation to assess compensation under that Act. On 7th June 1921 the respondent moved at the bar that compensation under the Workmen's Compensation Acts should be assessed. Ten days later, on 17th June 1921, the appellants asked and obtained decree for the taxed amount of their expenses of the action. Thereafter on 1st July 1921 I pronounced an interlocutor of that date, which is as follows:—‘The Sheriff-Substitute having considered the cause, allows the same to proceed as a claim under the Workmen's Compensation Act 1906: Appoints the pursuer to lodge a minute, stating the sum or sums so claimed by him, within six days from this date, and assigns Monday 11th July 1921, at 10 a.m., as a diet of hearing.’ Thereafter the respondent lodged a minute, and after sundry procedure proof was taken on the minute referred to in this interlocutor, and on 10th August 1922 I assessed compensation. On the said proof and on the proof in the action (so far as relevant to the issues on workmen's compensation) I found the following facts proved:—1. On 30th June 1919 the respondent while in the employment of the appellants as a station painter was injured by a fall from a height of about 30 feet from a plank scaffold on girders on the roof of Perth General Station. 2. The accident arose out of and in the course of his said employment and was contributed