

on these grounds—(1) The reporters and the Dean of Guild evidently considered that the *whole* building, including the appellants' properties, was dangerous. There is no doubt that the whole structure was dangerous, but not by reason of anything done or omitted to be done by the appellants. It was the upper proprietors alone who had made the building dangerous, and it is, in my opinion, for them to remove the danger at their own charges. (2) It was suggested that the appellants' properties would benefit by what the Dean of Guild had ordered to be done. Their properties, it was urged, would be made more secure. This seems to me to be an irrelevant consideration. The appellants' properties would never have been insecure but for the negligent way in which the upper properties were used and maintained. (3) It was also suggested that the Dean's award was merely a temporary adjustment or assessment of expenses, and that the appellants had a right of relief open to them. I do not think, however, that parties who are not plainly liable in costs ought to be put to the trouble and expense of recovering, in a process of relief, expenses which had been improperly imposed upon them.

I therefore am of opinion that the contentions of the respondent's counsel were not well founded. I am accordingly for sustaining the appeal and recalling the interlocutor appealed against.

The Court (*diss.* the Lord Justice-Clerk, Lord Ormisdale, and Lord Anderson) affirmed the judgment appealed against.

Counsel for the Objector (Appellant)—Chree, K.C.—MacLean. Agents—Cumming & Duff, W.S.

Counsel for the Respondent—Fraser, K.C.—Russell. Agents—Campbell & Smith, S.S.C.

Saturday, January 19.

FIRST DIVISION.
(SINGLE BILLS.)

THE CAR MART, LIMITED,
PETITIONERS.

Bankruptcy—Sequestration—Nobile Officium—Meeting of Creditors—Failure to Give Due Notice of Meeting—Gazette Notices not Inserted in Time to Allow of the Statutory Advertisement—Warrant to Hold New Meeting—Bankruptcy (Scotland) Act 1913 (3 and 4 Geo. V, cap. 20), secs. 44 and 63.

Where, in a sequestration, the *Gazette* notices were *per incuriam* of the petitioners' agent inserted too late to allow of the statutory advertisement of the meeting of creditors, the Court, on the application of the petitioners for an order holding the notices equivalent to notices at least six days prior to the said meeting, or otherwise to hold that sufficient intimation of the meeting had

been given, or alternatively for warrant to hold a new meeting, *ordered* a new meeting to be held, and *granted warrant* for the statutory advertisement thereof.

On January 18, 1924, the Car Mart, Limited, Euston Road, London, presented a petition for the rectification of a notice in the *Edinburgh* and *London Gazettes* in the sequestration of Henry Randolph Christie, Edinburgh.

The petition which appealed in terms to the *nobile officium* of the Court set forth, *inter alia*—“That of this date (January 8, 1924) the estates of Henry Randolph Christie, now or lately carrying on business at 37 York Place, Edinburgh, residing at the Anchorage, Port Seton, in the county of East Lothian, were sequestrated by the Lord Ordinary officiating on the bills in terms of the Bankruptcy (Scotland) Act 1913. The deliverance awarding sequestration ordered a meeting of creditors to elect a trustee and commissioners to be held in Dowell's Rooms, Edinburgh, on 16th January 1924. Under the circumstances after stated the said interlocutor dated 8th January 1924 was issued. Of this date (January 11, 1924) notices advertising the said meeting appeared in the *Edinburgh* and *London Gazettes*. Of this date (January 16, 1924) the meeting of creditors so ordered and advertised was held. Objection was stated by Mr Robert Archibald Craig, C.A., Edinburgh, presumably representing a creditor, to the competency of proceeding with the meeting in respect that the *Gazette* notices did not give timeous notice of the meeting by failing to comply with the terms of section 44 of the Bankruptcy Act 1913. It was resolved that the meeting should proceed. . . . The failure timeously to insert the *Gazette* notice occurred in the following circumstances:—The respondent did not enter appearance or lodge answers within the *induciae* fixed in the first deliverance on the petition for sequestration. The commission granted in said deliverance for recovery of evidence of notour bankruptcy and jurisdiction was executed, and when the usual minute craving sequestration was lodged it was found that appearance had then been entered for the respondent by Mr John Robertson, solicitor, Edinburgh. The minute craving sequestration proposed a meeting of creditors to elect a trustee and commissioners on 8th January. The case was enrolled for hearing, and appeared in the Bill Chamber Roll of the Junior Lord Ordinary (Lord Murray) of this date, January 8, 1924. On the morning of 8th January William Officer Gilchrist, Parliament House clerk to the petitioners' agents, approached the respondent's agent to ascertain whether there was to be any opposition to the motion. Mr Robertson replied that there would be no opposition and he agreed that decree of sequestration should then be taken. He undertook to delete his notice of appearance and thereby save trouble. The said arrangement was reported to the Bill Chamber clerk, and the date of the meeting of creditors suggested for 8th January, on the understanding that

there was no appearance, was altered to 16th January in the belief that the interlocutor would be signed and issued on the 8th, enabling the *Gazette* notices which had already been prepared in anticipation to appear in the *Gazette* published on that date. On the motion of counsel instructed for the hearing the Lord Ordinary granted decree of sequestration on 8th January on the footing that the notice of appearance would be withdrawn before issue of the interlocutor. On attendance at the Bill Chamber it was found, contrary to the arrangements made, that the respondent's agent had not withdrawn the notice of appearance. . . . On 10th January Mr Robertson deleted the notice of appearance and the interlocutor, dated and signed 8th January, was then issued and the *Gazette* notices despatched for advertisement. The petitioners' agents failed to notice that there was not sufficient time before the meeting to allow of the statutory advertisement. The notice calling said meeting of creditors failing to comply strictly with the statutory provision, the petitioners make the present application to your Lordships for an order holding the notice in the *Edinburgh* and *London Gazettes* of 11th January 1924 as equivalent to a notice in the said *Gazettes* at least six days prior to the said meeting, or otherwise to hold that sufficient intimation of the meeting was given, or alternatively for warrant to hold a new meeting of creditors on a date to be fixed by the Court."

On 19th January 1924 counsel for petitioners moved the Court to grant the prayer of the petition, and cited the cases of *Taylor*, 2 F. 1139, 37 S.L.R. 872, and *Naismith*, 1910, 1 S.L.T. 305.

The Court, without delivering opinions, appointed a new meeting of creditors to be held, and granted warrant for intimation thereof in the *Edinburgh* and *London Gazettes* in terms of the statute.

Counsel for Petitioners—Gillies. Agents—M. J. Brown, Son, & Company, S.S.C.

Wednesday, January 23.

FIRST DIVISION.

[Sheriff Court at Kilmarnock.]

DUNN v. SCOTTISH CO-OPERATIVE WHOLESALE SOCIETY, LIMITED.

Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), sec. 8, and Third Schedule—Incapacity Resulting from Injury—Industrial Disease and Sequelæ thereof—Incapacity Due to Disease Resulting from Industrial Disease—Disease not Included in Scheduled Sequelæ.

On 20th January 1922 a workman obtained a certificate under section 8 (1) of the Workmen's Compensation Act 1906 that he was suffering from dermatitis—a disease scheduled under section 8 of the Act as extended by Statutory

Rules and Orders 1918, No. 287—and was thereby disabled from earning full wages at the work at which he was employed. His employers agreed to pay compensation under the Act as for total incapacity, and continued to do so until 23rd June 1922, when they ceased payment on the ground that the incapacity was no longer due to the dermatitis but to a new trouble, viz., nephritis, which had by that time developed in the workman's system, and which was not scheduled as one of the *sequelæ* of dermatitis so as to bring it within the category of industrial diseases. It was found as a fact that the nephritis was in the case of this particular workman the actual consequence and result of the original dermatitis. Held that as the incapacity was due to a disease resulting from one of the scheduled diseases the arbitrator was right in ordering the memorandum to be recorded, the fact that the nephritis was not among the scheduled *sequelæ* of the primary ailments not being material where, as here, the arbitrator had found as a fact that the nephritis was a consequence of the industrial disease mentioned in the surgeon's certificate.

The Scottish Co-operative Wholesale Society, Limited, *appellants*, being dissatisfied with a decision of the Sheriff-Substitute of Ayrshire at Kilmarnock (ROBERTSON) in an arbitration under the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) between the appellants and Robert Dunn, *respondent*, appealed by Stated Case. The respondent died after the presentation of the appeal, but his executrix was sisted in his place.

The Case stated—"This is an arbitration under the Workmen's Compensation Act 1906, brought in the Sheriff Court of Ayrshire at Kilmarnock at the instance of Robert Dunn, blanket finisher, 60 Titchfield Street, Galston, now deceased, in which he craved the Court to grant warrant to the Sheriff-Clerk to record a memorandum of agreement alleged to have been entered into between the claimant and the respondents on 25th February 1922, by which the respondents agreed to pay to the claimant the sum of one pound per week, with the statutory additions, in respect of total incapacity in terms of the Workmen's Compensation Act 1906, and the Workmen's Compensation (War Additions) Acts 1917 and 1919. The said memorandum of agreement proceeded on a certificate, dated 20th January 1922 by the certifying surgeon appointed under the Factory and Workshops Act 1901, that the claimant, a workman under no legal disability, was suffering from dermatitis produced by dust or liquids, a disease coming within section 8 of the Workmen's Compensation Act 1906, and was thereby disabled from earning full wages at the work at which he was employed. The respondents objected to the said memorandum of agreement being recorded and after hearing the evidence in the case and parties' agents thereon I found the following facts proved:—1. That