

as regards the disputed territory, the proper course at present will be to leave each party in possession of his own side of the river, under an injunction upon each to keep an account of the fish taken.

Such is the result which the Lord Ordinary has arrived at on a consideration of the respective titles and averments as to possession. But apart from this, and having regard to the admissions in the Answers, as to the manner in which the complainant's side of the river was occupied, and his property dealt with by the respondents, or those acting under them, before the interdict was applied for, it appears to him to be expedient, if not necessary in the question of trespass, that each party should in the meantime be prevented from fishing *ex adverso* of, or from landing on, the property of the other. (Initld.) D. M.

The respondents reclaimed.

BALFOUR, for them (DUNDAS with him), argued—The respondents do not object to the note being passed, but the interdict should be recalled. The complainant has no title to the fishings in question. He has no written title to the salmon fishings at all. The respondent, the Duke of Sutherland, has been by himself and his predecessors in possession of the fishings from time immemorial. The complainant has never had any possession at all. He also referred to correspondence under the hand of the complainant's predecessor and his agents, in which the Duke's right to the fishings was recognised by them.

GORDON, SHAND, and KEIR, for the complainant, were not called on.

The LORD PRESIDENT—There are questions raised in this case which may be of importance; but the only one now before us is the question of interim possession, until some further or clearer light is obtained. In regard to that matter, the Lord Ordinary was called upon to exercise his discretion. If the title was clear on one side, there would be no dispute; but this is not so. The Duke's title is of a complex kind. He founds upon a title as proprietor, and also a right to possess under a lease. One question is, what fishings are comprehended in his title? and it is very difficult to say what the nature of the possession under the lease was. It would rather seem that if he possessed under the lease, the possession was Culrain's. In the meantime the Lord Ordinary had to regulate the possession while these questions are being tried. He has done so, and appointed the parties to keep notes with a view to adjustment afterwards. On the whole, I confess that the Lord Ordinary has dealt with the matter in a safe and judicious way, and I think we should adhere to his interlocutor. Of course the interdict may be recalled at any time by the Lord Ordinary as the case develops itself.

Agents for Complainant—Dundas & Wilson, C.S.
Agent for Respondents—Colin Mackenzie, W.S.

Thursday, May 31.

WINK v. REID AND OTHERS.

Bankruptcy—Act 1621, c. 18—Fraud at Common Law—Issue. Issues adjusted in a reduction founded on the Act 1621 and on allegations of fraud.

This action of reduction was founded on the following averments:—

David Reid was in 1856 proprietor of certain heritable subjects in the parish of Neilston. In that year, being indebted to James Harvey & Co.

to the extent of £200, he granted to trustees for that firm an *ex facie* absolute disposition of the property which was granted truly in security of that sum. On 11th June 1858, Reid paid up the £200, and the said trustees conveyed the subjects, in conformity with his request, to Reid and his wife, and the survivor, for their conjunct life-rent alimentary use alienarily, and to the children of the marriage between them, born and to be born, equally between them. Infestment passed on this disposition on 23d June 1858. In so far as the deed bore to convey any right in favour of Mrs Reid and her children, it was an alienation made by Reid when he was insolvent, without any true, just, or necessary cause to the prejudice of his lawful creditors, and as a fraudulent and collusive device for defeating their rights. Some months after the date of it, Reid suspended payment and was rendered notour bankrupt. On 31st March 1859, with consent of his wife, he disposed of the subjects to certain persons as trustees for his creditors. In this deed it was narrated that the previous disposition was null and void under the Act of 1621, as well as at common law. Notwithstanding the execution of this deed, Reid remained in possession and continued to carry on business, contracting new debts, with the proceeds of which he satisfied the debts of a number of the creditors for whose behoof the trust conveyance had been granted. In January 1864, the trustees, on the narrative that the purposes of the trust had been exhausted, disposed and reconveyed the subjects to Reid and his wife and children, with a destination similar to that contained in the disposition to them in 1858. At the date of this disposition Reid was utterly insolvent; and in so far as it bore to convey any right to the subjects to Mrs Reid and her children, it was granted without any true, just, or necessary cause to the prejudice of Reid's lawful creditors, and as a fraudulent and collusive device for defeating their legal rights. On 15th January 1864 Reid's estates were sequestrated, and the pursuer was afterwards elected trustee. It was also averred that Reid has been continuously insolvent from 1858.

The pursuer sought to reduce on these grounds, *inter alia*, the disposition to Reid's wife and children in 1858, and the other disposition to them in 1864. The action was defended by them and also by Reid. Issues were proposed for trial and reported.

SCOTT, for the defenders, objected that the issues proposed did not raise an important question as to which the parties were at variance—namely, whether the pursuer represented creditors prior to the granting of the first disposition. The pursuer averred that he did, but this the defenders denied. All these creditors had been paid.

GIFORD and HALL, for the pursuers, answered—At common law a deed by an insolvent may be challenged by creditors who were not so till after the deed was granted, but whose debts were contracted to pay off the debts of creditors who were so prior to the deed—Edmond v. Grant, 1st June 1853, 15 D. 703. They were willing, however, to insert in the issues that the pursuer now represented the creditors who were prejudiced.

The following issues were accordingly adjusted, the words in italics having been inserted by the Court in those proposed by the pursuer:—

“It being admitted that the estates of the defender David Reid were sequestrated on or about the 15th day of January 1864, and that the pursuer is trustee on the said sequestrated estates,—

- "1. Whether the disposition, No. 8 of process, so far as in favour of the defender, Mrs Martha Hopkins or Reid, and the children born or to be born of the marriage betwixt the defenders, David Reid and the said Mrs Martha Hopkins or Reid, was an alienation by the said David Reid to conjunct and confident persons of property belonging to him, without true, just, or necessary cause, to the hurt and prejudice of prior creditors of the said David Reid, *now represented by the pursuer*, contrary to the Act 1621, cap. 18?
- "2. Whether the defender David Reid, *when insolvent*, procured the said disposition, No 8 of process, to be executed, so far as in favour of the defender, Mrs Martha Hopkins or Reid, and the children born or to be born of the marriage betwixt the said David Reid and the said Mrs Martha Hopkins or Reid, fraudulently to disappoint the legal rights of his creditors, *now represented by the pursuer*?
- "3. Whether the disposition, No. 11 of process, so far as in favour of the defender Mrs Martha Hopkins or Reid, and the children born or to be born of the marriage betwixt the defenders, David Reid and the said Mrs Martha Hopkins or Reid, was an alienation by the said David Reid to conjunct and confident persons of property belonging to him, without true, just, or necessary cause, to the hurt and prejudice of prior creditors of the said David Reid, *now represented by the pursuer*, contrary to the Act 1621, cap. 18?
- "4. Whether the defender David Reid, *when insolvent*, procured the said disposition, No. 11 of process, to be executed, so far as in favour of the defender, Mrs Martha Hopkins or Reid, and the children born or to be born of the marriage betwixt the said David Reid and the said Mrs Martha Hopkins or Reid, fraudulently to disappoint the legal rights of his creditors, *now represented by the pursuer*?

Agents for Pursuer—Neilson & Cowan, W.S.

Agent for Defender—D. F. Bridgeford, S.S.C.

SECOND DIVISION.

PICKFORD AND CO. v. THE CALEDONIAN RAILWAY COMPANY.

Railway and Canal Traffic Act, 17 and 18 Vict. c. 31—Contravention. Circumstances in which a complaint by a company of carriers against a railway company, for giving facilities to their rivals in business, in contravention of the Railway and Canal Traffic Act, dismissed, the petitioners' averments, so far as relevant, not having been proved.

This was a petition and complaint presented under the 17 and 18 Vict. cap. 31 (the Railway and Canal Traffic Act, 1854). The petitioners are carriers in London, Edinburgh, Glasgow, and elsewhere. The petition set forth that they had, in the year 1862, come to an agreement with the respondents, by which the latter agreed to allow to the petitioners the same rates of cartage per ton for goods which they might cart to and from the Caledonian Railway Company's stations as the said Caledonian Railway Company allowed to their own carters or contractors for the time, it being thereby understood and agreed that the Caledonian Railway Company should give, as they thereby agreed to give, all goods at their stations to the petitioners to deliver which might be addressed to or consigned to them,

whether at such stations or to the petitioners' address. So far as regarded the stations at Edinburgh and Glasgow, it was in the said agreement stated that the Caledonian Railway Company's then contractors were Messrs J. & P. Cameron in Glasgow and Edinburgh, and Messrs Robb, Greig, and Company, and J. M'Fadyen in Glasgow, and a schedule of the then existing rates of cartage paid by the said Caledonian Railway Company to their said contractors was appended to the said minute of agreement, the said cartage per ton being only on goods the rates for which between consigner and consignee included the cartage for collection and delivery, all goods carried at station to station rates being excluded from the said agreement, in the same way as such station to station goods were excluded from the agreements between the said Caledonian Railway Company and their said contractors. It was thereby further agreed that the said arrangement should be retrospective as well as applicable to the future, so that the petitioners should draw the like sums for cartage theretofore performed by them since the expiry of their contract with the Caledonian Railway Company. The petition further set forth that the said Caledonian Railway Company, however, have not only failed to implement the said agreement, but have also, in violation and contravention of the provisions of the Acts of Parliament after quoted, given undue and unreasonable preference and advantage to themselves, in their capacity of common carriers, and to other persons and companies, over the petitioners, and have imposed on the petitioners undue and unreasonable prejudice and disadvantage, thereby entailing on the petitioners a heavy pecuniary loss. In particular, the said Caledonian Railway Company have contravened the provisions of the said Acts of Parliament, *inter alia*, in the following respects:—(1.) They have in some instances refused to hand over to the petitioners at their station in Buchanan Street, Glasgow, for delivery by the petitioners, goods which either arrived there labelled, consigned, or addressed to the petitioners' care, or with respect to which the consignees thereof directed them to hand over the same to the petitioners for delivery. (2.) The said railway company further afford to other carriers who are the competitors and rivals of the petitioners in business, facilities for lifting goods from their stations which they refuse to the petitioners, and do all in their power to obstruct the petitioners in lifting and carting goods from their said stations. (3.) The said railway company give an undue preference and advantage over the petitioners to other carriers, their competitors in business, inasmuch as they receive payment from the said competitors at the end of the month, or other stated period, of the charges on goods consigned to them during the month; while they compel the petitioners to make payment to them of the particular charges applicable to each package of goods consigned to the petitioners before such package is removed from the station of the railway company, or placed on the cart of the petitioners; and while thus exacting from the petitioners separate and instant settlement of charges payable to the railway company, they refuse to make similar settlements of charges and overcharges payable to the petitioners. (4.) The railway company also afford to the rivals of the petitioners in business, accommodation at their said station for carrying on their business, which they refuse to the petitioners. Various instances were given in the petition of the alleged violation