

Friday, October 29.

## FIRST DIVISION.

MUIRHEAD, PETITIONER.

*Burgh—Police Burgh—Annual Election of Commissioners—Returning Officer.*

In an application for the appointment of a returning officer to act at the annual election of commissioners for a police burgh, it appeared that neither the provost nor either of the junior magistrates could competently act, and the Court, refusing an application for the appointment of one of the non-retiring commissioners of police, *nominated* the Sheriff-Substitute of the county to act as returning officer.

This was an application by the Clerk of the Commissioners of the burgh of Hillhead, in the county of Lanark, for the appointment of a returning officer at the annual election of Commissioners of Police, to be held on the 2d November next. He stated that Hillhead was a police burgh in the sense of the General Police Improvement (Scotland) Act 1862, and that its affairs were managed by a body of nine Commissioners of Police, of whom three were magistrates; that by section 50 of the said statute one-third of the commissioners annually went out of office; that among those thus going out of office on the present occasion were the provost and one of the junior magistrates, while the other junior magistrate had recently died; that neither the provost nor the surviving junior magistrate could competently act as returning officer, as both had offered themselves as candidates for re-election; and that the present difficulty arose from the death of the other junior magistrate taken in conjunction with the two other magistrates offering themselves for re-election, for which state of matters no provision had been made by 3 and 4 Will. IV. cap. 76, or any subsequent statute dealing with municipal elections.

He accordingly prayed the Court, *inter alia*, to appoint as returning officer one of the other commissioners (named in the petition) who did not retire at the present time.

Authority—*Police Commissioners of Kirriemuir*, Nov. 8, 1884, 12 R. 103.

The Court refused the prayer of the petition in so far as it prayed for the appointment of one of the non-retiring Commissioners of Police as returning officer, and appointed Sheriff Balfour, one of the Sheriff-Substitutes of Lanarkshire, whom failing the senior Sheriff-Clerk-Depute for said county, to be returning officer, allowed the petitioner his expenses, as taxed, out of the burgh funds, and in respect of the day of election being on the 2d November next allowed a certified copy of the present interlocutor to be used in place of an extract thereof.

Counsel for Petitioner—Guthrie. Agents—Morton, Neilson, & Smart, W.S.

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## SECOND DIVISION.

[Sheriff of Lanarkshire.]

OASTLER v. DILL, SMILLIE, &amp; WILSON AND OTHERS.

*Reparation—Agent and Client—Duty of Agent.*

A woman instructed a law-agent to invest a sum on a first bond over heritable property. He lent it, acting both for her and for the borrower, on a second bond over property the existing burdens on which exhausted its value, and she lost her money in consequence. *Held* that he was bound to indemnify her.

*Observations* on the practice of an agent acting in such transactions for both parties to the loan.

Messrs Dill, Smillie, & Wilson were a firm of law-agents in Glasgow, Mr Thomas J. Smillie and Mr Archibald Cunninghame Wilson being in 1874 the sole partners. Mr Wilson was deceased at the date of this case. On 12th November 1874 two brothers of Mr Thomas J. Smillie, George and Matthew Smillie, bought a property in Braehead Street, Rutherglen Road, Glasgow. The disposition bore that the price was £1350, that £350 of the price was paid by the purchasers in cash, and that the balance, £1000, was contained in a bond and disposition in security over the property, of which the purchasers bound themselves to free and relieve the sellers. Previous to the purchase of this property, George and Matthew Smillie had procured from the first bondholder's agents a valuation of the property by a Glasgow measurer, in which the value of the property was stated at £1450, over and above the feu-duty of £15, 6s. Messrs Dill, Smillie, & Wilson were agents for a retired farmer, Mr Brownlee, who was a relative of Mr Smillie, and was also a relative of a widow Mrs Beatty Yates or Oastler, pursuer of this action. On the 7th November 1874 Mrs Oastler along with Mrs Brownlee called by appointment upon Mr Smillie, and the former lady handed over to him the sum of £600 for investment. Part of this, viz., £200, was invested in a security over a property belonging to a certain Mr M'Kinlay. The other £400 Mr Smillie invested in a second bond over the property in Braehead Street acquired by his brothers. Interest was paid upon this bond until 1880, when it ceased to be paid.

Mrs Oastler on the 17th March 1886 brought this action in the Sheriff Court of Lanarkshire, in which she called Messrs Dill, Smillie, & Wilson, and Mr Thomas Smillie as the sole partner of the firm, and Mrs Wilson as executrix-dative of her deceased husband Archibald Cunninghame Wilson, who was the only other partner of the firm, as defenders. The action concluded that the defenders should be found liable to pay the sum of £480, being the £400 and £80 as arrears of interest.

The pursuer averred that she had placed her money in Mr Smillie's hands, as a member of the firm, "with instructions to invest it in a first bond upon good heritable security," and that he having charge of the business, had invested her money, in violation of her instructions, on a second bond, which investment turned out