

the common law before the passing of the Act, and consequently the Act leaves the question exactly where it was. I therefore think we should adhere to the Lord Ordinary's judgment.

The LORD JUSTICE-CLERK, LORD CRAIGHILL, and LORD RUTHERFURD CLARK concurred.

The Court adhered.

Counsel for Suspenders—Rhind—A. S. D. Thomson. Agent—Martin J. Brown, S.S.C.

Counsel for Respondents (Reclaimers)—Shaw—Craigie. Agents—Winchester & Nicolson, S.S.C.

Thursday, February 2.

FIRST DIVISION.

THOM (CLERK TO POLICE COMMISSIONERS OF LINLITHGOW), PETITIONER.

Burgh—Administration of Burgh Property—Nobile officium—Authority to Sell—General Police and Improvement (Scotland) Act 1862, (25 and 26 Vict. c. 101).

In a petition presented by the clerk to the commissioners of police of a burgh constituted under the General Police and Improvement (Scotland) Act 1862, the Court granted authority to sell by public roup part of the burgh property acquired by the commissioners under section 125 of the said Act.

John Thom, Clerk to the Commissioners of Police of the burgh of Linlithgow, presented this petition, in which he averred that the Royal Burgh of Linlithgow was also a burgh constituted under the General Police and Improvement (Scotland) Act 1862 (25 and 26 Vict. c. 101) and the General Police and Improvement (Scotland) Act 1868 (31 and 32 Vict. c. 102); that under section 125 of the first recited Act the Commissioners had in 1877 purchased certain heritable subjects; that these had since that date been partly let to tenants and partly used as a fire-engine house and lamp store, and that the Commissioners were desirous to obtain power to sell the same.

He further averred that the statutes referred to contained no general power of sale, and that the powers of sale specially conferred by sections 161 and 373 of the Act of 1862 would not authorise a sale of the subjects in question, and referred to the petition of Alexander Tait, Clerk to the Commissioners of Police of the burgh of Grangemouth, 1st July 1884 (not reported), in which warrant to sell the old Town Hall of Grangemouth by public roup had been granted.

The petitioner accordingly prayed for authority to sell, by private bargain, that portion of the subjects not required for the purposes of the Commissioners.

The Court, on the petition being amended so as to embrace an alternative prayer for warrant to sell the subjects in question by public roup, granted warrant to sell by public roup.

Counsel for Petitioner—Wilson. Agent—Petitioner.

Wednesday, February 2.

SECOND DIVISION.

[Lord M'Laren, Ordinary.]

MORRISON v. NEILSON.

Agreements and Contracts—Volunteer—Volunteer Act 1863 (25 and 26 Vict. c. 65), secs. 24, 25, and 27.

Held that subscriptions to the funds of a volunteer corps, made payable by rules made under the Volunteer Act 1863, and approved by the War Office in terms of that Act, are debts which may be recovered in a court of law.

A volunteer corps made in March 1885, and obtained approval of rules which, *inter alia*, provided that the honorary colonel's subscription should be a certain sum, and that all subscriptions should fall due on 31st October in each year for the twelve months preceding, and that a member should be liable for a subscription provided he had been a member for one month in any year. Held that the rule, though dated in March 1885, made the honorary colonel legally liable for a subscription at the rate fixed by it, for the year ending 31st October 1885. Lord Young *dissented*, holding that the rule ought not to apply to the year in which it was passed, but only to the twelve months which began to run after 31st October 1885.

The Act 26 and 27 Vict. c. 65, provides, sec. 24—“The officers and volunteers belonging to a volunteer corps may from time to time make rules for the management of the property, finances, and civil affairs of the corps, and may alter or repeal any such rules, but any such rules shall not have effect unless and until the commanding officer of the corps thinks fit to transmit the same to the lieutenant of the county to which the corps belongs, and such lieutenant thinks fit to submit the same for Her Majesty's approval, and such approval, signified through one of Her Majesty's Principal Secretaries of State, is notified by such lieutenant to the commanding officer of the corps, to be by him forthwith communicated to the corps, whereupon the rules so approved shall be binding on all persons.”

Section 25, which is quoted in the opinion of Lord Craighill *infra*, provides that all money subscribed for the use of volunteer corps, and all effects belonging to it, and not the property of any individual volunteer, shall, along with the exclusive right to sue for and recover current subscriptions and other money due to the corps, vest in the commanding officer for the time being.

Section 27—“If any person belonging or having belonged to a volunteer corps . . . neglects or refuses to pay any money subscribed or undertaken to be paid by him towards any of the funds or expenses of such corps . . . or due under the rules of such corps, and actually payable by him, or to pay any fine incurred by him under the rules of such corps, such money or fine shall (without prejudice to any other remedy) be recoverable from him with cost at any time within twelve months after the same becomes due and payable as a penalty under this Act is recoverable,” &c.

This was an action in which the pursuer was Adam Morrison, the Lieutenant-Colonel and