

The Court answered the question of law in the negative.

Counsel for Appellant—Wark, K.C.—Paton. Agents—Maxwell, Gill, & Pringle, W.S.

Counsel for Respondent—Solicitor-General (Constable, K.C.)—Skelton. Agent—John S. Pitman, W.S.

Wednesday, June 21.

FIRST DIVISION.
MORGAN, PETITIONER.

Bankruptcy—Sequestration—Gazette Notice—Failure to Insert Notice Correctly—Application to Rectify—Nobile Officium—Bankruptcy (Scotland) Act 1913 (3 and 4 Geo. V, cap. 20), sec. 44, and Schedule B.

A notice of sequestration under section 44 of the Bankruptcy Act 1913 was timeously inserted in the *Edinburgh* and *London Gazettes*, but did not contain the sentence "All future advertisements relating to this sequestration will be published in the *Edinburgh Gazette* alone," conform to Schedule B. The statutory meeting was held and a trustee elected, to whose appointment objections were lodged. The Sheriff having difficulty in dealing with the appointment of the trustee and the objections owing to the omission from the *Gazette* notice, a petition was presented to the First Division appealing to the *nobile officium* of the Court to rectify the notice and to authorise the sequestration to proceed.

The Court authorised the petitioner to insert a notice in the *Edinburgh* and *London Gazettes* correcting the omission, and authorised the Sheriff upon proof of such notice having been duly inserted to proceed in the sequestration as if the first notice had been correctly given.

The Bankruptcy (Scotland) Act 1913, sec. 44, *inter alia* enacts—" . . . The party applying for sequestration shall, within four days from the date of the delivrance awarding the sequestration (if awarded in the Court of Session), or if it is awarded by the Sheriff within four days after a copy of the said delivrance could be received in course of post in Edinburgh, insert a notice in the form of Schedule B hereunto annexed in the *Gazette*, and also one notice in the same terms within six days from the said date in the *London Gazette*."

Schedule B is as follows:—

"Notice to the *Gazettes*."

"The estates of A B (name and designation) were sequestrated on (date, month, and year) by the (Court of Session or sheriff of _____).

"The first delivrance is dated the (date).

"The meeting to elect the trustee and commissioners is to be held at (hour) o'clock on (day) of the (week), the (date, month, and year), within (specify particular place) in (town).

"All future advertisements relating to this sequestration will be published in the *Edinburgh Gazette* alone."

Mrs Margaret Morgan, Douglas Hotel, Stirling, presented a petition appealing to the *nobile officium* of the Court, which set forth—"That of this date (May 18, 1922) the petitioner, with the concurrence of Alexander Stewart & Son of Dundee, creditors of the petitioner to the extent required by law, presented a petition to the Sheriff of Stirling, Dumbarton, and Clackmannan at Stirling for the sequestration of the petitioner's estates. That of the same date the Sheriff awarded sequestration in common form. That as required by section 44 of the Bankruptcy (Scotland) Act 1913 the petitioner duly presented to the Keeper of the Register of Inhibitions and Adjudications at Edinburgh an abbreviate of the petition and delivrance in the form prescribed, which was recorded of this date (May 20, 1922). That in terms of section 44 of the said Bankruptcy Act there should also have been inserted in the *Edinburgh Gazette* within four days, and in the *London Gazette* within six days after, a copy of the said delivrance could be received in course of post in Edinburgh, a notice in the form of Schedule B annexed to the said Bankruptcy Act. That of this date (May 23, 1922) a notice was timeously inserted in the *Edinburgh* and *London Gazettes*, but *per incuriam* the notice did not conform to the terms of said Schedule B, the sentence 'All future advertisements relating to this sequestration will be published in the *Edinburgh Gazette* alone' being omitted therefrom. That in terms of the said first delivrance, and as advertised in the said *Gazette* notices, the meeting of creditors for the purpose of electing a trustee and commissioners was held of this date (June 2, 1922). That the said meeting unanimously elected three commissioners and by a majority elected a trustee, to whose appointment objections have been lodged. That the Sheriff has difficulty in proceeding to deal with the appointment of the trustee and the disposal of the said objections by reason of the said notices calling the meeting of creditors not having been in the form prescribed by Schedule B although the whole other formalities prescribed by the said Bankruptcy Act have been duly observed, and no further advertisements of any proceedings in the sequestration have been necessary."

The prayer of the petition was as follows:—
—"May it therefore please your Lordships to authorise the petitioner to insert in the *Edinburgh* and *London Gazettes*, within six days from the date of your Lordship's interlocutor hereon, a notice in the following terms:—'Sequestration of Mrs Margaret Morgan, widow, carrying on business at Douglas Hotel, Arcade, Stirling.—All future advertisements relating to this sequestration will be published in the *Edinburgh Gazette* alone. This intimation was omitted from the notice published in the *Gazette* on 23rd May 1922, and is now given by authority of the First Division of the Court of Session, in terms of interlocutor dated 21st June 1922.

—R. M. & J. M. YELLOWLEES, *Solicitors*, 64 Murray Place, Stirling, *Agents*; and to hold that thereafter intimation has been fully given in terms of the Bankruptcy (Scotland) Act 1913, and in particular section 44 and Schedule B thereof; and to authorise the Sheriff of Stirling, Dumbar-ton, and Clackmannan, upon proof of such notice having been duly inserted, to proceed in the sequestration as if the notice required by the said Bankruptcy Act, and in particular section 44 and Schedule B thereof, had been correctly given on the 23rd May 1922, or to do further or otherwise in the pre-mises as to your Lordships shall seem proper.”

Counsel for the petitioner in the Single Bills moved the Court to grant the prayer of the petition. He referred to *Murray*, 1906, 8 F. 957, 43 S.L.R. 686.

The opinion of the Court (the LORD PRESIDENT, LORDS MACKENZIE, SKERRINGTON, and CULLEN) was delivered by

LORD PRESIDENT—I think, in view of the precedent afforded by the case of *Murray* (8 F. 957), we may grant the relief asked for, but it must be on the same condition as was imposed in the case of *Somerville & Company* (7 F. 651), namely, that the expenses of the petition and of the procedure connected therewith will not be allowed against the estate.

The Court pronounced this interlocutor—

“ . . . Authorise the petitioner to insert in the *Edinburgh* and *London Gazettes*, within six days from this date, a notice in the terms set forth in the prayer of the petition: Authorise the Sheriff of Stirling, Dumbar-ton, and Clackmannan, upon proof of such notice having been duly inserted, to proceed in the sequestration as if the notice required by the Bankruptcy Act, and in particular section 44 and Schedule B thereof, had been correctly given on the 23rd May 1922, and decern: Find that the expenses of and incidental to the petition shall form no part of the expenses of said sequestration or be chargeable therein.”

Counsel for the Petitioners—Maclean, Agents—Shield & Purvis, S.S.C.

Friday, June 23.

SECOND DIVISION.

[Lord Sands, Ordinary.]

JAMES SCOTT & SONS, LIMITED v.
R. & N. DEL SEL AND ANOTHER.

Contract—Frustration of Contract—Arbitration—Contract to Ship Jute—Order in Council Prohibiting Export of Jute—Suspension or Termination of Contract—Application of Arbitration Clause.

A firm of jute merchants contracted to ship a specified number of bales of jute from Calcutta to Buenos Ayres. The contract contained, *inter alia*, the

following provisions:—“ Any delay in shipment caused by fire, strike, break-ages, or accidents, and/or war, and/or civil strife, and/or any other unforeseen circumstances, and/or pestilence amongst the workmen engaged in connection with the manufacture, and/or shipment of the goods of this contract, to be excepted, and the quantity short produced in consequence thereof to be deducted from the quantity named in this contract, or delivered soon as possible thereafter, buyers having the option of refusing it after time. Sellers must notify buyers within six days of such delay. Should the vessel by which freight has been engaged be commandeered or delayed by the Government, sellers shall not be responsible for any late shipment or other consequences arising therefrom, and the goods shall be sent forward as early as possible. . . .” It also contained an arbitration clause in the following terms:—“ Any dispute that may arise under this contract to be settled by arbitration in Dundee, and in the event of a dispute as to quality a fair number of intact bales as may be required by the arbitrators to be sent by buyers to Dundee, and if required by sellers a further fair number of intact bales are to be returned to Calcutta at sellers’ expense.” Before all the bales of jute had been shipped, further export of jute from India to the Argentine was prohibited by an Order in Council of the Governor-General of India. A dispute having arisen between the parties as to whether the contract was rendered void and unenforceable *quoad* the balance of the bales of jute, held that the question fell to be determined by arbitration, the dispute being one that had arisen under the contract.

James Scott & Sons, Limited, merchants and manufacturers, Dundee, *pursuers*, brought an action against R. & N. Del Sel, merchants, Buenos Ayres, Rosario, and Dundee, and also against Thomas Agnew, solicitor, Dundee, *defenders*, in which the conclusions were for declarator “that the said Thomas Agnew as oversman appointed by the Sheriff-Substitute of Forfarshire at Dundee in the submissions contained in twenty-seven contracts entered into between the pursuers and defenders, the said R. & N. Del Sel, for the sale of hessian cloth and other jute goods by the pursuers to the said defenders, *videlicet*, two contracts dated 19th February, four contracts dated 22nd February, four contracts dated 5th March, five contracts dated 9th March, eight contracts dated 12th March, and four contracts dated 21st March, all in the year 1917, and under which arbitrators were appointed respectively by the said defenders and by the pursuers under protest conform to a letter from the said defenders to the pursuers dated 8th, and a letter from the pursuers to the said defenders dated 20th, both days of March 1918, has no jurisdiction to determine whether said contracts were in consequence of the embargo or prohibition of exporting jute goods from India to the Argentine imposed by the