

COURT OF SESSION.

Tuesday, May 20.

SECOND DIVISION.

GRANT, PETITIONER.

Process—Poor—Form of Note for Remit to Reporters on Probabilis Causa Litigandi—A.S., 21st Dec. 1842.

Robert Grant presented a note to the Second Division craving a remit to the reporters on the *probabilis causa litigandi* to consider his application for admission to the poor's roll. He stated in his note—"The petitioner being desirous of admission to the poor's roll to enable him to carry on a lawsuit against the Parochial Board of Abernethy," but did not state the nature of the proposed action. The respondent objected that the note was incompetent in respect that the nature of the proposed action was not stated therein, and quoted the case of *Duncan*, January 28, 1846, 8 D. 411.

The Court ordered the petition to be amended to the effect of stating the nature of the action.

Counsel for Petitioner—Gardner. Agent—R. J. Finlay, S.S.C.

Counsel for Respondents—Guthrie. Agents—John C. Brodie & Sons, W.S.

Wednesday, May 21.

FIRST DIVISION.

[Sheriff of Forfarshire.

WYLIE v. KYD.

Bankruptcy—Sheriff—Review of Sheriff's Interlocutor pronounced in Proceedings before Appointment of Trustee—Bankruptcy Act 1856 (19 and 20 Vict. c. 79), secs. 71 and 170.

Held competent to appeal to the Court of Session an interlocutor of a Sheriff pronounced before the appointment of a trustee in a sequestration, by which proof was allowed to a competitor for the trusteeship of his objections to the votes of the creditors who supported his opponent. *Tennent v. Crawford*, Jan. 12, 1878, 5 R. 433, followed.

In a competition for the office of trustee on the sequestrated estate of John Ogilvy, farmer, George Kyd, competitor for the office of trustee, objected to the votes of all the creditors who supported the election of James Wylie, who had been also nominated for the office at the first general meeting of creditors on 25th April 1884. The ground of objection was that the several creditors were not put on oath by the justices of the peace before whom their affidavits bore to have been sworn.

The Sheriff-Substitute (BROWN DOUGLAS) on 5th May 1884 pronounced this interlocutor:—"Allows to the competitor Kyd a proof of his objections—that the several deponents in the

affidavits produced were not put on oath by the justices of the peace before whom it is said the oaths were taken; and to the competitor Wylie a conjunct probation."

Wylie appealed to the Court of Session.

The Bankruptcy Act 1856, sec. 71, provides—"The judgment of the Sheriff declaring the person or persons elected to be trustee or trustees in succession shall be given with the least possible delay; and such judgment shall be final, and in no case subject to review in any court or in any manner whatever." The 170th section provides—"It shall be competent to bring under the review of the Inner House of the Court of Session . . . any deliverance of the Sheriff after sequestration has been awarded (except when the same is declared not to be subject to review) . . . and it shall be competent to the Inner House . . . to remit to the Sheriff with instructions."

The respondent objected to the competency of the appeal on the ground that the interlocutor of a Sheriff determining the competition for a trusteeship was final, and it followed necessarily that an interlocutor determining the validity of the votes given for competitors must also be final. Obviously that would be so if the Sheriff determined on the validity of the votes and decided the competition in the same interlocutor.—*Galt v. Macrae*, June 9, 1880, 7 R. 888; and Lord Shand in *Tennent v. Crawford*, *infra*.

Authorities for appellants—*Tennent v. Crawford*, January 12, 1878, 5 R. 433, and cases cited there; *Reid v. Drummond*, November 15, 1879, 7 R. 235.

LORD PRESIDENT—This point is settled by a series of decisions, and we are bound to follow them.

LORD MURE and LORD ADAM concurred.

The Court repelled the objection to the competency of the appeal, and sent the case to the roll.

Counsel for the Appellants—M'Kechnie. Agent—P. S. Malloch, S.S.C.

Counsel for the Respondent—Watt. Agent—David Milne, S.S.C.

Wednesday, May 21.

SECOND DIVISION.

[Lord Fraser, Ordinary.

BROWN v. CARTWRIGHT AND OTHERS
(STIRLING MAXWELL'S EXECUTORS).

(*Ante*, vol. xx. p. 818, July 17, 1883.)

Succession—Testament—Legacy—Master and Servant—"Domestic Servant."

A testator by holograph will left legacies to his factor, butler, coachman, housekeeper, and "to each of my other servants who shall be in my service at the time of my death, and who shall have been with me for four years, one year's wages." Opposite to each legacy to a person named there was pencilled on the margin the amount in figures, while