

Saturday, November 30.

SECOND DIVISION.

A. M. LAWSON'S TRUSTEES v. C. LAWSON
AND OTHERS.

Petition for Leave to Appeal—48 Geo. III. c. 151,
sec. 15.

Circumstances in which leave to appeal
against a unanimous judgment *refused*.

The Statute of Geo. III. enacts—"That hereafter no appeal to the House of Lords shall be allowed from interlocutory judgments, but such appeals shall be allowed only from judgments or decrees on the whole merits of the cause, except with the leave of the Division of the Judges pronouncing such interlocutory judgments; or except in cases where there is a difference of opinion among the Judges of the said Division." Here an application was presented for leave to appeal against a unanimous judgment of the Second Division. The main question in the suit was Whether at the date of the death of A. M. Lawson, he was a partner in the firm of Lawson & Co. or had concluded an agreement with the firm and had retired for a consideration? Their Lordships held there was no concluded agreement, and ordered production of certain balance sheets of the firm and accounts of A. Lawson with the firm.

In support of the application the Solicitor-General stated that it would cause great risk to the Company if all its affairs were revealed. Against the application it was urged, that the whole merits had not been decided, and it was expedient to exhaust the case in the interests of the minor sons of A. Lawson.

LORD COWAN—I am clear the application should be refused, on the ground that our Judgment was not pronounced on the whole merits of the case. We have not ordered a general accounting, and exposure to the public is not to be presumed.

LORD BENHOLME—I am of a different opinion. It appears to me that if our judgment is reversed there will be an end of this litigation, and a settlement between the parties on a different basis than if our order stands. Because in that case there will be a quick mode of ascertaining the rights of parties independently of any investigation.

It has been suggested by Lord Cowan that we do not do much harm by ordering these partial productions, but it seems to me they are only introductory to a more full examination, which will be shut out as being unnecessary in case this alleged agreement is held good.

Now, in regard to the respective dangers or embarrassment to the parties respectively, according as the appeal is admitted or refused, there is no equality. On the one hand these children are to receive the £300 a-year pending the appeal, while, if the defenders are once compelled to produce their books, any danger or damage they may sustain are irremediable. I am always tender of the rights of companies where they state a plea which if well founded would supersede the necessity of minute and detailed investigation into accounts.

I think we ought to grant leave to appeal.

LORD NEAVES—I am clear for refusing. There is no general ground for granting this application, and the practice is the other way; neither can I find any special ground considering the relations of the parties and the position of the case.

LORD JUSTICE-CLERK—I think we should refuse. The judgment is interlocutory, and there is no special reason for departing from the usual practice.

Application refused.

Friday, November 29.

SECOND DIVISION.

[Lord Jarviswoode, Ordinary.

MACKNIGHT v. PATERSON (OMAN'S TRUSTEE).

Trustee—Assessment—Personal Liability.

Trustee on a sequestrated estate held to be "owner," under The Edinburgh and Leith Sewerage Act, 1864, sec. 47, and as such personally liable for assessments under that Act.

The summons in this action concludes for payment of £103, 12s. 11d., from Andrew Paterson, the trustee on the sequestrated estates of John Oman, builder, for assessment under the Leith Sewerage Act 1864. The pursuer is clerk to the Leith Sewerage Commissioners, and represents them under section 74 of the General Police and Improvement (Scotland) Act 1862, incorporated with the Edinburgh and Leith Sewerage Act 1864.

By section 47 of "The Edinburgh and Leith Sewerage Act 1864" it is enacted that "the owners of all lands, houses, or other property, any sewer, outfall, or drain from which shall, after construction of the said main and branch sewers and works, be connected with the same, shall be liable in payment to the Commissioners of a reasonable sum of money for the use of the said main or branch sewers and works, which the Commissioners are hereby authorised and required to fix and exact in respect of all such lands, houses, or other property; provided always that such lands, houses, or other property shall not have been assessed for the expense of making such main or branch sewers or works; but if such lands, houses, or other property shall have been so assessed, and shall have been built upon, enlarged, or altered after the assessment for making such main or branch sewers and works was imposed and levied, the owners thereof shall be liable in payment to the Commissioners of such reasonable sum of money as aforesaid."

By section 3 of said General Police and Improvement (Scotland) Act 1862, incorporated with the said Sewerage Act as aforesaid, it is enacted that the word "owner" shall "include joint owner, fiar, liferenter, feuar, or other person in the actual possession or receipt of the rents of tenements, lands, and heritages, of every tenure or description, and the factor, agent, or commissioner of such persons, or any of them, or any other person who shall intrude with or draw the rents." And by section 42 of the Valuation of Lands (Scotland) Act, 17 and 18 Vict., c. 91, also incorporated with the said Sewerage Act, it is enacted that "the word 'proprietor' shall apply to liferenters as well as fiars, and to tutors, curators, commissioners, trustees, adjudgers, wadsetters, or other persons who shall be in the actual receipt of the rents and profits of lands and heritages."

The Commissioners, by resolutions, the latest in date of which was October 24, 1871, fixed 2s. 6d. per pound of rental as the reasonable sum to be