

Friday, May 27.

FIRST DIVISION.

[Sheriff of Haddington.

SCOTT & COMPANY v. WOOD.

Process—Appeal—Bankruptcy—Bill Chamber—Vacation—19 and 20 Vict. cap. 79, sec. 170.

Held that an appeal under section 170 of the Bankruptcy Act 1856, in which the Lord Ordinary on the Bills in vacation had made a remit to the Accountant in Bankruptcy, must be prosecuted before the Inner House as soon as session commences.

This was a note for the appellants in the appeal at their instance in the sequestration of John Patterson, farmer, Clerkington, Haddington. Andrew Wood, writer, Haddington, obtained his discharge as trustee in the sequestration from the Sheriff-Substitute of Haddington (SHIRREFF) on 3d February 1881. Scott & Company, creditors, and G. S. Ferrier, the new trustee, appealed to the Court of Session under section 170 of the Bankrupt Statute 1856. When the appeal came to be considered the Court was in vacation, and the Lord Ordinary on the Bills (FRASER) pronounced the order remitting to the Accountant in Bankruptcy to report. The Accountant reported in session. The Lord Ordinary on the Bills (who happened to be the same Judge who had in vacation remitted to the Accountant in Bankruptcy), on being moved to consider the report, stated that there was now a difficulty in his dealing with the appeal, as the Court was now sitting, and there was no provision made in the Bankrupt Statute for him disposing of the case. In these circumstances the appellants presented this note, and craved the Court to empower the Lord Ordinary to dispose of the case, or themselves to dispose of the appeal. After hearing counsel—who cited *Grant v. Wilson*, 1st Dec. 1859, 22 D. 51; *Westland v. Ross*, 18th Nov. 1840, 3 D. 83—the Lords of the First Division held that the appeal was properly before them, the functions of the Lord Ordinary on the Bills ceasing whenever vacation ends. The case was held to be analogous to that of the Lord Ordinary on the Bills acting in vacation for the Junior Lord Ordinary in petitions under the Distribution of Business Act, which are continued and disposed of by the latter whenever session commences.

Counsel for Appellants—M'Kechnie. Agents—T. & W. A. M'Laren, W.S.

Counsel for Respondent—Dickson. Agent—W. B. Glen, S.S.C.

Tuesday, May 31.

SECOND DIVISION.

BRANDT & CO. v. RENNY & BROWN.

Contract—Disconformity to Contract.

In this case the pursuers, who are merchants and shippers at St Petersburg, raised action against the defenders, who are spinners at Blairgowrie, for the price of "50 tons of W.

Nemiloff's fresh Rjeff flax, averaging 3rd crown, of fair average quality, of next spring's shipments," which had been shipped to their order. The defenders refused payment on the ground that the flax supplied was disconform to contract.

The case was set down for jury trial, but under a joint-minute for the parties this was dispensed with, and a proof was held before Lord Craig-hill.

The defenders argued—That on a sound construction of the contract the sellers had bound themselves to supply shipments of flax, of the average quality of W. Nemiloff's flax in particular, and not, as contended for by the pursuers, of flax of the average quality of that shipped by all dealers from St Petersburg.

The Lords, while giving no decision on this question, were of opinion, that although on the evidence the flax was to some small extent inferior in value to the average quality of flax shipped by all dealers from St Petersburg by £2 per ton, yet that was not sufficient disconformity to contract to entitle the defenders to reject the goods.

Counsel for Defenders—Guthrie Smith—H. Johnston. Agents—Leburn & Henderson, S.S.C.

Counsel for Pursuers—Mackintosh—Alison. Agent—W. S. Harris, L.A.

Tuesday, May 31.

FIRST DIVISION.

SCOTTISH PROPERTY INVESTMENT
BUILDING SOCIETY v. HORNE.

Process—Removing—Competency—Ex facie Absolute Disposition—Rights of Creditors—Power to Remove.

An investment society obtained in security of advances to one of its members an *ex facie* absolute disposition of certain heritable subjects, it being provided by the rules of the society that when any member thereof who has obtained an advance allows his instalments and interest to fall into arrear to an extent equal to three months' instalments, it shall be in the power of the society, if such member shall be in the actual possession or occupancy of the premises in respect of which the advance has been made, to remove him therefrom. *Held* that a summary petition in the Sheriff Court to enforce this rule is incompetent, the possession of the premises in question being neither vicious nor precarious.

This was an appeal from the decision of the Glasgow Sheriff Court in a petition for summary ejection. The Scottish Property Building Investment Society were the pursuers in the petition, and David Horne, the respondent in this appeal, was the defender. Horne was proprietor of certain heritable subjects in Glasgow, and on the security of these obtained various loans from the society. The transactions between the parties were somewhat complicated, but it was alleged by the pursuers that at the last adjustment of accounts