

great depreciation of property between his first and second bankruptcy) is his own conduct in starting business afresh under circumstances which did not justify him in doing so, with the result that new creditors to the extent of £1770 have been dragged in to share the ruin. He is therefore unable to hold that the bankrupt has discharged the burden of proof that lay on him under the recent Act."

The petitioner appealed to the Lord Ordinary on the Bills, who, after hearing the appellant's agent and the counsel for the objectors, pronounced this interlocutor:—

"The Lord Ordinary having considered the note of appeal and whole proceedings, Dismisses the appeal: Affirms the deliverance of the Sheriff appealed from: Finds the appellant liable in expenses, modifies the same to £3, 3s., and decerns."

Agents for Appellant—Liddle & Lawson, S.S.C.

Counsel for Objectors—Macfarlane. Agents—Morton, Neilson, & Smart, W.S.

Tuesday, September 26.

B I L L C H A M B E R.

[Lord Kinnear, Lord Ordinary
on the Bills.

LIVINGSTON AND OTHERS (PROVOST AND
COUNCILLORS OF POLLOKSHAW),
PETITIONERS.

*Process—Burgh—Municipal Election—Return-
ing-Officer—Nobile Officium, Exercise of by Lord
Ordinary on the Bills.*

Where the magistrate whose duty it was under the charter of a burgh erected by royal charter to act as returning-officer at the next annual municipal election, had resigned office previous to the date of the election, the Lord Ordinary on the Bills, on the petition of the provost and councillors of the burgh, appointed the provost, who went out of office on the day of election, and did not seek re-election, to act as returning-officer.

By royal charter dated 5th January 1813, and written to the Seal and registered 2d April 1813, the town of Pollokshaws was erected into a burgh. The charter provided "that the magistracy shall consist of a provost and one baillie, who shall have the legal and usual jurisdiction—that the administration of any common good which may belong to the burgh shall be committed to six councillors and a treasurer, jointly with the said provost and baillie, any three of them to be a quorum;" . . . "that the first election shall be on the first Tuesday of October 1812, and every future election shall be on the first Tuesday of October yearly, the hour of meeting being eleven o'clock forenoon. . . at which annual meetings one magistrate only shall be chosen yearly, so that each magistrate shall thereafter remain in office two years."

Andrew Ritchie, M.D., Braeside, Pollokshaws, the baillie elected in October 1881, resigned office on 23d September 1882. In terms of the said charter the term of office of the provost, treasurer, and the remaining councillors of the burgh expired on Tuesday, 3d October 1882, when the annual election fell to take place.

Under the charter the treasurer and councillors all retired annually. No difficulty had previously arisen in the management of the annual elections, the provost and baillie having alternately acted as returning-officer. But the baillie having resigned, as above explained, and the provost's term of office being about to expire, there was no one entitled to act as returning-officer at the ensuing election on 3d October. Nomination papers for the election required to be lodged on Thursday the 28th September, the Thursday previous to the election.

In these circumstances the present petition was presented to the Lord Ordinary on the Bills by David Livingston, the provost, and by the treasurer and the six councillors of the burgh, for the purpose of having a returning-officer appointed in order that the election might proceed. The petitioners suggested as returning-officer the petitioner Livingston (who did not seek re-election), and craved that he should be appointed with all the statutory and other powers competent and necessary for the discharge of the said office, and that they should be found entitled to the expenses of the petition out of the burgh funds.

The Lord Ordinary pronounced the following interlocutor:—

"The Lord Ordinary officiating on the Bills having considered the petition and relative productions, and heard counsel for the petitioners, In the circumstances stated, grants the prayer of the petitioner: Authorises and appoints David Livingston, present provost of the burgh of Pollokshaws, whom failing the Sheriff-Substitute of the county of Renfrew at Paisley, to act as returning-officer at the election of magistrates and councillors of the said burgh on the 3d day of October next, with all the statutory and other powers competent and necessary for the discharge of the said office: Allows the petitioners their expenses, as taxed by the Auditor of Court, out of the burgh funds: And authorises a certified copy of this interlocutor to be used in place of an extract, and the petitioners to act thereon; and decerns."

Counsel for Petitioners—Guthrie. Agent—
F. J. Martin, W.S.