

Thursday, July 12.

FIRST DIVISION.

[Lord Ordinary on the Bills.

YEAMAN v. CALEDONIAN PROPERTY INVEST-
MENT BUILDING SOCIETY.

Process—Reponing—Attendance of Counsel.

A process of suspension and interdict stood in the roll of the Lord Ordinary on the Bills as the only Bill Chamber cause of the day. The case was duly called, and after waiting a reasonable time the Lord Ordinary, in respect of no appearance having been made on behalf of the suspender, refused the note. The suspender reclaimed, and craved to be reponed, stating as the reason for the non-appearance before the Lord Ordinary that his counsel had not been aware that the case was called. The Court refused to repon the suspender, but observed that he might have his remedy by bringing a new process of suspension.

Thursday, July 12.

FIRST DIVISION.

[Bill Chamber.

WILSON, PETITIONER.

Bankruptcy—Absence of Trustee from Scotland—Appointment of New Trustee—Loss of Original Process—Authority to Divide Acquired Estate—Bankruptcy (Scotland) Act 1856 (19 and 20 Vict. c. 79).

The trustee upon a sequestrated estate intromitted with the funds of the bankrupt, but paid no dividend to his creditors, and subsequently quitted the country. Thereafter the bankrupt succeeded to funds, and on the petition of certain creditors a new trustee was appointed, when it was discovered that the whole process, sederunt-book, and list of creditors were irretrievably lost. In a petition by the new trustee craving the Court to grant him authority, after intimation and advertisement, to proceed to divide the estate among the creditors by whom claims should be lodged in terms of the advertisements, the Court granted the authority craved.

This was a petition presented by John Wilson, chartered accountant, Glasgow, under the following circumstances:—The estates of James Skirving, surgeon, Glasgow, were upon 23d April 1877 sequestrated by the Sheriff of Lanark, and Stenhouse Bairnsfather, accountant, Glasgow, was elected trustee, and subsequently duly confirmed in the office by the said Sheriff. It was believed that the trustee intromitted to a small extent with the funds of the bankrupt, but no dividend was ever paid to the creditors, and no trace could at the time of this petition be found of how any funds intromitted with were disposed of. Some time after the sequestration both the bankrupt and the trustee left

Scotland, and at the date of the petition they were both resident in America. On the death of his father in 1882 the bankrupt became entitled to a sum of about £200. A petition was accordingly presented to the Sheriff of Lanark by certain creditors of the bankrupt craving a warrant for holding a meeting of creditors to elect a new trustee. After being duly intimated, the meeting was held and the present petitioner was elected trustee, and his election was duly confirmed by the Sheriff. The petitioner also received payment of the sum due to the bankrupt from his father's estate. The difficulty which gave rise to the present petition was that the whole original process, sederunt-book, claims of creditors, and other documents seemed to be hopelessly lost. No list of creditors who had lodged claims could be found, and there was no means of obtaining such a list, nor could any information be obtained from the original trustee, who seemed to have failed to comply with the statutory requirements. He stated in answer to a letter written to him by the petitioner that he believed that the documents were left in his office at the time he left Scotland. The petitioner appended the names of the only persons known to him who claimed to be creditors.

The prayer of the petition was in these terms:—
“To grant to the petitioner authority to proceed in the sequestration, and to take all necessary steps therein for the division of the estate and otherwise, notwithstanding the loss of the sederunt-book, claims, and other documents, and the petitioner's consequent inability to use or produce the same, in terms and for the purposes of the statute; and to authorise the petitioner to insert a notice in the *Edinburgh Gazette*, *Scotsman*, and *Glasgow Herald* newspapers setting forth the date of the sequestration, and the loss of the names, designations, and addresses of persons claiming to be creditors, and of the claims lodged by them, and requiring creditors and representatives of creditors deceased to lodge claims in the statutory form within the period of one month, or such other period as to your Lordships shall seem proper, from the last date of notice, under certification that the assets of the estate shall be divided among such creditors or representatives of creditors only as shall lodge claims within the said period; and to grant warrant to the petitioner to divide the estate among such creditors or representatives of creditors as shall have lodged claims in terms of the said notice, the claims so lodged being always disposed of in accordance with the provisions of the said Act, and the further procedure in the sequestration, with a view to the division of the funds and otherwise, being, so far as may be, regulated thereby; and to remit to the Lord Ordinary on the Bills in vacation, or to the Sheriff of Lanarkshire, to proceed therein,” &c.

Authority—*Foulds*, July 18, 1872, 9 Scot. Law Rep. 631.

The Court granted the prayer of the petition.

Counsel for Petitioner—H. Johnston. Agents—Henderson & Clark, W.S.