

The Court adhered.

Counsel for Reclaimer—J. P. B. Robertson—Pearson. Agents—J. A. Campbell & Lamond, C.S.

Counsel for Respondent—Mackay—Rhind. Agent—William Officer, S.S.C.

Tuesday, October 23.

FIRST DIVISION.

HOEY v. HOEY.

Husband and Wife—Divorce—Aliment—Expenses.

A husband having obtained decree of divorce in the Outer House, the wife presented a reclaiming-note. On the wife's motion the Court gave her decree for aliment, to continue until further orders of Court, and for a sum of £75 to account of her expenses incurred in the Outer House. Authorities cited—*Ritchie v. Ritchie*, March 11, 1874, 1 R. 826; *Montgomery*, October 22, 1880, 8 R. 403.

Counsel for Pursuer—Lang. Agents—Pater-son, Cameron, & Co., S.S.C.

Counsel for Defender—Ure. Agents—Ronald & Ritchie, S.S.C.

Tuesday, October 23.

FIRST DIVISION.

[Lord Lee, Ordinary.]

LEE v. FERRIER.

Bankruptcy—Composition Contract.—Cautioner—Bankruptcy Act 1856 (19 & 20 Vict. cap. 79), secs. 138 and 141.

A composition contract entered into by a bankrupt and his cautioner with his creditors, but not yet approved by the Lord Ordinary or the Sheriff, cannot be resiled from by any of the parties to it without good cause; but a material alteration of circumstances, leading to the prejudice of a party, which could not have been foreseen when the contract was entered into, will warrant the Lord Ordinary or the Sheriff in withholding approval of the contract.

Observations on the case of *Ironside*, March 26, 1841, 4 D. 629.

Where the cautioner claimed right to withdraw on the ground of delay on the part of the trustee in reporting the composition contract to the Sheriff for his approval, and it appeared that the delay was largely attributable to his own fault, and no injury to him was relevantly averred, the Court refused to allow him to withdraw.

Thomas Stevenson, joiner, Annandale Street, Edinburgh, having got into difficulties, and been sequestered, Mr Ferrier, C.A., was appointed trustee. On the 15th of January 1883 a state of the bankrupt's affairs, made up by the trustee, was submitted by him to a meeting of creditors

held in Edinburgh. This state showed a probable dividend of 7s. per pound, subject to the expenses of realisation and sequestration. The bankrupt offered a composition of 6s. 6d. per pound, by two equal instalments at two and four months respectively, and offered Mr J. B. W. Lee as cautioner. This offer of composition was unanimously accepted by the creditors. The bond of caution was executed by the bankrupt and Lee as principal and cautioner on 13th February. On 6th March 1883, in the course of a correspondence which passed between the trustees and Mr Lee relative to a dispute which had arisen as to whether Mr Lee was to prepare the composition bill, and whether he was bound at once to sign them, Mr Lee called upon the trustee to make his report to the Sheriff in accordance with the Bankruptcy Act. On the 14th March a caveat (subsequently withdrawn) was lodged by Lee, who acted not only as cautioner for the bankrupt but also as his agent, narrating that the trustee had not made the statutory report to the Sheriff, and craving to be heard before the said report was approved of by the Sheriff. On the 17th March the trustee presented the following report to the Sheriff in terms of the Statute:—"To the Sheriff of the Lothians—In terms of the 138th section of the Bankruptcy (Scotland) Act 1856, the trustee reports to your Lordship that at the special general meeting of creditors held within the trustee's chambers No. 5 York Place, Edinburgh, upon Monday the 15th day of January 1883 years, at three o'clock afternoon, for the purpose of deciding upon an offer of composition made by the bankrupt, the creditors and mandatories for creditors then present unanimously agreed to accept of a composition of 6s. 6d. per pound on their respective debts as at the date of sequestration, payable by bills, in instalments at two and four months from the date of said offer, 15th January 1883, being at 3s. 3d. per pound each instalment, and approved of Mr J. B. W. Lee, S.S.C., Edinburgh, as security for payment of composition. The trustee herewith produces the minutes of said meeting, together with the minute of the previous meeting of creditors, when the offer was entertained, as also a copy of the *Edinburgh Gazette* containing the requisite statutory notice and certificate of posting of the circulars to the creditors, and lastly, the bond of caution by the said Thomas Stevenson and the said J. B. W. Lee as cautioner, dated 9th and 13th February 1883 years. The trustee also reports that his accounts have been audited by the commissioners, and the balance ascertained, and his remuneration fixed on the footing of his having no further trouble; but the expenses attending the sequestration have not yet been fully ascertained, for the reason that the bankrupt and his cautioner, when called upon by the trustee, on the instructions of the commissioners, to grant and indorse the bills for the composition, in terms of said offer, refused to do so, or perform the other obligations under the offer. The first instalment of said composition is past due, but has not been paid, and they still decline to pay it, and to grant and indorse bills for the second instalment of said composition, or perform said other obligations. In these circumstances, the trustee, on the further instructions of the commissioners, has convened a general meeting of the creditors, to be held on Monday,