

Friday, July 18.

FIRST DIVISION.

SANDERSON & MUIRHEAD AND OTHERS,
PETITIONERS.*Public Company—Winding-up—Liquidator.*

Circumstances in which the Court appointed as official liquidator of a public company a person whose nomination was objected to by some of the creditors on the ground, *inter alia*, that down to a recent date he had been a director of the company.

The Craiglockhart Hydropathic Company (Limited) was incorporated in 1879 under the Companies Acts 1862 and 1867. Its chief object was to carry on a hydropathic establishment in the vicinity of Edinburgh.

Its capital was £30,000, which was subsequently increased, and after the necessary buildings were erected the directors obtained authority to borrow over them the sum of £25,000. This loan was obtained, and a bond and disposition in security granted therefor, the existing directors or some of them granting their personal obligation for payment of the interest. The creditors in the bond in February 1884 served a schedule of intimation, requisition, and protest upon the company, demanding payment of their loan by Whitsunday following, and payment not having been made they advertised the property for sale on 6th August.

On 8th July 1884 Sanderson & Muirhead, contractors, and other trade creditors of the company, presented a petition to the Court for the judicial winding-up of the company under the Companies Act 1862, sec. 79, sub-sec. 4, and following sections, and suggested Mr James Drummond, C.A., Edinburgh, as official liquidator.

Robert Hutchison and others, who had guaranteed the payment of interest made under the bond and disposition in security above mentioned, and had paid the amount due at the previous term, viz., £625, while concurring in the winding-up, objected by minute to Mr Drummond's appointment, on the ground that he had only resigned his post as director six days before the petition was presented, and that in view of previous communications between the directors and the minuters he did not command the confidence of the latter.

Argued for the minuters—The Court had not laid down any rule in the case of disputes as to the appointment of a liquidator. In the case of a trustee in a sequestration, he who had the votes of a majority in value of the creditors obtained the appointment. In the case of a judicial factor, where there was a dispute the Court took the appointment into its own hands. Here they ought to do the same. The English Courts had held that a shareholder ought not to be a liquidator. At the same time it was admitted there was no personal objection to Mr Drummond.

The petitioners replied that as Mr Drummond had for some time been on the House Committee of Management he had the best means of knowledge as to the conduct of the establishment. It would be necessary to carry it on through the vacation, as the existence of a winding-up order would pre-

vent a sale until the Court met in October. The question was really for the shareholders more than the heritable creditors, who were secured. The other debts only amounted to about £1300.

The Court pronounced a winding-up order, and appointed Mr Drummond official liquidator.

Counsel for Petitioners—Jameson. Agents—J. & A. Peddie & Ivory, W.S.

Counsel for Minuters—Graham Murray. Agents—Davidson & Syme, W.S.

Friday, July 18.

FIRST DIVISION.

[Lord Lee, Ordinary.]

GRAY v. IRELAND.

Process—Caution for Expenses—Decree by Default—Absolutor or Dismissal.

In an action of damages for alleged illegal pawning, the Lord Ordinary on 18th March 1884 ordained the pursuer to find caution for expenses on or before the second box-day in the ensuing vacation, in respect it was not denied that he was an undischarged bankrupt whose estates had been sequestrated on his own application. On 3d June the pursuer was of new ordained to find caution within eight days. On 17th June the Lord Ordinary, in respect of an explanation then made, allowed him to find caution by the Friday following. The Lord Ordinary on 24th June, on the motion of the defender, in respect the pursuer had failed to find caution for expenses as required by the preceding interlocutor, assolized the defender from the conclusions of the action. The pursuer reclaimed, and made an offer to find caution. It appeared that his estate had been three times sequestrated within the previous ten years, the last time being on 22d October 1879, that he was an undischarged bankrupt, and that there were several decrees standing against him unpaid, and in particular one dated 3d March 1884. The Court *adhered*, and refused a motion that they should dismiss the action instead of granting absolutor.

Counsel for Pursuer and Reclaimer—Nevay. Agent—James Barton, S.S.C.

Counsel for Defender and Respondent—A. S. D. Thomson. Agents—Brown & Patrick, Solicitors.