

building to be erected under the powers and by the additional taxation to be provided by the bill. The result of that is, that in considering what uses may be actually made of that building, one must look and see whether the Act of Parliament so obtained has not placed a restriction upon those uses where and so far as the building is intended to be applied to the purposes of a market.

It is unnecessary, I think, after what the Lord Chancellor has pointed out, to go further into the construction of the 8th section of the Act. It seems to me that, while leaving the amplest and fullest discretion to the Corporation in the use of the rest of the building, the Legislature indicated that a particular portion of the building to be erected should be subject to the public right, not controlled by the discretion of the Corporation. While saying that, I do not suppose that it could be contended that the Legislature intended to exclude the discretion properly applicable to the managers or owners of the market-place in so far as it has been used for market purposes. I cannot doubt that for purposes of repairs, for purposes of cleansing, and for all purposes applicable to its use as a market, the managers and owners of the market-place have the discretion which is incident to and forms a necessary part of the power of management given to them by the statute; and if the language which has been adverted to in the interlocutor simply means a discretion of that kind incident to and forming a necessary part of the management of the market, it may be that those words may be supported. If, however, they mean, what I am bound to admit they more naturally point to, a discretion as to whether that portion of the building shall be used as a part of the market or not, and that the Corporation have some kind of discretion to determine whether or not, with reference to objects of public utility, that market-place shall be used for a Fishery Exhibition or any other exhibition which they think would be useful to the public, then I am bound to say that I disagree with that portion of the interlocutor.

For these reasons I concur in the judgment which the Lord Chancellor has moved, namely, that the appeal should be dismissed.

Interlocutor of First Division appealed from affirmed with costs.

Counsel for Pursuers (Respondents) — Sol. Gen. Davey, Q.C.—J. P. B. Robertson, Q.C.—M'Clymont. Agent—Andrew Beveridge, for Nisbet & Matheson, S.S.C.

Counsel for Defenders (Appellants) — Lord-Advocate Balfour, Q.C.—Sol.-Gen. Asher, Q.C. Agent—John Graham, for W. White-Millar, S.S.C.

COURT OF SESSION.

Wednesday, February 24.

FIRST DIVISION.

STARK AND HOGG, PETITIONERS.

Bankruptcy—Sequestration—Abbreviate of Petition and Deliverance—Register of Inhibitions—Bankruptcy (Scotland) Act 1856 (19 and 20 Vict. c. 79), sec. 48.

A petitioner for sequestration of a debtor having omitted to record the abbreviate in the Register of Inhibitions within the statutory period, the Court granted warrant to the Keeper of the Register, on the creditor's petition, to record the abbreviate, reserving all objections to parties interested.

Sequestration of the estates of John Hendrie, coalmaster, Glasgow, was awarded by the Sheriff-Substitute of Lanarkshire at Glasgow on 20th January 1886, upon the petition of Stark & Hogg writers Glasgow, creditors to the extent required by law. Thereafter Messrs Stark & Hogg *per incuriam* omitted to transmit, within the period provided by sec. 48 of the Bankruptcy Act, to the Keeper of the Register of Inhibitions the abbreviate of the petition and deliverance to be recorded in the Register.

This petition was presented to the First Division by Stark & Hogg, craving and setting forth that no prejudice had been caused to the sequestrated estate in consequence of the omission, in respect that between the date of the first deliverance and that of the confirmation of the trustee no alienation of or diligence against the heritable estate of the bankrupt had taken place, and craving the Court to grant warrant to the Keeper of the Register of Inhibitions, before the expiry of the second lawful day from the deliverance of the Court, to record the abbreviate and to make the usual certificate thereon.

On the petition being moved in the Single Bills the Court pronounced this interlocutor, observing that intimation of the petition on the wall and in the minute-book was unnecessary, seeing that the rights of third parties were expressly reserved by the judgment of the Court:—

“The Lords having considered the petition and heard counsel for the petitioners, grant warrant to the Keeper of the Register of Inhibitions at Edinburgh to receive the abbreviate of the petition for sequestration and deliverance thereon, signed by the petitioners or their agents, and in the form mentioned in the petition, and to record the said abbreviate in the Register of Inhibitions, and write and subscribe a certificate thereof on the said abbreviate, all in conformity with and as prayed for in terms of the Bankruptcy (Scotland) Act 1856, sec. 48, and decern, reserving all objections to parties interested against the validity of the sequestration, and all answers to such objections as accords, and declaring that the expenses of the present application and procedure connected therewith are not to be allowed against the estate.

Counsel for Petitioner—Goudy. Agent—T. M'Naught, S.S.C.