carrying on any of their works, and accommodating the persons employed in and attending the same. New houses or buildings were to be erected only at such places as the proprietor or his factor should point out. The tenants were to pay a lordship of one-ninth of all lead and other metals smelted, and further to pay £52, 10s. yearly on account of the chaplain, surgeon, and schoolmaster at Leadhills, as well as surface damages to the proprietor and his tenants. They furthermore bound themselves, within three years after the commencement of the lease, to construct new and improved washing-floors, and within seven years to reconstruct the flues of the smelting-mill in the manner specified in the lease. They also, *inter alia*, undertook to maintain the houses and other buildings, including those built by themselves, in good condition during the currency of the lease, and to restore any that might be damaged or destroyed by fire.

The subjects let by George Vere Irving, Esq., were the remaining one-fourth part of the said mines of South Shortcleugh, and the lordship payable therefor was one-ninth of all lead and other metals smelted, excepting the produce of the flues, on the whole of which a lordship was to be paid to the Earl of Hopetoun.

The subjects let were entered in the valuation roll at £1705, 9s., being the amount of the lordship. The company were also entered as proprietors of the mansion-house, and houses let to the miners and persons connected with the mines, in accordance with the terms of section 6 of the Valuation of Lands Act 1854, the duration of the lease being over twenty-one years, and the rents received by the company from their tenants, which amounted to £111, 10s., were entered as the yearly rent or value.

At a meeting of the Valuation Committee of the Commissioners of Supply of the County of Lanark for the Upper Ward of the County, held at Lanark on the 14th day of September 1885, for the purpose of hearing and disposing of appeals under the Valuation of Lands Acts, the Company appealed against these entries in the valuation roll, maintaining that the £111, 4s. should be deducted, and the balance, £1593, 19s. entered as the value of the mines; the houses, &c., being truly accessories of the mines, and not available for any other purposes since the tenant might not by the lease let them except to persons in their employment.

The Valuation Committee refused the appeal, and the appellants took a Case.

Argued for appellants—These houses were occupied as an adjunct of the mines; they had no extrinsic use; and as there was only one rent for all the subjects let there was no ground for making a separate valuation of these houses.—*Drumgray Coal Company*, April 8, 1867, 11 Macph. 977; *William Dixon, Limited*, Feb. 6, 1885, 12 R. 639.

At advising—

Lord Fraser—In the case of *William Dixon, Limited* (Feb. 6, 1885, 12 R. 639), we had to deal with a valuation put upon a lease of minerals and upon certain stores, manager's house, and dwellings for workmen, and other houses. On examining the lease in that case we found that the minerals were let to a tenant at a fixed rent of £800 or certain lordships. It was also found in that case that there was a separate letting of the stores, manager's house, dwellings, &c., and that there were obligations undertaken by the tenant which amounted in pecuniary value to £129, 13s. 4d. per annum. There were thus two rents payable, and the contention was that the stores, manager's house, and dwellings, were mere adjuncts of the lease of minerals, and that the only annual value that could be stated was the £800. This contention was rejected. We held that there being a distinct return in the form of obligations (which were worth to the landlord £129, 13s. 4d. per annum) undertaken by the tenant for the stores, &c., these could not be held as covered by the rent payable for the minerals, and that as the lease of these subjects (the stores, &c.) was for thirty-one years, then in terms of the 6th section of the Valuation Act, "the rent payable under such lease shall not necessarily be assessed as the yearly rent or value of such lands and heritages, but such yearly rent or value shall be ascertained in terms of this Act irrespective of the amount of rent payable under such lease." Accordingly it was determined in that case that the stores, manager's house, &c., should be entered as of the value in their actual state as they stood. The present case stands in contrast to that of *William Dixon*, and allows the application of the rule which I stated in the case of *Dixon*, viz., if "there had been only one rent covering the whole concern, then there would be no ground for holding that a separate valuation should be made of the houses, &c." In the present case there is only one rent for all the subjects which are let. The houses, and lands, and minerals are, according to the lease, paid for by a rent of one-ninth of the output, and this rent must be entered as the value of the whole subjects; and no separate value can be entered for the mansion-house occupied by the manager, miners' houses, and land covered by the lease.

Lord Lee—I agree that this case is to be distinguished from that of *Dixon & Co.* (12 R. 639), in respect that there is no separate payment for the ground and houses, and that they appear to be occupied as an adjunct of the mines.

The Court were of opinion that the valuation was wrong.

Counsel for Appellants—Dundas. Agents—Mackenzie & Black, W.S.

COURT OF SESSION.

Thursday, April 8.

BILL CHAMBER.

[Lord Fraser, Ordinary.

THE NATIONAL BANK OF SCOTLAND, LIMITED *v.* JAMES WILLIAMSON & SONS.

Bankruptcy—Petition for Sequestration—Process—Sheriff Courts Act 1876 (39 *and* 40 *Vict. cap.* 70), *secs.* 3 *and* 6.

Held that a petition for sequestration presented in the Sheriff Court, being a "proceeding in the ordinary Sheriff Court," is

incompetent if not in the form provided by the Sheriff Court Act 1876 for all actions in the ordinary Sheriff Court.

On 25th January 1886 the National Bank of Scotland presented a petition in the Sheriff Court of Orkney at Kirkwall for the sequestration of the estates of Messrs James Williamson & Sons. The petition was not in the form provided by the Sheriff Court Act 1876 for every action in the ordinary Sheriff Court, but in the form always in use in the Sheriff Court prior to that Act, and also in use in petitions for sequestration to the Lord Ordinary on the Bills. The Sheriff-Substitute (MELLIS) found the petition incompetent and dismissed it. The bank appealed to the Lord Ordinary on the Bills.

By interlocutor, dated 8th April 1886, the Lord Ordinary (FRASER) officiating on the Bills dismissed the appeal and affirmed the judgment of the Sheriff-Substitute.

"*Note.*—The petition in this case is in the usual form of petitions to a court of law in every case where no statutory form has been provided. It is in the form in which all petitions for sequestration under the bankruptcy laws are presented to the Court of Session, and before the Act of Parliament 39 and 40 Vict. cap. 70, entitled 'The Sheriff Courts (Scotland) Act 1876,' it was the form in which such petitions were presented to the Sheriff.

"The question now is, whether or not the Sheriff Court Act of 1876 renders the old form incompetent? The 6th section of that Act says that 'Every action in the ordinary Sheriff Court shall be commenced by a petition in one of the forms as nearly as may be contained in Schedule A annexed to this Act.' The petition in this case is not in conformity with Schedule A, and hence the objection.

"The word 'action' is defined in the interpretation clause (section 3) as follows—'"Action" includes every civil proceeding competent in the ordinary Sheriff Court.' That a petition for sequestration is 'civil' and not criminal is clear enough; that it is also a proceeding is also clear, and the only question is whether it is a proceeding 'in the ordinary Sheriff Court?' The language of the statute is very imperative, but one is very reluctant to give effect to an objection so purely technical. If the paragraphs in the petition had been numbered, and if the prayer of the petition instead of being at the end of it had been put after the title, the Act of 1876 would have been complied with, with this only exception, that there would be wanting pleas-in-law.

"The question has not been determined in any case that has occurred. In the case of *M'Dermott* v. *Ramsay*, 9th December 1876, 4 R. 217, it was held that a petition framed in terms of the Sheriff Court Act of 1876 for the apprehension of an apprentice *in meditatione fugæ* was competent. But it was not held that a petition framed in the ordinary form with the prayer at the end without pleas-in-law was incompetent. Either form of petition was sufficient to set forth the ground of complaint, and to enable the judge to apply the remedy.

"Again in the case of *Crozier* v. *Macfarlane & Company*, June 15, 1878, 15 S.L.R. 630, it was held that a petition for *cessio bonorum* was incompetent, seeing that it was not framed in terms of the Act of 1876, but this decision can constitute no precedent for the present case, because the Sheriff Court Act of 1876 has a special enactment in regard to the action of *cessio bonorum*. It provides (section 26) that the insolvent debtor shall 'be entitled to raise an action in the Sheriff Court praying for *interim* protection and for decree of *cessio bonorum* under the Act of the 6th and 7th years of the reign of King William the IV., chapter 56, as amended by this Act.' Now, under the Act of William IV., and relative Act of Sederunt of 6th June 1839 (section 1), there is a form of petition given in applications for cessio. When, therefore, the Sheriff Court Act of 1876 enacted that petitions for cessio should be permitted under 6 and 7 Will. IV. cap. 56, 'as amended by this Act,' the amendment that was meant was that the form of petition given by the Act of Sederunt of 1839 was abolished, and it was positively enacted that in actions of *cessio bonorum* the new form provided by the statute of 1876 must be adopted. There could be no other conclusion arrived at with reference to such an action in the presence of these enactments.

"This leaves the present case untrammelled by authority, and the question is simply reduced to this single point—Was this a proceeding in the ordinary Sheriff Court?

"The word 'ordinary' in this case is used to distinguish the Court from two other Courts over which the Sheriff presides, viz., the Certain Debts Recovery Court (30 and 31 Vict. cap. 96), and the Small Debt Court (1 Vict. cap. 41). In both these Courts the summons or complaint commences in a totally different fashion from the model given in the Sheriff Court Act of 1876. They proceed as follows:—'A B, Sheriff of the shire of , to the officers of Court jointly and severally, whereas it is humbly complained to me by C D, that E F, the defender, is owing the complainer,' &c. These forms in the Debts Recovery and Small Debt Courts have not been changed, and were not intended to be changed, and it was for that reason that in the Act of 1876 the word 'ordinary' Sheriff Court was used. The ordinary Court of the Sheriff is that in which he disposes of all business of a civil character not falling within his jurisdiction under the Debts Recovery Act or the Small Debt Act. It must be civil business, and hence are excluded complaints under statutes which confer jurisdiction to punish offences, such as some complaints under the Employers and Workmen Act 1875; under the Trade Union Acts 1871 and 1876; under the Conspiracy and Protection of Property Act 1875; under the the Embezzlement by Workmen Act, 22 Geo. II. cap. 27, and 17 Geo. III. cap. 56; and under the Truck Act, 1 and 2 Will. IV. cap. 37; and under the various Mining and Factory Acts. These have, all of them, enactments beyond civil business and civil remedies, and the complaints under the various statutes may be framed according to the old forms of petition in use in all the Courts of Scotland. The reason for the change made by the Act of 1876 was in order to dispel a delusion which sometimes existed amongst ignorant people that it was the Sheriff himself, in the case where the action began by a summons, that was demanding payment of the money, and that he truly was the complainer. This reason—if it be entitled to be called a reason—for altering the established form of writs sanctioned by immemorial usage would

have been satisfied by changing the commencement of the summons without interfering with the established forms of petition, but it was thought necessary for the sake of consistency to make all writs, summonses as well as petitions, run according to the same model, and yet consistency is not preserved in the Sheriff Court itself, seeing that the summons still speaks as if the Sheriff were commanding or complaining in the Debts Recovery and the Small Debt Courts.

"Upon the whole, the Lord Ordinary finds himself compelled by the absolute language employed in the 6th section of the 1876 Act to affirm the judgment of the Sheriff-Substitute and to dismiss this appeal."

Counsel for Appellants — Graham Murray. Agents—Mackenzie, Innes, & Logan, W.S.

Counsel for Respondents—Young. Agent—A. P. Purves, W.S.