

ther, upon the second ground that the Act itself specially limits or defines the right of a person in the defender's position to go upon the register, I am of opinion with your Lordships that the Lord Ordinary's judgment ought to be recalled.

LORD YOUNG—With reference to what my brother Lord Trayner has said regarding the first and second pleas in law for the defender—title to sue, and the competency of the action—I take leave to say for myself that I give no opinion upon them, and should have great difficulty indeed in concurring with the views of the Lord Ordinary. I ventured to point out, however, in the course of the argument, that it was manifestly in the legitimate interest of both parties that the question of the validity of these rules by the Board of Trade should be tried, and as they had been fully argued, it would be a pity to avoid deciding the question for which the action had been brought, and which both parties were interested in having settled, upon any technical ground, I also ventured to point out that there might be very great difficulty in maintaining the proposition that if an act was prohibited by statute and a penalty imposed in respect of it, that that would afford in all cases, or even generally speaking, a legitimate ground for an application to this Court for an interdict against it; and I rather think I ventured upon suggesting the illustration of the rules applicable to publicans. There are rules regarding the hours of opening and closing, the conditions of their certificates being violated, and penalties imposed by statute, and which are constantly being inflicted on them in the inferior courts on account of them doing these prohibited acts. But I should think it was extremely doubtful if other publicans, or an association of publicans, could present an application to this Court for interdict as to any of these things prohibited by the statute under a penalty, or whether we should not leave them to the statutory remedy of a prosecution for the penalty. There might be a thousand instances of things which are prohibited, with regard to which it would be absolutely ludicrous to allow anybody to increase the penalty from a few shillings or pounds, to the punishment inflicted for contempt of court; could you interdict a citizen of Edinburgh from having an accumulation of snow in front of his door, because that is prohibited under a penalty, and thus add to the penalty the further punishment that he shall be sent to jail the next time that such an accumulation is allowed to exist, as being in contempt of Court. I do not think that would follow at all. I content myself, however, with saying that I do not assent (I rather abstain from expressing any opinion) to the views of the Lord Ordinary on either the first or second pleas; but having the opinion which we all have on the question which both parties have a legitimate interest to have settled, I have thought it better to have that decided without expressing any opinion on those other points.

THE LORD JUSTICE CLERK—We did not consider these questions.

The Court recalled the interlocutor reclaimed against, and assoilzied the defender from the conclusions of the action.

Counsel for Pursuers—Graham Murray, Q.C. —Salvesen. Agents—Davidson & Syme, W.S.

Counsel for Defenders—Ure—Younger. Agents—Dove & Lockhart, S.S.C.

Friday, January 13.

OUTER HOUSE.

[Lord Stormonth Darling.

M'INTYRE (LIQUIDATOR OF VICTORIA PUBLIC BUILDINGS COMPANY, LIMITED), PETITIONER.

Company—Liquidation—Power to Carry on Business—Companies Act 1862 (25 and 26 Vict. cap. 89), sec. 95.

When the property of a company consisted of a hall let for public entertainment, and it was expedient to delay its sale until the time of the year when such property could be sold to best advantage, authority granted to the liquidator to carry on the business in the meantime.

This was an application by Daniel M'Intyre, C.A., Dundee, liquidator, acting under the supervision of the Court, of the Victoria Public Buildings Company, Limited, presented under the Companies Acts 1862 to 1890, and particularly sections 95, 131, and 151 of the Companies Act 1886, craving the authority of the Court to sell the property of the company, and in the meantime to carry on the business of the company. The prayer with reference to the business was as follows—"And also to sell the furniture and fittings therein, either at a valuation or by public roup or private bargain, as the liquidator may deem most expedient; and to sanction the liquidator carrying on the business of the company for such time as he may think proper, but not beyond Whitsunday 1893, and to pay out of the money from time to time in his hands, the wages and remuneration of the persons employed in the said business, and also all such outgoings, including cost of upkeeping buildings, feu-duty, rates, and taxes, as may from time to time become due and payable, in respect of the said subjects and their occupation by the company, and to execute such deeds and documents, and do such acts as may be necessary for, or incidental to the exercise of such powers."

The petition set forth—"The property of the company consists of—(1) A public hall in Arbroath, which with additions and improvements, has cost the company £1683, 17s.; (2) the furniture and fittings in the hall, which have cost the company £79, 14s. 11d.; and (3) miscellaneous articles in

the secretary's office, which are worth about £6 or £7. There are heritable debts on the property, amounting, with interest to Martinmas 1892, to £870, 10s. or thereby. The heritable creditors are The Arbroath West Port Association, Limited, having its registered office at Nos. 2 and 4 Keptie Street, Arbroath, for £550; Mrs Ann Anderson or Fraser, widow, residing at Killorn Cottage, Stirling, for £200, and the Royal Bank of Scotland for £103. The preferable debts due by the company, including expenses of liquidation, amount to about £180, and the ordinary debts amount to about £150.

"The capital of the company was, by memorandum of association, fixed at £2500, divided into 2500 shares of £1 each. 1250 shares have been issued, of which 1241 are fully paid up, and the arrears of calls amount only to £4.

"The liquidator proposes, with consent of the bondholders, to expose the hall property to public sale in January or February next, which is the best time for selling heritable property in Arbroath, and to sell the moveable fittings and effects of the hall, at a mutual valuation, to the purchaser of the hall property.

"In the meantime, until the property is sold, it will be essential for the beneficial winding-up of the concern that the business of the company should be carried on by the liquidator. The business consists simply of letting the halls for entertainments and for public and private meetings; and contracts have been entered into, some of which will not expire until Whitsunday 1893. The only liabilities which the liquidator will incur by doing so will be the taxes, caretaker's salary, feu-duty, interest, any repairs necessary in up-keeping the buildings, and such like, and the current revenue will in all probability be sufficient to meet these liabilities."

Reference was made by the petitioner to *More (Liquidator of the Burntisland Oil Company, Limited) v. Dawson and Others*, 30 S.L.R. 180.

The application was granted.

Counsel for the Petitioners — Lorimer.
Agent—Alexander Ross, S.S.C.

Tuesday, January 31.

FIRST DIVISION.

[Sheriff-Substitute of
Forfarshire.

HORSLEYS v. BAXTER BROTHERS & COMPANY.

Ship — Bill of Lading — Reparation — Exemption from Liability — Culpa — Onus of Proof.

A cargo of jute carried under a bill of lading which stipulated that the ship was not to be liable, *inter alia*, for "sweat," arrived in a damaged condi-

tion. The shipowners having proved that the damage had been caused by "sweat," and the consignees having failed to prove fault on the part of the ship, it was *held* (following the case of *Moes, Moliere, & Tromp*, July 5, 1867, 5 Macph. 988) that the ship was not liable for the damage sustained by the cargo.

Ship—Bill of Lading—Construction.

A bill of lading, after exempting the shipowners from liability for "perils of the sea, fire," &c., provided "that nothing *herein contained* shall exempt the shipowner from liability to pay for damage to cargo occasioned by bad stowage, by improper or insufficient dunnage or ventilation," &c. A subsequent clause provided that "the ship is not liable for 'sweat.'" *Held* that the qualifying words "herein contained" in the former clause applied only to the preceding exemptions, and did not qualify the subsequent clause, and that accordingly, where goods had been damaged by "sweat," the shipowners to escape liability were only bound to prove that fact, and were not bound to prove further that "sweat" was not caused by bad stowage or improper or insufficient dunnage or ventilation.

A cargo of 2504 bales of jute was shipped at Calcutta upon 20th September 1891 by the s.s. "Hesper" under bills of lading, "to be delivered, subject to the exceptions and conditions hereinafter mentioned, in the like good order and condition hereinafter mentioned, . . . at . . . Dundee. . . The following are the exceptions and conditions above referred to—"The act of God, perils of the sea, fire, barratry of the master and crew, enemies, pirates, and robbers, arrests and restraints of princes, rulers, and people, and other accidents of navigation excepted, strandings and collisions, and all losses and damages caused thereby are also excepted, even when occasioned by negligence, default, or error in judgment of the pilots, masters, mariners, or other servants of the shipowners; but nothing herein contained shall exempt the shipowners from liability to pay for damage to cargo occasioned by bad stowage, by improper or insufficient dunnage or ventilation, or by improper opening of valves, sluices, and ports, or by causes other than those above excepted, and all the above exceptions are conditional on the vessel being seaworthy when she sails on the voyage, but any latent defects in the machinery shall not be considered unseaworthiness provided the same do not result from want of due diligence of the owners, or any of them, or of the ship's husband or manager. The ship is not liable for insufficient packing or reasonable wear and tear of packages, for inaccuracies, obliterations, or absence of marks, numbers, address, or description of goods shipped, leakage, breakage, loss or damage by dust from coaling on the voyage, sweat, rust, decay. It is expressly declared that the owners of the steamer are not liable for