

The Court answered the questions by declaring that the residue of the estate of the deceased Archibald Bruce vested wholly in Thomas Bruce, subject to the liferent of the now deceased Mrs Isabella Bruce or Torrance and Miss Margaret Jane Bruce.

Counsel for the First Parties—Cullen. Agent—F. J. Martin, W.S.

Counsel for Second and Sixth Parties—Macfarlane—Sym. Agents—Wallace & Guthrie, W.S.

Counsel for the Third Parties—Kincaid Mackenzie. Agent—F. J. Martin, W.S.

Counsel for the Fourth Parties—Cook. Counsel for the Fifth Parties—Vary Campbell. Agents—Fraser, Stodart, & Ballingall, W.S.

Thursday, March 17.

SECOND DIVISION.

[Sheriff of Lothians
and Peebles.

HEDDLE v. MAGISTRATES AND COUNCIL OF LEITH.

(*Ante*, p. 44.)

Title to Sue—Complaint under Burgh Police (Scotland) Act 1892 (55 and 56 Vict. cap. 55), sec. 67.

Section 67 of the Burgh Police (Scotland) Act 1892 provides that any person assessed, and dissatisfied with the accounts made up by the statutory commissioners for the purposes of the Act, may complain against the same by petition to the Sheriff within three months after the accounts are approved by the commissioners.

Held that a ratepayer has a title to bring a complaint under the above section although he does not aver any hardship which he personally suffers through the irregularities in the accounts of which he complains, or any benefit which he would derive from their being corrected.

See former case between same parties, reported *ante*, p. 44.

James Heddle, tenant and occupier at No. 1 James Place, Leith, and assessed as under the provisions of the Burgh Police (Scotland) Act 1892, presented another petition under the provisions of the 67th section of that Act to the Sheriff of the Lothians and Peebles against the Magistrates and Council of Leith as coming in room of the commissioners of the burgh, and prayed the Court to find that there were certain irregularities in the commissioners' accounts and to ordain that these irregularities should be rectified. The specific cravings were of a similar nature to those in the former petition.

The petitioner did not aver in the condescendence annexed to his petition any particular hardship under which he suffered by reason of the irregularities in the accounts of which he complained, or any

special benefit which he would derive from these irregularities being rectified.

The defenders admitted that the pursuer along with the Misses Lamb was assessed for the Burgh General Assessment under the Burgh Police (Scotland) Act 1892 for the year ending 15th May 1897, the amount in respect of which he was so assessed being £1, 3s. 4d., and that he along with Miss Jane A. Lamb was liable for the like assessment during the current year to the extent of £1, 9s. 2d. They pleaded, *inter alia*, (1) No title or interest to sue. (2) The action is incompetent. (3) The action is irrelevant. (4) *Res judicata*.

On 19th January 1898 the Sheriff (RUTHERFURD) pronounced the following interlocutor:—"Finds that the petitioner has not a sufficient right, title, or interest to insist in the present application: Therefore sustains the respondents' first plea-in-law, and finds it unnecessary to dispose of their second, third, and fourth pleas-in-law: Dismisses the petition, and decerns."

Note.—"This is a petition under the 67th section of the Burgh Police Act of 1892, which provides that any person assessed, and dissatisfied with the accounts made up by the statutory commissioners for the purposes of the Act, may complain against the same by petition to the sheriff within three months after the annual audit and approval of the accounts.

"It appears to the Sheriff that the purpose of this enactment was to enable any ratepayer who may have been improperly assessed, or who may have suffered hardship in consequence of irregularities in the commissioners' accounts, to obtain redress in a summary manner.

"But in the present instance the petitioner is unable to allege that he has any interest whatsoever in the result of the application; and his purpose in presenting it has not been explained. It is the third petition of the same kind, and the Sheriff does not think that the Legislature intended that an individual ratepayer, with no pecuniary interest at stake, should have it in his power, year after year, to adopt proceedings against the commissioners which can be productive of no benefit to himself, unless it be the gratification of a morbid craving for notoriety, or possibly some ulterior motive.

"In a former case between the same parties the Sheriff sustained an objection to the petitioners' title to insist in such an application on grounds fully set forth in the note to his interlocutor—(See *Heddle v. Magistrates of Leith*, 1897, 35 S.L.R. p. 44). That interlocutor was brought under review of the Second Division of the Court of Session; but their Lordships did not consider it necessary to dispose of the question, inasmuch as (the parties having renounced probation) the Sheriff, who had heard them on the merits, indicated an opinion to the effect that the petition was not well founded. In these circumstances the Court remitted to the Sheriff to dispose of the case on its merits, which he accordingly did.

"But the parties to the present proceed-

ings have not agreed to renounce probation, and as they are at variance regarding matters of fact, some inquiry would be necessary. Before there can be any inquiry, however, the respondents are entitled to a judgment on their preliminary pleas. The Sheriff has therefore, in conformity with the opinion which he formerly expressed, sustained the respondents' first plea-in-law. This renders it unnecessary to dispose of their second, third, and fourth pleas; but the second practically involves the same question as the first. As regards the third and fourth, the Sheriff may say that he does not think the petitioner's averments are so plainly irrelevant that the petition should on that account be dismissed at this stage; nor is he prepared to hold that his former judgment on the merits is *res judicata*, although it might form a precedent in similar circumstances, unless the Sheriff were convinced that it was erroneous."

The pursuer appealed, and argued that his production of his bill of assessment was a sufficient title to complain under the 67th section of the Act.

Argued for the respondents—Even if the pursuer had a title, he had no interest to sue, as he had not set forth that he had suffered either in his person or property by the proceedings complained of. Further, section 67 did not apply where an independent auditor had been appointed by the Sheriff in terms of section 69, and had audited the accounts in terms of section 70. In such a case the right of appeal was limited to that specified in section 70.

LORD JUSTICE-CLERK—I think that section 67 does confer upon a ratepayer the right to take objections to the accounts of the municipality, and I find nothing in section 70 which deprives the ratepayer of that right. As the sole question before us is the question of title to sue, I am unable to agree with the judgment of the Sheriff, and am of opinion that it should be recalled.

LORD YOUNG—I am of the same opinion. I think the petitioner here has a title to present a complaint under section 67 setting forth the grounds of his objection. The petitioner has done so, and I am of opinion that the Sheriff's judgment finding that he has no title to complain must be recalled, and the petition remitted to him to consider the complaint and the grounds of it. The Sheriff will exercise his own judgment as to how he ought to deal with those as stated by a party having a legal title to state them. It might be quite within the Sheriff's power in the exercise of his discretion to refuse proof to all or any of them. That he must determine in the exercise of his judgment, having regard to the grounds of the objection, and also taking into account the position of the party stating them as the grounds upon which he was dissatisfied. By sending back the case to the Sheriff we decide nothing more than this, that the petitioner has a right to state his complaint and the grounds of his objections in

the petition, and that the Sheriff must dispose of them.

LORD TRAYNER—I am of the same opinion. The Sheriff has held that the petitioner has no title or interest to sue. I think that it is impossible to read section 67 without seeing that any person who is assessed or liable to be assessed has a title to complain if dissatisfied, and this title is not abrogated in any way by section 70. The petitioner's title consists in the fact, admitted by the defenders on record, that he is a ratepayer of Leith, and that he has been assessed and is liable to be assessed. His interest is just the interest of a ratepayer, neither more nor less, and it is no answer to his complaint to say that he has no interest to make a complaint because he will not benefit pecuniarily by the result. The statute says nothing whatever about the right of the ratepayer to complain being qualified by his being interested pecuniarily.

LORD MONCREIFF was absent.

The Court recalled the interlocutor appealed against, and remitted the cause to the Sheriff to proceed, and found the pursuer entitled to the expenses of his appeal.

Counsel for the Pursuer—Pärty.

Counsel for the Defenders—Salvesen. Agents—Irons, Roberts, & Company, S.S.C.

Wednesday, March 9.

SECOND DIVISION.

[Sheriff-Substitute of Fife and Kinross.]

CHRISTIE v. CAMERON.

Sale—Sale of Heritage—Obligation to Clear Record of Burdens—Disposition—Clause of Warrandice.

In the absence of a stipulation to the contrary, the seller of a heritable subject is bound, apart from the warrandice clause in the disposition, to free the subjects sold of all bonds and dispositions in security affecting them, and this obligation may be enforced by the purchaser after he has re-sold and disposed the subjects to a third party.

So held by a majority of the Second Division—*diss.* Lord Moncreiff.

Question—Whether the original purchaser had a title to sue upon the clause of warrandice in the disposition in his favour after he was divested of the subjects.

This was an action brought in the Sheriff Court at Dunfermline by Thomas Christie, flesher, Dunfermline, against Peter Hay Cameron, Solicitor before the Supreme Courts of Scotland, Edinburgh, proprietor of the lands of Clune, near Dunfermline. The pursuer prayed the Court to decern and ordain the defender instantly to dis-