tor of certain subjects in Rothesay. The yearly value of the subjects was £70, and the claimant's interest more than £10 per annum, and he had possessed that interest for more than six months prior to 31st July. The subjects since the claim was lodged were sold to a third party, with entry at 5th October current. The question of law stated is, "Whether it is necessary to support a claim under section 7 of 2 and 3 William IV. c. 65, that the claimant shall be still proprietor of the subjects at the date when the Sheriff proceeds to consider his claim?" I have no doubt upon the point. The statute proceeds upon the footing that at the date when the claim comes to be considered the claimant shall still be proprietor of the subjects. The clause says, "Every person . . . who when the Sheriff proceeds to consider his claim . . . shall have been for a period of six calendar months next previous . . . to the last day of July . . . the owner, &c.," and goes on to say, "provided the subject or subjects on which he so claims shall be of the yearly value of ten pounds, and shall actually yield or be capable of yielding that value to the claimant," and further, provided he be in possession, and either in actual occupation or in receipt of the profits and issues. I suppose it will not be said that after a person has parted with property it is capable of yielding yearly rent to him, or that a person who has sold subjects is in possession, in actual occupation, or in receipt of profits and issues.

LORD TRAYNER—I agree, and without the slightest hesitation or doubt. I think the Sheriff has gone upon a narrow construction of three or four words in the 7th section of the Reform Act without taking into account either the general scope of the Act or other parts of the same clause that he was considering. The Reform Act conferred the right to the franchise upon certain proprietors and occupiers, but it was the basis of the right to vote under the statute that the person claiming had the right of proprietor or of occupant, and it assumes that when he claims he has that right. The statute no doubt says that he shall have something more. He must have been proprietor for a period of not less than six calendar months prior to the 31st July. It is obvious I think that that merely means that he is not to be admitted because he is now proprietor, but that he must also have been proprietor during that period. I think your Lordship has demonstrated that that must be the meaning of the section when we come to consider the proviso which your Lordship has read.

LORD KINCAIRNEY—I concur with your Lordship in the chair. I cannot help thinking that the attention of the Sheriff had been drawn solely to the primary clause, the clause conferring the qualification, and if the case had to be decided upon that clause alone I would have agreed with him, differing I rather think from the opinion expressed by Lord Trayner, but I think the proviso makes it very clear that the claimant must be in possession of the subjects at the time when the Sheriff holds his Registration Court.

The Court sustained the appeal.

Counsel for the Appellant—J. G. Millar. Agent—L. M'Intosh, S.S.C.

Counsel for the Respondent—Pitman. Agents—Cooper & Brodie, W.S.

COURT OF SESSION.

Tuesday, November 24.

FIRST DIVISION.

[Lord Low, Ordinary.

RENWICK *v.* STAMFORD, SPALDING, AND BOSTON BANKING COMPANY, LIMITED.

Bill—Diligence—Suspension of Charge—Caution.

In a suspension of a charge upon a bill, the complainer, who was the acceptor, averred that he had been induced to part with the bill by false and fraudulent statements, and had received no value for it; that the bill had been negotiated fraudulently and in violation of an order of the Court of Chancery; and that the chargers had acquired it when overdue and without value given, and after they had received notice of the fraud and of the order pronounced by the Court of Chancery.

The chargers, who were a banking company, averred that they had acquired the bill during its currency for value from one of their customers, and without notice of the Chancery Order or of any defect in the title of the prior holders.

Held that the complainer must find caution as a condition of being allowed to proceed with the suspension.

This was a suspension brought by John Renwick, builder in Glasgow, of a charge upon a bill of which he was acceptor, the chargers and respondents being the Stamford, Spalding, and Boston Banking Company.

The substance of the complainer's averments was as follows:—Requiring some accommodation in his business he was induced by a person named Charles Engelhard to entrust him with four acceptances blank in the drawer's name, and, *inter alia*, the one upon which the charge complained of was given, being a bill dated 2nd April 1891, for £248 18s. at three months. The inducement was the false and fraudulent assurance that they would be discounted at certain fixed charges, and the proceeds remitted in due course, and that the bills would not be parted with except upon such discount

and remittance, the real intent being to use the acceptances as a means of extorting money from the complainer. On 21st April Engelhard wrote saying that he had got the bills drawn by his friends Robert Bertram & Company, and promising a remittance of the proceeds in a few days. In spite of letters from the complainer neither the bills nor the proceeds were sent, and on 2nd May the complainer obtained an interim injunction from the Court of Chancery against Engelhard and the alleged drawers parting with or negotiating the said bills until 8th May. This injunction was subsequently repeated until further order, and on 25th May Engelhard and the alleged drawers were ordered to deposit the bills in Court within seven days. On 7th May Engelhard still had the four bills in his possession, and the complainer ultimately recovered three of them, but the fourth was fraudulently retained and negotiated It was indorsed and received by the indorsees without value being given, after notice of the pending Chancery proceedings, and with intent to evade the orders of that Court. On 7th July, the bill being then overdue, was in the hands of a firm called Boehmer & Hertz of London, who professed to be indorsees of Deldmant & Woolf of London, who were pretended indorsees of the alleged drawers. The complainer was on 7th July called on to pay the amount of the bill to Boehmer & Hertz, as the last pretended indorsees. The chargers and respondents now asserted themselves to be holders of said bill, but if they were holders in their own right, they acquired it without value after it was overdue, and with notice that it had been obtained, issued, and negotiated by fraud. They were believed not to be holders in their own right, but to be merely giving their name as collecting agents for Boehmer & Hertz. On the chargers' first demand for payment in July, the complainer wrote them denying liability and explaining the fraud which had been perpetrated upon him.

The respondents denied that they had received the bill after notice of the Chancery proceedings, or after notice of any defect in the title of the prior holders, or that they were parties to or had knowledge of any fraud in connection with the granting or negotiating of the bill. They averred that they were holders of the bill in their own right, and that they had received it for value on 25th May from Boehmer, who was a customer of theirs, and had thus acquired it during its currency in the ordinary course of business.

The Lord Ordinary (Low) on 31st October passed the note.

The respondents reclaimed, and argued—The complaimer should be ordained to find caution as a condition of being allowed to proceed with his suspension. The Bills of Exchange Act 1882 had made no change in the law as to caution—*Simpson* v. *Brown*, June 9, 1888, 15 R. 716. Caution was dispensed with in very few cases, and only where there was a strong presumption in the complainer's favour, *e.g.*, when the bill sought to be suspended appeared *comparatione litterarum* to be a forgery, or was vitiated by erasures—Mackay's Practice, ii. 192; *Hamilton* v. *Kinnear & Sons*, June 17, 1825, 4 S. 102; *Simpson* v. *Brown*, November 4, 1874, 2 R. 75. Here there was nothing to throw doubt upon the respondent's averment that they were honest holders in due course, or to implicate them in the alleged fraud of Engelhard. Indeed, it was doubtful whether a relevant case of fraud had been averred at all. Mere averments of fraud, without explanation of the manner in which it was committed, were not sufficient.

The complainer argued — The complainer could not find caution, and therefore to ordain him to do so would be to make it impossible for him to obtain redress. If a *prima facie* case of fraud were made out by the complainer, that would be enough to deprive the bank of the presumption in favour of a holder in due course—Bills of Exchange Act 1882, secs. 29 and 30. Such a case was made out by the correspondence, from which it appeared that the bank must have acquired the bill after it was overdue, because on 7th July the complainer had been called on to pay to Boehmer & Hertz.

At advising—

Lord President—On this record the complainer certainly makes strong and, up to a certain point, plausible averments as to the circumstances under which Englehard came into possession of the bill in question, and his subsequent use of it. If the present question had arisen between the complainers and him very different considerations would have come into play.

But we must concentrate our attention upon the position of the holders of the bill, who are the present reclaimers. The question is, whether the complainer is to be allowed to go into a litigation with the reclaimers—a bank who came into possession of the bill in the ordinary course of business—without first finding caution. We are not entitled to assume anything against the bank beyond the admitted statements on record, or such other statements as can be instantly verified. There is nothing I think upon record to derogate from the claim of the bank to be considered holders of this bill in due course. The 30th section of the Bills of Exchange Act does not in terms apply, because in the present case it is neither "admitted nor proved that the acceptance, issue, or subsequent negotiation of the bill is affected with fraud" The bank makes no admission which at all touches that question, and I do not think that the section can be cited as in terms applicable to the present question, or as furnishing more than instructive suggestion upon the question of discretion which we have to decide at a stage antecedent to proof.

Upon the whole, I think we should be founding a dangerous precedent if we were to allow the complainer to proceed further in the litigation unless he first finds caution.

LORD ADAM concurred.

LORD M'LAREN—It appears to me that there is one and only one circumstance which induces hesitation as to altering the interlocutor of the Lord Ordinary, and that is, that the banking company have not clearly explained why they have commenced proceedings against the parties whose names are on the bill by an action against the acceptor after he had explained to them the circumstances in which he came to put his name to the bill. One would like to hear that the banking company had endeavoured first to recover payment from those who are directly liable to them on the bill. But in considering the question of security, which depends entirely on presumption or on the *prima facie* case made by the parties, we expect always the utmost candour from a complainer who asks to have diligence suspended without finding caution, and especially that he should confine himself to the real point of his case, and not make averments difficult of proof, and improbable on the face of them. If the complainer in this case had come here averring merely that the bank was using diligence against him oppressively, and asking that they should not be allowed to proceed, I should have been more inclined to accept the Lord Ordinary's view. But here the complainer in his averments seeks to identify the banking company with the fraud which he says was committed by other parties to the bill, making statements which are apparently not founded on information, and of which there is no corroboration. I think accordingly that we must follow the ordinary rule, and that the complainer can only be allowed to proceed on finding caution.

The Court recalled the interlocutor of the Lord Ordinary, and remitted to him to ordain the complainer to find caution in common form.

Counsel for the Complainer—Vary Campbell. Agent—Keith R. Maitland, W.S.

Counsel for the Respondents — Lees—Orr. Agents—Winchester & Nicolson, W.S.

Tuesday, November 24.

FIRST DIVISION.

CAMPBELL *v.* MAGISTRATES AND TOWN COUNCIL OF EDINBURGH.

Police—Paving Private Street in Edinburgh—Edinburgh Municipal and Police (Amendment) Act 1891 (54 *and* 55 *Vict.*), *sec.* 33—*Premises Abutting on a Street.*

Held that the proprietor of a garden, and of an upper flat and a *pro indiviso* share in the area of a house bounded by a street, was, in the meaning of section 33 of the Edinburgh Municipal and Police (Amendment) Act 1891, an owner of premises abutting on the street though there was no entry from the street either to the house or garden.

Police—Statutory Notice.

Held that notices issued by the magistrates under section 33 of the Edinburgh Municipal and Police (Amendment) Act 1891, calling upon the owner of a house abutting on a private street to pave the same, must specify in what manner the work is to be carried out.

David Campbell appealed, under section 62 of the Edinburgh Municipal and Police (Amendment) Act 1891, against a notice served upon him by the Magistrates of Edinburgh under section 33 of that Act, calling upon him, as owner of certain premises "abutting on" Rossie Place, to construct certain pavements and carriageways in that street.

The appeal was made in the following circumstances: — The appellant David Campbell was heritable proprietor of an upper flat and a *pro indiviso* share in the area of the house No. 23 Lady Menzies Place, Edinburgh, and of a plot of garden ground in front of said house. The subjects were bounded on the west by Lady Menzies Place, and on the north by Rossie Place. The entrance to the appellant's house was by an outside stair from Lady Menzies Place. There was a window in the wall of his house looking into Rossie Place, but no entrance from it either into the garden or house.

On 28th January 1891 the appellant was served by the Magistrates with notices under the Edinburgh Municipal and Police Acts 1879-87, requiring him to form and pave the footpaths, and make up, causeway, or pave the carriageway in Rossie Place to the reasonable satisfaction of the Magistrates and Council. Subjoined to the notices was a note to the effect that Mr Proudfoot, City Road Surveyor, would give information to any owners who might apply to him at his office as to what works were required under the notices. No attention was paid by the appellant to these notices, which were subsequently on 21st October 1891 withdrawn by the respondents.

On the same date the respondents served upon the appellant two fresh notices. The first of these notices referred to the foot-pavements in Rossie Place, and was in the following terms:—"Notice is hereby given to owners of lands and heritages fronting or abutting on the private street of Rossie Place, that the Magistrates and Council of the city of Edinburgh call upon them to free the foot-pavements or footpaths of said street from obstructions, and to properly level, make up, construct, pave, and complete the same to the reasonable satisfaction of the Magistrates and Council within one month from and after the 22nd day of October 1891; and in case this notice is not complied with within the time specified, the Magistrates and Council shall themselves, on the expiry of said period, cause the said foot-pavements or footpaths of the said private street, or part thereof, to be freed from obstruction, and to be