

petition under the Companies (Consolidation) Act 1908 for the winding-up by the Court of W. M. Mollison & Company, Limited, carrying on business as lithographic printers at Anniesland, Glasgow.

The petition (as amended at the bar) stated—"That the said company is a private company with a nominal capital of £15,000, divided into 5000 6 per cent. cumulative preference shares of £1 each, and 10,000 ordinary shares of £1 each. Of these shares there have been issued 3880 preference shares, of which 3660 have been fully paid in cash, and 220 have been issued as fully paid up otherwise than in cash, and 4080 ordinary shares, of which 3750 have been fully paid in cash, and 330 upon which 10s. per share has been paid. That the petitioner is a creditor of the said company to the extent of £50, 12s. 3d., with interest thereon from 7th July 1912 to date. The said sum is due by the company to the petitioner as holder of a bill, dated 4th June 1912, for £50, 12s. 3d., payable one month after date, and drawn by R. S. Griffiths on, and accepted by, the said company. . . . That the said company is unable to pay its debts. That the said bill for £50, 12s. 3d. was duly presented for payment and was dishonoured. On 10th July 1912 the petitioner's solicitors wrote to the said company demanding payment of the said bill, and on 12th July the company's solicitor replied admitting that the company was unable to meet the bill, and asking for delay to enable the company to take steps to secure the payment. A correspondence then ensued, and continued until 23rd September 1912, in which the petitioner repeatedly asked for payment, and the company repeatedly promised payment in a few days when certain arrangements had been completed. No arrangements have been made to enable the company to meet its liabilities, and the said bill still remains unpaid. The said bill and correspondence are produced herewith. That in these circumstances the petitioner humbly submits that the said company ought now to be wound up by the Court, and that an official liquidator should be appointed for that purpose."

Argued for petitioner—*Esto* that the bill of which the petitioner was the holder had not been protested, there was sufficient evidence in the correspondence that this company was unable to pay its debts. To require protestation in these circumstances would be to put the petitioner to unnecessary expense, expense which he was not likely to recover from the company.

The Court without delivering opinions ordered intimation and service.

Counsel for Petitioner—A. C. Black.
Agents—Fraser & Davidson, W.S.

Friday, October 18.

FIRST DIVISION.

(SINGLE BILLS.)

MONTGOMERIE - FLEMING'S TRUSTEES v. KENNEDY.

(*Ante*, July 13, 1912, vol. xlix, p. 925.)

Expenses — Taxation — Photographs Obtained by Pursuer—Small Sums Involved.

In an action for the enforcement of certain restrictions in the defender's title, in which the pursuers were substantially successful, the defender objected to the Auditor's report on the pursuers' account of expenses, in so far as he (the Auditor) had allowed an item of £9 odd, being the cost of certain photographs which the pursuers had obtained at their own hand, for the purpose of illustrating the subjects in dispute.

The Court *repelled* the objection.

Observed (per the Lord President) that it would be *peccimi exempli* to allow an objection involving a sum of only £9 odd upon a matter about which the Auditor was perfectly able to make up his mind.

[The case is reported *ante ut supra*.]

The Act of Sederunt, 15th July 1876, Table of Fees, chapter v (Jury Trials and Proofs), sec. 2, enacts—"Plans.—No allowance shall be made for plans lodged in process, or prepared for use of counsel, except such as are either ordered, or subsequently sanctioned, by the Court, prepared by mutual arrangement of parties, or proved and put in at the trial or proof."

Hugh Tennant, Holland House, West Kilbride, and others, testamentary trustees of the late J. B. Montgomerie-Fleming, of Kelvinside, Glasgow, *pursuers*, brought an action of declarator and interdict against Alexander Kennedy, cabinetmaker and upholsterer, Byres Road, Glasgow, *defender*, in order to enforce certain restrictions in the title of his (the defender's) house.

On 13th July the First Division recalled the interlocutor of the Lord Ordinary (SKERRINGTON), who had dismissed the action, and found that the defender as proprietor of the subjects in question was not entitled to occupy them otherwise than as a self-contained lodging, and granted interdict against their being converted into a cabinetmaking or upholstery business.

The Auditor having lodged his report on the pursuers' account of expenses, the defender objected thereto in so far as he (the Auditor) had allowed an item of £9 odd, being the cost of certain photographs which the pursuers had obtained for the purpose of showing the alterations which the defender proposed to make.

Argued for defender—The cost of the photographs in question was an unnecessary expense, as the case had never gone to proof. Moreover, they had been obtained

on the pursuers' instructions alone, and their preparation had neither been sanctioned by the Court nor agreed to between the parties. The item, therefore, must be disallowed—A.S., 15th July 1876, Table of Fees, chap. v., sec. 2; *City of Aberdeen v. School Board of Aberdeen*, 15th November 1897, 5 S.L.T. 182.

Counsel for pursuers were not called on.

LORD PRESIDENT—I am of opinion that this objection must be repelled. In the first place, my recollection is that the photographs were quite useful at the hearing of the case. But I do not rest my judgment upon that. Again and again it has been held in this Court that we are not sitting as taxing-masters, and it would be *per se* *exempli* to allow an objection involving a sum of only £9 odd upon a matter about which the Auditor is perfectly able to make up his mind.

LORD KINNEAR—I quite agree. I think this is merely a taxing question to be decided by the Auditor.

LORD JOHNSTON—I agree.

LORD MACKENZIE—I also agree.

The Court repelled the objection.

Counsel for Pursuers—D. P. Fleming.
 Agents—H. B. & F. J. Dewar, W.S.

Counsel for Defender—D. M. Wilson.
 Agents—Patrick & James, S.S.C.

Wednesday, June 12.

OUTER HOUSE.

[Lord Cullen.

REID v. M'GILL.

Right in Security—Lease—Bond and Disposition in Security—Mineral Lease—Lease Granted by Proprietor of Security Subjects Subsequent to Date of Bond Containing Provisions Prejudicial to Bondholder's Rights—Validity of Lease.

A bond and disposition in security was granted by the proprietor of certain lands during the currency of a lease of the minerals. When this lease expired, a new lease was entered into which contained certain unusual provisions unduly favourable to the tenant.

In a question between the bondholder and the mineral tenant as to the validity of the new lease, held (*per* Lord Cullen) that the terms of the lease were such that it could not be regarded as an act of fair and reasonable administration on the part of the proprietor, and that the lease was therefore not binding on the bondholder.

William Reid, 4 Clarendon Terrace, Dundee, raised an action against James M'Gill, Castlecary, Stirlingshire, in which he sought to have it declared that he was absolute proprietor of the whole metals and minerals in and under the lands of

Coneypark and Tomfyne in Stirlingshire, and that the defender had no right, title, or interest in the same as lessee, tenant, occupier, or otherwise.

The defender brought a counter-action against the pursuer, *inter alia*, for declarator that he (M'Gill) was tenant of said metals and minerals, in virtue of a lease entered into between him and the former proprietor of the lands in question.

Proof was allowed and evidence was led before the Lord Ordinary.

The facts proved and the contentions of parties sufficiently appear from the opinion of the Lord Ordinary *infra*.

The following authorities were referred to at the hearing:—Gloag and Irvine, *Rights in Security*, p. 130; Cooke, *Mortgages*, 1904, p. 708; Rankine, *Law of Leases* (2nd ed.), chap. ii; *Abbott v. Mitchell*, May 25, 1870, 8 Macph. 791, 7 S.L.R. 493; *Ritchie v. Scott*, March 10, 1899, 1 F. 728, 36 S.L.R. 540. *On Duration of Leases—Entail* (Scotland) Act 1882 (45 and 46 Vict. cap. 53), sec. 9; *Entail Improvement Act 1770* (10 Geo. III, cap. 51), sec. 1. *On Fair Rent—Valuation of Lands* (Scotland) Act 1854 (17 and 18 Vict. cap. 91), sec. 6.

LORD CULLEN—The principal question which arises for decision in these cases is whether a certain lease of minerals granted by the proprietor of the lands of Coneypark, &c., in the county of Stirling, is valid and effectual in a question with a creditor holding a bond and disposition in security over the property granted and recorded prior to the said lease.

The property of Coneypark, &c., was purchased by John S. Street (the grantor of the bond) in 1898 at the price of £12,000. To meet the price *pro tanto* he borrowed £10,000 on bond and disposition in security from Mr Wm. Reid, the pursuer of the principal action now before me. The coal and most of the other minerals were then under lease to a company called the Kilsyth and Bonnybridge Coal Company, Limited. This lease was dated in 1895, and was terminated by a renunciation granted by the liquidator of the tenant company in 1900.

John S. Street was a speculator possessed of little or no means, and apart from the loan of £10,000 obtained from Mr Reid, seems to have been sustained in his venture by advances made by his brother William B. Street, which ultimately amounted to about £11,000.

After acquiring the property John S. Street associated himself with Mr Andrew M'Gill, who had been a colliery manager, who is the defender in the principal action and pursuer of the other action of declarator and reduction. Mr M'Gill had practical experience as a colliery manager, but he, like John S. Street, his employer, was a man of no means. He was employed by John S. Street under the writing dated 22nd December 1898, in terms of which he was to be paid £250 per annum for taking full management of the brickwork and colliery on the property.

The property included clay suitable for