

there is nothing which I can regard as amounting to an express agreement to keep open the offer.

The other Judges concurred.

The interlocutor of the Lord Ordinary was accordingly recalled.

Counsel for Pursuers—Watson and Maclean.
Agents—J. & R. D. Ross, W.S.

Counsel for Defender—Solicitor-General (Clark) and Asher. Agents—J. W. & J. Mackenzie, W.S.

Saturday, November 22.

FIRST DIVISION.

[Sheriff of Lanarkshire.

FOULDS — APPELLANT IN LEISK'S SEQUESTRATION.

Bankrupt—Liberation—Caution.

Where, pending appeal against order for liberation, the opposing creditor had presented a petition for recall of the sequestration in which final judgment had not been pronounced,—*held*, the bankrupt was entitled to liberation, on condition of finding caution not only to appear but also to return to prison in the event of the sequestration being recalled.

The estates of Robert Leisk junior, formerly clerk in the National Bank, Glasgow, were sequestrated on the 10th September last by interlocutor of the Sheriff of Lanarkshire. The salary of the bankrupt had been at first £20, then £60, and for the last quarter of his service in the bank £80 a-year. These being his resources, he had speculated in railway and other shares to the extent of over £25,000, and the claims lodged in his sequestration were to a very small extent for ordinary debts, being chiefly founded on broking transactions and on I.O.U.s for loans of money. One of his brokers was John Christie Foulds of Glasgow; and a transaction in Caledonian stock carried through by him in March last resulted in a loss to Leisk of £369, 16s. 2d. Shortly after this Leisk received an appointment in the Bank of British North America at Montreal, but he lost this situation in consequence, as he alleged, of proceedings taken by Foulds to compel payment of his debt. These proceedings resulted in his incarceration in the North Prison, Glasgow, on the same day that sequestration was awarded.

The petition for sequestration had contained a prayer for liberation; and on 20th September the Sheriff-Substitute (GALBRAITH) pronounced the following interlocutor:—"Having heard parties' procurators and resumed consideration of this application, together with the minutes of meeting of creditors yesterday, from which it appears that by a large majority the creditors find the bankrupt entitled to protection for the period of six months—Finds, however, that liberation can only be granted on caution for appearance as afterwritten; therefore grants warrant to the keeper of the prison of Glasgow to liberate the said petitioner Robert Leisk junior, so far as detained under diligence at the instance of John Christie Foulds, sharebroker in Glasgow, acted in the Books of Court in common form, that he will attend all diets in the sequestration during the period of six months after the date of his liberation at which he may be required

by the trustee to appear, or which he is bound to attend in terms of the Bankruptcy Statutes, and that under a penalty of fifty pounds sterling in the event of his failure to attend any such diets."

Against this deliverance Foulds appealed, and he shortly afterwards brought a petition for recall of the sequestration on two grounds—(1) that the bankrupt was not domiciled in Lanarkshire; and (2) that the two concurring creditors were conjunct and confident with the bankrupt, and not truly creditors of his at all. This petition was dismissed by the Lord Ordinary; but that interlocutor being subject to review, Foulds still insisted in the present appeal.

Argued for the appellant—That the caution offered was not sufficient, nor was it such as could be made available; (2) as the sequestration might still be recalled, and the application for liberation would in that event be inept, liberation ought not to be granted.

At advising—

LORD PRESIDENT—This is an application under the 45th section of the Bankruptcy Statute. The claim for the liberation of a sequestrated bankrupt stands on a different footing from the personal protection of a bankrupt not incarcerated. The latter is in the hands of the creditors; whereas the liberation from prison is entirely in the hands of the Sheriff, who accordingly has in this case ordered the liberation of the bankrupt. Now, I think it would require pretty strong reasons before we could set aside the judgment of the Sheriff in a matter so absolutely placed by statute in his hands. But one ground upon which the liberation of the bankrupt is opposed is, that an application was made to the Lord Ordinary for recall of the sequestration. True, the Lord Ordinary refused the application, but that judgment is not final, and accordingly some provision must be made for the possibility of the sequestration being recalled, in which case it would be impossible to liberate under the statute. I therefore agree with the Sheriff that the bankrupt should be liberated on condition of caution being found; but I would enlarge the order for caution by requiring caution that the bankrupt return to prison in the event of the sequestration being recalled.

The other Judges concurred.

Counsel for Appellant—Rhind. Agents—Ferguson & Junner, W.S.

Counsel for Respondent—Solicitor-General and M'Lean. Agents—J. & R. D. Ross, W.S.

Saturday, November 22.

SECOND DIVISION.

[Dean of Guild, Dundee.

BRADFORD v. MORE.

Jurisdiction—Dean of Guild Court—Dundee Police and Improvement Act, 1871, § 183.

Held that in conducting building operations where a question of possessory right or disputed boundaries was or might be raised or involved, the Dean of Guild Court at Dundee had a jurisdiction concurrent with that of the Police Commissioners, and that his warrant