

defender's witnesses, Alexander Findlay, John Smith, Ann Smith or Badenoch, and William Johnston, as corroborated by the written evidence, the Lord Ordinary is of opinion that enough has been established to support the defence.

"If the Lord Ordinary is right in his view of the facts—if he is correct in holding that the defender and his authors have for forty years, or time immemorial, possessed and enjoyed the salmon fishings *ex adverso* of his barony lands, under grants or charters from the Crown of these lands, with parts and pertinents and fishings—it follows in law that the present action is not maintainable against the defender, and that he has been rightly absolved therefrom.

(Intd.) "R. M'F."

Agent for the Crown—Donald Horne, W.S.
Agents for the Earl of Seafield—Mackenzie, Innes, & Logan, W.S.

Tuesday, May 22.

FIRST DIVISION.

PROUDFOOT *v.* LECKY (*ante*, vol. i., p. 240).

Expenses. In an action of damages for wrongous dismissal of a servant, in which the jury found for the pursuer, with one farthing damages, neither party found entitled to expenses.

This case was tried before Lord Barcaple and a jury, on the 23d, 24th, and 26th March 1866. The question was whether the pursuer had been wrongfully and illegally dismissed from the service of the defender, to his loss, injury, and damage. The defender pleaded justification. The jury found for the pursuer—damages one farthing.

A. MONCRIEFF moved the Court to apply the verdict of the jury, and in terms thereof to decern against the defender, with expenses.

PATTISON (with him the LORD ADVOCATE) opposed the motion for expenses, on the ground that the verdict of the jury substantially represented the amount of patrimonial loss incurred by the pursuer, and was not intended as a vindication of his character. He cited Paterson *v.* Ronald, January 31, 1820, 2 Murray's Reports; 188; and Paterson *v.* Walker, November 29, 1848, 11 D. 167.

A. MONCRIEFF (with him GIFFORD) argued that the case was assimilated in principle to cases of slander, in which nominal damages carried expenses; and in support of this quoted Balfour *v.* Wallace, December 3, 1853, 16 D. 110; Ross *v.* Macvean, June 2, 1860, 22 D. 1144; and Borthwick *v.* Gilkison, November 21, 1863, 2 M'Ph. 125.

The Court refused the motion. In the case of Borthwick, malice had been found by the jury. There was nothing of the sort here.

Agents for the Pursuer—Wilson, Burn, & Gloag, W.S.

Agent for the Defender—R. P. Stevenson, S.S.C.

MACDONALD'S TRUSTEES *v.* MUNRO,
et e contra (*ante*, vol. i., p. 259).

Expenses—The pursuers of an action who succeeded before a jury to the extent of one-half of their claim, found entitled to expenses.

These are counter actions betwixt the trustees of the late Captain Ronald Macdonald, who resided in Portobello, and Archibald Innes Munro, who was the deceased's servant. In the one action the trustees claimed payment from Munro of £600, being the contents of four bank cheques which he had uplifted from bank for his late master and

failed to account for. In the other action, Munro claimed payment from the trustees of a legacy of £100 bequeathed to him in Captain Macdonald's will, and of a sum of wages due to him.

The first action was tried before the Lord President and a jury in April. The question submitted to the jury was limited to two of the cheques which were for £200 each. They jury returned a verdict for the pursuers for £200.

In the other action the only defence insisted in by the trustee was that Munro was in possession of funds belonging to them more than sufficient to pay the legacy and wages which he claimed.

The COURT to-day conjoined the actions, applied the verdict of the jury, and decerned against Munro for £200, under deduction of the sums claimed by him in the action at his own instance. In regard to expenses,

The LORD PRESIDENT said—These two cases stand in different positions. In regard to the first which I tried, I have looked at my notes of the evidence, and it appears to me that the defender Munro must be found liable in expenses. I take into consideration the whole evidence, the demand for explanations made by the trustees before the litigation commence, Munro's refusal to give them, the nature of his defence, and of the evidence by which it was supported. The defender had the means of giving the information which the trustees asked, and he should have given it. His own evidence does not seem from the result to have been at all satisfactory to the jury. In the other action the sums sued for were admittedly due, but the trustees contended that Munro was liable to them in a larger sum. In this they have proved to be right. Their action was first raised. If Munro had given an account in regard to the money drawn from bank, I think it is pretty clear that there would have been no litigation. The fair result is therefore, that in the second action neither party should be found entitled to expenses.

The other Judges concurred, and the trustees were found entitled to expenses in the action at their instance, and in the other neither party was found entitled to expenses.

Counsel for the Trustees—Mr Clark and Mr Shand. Agent—Mr J. T. Mowbray, W.S.

Counsel for Munro—Mr Gifford and Mr Deas. Agent—Mr John Robertson, S.S.C.

PATERSON *v.* THE PORTOBELLO TOWN
HALL COMPANY (LIMITED).

Lease—Public Officer—Conflicting Interest. Commissioners of Police having entered into a lease with a Joint-Stock Company of which some of them were directors, held that the lease was not illegal. Case distinguished from Blaikie *v.* Aberdeen Railway Company.

This action is raised at the instance of Alexander Paterson, clerk to and representing the Magistrates and Town Council of Portobello, as Commissioners of Police of the burgh of Portobello, against the Portobello Town Hall Company (Limited), and concludes for reduction of, *First*, a pretended tack bearing to be entered into between the defenders and the then Magistrates and Council of Portobello as Commissioners of Police for the burgh of Portobello, and bearing to be dated the 10th and 12th days of February 1863, whereby the defenders are said to have let to the said Magistrates and Council of Portobello, as Commissioners foresaid, and their successors in office, certain parts and portions, therein specified, of a large building in the High Street of Portobello therein described, and