

necessary to have a discussion upon the account. I certainly think that the regular and satisfactory course would have been to get the account audited before he modified the amount, because otherwise it was quite possible that the amount which he awarded as a modification might be more than the whole expenses. I therefore perfectly concur with your Lordship in remitting back to him with the view that he may get the account audited, which he is quite entitled to do, or have its amount otherwise ascertained at sight of the parties, and then, if he shall think that the expenses should be borne by the party whom he proposed to hold liable for them, he will report his opinion of new, and state the amount which that party ought to pay.

Lord ARDMILLAN—I have nothing to add. I entirely concur in what your Lordship has said.

Expenses reserved.

Agent for Pursuers—W. S. Stuart, S.S.C.

Agent for Defenders—James Somerville, S.S.C.

Tuesday, March 5.

## SECOND DIVISION.

George Patton, Esq., having on Friday last presented her Majesty's letter appointing him Lord Justice-Clerk and President of the Second Division of the Court, and having thereafter passed his probationary trials and taken the customary oaths, took his seat to-day on the bench as Lord Glenalmond.

**SOFIO v. GILLESPIE AND CATHCART.**

*Jury Trial—Commission.* Motion for a commission to examine the pursuer of an action which was to be tried by jury *refused*.

In this case issues were adjusted some time ago, which were set down for trial. The pursuer being resident in Messina,

CLARK and STRACHAN to-day moved for a commission to examine witnesses resident abroad, including the pursuer.

SCOTT, for the defenders, objected in so far as the motion asked the examination of the pursuer on commission.

The Court granted commission to examine witnesses other than the pursuer, but refused the motion *quoad* him. The pursuer was bound to attend the trial in this country and give his evidence at it.

Agent for Pursuer—James S. Mack, S.S.C.

Agent for Defenders—A. K. Morison, S.S.C.

Wednesday, March 6.

**SMYTH v. WALKER.**

*Diligence—Adjudication—Letters of Horning—Superinduction—Erasure—Prescription.* In a challenge of an adjudication on the grounds that certain words had been filled up after having been left blank in the letters of horning when they were signeted, and that there was an erasure in the execution—Held that the averments did not affect essential matters, and diligence sustained. *Question*—whether the documents were “grounds and warrants” which cannot be challenged after lapse of twenty years.

This was an action of reduction, improbation, and declarator, count and reckoning payment,

against Mr Walker, who, on a bond for £300, had in 1837 adjudged the subject of his security in absence, from the pursuer's parents, and its object was to reduce that bond and all the diligence which had followed thereon. The pursuer had alleged forgery, and as he did not abandon that ground of action, the Lord Ordinary (Jerviswoode) ordered him to lodge issues. These issues, when lodged, only raised a question as to certain superinductions in the letters of horning, and an erasure in the execution thereof. The defender therefore craved absolvitor, at any rate as regards all the writs impugned, except the horning, and also as regards it, because, after the lapse of twenty years, the prescription of the warrants of an adjudication prevented any such challenge; and even if such challenge were competent, the superinductions and erasure were not of essential words, and were not such as to cast the diligence. The Lord Ordinary reported the points so raised.

MILLAR and WEBSTER for pursuer.

GIFFORD and THOMS for defender.

At advising,

LORD JUSTICE-CLERK—This case, depending since 1862, was instituted by the pursuer, David Smyth, as heir of his deceased father Alexander, and of his deceased mother, for the purpose, in the first place, of setting aside a bond over property belonging to his deceased father, together with an adjudication led in virtue of the bond against the subjects; also, to set aside a decree of the Magistrates of Dundee, in a process at the instance of the defender, the object of which was to obtain a count and reckoning with the deceased mother of the pursuer, as in possession under a prior bond, of part of the subjects, and, as was alleged, of the other portion of the subjects; and, lastly, a decree of declarator against Mrs Smyth in the Court of Session in absence, finding that Mrs Smyth's former security had been extinguished.

In reference to the reduction of the right of the defender, the bond and disposition in security, which was granted by the deceased Alexander Smyth in favour of Robert Chrystal for a sum of £300, and the various steps of the progress by which the right passed from Robert Chrystal into the person of the defender are called for. These constitute the first six writs called for. The eighth call is for the horning and pointing, the execution of charge and execution of denunciation; and the ninth is for the decree of adjudication.

There are no grounds assigned, at least there are none insisted on, for impeaching the validity of the original bond, and nothing directed against the validity of the instruments of transmission, by which the defender came to be in right of the bond. The pursuer's challenge is truly directed against the letters of horning and subsequent procedure.

The first objection taken is that the letters of horning, when signeted, were blank in the description of the residence of the party who was to be charged in virtue of the letters, and the pursuer offers to instruct that the blank was filled up after the signeting and before recording. A similar objection is taken to the word “sasine,” and to the words “in favour of,” which are a portion of a description of one of the links in the progress.

The first answer of the defender is, that the letters of horning, being “warrants” of the adjudication, which adjudication is *in se* complete, cannot be called for, or, if exhibited, cannot be looked at with a view to set aside proceedings