

nary reclaimed against, of date 22d June 1866: Find that the defender, as tenant in the lease libelled, having failed to fulfil the condition of building dwelling-houses on the ground (as provided by the 5th section of the statute 10 Geo. III., c. 51), subject to which condition only the parties could lawfully contract in terms of said lease, the said lease is ineffectual and not binding on the pursuer as heir of entail succeeding to the grantor: Find the pursuer entitled to expenses since the date of the Lord Ordinary's interlocutor reclaimed against: Allow an account thereof to be given in, and remit the same when lodged to the auditor to tax and report: Appoint the report to be made to the Lord Ordinary; and remit to the Lord Ordinary to proceed with the cause as shall be just and consistent with the above finding; with power to decern for the expenses now found due. Five words delete.

"JOHN INGLIS, I.P.D."

Agents for Pursuer—Hay & Pringle, W.S.

Agents for Defender—Campbell & Smith, S.S.C.

Saturday, March 30.

SECOND DIVISION.

WALKER v. MARTIN.

Reparation—Culpa—Unfenced Machinery. In an action of damages by a young girl for personal injury caused by unfenced machinery, £30 awarded.

This is an advocacy from the Sheriff Court of Lanarkshire of an action in which Martin sued the advocator for damages in respect of injuries sustained by her while in his service in his bleachfield at Castlebank, Partick. The pursuer was injured at one of the windows in the wall of one of the rooms at the work, in which there is a series of wheels called dash or cog wheels, into which the cloth for bleaching is put, with a shaft and gearing to drive the wheels between them and the wall. While standing there the dash wheel caught her dress, and drew her into the machinery, by which she was seriously injured, having had the flesh on her thighs and back lacerated. The defence was that at the time the accident happened the pursuer was not engaged at her usual employment, but had left it prior to the usual hour of ceasing to work, and was idling away her time; that her duty in the defender's works never required her to be in that part of the works at which she was injured; that she had no right to be there; and that the accident was caused through her own fault.

The Sheriff-Substitute (Murray) assolizied the defender.

The Sheriff (Alison) altered, and modified the damage to £30.

The defender advocated.

To-day the Court adhered to the judgment of the Sheriff.

Counsel for Advocator—Mr Shand and Mr Brand. Agents—Ronald & Ritchie, S.S.C.

Counsel for Respondent—Mr Pringle. Agent—J. D. Bruce, S.S.C.

SMEATON v. ST ANDREWS POLICE COMMISSIONERS.

Police—Public Commissioners—Drainage—25 & 26 Vict., c. 101—Agreement. Held (1) that Police Commissioners, in carrying through a system of drainage operations for the public

benefit, are entitled to follow what course they may consider most expedient, but *suo periculo*, and *interim* interdict granted to a party complaining that his lands were to be used for the purpose recalled. (2) Circumstances in which proof of an alleged agreement with the Commissioners allowed, and to that extent a plea that it was *ultra vires* of the Commissioners to enter into such an agreement after a line of operations had been resolved upon and sanctioned by the Sheriff, repelled.

The pursuer is proprietor of the lands of Abbey Park, in the burgh of St Andrews, and conducts a large boarding-school for boys there. In 1863 the defenders, acting under the Act 25 and 26 Vict., cap. 101, proceeded to construct a system of drainage in St Andrews, and gave the requisite notices. The main sewer was to go through the pursuer's lands. The pursuer took several objections to the procedure of the Commissioners, but the Sheriff of Fifeshire, whose decision in such cases is final, in October 1865, confirmed the order of the defenders. The pursuer then intimated a claim for compensation. After several communications, with the view of avoiding litigation, the defenders agreed, on 12th February 1866, by a majority of one, to come to an amicable arrangement with the pursuer on the basis of a memorandum of agreement proposed by him. Thereafter the Commissioners, on 3d March 1866, resolved to proceed with the line of drainage sanctioned by the Sheriff. Smeaton then brought an action against the Commissioners to have them ordained to carry out the plan contained in the agreement. The Commissioners defended, contending that the memorandum founded on by the pursuer was not a final and binding agreement, and that it would be illegal and *ultra vires* for them to deviate from the line sanctioned by the Sheriff. In December 1866 the Lord Ordinary pronounced a judgment assolizieing the Commissioners, on the ground of the finality of the Sheriff's judgment. Smeaton reclaimed. In February 1867, before the reclaiming note for Smeaton was heard, the Commissioners passed a resolution to proceed with the execution of the line sanctioned by the Sheriff. Smeaton thereupon brought a suspension and interdict against the Commissioners to have them prevented from carrying out their resolution. The Lord Ordinary on the bills granted interim interdict, and reported the case to the Court. The Court recalled the interdict, holding that it was for the Commissioners to proceed or not with the works as they chose, *suo periculo*. The case was then heard on the defenders' plea that it was *ultra vires* of the Commissioners to make any agreement such as that alleged by the pursuer.

YOUNG and BALFOUR, for the pursuer.

COOK and CAMPBELL SMITH, in answer.

At advising,

Lord COWAN—When this cause was formerly advised, we were all of opinion that the Lord Ordinary had gone wrong in dismissing the action on the ground he did, namely, upon the finality of the judgment of the Sheriff in relation to the objections stated by the pursuer to the contemplated operations of the commissioners. The interlocutor was consequently recalled, and the cause ought then to have returned to the Lord Ordinary to proceed further on the merits, but it was pressed on the point that there were pleas stated by the defenders which might, if sustained, lead to the same result, and the cause was again heard on the question whether there were grounds for thus