Wednesday, July 17.

GUILD *v.* GIBB.

Process—Advocation—Failure to Print and Box. Advocator having failed to obtemper Lord Ordinary's interlocutor appointing him to print and box, the respondent printed the Lord Ordinary's interlocutor and the note of advocation, and enrolled in the single bills. Case sent to summar roll. Thereafter, in respect of no appearance by advocator, advocation dismissed.

This was an advocation from the Sheriff-Court of Dundee. The note of advocation was lodged with the Clerk of Court on 2d April 1867. The Lord Ordinary, on 18th June 1867, pronounced this interlocutor:—"Allows parties to lodge additional pleas in law in eight days each, and on the same being done, on the motion of the advocator, reports this advocation to the Lords of the First Division, in terms of the statute; apoints him to print the record, proof, and any other papers which may be deemed necessary; and to box the same to the Court, and grants warrant to enrol in the Inner House rolls in common form."

The advocator lodged no additional pleas. He did not print and box. The respondent then, following the procedure in the case of *Dow and Mandatory* v. *Jamieson*, 18th June 1867 (*ante*, pp. 107, 173), printed the Lord Ordinary's interlocutor of 18th June, and the note of advocation. The case appeared in the single bills.

BERRY, for the respondent, moved the Court to close the record and send the case to the summar roll, with the view of having it disposed of.

THOMS, for the advocator, contended that the motion was incompetent. He cited *Millar v. Logan*, 20 D., 522, and maintained that no additional pleas having been lodged by the parties, the report to the Inner House fell, and the case was still before the Lord Ordinary. The report was conditional, and did not take effect until additional pleas were lodged. He contended that the case of *Dow* v. *Jamieson* was not an authority in point, the interlocutor in that case not being in the same terms as here.

LORD PRESIDENT—It certainly is very desirable to have some means of preventing an advocator from lying by as this advocator had been doing, and tiding over a session in this way, without taking a single step in his advocation, and I don't see any difficulty from the statute. The Lord Ordinary is directed, if a motion be made to that effect before him, to appoint the record and proof to be printed, and boxed to the Judges of the Inner House, and to report the cause to the Inner House; but it is not on that being done that he is to report, nor on anything being done, in so far as the statute is concerned. And, unless there is some difficulty in the form of the interlocutor here, we are in a position to send the case to the roll. At first sight there does seem some difficulty. The Lord Ordinary allowed parties to lodge additional pleas, in eight days each, and, on that being done, reports to the Inner House. Certainly, taking that literally, the report does not properly become a report until that is done. But looking to the fact that the thing is only allowed to be done, and may be done or not as the parties think fit, this is too strict a reading of the interlocutor. I think the Lord Ordinary intended to allow each party eight days to lodge additional pleas, and after that to report, whether they lodged additional pleas or not. And therefore such condition as there is prefixed to this interlocutor is sufficiently purified by the lapse of time allowed for lodging additional pleas, as well as by the actual lodging of additional pleas. And therefore this report is now an unconditional report, and the case falls under the principle of *Dow* v. *Jamieson*, which we decided a very short time ago. And therefore I think we ought to send this note of advocation to the roll; and in order to make the remedy practically available to the respondent, it is necessary to put it to the roll immediately; but we may give the advocator all the time we can, consistently with that, to put himself right by printing and boxing the papers. What I propose is, to put it to the roll for Saturday; and if the advocator has not by that time printed and boxed, we shall give judgment against him by default.

The other Judges concurred.

On the following Saturday accordingly the case was put out in the summar roll. The advocator did not appear. The Court, in respect of his non-appearance, dismissed the advocation, with expenses.

Agents for Advocator—Lindsay & Paterson, W.S.

Agents for Respondent—Murray, Beath, & Murray, W.S.

Thursday, July 18.

FIRST DIVISION.

NEWTON *v.* NEWTON.

Entail—Deed of Locality—Reduction—Deathbed—Reserved Power—Faculty—Terce—Bond of Provision. Circumstances in which a deed of locality and a bond of provision in favour of younger children, executed by an heir of entail, reduced on the head of deathbed.

Bond of Annuity—Entail—Reduction. Circumstances in which held that a bond of annuity executed by an heir of entail was struck at by the prohibition in the entail, and deed reduced.

The pursuer, W. D. O. Hay Newton, succeeded on the death of his father, on 19th November 1863, to the entailed estates of Newton. In the following year he raised three actions. The first of these actions was directed against his mother, and concluded for reduction, *ex capite lecti*, of a deed of locality executed in her favour by the deceased Mr Hay Newtown, on 31st October 1863.

The defender did not dispute that the deed in question had been executed by the late Mr Newton on deathbed, but she maintained these pleas:—(1) That the action was excluded by a bond of provision or annuity executed in her favour by the deceased Mr Newton, in terms of the Aberdeen Act, in 1860; (2) that bond was binding on the pursuer, and was valid and effectual, so far as regarded the lands therein described, and in so far as the deed of locality now sought to be reduced affected these lands, the pursuer's title to maintain the action was excluded; (3) the deed of locality had been executed in terms of reserved faculties in the deeds of entail, and was therefore effectual; (4) the plea of deathbed was excluded, in respect that the deed sought to be reduced was granted for onerous causes; and *separatim*, the defender was entitled to maintain the deed to the extent of her right of terce in the lands.