and examined, and the bill stamp found to bear the figures 10, 5, 65.

Gifford and Asher for reclaimers.

Campbell Smith, and M'Lennan for respondent.

At advising—

Lord Cowan was of opinion that the interlocutor ought to be adhered to. It was averred that a blank bill stamp, granted by the suspender before his sequestration, and before the sequestration of Peter Macnab and his firm, had been filled up and indorsed to the charger. The mandate to fill up this document and convert it into a bill fell by the suspender's sequestration, and to use it, as it was said to have been done, was an act of gross fraud on the part of the drawers. As against the chargers, it was averred that they knew of the drawers' fraud, and that they received the bill in the full knowledge of how it had been fabricated. It appeared on the face of the bill that the stamp had been issued on the 10th May 1865, which was long anterior to the suspender's sequestration. That ought to have put the chargers upon their inquiry; but instead of inquiring they took an indorsation of the bill "without recourse" against the party from whom they received it. That was, to say the least of it, a very suspicious proceeding on their part, and he thought the circumstances disclosed, and the averments, were quite sufficient to warrant a proof by parole of the allegations of fraud and privity to it.

Lord Benholme concurred, being of opinion that the indorsation "without recourse" showed that the indorsees were conjunct and confident parties with the drawers and indorsers, and that, if the one party had committed a fraud, the other had a sufficient knowledge of it to bind them together in their interests.

Lord Neaves and the Lord Justice-Clerk also concurred, both laying great stress upon the date of the stamp; upon the suspender's sequestration, which was a public act of which the indorsees must be presumed to have known; and upon the indorsation "without recourse;" Lord Neaves remarking that Barnett & Co. must have been presumed, when they accepted of this indorsation "without recourse," to have made very thorough inquiry about the acceptor.

The Court adhered, with expenses.

Agents for Reclaimers—White-Millar & Robson, S.S.C.

Agent for Respondent—W. Milne, S.S.C.

Saturday, December 21.

HENDRY *v.* GRANT & JAMESON.

Process—Evidence Act—Expense of Printing Proof. After a proof was led before the Lord Ordinary, the defenders, who had led about one-half of the proof, intimated that they would bear no part of the expense of printing. The pursuer accordingly printed the whole, and called on the defenders to relieve him of one-half, which they refused to do. *Held*, on a report from the Lord Ordinary, that each party having led an equal amount of proof the defenders were liable in one-half.

In this case, which is an action of damages at the instance of a grieve against Messrs Grant & Jameson, writers, Elgin, on the ground partly of failure to obey instructions, and partly for want of professional skill in the management of a cause which he had employed the defenders to raise, issues were reported to the Court, and a long discussion followed. The defenders, before judgment was pronounced, offered to take a proof before the Lord Ordinary under the Evidence Act, to which the pursuer assented. The proof was accordingly led. Upon its conclusion the defenders' agents intimated to the pursuer that they would share no part of printing the proof. The pursuer accordingly printed the whole, and then called upon the defenders to relieve him of one-half, which they refused to do. Each party led an almost equal amount of proof. The Lord Ordinary was then moved for an order on the defenders to that effect. His Lordship reported the point.

W. A. Brown, for the pursuer, argued that the defenders should be ordained to pay one-half of the expense of printing the proof. It was necessary that the proof should be printed for the Inner-House, and the defenders having intimated that they would not print at all, the pursuer was entitled to print the whole, and he had an equitable claim to be relieved by the defenders of what he had expended for them.

Lancaster, for the defenders, answered:—It is not expedient that any such order should be pronounced as that which the pursuer seeks. The Lord Ordinary has reported the proof, and the case will be very soon disposed of by final judgment. It will then be seen who has to defray the whole expense of the proof, for that will fall on the unsuccessful party. The pursuer is a poor man, and in the event of the case being decided against him the defenders might fail to recover what they had disbursed for him, and that would be a hardship. Further, the nature of the action is one which justifies the defenders in resisting this motion. It is an action of damages against them, grounded on the allegation of want of professional skill. The case could not be brought to the Inner-House unless the proof was printed, but the defenders would provide no facilities for that being done.

The Court, without laying down any general rule for practice, and proceeding on the fact that there was an equal amount of proof on each side, ordained the defenders to divide the expense of the proof, and found them liable in the expenses of the discussion.

Agent for Pursuer—James Bell, S.S.C.

Agents for Defenders—H. & A. Inglis, W.S.

Tuesday, December 24.

FIRST DIVISION.

SMITH *v.* ANDERSONS.

Embezzlement Act, 17 *Geo. III., c.* 56—*Conviction—Penalty—Clerk of Court.* In a suspension of a conviction obtained under sec. 11 of the Embezzlement Act, the conviction bearing to proceed on the deposition of two witnesses, manufacturers, and on the failure of the party to give a satisfactory account of how he came by the stuff; *held* (1) that the deposition was unnecessary, and (2) that the judgment rightly ordained payment of the penalty to the clerk of court, he being the proper immediate recipient, although ultimately the penalty was to be divided between the informer and the poor of the parish.