Saturday, December 5.

SECOND DIVISION.

STEEL *v.* SMITH.

31 & 32 *Vict., c.* 100, *sec.* 27—*Lodging of Issues. Held* that the provision of the Court of Session Act 1868 as to the lodging of issues before the summary debate to take place in a cause, does not infer, on failure to implement the requirement of the Statute, dismissal of the action.

This was an action of damages brought by Matthew Steel, wright in Ochiltree, against Andrew Smith, secretary of the Ochiltree Gas Company, the allegation being that the defender had written to the pursuer a letter, falsely and calumniously charging him with embezzling the funds of the said Gas Company, of which the pursuer had formerly been collector. The defender pleaded that the action as laid was irrelevant, in respect that the letter was privileged, and malice was not averred.

Upon the record being closed, the case was sent to the Lord Ordinary's summary debate roll, the new Court of Session Act prescribing that the parties shall lodge such issues as they propose before the day fixed for the summary debate. The pursuer had failed to lodge his issues before that day, and at the summary debate the defender pleaded, in addition to his plea of irrelevancy, that the action should be dismissed, in respect the pursuer had failed to comply with the provision of the statute. The Lord Ordinary refused to dismiss the action on this ground, and further refused to hold the action irrelevant. The defender reclaimed.

YOUNG and CRICHTON for him.

CLARK and BLACK for pursuer.

The Court were of opinion. upon the point of form, that, although the failure to lodge issues previous to the summary debate was an irregularity to be condemned, and to be visited with a penalty in the way of expenses when the Lord Ordinary thought that proper, yet it did not go the length of entitling the defender to get the action dismissed. Upon the question of relevancy, their Lordships thought that the pursuer's averments did not disclose a case of privilege, and, therefore, that it was unnecessary to aver malice.

Agent for Pursuer—W. H. Muir, S.S.C.

Agent for Defender—L. M. Macara, W.S.

Tuesday, December 8.

FIRST DIVISION.

GOLDSTON *v.* YOUNG.

Mutual Contract—Sale of Heritage—Missives of Sale—rei interventus—locus penitentiæ—*Reparation—Alien—Title to Sue.* Action to enforce an alleged contract of sale of heritage *dismissed*, one of the missives founded on as constituting the contract being neither holograph nor tested, and there being no *rei interventus. Held* (by Lord Ormidale) that a letter of naturalization obtained after the raising of the action validated an action raised by an alien to enforce implement of a contract of sale of heritage.

On 21st February 1868 the pursuer, David Goldston, signed a letter, holograph of the defender, in these terms:—

"*Edinburgh*, 21 *Feby.* 1868,
112 *Nicolson Street.*

"Mr JOHN YOUNG,—Sir,—I hereby make offer to purchase that shop from you, No. 90 Nicolson Street, possessed by Mr Gibson, dyer, for the sum of seven hundred and ninety pounds sterling (£790), the feu to be two pounds (£2) yearly; the expense of said sale to be mutual.—Your acceptance will much oblige, (signed) D. GOLDSTON.

" DAID GOLDSTON."

On the same day the defender, Young, wrote and signed the following letter:—

"112 *Nicolson Street,*
Edinburgh, 21*st Feb.* 1868.

"Mr DAVID GOLDSTON,—Sir,—I hereby accept of your offer of seven hundred and ninety pounds sterling (£790) for that shop, No. 90 Nicolson Street, possessed by Mr Gibson, dyer, the feu to be two pounds yearly (£2); the expense of said sale to be mutual,—yours respectfully,

(signed) JOHN YOUNG."

These missives were delivered but no possession followed thereon. Goldston now sued Young for implement of the contract of sale alleged to be constitution by these missives; and, alternatively, for damages. After raising the action, Goldston, who was a native of Russia, obtained letters of naturalization, dated May 1868.

Young defended, and stated, *inter alia*, these pleas:—"(1) The pursuer has no title to insist in the present action. having been an alien when the action was instituted, or at least when the alleged cause of action arose; (3) the documents founded on not being holograph or tested, and being deficient in the necessary requirements of writs affecting heritage, the action cannot be maintained."

The Lord Ordinary (ORMIDALE), on 20th June 1868, pronounced the following interlocutor:—"Reserves the first plea in law for the defender, so far as preliminary, to be discussed with the merits: Closes the record on the revised condescendence and revised defences, Nos. 9 and 10 of process, and appoints parties' procurators to debate the cause in the summary debate roll on Wednesday next." Thereafter, on 2d July, the Lord Ordinary pronounced this interlocutor:—"The Lord Ordinary, having heard counsel for the parties on the first and third pleas in law for the defender, and having considered the argument and proceedings, Repels said first plea, and also said third plea, in so far as it was founded on as a preliminary bar to the action being proceeded with; and, under a reservation in the meantime of all questions of expenses: Appoints the case to be enrolled that parties may be heard as to the steps now to be taken in the cause.

"*Note.*—The Lord Ordinary has felt the first of the two pleas now repelled to be attended with difficulty. It depends upon the effect which falls to be given to the letter of naturalization, No. 14 of process, obtained and produced by the pursuer shortly after the action was raised, by which there has been granted to him 'all the rights and capacities of a natural born British subject,' in terms of the Act 7 & 8 Vict., cap. 68. It was maintained by the defender that this naturalization had no retro-active effect, and therefore that, as it was obtained subsequent to the date of the cause of action, as well as of its institution, it could not obviate his first plea in law.

"It rather appears to the Lord Ordinary that, having regard to the very comprehensive and unqualified terms of the letter of naturalization, as