

Wednesday, February 3.

SECOND DIVISION.

ALLAN & MANN v. LANG.

Summary Procedure Act, sec. 28—Advocation—Proceedings of a Criminal Nature. Held that a conviction for a guild offence, punished by a fine with the alternative of imprisonment, was a proceeding of a criminal nature, and therefore excluded by the 28th section of the Summary Procedure Act from the review of the Court of Session in a process of advocation.

By the Glasgow Police Act 1866, the Dean of Guild has power to decern for any penalty due in respect of a guild offence, and grant warrant for imprisoning the party liable on failure to pay. By the same Act the Master of Works has power to require occupiers to remove or alter porches, signs, gates, fences, &c., against or in front of their lands on or over any road or street, unless erected under a warrant of the Dean of Guild; and parties disobeying such requisition are guilty of a guild offence. Allan & Mann received a notice from the Master of Works to remove a fence and gate inclosing part of Victoria Street, Port-Eglinton, opposite a land on the north side thereof occupied by them. This they failed to obey, denying that the space inclosed was part of Victoria Street. The Dean of Guild, on a petition by the Procurator-Fiscal (LANG), found that the respondents had incurred a guild offence, modified the penalty to £5, granted warrant for imprisonment on failure to pay within fourteen days, and ordained the defenders to remove the obstructions complained of.

Allan & Mann advocated.

The respondent (petitioner in the Inferior Court) maintained the following pleas:—“(1) The advocation is incompetent. The proceedings are of a criminal nature, and all review thereof in this Court is excluded by the provisions of the Summary Procedure Act, 27 and 28 Vict., chap. 63, sec. 28, as well as at common law. (2) No jurisdiction, in respect the proceedings are of a criminal nature. (3) The advocation ought to be refused, in respect the judgments complained of are well founded, and that the advocates were guilty of the offence specified in the petition at the respondent's instance, having failed to remove the obstruction erected by them on the public street, all as set forth in the said petition.”

FRASER and MACLEAN for advocates.

WATSON and SHAND for respondent.

The Court sustained the first plea in law of the respondent, and refused the advocation.

Agent for Advocates—John Galletly, S.S.C.

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

Thursday, February 4.

FIRST DIVISION.

SCOTT v. M'MURDO.

Master and Servant—Dismissal—Term of Service—Coachman—Proof—Custom of the District—Reparation. Circumstances in which held that a servant had been justifiably dismissed for insolence, and that the master was entitled to turn him out of the cottage in which he had resided during the term of service.

A coachman is not presumed to be a yearly servant.

In the spring of 1867 Scott was engaged to become coachman to the defender, Admiral M'Murdo, from the then ensuing Whitsunday, his wages to be £45 with a free house and garden. Scott entered the defender's service at Whitsunday, and continued therein until Martinmas of the same year. He now sued the defender for damages, alleging that he had been engaged for a year, that he had been unjustifiably dismissed at the end of six months, and that, on Martinmas-day 1867, while he was absent from his dwelling-house, and his wife was outside, and the house was locked, the defender came with certain persons, broke into the house, and removed his, the pursuer's, furniture into the road, where it remained until the next day, the pursuer and his wife taking shelter for the night in a neighbour's house. The pursuer contended that, failing proof of the contract of service being stipulated for a year, that was the usual term of service for coachmen in the district.

The defender alleged that the contract of service had been for six months, that being the usual term of service in such cases; that the pursuer had, in consequence of insolent and abusive language on 28th August, been warned to leave his service at Martinmas; and that his furniture had been removed in order to make room for the incoming coachman.

After a proof, the Steward-substitute (DUNBAR) held the contract of service to have been lawfully dissolved at Martinmas, but gave £25 damages for forcible entry of the pursuer's house.

The Sheriff (HECTOR) recalled, and assolizied the defender.

The pursuer appealed.

SCOTT and BRAND for appellant.

Solicitor-General (YOUNG) and J. MARSHALL for respondent.

At advising—

LORD DEAS, after narrating the claims of the pursuer and the answer made by the defender, said,—As to the alleged duration of the contract of service, I don't think the evidence of the other coachmen is of much importance. It is admitted that this was a special bargain. It was not a simple engagement, leaving the question of time open, so as to admit of construction by the custom of the district. But then it is said the pursuer, immediately after the engagement, told the terms of it to his friend Pringle. That evidence is of doubtful competency. It is a dangerous kind of evidence to admit, for it puts a great deal in the power of any one who wishes to make up a story. He would merely have to go away and tell somebody his version of what took place. But leaving the question of admissibility, which may be a question of circumstances, and assuming that we may look at this evidence, what is its value? I think its value is very little. It must be received with great caution, (1) because it puts so much in the power of a party to say immediately afterwards to some one else that the contract was what he wanted it to be; and (2) because the party to whom it is said may be very willing to understand the contract to be in a particular way, and to assist his friend in making it out as they wish. Here, assuming that the pursuer gave this account to his friend, I have difficulty in holding that to be much of a corroboration. Sometimes, in examining a witness, we have a feeling that he is not entirely trustworthy, and I have something of that feeling here. But except this there is no corroboration of the pursuer's evidence. On the other hand, the defender says the engage-