

approved bills; That there is no evidence of any offer to pay or give security for the rent prior to Mr Ogg's letter on behalf of the respondent, dated 15th September 1866; Finds in law that in the above circumstances, the petitioner was justified in using sequestration *currente termino*; and that the respondent is liable in the expenses thereof, and of this process; Therefore allows the petitioner to lodge an account of his expenses; And remits the same, when lodged, to the Auditor of Court to tax and report.

"*Note.*—This is now a fight about expenses merely. Whether a landlord is justified in using sequestration *currente termino* must be gathered from the whole surrounding circumstances. In the present case the tenant had during the thirteen years of his tenancy been always behind. Sequestration had been had recourse to more than once. He had in the spring of 1866 renounced his lease from his finding himself embarrassed. He had specially undertaken to find security for his rent in the deed of renunciation. But without notice to the landlord he sold off his growing crop unconditionally, allowed part of it to be cut down, and although, on the eve of being ready for removal, paid no attention to his landlord's reminder that caution for the rent must be found. It is true that he maintained that the landlord had in his hands a sum of £35, but he has certainly not proved that fact, and even if he had, he knew at the time that the landlord denied it, and he had not constituted it against him. It is not to be expected that so peculiar a right as that conferred on landlords by the law of hypothec can be enforced without hardship, sometimes arising to the tenant as well as to great general creditors, but the Sheriff-substitute is of opinion that the tenant has, in the present case, himself to blame, and that the landlord only did what the law entitled him to do."

On appeal, the Sheriff adhered.

The tenant appealed to the Court of Session.

RHIND, for him, argued—Sequestration for rent *currente termino* should not be at the expense of the tenant, unless under very peculiar circumstances; and there were no such circumstances here. Authority—*Gordon v. Suttie*, June 11, 1836.

SOLICITOR-GENERAL and H. SMITH in reply.

The Court adhered.

Agent for Appellant—W. Officer, S.S.C.

Agent for Respondent—John Auld, W.S.

Friday, December 3.

SECOND DIVISION.

FRASER v. FRASER.

Service—Remuneration—Quantum Meruit. Circumstances in which held, it being proved that a party gave his services to a business firm as shopman and traveller, and no terms of remuneration being fixed, that he was entitled to a reasonable remuneration therefor.

This was an appeal from the Sheriff-court of Inverness-shire, the appellants being the defenders in the Court below. The action was brought by John Fraser, shopman, formerly of Inverness, against the firm of Fraser & Co., Inverness, concluding for salary at the rate of £100 a-year, in respect of services as traveller and shopman between September 1866 and February 1868. The defence was that the pursuer was not to be

remunerated by salary, but by a share of the profits of his own sales.

After a proof and production of correspondence, the Sheriff-substitute (THOMSON) found for the defenders.

The Sheriff (IVORY) recalled, and found for the pursuer, and allowed him £90 for the whole period.

The Sheriff added the following note to his judgment:—"Notwithstanding the terms of the correspondence which passed between the parties immediately before the pursuer went to Inverness, they are both agreed that the proposed partnership was never carried out. This view was adopted by both parties in their statements in the record, in their evidence, and at the debate, and it appears to the Sheriff to be confirmed by the other evidence in process. The parties, however, while they both agree that the pursuer never acted as a partner of the defenders' firm, differ as to the precise footing on which he gave his services to the defenders. The pursuer says that during the period in question he acted sometimes as shopman, sometimes as traveller, but that no terms of remuneration were fixed. The defenders, on the other hand, maintain that, shortly after the pursuer came to Inverness, he entered on his duties as traveller upon the understanding that he should receive as remuneration for his services one-half of the nett profits of all sales made by him; and that he continued to act on this footing until his dismissal. The Sheriff is of opinion that the defenders have failed to substantiate this defence; the only evidence in support of it being the defenders' own statement, which is contradicted by the pursuer. On the other hand, it appears to the Sheriff that the pursuer has succeeded in proving that during the period in question he gave his services to the defenders, sometimes as shopman, sometimes as traveller, and that no terms of remuneration were fixed. If this view is sound, there seems to be no reason to doubt that the pursuer is entitled to a fair remuneration for his services; and the Sheriff has accordingly allowed him such a sum as in the whole circumstances appears to him to be fair and reasonable."

The defenders appealed.

MACKINTOSH for them.

KEIR in answer.

The Court adhered to the Sheriff's judgment.

Agent for the Appellants—James Webster, S.S.C.

Agent for the Respondent—Æneas Macbean, W.S.

Friday, December 3.

DUNCANSON v. BAYLIS.

Building Contract—Failure to supply Plans—Improper termination of Contract—Damages. Circumstances in which held that a party who had contracted with a builder for the erection of a theatre and other tenements had failed to supply proper plans for the execution of the contract, and by improperly declaring it at an end had rendered himself liable in damages.

The parties to these actions are John Duncanson, mason and builder, Derby Street, Glasgow; and James Stevenson Baylis, proprietor of the Scotia Music Hall, Stockwell Street, Glasgow. The case arose out of a contract entered into between Duncanson and Baylis for the erection of a theatre or music hall in Cowcaddens Street, Glas-