

Thursday, June 29.

SECOND DIVISION.

ANDERSON v. FRASER.

Sheriff—Jurisdiction. A party raised an action in the Sheriff-court, founding on a letter as an obligation to convey a heritable subject, and concluded (1) for a conveyance, and (2) for money expended on the subject on the faith of the letter. Action *dismissed* as incompetent in the Sheriff-court.

This was an action raised in the Sheriff-court of Inverness by John Anderson, gardener, against James Fraser, sometime residing at New York, and at present at Inverness. The pursuer alleged that the defender sometime previous to 1859 succeeded to certain subjects in Inverness; and further, "in the end of the year 1858, or beginning of the year 1859, the pursuer wrote to the defender, informing him that the buildings on said property were in a ruinous condition, and of the necessity of repairs, and the defender, on the 22d day of February 1859, wrote to the pursuer the letter of that date herewith produced. Said letter is holograph of the defender, and he then, *inter alia*, writes as follows:—"This last letter gives me bad accounts about the leaky house. What on earth do you want me to do with it? Is it not your own, to do with it what you please? and do you really want me to repair it besides for you? So you need not be afraid to expend on it. Me or my heirs will not trouble you in this life, or the life to come, or dispute it with you; and if it is not worth keeping, let it go." The expressions in said letter above quoted refer to said property above mentioned." The conclusions of the summons were for a disposition of these subjects, or for payment of £200 expended on them.

The Sheriff-Substitute (THOMSON) allowed a proof.

The Sheriff (IVORY) pronounced an interlocutor in the following terms:—"Recals the interlocutor appealed against: Finds that the process involves a competition of heritable rights, and is therefore incompetent in this court: Dismisses the action, and decerns: Finds the pursuer liable in expenses; allows an account thereof to be given in, and remits the same, when lodged, to the auditor to tax and report.

Note.—The pursuer in the present action asks to have the defender decerned to deliver to him a valid conveyance of certain heritable subjects in Fraser Street, Inverness, or alternatively to pay him the sum of £200, expended by him upon the said property.

"The pursuer maintains that the defender is bound to grant the said conveyance, on the ground that the latter, by holograph letter dated 22d February 1859, conveyed, or undertook to convey, to him the property in dispute; and that on the faith of the said letter he laid out a large sum in improving it.

"The defender, on the other hand, resists the pursuer's demand, on the ground that he is the true proprietor of the subjects in question, and that the said letter does not contain either a conveyance in favour of the pursuer, or any obligation to convey the property to him.

"There seems, then, no room to doubt that the right to the said property in dispute is directly in the present action. Further, before the defender

can be decerned to grant the said conveyance, it must first be determined whether by the said letter the defender conveyed, or undertook to convey, the said subjects to the pursuer, and whether on the faith of it the latter expended a large sum in improving the property. But the determination of these questions will substantially decide whether the pursuer or defender is the proprietor of the subjects in dispute, and thus involves a question of heritable right.

"It appears to the Sheriff, therefore, that the present action involves a competition of heritable rights, and is incompetent in the Sheriff-court."

The pursuer appealed.

ÆNEAS J. G. MACKAY for him.

THOMS and RHIND for the respondent.

The Court unanimously adhered to the judgment of the Sheriff. The Lord Justice-Clerk had some doubt whether it would not be proper to sustain the competency of the action so far as the second conclusion of the summons was concerned.

Agent for Pursuer—Æneas Macbean, W.S.

Agent for Defender—William Officer, S.S.C.

Thursday, June 29.

WILSON v. WILSON.

Oath—Extrinsic—Deletions. Under a reference to oath the deponent admitted receipt of upwards of £50 of coppers, but admitted the validity of a state of his affairs in which his brother was entered as creditor for £98 and corresponding dividends. The name and first sum were deleted, but not the dividends; and the sums deleted were included in the summation, and two other names deleted were those of admitted creditors. The deponent stated repayment of the debt by delivery of flour—*Held* the oath was affirmative of the reference both as to the amount of the debt and its resting-owing, as the repayment by flour was extrinsic.

In this action the pursuer, who is a baker in Glasgow, sought payment of the sum of £98, which he alleged had been lent by him to his brother the defender in 1861. Under a reference to his oath the defender deponed that he had received in 1861 upwards of £50 of copper coin from the pursuer, in order to be transmitted to the Mint, but he could not remember whether he had got any loan, or any discharge for repayment of this money, or whether the sum received amounted to £100, or whether he had given silver or other money in exchange. It was, however, not due, as he had repaid his brother by supplying him with flour to the extent of £300; but whether this flour was supplied previous to his business difficulties in 1862, or after, or before or after the date of his state of affairs, or in what quantities, he could not remember; as all record had been lost by the burning of his books a few years ago. He, however, admitted the validity of a draft scheme of ranking and division, prepared for his creditors in 1862. In this the pursuer was inserted as a creditor for £98, but both the name and the figures were scored out. Why they had been so deleted he did not know. He had inserted his brother's name for this sum "to protect him fully in the event of it going to a trustee." And the sum, though scored out, was included in the summation; the dividends for the pursuer were not deleted, and two others, who were unquestion-