

Interlocutor appealed against affirmed, and appeal dismissed with costs.

Counsel for the Appellant—Davey, Q.C.—Guthrie Smith. Agent—Andrew Beveridge, Solicitor.

Counsel for the Respondents—Kay, Q.C.—Gloag. Agents—Simson & Wakeford, Solicitors.

COURT OF SESSION.

Wednesday, February 18.

SECOND DIVISION.

[Sheriff of Argyllshire.

M'EACHAN v. MACDONALD.

Sheriff—Process—Expenses of Appeal where no Finding of Expenses in Sheriff-Principal's Interlocutor, and Judgment Affirmed by Court of Session.

In an action in the Sheriff Court of Argyllshire, the Sheriff-Substitute (GARDNER) after decerning in favour of the pursuer, found him entitled to expenses in the usual terms. The defender appealed to the Sheriff (FORBES IRVINE), who dismissed the appeal, and added, "Affirms the interlocutor appealed against, and decerns." The Second Division dismissed an appeal to them, and found the respondent "entitled to expenses from the date of the Sheriff's judgment," and remitted to the Auditor "to tax the same and also the expenses found due in the Sheriff Court."

The Auditor in his report draw the attention of the Court to the fact that the Sheriff Principal had made no finding of expenses in the pursuer's favour as regarded the appeal to him, and reserved the question whether he was to be found entitled to them for the consideration of the Court. Counsel for the appellant contended that the pursuer was not entitled to these expenses in respect they were not decerned for—*Gordon v. Walker*, March 5, 1872, 10 Macph. 520; *Wilson's Sheriff Court Practice*, 302. Counsel for the respondent stated that in point of fact an interlocutor in the terms of that of the Sheriff-Principal was understood and acted on in the Sheriff Court of Argyllshire as carrying expenses, and he produced a letter from the Sheriff-Clerk to that effect; further, that the First Division had held that such an interlocutor carried expenses.

The Court *disallowed* the expenses in question, observing that the practice followed in the Sheriff Court of Argyllshire was a bad one, and that it was preferable to follow the course taken in the Court of Session in a case where a Lord Ordinary had made no finding as to expenses.

Counsel for Pursuer (Respondent)—Baxter. Agents—A. J. & J. Dickson, W.S.

Counsel for Defender (Appellant)—J. C. Smith. Agent—John Macmillan, S.S.C.

Friday, February 20.

FIRST DIVISION.

M'NEILL v. CAMPBELL AND OTHERS (SIR JOHN CAMPBELL'S TRUSTEES).

Process—Proof—Competency—Diligence.

In an action for reduction of a settlement on the ground of facility and circumvention, the Court (following the case of *Livingstone v. Dinwoodie*, June 28, 1860, 22 D. 1333) refused a diligence at the instance of the defenders to recover a diary containing entries by a body-servant of the testator with regard to his master's health and state of mind.

Counsel for Pursuers—Asher—D. Robertson. Agents—M'Neil & Sime, W.S.

Counsel for Defenders—Balfour—Mackintosh. Agents—Waddell & M'Intosh, S.S.C.

Friday, February 20.

FIRST DIVISION.

[Lord Rutherford Clark, Ordinary.

TAYLOR AND OTHERS (TRUSTEES AND EXECUTORS OF THE MARQUIS OF TWEDDALE) v. THE EARL OF HADDINGTON.

Real and Personal—Real Burden—Condition of Tenure—Singular Successor—Obligation to Relieve of Feu-duty.

Lands were feued by a disposition "under the burden of the payment of eight bolls of wheat and eight bolls of barley to the Crown annually, . . . and these for crop and year Eighteen hundred and nine, and in all time thereafter; and which burdens are hereby declared real liens and incumbrances affecting the said whole lands and others above disposed, and shall be engrossed in the instruments of seasin to follow hereon, and in all the future investitures and transmissions of the said lands and others, otherwise the same shall be void and null." The payment of a blench-duty was the only condition of the tenure of the feu.

In a personal action at the instance of a singular successor of the disponent against a singular successor of the disponent, held (*rev.* Lord Rutherford Clark, Ordinary) that the defender was liable in payment of the converted value of the 16 bolls of victual feu-duty for the crops of the years during which he had held the feu.

Opinion per Lord President (Inglis) and Lord Mure that although the annual payment of the 16 bolls was effectually constituted a real burden on the lands, no personal obligation had been transmitted as against singular successors, arising either from the terms of the original contract or from the principles of tenure, but that the pursuers