

consideration of the arbiters. In that view of the case, and considering that very strong circumstances would be required to interrupt an arbitration of this kind, I agree with your Lordships that the interlocutor of the Lord Ordinary should be adhered to.

The Court adhered.

Counsel for Complainers—J. P. B. Robertson—W. C. Smith. Agents—Murray, Beith, & Murray, W.S.

Counsel for Respondents—Mackintosh—Dundas. Agents—Dundas & Wilson, C.S.

Wednesday, November 12.

FIRST DIVISION.

[Sheriff of the Lothians
and Peebles.

M'FARLANE & GIBB v. STRACHAN.

Process—Remit to Reporter to Hear Parties—Duty of Reporter—Reference—Debts Recovery Act 1867 (30 and 31 Vict. cap. 96).

In an action under the Debts Recovery Act the Sheriff remitted the account in dispute to a man of skill with instructions to hear parties, examine the disputed account, and report. The reporter after conferring with the parties separately, issued his report. Held that he was bound to hear the parties in each other's presence, and that a decree founded on the report could not stand.

M'Farlane & Gibb, upholsterers, Edinburgh, sued Miss Strachan, Edinburgh, in the Sheriff Court of Midlothian under the Debts Recovery Act 1867, for the sum of £47, 17s. 11d., as per account ending 20th June 1883.

The defender pleaded that the account was overcharged. She tendered £31, 10s. for a discharge in full, and she made a counter claim for £5. The Sheriff-Substitute by interlocutor of 31st March 1884 remitted to Mr Veitch, cabinet-maker, Shandwick Place, Edinburgh, "to hear parties, examine the said accounts, and if necessary the work executed, and report."

Veitch reported—"I have examined the account sued for. I have also examined, as far as that could be done, the work charged for in the account. I have also considered Miss Strachan's statement on the subject, with three letters from her. I have also examined Messrs M'Farlane & Gibb's business books, and I have considered their statements on the matter in dispute." The result of the report was that the pursuers' account was overcharged by £3, 3s. 6d., and that 15s. should be allowed for the defender's counter claim.

Objections to this report were lodged by the defender, who complained, *inter alia*, that the reporter "did not hear parties, that he had received documentary evidence adduced by the pursuers, and heard their statements and arguments outwith the defender's presence."

Upon 11th July the Sheriff-Substitute remitted the matter to the reporter, with instructions to him to specify the items which he considered to be overcharged, and the precise grounds on which he allowed the counter claim.

Veitch then lodged a supplementary report bringing out the details desired by the Sheriff-Substitute.

Upon 23d July the Sheriff-Substitute gave effect to Veitch's two reports, and ordained the defender to pay the pursuer the sum of £43 19s. 5d., the balance of the account sued for after deducting £3, 3s. 6d. and 15s.

The defender appealed to the Sheriff, who upon 1st August affirmed the judgment of the Sheriff-Substitute and dismissed the appeal.

The defender appealed to the Court of Session, and argued that the account in question was grossly overcharged; various items were entered in the account which she had never purchased, and no opportunity was offered to her of making explanations in the presence of the pursuers; upon that ground the award ought to be set aside.

Argued for the respondents—The referee had taken a fair and reasonable view of the dispute between the parties, and his award ought to be sustained. The words "in each other's presence" usually inserted after the order "to hear parties," in this case were omitted, and the reporter was not bound to hear parties in each other's presence.

Authorities—*M'Gregor v. Stevenson*, 20th May 1847, 9 D. 1056; *M'Nair v. Faulds*, Feb. 16, 1855, 17 D. 445.

At advising—

LORD PRESIDENT—It is very unfortunate that a miscarriage of justice of this kind has occurred under a statute which was intended to be expeditious in its operation and to save expense. But from what has occurred it is clear that justice has not been done to the defender, and therefore matters cannot stand in their present position. The defender may not be successful in getting the accounts in question materially reduced in amount, but she is at any rate entitled to be heard as to any objections she has to the various items of the account. The parties should have been heard by the referee in each other's presence, and an opportunity given to each to make all necessary explanations. No doubt, Mr Veitch was a very suitable man to whom this matter might be referred, but in the present case he has made a mistake by not hearing what the parties had to say in each other's presence. The words "to hear parties" in the Sheriff's interlocutor of 31st March 1884 form an expression which means that the parties are to be heard in each other's presence.

Upon that ground, and upon that alone, I think that this award must be set aside, and that we should remit to the Sheriff to remit to Mr Dowell to examine the account and hear the parties' explanations.

The remit will be very much in the terms of the previous remit.

LORD MURE and LORD SHAND concurred.

LORD DEAS was absent.

The Court remitted the case to the Sheriff, with instructions to remit the account in dispute to Mr Alexander Dowell to examine it, hear parties' explanations, and report.

Counsel for Appellant—Campbell Smith. Agent—John Macmillan, S.S.C.

Counsel for Respondent—R. Johnstone—Shaw. Agent—P. Morison, S.S.C.