

for what reason, if any. I must therefore order this summons to be of new served, and that in the old way by a messenger, and I will appoint a new diet of appearance; and I will do this in such a way as to render it unnecessary to send the case through the calling lists again."

Counsel for Pursuer—Lang. Agent—D. R. Grubb, Solicitor.

Tuesday, November 25.

## OUTER HOUSE.

[Lord M'Laren.

BALLANTINE v. REDDIE.

*Process—Remit—Reporter's Fee.*

The accountant to whom a remit had been made in an action of accounting lodged his report without having received his fee. On his motion for payment—*held* that the parties to the action were jointly and severally liable for his fee.

This was an action of accounting. It was brought in May 1877 by William Wood, C.A., trustee upon the sequestrated estate of Andrew Fitzjames Cunningham Rollo Bowman Ballantine, Esq., against Charles Reddie, writer in Glasgow. The defender had been factor and law-agent for the bankrupt from June 1868 till his sequestration in December 1872. The pursuer alleged that a balance of at least £6000 in favour of the estate would be brought out on a just accounting. The defender denied this averment and stated he was willing to account. Accounts were lodged by him under an order from the Lord Ordinary.

On 20th November 1877 Mr Ballantine was discharged from the sequestration, and thereafter assisted as pursuer of the action. On 8th January 1878 Lord Curriehill remitted the accounts to Ebenezer Erskine Scott, C.A., Edinburgh, to examine and report upon them.

Mr Scott completed his report in 1883, and delivered it to the pursuer's agents. The case, which had fallen asleep, was wakened on 27th February 1884, and the report allowed to be seen. It was lodged on 29th February 1884, without Mr Scott having obtained payment of his fee as reporter. Objections were lodged by the defender, and the case stood in the roll for discussion.

Mr Scott thereafter, not having obtained from the parties payment of his fee, enrolled the case, and moved the Lord Ordinary for decree against the parties to the action for the amount of his fee.

The Lord Ordinary (M'LAREN) issued the following interlocutor:—"The Lord Ordinary having heard counsel, decerns against the pursuer and defender jointly and severally for payment to Ebenezer Erskine Scott, C.A., Edinburgh, of the sum of two hundred and four pounds fifteen shillings sterling, being the amount of his fee for preparing the report under the remit to him of date 8th January 1878."

"*Opinion.*—My impression of the practice in cases of this kind is that decree is always given for the reporter's fee against the parties jointly and severally, leaving it to the reporter to recover

one-half of the fee if he can from each party. In a recent case which went to the First Division I had found the parties liable jointly in payment of the reporter's fee, meaning in the special circumstances of that case that the liability was to be divided without relief; and the Lord President asked whether I meant the result to be as I have stated, or whether I meant only that the parties should be jointly responsible for the fee in the first instance. I understood from this that his Lordship considered that it was the ordinary practice to decern against the parties jointly and severally. With this recent case in view, I have no hesitation in finding the parties jointly and severally liable for the reporter's fee. With regard to the expenses of this application, I do not think that the reporter is entitled to them."

Counsel for Pursuer—Jameson. Agents—J. A. Campbell & Lamond, C.S.

Counsel for Defender—Nevay. Agents—J. & R. A. Robertson, S.S.C.

Counsel for Accountant—Pearson. Agents—Morton, Neilson, & Smart, W.S.

Tuesday, November 25.

## FIRST DIVISION.

[Sheriff of Ayrshire.

BELL v. REID.

*Aliment—“Maintenance Money”—Compensation.*

A father-in-law, who had become indebted to his son-in-law, conveyed all his property to him by an agreement which stipulated, *inter alia*, that the son-in-law should allow him £100 a-year for "maintenance." Thereafter a litigation between them took place, in which the son-in-law was successful, and was found entitled to expenses. *Held* that he could not set-off these expenses against the claim for maintenance, that being as between them an alimentary fund.

*Question*—Whether it would have been held an alimentary fund in a question with the other creditors of the father-in-law?

Thomas Reid, farmer, was tenant of the farms of Monktonmiln, Fairfield Mains, and others, in the parish of Monkton and county of Ayr, and he resided on one of these farms. In 1878, Reid, who had had certain transactions and litigations with Finlay Bell his son-in-law and the defender of this action, entered into an agreement, dated 1st and 4th February of that year, with Bell, whom he was at the time debtor to the extent of £8384, 4s. 3d.

The substance of the agreement was that Reid was to assign his leases and other property to Bell, who in return was to make him an annual allowance of £100. The third article of the agreement, which is the only one of importance in the present question, provided that . . . "the first party" (Bell) "shall pay the second party" (Reid) . . . "after the signing of this agreement, and until Martinmas 1893, a sum of £100 sterling for maintenance, payable half-yearly. . . and declaring that in the event of