

Tuesday, March 19.

FIRST DIVISION.

[Exchequer Cause.]

THE SCOTTISH UNION AND NATIONAL
INSURANCE COMPANY AND OTHERS v.
COMMISSIONERS OF INLAND REVENUE.

Revenue—Case under the Taxes Management
Act 1880 (43 and 44 Vict. cap. 19), sec. 59—
Expenses.

In this case, which was presented under the Taxes Management Act 1880, the Auditor in taxing the account of the Scottish Union and National Insurance Company and others disallowed all charges for the preparation and adjustment of the case before it appeared in the rolls of Court. An objection to the Auditor's report upon this ground repelled.

At advising—

LORD PRESIDENT—We know nothing about Inland Revenue cases till they come into Court, and it is understood that such cases are prepared by the Commissioners, and that there is nothing left for the Court save to hear parties. The expenses in the ordinary case would be the expenses of the proceedings before the Court, not expenses incurred in arguing with the Commissioners, who are the proper persons to determine what the case should be.

LORD RUTHERFURD CLARK and LORD ADAM concurred.

LORD MURE and LORD SHAND were absent.

The Court pronounced the following interlocutor:—

“The Lords having heard Counsel for the parties on the Auditor's report on the appellants' account of expenses, No. 10 of process, taxing the same at the sum of £98, 1s. 6d., and a note of objection for the appellants to the said report, No. 11 of process: Repel the said objections, approve of the Auditor's report: Find the appellants liable in the expenses of this day's discussion, modify the same at the sum of £3, 3s., and decern against the respondents for the said sum of £98, 1s. 6d. sterling, but under deduction always of the said sum of £3, 3s. of expenses hereby found due to them.”

Counsel for the Insurance Company—Jameson.
Agents—Cowan & Dalmahoy, W.S.

Tuesday, March 19.

FIRST DIVISION.

[Lord M'Laren, Ordinary.]

CALEDONIAN RAILWAY COMPANY v.
CHISHOLM.

Expenses—Reserved Expenses.

Where in the course of a litigation expenses have been reserved, and there is in the final interlocutor a general finding of expenses in favour of the successful party, the reserved expenses are carried by that finding.

This was an action by the Caledonian Railway Company against John Chisholm, sack contractor, Perth, for payment of a sum alleged to be due for the carriage of the defender's sacks over the pursuers' lines of railway.

As the basis of their claim the pursuers lodged with the summons an account of the amounts alleged to be due. For this account they subsequently proposed to substitute another. This proposal was resisted by the defender, and after considerable discussion the Lord Ordinary (M'LAREN) by interlocutor of 30th October 1886 refused to allow the substitution.

Against this interlocutor the pursuers reclaimed, and on 10th December 1886 the First Division recalled the interlocutor of the Lord Ordinary, and allowed “the record to be amended by substituting the account, No. 34 of process, for the account lodged with the summons, and also by making the additions now proposed at the bar, reserving all questions of expenses.”

On 13th March 1888 the Lord Ordinary pronounced the following interlocutor:—“Finds that by the written contract between the pursuers and the defender, relating to the hire of the defender's sacks during the period of seven years commencing in 1874, the defender had an unqualified right of free carriage over the Caledonian Railway for all his sacks: Therefore assoilzies the defender from the conclusions of the action, and decerns: Finds the defender entitled to expenses,” &c.

The pursuers reclaimed, and on 8th February 1889 the First Division adhered to the interlocutor reclaimed against, refused the desire of the reclaiming-note, found the defender entitled to additional expenses, allowed an account thereof to be given in, and remitted the same to the Auditor to tax and report.

The Auditor taxed the defender's account at £1588, 8s. 4d., “reserving for the determination of the Court the question of the liability of the pursuers for the Inner House expenses claimed by the defender in connection with the reclaiming-note for the pursuers against Lord M'Laren's interlocutor of 30th October 1886, amounting, as taxed by me, and noted on the margin of the account, to the sum of Twenty-four pounds, fourteen shillings (£24, 14s.), included in the taxed amount now reported.

“Note.— . . . The expenses in connection with this reclaiming-note are the expenses referred to in the reservation in my report. As entered in the account they amount to £47, and as taxed by me, to £24, 14s.” It humbly appears to me that this portion of the account should be disallowed, the substitution of the one account