

that it should have been rejected there if disconform to sample, and therefore disconform to contract. In support of this view reference was made to the opinion which I delivered recently in the case of *Pini & Company*. I think the cases quite distinguishable. The case of *Pini* was not the case of a sale by sample, but a contract for the furnishing of metal pipes according to a certain specification. The buyer had the specification in his hands, and could by himself or his agent have ascertained the conformity or disconformity by examination of the delivered goods at the port of shipment, which was the place of delivery to the buyer. But here the defenders had no such opportunity. They had not the sample; it had been sent, as the pursuers knew, abroad, to the foreign buyer, and so far as appears, the defenders had never seen that sample, and had never been intended to see it. They could not therefore compare the cargo at the port of shipment with a sample they did not possess and had never seen. The sample had been sent to the foreign buyer in order that he might consider whether he would buy coke of that description, and it remained with the foreign buyer in order that he might compare it with the bulk when it arrived. It was at the port of destination only, therefore, that it could be ascertained whether the cargo was or was not conform to contract, and there was no want of timeous rejection there. Accordingly, I think, the Lord Ordinary's interlocutor should be recalled, and that we should find that the sale in question was a sale by sample, and *quoad ultra* continue the cause. I would propose to make no finding at present as to the timeous rejection because it has not yet been finally determined as between the defenders and their foreign buyer whether the cargo was or was not conform to sample.

LORD JUSTICE-CLERK — That is the opinion of the Court.

The Court recalled the interlocutor reclaimed against; found that the sale of the coke in question was a sale by sample; and *quoad ultra* continued the cause.

Counsel for the Pursuers—Ure—Cooper. Agents—T. J. Gordon & Falconer, W.S.

Counsel for the Defenders—C. S. Dickson—Salvesen. Agents—Beveridge, Sutherland, & Smith, S.S.C.

Friday, June 28.

SECOND DIVISION.

[Lord Kyllachy, Ordinary.

COWAN v. MILLAR.

*Trade Name—Name Descriptive of Premises—Exclusive Title to Name—Interdict.*

The respondent carried on business as an ironfounder for some years in premises in Kennedy Street, Glasgow, of which he was tenant. He had acquired the business from a firm which had built the foundry twenty years previously, and which had carried on business there, first as owners and afterwards as tenants. The premises had all along been known as the "Sun Foundry, Glasgow." In 1894 the respondent transferred the business to new premises situated about twelve miles from Glasgow, and took an office in Robertson Street, Glasgow. He continued to designate his works as the "Sun Foundry, Glasgow," and arranged with the post office authorities that letters so addressed should be delivered to him at his office. The owner of the premises in Kennedy Street being about to start business as an ironfounder there brought an action of interdict against the respondent to have him prevented from using the name "Sun Foundry, Glasgow" as designative of his works or in connection with his business. The complainer did not claim an exclusive right to the name "Sun Foundry," but maintained that the respondent was not entitled to call his works the "Sun Foundry, Glasgow." The Court (*rev. judgment of Lord Kyllachy*) granted the interdict craved.

In 1857 a firm of ironfounders, Messrs George Smith & Company, began business in premises in Port Dundas Road, Glasgow, of which they were the tenants. They called these premises the "Sun Foundry, Glasgow," and that was their trade address.

In 1871 they removed to Kennedy Street, Glasgow, where they built a foundry which was their own property, and to which they transferred the name by which their former foundry had been known.

In 1887 Messrs George Smith & Company failed, and Gavin Bell Millar bought from their creditors the whole concern, premises, goodwill, and right to use the firm's name included. In September of the same year G. B. Millar transferred to a new firm, of which he himself was a partner, the whole assets of the business, including goodwill and the right to use the firm's name. He retained to himself the premises, including machinery and patterns, but these he let to the firm on lease for a period of years. The firm carried on business under the old name of George Smith & Company, continuing to use "Sun Foundry, Glasgow" as their trade address.

In 1891 G. B. Millar died and by various transmissions James Cowan, contractor, Glasgow, became vested in his rights as owner of the premises and plant. By other transmissions John Millar, ironfounder, became vested in all the rights of the firm of George Smith & Company, and as their successor in business carried on business in the premises at Kennedy Street under that name.

At Whitsunday 1894 George Smith & Company removed their works to Clippens in Renfrewshire, about twelve miles from Glasgow, and their offices to 26 Robertson Street, Glasgow.

Thereafter James Cowan, who was about to commence the business of an ironfounder at his premises in Kennedy Street, presented a note of suspension and interdict against John Millar, ironfounder, carrying on business under the name of George Smith & Company at Clippens near Johnstone, and at 26 Robertson Street, Glasgow, in which he prayed the Court "to interdict, prohibit, and discharge the respondent and his agents, servants, and all others acting for him, from publishing or issuing, or causing to be published or issued, circulars, notices, or advertisements in the terms set out in statement 7 hereto annexed, or terms of a like import or effect, and from exhibiting or using the name 'Sun Foundry, Glasgow' either by itself or in conjunction with other words, or work done, or articles made by him, or on letter paper, invoices, labels, catalogues, or other stationery used by him, or in advertisements, notices, or circulars published or issued by him to the public or his customers, as his address in connection with the business of ironfounder carried on by him, so as to be a colourable imitation of the name by which the complainer's foundry is commonly known, or in such a way as to lead the public, or the respondent's customers, to infer that the respondent is carrying on the business as an ironfounder at the Sun Foundry, Glasgow, belonging to the complainer, or that the iron goods manufactured or sold by the respondent are goods manufactured at the complainer's said foundry; and further, to interdict, prohibit, and discharge the respondent from executing orders addressed to the Sun Foundry, Glasgow, except in so far as these may be in implement of work contracted to be done prior to 28th May 1894, and from using the name 'Sun' as his registered Glasgow telegraphic address; and also to interdict, prohibit, and discharge the respondent from otherwise in any way infringing the right of the complainer to use the name 'Sun Foundry, Glasgow' to designate the said foundry now belonging to the complainer."

The complainer stated:—"VII. In breach of the complainer's rights, the respondent has issued a circular to a large number of persons in Great Britain and elsewhere likely to require articles similar to those made at the Sun Foundry, Glasgow. The said circular is in the following terms:—'Sun Foundry, Glasgow, May 1894. Dear Sir,—The continuous increase in volume of both home and foreign business

during recent years has rendered our present available space and facilities inadequate for the proper execution and dispatch of orders. We are therefore pleased to inform you that we have secured suitable ground, convenient, and of easy access to the city, and have erected thereon new buildings of a magnitude sufficient alike to cope with present large demands and to greatly increase our daily output of castings. Our new works at Clippens, Johnstone, are built on an area of 46 acres, and are therefore about the largest in the kingdom. They are thoroughly equipped with the most modern improved plant, machinery, and appliances necessary for the rapid production of all classes of architectural, sanitary, and general artistic ironwork, while prompt dispatch of manufactures is ensured by two railway companies having branches within the works, in direct communication with their main lines. Kindly note that, having offices at 26 Robertson Street, Glasgow, there will be no change in our address, and that your letters to "George Smith & Company, Sun Foundry, Glasgow," and your telegrams, "Sun, Glasgow," will be delivered to us, and will receive our most careful attention. For the convenience of our local friends we have opened well-appointed stores in connection with and in proximity to our new offices, where customers will find all ordinary R. W. pipes and connections, and sanitary castings commonly in demand. Besides these, we have contracted for a private telephone wire between 26 Robertson Street and our works at Clippens, in order that customers' requirements may be attended to with all promptitude. Trusting to be honoured with a continuance of your favours,—We are, your obedient servants GEORGE SMITH & COMPANY."

"By said circular, and by using as his telegraphic address 'Sun, Glasgow,' and, it is believed and averred, by representations in other ways, the respondent has represented and is representing that he still occupies or owns the Sun Foundry, Glasgow, and is entitled to use that name, and that the work he will produce will be manufactured at the Sun Foundry. Buyers in the trade and others will, by said circular and representations, be misled and deceived into thinking that the goods produced by the respondent are made at the complainer's works. In these ways the complainer will be seriously injured, and his property materially deteriorated in value."

The respondent admitted that he had issued a circular in the terms complained of to all persons who had been customers of his firm since September 1887, but denied that buyers would be misled or deceived, or that the complainer's property would be injured.

He pleaded, *inter alia*—"(1) No title. . . . (3) The respondent having acquired the sole right to the name 'Sun Foundry' as a trade name, the note should be refused, with expenses."

Proof was led. The evidence showed that the respondent was continuing to

designate his works as "The Sun Foundry, Glasgow," and that he had arranged with the Post Office that letters addressed to "The Sun Foundry, Glasgow," should be delivered to him at his office in Robertson Street, Glasgow. It further appeared that the complainer was litigating with the respondent about some patterns which the former averred that the latter had unwarrantably removed when he left the premises at Kennedy Street, Glasgow.

On 14th March 1895 the Lord Ordinary refused the prayer of the note.

"*Opinion.*—The complainer in this case is owner of certain subjects in Glasgow known as the Sun Foundry, and the respondents were until lately his tenants in those subjects. The complaint stated generally is that, the respondents having lately removed their manufacture and business from the Sun Foundry to other premises, they have called those new premises by the same name, and continue to use that name as part of their trade address. The defence is that the complainer has no exclusive right to the name in question; that its use involves no personation of the complainer or of any business in which he is interested, and that the complainer therefore has suffered no wrong. It is also pleaded (although that raises a question not necessary to be now decided) that the name in controversy has come to be so recognised as part of the respondents' trade name, that they (the respondents) have not only a right, but an exclusive right to its use.

"Cases of this description always depend mainly upon matter of fact. The law is sufficiently well settled. There is no property in a name, but the use of a name may in certain circumstances amount to misrepresentation, and result in injury which the law will redress.

"What has to be considered therefore is, whether the respondents' transference to their new foundry of the name by which the old foundry was known involves misrepresentation—that is to say, misrepresentation as to the identity of their manufacture? and if so, whether that misrepresentation is injurious to the complainer—that is to say, deprives or tends to deprive the complainer of some benefit to which he is justly entitled? Now, in determining this—always delicate—question, it is necessary to consider the exact circumstances, and (abstracting from details which are immaterial) these circumstances may, I think, be stated thus—A firm of ironfounders, Messrs George Smith & Sons, began business in the year 1857 in premises in Port Dundas, of which they were tenants. They called those premises 'The Sun Foundry,' and that was their trade address. In 1871 they removed to Kennedy Street, where they built a foundry which was their own property, and to which they transferred the name by which their former foundry had been known. In 1887 they failed, and a certain Mr G. B. Millar bought from their creditors the whole concern, premises goodwill, and trade name included. He shortly afterwards transferred to a new firm, of which he himself was a partner (but that is

immaterial), the whole assets of the business, including a goodwill and the right to use the firm's name. He retained to himself the premises, including machinery and patterns, but these he let to the firm on lease for a period of years. The firm carried on business under the old name, continuing to use 'The Sun Foundry' as their trade address. In 1891 Mr G. B. Millar died, and by various transmissions the present complainer became vested in his rights as owner of the premises and plant. By other transmissions the present respondent became vested in all the rights of the firm, becoming their successors in business, and carrying on the business until Whitsunday 1894 under the same name and in the same premises. At that term they removed their works to Clippens, some miles from Glasgow, and their office and stores to certain other premises in another part of Glasgow. The complainer has not yet begun business in the old premises, but he is about to do so. The question, as I have said, is, whether in these circumstances, he can interdict the respondents from calling by the name of 'The Sun Foundry' the new works to which they have now removed?

"Had the firm been a brewery or a distillery, there would probably have been little doubt as to the rights of parties. The premises in such concerns are not mere accessories of the business of which they are the seat. The quality of the manufacture in such concerns depends, or is supposed to depend, more or less largely on the situation—the water supply—the structure and arrangements of the premises. It is by these things, as much as by the skill and capacity of the management, that custom is attracted and the reputation of such concerns exists. If therefore the tenant of a brewery or distillery with a known name were to transfer himself to different premises, and were in his advertisements and business notices to call those premises by the same name, the result would almost certainly be that the public would be deceived. They would, if they continued their orders without notice of change, expect one article, and would get another, which might be equally good, but which would, at least in their view and in that of the market, be substantially different. There would thus be a substantial misrepresentation, and one resulting in injury to the owner of the original premises, because custom intended for him or his tenant would at least probably be diverted elsewhere.

"The same consideration would apply to an hotel. The public resorting to a particular hotel expect the accommodation afforded by a particular house having a particular situation, and fitted up in a particular way. If, being attracted by the old name, they arrive at a different house, they get accommodation which may be as good, but is certainly not the same, and is not what they expect. It has accordingly been held, in the case of the *Great North of Scotland Railway Company v. Mann*, 19 R. 1035, that the owner of a known hotel may prevent a former tenant, although that

tenant has to a large extent made the business from calling by the same name a new hotel to which he has removed.

"On the other hand, there are cases which are probably equally clear the other way. For example, the case of a shop. A building has, by reason of something in its history, a particular name—'The Colosseum,' 'Polytechnic,' 'Goldsmith's Hall,' 'Milton House.' The owner converts it into a shop and lets it. The tenants make a business and obtain a reputation, and after a time they remove and call their new premises by the same name. Can the landlord prevent their doing so? It is, I think, generally allowed that he cannot. The reason is that a shop where goods are sold has in general nothing to do with the reputation which the goods obtain. There is therefore no misrepresentation involved in the continued use in one shop of the name by which a former shop was known. The customers still continue to get the goods which they expect. If they go to the new shop in person, they, of course, see the change and can judge. If they send or write they get from the same firm the goods which they got before, and it is nothing to them from what premises the goods are despatched. Exceptional cases may, of course, be figured, but in general it cannot, I think, be affirmed that the owner of a shop has as such any right to prevent the name of the shop being adopted by any other shop.

"Now, this being so, the question is—To which of these two categories does a foundry, or the business of a foundry, belong? The business is, of course, a manufacture, and to that extent it resembles the other manufactures to which I have referred. But the question is—Whether the resemblance goes further? and that seems to depend on this—Whether it can be affirmed, as matter of fact and experience, that the customers of an iron foundry are likely to attach importance to the place or premises where their orders are executed? If not, there is no misrepresentation—certainly no material representation—involved in what the respondents have here done. Their customers, *ex hypothesi*, continue to get what they expect; and the complainer is not deprived, either now or when he begins business, of any custom on which he had right to count.

"Now, I do not think I can hold, upon the proof or upon such common knowledge as in such matters we all have, that in an ordinary iron foundry the manufacture takes its character and derives its reputation from the particular premises or even from the particular machinery. One iron foundry is, I should think, very much like another; and the success and reputation of a foundry business depends, and must depend, mainly on the capital, skill and attention applied to it by the founder. No doubt there may be cases where foundry premises, or the machinery with which they are fitted, have exceptional characteristics—characteristics to which customers may attach importance, and on which they

may rely. But I cannot hold it proved (it was not indeed sought to be proved) that this particular foundry is in any way exceptional, or exceptionally equipped. So far as appears, the premises and plant are of the usual description, and such as could be set up as readily in one place as another. It is therefore, I think, difficult to suppose that customers of the respondent's firm, who had been accustomed to deal with them, would, although informed fully of the facts connected with their change of premises, feel any particular interest in that matter, or be disposed in consequence to transfer their orders to some new firm established in the original premises. They may imagine—I think it likely that most of them do—that the respondent's foundry premises are still the same; but if that matter is unimportant they are not deceived. What the complainer must show is that, if they had known everything, they would probably have come to *him*. If he does not show that, he suffers no injury. But, as I have already said, I do not think that that is a thing which can be shown.

"The truth is that, supposing the complainer to begin business in Kennedy Street under the name of 'The Sun Foundry Company,' or under some similar name, he is, as it seems to me, a good deal more likely to obtain custom intended for the respondents than the respondents are likely—by what they have done—to obtain custom intended for him. In saying so, I must not be understood as indicating any opinion for or against the complainer's right to begin business if he pleases, and to call his foundry by the name which it has always borne.

"I am therefore of opinion that, so far as the evidence goes the respondents have done nothing illegal, and that interdict must be refused. And this being so, it is unnecessary to decide (1) Whether it is or is not a bar to the complainer's demand that he is not yet in business as an iron-founder, but only proposes to begin business? and (2) Whether the complainer could, in any view, obtain interdict in terms of his prayer?

"These are questions of difficulty which may arise if a view different from that which I have expressed should ultimately be taken on the main subject of controversy.

"I should perhaps add a word as to the complainer's argument, founded on his proprietorship, not only of the foundry premises, but of the moveable machinery and patterns. I have not overlooked that circumstance, but I have been unable to hold that by continuing the name of the 'Sun Foundry, Glasgow,' as the name of their new works the respondents have represented to the public that they continue to have the use of the moveable machinery and patterns which they in fact left or ought to have left in Kennedy Street. An announcement of continuance in premises, or of change of premises, implies or suggests nothing as to the continued use or ownership of patterns or machinery. Patterns or machinery may

change hands although the business remains the same and is conducted in the same premises; or, again, it may be just the other way. If they have made no misrepresentation otherwise, I do not think it can be held that the respondents have made any misrepresentation in this particular."

The complainer reclaimed, and argued—He was the proprietor of the premises which had been for years known as the Sun Foundry, Glasgow, and he was the owner of all the patterns which had been issued from that foundry. He had bought and paid for the foundry and all the pertinents. The respondent, after he gave up his lease of the premises in Kennedy Street, had left the Sun Foundry, Glasgow. Indeed, his foundry was no longer in Glasgow, but at Clippens, Johnstone, about 12 miles from Glasgow. By his circular he was representing himself as constructing goods at the Sun Foundry, Glasgow, with all the old appliances and patterns. This was a misrepresentation, and calculated to injure the reclamer in the business he was about to start in the premises in Kennedy Street. The complainer was therefore entitled to interdict—*Dunachie v. Young & Sons*, May 22, 1883, 10 R. 874; *Great North of Scotland Railway Company v. Mann*, July 15, 1892, 19 R. 1035; *Armstrong v. Kleinbars*, 1884, 56 American Reports, 894. There was no distinguishing variation as in *Charleson v. Campbell*, November 17, 1876, 4 R. 149. This case was distinguished from *Day v. Brownrigg*, 1878, L.R., 10 Ch. D. 274; and *Turton v. Turton*, 1889, L.R., 42 Ch. D. 128; see *Mason v. Queen*, April 8, 1886, 23 S.L.R. 641, where it was held that there was no right of exclusive possession of a trade name unattached to premises. The respondents were entitled to call their foundry "Sun Foundry, Clippens or Johnstone," but not "Sun Foundry, Glasgow."

Argued for the respondent—(1) The complainer had no title to sue. He had no foundry working, and apart from use there could be no property in a name. The complainer was merely the proprietor of premises, for he was carrying on no foundry business at Kennedy Street. He therefore suffered no injury by the action of the complainers. (2) There was no attempt at deception or misrepresentation on the part of the respondent. (3) If the interdict was granted injury would result to the respondent. His firm had built up the business. The goodwill and name belonged to the firm who had used the premises, and not to the landlord by reason of his being owner. The Lord Ordinary's judgment was supported by the authorities—*Day, supra*; *Turton, supra*; *Levy v. Walker*, 1879, L.R., Ch. D. 436; *Street v. Union Bank of Spain and England*, 1885, L.R., 30 Ch. D. 156; *Edwards v. Dennis*, 1885, L.R., 30 Ch. D. 454; *Wotherspoon v. Currie*, 1872, L.R., 5 Eng. and Ir. Ap. 508.

At advising—

LORD TRAYNER—The respondent's firm of George Smith & Company carried on

business for some years in the premises long and well known as the Sun Foundry, Glasgow. The complainer is the proprietor of these premises, from which the respondent has now removed. The respondent now has his works at Clippens in Renfrewshire, about twelve miles from Glasgow, where he carries on business under the same firm of George Smith & Company, but notwithstanding this he continues to designate his works as the "Sun Foundry, Glasgow," and has made arrangements with the post office authorities that all letters addressed to the "Sun Foundry, Glasgow," shall be delivered to him at his offices in Robertson Street, Glasgow, and not at the premises designated by such an address which are situated in Kennedy Street. In these circumstances the present complaint is brought to have the respondents interdicted from using the name "Sun Foundry, Glasgow," as designative of his works, or using it as his address in connection with the business of ironfounder carried on by him, or in such a way as to lead the public or his customers to infer that he is carrying on the business of an ironfounder at the Sun Foundry, Glasgow, belonging to the complainer. The Lord Ordinary has refused interdict chiefly on the ground that the complainer has no exclusive right to the name of "Sun Foundry, Glasgow," and that its use by the respondent does the complainer no wrong. There is much in the opinion of the Lord Ordinary with which I concur, but I cannot reach the same conclusion as that which he has arrived. The complainer has certainly no exclusive right to the name "Sun Foundry," nor does he claim this. He concedes to the respondent that he may call his new works the "Sun Foundry" if he pleases, but he objects to the name "Sun Foundry, Glasgow," being used by the respondent, because (1) The "Sun Foundry, Glasgow," that is, the premises so long known by that name, and the only foundry so named in Glasgow, belongs to him, and is a foundry with which the respondent has had no connection whatever; (2) because the use of that name by the respondent would lead the public to infer that the respondent was carrying on the business of ironfounder at the complainer's premises in Glasgow; and (3) because such an inference would or might reasonably be injurious to the complainer in the business of ironfounder which he is about to carry on there. These appear to me to be substantial grounds of complaint on the part of the complainer. No one is entitled to use a name or designation for his works, already appropriated, which will or reasonably may deceive the public into the belief that he is carrying on the business which is really being carried on by another, and consequently, it may be, do injury to that other's interests by procuring orders which otherwise would go to the person legitimately using the name or designation in dispute. I cannot conceive what legitimate object the respondent can have in desiring to use a designation for his works, which is certainly incorrect; but whatever his

motive or purpose may be, to allow a continuance of the misrepresentation, which the name by which he at present designates his works certainly makes, would or reasonably might do an injury to the complainer against which he is entitled to be protected. The Lord Ordinary seems to hold that the complainer could not interdict any other person carrying on business as an ironfounder in Glasgow from doing so under the name of the "Sun Foundry, Glasgow." On this question I give no opinion, beyond saying that I am not prepared to endorse that view, so broadly as it is put. But there is a great difference between that case and the case before us, where the respondent has no works in Glasgow at all, but designates, as if in Glasgow, works which are some twelve miles distant from that city, and that by a name long used by, and well known as pertaining to, premises still existing in that city. I am therefore of opinion that the interdict sought in the first part of the prayer of the note should be granted. As regards the rest of the prayer, the complainer did not insist on interdict, and I should not have been prepared to grant it. I may add that nothing which I propose to do would exclude the respondent from calling his work the "Sun Foundry" or the "Sun Foundry, Clippens," or from adding "formerly Sun Foundry, Glasgow," or advertising that the offices connected with works so named are situated in Glasgow in such a way as to make it clear that, while the offices are in Glasgow, the works are at Clippens.

I have not dealt with the question raised by the respondent, that the complainer is not entitled to interdict because he is not actually carrying on business now as an ironfounder at the Sun Foundry, as a ground of judgment. If the complainer did not carry on or propose to carry on business at the Sun Foundry, Glasgow, it might very seriously affect his right to interdict on the ground of want of interest. But the fact that the complainer is not at present carrying on the business of an ironfounder (which however he intends to do) is sufficiently explained by the circumstance that he is litigating with the respondent about certain patterns necessary for the work, which the respondent, it is said, improperly withholds from the complainer, and also by the circumstance that the respondent's own action would up to this time have prevented any orders addressed to the "Sun Foundry, Glasgow," ever reaching the complainer.

The LORD JUSTICE-CLERK and LORD RUTHERFURD CLARK concurred.

LORD YOUNG was absent.

The Court pronounced the following interlocutor:—

"Recal said interlocutor, and interdict, prohibit, and discharge the respondent and his agents, servants, and

all others acting for him from publishing or issuing or causing to be published or issued circulars, notices, or advertisements in the terms set out in statement 7 of the statement of facts for the complainer, or terms of a like import or effect, and from exhibiting or using the name "Sun Foundry, Glasgow," either by itself or in conjunction with other words or work done or articles made by him, or on letters, paper, invoices, labels, catalogues or other stationery used by him, or in advertisements, notices or circulars published or issued by him to the public or his customers as his address in connection with the business of ironfounder carried on by him so as to be a colourable imitation of the name by which the complainer's foundry is commonly known, or in such a way as to lead the public or the respondent's customers to infer that the respondent is carrying on the business of an ironfounder at the Sun Foundry, Glasgow, belonging to the complainer, or that the iron goods manufactured or sold by the respondent are goods manufactured at the complainer's said foundry; also interdict, prohibit, and discharge the respondent from otherwise in any way infringing the right of the complainer to use the name "Sun Foundry, Glasgow" to designate the said foundry now belonging to the complainer: Find the complainer entitled to expenses since the date of the Lord Ordinary's interlocutor: Remit to the Auditor to tax the same and to report: *Quoad ultra* refuse the prayer of the note, and find no expenses due to or by either party, and decern."

Counsel for the Complainer—Ure—Wilson. Agents—J. & J. Ross, W.S.

Counsel for the Respondent—Salvesen—A. S. D. Thomson—Crabb-Watt. Agents—Simpson & Marwick, W.S.

## HIGH COURT OF JUSTICIARY.

Saturday, June 29.

(Before Lords Adam, M'Laren, and Kinnear).

WALKER v. FORBES.

*Justiciary Cases — Suspension — Competency — Prior Appeal by Stated Case — Summary Prosecutions Appeals Act 1875 (38 and 39 Vict. c. 62), sec. 9.*

An appeal upon a stated case, under sec. 3 of the Summary Prosecutions Appeals Act 1875, against a conviction and sentence pronounced in an inferior court, was lodged with the Clerk to the High Court of Justiciary, and an order for hearing was pronounced thereon. The appeal was afterwards withdrawn with the consent of the respondent.