

Thursday, July 11.

SECOND DIVISION.

[Sheriff Court at Glasgow.

DAWSON v. CAMPBELL.

Sheriff—Proof—Dictation—Sheriff Court Act 1853 (16 and 17 Vict. cap. 80), sec. 10.

This case was appealed from the Sheriff Court at Glasgow to the Second Division. When the case was called for hearing the Court at once drew attention to the length of the proof, and to the fact that it was wholly taken down in question and answer.

After the following authorities had been referred to—Dove Wilson on Sheriff Court Practice, p. 176; *Merry & Cuninghame*, January 11, 1895, 22 R. 247—the Lord Justice-Clerk observed:—“We will not take up the case just now, but remit to the Sheriff-Substitute to say if he dictated the proof, and if not, why not?”

LORD YOUNG and LORD TRAYNER concurred.

LORD RUTHERFURD CLARK was absent.

The case was allowed to stand over, no order being pronounced.

Counsel for the Pursuer—Dundas—W. Thomson. Agents—J. Douglas Gardiner & Mill, S.S.C.

Counsel for the Defender—J. C. Thomson—A. S. D. Thomson. Agent—John Veitch, Solicitor.

Friday, July 12.

FIRST DIVISION.

[Lord Low, Ordinary.

HENDERSON v. DAWSON.

Husband and Wife—Contract—Personal Obligation by Wife—In rem versum.

H having been employed by D to execute repairs on buildings belonging to him, and having failed to obtain payment of his account, raised an action against D for the amount, and recorded a notice of inhibition. Prior to the recording of the notice of inhibition D had concluded a bargain for sale of the subjects, but had not granted a formal disposition to the purchaser. D's wife, who held a postponed bond over the subjects, being anxious to prevent the execution of the inhibition, as she was afraid it might interfere with the sale being carried through, wrote to H in these terms:—“Having a bond over the . . . property, it is, and always has been, my intention to see you paid as soon as the money is handed over to me. . . . I have instructed Messrs C. & F. to retain sufficient money to settle

your account.” On receipt of this letter H instructed his agents not to proceed with the action and inhibition, and the sale having subsequently been carried through, D's wife obtained payment of the greater part of the sum due under her bond.

Held (1) that the letter constituted an unqualified obligation by D's wife to pay H's account out of the proceeds of her bond; and (2) that this obligation, having been undertaken by her in reference to and with the intention of benefiting her separate estate, was binding upon her although she was a married woman.

Stamp—Promissory-Note—Stamp Act 1870 (33 and 34 Vict. cap. 97), sec. 49.

A wrote to B—“It is my intention to see you paid as soon as the money” due under a particular bond “is handed over to me. I have instructed C. & F. to retain sufficient money to settle your account.”

Held that the letter, being entirely indefinite as to the sum to be paid, was not a promissory-note in the sense of the Stamp Act.

Michael Dawson was the proprietor of a property in Argyle Street, Glasgow, which he had purchased in 1892 for the sum of £14,600. The property was subject to bonds for £9500, £3900, and £2500, the last bond, which was postponed to the other two, being in favour of Mr Dawson's wife. The property was greatly out of repair when Mr Dawson bought it, and he accordingly made extensive alterations and repairs, with the view of enhancing its value as a letting or selling subject. These repairs were executed by Mr Matthew Henderson, whose account amounted to £349, 6s. 6d. Mr Dawson having failed to pay this account, Mr Henderson raised an action against him for the amount on 16th October 1893, and on the same day recorded a notice of inhibition.

Previous to this date Mr Dawson had been negotiating for the sale of the subjects, and on the 14th October 1893 he had completed a bargain for a sale of the subjects to a Mr Lawson at the price of £16,000. In these circumstances Mrs Dawson wrote the following letter to Mr Henderson, with the object of inducing him to refrain from executing the inhibition:—“Langside, 24/10/93. Dear Sir,—Having a bond for £2500 over the Argyle Street property, it is, and always has been, my intention to see you paid as soon as the money is handed over to me, although I hope you will receive payment from my husband's estate, or at least, that the deficiency I may have to make up will not be very great. I have instructed Messrs Caldwell & Fyfe to retain sufficient money to settle your account.” On the same date Mrs Dawson wrote a letter to her husband's agents, Messrs Wilson, Caldwell, & Fyfe, containing the following instructions:—“Please retain from the £2500 due to me on 11th November sufficient money to settle the balance owing to Mr Henderson.”

Mr Henderson accordingly instructed his agents not to proceed with the action or