

Counsel for the Respondent—Salvesen, K.C.—Gunn. Agents—Mackay & Young, W.S.

Saturday, June 1.

FIRST DIVISION.

[Lord Pearson, Ordinary.

HENDERSON v. HENDERSON'S TRUSTEES.

Process—Expenses—Withdrawal of Reclaiming-Note—Respondent Printing after Communication with Reclaimer.

A reclaiming-note was sent to the Summar Roll on 16th May. On June 1, before the case had been put out for hearing, the reclaimers moved that the reclaiming-note be refused, and that they should be found liable in £2, 2s. of expenses. The respondents moved for full expenses, on the ground that after an interview on 27th May between the parties' agents, at which the reclaimers' agents had rejected a proposal for a joint print, and at which no indication had been given of any prospect of the reclaiming-note being withdrawn, the respondents had printed certain documents. The Court allowed £6, 6s. of expenses.

Alexander Henderson and others brought a petition for the sequestration of the trust estates administered under his marriage-contract trust. Answers were lodged for the trustees William John Menzies, W.S., and John Henry Robertson, stockbroker.

On 4th April 1901 the Lord Ordinary (PEARSON) pronounced an interlocutor, whereby he sequestrated the said estates.

Against this interlocutor the trustees reclaimed.

On 16th May 1901 the case was sent to the Summar Roll.

On June 1 the reclaimers enrolled the case in the Single Bills, and moved the Court to refuse the reclaiming-note, and to find them liable in £2, 2s. of modified expenses.

Counsel for the respondents moved for full expenses, and stated that, after an interview between the parties' agents on 27th May at which the reclaimers' agents had rejected a proposal for a joint print, and at which no indication had been given of any prospect of the reclaiming-note being withdrawn, the respondents had printed certain documents. He argued that the previous communication with the other side distinguished the case from *Gilchrist & Co. v. Smith*, Jan. 9, 1901, 38 S.L.R. 238, and brought it within the rule of *Little Orme's Head Limestone Company v. Hendry & Company*, November 25, 1897, 25 R. 124.

LORD PRESIDENT—We think that the circumstances here are such as to lead to somewhat more liberal treatment than in the ordinary case, because it cannot be said here, as it has been said in some other

cases, that the respondent has been premature in printing. The respondent communicated with the other side and they offered no discouragement to printing. We therefore think that the expense of printing the documents referred to should be allowed, but we consider that instead of making a remit to the Auditor, an award of £6, 6s., instead of the customary £2, 2s., will meet the justice of the case.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court found the reclaimers liable in £6, 6s. of modified expenses.

Counsel for the Reclaimers—Macphail. Agents—Cadell & Wilson, W.S.

Counsel for the Respondents—Berry. Agents—Hagart & Burn Murdoch, W.S.

Tuesday, June 4.

FIRST DIVISION.

[Dean of Guild Court, Musselburgh.

DOWNIE v. FRASER.

Process—Civil or Criminal Jurisdiction—Dean of Guild Court Proceedings—Penalty—Appeal—Summary Procedure Act 1884 (27 and 28 Vict. cap. 53), sec. 28—Burgh Police (Scotland) Act 1892 (55 and 56 Vict. cap. 55), sec. 487.

Proceedings in the Dean of Guild Court, even when their purpose is the recovery of a penalty, are of a civil character, and may be appealed, when an appeal is competent, to the Court of Session.

Robert Fraser, Burgh Prosecutor of the Burgh of Musselburgh, presented a petition in the Dean of Guild Court Musselburgh against John Downie, contractor, Musselburgh, in which he prayed the Court to find the respondent liable in a penalty not exceeding £5 sterling, and additional penalties for each day that the contravention complained of continued.

In the petition it was averred that Downie was the owner of a new tenement in Musselburgh, and that he had failed to give notice to the clerk of the commissioners that the tenement in question was ready for inspection before permitting it to be occupied, contrary to section 180 of the Burgh Police (Scotland) Act 1892.

That section is in the following terms:—
“Within one month after any new house or building, or any alteration on the structure of any existing house or building, has been completed, or before such house or building or any portion thereof has been occupied, the owner or the builder shall give notice to the clerk of the commissioners that the house or building, or any part thereof, is ready for inspection before being occupied; . . . and every owner or builder who shall fail to give such notice aforesaid, or shall permit such house or