Thursday, December 8.

SECOND DIVISION.

WILLIAMSON *v.* ALEXANDER MACPHERSON & COMPANY.

Appeal to the House of Lords—Interim Execution Pending Appeal—Expenses—Expenses Found Due Reserving Question of Modification—Taxed Amount of Expenses not Modified Prior to Appeal—48 Geo. III., cap. 151, *sec.* 17.

In an action of damages for breach of contract the pursuer was found entitled to expenses, "reserving consideration as to modification." After the expenses had been taxed, but before the question of modification had been dealt with, the defenders appealed to the House of Lords. In a petition presented by the pursuer for interim execution pending the appeal, *held* that, as the question of modification of expenses had not been dealt with prior to the appeal, it was not competent thereafter to determine that question and decern for expenses.

In an action at the instance of John Williamson, shipowner, Glasgow, against Alexander Macpherson & Company, contractors for ship machinery, Greenock, the pursuer sought to recover £1100 damages for breach of contract.

On 13th January 1904 the Lord Ordinary (KINCAIRNEY) granted decree in favour of the pursuer, assessing the damages at £243, 9s. 9d. The interlocutor proceeded as follows:—"Finds the pursuer entitled to expenses, reserving consideration as to modification; allows an account of said expenses to be given in, and remits the same when lodged to the Auditor of Court to tax and to report."

The defenders reclaimed, and on 28th June 1904 the Second Division adhered to the interlocutor reclaimed against. With regard to expenses, their Lordships' interlocutor was in the following terms:—"Find the pursuer entitled to additional expenses; remit to the Auditor to tax the same, and to report to the Lord Ordinary, to whom remit the cause to proceed therein, and to decern for said expenses."

The expenses found due by said interlocutors were thereafter taxed at £1299, 6s. 4d., but before the Auditor's report was approved and decree obtained against the defenders for said expenses the defenders on 8th November 1904 presented a petition of appeal to the House of Lords.

On 8th December the pursuer petitioned for interim execution pending appeal, praying the Court "to allow execution to proceed on the said judgments and decrees of date 13th January 1904 and 28th June 1904 before mentioned, notwithstanding the said appeal, to the effect of enabling the petitioner to recover payment of the sums thereby found due to him, as well as the taxed expenses before mentioned and dues of extract, . . . and, if necessary for that purpose, of new to remit to the Lord Ordinary to decern for the taxed expenses found due to the petitioner."

On the calling of the pursuer's petition in the Single Bills, counsel for the defenders argued—The prayer of the petition could only be granted in so far as it related to the sum found due to the pursuer in name of damages. The pursuer had not been entirely successful, and the question of modification of expenses could not be dealt with after appeal had been taken to the House of Lords—Mackay's Practice, p. 582; *Gordon* v. *Hyslop & Company*, July 11, 1821, 1 S. 120; *Lord Medwyn* v. *Dickson*, July 7, 1829, 7 S. 837; *Hogarth* v. *Balmer*, July 6, 1830, 8 S. 1017. The process being no longer in the Court of Session, it would be impossible for the Lord Ordinary to deal with the question of modification.

Argued for the pursuer—The cases relied on by the defenders were too remote in date to be regarded as throwing light on the existing state of practice. The proper and competent course was for the Court to remit to the Lord Ordinary to deal with the question of expenses—48 Geo. III, c. 151, sec. 17.

LORD JUSTICE-CLERK—I think the prayer of the petition should be granted so far as it refers to the sums found due, and refused *quoad ultra*.

LORD YOUNG concurred.

LORD TRAYNER—I see no reason for departing from the practice established by the cases cited to us.

LORD MONCREIFF concurred.

The Court pronounced an interlocutor in terms of the prayer of the petition so far as it related to the sums found due to the petitioner, and *quoad ultra* refused the prayer.

Counsel for the Pursuer—Horne. Agents—Webster, Will, & Co., S.S.C.

Counsel for the Defenders—Salvesen, K.C.—MacRobert. Agents—Campbell & Smith, S.S.C.

Friday, December 9.

FIRST DIVISION.

[Lord Low, Ordinary.

DARNEY & SON *v.* THE CALDER DISTRICT COMMITTEE OF THE COUNTY COUNCIL OF MIDLOTHIAN.

Local Government — County Council — "Offensive Trade"—Condition in Sanction of Local Authority—Action to Reduce Condition — Competency—Public Health (Scotland) Act 1897 (60 *and* 61 *Vict. c.* 38), *sec.* 32 (1), (2), (3).

The district committee of a county council, in virtue of their powers as local authority, under sec. 32, sub-sec. 1, of the Public Health (Scotland) Act 1897, issued an order declaring the manufacture of glue to be an "offensive business" within the meaning of the Act, and, in virtue of their powers under sec. 32, sub-sec. 3, passed bye-laws regu-