

COURT OF SESSION.

Tuesday, July 5.

OUTER HOUSE.

[Lord Mackenzie.

BUCHANAN v. BALLANTINE.

Process—Expenses—Caution for Expenses—Pursuer Ordained to Find Caution for Expenses—Action Unsuitable for Trial in Court of Session.

A pursuer having raised an action of damages, applied for the benefit of the poor's roll. The reporters found that there was a *probabilis causa*, but on consideration of their report the Second Division refused admission to the roll on the ground that the cause was unsuitable for trial in the Court of Session. The pursuer thereupon proposed to proceed with the action in the Court of Session in ordinary form.

The Court (*per* Lord Mackenzie) *ordained* the pursuer to find caution for expenses within fourteen days.

This was an action of damages for slander at the instance of Effingham D. Buchanan, Strathaven, against Andrew Ballantine, farmer, Glassford, Hamilton, in which proceedings were sisted in order to allow the pursuer an opportunity to apply for the benefit of the poor's roll.

The matter came before the reporters on *probabilis causa litigandi*, who reported that there was a *probabilis causa*, but thereafter, on the consideration of the report by the Second Division, the Court refused to admit the pursuer to the poor's roll, on the ground that the cause was unsuitable for trial in the Court of Session.

The pursuer then enrolled the case before Lord Mackenzie (Ordinary), and intimated that he desired to proceed with the action in the Court of Session in common form, and on 14th June 1910 the Lord Ordinary, on the pursuer's motion, recalled the sist.

On 5th July 1910 counsel for the defender moved the Court to ordain the pursuer to find caution for expenses, and cited *Ritchie v. Mackintosh*, June 2, 1881, 8 R. 747, 18 S.L.R. 528; and *Robertson v. Meikle*, July 15, 1890, 28 S.L.R. 18.

The Lord Ordinary (MACKENZIE) pronounced the following interlocutor:—"The Lord Ordinary having heard counsel, in respect of the interlocutor of the Second Division of 8th June 1910 finding that this action is not a suitable one to be raised in the Court of Session, ordains the pursuer to find caution for expenses in common form, and that within fourteen days."

Counsel for the Pursuer—Dykes. Agent—Robert Gray, S.S.C.

Counsel for the Defender—Fenton. Agents—Simpson & Marwick, W.S.

Friday, December 9.

SECOND DIVISION.

[Lord Mackenzie, Ordinary.

GLENDINNING v. J. D. HOPE & COMPANY.

Stock Exchange—Retention—Custom—Proof—Local Custom—Stockbroker's Lien—Custom of Edinburgh Stock Exchange—Right to Retain Scrip against Open Accounts.

In an action against a firm of stockbrokers, who were members of the Edinburgh Stock Exchange, for delivery of a transfer of shares, the defenders averred that it was the custom of the Exchange for stockbrokers to retain scrip (including transfers) belonging to their constituents as security against open accounts. The sole partner of the defenders' firm and one other member of the Exchange deponed that the custom existed, but they did not speak to any individual case in which they had enforced it. Another member of the Exchange deponed that he had exercised the right on one occasion. For the pursuer an experienced member of the Exchange deponed that he had never heard of any case in which the alleged custom had been enforced, although he knew that some members of the Exchange maintained that it existed. It appeared that the alleged custom was in force on the London Stock Exchange.

Held (*rev.* judgment of Lord Mackenzie) that the alleged custom had not been proved, and that the stockbrokers were therefore not entitled to retain the transfer against a balance said to be due on a subsequent transaction.

James P. Glendinning, Nethershiel, Mid-Calder, brought an action against John D. Hope & Company, stockbrokers, Edinburgh, and against John D. Hope, the sole partner of that firm, in which he concluded for delivery of a transfer of 100 fully-paid ordinary shares of the Globe and Phoenix Gold Mining Company, Limited.

The pursuer averred that on 19th August 1909 he instructed the defenders to purchase on his account 100 shares of the Globe and Phoenix Gold Mining Company, Limited; that on the same day the defenders sent him a contract note advising the purchase of 100 shares for settlement on 26th August 1909; and that on 26th August he duly paid the amount required to settle the transaction.

The defenders admitted these averments, but they averred that the pursuer was due to them the sum of £50, 2s. in respect of a subsequent transaction. They further averred—"Explained that it is a custom of the Edinburgh Stock Exchange, as well as of the London Stock Exchange, for stockbrokers to retain scrip, including transfers, belonging to their constituents, and which has come into their possession