June 13. 1821. *Respondent's Authorities.*—(1.)—3. Ersk. 2. 31;—(2.)—3. Ersk. 3. 66; 1. Bank. 23. 44.

SPOTTISWOODE and ROBERTSON,—J. CHALMER,—Solicitors.

(*Ap. Ca. No.* 26.)

No. 14. A. WALLACE, for the Glasgow Glass-Work Company, Appellant. —*Leach—Cuninghame.*

J. GEDDES, Respondent.—*Warren—Forsyth.*

Interest—Expenses.—Held,—1.—(reversing the judgment of the Court of Session,) That interest on a salary, of the amount of which there was no evidence, was not due prior to constitution by decree; and,—2.—That expenses, in the circumstances, were not due to either party.

June 13. 1821.

1ST DIVISION. Lord Craig.

IN 1795 Geddes brought an action against the Glasgow Glass-work Company, alleging that he had been employed by them as their manager at a salary of £275 per annum, besides being entitled to a share as a partner; that they had failed to pay him his salary, except certain small sums which he had received for his subsistence, and concluding against them for £1790, being the arrears which were due to him. The case then resolved into a count and reckoning, and only two questions of any general importance arose,—the first relating to a claim of interest by Geddes, and the other to the expenses of process. The Lord Ordinary, on the 13th of November 1798, after finding that no specific sum of salary had been agreed upon, found Geddes entitled to £120 per annum. This interlocutor was recalled by the Inner-House on the 13th of December 1799, by whom it was fixed at £226. 18s. 5½d. per annum; and by a subsequent interlocutor of the 2d of June 1801, they found Wallace 'liable in the full expense 'of extract,' without mentioning any other expenses. These judgments were affirmed simpliciter by the House of Lords on the 26th of February 1805, without any allusion to costs. The case then returned to the Court of Session, to make up a state of accounts between the parties. On the 13th of May 1806, the Lord Ordinary found 'that an interest account must be stated 'between the parties, giving each of them interest on the sums 'they shall appear to be in advance.' Thereafter, on the 3d of March 1808, his Lordship, on advising the report of an accountant, and objections by Geddes, found 'that interest must be 'stated on the salary due to Mr. Geddes, at the rate of 5 per 'cent., from the end of each year.' This interlocutor was ad-

hered to by the Court on the 24th of February and 11th March 1809. After several intermediate proceedings and reports of an accountant, the Court, on the 9th June 1813, found that 'payments or advances made to Mr. Geddes from the funds of the company are to be applied towards extinction of advances made by Mr. Geddes for the company, and salaries due to him by them, with the interest thereof, and towards extinction of such interest in the first place, and of such advances and salaries in the second place, and that the surplus, if any, after computation as aforesaid, shall not bear interest against Mr. Geddes till the end of a year from the date of the payment or advance.' A balance having been ascertained on these principles in favour of Geddes, the Court, on the 14th of December 1814, decerned for the same. A question then arose as to the expenses of process, in reference to which Wallace contended, that the Court could not competently award any expenses to Geddes prior to the interlocutor of the House of Lords affirming those of the Court of Session, in which the expenses decerned for were limited to those of extract, and that, in the circumstances, no expenses were due. The Court, however, on the 16th of May 1815, found 'that the article relative to the expense of extract, in the interlocutor of 2d June 1801, was inapplicable to the circumstances of the case and the state of the process as at that time, and must have been inserted per incuriam; and that the Court are not therefore barred thereby from awarding to Mr. Geddes the whole expenses of litigation incurred before the action of appeal,' and found expenses due accordingly, and remitted to the auditor to tax the amount. The auditor having rejected a claim made by Geddes for journeys to Edinburgh, the Court, on objections being lodged, found Geddes entitled to £200 on this account, in addition to the taxed expenses, in respect that these journeys 'were necessary and useful in the circumstances of this case.' *

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Wallace then appealed, on the ground, 1. That as there had been no fixed salary, interest ought not to have been allowed prior to the date of its constitution by the decree of the Court; and, 2. That it was incompetent to award any expenses except those of extract prior to the judgment of the House of Lords, and that no expenses of any part of the litigation were due. To this it was answered, 1. That the decree of the Court did not create the debt, but merely repelled the unfounded objections made by Wallace, and gave effect to it, so that interest ought to be allowed; and, 2. That expenses were in the circumstances due, and

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* Not reported.

June 13. 1821. justice could not be excluded by a limited finding, which was evidently introduced per incuriam. The House of Lords 'Ordered and adjudged, that the interlocutors complained of, so far 'as they allow to the respondent interest on the enlarged salary 'of £226 : 18 : 5, before the same was constituted by the interlocutor of the 13th December 1799, and so far as the same relate 'to the costs of suit, and the allowance to the respondent of '£200 sterling, in addition to the taxed amount of costs reported by the auditor, be reversed: And it is declared, that, under 'the circumstances of this case, neither party is entitled to costs 'of suit hitherto: And it is further ordered and adjudged, that 'the rest of the interlocutors be affirmed: And it is further ordered, that the cause be remitted back to the Court of Session, 'to do thereupon as shall be just.'

A. MUNDELL,—J. CHALMER,—Solicitors.

(Ap. Ca. No. 27.)

No. 15.

EARL of ELGIN, Appellant.—*Romilly—Erskine—Bell.*
ROBERT WELLWOOD, Respondent.—*Clerk—Moncreiff.*

Entail.—Held (affirming the judgment of the Court of Session,) that a lease of 999 years, with a grassum, did not fall under the prohibitions in an entail against alienating, there being a permissive clause to let leases on certain terms, without limitation in point of endurance, and the lease being so granted.

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1ST DIVISION.
Lord Armadale.

BY the entail of the estate of Garvoch, executed by the father of the respondent in 1790, there is a prohibition, fortified by irritant and resolutive clauses, against selling, alienating, or disponing the lands; and it is declared, that the heirs shall not 'set 'tacks or rentals of any part of the said lands and estate, except-'ing in the terms after mentioned, for longer space than nineteen 'years certain, or for the life of the setters, or in the terms of the 'powers given to the proprietors of entailed estates in Scotland 'anent granting of tacks or leases, by an act of Parliament passed 'in the tenth year of his present Majesty's reign.' The exception alluded to is thus expressed: 'And with this power and faculty, 'as it is hereby expressly provided and declared, notwithstanding 'of the restrictions before written with regard to the setting tacks, 'that the said Robert Wellwood, my son, and each of the heirs 'succeeding to the said lands and estate, shall have full power to 'set tacks of the same, excepting the house, office-houses and gar-