

the right of appeal by merely extracting a decree for expenses which was quite distinct from the decree on the merits. The only way he could have put an end to the case was by extracting the decree of absolvitor.

At advising—

LORD JUSTICE-CLERK—In such a case as this, which is under a statute by which there is an exclusion in a special case of a right of appeal otherwise competent, one rather leans towards the exercise of the right of appeal than towards its exclusion. Here my own impression is that the extract of the decree of expenses was not equivalent to extract of the decree of absolvitor, although in this case it is of consequence to observe that the decree of absolvitor was followed by decree for expenses in favour of the defender, for there are many cases where the award of expenses may be inconsistent with the judgment of absolvitor. But the ground of my judgment here is that the interlocutor disposing of the merits of the case was not extracted, and therefore that the appeal is not excluded by the statute.

LORD CRAIGHILL concurred.

LORD RUTHERFURD CLARK—I am also inclined to read the statute as your Lordship has done. The statute declares in very express terms that the right of appeal is competent for six months, provided that it has not before the lapse of that time been extracted or implemented. There is here a decree of absolvitor. Has it been extracted or implemented? Now, I think the meaning of the statute is that a party shall not be cut out of his appeal unless the right of appeal is expressly excluded by the statute. But it is said that the appeal is barred here because the decree of absolvitor was followed by a decerniture for expenses, and that has been extracted. I do not think that extracting that decree is equivalent to extracting the decree of absolvitor, and therefore I think that the appeal is competent.

The Court repelled the objection and sustained the competency of the appeal.

Counsel for Pursuer (Appellant)—D. F. Macdonald, Q. C.—Gardner. Agent—A. Trevelyan Sturrock, S. S. C.

Counsel for Defender (Respondent)—Darling—Law. Agents—Rhind, Lindsay, & Wallace, W. S.

Friday, October 24.

SECOND DIVISION.

CLAPPERTON, PETITIONER.

Poor—Admission to Poors' Roll—Act of Sederunt 21st Dec. 1842, secs. 2 and 3—Declaration of Poverty—Procedure to be adopted where Applicant is unable from Bodily Injuries to Appear before the Minister and Elders and Emit a Declaration.

Alexander Clapperton, residing at No. 7 Spence Place, Edinburgh, having been run over by an omnibus belonging to the Edinburgh Tramways Company, and being desirous of obtaining admission to the benefits of the poors' roll to enable

him to raise an action of damages against the Company, applied to the Session-Clerk of St Cuthbert's Parish (in which parish he was resident) requesting that a meeting of the minister and elders of the parish should be held within his house for the purpose of taking his declaration of poverty in terms of the Act of Sederunt 21st December 1842, which enacts:—Sec. 2—"That no person shall be entitled to the benefit of the poors' roll unless he shall produce a certificate under the hands of the minister and two elders of the parish where such poor person resides, setting forth his or her circumstances according to a formula hereto annexed (Schedule A)." Sec. 3—"That if the party's health admit of it, he or she shall appear personally before the minister and elders, at the time and place to be appointed by them, to be examined as to the facts required by said formula."

He produced a medical certificate to the effect that he was unable to leave his own house to appear before the minister and elders.

The request having been refused by the session-clerk, who acted on his own responsibility in the matter, Clapperton presented this petition praying the Court "that the minister and elders of the parish of St Cuthberts be ordained to hold a meeting within No. 7 Spence Place, Edinburgh, for the purpose of taking the declaration of poverty in terms of the Act of Sederunt 21st June 1842."

It was stated at the bar that regular meetings were held by the Kirk-Session for the purpose of meeting with poor persons applying for such certificates; that the parish contained 85,000 parishioners, and the parochial duties were very heavy, and therefore it was not expedient that such an additional duty as would be involved in such special meetings as was here applied for should be imposed.

The Court, without pronouncing any order, intimated that they were of opinion that the request was a reasonable and proper one, and ought to be complied with.

LORD CRAIGHILL was absent.

Counsel for Petitioner—Salvesen. Agent—Arthur Adam, W. S.

Counsel for Respondents—Lyell. Agents—Horne & Lyell, W. S.

Friday, October 24.

SECOND DIVISION.

[Sheriff of the Lothians and Peebles at Edinburgh.]

M'DERMAID v. THE EDINBURGH STREET TRAMWAYS COMPANY (LIMITED).

Street—Tramway Car—Duty of Driver to pull up if Necessary till Temporary Obstruction is Removed—Reparation.

The driver of a cab stopped in a crowded street to take up a passenger, in such a manner that one wheel of the cab was on tramway rails which ran along the street. A driver of a car coming behind saw the obstruction, and whistled, but did not stop, and his car struck the cab and upset it.