

the deed, and from that intention may gather what the deed proposed to do. I do not think that is a mode of construing a feu-charter to which we are accustomed. There is nothing in favour of such a mode of construing a charter; on the contrary, the rule is in favour of liberty to the vassal. All clauses of prohibition must be strictly construed. As to the footpath, I do not here either find any clause of prohibition on which the appellant may rely. It may be that there is a necessity for the respondent to lay down a footpath in front of tenements if he ever builds them, such as are conditioned in the deed, but until he does that I do not think he need to lay down any footpath.

In conclusion, I desire to say that I think the note of the Assessor is not only well put, but is good law.

The Court adhered.

Counsel for Magistrates—Comrie Thomson—Darling. Agents—Millar, Robson, & Innes, S.S.C.

Counsel for Petitioner—Pearson—Low. Agent—Donald Mackenzie, W.S.

Saturday, March 19.

FIRST DIVISION.

[Lord M'Laren, Ordinary.]

STEEDMAN v. STEEDMAN.

Process—Act 48 Geo. III. cap. 151, sec. 16—Reponing—Expenses—Husband and Wife.

The 16th section of the Act 48 Geo. III. cap. 151, provides that "If the reclaiming or representing days against an interlocutor of a Lord Ordinary shall from mistake or inadvertency have expired, it shall be competent, with the leave of the Lord Ordinary, to submit the said interlocutor by petition to the review of the Division to which the said Lord Ordinary belongs; but declaring always, that in the event of such petition being presented, the petitioners shall be subjected in payment of the expenses previously incurred in the process by the other party." Where a husband had obtained decree of divorce against his wife, and she had from mistake allowed the reclaiming days to expire, she was reponed without payment of expenses, the Lord President observing, that while undoubtedly in the ordinary case a person must before being reponed pay his previous expenses, that rule did not apply to the case of husband and wife. If it did, the wife would have been entitled to demand that her husband should furnish her with the means.

Authority cited—*M'Ra v. Birtwhistle's Trustees*, March 11, 1831, 9 S. 582.

Counsel for Defender (Reclaimer)—Hay. Agent—James Skinner, S.S.C.

Counsel for Pursuer (Respondent)—Dickson—Forsyth. Agent—N. B. Constable, W.S.

Saturday, March 19.

FIRST DIVISION.

[Lord Fraser, Ordinary.]

BLACK v. JEHANGEER FRAMJEE & COMPANY.

Expenses—Arrestment on the Dependence—Ship.

Held that the expense of arresting a ship on the dependence and dismantling her under a warrant of the Lord Ordinary on the Bills was not a part of the ordinary expenses of process to be allowed against a defender, and was rightly disallowed by the Auditor.

Thomas Black, sailmaker and ship-store merchant, Greenock, made furnishings to the owners of the ship "Huron" in the year 1886 to the value of £130, 2s. 10d. On 8th September 1886 he used arrestments to found jurisdiction by arresting the "Huron" in Lamash Bay, where she was then lying. On the same day he raised an action against Thomas Bryson, the master of the ship, for payment of the account, and the owners, Jehangeer Framjee & Company, East India merchants, London, having sisted themselves as defenders, defended the action. Arrestments were used by the pursuer on the dependence.

As the vessel was lying in Lamash Bay, and was ready for sea, the pursuer applied to the Lord Ordinary on the Bills for warrant to remove her to a safe harbour and dismantle her, and the Lord Ordinary on 9th September granted warrant to remove her to Greenock and dismantle her. This warrant was carried into execution at a considerable expense.

On 8th October 1886 the owners applied for loosing of the arrestments on the dependence.

The Lord Ordinary on the Bills loosed the arrestments on condition of the defenders consigning £400 to meet the pursuer's claims. This £400 was not consigned. Instead of making the consignment the owners, Jehangeer Framjee & Company, endeavoured to get the vessel released by means of an extrajudicial tender. They applied to the pursuer Black for his account of expenses, and the parties agreed to have this account taxed by the Auditor of the Court, which was done on the 12th of October 1886. The amount of the account was £199, 11s. 9d., but the Auditor taxed it at the sum of £21, 7s. 7½d. The sum which was disallowed, and for which the Auditor expressly reserved the claim of the pursuer, was composed of items of expense attending the arrestments, removal of the vessel to a safe port, and there dismantling her. The Auditor in the taxation of the account held that these were not expenses of process, and therefore must be recovered in some other way.

On the 15th October 1886 the defenders tendered payment of the sum concluded for, viz., £190, 2s. 10d. with interest thereon, and the taxed expenses, £21, 7s. 8d. This tender was declined. Thereafter they again applied to the Lord Ordinary on the Bills to discharge the arrestments on the dependence on consignment of the said sums of £190 and £21, but the Lord Ordinary on the Bills refused to make any further order.

The case was argued in the Court of Session