

direction should be given to the jury in the particular case before them. It might be a proper direction to give, qualified by a great number of explanations which it is inconvenient to give, and might lead to undesirable results. I think myself that the learned Judge was quite right in refusing to give the direction asked.

As regards the first exception, which is an exception to a direction which he has given, I am of opinion that the objection cannot be sustained. I think it is a perfectly sound direction. A cabman, or indeed any other person, but especially a cabman who was there not only bodily but with a carriage and horse, must obey the orders of the railway company's authorised servants as to leaving the station. When he is ordered to leave it he must leave it, and if he refuses and persists in refusing he may be turned out. He is not to remain there until it has been settled by some disinterested tribunal whether he has a right to remain and whether the servants of the railway company were wrong in ordering him out. If the railway servants are wrong in ordering him out, the duty of the cabman is to obey, and he will afterwards have his remedy for any injury which had been sustained on account of his having been turned out by their order in circumstances in which he ought not. I am therefore of opinion upon the bill of exceptions that it must be disallowed.

LORD TRAYNER, LORD MONCREIFF, and the LORD JUSTICE-CLERK concurred.

The Court disallowed the bill of exceptions.

Counsel for the Pursuer—Kennedy—A. M. Anderson. Agent—W. R. Mackersy, W.S.

Counsel for the Defenders—Balfour, Q.C.—Grierson. Agent—James Watson, S.S.C.

Thursday, October 18.

FIRST DIVISION.

MARSHALL v. CALEDONIAN RAILWAY COMPANY.

(*Ante*, July 5, 1899, 36 S.L.R. 845.)

Process — Interlocutor — Rectification of Error.

An appeal was taken by the defenders in a Sheriff Court action against an interlocutor of the Sheriff-Substitute, pronounced on 11th July 1898, whereby he decerned against the defenders for payment of the sum of £300. The First Division on 5th July 1899 pronounced an interlocutor whereby they adhered to the interlocutor appealed against, and “of new decern for payment by the defenders to the pursuer of the sum of £300 sterling.”

The pursuer on 18th October 1899 craved the Court to alter this inter-

locutor by adding to the words quoted above the words “with interest thereon from said 11th July 1898.” He founded upon the case of *Harvey v. Lindsay*, July 20, 1875, 2 R. 980.

The Court altered the interlocutor as craved.

Counsel for Pursuer—M'Clure. Agents—J. W. & J. Mackenzie, W.S.

Thursday, October 19.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.]

INNES v. M'DONALD.

Administration of Justice—Law-Agent—“Duly Qualified” Law-Agent—Certificate—Right to Recover Expenses—Law-Agents and Notaries Public (Scotland) Act 1891 (54 and 55 Vict. c. 30), secs. 2 and 3—Stamp Act 1891 (54 and 55 Vict. 39), sec. 43.

Section 3 of the Law-Agents Act 1891 provides that “no expenses on account of any act done by any person who acts as a law-agent . . . without being duly qualified so to act . . . shall be recoverable in any action . . . by any person or persons whomsoever.”

Section 2 provides for the prosecution of any person who, “being neither a law-agent nor a notary-public, falsely pretends to be or takes or uses any name, title, or description implying that he is duly qualified to act as such.”

Section 43 of the Stamp Act of 1891 provides for a penalty against persons acting as law-agents without having a duly stamped certificate.

Held that a person who had acted as a law-agent in a case without possessing a duly stamped certificate was not “duly qualified” so to act in the sense of section 3 of the Law-Agents Act, and that accordingly his expenses were not recoverable in an action at the instance of any person whomsoever.

Section 2 of the Law-Agents and Notaries Public (Scotland) Act 1891 (54 and 55 Vict. c. 30) provides that “Any person being neither a law-agent nor a notary-public, who either by himself or in conjunction with others, wilfully and falsely pretends to be, or takes or uses any name, title, addition, or description implying that he is duly qualified to act either as a law-agent or as a notary-public, or that he is recognised by law as so qualified, shall be guilty of an offence under this Act, and shall be liable to a penalty not exceeding the sum of ten pounds for the first offence, together with the costs of prosecution and conviction: and any such person who shall be guilty of a second or subsequent offence or offences under this section shall be liable to a penalty not exceeding twenty pounds.” . . . Section 3 provides that “No costs, fee, reward, or disbursement on account of or in relation to any act or proceeding done or

taken by any person who acts as a law-agent or as a notary-public without being duly qualified so to act, or who not being so qualified gives legal advice, or frames or draws any deed, shall be recoverable in any action, suit, or matter by any person or persons whomsoever."

Section 43 of the Stamp Act 1891 (54 and 55 Vict. c. 39) provides that—"Every person who in any part of the United Kingdom (a) directly or indirectly acts or practices as a solicitor or law-agent in any court or as a notary-public without having in force at the time a duly stamped certificate . . . shall incur a fine of fifty pounds, . . . and shall be incapable of maintaining any action or suit for the recovery of any fee, reward, or disbursement on account of or in relation to any act or proceeding done or taken by him in any such capacity."

An action of count, reckoning, and payment was raised by Mrs Helen Potts or Innes, 33 Richmond Place, Edinburgh, and by her husband as her administrator-in-law and for his own interest, against Alexander M'Donald, sheriff-officer, Edinburgh.

After sundry procedure the Lord Ordinary (KYLACHY), on 28th October 1898, decerned against the defender for payment of £33 with interest, found the pursuer entitled to expenses, and remitted to the Auditor.

The Auditor made the following report:—"In obedience to a remit by Lord Kylachy the Auditor has examined the foregoing account, and taxes the same in presence of the agents at the sum of £95, 0s. 11d.

Note.—"At the audit it was contended by the defender's agents that the whole of the pursuer's expenses should be disallowed. For the period to 29th September 1898 the business was undoubtedly conducted by Mr Andrews, who had not a law-agent's certificate. Thereafter Mr Spinks, S.S.C., appears to have acted as agent, but the defender's agents allege that he merely lent his name, and that the business in point of fact continued to be done by Mr Andrews as before. In these circumstances they contend, founding on a decision by Justice North in *re Sweeting*, 19th January 1898, L.R., 1 Ch. 268, that there is no legal claim either by the pursuer or by her agent for any part of the expenses, whether consisting of charges or outlays.

"The Auditor has not felt himself entitled, under the remit to him, to deal with such questions, but, to assist the Lord Ordinary, he may state that the taxed amount of expenses to 29th September 1898 inclusive is £77, 8s. 5d., whereof charges £43, 17s. 2d., and outlays £33, 11s. 3d., and that of the balance £9, 15s. consists of charges, and £7, 17s. 6d. consists of outlays."

Thereafter on the 24th December 1898 the Lord Ordinary pronounced an interlocutor whereby he approved of the Auditor's report, and decerned against the defender for payment of the taxed amount of expenses.

The defender reclaimed, and argued—It was clear that Mr Andrews was not a person "duly qualified" to act as a law-agent.

One of the necessary qualifications was the possession of a certificate. That appeared from section 43 of the Stamp Act, and also from section 47. The fact that section 2 of the Law-Agents Act did not deal with the question of a certificate could not import a limitation into the general terms of section 3. The two sections dealt with different questions in a different way, and it was not competent to reason from one to the other. The claimer's view was supported by the English cases of *Fowler v. Monmouthshire Railway and Canal Co.*, 1879, L.R., 4 Q.B.D. 334; *in re Sweeting*, L.R. [1898], 1 Ch. 268. The claimer did not insist in the reclaiming-note so far as regards the last two sums mentioned in the Auditor's note amounting to £17, 12s. 6d., being the expenses in the Outer House after 29th September 1893, in respect that his doing so would involve a remit to the Lord Ordinary.

Argued for respondent—The words "duly qualified" could not be interpreted by reference to the Stamp Act. Section 2 of the Law-Agents Act did not refer to the possession of a certificate as a necessary qualification for the purposes of the Act. Accordingly, the mere fact that Mr Andrews did not possess a certificate would not call into operation the penalty inflicted by section 3. Though under a separate Act he might be subject to a penalty of £50, that did not prevent him from being "duly qualified" in the sense of the Law-Agents Act—*Clyne v. Clyne's Trustees*, May 31, 1837, 15 S. 1051; *M'Gown v. Begg*, January 24, 1828, 6 S. 420. These cases applied to the Act 25 Geo. III. c. 80, which attached penalties to law-agents practising without certificates in almost the same words as those used in the Stamp Act of 1891. The English cases had no application owing to the presence of clear words of definition in the English Act.

LORD PRESIDENT—The primary question in this case is, was this gentleman at the time when he carried on the part of this litigation specified by the Auditor duly qualified to do so? Now we have to judge of that question according to the state of the statutory law from and after July 1891, and my answer must be that he was not duly qualified, and that if he did the thing, he did it under a penalty of £50. Take section 3, as it stands, alone, and it does not admit of doubt that he was not duly qualified because he had not fulfilled the several conditions all of which are exacted by the Legislature to entitle and qualify him to act. He had fulfilled some of these conditions but not all. Accordingly, the argument in favour of this judgment depends on these words "duly qualified" being used in a limited or secondary sense, to wit, duly qualified so far, but not altogether—only so far as the belonging to one of the privileged bodies of law-agents is a qualification. I think that argument is too far fetched, proceeding as it does on section 2, and an inference to be drawn from the provisions of that section. That section, however, relates to a different matter altogether, viz., the assumption of the title of

an agent. The words of that section are—“Any person being neither a law-agent nor a notary-public, who either by himself or in conjunction with others wilfully and falsely pretends to be, or takes or uses any name, title, addition, or description implying that he is duly qualified to act either as a law-agent or as a notary-public, or that he is recognised by law as so qualified, shall be guilty of an offence.” It is sufficiently plain that the Legislature there says, that if a man is deficient in professional qualifications he then shall not be entitled to call himself law-agent, solicitor, Writer to the Signet, and so on; but I am unable to see that it is a just inference that into the general terms of section 3 there is to be imported a limitation from section 2 which deals with a collateral matter. On that ground I think we are bound to give their full effect to the words “duly qualified” according to their natural sense—and, finding as I do that this gentleman is deficient in one of the statutory qualifications, I must conclude that no remuneration in respect of his services can be recovered by any person whatsoever. I am for recalling the interlocutor of the Lord Ordinary.

LORD M'LAREN—I agree. The question seems to depend upon the Law-Agents Act of 1891, and I do not think that it is a safe construction of that Act to argue from what is contained or implied in section 2 to analogous conditions in section 3. The abuses dealt with in the two sections are different, the punishment or penalty is different, and the scheme of the sections is different. It was never intended under section 2 to punish any lawyer who does not practice for merely using the title of Writer to the Signet or solicitor which belongs to him. The first section is plainly directed against practitioners falsely assuming the name without being entitled to do so. That is a case of fraud or misrepresentation which, whether it is due to vanity or to a desire to obtain employment, is a proper subject of penal legislation.

The object of section 3 is different. It is not directed against false representation, but is intended to protect honest practitioners in the practice of their profession against the competition of persons who have omitted to fulfil the whole or part of the obligations incumbent on them, which make up the necessary qualification. I see no ground for holding that a certificate, the object of which is the collection of stamp duty, is not a material part of the professional qualifications.

LORD ADAM and LORD KINNEAR concurred.

The Court recalled the interlocutor reclaimed against, decerned against the defender for payment of the sum of £17, 12s. 6d., and found the pursuer liable in the expenses of the reclaiming-note.

Counsel for the Pursuer — Baxter — Forsyth, Agent—William Spink, S.S.C.

Counsel for the Defender—W. Campbell, Q. C. — Findlay. Agents — Hossack & Hamilton, W.S.

Thursday, October 19.

FIRST DIVISION.

[Lord Pearson, Ordinary.

GUNN v. MUIRHEAD.

(Ante, June 30, 1899, 36 S.L.R. 798.)

Expenses — Auditor's Report — Print of Documents Used in Two Reclaiming-Notes.

In a case of great complexity in which there were two reclaiming-notes, a print of documents was prepared and used for the purposes of the first reclaiming-note. The claimer was successful, and was allowed “the expenses of the debate in the Inner House,” under which the cost of the print did not fall. The print contained documents essential to the discussion of the second reclaiming-note, in which the same party was successful, and was found entitled to his expenses. The Auditor having disallowed the expenses of the print, the Court *sustained* an objection to this disallowance, *holding* that the fact that the print had originally been prepared for the purposes of the first reclaiming-note did not preclude it from being a proper item of the expenses of the second reclaiming-note.

Expenses—Proof—Witnesses Called but not Examined.

Held that a successful defender who had called certain witnesses whose evidence was originally necessary, but had not examined them owing to admissions made by the pursuer's witnesses which rendered their evidence unnecessary, was entitled to the expenses of these witnesses.

Expenses — Proof — Copy of Evidence for Debate before Lord Ordinary.

A proof was taken in a case of great difficulty turning upon very complicated facts, and the hearing upon the evidence did not take place till three weeks after it had been led. The Court, under the circumstances, *allowed* against the losing party the charge for one copy of the evidence for the use of counsel at the hearing.

Expenses—Fees to Counsel—Case Extending to Three Days.

The debate on a reclaiming-note extended into three days. The Auditor disallowed *in toto* the fees paid to counsel for the second day's hearing. An objection to the disallowance was *repelled* by the Court, who held that it was within the discretion of the Auditor to consider the aggregate amount of remuneration paid to counsel, and deal