

assets of the bankrupt became valueless.

It is also important that the Accountant of Court, to whom the Sheriff remitted to report, agrees with the trustee's opinion that the bankrupt's failure arose from innocent misfortunes and losses in business.

LORD MONCREIFF concurred.

LORD JUSTICE-CLERK—With reference to what Lord Trayner has just said, I would like to add that in commenting on the Sheriff-Substitute's note I did not at all mean to imply that I objected to the tenor of what he said, which I thought very proper. I merely meant to say that the Sheriff Substitute did not in his note deal with the special circumstances of the case which is now before us.

LORD YOUNG was absent.

The Court recalled the interlocutor appealed against, and granted the prayer of the petition.

Counsel for the Petitioner—W. Mitchell.
Agents—A. & A. Campbell, W.S.

Wednesday, July 4.

FIRST DIVISION.

[Sheriff Court of Fife.

DOUGALL'S TRUSTEES v. LORNIE.

(*Ante*, July 19, 1899, 1 F. 1107, and 36 S.L.R. 927.)

Process — Appeal from Sheriff Court — Printing and Boxing of Record, &c.— Practice where Second Appeal—Reference to Prints Boxed in Former Appeal—A. of S., July 11, 1828, sec. 77—A. of S., March 10, 1870, sec. 3 (1).

An appeal having been taken after proof had been led in an action raised in the Sheriff Court, the case was remitted back to the Sheriff, and thereafter a second appeal was taken. The appellant did not box along with his second note of appeal any prints of the record and proof, but for them merely referred to the print boxed in the former appeal. The defender objected to the competency of the appeal, on the ground that the appellant had not complied with the provisions of the Act of Sederunt of March 10th 1870, section 3 (1). The appellant showed that his procedure was in accordance with the practice followed in recent cases where there was a second appeal, and further maintained that it was justified by the provisions of the Act of Sederunt, March 10th 1870, section 3 (1), read along with the Act of Sederunt, July 11th 1828, section 77. The Court, in respect of the practice in such cases, *repelled* the objection.

Question—Whether the practice was justified by the provisions of the Act of Sederunt?

This case is reported *ante, ut supra*.

Section 77 of the Act of Sederunt, 11th July 1828 enacts "That reclaiming-notes, not being against decrees in absence or upon failure to comply with orders, shall at first be moved merely as single bills and immediately ordered to the roll, and shall then be put out in the short or summar roll as the case may be: Provided always that such notes, if reclaiming against an Outer House interlocutor, shall not be received unless there be appended thereto copies of the mutual cases, if any, and of the papers authenticated as the record in terms of the statute if the record has been closed, and also copies of the letters of suspension and advocacy, and of the summons with amendment, if any, and defences; and provided also that when any of the proceedings or documents in a cause have once been printed and boxed in the appendix to any note or other paper given in to the Inner House, it shall not be necessary at any subsequent stage of the case to box the same again, but only to refer to such former paper by its description and date as containing the same in the appendix thereto."

Section 3 of the Act of Sederunt 10th March 1870 enacts that—"(1) The appellant shall during session, within fourteen days after the process has been received by the Clerk of Court, print and box the note of appeal, record, interlocutors, and proof, if any, unless within eight days after the process has been received by the Clerk he shall have obtained an interlocutor of the Court dispensing with printing in whole or in part, . . . and if the appellant shall fail within the said period of fourteen days to print and box, . . . he shall be held to have abandoned his appeal, and shall not be entitled to insist therein except upon being reponed as hereinafter provided."

An action was raised in the Sheriff Court of Fife by George Dougall, plumber, Kirkcaldy, against John Guthrie Lornie, for payment of the balance of an account. After a proof the Sheriff-Substitute (GILLESPIE) pronounced an interlocutor, against which the defender appealed to the Sheriff (MACKAY). The Sheriff adhered, and the defender appealed to the First Division. On 20th December 1898 the defender and appellant boxed a print containing the record, proof, &c., in the action. On July 19th 1899 the Court recalled the interlocutor appealed against, and remitted to the Sheriff-Substitute to proceed.

After further procedure the Sheriff-Substitute on 7th March 1900 pronounced an interlocutor, against which the defender appealed to the Sheriff.

On 4th June 1900 the Sheriff pronounced an interlocutor, against which the defender appealed to the First Division.

The defender did not of new print and box the record and proof, &c., but he lodged a print entitled "Record, &c., in appeal John Guthrie Lornie against George Dougall and others," which contained (1) the following note:—"Record, proof, &c. (see print in former appeal boxed 20th December

1898, and print of documents boxed 8th June 1899); (2) the interlocutors since the date of the former appeal; (3) the Note of Appeal; and (4) and (5) a minute and excerpts from a report which had been lodged since the disposal of the former appeal. There was also a note on the front page of the print referring to the prints boxed in the former appeal.

The pursuer objected to the competency of the appeal, upon the ground that the appellant had not complied with the provisions of the Act of Sederunt of 10th March 1870 as regards printing and boxing of prints in Sheriff Court appeals.

Argued for the pursuer—The practice as to appeals from the Sheriff Court was regulated by the Act of Sederunt of 1870, and not by that of 1828, and accordingly the proviso in the earlier Act as to its being unnecessary of new to box prints already boxed at a former stage of the case did not apply. There was no hardship to the defender, since under the Act of 1870 he was entitled to apply to the Court to dispense with printing, and that was the course he should have taken.

Argued for the defender—The practice had invariably been in accordance with that followed by the defender, viz., not to print and box the record, &c., again in the event of a second appeal, but to refer to the print already boxed. This had been followed in many cases in the last two years—*M'Mahon v. Matheson*, Jan. 12, 1900, 2 F. 384; *Faill v. Wilson*, July 20, 1899, 36 S.L.R. 941; *Hamilton v. Lochrane*, January 27, 1899, 1 F. 478. There had been no case where any other course had been taken. The proviso in the Act of Sederunt of 1828 regulated the practice. The provisions of the Act of Sederunt of 1870 were never read as peremptory, but were merely directory—*Boyd, Gilmour, & Co. v. Glasgow & South-Western Railway Co.*, Nov. 16, 1888, 16 R. 104. But in point of fact the provisions of that Act had been complied with, because the defender had printed the record, &c. in the first appeal, and it was unnecessary to reprint them.

LORD PRESIDENT—This appears to me to be a very plain case. It would be unfortunate if we were obliged to apply a different rule to appeals from that applicable to reclaiming-notes, and to hold that where an appeal from an Inferior Court has been taken and the necessary papers printed, it should be requisite, on the case coming up again on appeal at a later stage, to reprint papers that had been previously boxed instead of merely referring to them, as in the case of reclaiming-notes. We should not be disposed to adopt such a distinction unless forced to do so by the express words of statute. Now, it appears from Mr Sandeman's statement that during the last few months there have been at the least six cases in which appeals have been taken to this Court from the Sheriff in which the course recognised as applicable to reclaiming-notes was adopted without objection. In matters of this kind great weight must be attached to practice, especially where

we are asked to sustain a technical objection which might cause great inconvenience and expense. It is to some extent doubtful upon what ground the practice was originally founded, and whether it is sanctioned by the Acts of Sederunt to which we have been referred. No doubt section 77 of the Act of Sederunt of 11th July 1828 primarily deals with reclaiming-notes, the reference to letters of advocacy being explained by the fact that at that date advocations from the Inferior Courts went first to the Outer House. Accordingly, if the appellant's argument depended on the earlier part of the section it would be difficult to maintain that the procedure contemplated in the Act regulated appeals as well as reclaiming-notes, but in the proviso which follows the language is very general, and *ex facie* applies to any cause before the Court. No doubt in construing general words in any kind of document it is difficult to say that a proviso is to go beyond the subject-matter dealt with in the principal part of the clause. But it is not improbable that the Court when making a provision in the nature of a dispensing power might think it advisable to apply it generally, although the rest of the Act of Sederunt, not being remedial, might be narrower in its scope. This apparently has been the view taken in practice, and any other view would be objectionable as involving a multiplication of procedure by requiring that in a case like the present, an appellant should come here expressly to obtain a dispensation from printing. There is thus I think reasonable ground for holding that it was the appellant's right to refer back, as he has done, to papers previously boxed to this Court, and it therefore appears to me that the objection now taken to the competency of this reclaiming-note should be repelled.

LORD ADAM—Having in view the practice in appeals, I concur. Had the question been open I should have been of opinion that it ought to be decided the other way. I think that the Act of Sederunt of 1870 was passed by the Court to regulate the procedure in appeals from Inferior Courts. Had it provided no remedy in a case such as this we might have been forced to take a liberal construction of the Act of Sederunt of 1828, but a remedy is provided, for the party appealing has only to come to the Court and ask for a dispensation from printing, and what better reason could there be for granting such an application than the fact that he has already printed? And the Act of Sederunt does not stop there. It goes further and provides that if an appellant fails to apply for dispensation he has only to come to the Court and ask to be reponed, subject to such conditions as the Court may impose. Where therefore the Act of Sederunt regulating procedure in appeals contains a sufficient remedy to meet the case, it seems to me that we should proceed under that Act and not have recourse to the Act of 1828, which was passed many years before the Act authorising these appeals, and without reference to them.

As, however, the practice is different, and may possibly be more convenient, and it does not seem very material which way we decide the point, I concur with your Lordship.

LORD M'LAREN—The question might be of pecuniary importance in a case where a number of copies of the print were required and there were not enough remaining in the agent's office, in which case it might be necessary to reprint. Now, I assume that there is a question on the construction of section 77 of the Act of Sederunt of 1823, since it has been argued to us, but there is no better way of construing a procedure statute than by reference to practice, and there is certainly great convenience in following the practice of accepting a reference to a previous print instead of requiring a special application to the Court to dispense with printing. Appearance in such applications costs money in fees, and the matter may be overlooked. By adhering to the past practice the matter works automatically, because agents are accustomed to insert such marginal references in all cases where the print in question is already before the Court.

LORD KINNEAR—I agree that the objection is without substance, and should be repelled. If it had been necessary to decide the point for the first time, I should have preferred Lord Adam's view, because it seems to me that the procedure on appeals from the Sheriff Court to the Inner House must be regulated by the Act of 1868 and the Act of Sederunt, which was passed for carrying out its provisions, because it was that Act which for the first time allowed such appeals; and that it cannot be regulated by the Act of Sederunt following on the Judicature Act of 1825, when no appeal was allowed from the Sheriff to this Court, and the Sheriff's judgments were brought under review by advocations and suspensions brought in the Outer House. I should have been disposed to hold that the scope of the Act of Sederunt was limited by the procedure then in force, which it was intended to regulate, and that it would not apply to a process introduced by a much later statute. I have difficulty also in holding that the other construction is supported by practice. I think that all the practice shows is, that in two or three recent cases a very unsubstantial objection was not raised, because all the prints being before the Court nobody had any interest to raise it. But whichever be the right view, the result is the same, and I think that the objection should be repelled.

The Court pronounced this interlocutor—

“The Lords having heard counsel for the parties on the pursuers and respondents' objection to the competency of the record, &c., in the second appeal, No. 63 of process, Repel said objection, and appoint the cause to be put to the roll: Find no expenses due to or by either party in respect of the discussion on the competency.”

Counsel for Pursuer—Guy. Agents—
Watt, Rankin, & Williamson, S.S.C.
Counsel for Defender—Sandeman. Agent
—W. B. Rainnie, S.S.C.

Thursday, July 5.

FIRST DIVISION.

[Sheriff Court of Lanarkshire.

HENDERSON v. CORPORATION OF
CITY OF GLASGOW.

Reparation—Workmen's Compensation Act 1897 (60 and 61 Vict. c. 37), sec. 7 (1) and (2) —Factory and Workshops Act 1878 (41 and 42 Vict. c. 16), sec. 93 (3) (c)—“Factory” —“Manual Labour Exercised for Purposes of Gain”—Works Carried on by Corporation for Disposing of Town Refuse.

The Corporation of Glasgow had works which were used by them for disposing of the town refuse. This refuse consisted of manure, street sweepings, and the contents of ashpits; the manure was sent out for sale to customers or for use on properties owned or leased by the Corporation, without being treated, and the other refuse was subjected to certain processes, in some of which steam was employed, after which portions of it were sold or used, and the rest of the material was destroyed. The amount realised by sales did not cover the expense of carrying on the works, the deficit being provided for by assessment.

Held that the works were a factory within the meaning of the Factory and Workshops Act 1878, and consequently within the meaning of the Workmen's Compensation Act 1897.

Caledonian Railway Co. v. Paterson, Nov. 17, 1898, 1 F. (Just. Cas.) 24, distinguished.

Process—Workmen's Compensation Act 1897 (60 and 61 Vict. c. 37), sec. 1, sub-sec. (1)—Stated Case—Question of Fact—Accident Arising out of and in the Course of the Employment—Reparation.

A workman was employed by a corporation in their cleansing department in carting manure to their refuse despatch works. He entered the works, and was proceeding to certain “tips” by which manure was discharged into railway trucks at a siding in the works. While waiting for his turn he sat down upon a protecting bar which was placed along certain tanks, and, the bar having broken, he fell into a tank and sustained injuries which resulted in his death. While standing at the bar he was near enough to his cart to have full control of the horse.

In an arbitration under the Workmen's Compensation Act the Sheriff found in fact that the accident to the