

SUSPENSION—SLOWEY *v.* ROBERTSON.

Counsel for the Suspenders—Mr Shand and Mr Guthrie. Agent—Mr John Murray, S.S.C.

Counsel for the Respondent—Mr Patton. Agent—Mr John Patten, W.S.

This is a suspension of a summary warrant of ejectment pronounced by the Sheriff-Substitute of Stirlingshire, ordaining the suspender to remove from certain premises in the village of Alva belonging to the respondent, to which it appears that the suspender had acquired right by a verbal lease. The point on which the case turned was that the notice to remove was given to the wife, and it was pleaded for the suspender that the *præpositura* of the wife did not entitle her to receive such warning so as thereby to bind the husband. But it appeared in evidence that the premises had been originally taken by the suspender's wife, and that under that contract of location he had possessed the subjects along with his wife.

The LORD ORDINARY (Mackenzie) held that "as the suspender's wife was the person who took the house and paid the rent, verbal warning to her was enough in her husband's absence, his occupation being that of a hawker."

To-day the Court adhered.

The LORD JUSTICE-CLERK observed that the judgment to be pronounced did not in any way affect the authority of the case of Lambert *v.* Smith, relied upon by the suspender. There it was decided that the *præpositura* of the wife did not entitle her to receive such a warning, just as it did not entitle her to enter into the original contract of location, so as to bind the husband. But in the present case it must be held that the facts disclosed authority to the wife to perform such acts, and the husband could not at one and the same time avow what the wife had done, so as to get the benefit of the contract of location, and disavow the warning that had been made to her, so as to get rid of its consequences.

## Saturday, Nov. 4.

M'LAREN *v.* THE TRUSTEES OF THE CLYDE NAVIGATION.

Counsel for the Reclaimers—The Solicitor-General and Mr Shand. Agent—Mr Simon Campbell, S.S.C.

Counsel for the Respondent—Mr Gordon and Mr Marshall. Agents—Messrs J. & H. G. Gibson, W.S.

This is an action at the instance of the burgh schoolmaster of Renfrew, in his capacity of collector for the heritors and proprietors of heritages in the parish of Renfrew, for collecting an assessment imposed by the heritors for the purpose of rebuilding the parish church, and is directed against the Clyde Navigation Trustees, who refuse to pay the share of the assessment that has been imposed upon them. The *cumulo* assessment amounted to £5500, and was imposed by the heritors on the 24th of August 1860 on the real rent of lands and houses within the parish, at the rate of six shillings per pound. The assessment is levied, in conformity with the Lands Valuation Act, upon all subjects entered in the valuation roll; and the pursuer says that at the date of the assessment the defenders were entered in the roll as proprietors of the subjects at Clyde Bank and Yoker Lodge, in the parish of Renfrew, in respect of which it is proposed to assess them, and that they are thereby liable. The share claimed from the defenders amounts to £107, 2s.

The claim is resisted by the defenders on the ground that they are not heritors in the parish of Renfrew, but only tenants and occupiers of heritable subjects; and they produce certain leases in their favour from Mr Speirs of Elderslie, all of them for upwards of twenty-one years. They maintain that as the resolution of the heritors did not lay any part of the assessment on tenants of subjects, they are not liable, and, at any rate, that to impose such an

assessment upon them was *ultra vires* of the heritors. The pursuer, on the other hand, pleads that the defenders are liable to the assessment in respect of their appearing as proprietors in the valuation roll. With regard to the leases founded on to establish the character of mere occupancy, it is contended that their duration is sufficient to constitute the defenders owners and proprietors for the purpose not only of valuation under the Lands Valuation Acts but also of assessment, when such is imposed according to the real rent of lands and heritages. Further, it is contended that under the terms of the leases the defenders are truly owners and proprietors, and were properly entered as such in the valuation roll.

The Lord Ordinary (Jerviswoode) repelled the defences, and decerned against the defenders. To-day the Court, after full argument, took to avizandum a reclaiming note presented by the defenders.

## Monday, Nov. 6.

DONALDSON *v.* FINDLAY, BANNATYNE, AND CO.

Counsel for the Pursuers—Mr Patton, Mr Charles Robertson, and Mr R. H. Strachan. Agent—Mr Thomas White, S.S.C.

Counsel for the Defenders—Mr E. S. Gordon and Mr Cleghorn. Agent—Mr Æneas Macbean, W.S.

This is an action of count and reckoning by the representatives of the late Professor Donaldson, who raised it as in right of his wife, Dorothy Findlay or Donaldson, against Findlay, Bannatyne, & Co., a company formed for the purpose of paying the debts of the insolvent firm of Cunningham, Findlay, & Co., of Glasgow, of which company Robert Findlay, the father of Mrs Donaldson, was a partner. The case has been for many years before the Court, and on 3d March 1860, the Court of Session pronounced an interlocutor decerning in favour of the pursuers against Findlay, Bannatyne, & Company, and Robert Findlay, as sole surviving partner of that company, and Martin Tucker Smith, as the surviving disponee and assignee in trust, for behoof of the creditors of the said company, for the sum of £4033, 7s. 3d., with interest thereon since 26th February 1827, at the rate of 5 per cent. per annum; but under this qualification, that interest on the sum of £1383, 4s. from 9th July 1831, the date of an interim decree pronounced for said sum, to 10th November 1849, shall be restricted to the rate payable during that time if that be less than 5 per cent., and under deduction of the said sum of £1383, 4s., said sum to be applied towards extinction of the said sum of £4033, 7s. 3d. at the date of payment thereof. This interlocutor was appealed to the House of Lords, and a remit was made to this Court with certain directions to adjust all the claims of the parties. Thereafter, in pursuance of a remit from the Court of Session, a report was prepared by Mr Auldjo Jamieson, accountant, upon which the parties were appointed to be heard. Junior counsel were accordingly heard at great length upon Saturday and to-day. The Court, in respect of the complicated nature of the case, appointed the pursuers to state in a short note the different decrees which they now asked, with the grounds upon which they asked them, and the defenders to state in an answer to the note the grounds upon which they resisted the decrees asked, or any of them. The Court intimated that after these were lodged they would hear senior counsel thereon.

R. N. HENRY GARDINER IN M. P. WILSON *v.* JEFFREY AND OTHERS.

Counsel for Reclaimer—Mr Gordon and Mr Guthrie Smith. Agent—Mr Livingstone, S.S.C.

Counsel for Respondents—Mr Gifford and Mr Black. Agent—Mr D. Curror, S.S.C.

This case arose under the will of the late Henry Arnot, baker in Edinburgh. By a codicil the testa-