

be a reason for awarding expenses against him. But it must be added that the whole history of this road does not read well for the pursuer. On the contrary, one cannot help feeling that there was rather a breach of fair understanding between the parties. It was not such an arrangement as could afford any legal obstacle to the present claim, but it is an unfavourable aspect of the case for the pursuer. I am therefore disposed, on the whole matter, to give the defender the expenses of the first as well as of the second trial.

The other Judges concurred, in consideration of the special state of facts, and the Court accordingly applied the verdict, and found the defender entitled to expenses, including the expenses of the first trial.

Agent for Pursuer—James Webster, S.S.C.

Agent for Defender—Alex. Howe, W.S.

Thursday, November 21.

SUTHERLAND AND MACKAY v. MACKAY.

This was the first appeal to the Court under the Debts Recovery (Scotland) Act 1867, 30 and 31 Vict., c. 96.

The appellants having, in terms of the 14th section of the Act, presented to the Lord President of the First Division (to which Division the appeal had been taken) a note craving his Lordship to move the Court to send the appeal to the Summar Roll, were ordered to print the Sheriff-court process, and the appeal was sent to the Summar Roll.

The Lord President intimated that, although the case was sent to the Summar Roll, it was not to be taken for granted that the same course would be followed with regard to all cases under the "Debts Recovery Act"; for although the Act required that parties should move the Court to send the appeal to the Summar Roll, it did not bear that the Court were bound to send it there.

Counsel for Appellants—Mr Black.

Agent—D. Forsyth, S.S.C.

Thursday, November 21.

WALDIE v. GORDON'S TRUSTEES AND ANOTHER.

Landlord and Tenant—Lease—Concluded Contract—Offer and Acceptance—Conditional Acceptance—Issue. A party made a written offer for a farm. The landlord sent a written acceptance, under certain conditions and stipulations. In an action by the offerer, founding on the offer and letter of acceptance as forming a contract of lease—*Held* that there was no concluded agreement. Opinions, that if such letters had been followed by possession, the offerer might have been held to have acquiesced in the stipulations contained in the landlord's acceptance, so as to make a concluded contract.

Dismissal of Action—Remit to Lord Ordinary—Issue—Consent. A case being reported on adjustment of issues, the Court holding that the pursuer had not stated a case entitling him to go to a jury, of consent of pursuer, the case was not sent back to the Lord Ordinary, but was finally disposed of by the Court.

This was an action of declarator and damages at the instance of George Waldie, stabler in Montrose, against the trustees of the late Mr Gordon of Charleton and Kinnaber, and another, founded on alleged failure to implement a contract of lease.

In March 1866 the farm of Kinnaber was advertised to be let. The pursuer, on 27th June, sent in an offer for the farm in the following letter:—"I here offer for the farm of Mains of Kinnaber as advertised, say £140 per annum, payable in two instalments, the first half at Candlemas after shearing, and the other half of above sum at Lammas, the term of lease for nineteen years and crops, and £16 per annum for the wood, except the first year, which will be £8, and entry at Whitsunday 1867. The proprietor, if wanted, to git possession of the wood for a rabbit warren, and the land on the east side at valuation, by giving one year's notice previous. The proprietor gits the wood at £16, and no valuation, except what fencing may be at time of exchange of such, he (the proprietor) will have to take at valuation. £170 to be spent in repairs of house and steading, and to leave them in fair and habitable condition. Should any damage buy rabbits to amount of £5 of valuation per annum, the proprietor to pay for same, and the proprietor to give say £10 per annum for the first five years to me, to be expended on town's manure.

(Signed) "GEORGE WALDIE."

The sum of £140 was explained by the pursuer to be a clerical error for £240. On 8th July Mr G. M. Gordon, one of the defenders, and who acted for the other defenders in the management of the lands, transmitted the following letter to the pursuer:—"Sir,—I accept your offer of 27th ultimo on the following understanding, viz.:—That it is for a lease of the farm of Kinnaber, as at present occupied by Mr Milne, and as to the extent of which you must satisfy yourself, for nineteen years from Martinmas next, at an annual rent for the first five years of £230, and for the remainder of £240; and for a lease of the grazing in the Kinnaber wood, lying between the Kinnaber farm-steading and the dwelling-house of the gardener at Charleton, and on the east side of the high road which passes near that house, for eighteen and one-half years from Whitsunday next, at an annual rent of £16." The letter contained several reservations and stipulations, *inter alia*,—"Proprietor not to put up fences or renew existing ones. Tenant to fence where necessary to prevent sheep or cattle from entering on lands not let to him. Proprietor to pay damage which may be caused by rabbits to the arable ground, if such damage in any year exceeds £5, according to valuation. But, to avoid vexatious questions, proprietor to have power to intamate to tenant that the latter may keep down rabbits on arable land, in which event latter to have no claim for damages. Lease to be under conditions similar to those in current lease to Mr Milne, of which a copy is herewith sent, except that wood rent should be payable at expiry of each six months for the preceding six. . . . That if tenant die, proprietor may declare lease at an end as at date of death or first term of Whitsunday and Martinmas thereafter, and that tenant insure stock. Lease to be under the conditions in favour of Mr Milne specified in his lease, and in favour of Mr Burgess as to access to a field through corner of Kinnaber wood, in terms of his lease.—I am," &c.

Various correspondence passed between the parties. The pursuer alleged that he agreed to the con-