

Friday, May 21.

FIRST DIVISION.

PETITION—DAVID STAIG.

Process—20 and 21 Vict., cap. 56—Reclaiming Note.

Held that an interlocutor by the Lord Ordinary on the Bills in vacation, pronounced in a summary petition, which during session would have come before the Junior Lord Ordinary, must be reclaimed against in eight days.

An interlocutor on this petition was pronounced by Lord Gifford, the Lord Ordinary officiating on the Bills, on May 7, 1875. This was reclaimed against on May 19, and on the case appearing in the single bills the respondent objected that the reclaiming note, not having been boxed within eight days, was too late.

At advising—

LORD PRESIDENT—My Lords, I think we must refuse this reclaiming note, in respect that it is too late. It is quite possible that has been caused by a mistake, but unfortunately it is a fatal mistake. There is no doubt that this is one of the petitions to be presented to the Junior Lord Ordinary in terms of sec. 4 of the Act of 1857. Then it is provided by sec. 5 that “the judgment of the Lord Ordinary granting or refusing any such petition or application, or disposing of any such report, unless the same shall be brought under review in manner hereinafter provided, shall be equally valid and effectual as a judgment of either Division of the Court to the like effect.” Section 6 provides that “It shall not be competent to bring under review of the Court any interlocutor pronounced by the Lord Ordinary upon any such petition, application, or report as aforesaid, with a view to investigation and inquiry merely, and which does not finally dispose thereof on the merits; but any judgment pronounced by the Lord Ordinary on the merits, unless when the same shall have been pronounced in terms of instructions by the Court on report as herein-before mentioned, may be reclaimed against by any party having lawful interest to reclaim to the Court, provided that a reclaiming note shall be boxed within eight days, after which the judgment of the Lord Ordinary, if not so reclaimed against, shall be final.” Now this interlocutor was pronounced on May 7, and the reclaiming note was not boxed until May 19, and consequently after eight days. It has been said, however, that this interlocutor is one by the Lord Ordinary on the Bills, and so is a Bill-Chamber interlocutor, which may be reclaimed against within fourteen days. Now this is not a Bill-Chamber interlocutor; it is not an interlocutor in a Bill-Chamber case. The process is in the hands of one of the clerks of Session. The Lord Ordinary on the Bills in vacation comes *in loco* of the Junior Lord Ordinary, and in discharging his duties he is not exercising the jurisdiction of the Bill-Chamber.

The Court pronounced the following interlocutor:—

“Refuse the reclaiming note as incompetent; find the respondent entitled to additional expenses, which modify to two pounds two shillings sterling, and remit to the Junior Lord Ordinary to decern for said modified

expenses along with the other expenses found due by said interlocutor.”

Reclaimers' Counsel—J. Campbell Smith. Agent—Andrew Clark, S.S.C.

Respondent's Counsel—J. M. Gibson. Agents—Macnaughten & Finlay, W.S.

Tuesday, May 21.

FIRST DIVISION.

ROBB v. SCHOOL BOARD OF LOGIEALMOND.

(Ante, p. 278.)

School—Schoolmaster—Dismissal—Retiring Allowance—Education Act, 1872, cap. 60. Circumstances in which held that a schoolmaster dismissed for inefficiency, in terms of the 60th section of the Education Act of 1872, was not entitled to demand a retiring allowance.

The circumstances of this case are fully narrated in a former report, *ante*, p. 278. In accordance with the interlocutor of the Court of 5th February 1875, the pursuer put in the following Minute of Amendment:—

“6. The attendance at the said Side school at Ballandee has not been large at any time. The supply of schools in the district has been disproportionate to its wants, and even an equal distribution of pupils among these schools would have allowed only of a small attendance at each. The gradual decrease in the number of pupils at the said Side school has not been caused by the pursuer's inattention or neglect of duty, and he has constantly and regularly fulfilled the duties incumbent on him. Down to the year 1872 his school was regularly visited and inspected by a committee of the presbytery, and before the School Board came into existence no fault was ever imputed to him, and no complaint against him was ever made with regard to his discharge of duty as a teacher.

“7. Various causes operated to the prejudice of the said Side school. One was, that the other schools in the parish were more conveniently placed in the centres of population. These are the hamlet of Harrietfield, about a mile to the west of Ballandee, where the pursuer's school was situated; and the hamlets of Chapelhill and Millhaugh, which are near one another, about a mile to the east of Ballandee. At Harrietfield there was a school in connection with the United Presbyterian Church, and at Millhaugh an adventure school. Excepting at these hamlets, the population of the parish was widely scattered over a large area, and very few resided at or near Ballandee.

“8. Another cause was, that the population of the district has been generally on the decrease, and since 1858 has been diminished by about a third. This was owing to the removal of small dwellings formerly occupied by cottars, and also in a considerable measure to the stoppage of a woollen factory which was worked at Millhaugh until about the year 1867.

“9. Other circumstances from which the said Side school at Ballandee suffered arose out of sectarian rivalry and animosity, and also out of the political feeling that ran high in the district in