

Friday, July 15.

## SECOND DIVISION.

[Lord Lee, Ordinary.]

RONALDSON AND OTHERS (GRAY'S TRUSTEES)  
v. DRUMMOND & REID.*Expenses—Agent and Client—Discount upon Disbursements.*

An agent who receives commission or discount upon the payment of charges incurred on account of a client is not entitled to charge the full amount of such payment against his client or against the opposite party in a litigation who has been found liable in expenses, but can only take credit for the sum actually disbursed.

The Auditor's report in the case of *Gray's Trustees v. Drummond & Reid*, June 7, 1881, *supra*, p. 551, having been enrolled for approval, the defenders, who had been found liable in expenses, objected to the said report on the following grounds—(1) That in course of the inquiry under the remit it had been ascertained that the pursuers' agents, Messrs James L. Hill & Company, received from Mr Dowell, who had been appointed to sell the furniture of Harthill Villa, a part of the commission charged by him for selling the furniture, and the full amount of that commission, without crediting the repayment, had been charged and allowed against the defenders. (2) That the account as audited included charges for the full professional remuneration of the pursuers' said agents connected with the sale of the furniture, and that the discount received out of the auctioneer's commission had not been credited. (3) That the pursuers' agents being bound to credit the said discount to the pursuers, the latter were bound to credit it in a question with the defenders. (4) The pursuers' agents had refused to state the amount of the said commission, and said that it had not been passed through their business books. The defenders believed that the amount of this commission was not less than £35, and they claimed that this sum be deducted from the amounts of the accounts as reported by the Auditor.

The pursuers' agent wrote to the Auditor in the following terms in explanation of his account—"Dear Sir,—With reference to the taxation of the non-judicial account in this action, I beg to mention that Mr Dowell allowed and paid me a portion of the commission charged by him for the realization and sale of the furniture pointed and sold in connection with the action. This allowance was treated by Mr Dowell as a personal commission, and he made it when settling other transactions with me, and it thus does not appear in my business books, and so was not known to my clerk who charged the account and attended the taxation."

He also produced the following letter to himself from Mr Dowell, the auctioneer—"Gentlemen,—I beg to state that agents are not entitled to commission from us, or to any share of our commission for conducting sales of property or effects; but there are cases where, from a variety of transactions, and from personal consideration, we occasionally give a donation, which of course is directly out of our pockets."

At advising—

**LORD JUSTICE-CLERK**—I am rather glad to have an opportunity of expressing an opinion on the matter in hand. The notion of a so-called system of commission, by which the agent gets more than he is entitled to without the knowledge of the opposite party, is not creditable, nor is it to be allowed, and I shall always oppose it. The system goes too far in high transactions and in low transactions, and in this case the attempt to charge against the unsuccessful party more than was actually paid to Mr Dowell for his work is not to be listened to.

**LORD YOUNG**—I am of the same opinion, and concur in every word that your Lordship has said. I assume that Mr Dowell was properly paid with the money which he received, and not that he gave back as charity to Mr Hill or anyone else a portion of his own proper right. He gives discount on receiving payment of his account, and I assume he has been rightly paid with what he actually received. If Mr Hill charges against his client, and consequently the client against his adversary in the litigation, more than he paid, he charges so much in excess of what he is entitled to. He is remunerated according to a well-established scale of remuneration, and the law will not allow him to get more in a question with his client, or allow his adversary in litigation to pay more. It is nothing to the purpose to say it is a matter between the agent and his client. So it is—that is to say, if the client is not seeking to make a charge against anyone else. But it so happens here that he has made a charge against Mr Drummond, who objects to being charged with Mr Hill's account, which is in excess of a just charge. He is entitled to what was paid to Mr Dowell and no more. I agree in condemning the system when it prevails, and it is notorious that it does prevail universally. Tradesmen, grocers, saddlers, coachmen receive tips, which are all paid by the master in the end. It is no doubt hard to detect the practice, but when we do detect it we must discountenance it.

**LORD CRAIGHILL** concurred.

The Lords sustained the objection.

Counsel for Pursuers—Dickson. Agents—J. L. Hill &amp; Co., W.S.

Counsel for Defenders—Pearson. Agent—Thomas White, S.S.C.

Friday, July 15.

## SECOND DIVISION.

[Lord Rutherford Clark,  
Ordinary.]MURRAY'S TRUSTEES v. MURRAY AND  
OTHERS.*Succession—Marriage—Contract—Conquest—Legitim.*

In an antenuptial contract of marriage, the husband, besides undertaking certain