

Counsel for Pursuer—Mr Millar and Mr J. C. Smith.  
Agent—Mr James Hatton, W.S.

Counsel for Defenders—Mr Fraser, Mr Scott, and Mr William N. M'Laren. Agent—Mr James Barton, S.S.C.

In December 1861 a lease of a shop in Nelson Street had been granted by the late Mrs Hatton to the defender John Clay, who is an ironmonger, for seven years, from Whitsunday 1862. This lease contained a clause excluding assignees and sub-tenants. On 3d September 1863, Mrs Hatton, with concurrence of her husband, raised an action of removing against the defenders. The grounds of the action are set forth in the 11th and 12th articles of the pursuer's condescendence as follows:—"On or about 6th June 1863 the remainder of the stock of ironmongery goods in the shop in Nelson Street was removed by Clay to another ironmongery shop occupied by him in Pitt Street; and about the same time the furniture belonging to Miss M'Luckie was brought into the shop and room adjoining the same, and the window of the shop, which had been previously stocked with ironmongery goods, was filled with gloves, ribbons, and other articles connected with her calling, which is that of a cleaner of gloves and ribbons. From the time she took possession of said shop, early in June, down to the execution of the summons in the present action, a period of more than three months, the shop was in the entire and sole possession of Miss M'Luckie." The summons concluded in the following manner:—"And our said Lords ought and should farther decern and ordain the said Jane M'Luckie, as assignee to said lease, or as tenant and sub-tenant in said subjects, holding and possessing the same under the authority of the said John Clay, in whatever manner she may pretend to do so, to cease from occupying the said subjects, and to fit and remove," &c.

It was maintained by the defenders that the action is irrelevant, because the conclusions are applicable only to a sub-lease, or an assignation to a lease, whereas it is nowhere averred in the condescendence that Clay had either sublet the premises to Miss M'Luckie or had granted to her an assignation to his lease. Lord Ormisdale, of consent of both parties, granted a proof before answer. A voluminous proof having been led, his Lordship found for the pursuer, holding that the arrangement between the defenders, and their acts consequent thereon, amounted to a cession by the defender Clay of the shop and premises to the defender M'Luckie, and were adopted by them as a collusive device to defeat the conditions of the lease excluding sub-tenants and assignees.

The defenders having reclaimed, the Court held that the summons concluded that Miss M'Luckie should be decerned to remove, not only as assignee or sub-tenant, but also "in whatever manner she may pretend to possess the premises under the authority of the said John Clay;" that such a conclusion applied not only to an assignation of the lease or to a sub-lease, but to any form of possession which Miss M'Luckie may have held of the premises; that though nothing was said in the condescendence about Clay having sub-let the premises or granted an assignation to the principal lease, yet it was averred that Clay had left the premises with his goods and that Miss M'Luckie had come in with hers; and that the summons was therefore relevant. The Court then appointed parties to be heard on the proof, but before the debate had proceeded further the defenders consented to the Lord Ordinary's interlocutor being adhered to on the pursuer agreeing to accept a sum of £20 in name of expenses.

#### GALLETLY, HANKEY, AND SEWELL v. LAW.

*Process—Jury Trial—17 and 18 Viet c. 34.* Warrant to cite witnesses resident in England to give evidence at a jury trial *refused*, but commission to examine them in London *granted*.

Counsel for Pursuers—Mr Shand.

Counsel for Defenders—Mr W. M. Thomson.

A motion was to-day disposed of in this case, made by the defenders on the authority of the 1st and 2nd sections of the Act 17 and 18 Vic., c. 34, asking a warrant from the Court to cite certain witnesses, owners of vessels in London, to give evidence at a jury trial, to be held in Edinburgh during the ensuing jury sittings. The pursuers are brokers in London, and they bring the action against the defender, who is sole owner of the ship Indian Empire, concluding for their commission as brokers employed to freight the defender's ship, and for certain disbursements which they allege they were obliged to make to certain parties whose goods they had freighted to the Indian Empire, but were unable to carry by reason of the ship being taken out of their hands. The claim is resisted on the ground that the pursuers mismanaged their contract by taking lower rates of freight than other owners of ships were receiving at the time in the dock in which the Indian Empire lay.

The defenders propose to make out this defence through these owners of ships, and they asked a warrant to cite them for the trial which is to take place on Tuesday. They contend that this not being a case of skilled evidence, and therefore not a matter of opinion, but a question of fact, it does not fall within the judgment of the Court in *Macniven v. Turner*, where the Court refused to compel skilled witnesses to attend. The Court refused the motion, on the ground, that although the evidence referred to by the defenders might be the best evidence, it was not the only evidence, because the rate of freight at the time libelled was a general fact in the knowledge of several persons, and therefore there was not sufficient urgency authorising the Court to exercise their discretion in favour of the defenders. The Court, however, granted commission and diligence to the defenders to examine the witnesses in London.

#### DAVIDSON v. LAWRIE.

*Remuneration of Services—Commission—Shipbroker.*

Defences to an action by a broker for commission on the sale of a ship, which (diss. Lord Benholme) repelled.

Counsel for the Advocate—The Solicitor-General, Mr Clark, and Mr Balfour. Agents—Messrs Gibson-Craig, Dalziel, & Brodies, W.S.

Counsel for the Respondent—The Lord Advocate and Mr Shand. Agents—Messrs Adamson & Gulland, W.S.

This is an advocacy from the Sheriff Court of Lanarkshire. The action is at the instance of Alexander Bartleman Davidson, master mariner, lately residing in Glasgow, now master of the steamer Georgiana, of Liverpool, and is directed against James Gray Lawrie, shipbuilder, Whiteinch, Partick. The summons concludes for £375, which the pursuer says was the stipulated and agreed upon commission at the rate of 2½ per cent., between him and the defender on the sum of £15,000, being the price of a ship which the pursuer says he was the means of selling for the defender to Mr George Wigg, merchant, Liverpool. The pursuer brought about an interview between the defender and Mr Wigg, and ultimately a bargain was made. On 15th November 1862 a formal contract was executed between Mr Wigg and the defender, whereby he agreed, for the sum of £15,000 and £18,000 respectively, to build two steamers for Mr Wigg. Any question as to the second steamer is withdrawn in this process. Previous to the execution of this formal contract and during the communications that were going on between Mr Wigg, the pursuer, and the defender, the defender addressed the following letter to the pursuer:—

"Glasgow, 11th October 1862.

"Captain Davidson—Dear Sir, I could deliver my ship 212.0 × 25.0 and 1510 in 2½ months from date of order, with engines for 12 knots; and my price would be £15,000 cash; or I could deliver in 3