

LORD KINLOCH—I am of the same opinion. I think it clear that both the defender and Scott employed the agents in these actions; and it is not difficult to understand why. The defender evidently had an interest in the action of multipounding; and, moreover, in that action, and by being a party to it, he actually got £125. I do not see the slightest evidence of mismanagement on the part of the agents. And I think we cannot do otherwise than adhere to the Lord Ordinary's interlocutor.

Lord Ordinary's interlocutor adhered to.

Agent for Reclaimer and Defender—James Barclay, S.S.C.

Agent for Respondent and Pursuer—D. J. Macbrair, S.S.C.

Tuesday, November 22.

CHEYNE v. GRAY.

*Procedure—Absence of Counsel—Professional instruction—Expenses.* Reclaiming Note refused in respect of no appearance for reclaimer, whose counsel was alone in the case, it being no excuse that he was engaged in a proof before a Lord Ordinary, and was alone there too. The Court refused to hear a counsel instructed on the spot, remarking that that was not professional instruction. No expenses allowed, in respect that there was no appearance for the respondent either.

When this case was called no appearance was made for the reclaimer, and it was stated at the bar that, as the case was a small one, only a single counsel was instructed, and he was engaged in a proof before a Lord Ordinary, in which he was also employed alone. The Court, while observing that, in a case such as this, one counsel appeared to be sufficient, held that the excuse could not be accepted, and desired that the reclaimer's counsel be informed of this. In the meantime, the gentleman who had acted as counsel for the respondent (the pursuer) in the Outer House appeared at the bar, and stated, in reply to the Lord President, that he had not been instructed for the Inner House, though he had no doubt that he would be. After waiting for some time,—the reclaimer's counsel failing to appear,—the Court, in respect of no appearance for the reclaimer, refused the reclaiming note, but, in respect of no appearance for the respondent, without expenses.

Afterwards, a counsel appeared for the reclaimer, and in reply to the Court, stated that he had been instructed since the calling of the case, to support the reclaiming-note. The Lord President remarked that such instruction could not be held as professional instruction; and that the Court could not hear him. It was farther remarked, that as an interlocutor had already been pronounced, the Court could not listen to counsel's argument.

Reclaiming-note refused, but without expenses.

Agent for Reclaimer—James Buchanan, S.S.C.

Agent for Respondent—Thomas Sprot, W.S.

Wednesday, November 23.

FORBES v. INNES.

*Process—Declarator—Reduction—Relevancy—Personal Exception—Glebe—Heritors.* Circumstances in which it was held that the declaratory conclusions of an action could not be

maintained so long as a certain decret-arbitral remained unreduced.

*Held* that—where, after a regular motion of the presbytery for perambulation of the glebe, of which notice had been given to the heritors, the minister and one of the heritors of a parish had entered into a submission for the determination of the boundaries of the glebe, which submission was carried out through a long course of proceeding, and a final decret-arbitral pronounced—it was not a relevant ground of reduction of the said submission and decret-arbitral, at the instance of the heritor, to say that the other heritors had not been made parties to the submission; and that he himself had become a party to it on the understanding that they should also do the same. *Held* that he was barred *personalis exceptione*, no such understanding appearing on the face of the submissions, and no objection having been taken during the proceedings, and none of the other heritors having any interest to disturb the existing state of matters.

This was an action of declarator and reduction at the instance of Forbes of Haddo, against the other heritors of the parish of Inverkeithny, the Presbytery of Turriff, in which the said parish lay, the Rev. John Souter, the minister of the said parish, and George Cruickshank, farmer at Comisty, and John Ligertwood, advocate, Aberdeen, arbiter and clerk respectively, under a deed of submission which was therein sought to be reduced. The pursuer concluded (1) that it should be found and declared that the minister's glebe of the parish of Inverkeithny consisted "of the lands specified in the minutes of meeting of the Presbytery of Turriff, within which the said parish of Inverkeithny is situated, dated 15th August 1750, and which lands are therein described as follows:"—There was then inserted the description of the said glebe lands from the minutes of said meeting, which had been called for the express purpose of perambulating the same. There then followed a conclusion as to the pursuer's own property of Haddo adjoining the glebe, and one requiring the minister and presbytery to flit and remove from the same. "(2) That, if necessary, in order to give effect to the conclusions above written, decree of reduction should be pronounced, of, first, a pretended deed of submission, dated 1861, bearing to have been entered into between the defenders, the said Presbytery of Turriff and the said minister of Inverkeithny on the one part, and the pursuer on the other, whereby it was alleged that the said parties thereto submitted and referred to the defender, the said George Cruickshank, as sole arbiter, to ascertain, settle, and determine the boundaries of the said glebe of Inverkeithny. Second, a pretended decret-arbitral, dated 22d February 1867, alleged to have been pronounced under the said submission.

In his condescendence the pursuer averred that, by the minutes of meeting of the Presbytery of Turriff in 1770, the limits of the glebe had been determined, and the boundaries accurately defined; that in consequence of the late minister, Mr Milne, having for many years been a tenant of the pursuer's authors in the farm of Dundore, on the estate of Haddo adjoining the glebe, the boundary of the glebe had been lost, and the pursuer's lands encroached upon; that for some years previous to 1860 a dispute had existed between the pursuer and the minister of the parish as to the