

sterling, including a sum of £31, 5s. sterling, charged as commission. The respondents (pursuers) brought an action to recover.

The Sheriff-Substitute (BELL) and the Sheriff (ALISON) both held that the defender was liable.

The defender advocated.

SCOTT and BRAND for him argued—(1) That the pursuers held themselves out as stockbrokers in the transactions which took place between them and the defender and the actual brokers in these transactions; but that, as they were in point of fact not brokers, and had delegated the making of the purchases and sales to others who were brokers, but whom the defender did not employ, they were not entitled to recover in respect of the said alleged losses. (2) That the defender instructed the pursuers to buy on the 27th February double the quantity of shares of each stock required for the engagement to deliver on that day, and 200 more; and that if the pursuers had obeyed these instructions, he would have had a profit upon the new shares equal to or greater than the loss upon the others, and that as the sum sued for is the loss arising from the pursuers' failure to fulfil the whole order, they are not entitled to recover. (3) That the defender was not liable for losses on transactions between the stockbrokers and the pursuers, but with which the defender personally had no concern, seeing that he did not employ the stockbrokers nor was any party to transactions between the pursuers and them. (4) That, not being brokers, the pursuers were not entitled to charge commission on the said transactions.—(*Cope v. Rowlands*, 2 M. & W., p. 149. Keyser, Law of the Stock Exchange, p. 267; 6 Anne, cap. 16.)

WATSON and TRAYNER, for the respondents, were not called upon.

The Court adhered to the judgments of the Sheriff and Sheriff-substitute, and found the pursuers entitled to expenses both in this and in the inferior court.

Agent for Advocator—John Walls, S.S.C.

Agents for Respondents—Neilson & Cowan, W.S.

Friday, December 13.

DAVIDSON v. CLARK AND OTHERS.

Vitiosus Intromission—Statute 1695, cap. 41—Renunciation of Succession—Expenses. Next of kin charged under the Act 1695, cap. 41, having neither renounced nor confirmed, and being sued as vitiosus intromitters, renounced the succession when the case was in the Inner-House upon a reclaiming note; the Court found them liable in expenses of process, under deduction of the expense of the minute of renunciation.

This was an action brought against the next of kin of the deceased Mary Clark, at the instance of a person who had alimented her illegitimate child, for the amount of aliment expended and to be expended upon it. Before bringing the action, the pursuer charged the defenders under the Act 1695, cap. 41, to obtain themselves confirmed executors *qua* next of kin of the deceased Mary Clark within twenty days, "with certification to them if they fail either to get themselves confirmed as executors foresaid, or to renounce their right in the moveable effects of the said Mary Clark, they shall be liable to the complainer (pursuer) as vitiosus intromitters with the said Mary Clark's moveable effects."

The defenders did not confirm, and the present action was brought against them as vitiosus intromitters under the Act, and concluded that they should be decerned against, conjunctly and severally, in the premises. The defenders denied that they had had any intromission with Mary Clark's estate, which, they alleged, consisted entirely of a claim under a settlement of her father, which was not presently exigible. They did not renounce the succession, but were willing that the pursuer should have decree against Mary Clark's estate, provided she did not ask expenses against them, contending that she was bound to constitute her claim against them at her own expense, just as if they had been confirmed executors. The pursuer refused to agree to this, and defences were lodged upon the matter of expenses. The pursuer contended that the defenders were bound either to confirm or to renounce the succession; that, as they had done neither, they were vitiosus intromitters under the Act, and could not plead the privileges of duly confirmed executors, nor require a constitution of the pursuer's claim at her own expense.

The Lord Ordinary (KINLOCH) decerned against the defenders, with the declaration that the decree should only be enforceable to the extent of the succession of Mary Clark devolving on them, and found the defenders entitled to the expenses of process.

The pursuer reclaimed.

MACLEAN (with him GIFFORD) for her, and THOMSON, for the defenders, were heard.

In the course of the hearing, the defenders offered to renounce the succession, and were allowed to give in a minute to that effect, the pursuer not opposing.

Upon this being done, the Court, in respect of the minute, assolizied them from the passive titles libelled, but decerned against them *cognitionis causa tantum*, to the effect that the pursuer might attach the moveable estate of the deceased Mary Clark, and found the pursuer entitled to expenses, under deduction of the sum of £2, 2s., as the expenses of the minute of renunciation put in by the defenders.

Agent for the Pursuer—W. Miller, S.S.C.

Agent for the Defenders—A. Morrison, S.S.C.

Saturday, December 14.

FIRST DIVISION.

GRANT, PETITIONER.

Ship—Register—Arrestment—Real Owner. A ship, formerly the property of B, stood registered in names of A and the pupil children of B. A creditor of B raised a petititory action against him; arresting the ship *ad fundandam jurisdictionem*, and on the dependence. He also raised a declarator and reduction against the pupil children, to reduce the bill of sale to them, and declare that B was the true owner of the share in the ship standing in name of his pupil children, and arrested the ship to found jurisdiction. On petition of B, as administrator-in-law for his children, the arrestments recalled.

This was a petition for recal of arrestments, presented by John Grant, timber merchant, Cardiff, county of Glamorgan, South Wales, as administrator-in-law for Catherine Flora Grant and others, his pupil children.