and examined, and the bill stamp found to bear the figures 10, 5, 65.

Gifford and Asher for reclaimers.

Campbell Smith, and M'Lennan for respondent.

At advising—

Lord Cowan was of opinion that the interlocutor ought to be adhered to. It was averred that a blank bill stamp, granted by the suspender before his sequestration, and before the sequestration of Peter Macnab and his firm, had been filled up and indorsed to the charger. The mandate to fill up this document and convert it into a bill fell by the suspender's sequestration, and to use it, as it was said to have been done, was an act of gross fraud on the part of the drawers. As against the chargers, it was averred that they knew of the drawers' fraud, and that they received the bill in the full knowledge of how it had been fabricated. It appeared on the face of the bill that the stamp had been issued on the 10th May 1865, which was long anterior to the suspender's sequestration. That ought to have put the chargers upon their inquiry; but instead of inquiring they took an indorsation of the bill "without recourse" against the party from whom they received it. That was, to say the least of it, a very suspicious proceeding on their part, and he thought the circumstances disclosed, and the averments, were quite sufficient to warrant a proof by parole of the allegations of fraud and privity to it.

Lord Benholme concurred, being of opinion that the indorsation "without recourse" showed that the indorsees were conjunct and confident parties with the drawers and indorsers, and that, if the one party had committed a fraud, the other had a sufficient knowledge of it to bind them together in their interests.

Lord Neaves and the Lord Justice-Clerk also concurred, both laying great stress upon the date of the stamp; upon the suspender's sequestration, which was a public act of which the indorsees must be presumed to have known; and upon the indorsation "without recourse;" Lord Neaves remarking that Barnett & Co. must have been presumed, when they accepted of this indorsation "without recourse," to have made very thorough inquiry about the acceptor.

The Court adhered, with expenses.

Agents for Reclaimers—White-Millar & Robson, S.S.C.

Agent for Respondent—W. Milne, S.S.C.

Saturday, December 21.

HENDRY *v.* GRANT & JAMESON.

Process—Evidence Act—Expense of Printing Proof. After a proof was led before the Lord Ordinary, the defenders, who had led about one-half of the proof, intimated that they would bear no part of the expense of printing. The pursuer accordingly printed the whole, and called on the defenders to relieve him of one-half, which they refused to do. *Held*, on a report from the Lord Ordinary, that each party having led an equal amount of proof the defenders were liable in one-half.

In this case, which is an action of damages at the instance of a grieve against Messrs Grant & Jameson, writers, Elgin, on the ground partly of failure to obey instructions, and partly for want of professional skill in the management of a cause which he had employed the defenders to raise, issues were reported to the Court, and a long discussion followed. The defenders, before judgment was pronounced, offered to take a proof before the Lord Ordinary under the Evidence Act, to which the pursuer assented. The proof was accordingly led. Upon its conclusion the defenders' agents intimated to the pursuer that they would share no part of printing the proof. The pursuer accordingly printed the whole, and then called upon the defenders to relieve him of one-half, which they refused to do. Each party led an almost equal amount of proof. The Lord Ordinary was then moved for an order on the defenders to that effect. His Lordship reported the point.

W. A. Brown, for the pursuer, argued that the defenders should be ordained to pay one-half of the expense of printing the proof. It was necessary that the proof should be printed for the Inner-House, and the defenders having intimated that they would not print at all, the pursuer was entitled to print the whole, and he had an equitable claim to be relieved by the defenders of what he had expended for them.

Lancaster, for the defenders, answered:—It is not expedient that any such order should be pronounced as that which the pursuer seeks. The Lord Ordinary has reported the proof, and the case will be very soon disposed of by final judgment. It will then be seen who has to defray the whole expense of the proof, for that will fall on the unsuccessful party. The pursuer is a poor man, and in the event of the case being decided against him the defenders might fail to recover what they had disbursed for him, and that would be a hardship. Further, the nature of the action is one which justifies the defenders in resisting this motion. It is an action of damages against them, grounded on the allegation of want of professional skill. The case could not be brought to the Inner-House unless the proof was printed, but the defenders would provide no facilities for that being done.

The Court, without laying down any general rule for practice, and proceeding on the fact that there was an equal amount of proof on each side, ordained the defenders to divide the expense of the proof, and found them liable in the expenses of the discussion.

Agent for Pursuer—James Bell, S.S.C.

Agents for Defenders—H. & A. Inglis, W.S.

Tuesday, December 24.

FIRST DIVISION.

SMITH *v.* ANDERSONS.

Embezzlement Act, 17 *Geo. III., c.* 56—*Conviction—Penalty—Clerk of Court.* In a suspension of a conviction obtained under sec. 11 of the Embezzlement Act, the conviction bearing to proceed on the deposition of two witnesses, manufacturers, and on the failure of the party to give a satisfactory account of how he came by the stuff; *held* (1) that the deposition was unnecessary, and (2) that the judgment rightly ordained payment of the penalty to the clerk of court, he being the proper immediate recipient, although ultimately the penalty was to be divided between the informer and the poor of the parish.

This was a suspension of a conviction obtained under the Embezzlement Act, 17 Geo. III., c. 56. The suspender alleged that on 20th November last he was waiting at the Newburgh station of the North British Railway, between seven and eight o'clock in the evening, when a policeman came up and asked him if two bags, lying on the platform, belonged to him. On his replying that they did, he and the bags were taken to the Town-house of Newburgh. He was then taken before two justices. The respondents, T. S. Anderson and W. Anderson, manufacturers, compeared and made deposition, and between nine and ten at night a sentence was pronounced against him, bearing that the justices, in respect of the depositions of the Andersons, and in respect of Smith refusing to give any satisfactory account how he came in possession of the yarns, or to produce the party from whom he purchased them, found him guilty of a misdemeanour in terms of 17 Geo. III., c. 56, sec. 11, and in terms of sec. 14 fined him £20, to be paid to the clerk of Court at Newburgh within seven days, warrant of distress to issue on failure of payment within the specified time.

Smith now contended that these proceedings were illegal and oppressive. No complaint had been made by any one under sec. 10, or that the yarns in the bags were suspected to be purloined, and no reasonable suspicion existed before the apprehension that the yarn was embezzled. The deposition on which the judgment proceeded was not signed and authenticated by the respondents; and the judgment was null, as not being in terms of the statute, inasmuch as it did not give one half to the informer and the other half to charitable purposes, but ordained payment to the clerk of court at Newburgh.

Section 11 enacts that "every peace-officer, constable, . . . &c., shall and may apprehend, or cause to be apprehended, all and every person or persons who may reasonably be suspected of having, or carrying, or any ways conveying, at any time after sun setting and before sun rising, any of such materials suspected of being purloined or embezzled, and the same, together with such person or persons, as soon as convenient, may be conveyed or carried before two justices for the county, town, or place, within which the suspected person or persons may be apprehended; and if the person or persons so apprehended in conveying any such materials shall not produce the party or parties duly entitled to dispose thereof, from whom he, she, or they, bought or received the same, or some other credible witness, to testify upon oath or (being of the people called Quakers) upon solemn affirmation, to the sale or delivery of the said materials, or shall not give an account to the satisfaction of such justices, how he, she, or they came by the same; then the said person or persons so apprehended shall be deemed and adjudged guilty of a misdemeanour, and be punished in manner herein aftermentioned, although no proof shall be given to whom such materials belong."

Section 14 provides that every person deemed guilty of a misdemeanour, under the 11th and other sections, "shall, for every such misdemeanour, forfeit, for the first offence, the sum of twenty pounds . . . of which forfeiture one moiety shall be paid to the informer, and the other moiety to and amongst the poor of the parish, town, or place where such conviction shall be, or to such public charity or charities as the justices convicting shall appoint."

Scott for complainer.

Fraser, for respondent, was not called on.

Lord Justice-General—I have no doubt in this case. This appears to me to be a very good conviction under the 11th section of the Act. It is not an Act under which it is very easy to have the proceedings properly conducted. In former times, especially, they were very badly conducted, and the practitioners who acted for the manufacturers were in the habit of bungling the procedure very considerably; but here the clerk of court went about the matter well, both as to calligraphy and composition. The proceedings are entirely under the 11th section, and the penalty is under the 14th. We have nothing to do with the 10th section. That section authorises justices, in certain circumstances, to issue search warrants for the purpose of searching dwelling-houses, out-houses, and other places, and, if the materials suspected to be embezzled are found, the parties in whose hands they are found are to be brought before two justices, and if they shall not give an account to the satisfaction of the justices how they came by the same, they are to be deemed guilty of a misdemeanour, and punished, although no proof be given to whom such materials belong. But that is quite different from the present case. The suspender tells us the nature of this case. He had two bags, and was waiting at a railway station, when he was apprehended and carried before two justices. That was after eight o'clock at night. Is not that the very case for which the 11th section provides? It provides that any constable may apprehend any person who is reasonably suspected of having or carrying embezzled materials, and convey the same along with such person before two justices, and if such person shall not produce the party from whom he bought the same, or give a satisfactory account of how he came by the same, he shall be deemed guilty of a misdemeanour, and punished, although no proof be given to whom the materials belong. Here, the complainer was brought before two justices, and the account he gives is as unsatisfactory as could be, for he could give no account at all, and said he would give no account, and therefore he was convicted. I do not think it was necessary to have the evidence of the Messrs Anderson at all. No doubt it was satisfactory to the minds of the parties to have it, and it does no harm. The conviction is in good form, and in ordering the penalty to be paid to the clerk of court, they take the ordinary procedure in cases where there is no special provision as to payment or recovery. The clerk of court is the proper party to receive all penalties that may be adjudged, unless the statute directs otherwise. There is no special direction here. All that is said is, that ultimately one-half shall go to the informer, and one-half to the poor of the parish; but the proper immediate recipient of all such penalties is the clerk of court.

The other judges concurred.

Agent for Complainer—James Bell, S.S.C.

Agents for Respondents—Macgregor & Barclay, S.S.C.

Tuesday, December 24.

MORRIS AND BOYD *v.* THE EARL OF GLASGOW.

Suspension—2 & 3 *Will. IV., c.* 68—25 & 26 *Vict., c.* 114—*Oath of Credulity.* Conviction of the