Counsel for Pursuers (Reclaimers)—Guthrie Smith—M'Kechnie. Agents—Philip, Laing, & Monro, W.S.

Counsel for Defenders (Respondents)—J. A. Crichton. Agent—John Gill, S.S.C.

Wednesday, March 13.

FIRST DIVISION.

HOPE, PETITIONER.

Public Officers—Appointment of Interim Keeper of the Signet.

On March 12th the Keeper of Her Majesty's Signet in Scotland died. In consequence of this the deputation granted by him to the Deputy Keeper of the Signets, James Hope, Esq., W.S., fell, and it was necessary to petition the Court to grant a commission to an interim Keeper. This petition, following the precedents, was presented by Mr Hope, and prayed their Lordships to appoint him to act as interim Keeper. The concurrence of the Lord Advocate in the petition having been obtained, the Court made the appointment as craved.

The following interlocutor was pronounced:—

"The Lords having heard counsel for the petitioner, and for the Lord Advocate, who through his counsel expressed his consent thereto, Appoint the petitioner to act as interim Keeper of the Signet till Her Majesty shall be pleased to issue a commission appointing a new Keeper; and grant warrant and authority to the petitioner in terms of the prayer of the petition: And appoint the petition, with this deliverance, to be recorded in the Books of Sederunt.

Counsel for Petitioner—Maconochie. Agents—Hope, Mann, & Kirk, W.S.

Wednesday, March 13.

OUTER HOUSE.

[Lord Rutherfurd Clark.

BARBOUR'S TRUSTEES *v.* DAVIDSONS.

Process—Discharge of an Inhibition used on Dependence of Action.

Where an inhibition is used on the dependence of an action, it is not necessary to present a petition for the purpose of getting it discharged, as the Court will pronounce an order to that effect *in causa*, and grant a warrant to the Keeper of the Register to mark the discharge and recall upon the record.

In this action inhibitions were used by the pursuers upon the dependence of the summons, and on the case being taken out of Court by a joint minute for the parties, the defenders moved the Lord Ordinary to insert in his interlocutor dismissing the action an order for discharge of the inhibitions, and a warrant to the Keeper of the Register of Inhibitions to mark upon the record the discharge and recall thereof. The Lord Ordinary (RUTHERFURD CLARK) was doubtful whether he had power to do so without a petition being presented, having regard to the forms of section 148 of the Titles to Land Consolidation Act of 1868. On inquiry, however, into the practice, and on the authority of three unreported cases—*Ward's Trustees* v. *Tennent*, 5th Dec. 1871; *Williamson* v. *Rodger*, 24th June 1874; *Marschner* v. *Edinburgh and Leith Joiners Building Company*, 25th Feb. 1876—the Lord Ordinary granted the motion, and pronounced the following interlocutor:—

"The Lord Ordinary, in respect of the joint minute, discharges and recals the inhibition recorded 14th June 1877, used upon the dependence of the action; grants warrant to and authorises the Keeper of the Register of Inhibitions to mark upon the record thereof the discharge and recall of said inhibitions," &c.

Counsel for Barbour's Trustees — Moody Stuart. Agent—H. R. Macrae, W.S.

Counsel for Davidson—Wallace. Agents—Adam & Sang, W.S.

Thursday, March 14.

FIRST DIVISION.

[Sheriff of Caithness.

ROSS *v.* BRIMS.

Expenses—Process—Judicature Act, sec. 44, *and Court of Session Act* 1868, *sec.* 64.

Where an objection to the competency of an appeal is not taken till the case is put out for hearing, the Court, although they dismiss the appeal as incompetent, will not give the respondent his expenses.

This was an appeal against a judgment ordaining a tenant to remove. When the case came up for hearing, the respondent submitted that by 6 Geo. IV. c. 120, sec. 44, followed by 31 and 32 Vict. c. 100 (Court of Session Act 1868), sec. 64, an appeal in such an action is incompetent, suspension being the proper remedy, and referred to the case of *Fletcher* v. *Davidson*, 3d March, 1874, 2 R. 71.

At advising—

LORD PRESIDENT (in sustaining the objection to the competency of the appeal)—It is the duty of a respondent to state any objection he may have to the competency of an appeal when the case appears in the Single Bills. I do not say that if he fails to do so that that precludes him from stating it afterwards. On the contrary, the Court will *ex proprio motu* take up any such objection. But it is a consequence of such failure that parties are put to unnecessary expense, and, as in the present case, counsel may be instructed to discuss the case on the merits. That expense is due to the respondent's omission, and therefore we shall give him no expenses.