

through the medium of an action in the Court of Session. I have endeavoured in this case to apply the principles on which we proceeded in *Day v. Bennie*. In that case on considering the decree we came to the conclusion that the Court of Chancery had jurisdiction, that there was no good objection to the injunction, that the defender by his wrongful act had rendered the injunction necessary, and that he was therefore rightly condemned in costs. The circumstances of this case are materially different, and I do not think that this decree is one which the liquidator can conscientiously maintain."

Counsel for Pursuer—Guthrie. Agents—John Clerk Brodie & Sons, W.S.

Counsel for Defender—Darling. Agent—John Bell, W.S.

Tuesday, October 27.

### FIRST DIVISION.

J. & W. G. GARDINER v. VICTORIA ESTATES COMPANY.

(*Ante*, vol. xxii. p. 888, 16th July 1885.)

*Process—Expenses—Expenses Reserved, followed by General Decree for Expenses.*

A petitioner was allowed to amend his petition, all questions of expenses being reserved. After proof and various procedure the respondents were found liable to him in the expenses of the petition generally. The Auditor reserved for the consideration of the Court the question whether the respondents were liable for the expenses connected with the amendment. *Held* that the respondents were liable in the full expenses of the petition without deduction, on the grounds (1), *per* Lord President, that the general award of expenses had already determined the question; and (2) *per* Lords Mure and Shand, that the amendment had been rendered necessary by the respondents' conduct.

This was a petition presented for rectification of the register of the Victoria Estates Company (Limited) by removal of the petitioners' names. The petition was boxed on 29th October 1884, and answers were lodged on 6th November. The ground of application was that the petitioners had sold their shares in October 1878 to Mr Drummond, the managing director of the company.

The company lodged answers stating that the shares had been sold to the company, who had no power to buy their own shares, and pleaded that the petitioners' names must therefore appear on the register. They stated that the words "for behoof of the Victoria Estates Company (Limited)" appeared on the transfers.

The principal transfers were not exhibited to the petitioners till November 11, 1884, when it was discovered that these words had in one case been interlined, and in the other apparently been added after signature. The petitioners thereupon desired to amend their petition.

By interlocutor of 21st January 1885 this was

allowed, and the question of expenses was reserved.

By interlocutor of 16th July 1885 the Court ordered the register to be rectified by the removal of the petitioners' names, and found the respondents liable in expenses.

The Auditor taxed the account at £134, 11s. 3d., reserving for the determination of the Court the question of the liability of the respondents for the expenses incurred by the petitioners in connection with the amendment of the petition and answers allowed by the Court, amounting to £12, 3s. 11d., and included in the taxed amount now reported.

Argued for the petitioners—The amendments were rendered necessary by the delay of the respondents in exhibiting the transfers.

Authority—*Macfie v. Blair*, December 12, 1884, 22 S. L. R. 224.

Replied for the respondent—Had the petitioners called at the office of the company before the petition was presented, the transfers would have been exhibited and the expense saved.

At advising—

LORD PRESIDENT—When the expenses are reserved at any particular stage of a case, no matter in whose favour, it means, I think, that these expenses should be disposed of along with the other expenses of the cause when it comes to an end. Now, on 16th July the respondents were found liable in expenses without any reservation. That is sufficient to dispose of this point. We cannot go into the other questions now.

LORD MURE—There might be cases in which it might be made out that one of the parties had been put to special expense, and that the question as to the liability for this should be determined at once. But it seems to me here that, as Mr Dickson says, it became necessary for him to amend his petition in consequence of matters coming to his knowledge after the answers had been lodged. Upon that ground I think he should have these expenses.

LORD SHAND—I agree with Lord Mure. I put my judgment entirely on this ground, that the amendments here were rendered necessary because the petitioners had not got the documents which the other party should have given or exhibited to him at an earlier stage.

As regards the general question, I cannot agree that a general finding of expenses settles the question as to the liability for expenses that have been reserved. I think that as the Auditor should disallow under a general finding of expenses the expense of any step in which the party found entitled to expenses has been unsuccessful, so he should disallow any expenses which were unnecessary or were incurred in steps in which the party has been unsuccessful, even when they have been reserved and a general finding of expenses has followed.

LORD ADAM was absent on Circuit.

The Court approved of the Auditor's report.

Counsel for Petitioners—Dickson. Agents—J. & J. Ross, W.S.

Counsel for Respondents—Guthrie Smith. Agents—Duncan Smith & M'Laren, S.S.C.