

competency of the reclaiming-note, but the Court continued the case for argument upon the question whether a reclaiming-note boxed without prints of the record could be received even of consent.

Argued for the respondent—The reclaiming-note was incompetent. It was settled by a train of decisions that where no prints of the record were boxed, a reclaiming-note must be dismissed as incompetent—Court of Session Act 1825 (6 Geo. IV. c. 120), sec. 18; Act of Sederunt, 11th July 1828, sec. 77; *M'Evoy v. Braes' Trustees*, January 16, 1891, 18 R. 417; *Watt's Trustees v. More*, January 16, 1890, 17 R. 318; *Miller v. Simpson*, December 9, 1863, 2 Macph. 225. The consent of parties was not sufficient, for an incompetent reclaiming-note cannot be received of consent—*Hopkirk v. Shotts Iron Company*, December 8, 1830, 9 S. 152; *Burns v. Waddell & Son*, January 14, 1897, 24 R. 325.

Argued for the reclaimer—In *M'Evoy, cit.*, the record had never been printed at all. The Court of Session Act 1825, sec. 18, was directory and not imperative—*Allan's Trustees v. Allan & Sons*, October 23, 1891, 19 R. 15; *Harris v. Haywood Gas Coal Company*, May 12, 1877, 4 R. 714. It was within the power of the Court to receive this reclaiming-note.

LORD JUSTICE-CLERK—I have never seen an authority more clearly in point than the decision in the case of *M'Evoy*, and I think we must follow it.

LORD YOUNG—I am afraid we must.

LORD TRAYNER—I agree.

LORD MONCREIFF—I am of the same opinion.

The Court pronounced this interlocutor—

“The Lords refuse the reclaiming-note as incompetent: Find the defenders entitled to additional expenses, and remit the same to the Auditor to tax and to report.

Counsel for the Reclaimer—Craigie. Agents—Irons, Roberts, & Company, S.S.C.

Counsel for the Respondent—A. S. D. Thomson. Agent—Henry Wakelin, Solicitor.

Tuesday, February 21.

## SECOND DIVISION.

[Dean of Guild Court,  
Paisley.]

M'GHEE v. MONCUR.

*Burgh—Dean of Guild—Procedure—Member of Court Pronouncing Judgment without Hearing Case.*

Two magistrates sitting as the Dean of Guild Court of a burgh heard parties in a petition for a lining, and made avizandum of the case. They disagreed, and called in a third magistrate. With-

out further proceedings the three pronounced a judgment, in which one of the magistrates who heard the case did not concur. *Held* that the procedure was incompetent, and the judgment recalled.

Bernard M'Ghee, grocer, Paisley, petitioned the Magistrates of Police of the burgh of Paisley, as the Dean of Guild Court of the burgh, for warrant to make certain alterations on certain buildings. John William Moncur, the Master of Works of the burgh of Paisley, objected on the ground that the plan lodged did not show that the petitioner intended to comply with the provisions of the 172nd section of the Burgh Police (Scotland) Act 1892 in so far as related to the height of the ceiling of the ground floor of the building proposed to be altered.

Bailie Nicolson and Bailie Wilson, sitting in the Dean of Guild Court, having on 21st and 28th December 1898 considered the petition and relative plans, and heard parties thereon, on the latter date pronounced an interlocutor making avizandum of the cause.

The two Bailies disagreed and called in a third Magistrate—Bailie Hamilton. Without further proceedings an interlocutor was pronounced on 21st January 1899 signed by the three refusing by a majority in number to grant the warrant and authority craved by the petitioner. The note stated that Bailie Nicolson did not concur in the present judgment.

The petitioner appealed, and argued, *inter alia*, that the judgment was bad, as the third magistrate had been called in after the parties had been heard and the case taken to avizandum.

LORD JUSTICE-CLERK—This judgment is irregular on the face of it. Two judges heard the case, and after making avizandum they disagreed and called in another magistrate, and without any further proceedings the three pronounced a judgment, in which one of the judges who heard the case did not concur. In a case in the Dean of Guild Court such procedure is irregular and incompetent, and the judgment must be recalled.

LORD YOUNG, LORD TRAYNER, and LORD MONCREIFF concurred.

The Court recalled the interlocutor reclaimed against, and remitted to the Dean of Guild to proceed with the cause.

Counsel for the Petitioner—Cook. Agent—F. J. Martin, W.S.

Counsel for the Respondent—Clyde. Agents—Campbell & Smith, S.S.C.