

Tuesday, March 19.

FIRST DIVISION.

[Exchequer Cause.]

THE SCOTTISH UNION AND NATIONAL  
INSURANCE COMPANY AND OTHERS *v.*  
COMMISSIONERS OF INLAND REVENUE.

*Revenue—Case under the Taxes Management  
Act 1880 (43 and 44 Vict. cap. 19), sec. 59—  
Expenses.*

In this case, which was presented under the Taxes Management Act 1880, the Auditor in taxing the account of the Scottish Union and National Insurance Company and others disallowed all charges for the preparation and adjustment of the case before it appeared in the rolls of Court. An objection to the Auditor's report upon this ground *repelled*.

At advising—

LORD PRESIDENT—We know nothing about Inland Revenue cases till they come into Court, and it is understood that such cases are prepared by the Commissioners, and that there is nothing left for the Court save to hear parties. The expenses in the ordinary case would be the expenses of the proceedings before the Court, not expenses incurred in arguing with the Commissioners, who are the proper persons to determine what the case should be.

LORD RUTHERFURD CLARK and LORD ADAM concurred.

LORD MURE and LORD SHAND were absent.

The Court pronounced the following interlocutor:—

“The Lords having heard Counsel for the parties on the Auditor's report on the appellants' account of expenses, No. 10 of process, taxing the same at the sum of £98, 1s. 6d., and a note of objection for the appellants to the said report, No. 11 of process: Repel the said objections, approve of the Auditor's report: Find the appellants liable in the expenses of this day's discussion, modify the same at the sum of £3, 3s., and decern against the respondents for the said sum of £98, 1s. 6d. sterling, but under deduction always of the said sum of £3, 3s. of expenses hereby found due to them.”

Counsel for the Insurance Company—Jameson.  
Agents—Cowan & Dalmahey, W.S.

Tuesday, March 19.

FIRST DIVISION.

[Lord M'Laren, Ordinary.]

CALEDONIAN RAILWAY COMPANY *v.*  
CHISHOLM.

*Expenses—Reserved Expenses.*

Where in the course of a litigation expenses have been reserved, and there is in the final interlocutor a general finding of expenses in favour of the successful party, the reserved expenses are carried by that finding.

This was an action by the Caledonian Railway Company against John Chisholm, sack contractor, Perth, for payment of a sum alleged to be due for the carriage of the defender's sacks over the pursuers' lines of railway.

As the basis of their claim the pursuers lodged with the summons an account of the amounts alleged to be due. For this account they subsequently proposed to substitute another. This proposal was resisted by the defender, and after considerable discussion the Lord Ordinary (M'LAREN) by interlocutor of 30th October 1886 refused to allow the substitution.

Against this interlocutor the pursuers reclaimed, and on 10th December 1886 the First Division recalled the interlocutor of the Lord Ordinary, and allowed “the record to be amended by substituting the account, No. 34 of process, for the account lodged with the summons, and also by making the additions now proposed at the bar, reserving all questions of expenses.”

On 13th March 1888 the Lord Ordinary pronounced the following interlocutor:—“Finds that by the written contract between the pursuers and the defender, relating to the hire of the defender's sacks during the period of seven years commencing in 1874, the defender had an unqualified right of free carriage over the Caledonian Railway for all his sacks: Therefore assoilzies the defender from the conclusions of the action, and decerns: Finds the defender entitled to expenses,” &c.

The pursuers reclaimed, and on 8th February 1889 the First Division adhered to the interlocutor reclaimed against, refused the desire of the reclaiming-note, found the defender entitled to additional expenses, allowed an account thereof to be given in, and remitted the same to the Auditor to tax and report.

The Auditor taxed the defender's account at £1588, 8s. 4d., “reserving for the determination of the Court the question of the liability of the pursuers for the Inner House expenses claimed by the defender in connection with the reclaiming-note for the pursuers against Lord M'Laren's interlocutor of 30th October 1886, amounting, as taxed by me, and noted on the margin of the account, to the sum of Twenty-four pounds, fourteen shillings (£24, 14s.), included in the taxed amount now reported.

“*Note.*— . . . The expenses in connection with this reclaiming-note are the expenses referred to in the reservation in my report. As entered in the account they amount to £47, and as taxed by me, to £24, 14s.” It humbly appears to me that this portion of the account should be disallowed, the substitution of the one account

for the other did not in any way affect the conclusions of the summons, or even the amount sued for. The pursuers, by reclaiming, obtained what they sought from the Lord Ordinary, and while I think it only reasonable that they should pay the expenses incurred by the defender in the Outer House discussion, I consider it too great a penalty that, after succeeding in obtaining a recall of the Lord Ordinary's interlocutor, they should have to pay, in addition to their own Inner House expenses, the expenses incurred by the defender in opposing them unsuccessfully. The reservation attached to the Inner House interlocutor might, I assume, have been obtained from the Lord Ordinary. Of course all previous expenses properly incurred by the defender in connection with the account No. 6, and rendered of no avail by the substitution of No. 34, must be allowed, and in the audit I have endeavoured to give effect to this view. In regard to this point I have only to add, that while in the great majority of cases 'reserved expenses' follow the issue of the cause, it has been held by the Court that there is no absolute rule withdrawing such expenses from the consideration of the Auditor."

The defender argued—He had been found entitled to these expenses. The meaning of a reservation of expenses was that they were reserved till the cause was finally disposed of. If there was a general finding of expenses in favour of one party in the final interlocutor that carried all reserved expenses unless there was some special finding to the contrary—*Gardiners v. Victoria Estates Company (Limited)*, October 27, 1885, 13 R. 80; *M'Fie v. Blair*, December 12, 1884, 22 S.L.K. 224.

The pursuers argued—The defender was not entitled to these expenses, as he had been unsuccessful so far as they were concerned. These expenses also had not been disposed of by the Lord Ordinary, as there was no remit to him to dispose of them. Nor were they disposed of afterwards on the reclaiming-note.

At advising—

LORD PRESIDENT—As regards the question reserved by the Auditor, I am of opinion that when expenses are reserved, whether these are expenses appertaining to some incidental proceeding, such as a reclaiming-note on point of form, or any expenses in the course of the litigation which it is not convenient to dispose of at the time, the reservation means that they are to fall under the general account of the winning party. There may very well be reasons for suggesting that reserved expenses should not form part of that account, but the answer is that the other party should bring these under the view of the Judge deciding the case. If nothing is said they are carried by the general finding with regard to expenses. In the present case the judgment of the Lord Ordinary assuaged the defender and found him entitled to expenses. That finding disposed of the reserved expenses. If not, the case would have been in a curious position. That interlocutor might have been acquiesced in, and in that case these reserved expenses might have remained reserved to the end of time.

I am fortified in the view I take of the subject by the opinions in the case of *Gardiner*, and I see that in the case of *M'Fie v. Blair* there is a judgment of Lord Kinnear's to the same effect.

That judgment was not brought under the review of the Court, but there is a very valuable note of his Lordship's expressing his opinion on the question of reserved expenses.

LORD RUTHERFURD CLARK—I concur. It has always been my view that when any expenses are reserved in the course of a litigation the meaning of the reservation was that they were reserved for the determination of the Court deciding the general question of expenses, whether that Court were the Lord Ordinary or the Inner House. Being reserved, they must be disposed of by the Judge who decides the case. I therefore hold that when the Lord Ordinary found the defender in this case entitled to expenses generally he included the expenses reserved.

LORD ADAM—I also concur. When the question of expenses is reserved, it is reserved for the consideration of the Court when the case is finally determined. The unsuccessful party, if he had anything to urge with regard to the reserved expenses, ought to have brought it before the Lord Ordinary. The general finding as to expenses by the Lord Ordinary disposed of these reserved expenses, and the fact that there is no special finding dealing with these expenses does not make it allowable for the Auditor to move in the matter as judge. The general finding of the Lord Ordinary necessarily carried a finding in favour of the defender with regard to the reserved expenses.

LORD MURE and LORD SHAND were absent.

The Court pronounced this interlocutor:—

"Remit to the Auditor to reconsider the portions of the account amounting to £357, 18s. and £115, 2s. 2d. respectively, and to allow so much thereof, if any, as consists of necessary outlays reasonably charged: *Quoad ultra* approve of the Auditor's report, and decern *ad interim* against the pursuers for payment to the defender of the sum of Fifteen hundred pounds sterling to account of the said expenses, and reserve the question of the expenses of this day's discussion."

The reserved expenses were accordingly included in the taxed amount of the defender's account.

Counsel for the Pursuer—Balfour, Q.C.—Guthrie. Agents—Hope, Mann, & Kirk, W.S.

Counsel for the Defender—C. S. Dickson. Agents—J. & A. Peddie & Ivory, W.S.