

statutes are inconsistent with any other assumption than that an informer has the right to prosecute.

I hold also that the right under these statutes has not been taken away by the Summary Procedure Act 1864. A party having a right to institute proceedings is to carry them out according to the new rules provided by the Act, but his right to institute the proceedings is not affected.

Appeal dismissed.

Agents for Complainer—Hope & Mackay, W.S.

Agent for Respondent—L. Macara, W.S.

COURT OF SESSION.

Tuesday, June 18.

FIRST DIVISION.

DOW AND MANDATORY *v.* JAMIESON.

Process—Advocation—Failure to Print and Box.

Advocators having failed to obtemper Lord Ordinary's interlocutor appointing them to print and box record, &c., to the Court, on report of the Lord Ordinary, respondent recommended to print and box Lord Ordinary's interlocutor, with note of advocation.

On 28th February 1867, the Lord Ordinary (BARKCAPLE) pronounced this interlocutor:—"On the motion of the advocators, makes *avizandum* with this advocation to the Lords of the First Division, in terms of the statute; appoints them to print the record, with the notes of additional pleas in law, and such productions as may be deemed necessary, and to box the same to the Court; and grants warrant for enrolment in the Inner-House Rolls." The advocators having neither printed nor enrolled in terms of this interlocutor, the Lord Ordinary, on 5th June 1867, on the respondent's motion, appointed the advocators, within the next eight days, to print and box the record, pleas in law, and productions to the Inner-House, in terms of the previous interlocutor.

The advocators did not obey this order. The respondent then moved the Lord Ordinary to dismiss the advocation. The Lord Ordinary doubted his power to do so under the Court of Session Act 1850, 13 and 14 Vict., c. 36; sec. 32 of which enacts that the Lord Ordinary before whom the advocation is enrolled shall, at the first calling of the cause, if a motion to that effect be made by either party, appoint the record, &c., to be printed and boxed for the Inner-House, and shall report the cause to the Inner-House. His Lordship was inclined to think that he was *functus officio* after pronouncing the first interlocutor, had it not been for the case of *Miller v. Logan*, 20 D., 522, in which case it was held that where a Lord Ordinary had, on the motion of the respondent in an advocation, pronounced an interlocutor reporting the cause, and appointing the record, &c., to be boxed, and where the respondent became bankrupt before obtempering that order, a motion for intimation to the respondent's trustee was properly made before the Lord Ordinary.

The Lord Ordinary reported the point.

LORD PRESIDENT—It seems to be the principle of the case of *Miller v. Logan* that the report of the Lord Ordinary, which transmits a case to the Inner-House, is not complete by the mere pronouncing of the interlocutor making the report; and without

going into the niceties of that case, but following that principle, it appears to follow that until one of the parties brings the case here, and moves that it be sent to the roll—*i. e.*, until the case is in the single bills—the reporting is not complete. It is the appearance of a case in the single bills, in the case of a written report by the Lord Ordinary, that comes in the place of the personal appearance of the Lord Ordinary at the table to report the case. The solution of the respondent's difficulty seems to be this; if he will print and box the interlocutor of the Lord Ordinary, with the note of advocation, that will appear in the single bills, and enable the Inner-House to dispose of the case, and inflict such penalties upon the advocator as may seem proper.

Agents for Respondents—Paterson & Romanes, W. S.

Tuesday, June 18.

SIDEY & CRAWFORD AND MANDATORY *v.*

J. & A. PHILLIPS.

Jury Trial—New Trial—Bill of Exceptions—Commission Agent—Insurance. Motion for new trial, on the ground that the verdict was against evidence, refused. Exceptions to Judge's charge disallowed.

The defenders, J. & A. Phillips, wholesale grocers in Glasgow, gave an order to Sidey & Crawford, commission agents in Montreal, for a quantity of butter. When the butter arrived in this country, the defenders refused to take it, objecting to the price and quality. The butter was sold under a warrant from the Sheriff. Sidey & Crawford then brought an action against the defenders.

The case was tried before Lord Ormisdale and a jury in March last, on the following issue:—

"Whether, on or about the 30th June 1864, the defenders ordered the pursuers to purchase and ship for them 200 packages choice dairy butter of the finest quality, and got up in the best style, and at the lowest price practicable; whether the pursuers duly implemented the said order; and whether the defenders are due and resting-owing to the pursuers the sum of £192, 4s., as the balance of the cost of said butter and relative charges, with interest as per Schedule annexed, or any part thereof?"

"SCHEDULE.

"Cost of 200 packages prime Canadian dairy butter, shipped to the defenders per steamer 'St Andrew,' . \$4448-47

"CHARGES.

"Entry, cartage, wharfage, bill stamps, &c.,	\$42-52
"Insurance, 1½% on \$5180 value, and 10%	64-75
"Commission on \$4448-47,	177-93
	285-20
	\$4783-67

"Exchange @ 7½% £988 9 5

"Free proceeds of sale, under warrant of the Sheriff of Lanarkshire, of the above 200 packages of butter, received on 26th Jan. 1865, 796 5 5

"Balance of cost and charges, £192 4 0