

the personal obligation undertaken by the Harpers did not affect the lands, then a knowledge of this inoperative undertaking could not make it effectual or binding on a *bona fide* purchaser from the bondholder, whose right was not affected by the condition.

LORD YOUNG—I concur in the result, and I am prepared to affirm the judgment on the grounds stated by the Lord Ordinary.

LORD TRAYNER—I agree with the Lord Ordinary. I think his Lordship's conclusion could have been reached on other grounds in addition to that upon which he has proceeded. But I refrain from going into them as the ground taken by the Lord Ordinary seems to me sufficient for the decision of the case.

LORD RUTHERFURD CLARK was absent.

The Court adhered.

Counsel for the Pursuers—Rankine—Younger. Agents—Morton, Smart, & Macdonald, W.S.

Counsel for the Defenders—Brownlie & Watson and Gibbon—H. Johnston—Craigie. Agent—F. J. Martin, W.S.

Counsel for the Defenders—Glasgow General Educational Endowments Committee, and Alexander MacArthur's Trustees—Cooper. Agents—Webster, Will, & Ritchie, S.S.C.

---

Wednesday, November 6.

FIRST DIVISION.

DOWNIE'S CURATOR BONIS AND ANOTHER v. MACFARLANE'S TRUSTEES AND OTHERS.

(*Ante*, vol. xxxii. p. 715.)

*Process—Expenses—Several Defenders.*

Where two sets of defenders had put in separate defences, and it was objected by the pursuer to the Auditor's report that he had allowed them the expenses of their separate appearances—*observed per cur.* that such an objection should have been raised on the motion for expenses.

The Court having in this case dismissed the first and second declaratory conclusions in so far as directed against the defenders, the trustees of the Patterson trust and of the Cook trust and Mrs Millar, assoilzied them from the remaining conclusions of the summons and found them entitled to expenses. A question as to expenses arose in the following manner—The defenders, the Patterson trustees and the Cook trustees, gave in separate accounts of expenses, which the Auditor taxed, adding to his report the following note—“At the audit the pursuers' agents contended that these defenders and Cook's trustees ought to have had only one account as

their interests were identical. The Auditor, however, thinks that the matter is one for the Court to deal with, and they having awarded expenses to all the defenders without any qualification, he feels that he has no power to restrict them to the effect contended for.”

On a motion to approve of the Auditor's report, the pursuers objected, and argued—the Patterson trustees and the Cook trustees ought to have made common cause, for the questions at issue between the pursuers and both sets of trustees were identical. This was the proper stage for raising this question—*Cameron v. French*, October 26, 1893, Scot. Law Times, vol. i. p. 259.

Argued for the defenders—(1) The pursuers' objection was unfounded in fact. The questions between the pursuers and the two sets of trustees were similar but not identical, and the interests of the defenders had really been conflicting. (2) In any event, the objection came too late. The invariable practice, if not the rule, of the Court was that any such objection should be made when the defenders moved for expenses—*Duncan v. Salmond*, March 17, 1874, 1 R. 839.

LORD PRESIDENT—I think both sets of expenses must be allowed, in the first place, because that appears to have been under the consideration of the Court when the interlocutor was pronounced, and also now that it has been reopened, it appears that there are quite substantial grounds for separate conduct of the case for each set of defenders. I may add that I think this discussion very forcibly illustrates the convenience of the practice of determining this question in the discussion when the finding of expenses is made, because otherwise the whole subject has to be re-discussed and brought back to the mind of the Court.

LORD M'LAREN and LORD KINNEAR concurred.

LORD ADAM was absent.

The Court approved of the Auditor's report.

Counsel for the Pursuers—C. K. Mackenzie—Constable. Agents—Dundas & Wilson, C.S.

Counsel for Mrs Macfarlane's Trustees (Patterson Trust)—Guthrie—James Reid. Agents—Thomson, Dickson, & Shaw, W.S.

Counsel for Mrs Macfarlane's Trustees (Cook Trust)—W. Campbell—Crole. Agent—W. B. Rainnie, S.S.C.