

This case was decided against the defender on 6th June current. On 13th June the defender presented an appeal to the House of Lords, on which an order of service had not yet been obtained. On 9th June the pursuers presented a note to the Court praying for warrant to uplift from the Royal Bank a sum of £6000 which had been consigned on 15th July 1865, when certain arrestments which had been used by them on the dependence of the action were loosed by the Court. The decree in the action was not yet extracted, and was not extractable, the expenses having only been decerned for yesterday.

PATTON and WATSON, for the pursuers, supported the application.

SOLICITOR-GENERAL, CLARK, and DUNCAN, for defender, opposed it. The application was premature as the decree had not been extracted. It was expected that the appeal would be served early next week.

The Court refused the application on the ground that it was an incompetent attempt to enforce execution of a decree which was not yet extracted.

Agents for Pursuers—Davidson & Syme, W.S.

Agents for Defender—Adam, Kirk, & Robertson, W.S.

## SECOND DIVISION.

ARTHUR v. BELL.

*Process—Reclaiming-Note—Reponing.* Circumstances in which a reclaiming-note praying to be reponed refused. Observed that a party is not entitled to be reponed against a judgment pronounced in absence or by default simply as a matter of course.

Bell brought an action against Arthur, and decree passed in absence. Arthur suspended, and in the action of suspension the Lord Ordinary (Kinloch) pronounced the following interlocutor:—"The Lord Ordinary having called the cause repeatedly in the debate-roll, and no appearance being made for the suspender, on the respondent's motion, repels the reasons of suspension: Finds the charge orderly proceeded, and decerns: Finds the suspender liable in expenses, allows an account thereof to be lodged, and remits the same to the Auditor to tax and report."

Arthur reclaimed, and sought to be reponed, offering to pay any expenses that might have been incurred by the other party in consequence of his failure to appear.

RHIND, for him, argued that the claimer should be reponed, in respect of the offer to pay expenses, which he at once made. There was no case where the Court had refused to repon upon a first reclaiming-note. *Hamilton v. Christie*, 19 D. 712; *Mather v. Smith*, 21 D. 24.

MACKENZIE, for the respondent, was not called upon.

The Court unanimously refused the application. The Lord Justice-Clerk remarked that the point was one of considerable practical importance, and he was glad that the matter had been brought before the Court, because it gave them the opportunity of observing that a party was not entitled to be reponed simply as a matter of course. This was tantamount to a demand to be reponed upon a second reclaiming-note, because the claimer had already been reponed in the action of suspension of the decree in absence, which he had allowed to pass against him.

Agent for Reclaimer—Party.

Agent for Respondent—Party.

## HIGH COURT OF JUSTICIARY.

Monday, June 18.

(Lord Justice-General and Lords Cowan and Ardmillan presiding.)

H.M. ADVOCATE v. PETER GRIEVE.

*Wilful Fire-raising—Burning Requisite to Constitute Crime.* If a door is set on fire the crime of fire-raising is committed, but the fact of a door being charred does not necessarily imply that it has been on fire.

*Proof.* Evidence of an insurance effected by the panel over goods in his shop admitted (without objection) to prove motive, although no notice given in the indictment.

Peter Grieve was charged with wilful fire-raising, as also attempt to commit wilful fire-raising. The indictment set forth that "the fire thus set or applied by you did take effect and did burn and destroy part of said shop or premises, particularly the architrave of the door of the back shop of said shop or premises or part thereof, and part of the ceiling of said shop or premises."

The only portions of the premises proved to have been affected by the fire were the shelving (which belonged to the tenant) and the door, and all that was proved in regard to them was that they were charred.

ALEXANDER MONCRIEFF, A.-D. (CRIGHTON, A.-D., with him), argued on the authority of the case of *John Arthur*, 1 Sw. 152, that the crime of wilful fire-raising had been committed because part of the door had been burned.

DUNDAS GRANT, for the panel, replied that there was no evidence that the door had been burned. It had only been charred.

THE LORD JUSTICE-GENERAL, in charging the jury, said—The question as to whether there had been a completed crime, or only an attempt, is a very nice and narrow one. I cannot say that the burning of the shelves which were put there by the tenant and might have been removed, would be sufficient burning of the premises to constitute fire-raising. If, however, a door of a building is set on fire, that is undoubtedly fire raising. According to the evidence in this case, the door was charred. That does not necessarily imply that it was on fire. Charring is a slow process, and may or may not amount to being on fire. We have not here a piece of evidence which we had in the case of *Arthur*, referred to by the Advocate-Depute. The door is not produced as it was there. It was a dispute in *Arthur's* case what charring was. Learned persons and chemists—Dr Boswell Reid and others—proved that the door was charred, but had never been on fire. It is for you to say, in this case, whether without skilled evidence, and without seeing the door, it is safe to find the panel guilty of fire-raising.

In the course of the trial, evidence was led for the purpose of proving motive as to an insurance against fire which the panel had effected over the goods in his shop, although no notice was given in the indictment that such evidence was to be adduced. Similar evidence was in the same circumstances disallowed, on objection by the panel, in the case of *Daniel Black*, 2 Irv. 583. No objection, however, was taken in this case.

The jury found the panel guilty of attempt to commit wilful fire-raising, and he was sentenced to penal servitude for eight years.