

Saturday, June 6.

SIR COUTTS LINDSAY v. THE FISHERMEN  
OF ST ANDREWS.

(Ante, p. 555.)

*Jury Trial*—Trial before the Lord Ordinary—*Special Jury*. Circumstances in which the Court appointed a trial to proceed before the Lord Ordinary during Session, and allowed a special jury.

In this case, in which an issue was adjusted to try the question whether the complainers have had forty years' possession of the mussel scalps in the river Eden, the respondents moved the Lord Ordinary (BARCARLE) to fix a day for the trial of the cause during session, alleging as a reason for doing so that some of the respondents would be engaged at the herring fishing when the case would probably come on at the ordinary jury sittings. The complainers, on the other hand, moved that a special jury should be appointed to try the question, on account of the difficulty and delicacy, and the novelty of the question. The respondents objected that the question was an ordinary one of fact. There was nothing misleading, as contended for the complainers, in the words "exclusive possession," which could not be put right by the presiding judge. No case had been cited when the Court had granted a special jury at the first trial of the case; all the cases were those where a common jury had made a miscarriage and a second trial was allowed by the Court. His Lordship reported the point to the Second Division.

The Court held that the respondents had assigned a good reason for the trial of the case before the Lord Ordinary during the session, and thought the case was one for a special jury in respect of the anxiety with which the issue had been adjusted by the Court, and of the fact that it was the first case of the kind.

Counsel for Complainers—Mr Watson and Mr Balfour. Agents—Dundas & Wilson, C.S.

Counsel for Respondent—Mr Clark and Mr W. A. Brown. Agent—A. Beveridge, S.S.C.

COURT OF JUSTICIARY.

Monday—Wednesday, June 8—10.

HIGH COURT.

H. M. ADVOCATE v. RODGER.

*Falsehood, Fraud, and Wilful Imposition—Bill—Theft—Loan—Pledge*. A purchaser of goods granted bills for the price. Before the bills fell due, he was apprehended on a charge of falsehood, fraud, and wilful imposition, and as having no means of paying, and not intending to pay, the bills. 1. Objection, that it could not be said that he did not intend to pay until the bills fell due, *repelled*, and *held* that the objection was on the merits. 2. Objection to charge of theft—bearing that the panel received goods in loan for a short time, and failed to return them—as too indefinite, *sustained*.

William Rodger was accused—"That albeit, by the laws of this and of every other well-governed realm, falsehood, fraud, and wilful imposition; as

also theft, are crimes of an heinous nature, and severely punishable: Yet true it is and of verity, that you the said William Rodger are guilty of the said crimes, or of one or other of them, actor, or art and part: In so far as, you the said William Rodger having conceived a wicked and felonious and fraudulent scheme of obtaining on false representations and pretences, from dealers in plate, watches, jewellery, and the like, quantities of their goods, and of appropriating them to your own uses and purposes, without paying, or intending to pay, for the same, did, in prosecution of your said scheme, on the 12th day of April 1867," make a certain false representation to Andrew Swan, jeweller in Stirling, as to his possession of large means, &c.; "and you did, by means of these or similar false and fraudulent representations and pretences, or part thereof, wickedly and feloniously and wilfully deceive and impose upon the said Andrew Swan, and induce him to believe that you were a person of good credit and responsibility, and possessed of means sufficient to pay, and that you intended to pay, for any goods you might purchase from him, and to allow you to select from his stock, and to sell you the goods 1st, 2d, 3d, 4th, 5th, 6th, and 7th hereinafter libelled, of the price or value of £138, 5s. or thereby; and you did, in pursuance of your said scheme, then and there, grant to the said Andrew Swan, as in payment of the said goods, five or thereby bills or promissory-notes, each dated the 12th day of April 1867, three of said bills or promissory-notes bearing to be each for the sum of £25, and to be payable respectively at nine, fifteen, and twenty-one months after the date thereof, and the other two of the said bills or promissory-notes bearing to be each for the sum of £31, 12s. 9d., and to be payable respectively at twenty-seven and thirty-three months after the date thereof, you the said William Rodger well knowing that you had no means of paying, and not intending to pay, the said bills or promissory-notes, or for the said goods; and the said Andrew Swan being imposed upon and deceived by your said wicked and felonious, false, fraudulent, and wilful representations and pretences, or part thereof, did, then and there, deliver to you, and you did, then and there, wickedly and feloniously and fraudulently receive from the said Andrew Swan the articles following, or part thereof, his property or in his lawful possession, without making payment, or intending to make payment, for the same, viz.:"—[Then followed a list of articles]. Other similar charges were set forth, and the indictment then proceeded—"Or otherwise, as regards the three emerald and diamond studs 33d above libelled, and the diamond or other ring 34th above libelled, you the said William Rodger having—(1) on a day between the 23d day of September and 5th day of October 1867, both inclusive, the particular day being to the prosecutor unknown, in or near the said shop or premises in or near Princes Street aforesaid, received from the said firm of William Marshall & Company or the said John Dalrymple Marshall, or Thomas Rymer Marshall, the said studs in loan for a short time, and to be shortly thereafter returned by you to the said William Marshall & Company, or John Dalrymple Marshall, or Thomas Rymer Marshall, did fail to return the said studs, and did, on one or more occasions between the 23d day of September and 5th day of October 1867, the particular time or times being to the prosecutor unknown, in or near the said shop or premises in or near Princes Street aforesaid, or in or near the said premises