Wednesday, May 26.

SECOND DIVISION.

[Sheriff of Lanarkshire.

KING *v.* GAVAN.

Sheriff Court Act 1876 (39 *and* 40 *Vict. cap.* 70), *sec.* 20—*Decree by Default—Reponing.*

In an action in a Sheriff Court the Sheriff granted decree against the defender in terms of the conclusions of the petition in respect of no appearance by or for the defender at a diet appointed for hearing an appeal by the defender against an interlocutor allowing a proof. The Court, in respect that the default happened through a mistake of the defender's procurator as to the effect of his non-attendance at the debate, reponed him on payment of expenses since the date of the interlocutor allowing a proof.

In an action for delivery of certain articles raised in the Sheriff Court of Lanarkshire at the instance of Ann Gavan against Hugh King, the Sheriff-Principal (CLARK) appointed the 19th April 1880 for hearing parties' procurators on an appeal to him by the defender from an interlocutor of the Sheriff-Substitute (LEES) allowing a proof. On the 19th April no appearance was made for the defender to support his appeal.

The Sheriff Court Act of 1876 (39 and 40 Vict. c. 70) by section 20 enacts as follows:—"Where in any defended action one of the parties fails to appear by himself or his agent at a diet of proof, diet of debate, or other diet of cause, it shall be in the power of the Sheriff to proceed in his absence, and, unless a sufficient reason appear to the contrary, he shall, whether a motion to that effect is made or not, pronounce decree as libelled or of absolvitor, as the case may require, with expenses; or if all parties fail to appear, he shall, unless a sufficient reason appear to the contrary, dismiss the action."

The Sheriff pronounced this interlocutor—"*Glasgow, 19th April* 1880.—On the pursuer's craving, in respect of no appearance being made for the defender, although his agent was repeatedly sent for, Holds him as confessed: Recals the interlocutor appealed against, and decerns and ordains the defender to deliver as craved."

The defender appealed to the Court of Session.

It was explained for him at the bar that the procurator whom he had employed had failed to attend the diet before the Sheriff in the belief that the effect of such failure would merely be the dismissal of the appeal against the order for proof, in which it was no longer desired to insist. The Sheriff, however, had, instead of dismissing the appeal, decerned him to deliver the articles in dispute. The section might be binding on the Sheriff, but this Court would repone on cause shown.—*Anderson* v. *Garson*, 3 R. 254; *M'Gibbon* v. *Thomson*, July 14, 1877, 4 R. 1085.

The Court reponed the defender on payment of the expenses incurred since the interlocutor allowing a proof.

Counsel for Appellant — Brand. Agent — W. Officer, S.S.C.

Counsel for Respondent — Campbell Smith. Agent—John Gill, S.S.C.

Thursday, May 27.

SECOND DIVISION.

[Lord Young, Ordinary.

(Before Seven Judges.)

ROSE *v.* SPAVEN.

Fraud—Agent and Client—Reduction.

A was induced by his law-agent B to sign a bond for £1000 on heritable property belonging to him, allowing B to retain the money when it should be obtained from the lender and place it to A's credit in current account between them. B had for some time acted as agent for A, and had been in the custom of making disbursements on his behalf. B was at the time insolvent and had embezzled a large sum belonging to another client C. To conceal his defalcation by rendering valid a security he had delivered to C over a house already burdened to the full extent, B induced D, another client, to discharge a first bond for £1000 which he held over this house, undertaking to deliver to him a new security for his £1000. He then put on record and delivered to D the bond signed by A. Three months thereafter B became bankrupt and absconded. A, who had never received any value for the bond granted by him, thereupon raised a reduction of it. *Held* on a proof, by a majority of seven judges, that A having put B in a position to commit the fraud, must bear the loss, and bond accordingly sustained—*diss.* Lord President and Lord Justice-Clerk, who were of opinion that what B had done amounted to an attempt to benefit D at the expense of A, and that the bond should therefore be reduced.

Messrs Renton & Gray, S.S.C., carried on business as law-agents in Edinburgh for a considerable period prior to October 1878. In November 1877 Mrs Muir, a client of Renton & Gray, handed to Renton a sum of £1600 to be invested for her. Renton, whose private affairs and the affairs of whose firm of Renton & Gray were at the time deeply involved, embezzled this money, paying it into his private account with the Commercial Bank, which was largely overdrawn. Being pressed by Mrs Muir to deliver to her the security which he had undertaken to procure for her, he handed to her a bond for £1250 dated 19th February 1878, granted by Robert Ferguson glass merchant, Edinburgh, over the villa 8 Granville Terrace, Merchiston, Edinburgh, belonging to him. That property was at the time bonded to the full extent and the bond for £1250 was therefore worthless as a security. It was obtained by Renton under the following circumstances—In December 1875 Mr Spaven, a client of Renton's, had lent to Mr Ferguson, also a client of Renton's, over the house 8 Granville Terrace a sum of £1000. Subsequently Mr Ferguson borrowed on that house, and the house west to it also belonging to him, but not from Spaven, a sum of £500. These bonds remained on the property till February 1878, when Renton informed Ferguson that Mr Spaven was desirous of calling up this