

crime well known to the law, and of the deepest moment to the commercial community, not turning on inability to pay, but solely on the intention not to pay. The line of distinction is quite broad and clear, and it is as good and certain law as it is common sense. The question for you is, whether it is proved that when these orders were sent the prisoner had resolved not to pay? and that entirely depends on the impression which the evidence has made on your minds.

The jury convicted the panel of certain of the charges, and the Lord Justice-Clerk sentenced him to imprisonment for twelve calendar months.

After evidence had been led in *Hall's* case, he also was convicted upon certain charges and was sentenced to nine months' imprisonment.

Counsel for Panel Witherington—Jameson—Kennedy. Agent—T. M'Naught, S.S.C.

Counsel for Panel Hall—Jameson—Sym. Agent—James Junner, S.S.C.

Counsel for Crown—Solicitor-General (Balfour, Q.C.)—Rutherford, A.-D.—A. T. Innes, A.-D. Agent—Crown Agent.

Saturday, June 18.

(Before Lord Justice-Clerk, Lord Young,
and Lord Craighill.)

BLAIKIE v. LINTON (P.-F. OF EDINBURGH
POLICE COURT).

Justiciary Cases—Public House Acts—Insufficient Specification in Charge—Person Entrapped into Commission of an Offence.

William Blaikie was charged before the Police Court of Edinburgh at the instance of Linton, the respondent, Procurator-Fiscal of that Court, with an offence against the laws for the regulation of public-houses, in so far as he did, within certain premises in Causewayside, Edinburgh, occupied by him, "traffic in exciseable liquors, videlicet, whisky, and did sell whisky to Marion Glen without having obtained a certificate in that behalf in terms of the Public-Houses (Scotland) Act 1862."

From the facts proved it appeared that the accused held for the said premises in Causewayside a dealer's licence authorising him to sell a quantity not less than two gallons, granted by the authorities of Excise, but not a retail licence, and that for other premises occupied by him at no great distance in East Preston Street he had a retail licence. Further, it appeared that the quantity of whisky sold by him on the occasion libelled was one pint, being a quantity less than he was entitled to sell under his Excise licence, but that he had sold it on the solicitation of Glen, who was a female turnkey in the Edinburgh prison, and who was acting in concert with several officers of the detective police who had employed her to go to Blaikie's shop and to induce him to sell the whisky. The Judge of Police convicted Blaikie and fined him £7. He then brought this suspension, on the ground (1) that a general charge of having sold whisky without having obtained a certificate in that behalf in terms of the Public-Houses Act Amendment (Scotland) Act 1862,

which did not state the quantity alleged to have been sold, was not applicable to a case where the offence was committed by one having a right to sell whisky but being restricted to sell in quantities exceeding two gallons. On this ground he contended that there was no relevant or sufficient specification of an offence against the laws for the regulation of public-houses, and that therefore the conviction following on such a complaint was bad. (2) The suspender averred that the conviction was bad, inasmuch as he had been entrapped into and solicited to the breach of his Excise certificate by the police. In support of this averment he alleged that the woman Glen who had procured the whisky was not only acting in pursuance of the directions of the police authorities, and not a *bona fide* purchaser, but had on his telling her that he was not licensed to sell whisky in small quantities in his Causewayside premises, and asking her to go to the retail shop occupied by him in East Preston Street, represented to him that it would be a very great favour to her if he could let her have the whisky there without going to East Preston Street. In consequence, he said, of these and similar representations he was induced to give her a pint of whisky, for which she produced a bottle previously marked by the detectives in pursuance of their scheme. With regard to this alleged scheme, he pleaded—" (2) The whole of the scheme condescended on, and the sentence and conviction by which the same was followed and made effectual against the complainer, being grossly unjust, oppressive, and corrupt, suspension, &c., as craved, falls to be granted, and the complainer found entitled to expenses."

The Lords after hearing counsel, without pronouncing any opinions, suspended the conviction as craved, ordered the repayment of the fine imposed by the Judge of Police, and found the suspender entitled to expenses.

Counsel for Suspender—D. F. Kinnear, Q.C.—Shaw. Agents—Pearson, Robertson, & Finlay, W.S.

Counsel for Respondent—Asher—Keir. Agents—Millar, Robson, & Innes, S.S.C.

COURT OF SESSION.

Wednesday, June 22.

FIRST DIVISION.

[Sheriff of Lanarkshire.

TENNENTS v. ROMANES.

Process—Appeal—Sheriff Courts Act 1876 (39 and 40 Vict. c. 70), sec. 32—Competency.

A Sheriff-Substitute on 10th March pronounced an interlocutor exhausting the merits of a cause, and finding the unsuccessful party, T., liable in expenses. The Sheriff on appeal adhered on 31st March, and found T. liable "in the expenses of this appeal, to be taxed and decerned for along with the other expenses," and decerned. This decree was extracted on 21st April, and implemented

by payment to the successful party, R., of money which had been consigned in the cause. On 2d May the Sheriff-Substitute approved of the Auditor's report on R.'s account of expenses, decerned in favour of R. for the "said taxed expenses of process to which he has been found entitled, besides the dues of extract." T. appealed to the Court of Session, his appeal being noted on 16th May. *Held* (1) that the interlocutor of 31st March having been duly extracted in terms of sec. 32 of the Sheriff Courts Act 1876, and implemented, was not subject to appeal; and (2) that the interlocutor of 2d May being merely a decree for expenses, was also not subject to appeal, to the effect of bringing the previous interlocutors under review. Appeal *refused* as incompetent.

A process of multiplepoinding was raised in the Sheriff Court of Lanarkshire by James Logan, as pursuer and real raiser, against Mrs Hamilton Dunbar Tennent of Pool, her husband Charles Welch Tennent of Rungally and Pool, Charles Simon Romanes, accountant, trustee on the sequestrated estate of Wm. Carmichael, and the said Wm. Carmichael, common debtor, as defenders.

On 10th March 1881 the Sheriff-Substitute (BIENIE) pronounced an interlocutor in which, after findings, he ranked and preferred the claimant C. S. Romanes to the whole fund *in medio*; granted warrant to the Clerk of Court to pay over to him the whole consigned money, with all interest thereon; and found the claimants Mr and Mrs Tennent liable in expenses.

Mr and Mrs Tennent having appealed, the Sheriff (CLARK) on 31st March 1881 adhered, found them liable "in the expenses of this appeal, to be taxed and decerned for along with the other expenses," and decerned.

This interlocutor was extracted on 21st April, and on the 22d the consigned money was duly paid over to the procurator for Mr Romanes. On 2d May the Sheriff-Substitute, on the craving of the procurator for the claimant C. S. Romanes, approved of the Auditor's report on his account of expenses, and decerned against Mr and Mrs Tennent to pay to the said C. S. Romanes the amount of the said taxed expenses of process to which he has been found entitled, besides the dues of extract, and decerned.

Mr and Mrs Tennent appealed to the Court of Session, their appeal being noted on 16th May 1881.

The Sheriff Courts (Scotland) Act 1876 (39 and 40 Vict. c. 70) provides (sec. 32) that "Notwithstanding anything contained in section 68 of the Court of Session Act 1868, extract of any judgment, decree, interlocutor, or order pronounced in the ordinary Sheriff Court may be issued at any time on the expiration of fourteen days from the date thereof, unless the same shall, if competent, have been sooner appealed against, and no extract of any such judgment, decree, interlocutor, or order shall be issued before the expiration of fourteen days from the date thereof, unless the Sheriff or Sheriff-Substitute who pronounced the same shall allow the extract to be sooner issued."

The respondent objected to the competency of the appeal. He argued that the interlocutor of 31st March was a final judgment disposing of the

whole merits and awarding expenses. It was duly extracted, and had been implemented by payment of the consigned money. It could not therefore be now brought under review. The interlocutor of 2d May was a mere decree for expenses, which was not subject to appeal and could not be made a means for bringing all the previous interlocutors up for review. See *Cruickshank v. Smart*, Feb. 5, 1870, 8 Macph. 512; A. S., July 11, 1828; A. S., July 10, 1839, sec. 109; Sheriff Court Act 1876, secs. 3, 32, 33.

The appellant argued that the appeal was competent. The extract here was incompetent, because the proceedings were not then at an end, expenses not having been decerned for—*M'Glashan's Sheriff Court Practice*, sec. 1702; A. S., July 10, 1839, sec. 113. If the extract was good, then the interlocutor of 2d May 1881 was incompetently pronounced, for no proceedings could take place after extract—*Shand's Practice*, 1048; *Badger v. Lord Blantyre*, Nov. 16, 1844, 17 J. 53. The appeal had been noted within fourteen days from the date of the decree for expenses, which was therefore competently brought under review, and so brought all the previous interlocutors under review also. There was no authority against an appeal from a decree for expenses.

At advising—

Lord President—In this case the Sheriff-Substitute on 10th March 1881 pronounced an interlocutor which disposed of the whole merits and found the present appellants liable in expenses. That interlocutor was affirmed by the Sheriff on 31st March, who found the same parties liable in the expenses of the appeal to him, "to be taxed and decerned for along with the other expenses." I have no doubt that that is, within the meaning of the Acts of Parliament, a final judgment. This interlocutor was extracted on 21st April, and on the extracted decree the successful claimant obtained payment of the money which had been consigned to meet his claim, to the amount (with interest) of £221, 15s. 2d., as appears from the consignment receipt in process. After that his account of expenses was audited and taxed, and the Sheriff-Substitute on 2d May decerned for the taxed amount.

Mr and Mrs Tennent have now appealed. The appeal was noted on 16th May, that is, just within the fourteen days from the decree for the taxed amount, and objection has been taken to the competency of the appeal.

It is contended, in the first place, that a final judgment having been extracted and implemented by payment of the consigned money, it is no longer possible to bring it under review; and, in the second place, that an appeal against a decree for expenses is inoperative and incompetent, because a decree for expenses follows as a matter of course on a final judgment which has been extracted.

The appellant, on the other hand, contends, that having brought his appeal within fourteen days of a decree for expenses, that decree is competently brought up on appeal, and so brings up all the previous interlocutors.

I have great difficulty in sustaining this appeal to any effect. Mr Rhind contended that the extract was here incompetent, because the proceedings were not at an end, and the claimant should have waited till expenses had been decerned for

before procuring extract; and if he is right in that view there is a great deal to be said for the competency of this appeal. But it appears to me that that question was set at rest by section 32 of the Sheriff Court Act of 1876, which provides that "Notwithstanding anything contained in section 68 of the Court of Session Act 1868, extract of any judgment, decree, interlocutor, or order pronounced in the ordinary Sheriff Court may be issued at any time on the expiration of fourteen days from the date thereof, unless the same shall, if competent, have been sooner appealed against, and no extract of any such judgment, decree, interlocutor, or order shall be issued before the expiration of fourteen days from the date thereof, unless the Sheriff or Sheriff-Substitute who pronounced the same shall allow the extract to be sooner issued." Now, this is a very unqualified provision; and if fourteen days have elapsed from the date of any judgment which is extractable, then I think extract of it must be competent. In the present case fourteen days had elapsed, because the extract was on 21st April, and the interlocutor of the Sheriff was on 31st March. I think, therefore, that under that section of the statute extract was competent and proper; and so it follows that this appeal cannot be taken, for there is no appeal against an extract judgment.

The interlocutor on the merits being therefore not subject to appeal, the question comes to be whether there is any appeal here at all. To bring up a decerniture for expenses, to the effect of letting the appellant get into a review of the interlocutors on the merits, would be, I think, by a mere evasion to set at naught the provisions of the Acts of Parliament. I think, therefore, it is impossible to sustain the competency of this appeal to that effect. Then if there is only a decerniture for expenses, that is not an interlocutor subject to appeal. In *Cruickshank v. Smart* (5th Feb. 1870, 8 Macph. 512) Lord Deas expressed his opinion that a decree for expenses is not subject to appeal, and I concurred in that opinion, though not entering so fully into the question.

On both grounds I think this appeal must be dismissed as incompetent.

LORD DEAS—I am of the same opinion. I think this extract was competent and proper; and I have always had the opinion that a decree for expenses is not subject to appeal.

LORD MURE—I concur. I think the provision of the Act of 1876, taken in connection with former practice, is conclusive. The Act of Sederunt of 10th July 1839 does not appear to me to affect the question at all.

LORD SHAND—I am of the same opinion. By the statute which regulated these matters before the Act of 1876 an appellant had twenty days from the date of a final interlocutor within which no extract could be issued. The 1876 Act abridged this period, and parties may now obtain extract within fourteen days. The result is that if the successful party chooses to take extract he excludes appeal, and I think this case is important as pointing that out. Practitioners in the Sheriff Courts should take notice that if they desire to appeal they must do so within fourteen days from the date of a final interlocutor, though

expenses have not been decerned for in the Court below.

The Lords refused the appeal as incompetent.

Counsel for Appellants—Rhind. Agents—Hagart & Burn Murdoch, W.S.

Counsel for Respondent—Baxter. Agent—W. Black, S.S.C.

Tuesday, June 22.

SECOND DIVISION.

[Lord Fraser, Ordinary.

CAMERON AND OTHERS (DEACONS OF THE
INCORPORATED TRADES OF PERTH)
v. HUNT AND OTHERS.

*Trust—Administration—Application for Power to
Sell—Trusts Act 1867, sec. 3.*

A trustor who died in 1810 directed that the residue of his estate should be invested in the public funds till a suitable investment in land in the neighbourhood of the town of Perth should be found, and that the rents and profits of such land when acquired should be applied in the promotion of education in Perth. There was no power of sale. A suitable investment was not found till 1851. In 1881 the trustees, on the representation that it was expedient that the land so purchased should be sold, applied to the Court for authority to carry out a contract of sale into which they had provisionally entered. They suggested no new purchase of land near Perth to which to apply the money, but proposed with part of it to pay off a heritable debt on the property they proposed to sell, and to invest the rest on heritable security. The petition was opposed by a dissenting trustee, but only on the ground that the debt had been illegally entered into, and that the other trustees were not entitled to pay it off out of the trust funds. *Held*, after a report by a man of business in favour of the application, (*rev.* Lord Fraser) that the sale fell to be granted as being expedient and not inconsistent with the purposes of the trust.

Question (per Lord Young), Whether the trustees had not power, irrespective of the Trust Acts of 1867, to sell the lands without the necessity of applying to the Court?

William Stewart, of 3 William Street, in the parish of St Marylebone and county of Middlesex, who died in the year 1810, left a last will and settlement in favour of the eight deacons of the incorporated trades of the city or burgh of Perth, in which, after providing for payment of debts and for one special legacy, he directed that the residue and remainder of his estate, consisting for the most part of Irish five per cent. stock, "shall be invested"—"And as to all the rest, residue, and remainder of my estate and effects, I direct that the same shall be invested, or shall remain invested, in the public funds till a proper purchase or purchases in lands can be found in the neighbourhood of Perth, and that when such proper purchase or purchases can be found, the