

Counsel for Suspender—Trayner—Pearson.
Agents—Davidson & Syme, W.S.
Counsel for Respondents—Asher—Baxter.
Agents—Tawse & Bonar, W.S.

Tuesday, June 28.

SECOND DIVISION.

[Sheriff Court of Dumfries
and Galloway.

M'BRIDE v. WILLIAMS & CO.

*Process—Action raised before Term of Payment
of Debt Sued for.*

Andrew M'Bride, master of a ship called "Royal Alice," ordered on 20th February 1879 from Peter Williams & Co., wholesale clothiers, Liverpool, a quantity of drapery goods, to be paid for a year after the date of order, when he should return from a voyage to Calcutta. In November thereafter the latter raised an action against him in the Sheriff Court of Dumfries and Galloway for the price of the said goods. The defender pleaded that the account sued for being not yet due the action was premature and uncalled for. On 10th February 1881 the Sheriff-Substitute (REIND) sustained the defence and dismissed the action as premature. The pursuers having appealed, the Sheriff-Principal (MACPHERSON) on 13th April 1881 recalled the interlocutor appealed against, on the ground that more than a year had elapsed since the sum sued for was admittedly due and there had been no tender of payment nor any proposal to consign.

Under these circumstances the Court, on appeal, adhered to the Sheriff-Principal's judgment.

Counsel for Appellant—Hon. H. J. Moncreiff.
Agent—Edward Nish, Solicitor.

Counsel for Respondent—Shaw—Watt.
Agents—Martin & M'Glashan, S.S.C.

Tuesday, June 28.

SECOND DIVISION.

[Sheriff of Lanarkshire.

SCOTT v. SCOTT.

Nuisance—Sewage—Pollution.

Where a proprietrix who contemplated feuing a portion of her lands proposed a scheme in her feu-contracts for carrying away the sewage of houses to be erected thereon by means of a drain which was ultimately to empty itself into a ditch situated on the lands of a neighbouring proprietor—the Court sustained an action of interdict by the latter to restrain her in these operations on the ground of nuisance.

In this case the pursuer, who was proprietor of a portion of the lands of Wester Daldowie or Boghall, on the south side of the turnpike road leading from Glasgow to Hamilton, raised an action against Mrs Agnes Scott, who was the proprietrix of portions of these lands on the north and south

sides of the same turnpike road, to interdict her from discharging or transmitting, or causing to be discharged or transmitted, the sewage from any houses erected or to be erected on any part of the lands of Wester Daldowie or Boghall belonging to her into or through any drain situated wholly or partly on any part of the estates of his lands.

It appeared that the defender had feued certain portions of her lands on the north side of the turnpike road, and contemplated also feuing her lands on the south side thereof. Several houses had been erected on the north side, and the feu-contracts contained a system of drainage to carry a drain across the turnpike road into a field belonging to her, and thence to carry it along the north and west ends of this field and to discharge the sewage into a drain running along the north side of a field belonging to the pursuer, and thereafter into a ditch on his lands.

The pursuer pleaded—“(1) The defender is not entitled, without the pursuer's consent, to use any drains, situated wholly or partly on pursuer's property, for the purpose of transmitting and discharging the said sewage, and interdict should therefore be granted as craved, with expenses. (2) As the said intended transmission and discharge of said sewage will create a nuisance on pursuer's property, and be injurious and damaging thereto, he is entitled to interdict as craved, with expenses.”

The defender, on the other hand, pleaded—“(1) The pursuer is not the proprietor of any part of the land through which said ditch passes. (2) Said ditch, which is the natural receptacle and vehicle of the defender's sewage, has from time immemorial being used by the pursuer and others as a common sewer. (3) Any sewage from the defender's lands would not appreciably affect the ditch or change its character; and (4) No nuisance would be created by the sewage from the defender's lands.”

The Sheriff-Substitute (MAIR) found “(1) That the pursuer is proprietor of a portion of the lands of Wester Daldowie or Boghall, situated on the south side of the turnpike road leading from Glasgow to Hamilton, and that the defender is proprietrix of a portion of these lands on the north and south sides of the said road: (2) That at the date of the present action the defender was in course of constructing a drain from her lands for the purpose of transmitting sewage from the houses erected and to be erected thereon, and contemplated that the sewage should be transmitted and discharged into a drain or ditch running along the north side of a field belonging to the pursuer, and thereafter into a drain or ditch on the pursuer's lands: (3) That since the present action was raised the defender has completed her drain, whereby the sewage from the houses erected on her lands is now discharged into the drain running along the north side of the said field, and thence into the ditch or drain on the pursuer's lands. (4) That previous to the said sewage matter being led into the said last-mentioned drains the water therein was suitable and had been used for domestic purposes, and for the use of cattle drinking; but that since the transmission of the said sewage the water has