

Tuesday, June 14.

SECOND DIVISION.

[Sheriff of the Lothians.

FRASER v. BELL.

Reparation—Dog known to be Ferocious—Relevancy.

A man who had been injured by a piece of coal which a fellow-workman dropped through fright when a dog sprang upon him, brought an action of damages against the owner of the dog, on the ground that the attack by the dog was the direct occasion of the injury sustained by the pursuer, and that there had been negligence on the part of the defender in not securing the dog. The pursuer averred that the dog was of a vicious and ferocious character, and that the defender knew him to be so. Action held relevant.

This was an action by John Fraser, residing in West Port, Edinburgh, against John Adam Bell, residing at 15 Lauder Road, Edinburgh, for £100 as damages for personal injuries under the following circumstances:—

On 24th March 1887 the pursuer, who was in the employment of John Smith & Sons, coal merchants, was ordered by his employers, along with another man, to take coals to the defender's house. The pursuer's fellow-workman carried the pieces of coal from a cart to the coal cellar, and the pursuer stood at the cellar door for the purpose of putting them in. While thus employed, a large dog belonging to the defender, suddenly rushed out of the house and sprang upon the man who was carrying the coals, and frightened him, with the result that he dropped a large piece of coal upon the pursuer's foot, so that, as he averred, it was severely crushed and injured.

The pursuer averred—“(Cond. 3) The injury sustained by the pursuer as aforesaid arose from the culpable neglect of the defender or of his servants at his residence, or of others there for whom he is in law responsible. The dog referred to, by its ferocious and sudden attack on the pursuer's fellow-servant as before stated, was the direct occasion of the pursuer's injury. It is believed and averred that the dog was of vicious and ferocious habits. The defender knew that fact, and that it was dangerous for strangers like the pursuer to pass near to it on his (defender's) premises. On occasions before the said accident the defender and others of his household had to take means to control it when attempting to jump on and alarmingly attack persons in a similar manner. On the occasion when the pursuer was injured as aforesaid, the dog had immediately before shown to the defender's servants in the house a vicious and ferocious inclination to rush out of the house and attack the pursuer and his fellow-servant while discharging the duty which they were engaged at on the premises. The defender knew that the pursuer had to convey the coals into his house on the date referred to. He also, knowing the dangerous character and habits of the dog, should have taken precautions by way of chaining up the dog while the pursuer was lawfully on the premises, or to have taken some similar precaution to prevent the dog getting out of the house at the time the pursuer and his

fellow-servant were at the place for the purpose stated on the occasion referred to. The defender, however, culpably and recklessly failed to adopt precautions of any kind, or to give the pursuer any warning of the danger which existed from the presence of such a dog on the premises.”

The defender's first plea was that the action was irrelevant.

The Sheriff-Substitute (HAMILTON) on 18th May sustained this plea and dismissed the action.

“Note.—In the opinion of the Sheriff-Substitute, the pursuer's statement shows that the occurrence through which he met with the injury libelled was purely accidental, and not one for which the defender can be held responsible.”

The defender appealed to the Court of Session, and argued—The action was relevant; there was no need of circuity of action, as the dog belonged to the defender. The pursuer's case was that the dog jumped at and tried to bite the pursuer's companion—*Scott v. Shepherd*, Easter Term, 1773, 3 Wilson's Rep. 403. There was culpa on the part of the defender in keeping a ferocious dog whose character he knew. To show that the dog was ferocious, it was not necessary to prove that the dog had bitten anyone previously—*Burton v. Moorhead*, July 1, 1881, 8 R. 892; *Renwick v. Von Rotberg*, July 2, 1875, 2 R. 855; *Worth v. Gilling and Another*, November 2, 1866, L.R., 2 C.P. 1; Addison on Torts, p. 19.

The defender argued—The action was irrelevant. The occurrence was purely an accident. It was not relevant merely to aver that the dog was of a vicious character; the special circumstances in which he had shown vice must be stated. The case of *Burton v. Moorhead* was not in point; it was necessary to aver that it was unsafe to keep the dog. The averments were deficient in particulars, and did not give the defender sufficient information as to what case was to be made against him—*Shaws v. Croall & Sons*, July 1, 1885, 12 R. 1186; *Holmes v. Mather*, June 24, 1875, 10 L.R., Ex. 261.

At advising—

LORD JUSTICE-CLERK—I am of opinion, on the whole, that this case ought to go to proof. The simple state of the facts is this—The pursuer and another man, a fellow-servant, were engaged in putting coals into the defender's cellar. While they were engaged in doing this, a dog belonging to the defender, and kept on his premises, which we were told was a collie dog, jumped up in the face of the pursuer's fellow-servant. The man dropped a piece of coal upon the pursuer's foot, and he thus sustained the injury complained of. Then it is said upon record that the dog was of vicious and ferocious habits, and that it had previously shown a disposition to attack these persons in a similar manner. It is not alleged upon record, and perhaps it was not necessary to do so, that the dog when it jumped upon the man actually intended to bite him, but the result was that the dog did frighten the man, who dropped the coal and so hurt his companion. That is the case as it is now stated, and I say nothing as to pursuer's chance of succeeding in the proof if he has to prove that the allegations which he makes in condensation 3 are true. But, as I said, I think that the case ought to go to proof.

LORD CRAIGHILL—I am of the same opinion. In this case, which is a peculiar one, it appears that this dog flew out at the two men who were engaged at the defender's residence, and alarmed the pursuer's companion, but it is not clear whether the dog intended to bite him or not. The pursuer's companion in consequence dropped a piece of coal and injured the pursuer. Well, if there is any fault in the defender in not restraining the dog, then I think it is quite plain that although the person who suffered the injury was not the person upon whom the dog leapt, still the pursuer is entitled to recover damages. That is a matter upon which there is no contention. But it is contended that no relevant case has been stated as to the character of the dog, to make the defender liable in damages. It is no doubt said that the dog was a vicious and ferocious animal, but the defender says that there is a want of specification as to its alleged ferocious character. I think, however, on the contrary, that enough has been said upon record for all purposes, and I am the more persuaded of this, because I think the pursuer cannot succeed unless he proves that the defender had knowledge of the vicious and ferocious character of the dog. Upon the whole matter I think a relevant case has been stated.

LORD RUTHERFURD CLARK—I am of the same opinion. I think that a case has been relevantly stated on record. It is averred that this dog was ferocious, and that the defender knew it. That being so, the action is relevant. If, however, the pursuer in order to succeed requires to show that the dog was ferocious, and that the defender knew of the ferocity, I think that he had better consider whether he will go any further in the case.

The Court recalled the interlocutor of the Sheriff-Substitute, repelled the defender's first plea-in-law, and remitted the case to the Sheriff-Substitute.

Counsel for Pursuer—Wilson. Agent—D. Howard Smith, Solicitor.

Counsel for Defender—Guthrie Smith. Agents—Macrae, Flett, & Rennie, W.S.

Tuesday, June 14.

FIRST DIVISION.

[Sheriff of Lanarkshire.

ADAM v. CROWE.

Process—Warrant to Apprehend as in meditatione fugæ.

A warrant to apprehend as *in meditatione fugæ* cannot be executed except in Scotland. Archibald Mason Adam, dead-meat salesman, Glasgow, presented a petition in the Sheriff Court of Lanarkshire at Glasgow for the apprehension of John Crowe, cattle salesman, Glasgow. He averred that Crowe was indebted to him in the amount of £500, and that he was *in meditatione fugæ*. On March 12, 1887, the Sheriff-Substitute (LEES) granted warrant for Crowe's apprehension.

On 9th April one of the Liverpool Magis-

trates endorsed the warrant thus:—"CITY OF LIVERPOOL, in the County of Lancaster, to wit.—Whereas proof upon oath hath this day been made before me, one of Her Majesty's Justices of the Peace for the said city, that the name of J. M. Lees, Esquire, to the within warrant subscribed, is of the handwriting of the Sheriff-Substitute of Lanarkshire within mentioned, I do hereby authorise James Rennie, who bringeth to me this warrant, and all other persons to whom it was originally directed, or by whom it may lawfully be executed, and also all constables and other peace officers of the said city of Liverpool, to execute the same within the last-mentioned city. Given under my hand this ninth day of April, One thousand eight hundred and eighty-seven. — J. MILES, J.P. for Liverpool." Under this warrant Crowe was apprehended on 9th April on board the "Servia" at Liverpool. Until 8th April he had been living at Glasgow, and he was about to proceed to Canada under a written contract of service with a firm in whose employment he had already been. He was brought back to Glasgow, and on 12th April was examined before the Sheriff-Substitute (SPENS). On 13th April the Sheriff-Substitute pronounced this interlocutor:—"Finds that the respondent has been admittedly brought from England, having been taken off the 'Servia' at Liverpool on Saturday the 9th April current, on the assumption that he could be legally apprehended in virtue of the warrant issued by one of Sheriff-Substitutes of Lanarkshire on 12th March last, with the relative indorsement by a Justice of the Peace in Liverpool: Finds under reference to note that the respondent's apprehension was not a competent proceeding, and that the respondent is not lawfully within the jurisdiction of this Court; therefore dismisses the petition: Finds the petitioner liable to the respondent in expenses, which fixes at the sum of Four pounds four shillings.

"*Note*.—If I am right in the view which I have taken it is wholly unnecessary to discuss the question of whether in the circumstances disclosed in the respondent's declaration or otherwise admitted at the bar, had the respondent been apprehended in Scotland, petitioner would have been entitled to the order which he asks. I may, however, say that so far as the respondent's declaration is concerned *per se*, I would not have been inclined to grant the order, but the explanation which Mr Watson gave me, he being one of the respondent's employers, to the effect that it was by no means impossible that under the agreement the respondent might have resided in Canada for the whole two years in the agreement, might not impossibly have altered my opinion as to the petitioner's right to demand the order which he asks had the case gone to proof.

"The case was continued yesterday from the first diet in the forenoon to three o'clock p.m. in order that a copy of the agreement referred to might be produced, it being explained that the original had been destroyed. At this second diet my attention had been specially directed by Mr Shaw, who had not been present at the first diet, to the fact that the warrant had been executed in England. I was at once disposed to take the view that this was incompetent, but the case was continued till to-day chiefly to allow Mr Angus Campbell, the petitioner's agent—he being merely