

Wednesday, January 8.

FIRST DIVISION.

[Sheriff of Aberdeen.

WALKER v. KNOWLES & SONS.

Process—Proof—Proof or Jury Trial—Appeal for Jury Trial—Remit to Sheriff for Proof—Court of Session Act 1825 (6 Geo. IV. cap. 120) (Judicature Act), sec. 40.

In an action of damages for £150 brought in the Sheriff Court at the instance of a tenant against her landlords, on the ground that she had sustained loss in her business through building operations carried out by the landlords on the building of which her premises formed part, a proof was allowed, and the pursuer appealed for jury trial. The Court, on the motion of the defender, in view of the nature of the injuries alleged and the character of the case, *remitted* to the Sheriff to proceed with the proof allowed.

Mary Jane Walker, dressmaker, Aberdeen, brought an action in the Sheriff Court at Aberdeen against her landlords, Knowles & Sons, fruit salesmen there, in which she craved decree for payment of £150 as damages.

The pursuer had for a number of years been tenant of the first floor of a tenement, No. 423 Union Street, Aberdeen, at a rent of £40 per annum. In the early spring of 1901 she re-took these premises for the year from Whitsunday 1901 to Whitsunday 1902 from the then proprietor, one Watson. She occupied the said first floor for the purposes of her business as a dressmaker, her show and fitting-rooms facing Union Street being immediately over a shop, No. 425 Union Street, which also belonged to Watson. The whole property, including both the shop and the first floor premises occupied by the pursuer, was purchased from Watson by the defenders in April 1901. In the beginning of June the defenders began making certain alterations on the shop and the lower part of the front of the building. These alterations consisted in putting in a modernised shop front and lowering the floor of the entrance to the floors above. It was in the course of carrying out these operations and from their effect when carried out that the loss and injury for which the pursuer claimed damages in the present action were alleged to have been sustained.

The pursuer averred that during the operations in question the defenders had blocked up the doorway leading to her premises, leaving a passage only two feet wide, and that the doorway and passage were rendered unsafe for use; that they had removed her brass plate and door-bell from the doorway; that they had put in a steel beam across the front of the property immediately below or at the level of the first floor joists, which involved the opening of the pursuer's premises to the weather for a considerable time; that this operation caused damage to the pursuer's

stock, and also interfered with the carrying on of her business in her show and fitting-rooms; that the pursuer was not warned as to the nature and extent of the alterations, and that her consent was not asked or obtained; that the defenders when they replaced her door-plate put it on the opposite side of the doorway from where it had been formerly, and also on the opposite side from the bell; that the defenders had permanently altered the entrance to the pursuer's premises and narrowed it from five to three and a-half feet; that owing to the appearance and condition of the property during the defenders' operations the pursuer's business was brought to a standstill through the pursuer's customers either refusing to enter the premises on account of their condition or imagining that the pursuer had removed; and that the pursuer was prevented from procuring temporary premises elsewhere owing to the defenders not giving her proper notice of their intended operations.

The defenders had made the pursuer a tender of £20.

By interlocutor dated 16th December 1901 the Sheriff-Substitute (ROBERTSON) allowed a proof.

The pursuer appealed to the Court of Session for jury trial. When the case appeared in the Single Bills the defender moved that the case be remitted back to the Sheriff for proof, and cited *Nicol v. Picken*, 20 R. 288, 30 S.L.R. 342; *Cuningham v. Ayrshire Foundry Company*, 21 R. 19, 31 S.L.R. 9.

The argument for the pursuer sufficiently appears from Lord Adam's opinion.

LORD ADAM—From the statements made at the bar this case seems to be of this nature, that in a street in Aberdeen the pursuer is tenant of the first floor of a property, the owner of the property himself occupying the ground floor. The pursuer holds her subjects under a lease, and the lessor to her having sold his property, the purchaser, who is now the proprietor, with a view to improving the property, carried out certain alterations on the ground floor with the result, it is said, of damage being done to the tenant on the first floor. The damage of which the pursuer complains includes the removal of a brass plate affixed to the street doorway indicating the pursuer's name and business, the reduction of the width of the entrance to the pursuer's premises from five feet to three and one-half feet, and the injury done to some of her property in consequence of the operations of the workmen extending to her showroom. Mr Thomson maintained that this case fell within the list of enumerated causes, and should therefore go to trial before a jury, but that does not necessarily follow. As this case has been brought here the Court has full control of it. Now, after coming into the Court of Session by way of appeal for jury trial, we know that while numerous cases are sent to trial before a jury some are remitted for proof before a Lord Ordinary and some also are sent back to the Sheriff Court from which they have been appealed. The considera-

tions which lead to the latter course being adopted are, I think, their local character, the fact that all the likely witnesses are to be found on the spot, and the facility of visiting the premises if the judge should think it desirable to do so. It appears to me that, keeping in view the nature and character of this case, and having regard to the considerations to which I have referred, this case is not appropriate for jury trial in this Court, that indeed it is altogether inappropriate. I propose, therefore, that the case should be sent back for proof before the Sheriff.

LORD KINNEAR—I concur entirely in your Lordship's opinion. I think this is a proper case for the judge ordinary of the bounds, and that it is not a fit case for trial by jury in this Court. I am confirmed in that view by observing that the pursuer makes a strong point of the injury done to her by reason of the defender having, in replacing the brass plate which he had removed, put it up "on the other side of the doorway from where it was formerly stationed." Now, if that is a question which it is fitting to raise in any court, it must certainly be in the local court, and not in the Court of Session.

The **LORD PRESIDENT** concurred.

LORD M'LAREN was absent.

The Court pronounced this interlocutor:—

"The Lords having heard counsel for the parties upon the motion to appoint parties to lodge the issue or issues proposed for the trial of the cause: Refuse the motion, dismiss the appeal, and remit to the Sheriff to proceed with the proof allowed by the interlocutor of 16th December 1901, and to dispose of the cause: Find the defender entitled to the expenses of the appeal; modify the same to the sum of three guineas, for which decern against the pursuer."

Counsel for the Pursuer and Appellant—**W. Thomson.** Agent—**John Veitch,** Solicitor.

Counsel for the Defender and Respondent—**P. Balfour.** Agents—**Alex. Morison & Company, W.S.**

Wednesday, January 8.

SECOND DIVISION.

[Lord Kincairney, Ordinary.

SOUTHERN BOWLING CLUB, LIMITED *v.* ROSS.

Police—Club—Shebeening—Police Entering Private Club in Disguise to Detect Shebeening—Public Houses Acts Amendment (Scotland) Act 1862 (25 and 26 Vict. c. 35), sec. 13.

Held (aff. judgment of Lord Kincairney) in an action at the instance of a private club against the Chief-Constable

and a sergeant of the Edinburgh Police Force, that the pursuers were not entitled to a decree declaring it to be illegal for members of the police force, acting on the instructions of the Chief-Constable, to enter the pursuers' premises in disguise with the purpose of discovering whether shebeening was practised in the club, or to interdict against their doing so.

Held by Lord Kincairney (Ordinary) that a private club is a place which the police are entitled to enter and inspect under the provisions of the Public Houses Acts Amendment (Scotland) Act 1862, section 13.

The Southern Bowling Club, Limited, incorporated under the Companies Acts 1862 to 1893, and having their registered office in Edinburgh, raised an action against Roderick Ross, chief-constable of the City of Edinburgh, and Hugh Calder, a police officer or constable in the Edinburgh Police Force.

The conclusions of the summons were (1) for declarator—" (First) That the defenders or any other officer or constable or member of the Police Force of the City of Edinburgh are not entitled to demand entrance to or to enter the pursuers' said premises at pleasure or without a lawful warrant or the authority of a lawful magistrate, or alternatively to the above conclusion that they are not entitled to demand entrance to or enter the pursuers' said premises except when in uniform or in the declared character and capacity of constable, police officer, or member or members of the said police force, and specially that they are not entitled to use any disguise or other means intended or calculated to conceal their character as constables, police officers, or members of the said force for the purpose of seeking or obtaining admission to the pursuers' said premises, or falsely to represent or hold out themselves to be persons entitled, by virtue of the constitution of the pursuers' club, to enter and use the said premises and be supplied with exciseable liquors in said premises; and (secondly) that the defenders or any other officer, constable, or member of the Police Force of the City of Edinburgh are not entitled to demand entrance to or to enter the premises of the pursuers at No. 13 West Preston Street, Edinburgh, for the purpose of trafficking or attempting to traffic within said premises in exciseable liquors with any of the pursuers' officials or servants or with any other person; and further, that they are not entitled in the pursuers' said premises to purchase from any official or servant of the pursuers or other person, or to order, request, or solicit any such official or servant or other person to supply them in return for payment with any wine, spirits, beer, cider, or other exciseable or fermented or distilled liquors, or in any way to traffic or attempt to traffic with such official or servant or other person, or to solicit any such official, servant or other person to traffic with them in any such liquors;" (2) for interdict against the defender and all others acting under the authority of the defender