

Saturday, June 6.

SIR COUTTS LINDSAY v. THE FISHERMEN
OF ST ANDREWS.

(Ante, p. 555.)

Jury Trial—*Trial before the Lord Ordinary—Special Jury.* Circumstances in which the Court appointed a trial to proceed before the Lord Ordinary during Session, and allowed a special jury.

In this case, in which an issue was adjusted to try the question whether the complainers have had forty years' possession of the mussel scalps in the river Eden, the respondents moved the Lord Ordinary (BARCARLE) to fix a day for the trial of the cause during session, alleging as a reason for doing so that some of the respondents would be engaged at the herring fishing when the case would probably come on at the ordinary jury sittings. The complainers, on the other hand, moved that a special jury should be appointed to try the question, on account of the difficulty and delicacy, and the novelty of the question. The respondents objected that the question was an ordinary one of fact. There was nothing misleading, as contended for the complainers, in the words "exclusive possession," which could not be put right by the presiding judge. No case had been cited when the Court had granted a special jury at the first trial of the case; all the cases were those where a common jury had made a miscarriage and a second trial was allowed by the Court. His Lordship reported the point to the Second Division.

The Court held that the respondents had assigned a good reason for the trial of the case before the Lord Ordinary during the session, and thought the case was one for a special jury in respect of the anxiety with which the issue had been adjusted by the Court, and of the fact that it was the first case of the kind.

Counsel for Complainers—Mr Watson and Mr Balfour. Agents—Dundas & Wilson, C.S.

Counsel for Respondent—Mr Clark and Mr W. A. Brown. Agent—A. Beveridge, S.S.C.

COURT OF JUSTICIARY.

Monday—Wednesday, June 8—10.

HIGH COURT.

H. M. ADVOCATE v. RODGER.

Falsehood, Fraud, and Wilful Imposition—Bill—Theft—Loan—Pledge. A purchaser of goods granted bills for the price. Before the bills fell due, he was apprehended on a charge of falsehood, fraud, and wilful imposition, and as having no means of paying, and not intending to pay, the bills. 1. Objection, that it could not be said that he did not intend to pay until the bills fell due, *repelled*, and *held* that the objection was on the merits. 2. Objection to charge of theft—bearing that the panel received goods in loan for a short time, and failed to return them—as too indefinite, *sustained*.

William Rodger was accused—"That albeit, by the laws of this and of every other well-governed realm, falsehood, fraud, and wilful imposition; as

also theft, are crimes of an heinous nature, and severely punishable: Yet true it is and of verity, that you the said William Rodger are guilty of the said crimes, or of one or other of them, actor, or art and part: In so far as, you the said William Rodger having conceived a wicked and felonious and fraudulent scheme of obtaining on false representations and pretences, from dealers in plate, watches, jewellery, and the like, quantities of their goods, and of appropriating them to your own uses and purposes, without paying, or intending to pay, for the same, did, in prosecution of your said scheme, on the 12th day of April 1867," make a certain false representation to Andrew Swan, jeweller in Stirling, as to his possession of large means, &c.; "and you did, by means of these or similar false and fraudulent representations and pretences, or part thereof, wickedly and feloniously and wilfully deceive and impose upon the said Andrew Swan, and induce him to believe that you were a person of good credit and responsibility, and possessed of means sufficient to pay, and that you intended to pay, for any goods you might purchase from him, and to allow you to select from his stock, and to sell you the goods 1st, 2d, 3d, 4th, 5th, 6th, and 7th hereinafter libelled, of the price or value of £138, 5s. or thereby; and you did, in pursuance of your said scheme, then and there, grant to the said Andrew Swan, as in payment of the said goods, five or thereby bills or promissory-notes, each dated the 12th day of April 1867, three of said bills or promissory-notes bearing to be each for the sum of £25, and to be payable respectively at nine, fifteen, and twenty-one months after the date thereof, and the other two of the said bills or promissory-notes bearing to be each for the sum of £31, 12s. 9d., and to be payable respectively at twenty-seven and thirty-three months after the date thereof, you the said William Rodger well knowing that you had no means of paying, and not intending to pay, the said bills or promissory-notes, or for the said goods; and the said Andrew Swan being imposed upon and deceived by your said wicked and felonious, false, fraudulent, and wilful representations and pretences, or part thereof, did, then and there, deliver to you, and you did, then and there, wickedly and feloniously and fraudulently receive from the said Andrew Swan the articles following, or part thereof, his property or in his lawful possession, without making payment, or intending to make payment, for the same, viz.:"—[Then followed a list of articles]. Other similar charges were set forth, and the indictment then proceeded—"Or otherwise, as regards the three emerald and diamond studs 33d above libelled, and the diamond or other ring 34th above libelled, you the said William Rodger having—(1) on a day between the 23d day of September and 5th day of October 1867, both inclusive, the particular day being to the prosecutor unknown, in or near the said shop or premises in or near Princes Street aforesaid, received from the said firm of William Marshall & Company or the said John Dalrymple Marshall, or Thomas Rymer Marshall, the said studs in loan for a short time, and to be shortly thereafter returned by you to the said William Marshall & Company, or John Dalrymple Marshall, or Thomas Rymer Marshall, did fail to return the said studs, and did, on one or more occasions between the 23d day of September and 5th day of October 1867, the particular time or times being to the prosecutor unknown, in or near the said shop or premises in or near Princes Street aforesaid, or in or near the said premises

occupied by the said Equitable Loan Company, or at some other place to the prosecutor unknown, wickedly and feloniously, steal and theftuously away take the said three emerald and diamond studs, or one or more of them, the property or in the lawful possession of the said firm of William Marshall & Company."

SOLICITOR-GENERAL (MILLAR) and BLACKBURN (A.-D.) for the Crown.

MATR and REID for panel.

REID, for the panel, stated two objections to the relevancy of the libel. The first was with reference to the first three charges of falsehood, fraud, and wilful imposition. It appeared from the indictment that the prisoner, having received certain goods from Andrew Swan, had come to an arrangement for their payment by granting bills and promissory-notes for the full value of the goods, and not one of these bills had fallen due when, in the month of October last, the prisoner was apprehended. In these circumstances, he maintained that there was not before them a relevant charge of falsehood, fraud, and wilful imposition. To constitute such a charge, it was essential not only that the prisoner should receive the goods, but that there should also be failure on his part to pay for them. It was impossible to say that the prisoner had not intended to pay for the goods until the bills became due. The other objection referred to the charge of theft against the prisoner. It was stated that he received certain studs from Mr Marshall on loan "for a short time," and he had to submit that that was too indefinite. It did not appear that the period during which the studs had been given in loan did not extend beyond the 25th October; and if the prisoner had got them for a time beyond that date, then he did not steal them, as the libel charged him with the theft between 23d September and 5th October.

BLACKBURN (A.-D.) said, in respect to the first objection, that it might be a very good objection to make to the jury, but it did not affect the relevancy of the libel. The essence of the charge of falsehood, fraud, and wilful imposition consisted in the fact that, at the time a person obtained the goods, there was no intention to pay for them, and no doubt it would be an element rendering it difficult in the Crown case to prove that the bills, when given, were not given in *bona fide*; but if they proved that these bills were part of the fraud, then the crime of falsehood, fraud, and wilful imposition would be made good. With respect to the second objection, that too great latitude was taken, he maintained that the averment was specific enough. The goods were lent for a short time, and instead of being returned they were pawned.

LORD ARDMILLAN—What do you call a short time?

BLACKBURN (A.-D.) admitted that the language might have been more specific.

LORD JUSTICE-CLERK—You do not specify the particular purpose for which the goods were given.

BLACKBURN (A.-D.) said he did not think that it was necessary to do so. Receipt of goods on loan was not certainly receipt for the purpose of pawning them.

LORD ARDMILLAN—But it is nowhere said that they were pawned.

SOLICITOR-GENERAL (MILLAR) was also heard in support of the libel, and quoted cases to show that the libel was framed according to precedent.

The Court then retired for consultation, after which,

LORD ARDMILLAN said he was of opinion that the

first objection stated was not good. The great difficulty in the prosecutor's case would be to prove that there was no intention to pay these, and that the prosecution had been brought before the bills became due would considerably increase the difficulty. He thought, however, the objection was an objection on the merits. The other objection was one of some nicety; but he was inclined to think that the indictment was incorrectly framed. Three things would have made the libel a good one—if it had been said that the studs were given for a short time for the purpose of inspection; that they were given for a short time that the prisoner might wear them when visiting the lady to whom he was to be married; or if it had been said that they were given for the purpose of being compared with others. It was not, however, stated that the studs were given for any purpose whatever. Then the time in which they were to be returned was not sufficiently specific. Had it been said that they were to be returned immediately, that might have done; but a short time might be one day, ten days, or twenty days. He thought, therefore, that the objection should be sustained.

LORD JERVISWOODE thought the indictment was correctly framed, but he did not wish to press his opinion against the majority of the Court.

The LORD JUSTICE-CLERK concurred with Lord Ardmillan.

The panel pleaded not guilty. Evidence was led. The jury returned a verdict of guilty; and the panel was sentenced to penal servitude for eight years.

Agent for Crown—T. G. Murray, W.S.

Agent for Panel—W. Officer, S.S.C.

COURT OF SESSION.

Wednesday, June 10.

FIRST DIVISION.

ADAMS AND OTHERS v. MAGISTRATES OF GLASGOW AND OTHERS.

Interdict—Property—Public Green—Magistrates—Suspension. Note passed to try the question whether magistrates, administrators for public good, were entitled to convert a portion of a public green into part of a public road, and interim interdict granted against the magistrates proceeding with the operations.

This was a note of suspension and interdict at the instance of James Adams and others, designed burgesses of Glasgow, and resident there, against the Lord Provost, Magistrates, and Town-Council of Glasgow, and the Glasgow Board of Police. The complainers alleged that the respondents, the Town Council, had begun to encroach upon the Public Green of Glasgow by operations which would have the effect of throwing above 2000 square yards of the Green into Greenhead Street, which runs along the south side; and this portion of ground, the complainers alleged, would become vested in the other respondents, the Police Board, for the objects and purposes of a public street, and of the Glasgow Police Act.

The Lord Ordinary (MURE) pronounced this interlocutor:—"Passes the note; and, on the condition that the respondents, the Magistrates of Glasgow, find caution for all loss and damage which the complainers may sustain, and may ultimately