Counsel for Complainer—Mr Gordon and Mr Scott. Agent—Mr David Crawford, S.S.C.

Counsel for Respondent—Mr Patton and Mr Lee. Agents—Messrs Hamilton & Kinnear, W.S.

This was a note of suspension at the instance of James Nisbet, Ferniegare, near Hamilton, and others, against H. H. Robertson Aikman, Ross House, Hamilton, of a decree of removing pronounced against them in the Sheriff Court of Lanarkshire. The respondent had presented a petition to the Sheriff setting forth that he was proprietor of certain subjects at Ferniegare occupied by the present complainers, and craving the Sheriff to grant warrant of summary ejection and removal against them. The defence to this petition was that the petitioner had no title, that the warning was defective, and that the defenders never having been the tenants of the petitioner, the summary proceeding by petition on an execution of warrant was incompetent. Decree was pronounced against the defenders, who thereupon presented this note of suspension. It appeared from the complainer's statement that he had been proprietor of the said subjects, and had disponed them to the Commercial Bank, on account of certain advances, by an *ex facie* absolute disposition, qualified by a back letter. The Bank had made other advances to him, and had thereafter sold the subjects to the respondent. In so doing the complainer alleged that the bank proceeded in violation of his right under the back letter, and he proposed to raise a reduction of the disposition in the respondent's favour, in respect that the bank had no right to sell the said subjects, of which he described himself in the suspension as proprietor. The Lord Ordinary (Mure) passed the note in order that the questions raised might be deliberately considered. To-day the Court recalled the Lord Ordinary's interlocutor, and remitted to him to refuse the note.

The LORD JUSTICE-CLERK said the Lord Ordinary had passed the note as the case raised points requiring more deliberation than they could receive in the bill; and probably if he had been in the position of the Lord Ordinary he would have done the same. But when the case came before the Court it was obvious that it was of such a nature as to require disposal at once, and accordingly they had had a full argument. The petitioner in the action of removing sets himself out as being the heritable proprietor of a dwelling house, &c., at Ferniegare. That is his title, and in support of it he produces a disposition which is registered, and therefore equivalent to disposition and infeftment. It further appears that he acquired the subjects as purchaser from the Commercial Bank. The petitioner further sets out that the subjects are occupied by the respondents as tenants under him, and that he has from time to time summoned them to remove, and he produces a percept and execution of warning in support of that. There is no doubt that the warning was timeously given. Upon these grounds he prays for summary ejectment of the respondents. Now, *ex facie*, in that petition the proceedings are perfectly regular, and I may just say, in passing, that there is no irregularity or impropriety in a petitioner seeking such a summary remedy, setting out that the respondents are either tenants or pretended tenants, because it may turn out that the title to tenancy is liable to objection, and I cannot think that merely because the title to tenancy is liable to objection the respondents could object to the petition. But all depends on the nature of the defence. If the defender had alleged in answer to the petition that he was proprietor, and thereby had a title to compete with him, the proceedings could not have proceeded before the Inferior Court. But that is not his defence. His defence is (1) that the summary remedy asked is incompetent, because the parties do not stand towards one another as lessor and lessee. That is a complete admission that he has not a good title of tenancy, and is therefore not a good answer to the petition. I can well enough understand the petitioner bringing a summons of removing, and not knowing very well whether the respondents had a good right of tenancy; but it would have been rash for him to proceed without warning. But after the defender said that he was not tenant, I hold his mouth shut as to the remaining objections, for they are all about the warning. No doubt there is, in a certain sense, another defence, to the effect that the pursuer has no title. It is said that Nisbet was proprietor of the subjects; but that is no allegation of property; and there is no production of any title by the defender. It appears to me, therefore, that in that state of matters the Sheriff-Substitute could do nothing else but grant decree of removing. His Lordship then adverted to the case of Waterstone *v.* Mason, June 30, 1848 (8 D. 944), which had been pleaded in argument as being counter to the judgment of the Sheriff-Substitute, and said that in that case the petitioner in the inferior Court libelled a missive of lease, and the allegation was that the defender possessed on that. The question raised on the merits was a competition of heritable rights, and the points decided were (1) that the petitioner, having taken his stand expressly on a missive of lease, he could not turn round and say that the respondent was not a tenant but a vitious possessor; and (2) that there was a competition of heritable rights in the inferior Court which the Sheriff could not decide. There was no such question here. It is a removing against a party who either was or might be supposed to be tenant, and who, when he admits that he is not tenant, admits enough to ground decree of removal. His Lordship continued—I do not think it necessary to fix any general principle beyond this, that a petition framed in the manner in which this is may competently proceed in the inferior Court, whether the defender has a good title of tenancy or not. The plea of *lis alibi pendens*, though stated in the inferior Court, not being insisted on in the note of suspension, requires no consideration.

The other Judges concurred.

Saturday, Jan. 13.

FIRST DIVISION.

RITCHIE *v.* RITCHIE'S TRUSTEES.

Reduction — Fraudulent Impetration — Essential Error. (1) Issues adjusted in a reduction of a deed alleged to have been fraudulently impetrated. (2) Issue of essential error disallowed.

Counsel for Pursuer—The Solicitor-General and Mr Thomson. Agent—Mr John Murray, S.S.C.

Counsel for Defenders—The Lord Advocate and Mr Millar. Agent—Mr Thomas Padon, S.S.C.

Patrick Grant Ritchie, only child of the late Patrick Ritchie, Buccleuch Place, Edinburgh, sued the defenders, who were the trustees nominated by his father, for reduction of a deed which he had signed in 1860, whereby he renounced and discharged all his claims as the next-of-kin of his mother, who died in 1830, and also his right to *legitim* out of his father's estate. There were also ulterior conclusions for count, reckoning, and payment. The grounds of reduction were (1) that the deed had been fraudulently impetrated from the pursuer by his father; and (2) that when he signed it the pursuer was under essential error as to its substance and effect.

The pursuer proposed two issues for the trial, which put these two grounds generally in issue. The defenders objected to the first issue, that it did not specify the nature of the fraud said to have been practised on the pursuer by his father; and to the second issue, that no case of essential error was relevantly averred on record.

Lord Barcaple reported the case with an opinion in favour of the defender's contention in regard to the first issue, and against it in regard to the second, but stating that he thought the nature of the essential error should be specified in the second issue as well as in the first.

The Court disallowed the issue founded upon the allegation of essential error, and allowed two issues for the purpose of proving that the deed was impetrated by means of false and fraudulent representations to the effect in the case of the one issue that nothing was due to the pursuer as next-of-kin of his deceased mother, and in the case of the other, that the deed was, on the part of the pursuer, merely an assignation or transference by him to his father of certain shares therein mentioned.

HIGH COURT OF JUSTICIARY.

Monday, Jan. 15.

(The Lord Justice-Clerk, Lord Cowan, and Lord Ierviswoode presiding).

H. M. ADVOCATE *v.* EDMISTON.

Writing and Sending Threatening Letters—Wickedly and Feloniously. (1) Every crime is wicked and felonious, and as soon as an act is proved to be a crime there is sufficient evidence of wicked and felonious intent. (2) Writing and sending threatening letters is a crime, whatever may have been the motive.

Counsel for the Crown—The Lord Advocate and Mr A. Moncrieff.

Counsel for the Panel—Mr Watson and Mr Rhind.

Elizabeth Edmiston, residing at Ayton Smithy, Dunbog, Fife, was charged with the crime of writing and sending threatening letters, she having on the 13th or 14th of December 1864 wickedly and feloniously written or caused to be written, and sent or caused to be sent through the post-office at Dunbog, to the Rev. James Pitt Edgar, minister of the parish of Dunbog, a threatening letter, and on the same day another threatening letter to John Ballingall, farmer, Dunbog. At the last Circuit Court at Perth, Mr John Bell, farmer, Glenduckie, was placed at the bar on the charge of writing the same letters, when Edmiston made a statement confessing she had written them, which led to the charge being withdrawn against Mr Bell and Edmiston's apprehension.

The prisoner pleaded not guilty. After evidence had been led, and the Lord Advocate had addressed the jury,

Mr WATSON said he was not now going to deviate from the course which the panel herself had first adopted, and so consistently pursued, of stating that she did write these letters and send them with the view of their reaching their respective destinations. It was essential, however, in order to make out the case submitted to them that the public prosecutor should make out not only that these letters were sent and delivered, but that that act was "wickedly and feloniously" done. That element of wicked and felonious intent had been well described by one of their Lordships on the bench as expressing the quality of the act, which is specifically charged in the indictment—as expressing that which was essential to the constitution of the crime—"a certain condition of mind on the part of the accused at the time of committing the act libelled." These words and that principle were laid down in a case (James Miller, 4 Irv. 244), where the accused was charged with writing threatening letters, and what he had to submit to the jury was this, that although it was conceded on the part of the panel that she did write and send those letters, there was absent from this case that frame of mind, that condition of mind, which was essential to the constitution of guilt. Why, from the beginning to the end of these statements, which were the evidence on which the Crown mainly rested, they had the distinct and persistent asseveration on the part of the panel that these letters were written as a frolic. He did not think that one witness in the case had said that the accused took part in any of those scenes enacted in connection with the settlement of Mr Edgar; and Mr Edgar himself told them that although in the course of his visitation of the parish he had met with impertinencies that led him to perceive he was not a welcome guest, he had observed nothing on the part of the panel to indicate that she had any feeling of enmity or hostility towards himself. They had her own statement that she had no feeling of enmity towards him or Mr Ballingall, and they had no evidence to the contrary. He could quite understand that there were acts which any man or woman might commit which were in themselves of such a character as necessarily to show animus—a wicked, felonious design, and evil disposed frame of mind towards the person against whom these acts were committed. He did not contend that anyone was entitled to inflict injury upon another for the purpose of venting his spite and enmity against him. He did not think they had any case of that kind here. They were stupid, foolish letters undoubtedly, and they were written in terms which he did not in the least degree defend; but it was for the jury to consider whether they were written by the panel at the bar and sent to these two men in the parish of Dunbog, with the intention of seriously alarming them by threatening death and fire to one or both of them. He submitted to them, on the prisoner's own statement, that it was done thoughtlessly, that it was done without that intention, and without that disposition of mind necessary to produce guilt.

The LORD JUSTICE-CLERK, in charging the jury, said—A few observations will be sufficient to discharge my duty so far as this case is concerned. I beg to direct attention to the terms of the charge. In the first place, in the major, it is "the writing and sending to any of the lieges any threatening letter, unsigned or signed with a fictitious name or names, containing threats of death to the person to whom the same is sent, or to set fire to his dwelling-house or premises." That is the general nature of the charge. Now, you will see that the letters which have been proved to be written and sent by the prisoner are letters of this description—threatening letters, "containing threats of death to the person to whom the same is sent, or to set fire to his dwelling-house or premises." For obvious reasons I do not read these letters at length; they are really unfit to be read publicly in a court of justice, or in an assembly of men of common delicacy of feeling. But you will observe plainly enough the threat which is addressed to the person to whom the first letter libelled is addressed—"The first night I get you out I will blow your brains out;" and so on. And then at the foot of the first paragraph lamenting that the explosion at the manse had not taken effect with fatal consequences—"but if I can manage I will burn the place about your head, so beware." There is thus in the letter the threat of death and also of fire-raising. The other letter contains very much the same, expressed in different language. I need not trouble you by going into the details of it; but if you read it over yourselves you will find there are perfectly distinct and clear threats to the same effect. Now, gentlemen, if I rightly understand the defence which is made to you by the prisoner's counsel, it does not consist in a denial of the fact that the prisoner wrote or sent these letters—one of them to Mr Edgar, minister of Dunbog; the other to Mr Ballingall, farmer in the same parish. The defence, as I understand it, is this, that there is no evidence that these letters were written with any malicious purpose, or out of any spirit of ill-will towards the persons to whom they were addressed. Now, gentlemen, if that were the question in this case, as I will show you immediately it is