

admitted that the hedge forms the boundary between the two properties; and that being so, the Sheriff will say whether it shall be repaired, or a new fence erected, or what else shall be done.

Interlocutor affirmed and appeal dismissed, with costs.

COURT OF SESSION.

Thursday, Feb. 15.

SECOND DIVISION.

DUKE OF BUCCLEUCH AND OTHERS *v.* COWAN AND OTHERS (*ante*, p. 141).

Nuisance—Pollution of Water—Issues. Form of issues in an action of nuisance caused by the pollution of water.

The following issues have been adjusted to try this case:—

- "1. Whether between 1st January 1835 and 1st October 1853, the defenders, the first-mentioned firm of Alexander Cowan & Sons, did, by discharging refuse or impure matter at or near their mills of Bank Mill, Valleyfield Mill, and Low Mill, or any of them, pollute the water of the stream or river called the North Esk, to the nuisance of the pursuers or their authors as proprietors of their respective lands aforesaid, or of one or more of them?"
- "2. Whether, between 1st October 1853 and 20th May 1864, the defenders, Alexander Cowan & Sons, the present occupants of said mills, did, by discharging refuse or impure matter at or near their said mills, or any of them, pollute the water of the said stream or river, to the nuisance of the pursuers or their authors as proprietors of their respective lands aforesaid, or of one or more of them?"
- "3. Whether, between 1st January 1835 and 15th May 1856, the defenders, the first-mentioned firm of William Somerville & Son, did, by discharging refuse or impure matter at or near their mill called Dalmore Mill, pollute the water of the said stream or river, to the nuisance of the pursuers or their authors as proprietors of their respective lands aforesaid, or of one or more of them?"
- "4. Whether, between 15th May 1856 and 20th May 1864, the defenders William Somerville & Son, the present occupants of said Dalmore Mill, did, by discharging refuse or impure matter at or near their said mill, pollute the water of the said stream or river, to the nuisance of the pursuers or their authors as proprietors of their respective lands aforesaid, or of one or more of them."
- "5. Whether, between 1st January 1835 and 1st July 1856, the defenders, the first-mentioned firm of Alexander Annandale & Son, did, by discharging refuse or impure matter at or near their mills called Polton Papermills, pollute the water of the said stream or river, to the nuisance of the pursuers, the Duke of Buccleuch and Lord Melville, or their authors, as proprietors of their respective lands aforesaid, or of either of them?"
- "6. Whether, between 1st July 1856 and 20th May 1864, the defenders, Alexander Annandale & Son, the present occupants of said Polton Papermills, did, by discharging refuse or impure matter at or near the said mills, pollute the water of the said stream or river, to the nuisance of the pursuers, the Duke of Buccleuch and Lord Melville, or their authors, as proprietors of their respective lands aforesaid, or of either of them?"
- "7. Whether, between 15th May 1856 and 20th May 1864, the defenders, James Brown & Company, did, by discharging refuse or impure matter at

or near their mill, called Esk Mill, pollute the water of the said stream or river, to the nuisance of the pursuers, or their authors, as proprietors of their respective lands aforesaid, or of one or more of them?"

- "8. Whether, between 1st May 1848 and 20th May 1864, the defender, Archibald Fullerton Somerville, did, by discharging refuse or impure matter at or near his mill, called Kevock Mill, pollute the water of the said stream or river, to the nuisance of the pursuers, the Duke of Buccleuch and Lord Melville, or their authors, as proprietors of their respective lands aforesaid, or of either of them?"
- "9. Whether, between 1st January 1843 and 20th May 1864, the defenders, William Tod & Son, did, by discharging refuse or impure matter at or near their mill, called St Leonard's Mill, pollute the water of the said stream or river, to the nuisance of the pursuers, the Duke of Buccleuch and Lord Melville, or their authors, as proprietors of their respective lands aforesaid or of either of them?"

The Court repelled the plea of acquiescence stated for the defenders, and held that there were no counter issues required.

MURPHY *v.* M'KEAND.

Process—Sheriff Court Act—Leading of Proof—Appeal to Sheriff. (1) A pursuer of an action having been allowed a proof, the diet of which was twice adjourned, and having failed to attend the adjourned diet, held that, under section 10 of the Sheriff Court Act, his action fell to be dismissed; and (2) a Sheriff-Substitute having fixed a new diet of proof after the original diet had fallen, held that this was an allowance of proof and that the interlocutor might be appealed to the Sheriff under section 19 of the Sheriff Court Act.

Counsel for the Advocator—Mr Mair. Agent—Mr W. Officer, S.S.C.

Counsel for the Respondent—Mr Patison. Agent—Mr W. S. Stuart, S.S.C.

This is an advocacy from the Sheriff Court of Galloway. The advocator had presented in that Court a petition against the respondent and another, in which he applied for interdict of an intended sale of some bark under a poiding. He alleged that the poiding had been carried out unwarrantably, because the bark was not the property of the poider's debtor, but his. Interim interdict was granted, and a minute of defence was lodged to the effect (1) that the petition was vague and indefinite, and (2) that the bark was not the property of the petitioner. A variety of procedure occurred thereafter in the process, which is detailed in the annexed opinion of the Lord Justice-Clerk. The question before the Court arose out of a renewal of a diet of proof which the Sheriff-Substitute granted to the petitioner after a first diet had fallen. This interlocutor of the Sheriff-Substitute was appealed to the Sheriff (Hector), who recalled it. He also dismissed the petition, and found the petitioner liable in expenses. To-day the Court adhered to the judgment of the Sheriff.

The LORD JUSTICE-CLERK said—This is a small case, but it belongs to a class of cases of great importance, because there is no way in which more mischief can be done than by applications for interdict, and especially for interim interdict. The petitioner's application was presented on the 24th of January, interim interdict was granted of that date, and all I will say upon that point is that if the application had been made to me I would have refused it. The defender appeared, and stated his defence to be an objection to the vagueness of the petition, and a denial that the bark in question was the property of the petitioner. Upon that the Sheriff-Substitute allowed the petitioner a proof of his averments. I shall not say whether the proof ought to have been