

Mr IVORY, for the Lord Advocate, asked the Court to pronounce a decree in special form. By section 2 of the Crown Suits Act (18 and 19 Vic., c. 90) it is enacted that where judgment is given against the Crown "the defendant or defendants shall be entitled to recover costs in like manner, and subject to the same rules and provisions, as though such proceeding had been had between subject and subject; and it shall be lawful for the Commissioners of Her Majesty's Treasury, and they are hereby required, to pay such costs out of any monies which may be hereafter voted by Parliament for that purpose." If decree was now pronounced against the Lord Advocate, he might be charged, and the rents payable to the Crown might be attached, and this had been done in a recent case. In England, in similar circumstances, the Court of Chancery had ordered that the costs should be paid in the manner directed by the Crown Suits Act, "with liberty for the defendants, or any of them, to apply to this Court as they may be advised with respect to the said costs." (Attorney-General v. Hanmer, 12th May 1859, 4 De Gex and Jones, 205.) Mr Ivory asked a similar order in this case.

The Court refused to pronounce any other than an ordinary decree against the Lord Advocate, as acting for the Commissioners of Woods and Forests. Of course such a decree did not make his Lordship personally liable. But if the Crown refused to pay expenses decreed for, their creditor was entitled to recover them in the ordinary way. The Act of Parliament placed the Crown in regard to this matter in the same position as a subject.

COMMERCIAL BANK v FORSYTH AND OTHERS.

Declinator. If a Judge declines on the ground of interest, he is bound to judge if the parties agree to waive the objection.

Counsel for Pursuers—The Solicitor-General and Mr Mackenzie. Agents—Messrs Melville & Lindesay, W.S. Counsel for Defenders—Mr Gifford. Agents—Messrs H. & A. Inglis, W.S.

In this case Lord DEAS declined, on the ground that he was a shareholder in the bank.

The LORD PRESIDENT said—This declinator is offered on the ground not of relationship but of interest. This is a species of objection which may be waived by the parties; and I think if the objection is waived Lord Deas is bound to give his judgment.

The other Judges concurred, Lord CURRIEHILL mentioning a case of the Caledonian Railway Company in the House of Lords where this course had been followed by the Lord Chancellor.

The parties having waived the objection, and this having been minuted, the declinator was repelled.

Wednesday, Feb. 21, and Thursday, Feb. 22.

JURY TRIALS.

(Before Lord Ormisdale.)

NELSON v BLACK AND MORRISON.

(Ante, pp. 83, 123.)

Reparation—Judicial Slander—Jury Trial. In an action against Procurators-Fiscal for maliciously and without probable cause slandering a person in a petition presented to a Sheriff—verdict for the defenders.

Counsel for the Pursuer—Mr Watson and Mr MacLean. Agent—Mr William Miller, S.S.C.

Counsel for the Defender—Mr Gifford and Mr A. Moncrieff. Agents—Messrs Murray & Beith, W.S.

In this case, David Nelson, turnpike surfaceman, Glenduckie, was pursuer; and Alexander Black and William Morrison, writers in Cupar, and Procurator-Fiscals for the eastern district of Fife, were defenders. The issue which was sent to trial, and the

circumstances with regard to the adjustment of which have been already reported, was in these terms:—

"It being admitted that the defenders prepared and, on or about 26th December 1864, presented to the Sheriff-Substitute of the county of Fife, at Cupar, a petition containing the words and sentences set forth in the schedule annexed hereto:

"Whether the said words and sentences, or any part thereof, are of and concerning the pursuer, and are false and calumnious, and were inserted in said petition by the defenders maliciously and without probable cause—to the loss, injury, and damage of the pursuer?"

Damages were laid at £200 sterling.

The schedule containing the excerpts from the petition complained of was as follows:—

"That the petitioners are in course of taking a precognition against James Pringle, millwright, residing at Barley Mill, in the parish of Abdie and shire of Fife, present prisoner in the prison of Cupar, accused of having, along with other persons, whose names are to the petitioners unknown, during the years 1863 and 1864, or part thereof, wickedly and illegally conspired together for the purpose of taking the life of the Rev. James Pitt Edgar, minister of the parish of Dunbog, in the county of Fife, and of John Ballingall, farmer, Dunbog, aforesaid, or of doing them some grievous bodily injury; and for the purpose of wilfully setting fire to or attempting to set fire to their dwelling-houses or premises, or otherwise of doing serious injury and damage to their property and persons; as also, of wickedly and maliciously writing and sending, or causing and procuring to be written and sent, threatening letters to the said Rev. James Pitt Edgar and John Ballingall. That in the course of said precognition the petitioners have recovered various letters and other documents, showing that other persons than the said James Pringle have been engaged in said conspiracy, and in writing and sending said threatening letters, all which are herewith produced; and particularly that John Bell, farmer, Glenduckie; Barbara Honeyman or Black, wife of and residing with William Black, parochial schoolmaster, Dunbog; George Black and William Black, sons of and residing with the said William Black; and David Nelson, a roadman, residing at Glenduckie, have been engaged in said conspiracy, and in writing and sending said threatening letters. That the petitioners are informed and have reason to believe that written documents and other articles referring to and connected with said conspiracy and threatening letters are in the possession of the said John Bell, William Black, schoolmaster, Barbara Honeyman or Black, George Black, and William Black, and also in the possession of the said David Nelson; and as it is necessary for the purposes of said precognition to recover and take possession of the same, the present application for warrant to search becomes necessary.

This action arose out of the proceedings consequent upon the presentation of the Reverend James Pitt Edgar to the parish of Dunbog, and specially from the circumstances of the investigation undertaken by the defenders, as Procurators-Fiscal for the eastern district of Fife, to ascertain the authors of the various threatening letters addressed to that gentleman, and of the explosion of the bush of a cart-wheel filled with gunpowder below the windows of the manse.

It appeared from the evidence that suspicion having fallen upon a millwright, named James Fringle, a search of his premises was instituted by the authorities, and on Saturday 24th December 1864 a number of documents were recovered, after perusal of which the defenders, on the 26th December, presented a petition to the Sheriff containing the statements complained of, and craving warrant to search the house of the parties therein named. This warrant was executed the following day on all the persons referred to except David Nelson, the