

he would at once dismiss him. The pursuer did not return when so desired, and on 5th August the defender wrote him a letter dismissing him. At the same time he telegraphed to his solicitor in London to get the warehouse taken possession of. The pursuer left for London on the evening of the 5th, but on his arrival he found the warehouse locked against him. He thereupon raised an action for count and reckoning, and payment of the commission due to him, and for damages for wrongful dismissal. It was the latter branch of this action only that formed the subject of the present trial, which was commenced on Friday evening and terminated yesterday.

Lord BARCAPLE, in his charge to the jury, said—Cases founded upon wrongful dismissal, where the dismissal is sought to be justified, are usually of a very simple kind. The question generally is whether the servant has committed a fault of such magnitude as to justify dismissal? But here there is a combination of matters alleged against the pursuer; and these combined may justify dismissal, although possibly each one taken by itself might not. The first matter I may allude to is the statement on record by the defender, that the pursuer had been frequently at the warehouse in a state of intoxication, and unfit for business. This was not known to the defender when the dismissal took place, and it might have involved a question of law as to whether you were entitled to regard any matter which could not be in the defender's mind at the time of dismissal. But I am relieved from giving any opinion on this legal question, and you are also relieved from considering the matter, because the charge has been virtually abandoned by the counsel for the defender, and I think it right to say that it was not proved. The pursuer admitted that there was sometimes jollification in the warehouse; but intoxication was only spoken to by one witness, who has not been corroborated. In 1863, a coldness seems to have arisen, in consequence of the pursuer suspecting that the defender wished to transfer him to the employment of Tillie & Henderson—a matter in regard to which the pursuer seems to have been entirely mistaken—but there was no decided breach until July 1864, when the pursuer went to Glasgow without giving any notice of his intention, because, as he thought, the defender would try to avoid him if he knew of his coming. That indicated a most unfortunate state of mind on the part of the pursuer. In the course of the interview that took place, the defender says expressions were used to him by the pursuer which justified his dismissal. Both parties are agreed that the cause of this was the recurrence to the dispute of 1863, which was introduced into the conversation by the defender. You will judge of the evidence of what passed on this occasion. Mr Brown, a clerk, heard through a partition what took place, and he was of the impression that he heard the pursuer say the defender was no gentleman. That was certainly a strong thing to say, if it was said. The defender's next ground of justification is that the pursuer disobeyed his order to return to London. The pursuer says he proposed to the defender to wait in Glasgow until the defender's return from Belfast. The defender says the pursuer had told him he was to return on the Monday. He did not remember whether at the interview he had told him to return. The pursuer's letter of 27th July, written immediately after the interview, rather shows also that he had intended to return on the Monday. But he went off with his wife to the Highlands, and did not return to Glasgow until the Tuesday, and on 3d August he was ordered in writing to go back to London, but he did not do so until the 5th. The defender's next ground of justification is that the pursuer had made false and improper statements in regard to him to third parties. Mr Sinclair gave evidence that the pursuer had said to him of the defender that he dealt in an underhand way with the buyers of the houses he did business with. The defender

said nothing about this at the time, but he was quite entitled now to ask the jury to take it into account. Again, when the defender was in London he told Mr Sinclair that he could not be present at his daughter's marriage because his own mother was dying, and he required to go home; and the pursuer is said to have told Mr Sinclair in regard to this that it was all a pretence, and that he had left London to avoid him. The pursuer had also made statements as to the dispute about Tillie & Henderson, in regard to which, as I have said, he was mistaken. Then, again, he told Mr James Sinclair that the defender was endeavouring to prevent consignments being made to him, so as to save his commission, and that the defender was a "low, sneaking fellow." You will judge of the evidence as to all these matters, and say whether they are proved, and whether, putting them altogether, they form a sufficient justification of the dismissal. This was peculiarly a question for a jury. It is quite true that the pursuer was only a servant in one sense; he was the defender's agent and representative in London, and while he was entitled to considerable latitude and consideration, it is also to be kept in view that from a person occupying the position he did, there were expected a carefulness and gentlemanlike propriety in his conversation with others in regard to his principal which are not looked for from an ordinary or untried servant. The question is, has he gone beyond the proper boundary? If you come to be of opinion that the defender was justified in dismissing the pursuer, then the manner in which it was done is immaterial. But if, on the other hand, you think that he was not justified in dismissing him, then you will consider the circumstances under which the defender carried out his resolution, and these you will take into view as aggravating the damages which in that case you will find to be due to the pursuer.

The jury, after an absence of an hour and ten minutes, returned a verdict for the pursuer, and assessed the damages at one farthing.

Monday, March 26.

(Before Lord Kinloch.)

PRINGLE v. HOOD AND OTHERS.

Counsel for Pursuer—Mr Fraser and Mr Brand. Agents—Messrs Wotherspoon & Mack, W.S.

Counsel for Defenders—The Solicitor-General and Mr J. R. Davidson. Agents—Messrs Hill, Reid, & Drummond, W.S.

In this case, in which Andrew Monilaws Pringle, residing in Cumberland Street, Edinburgh, assignee of Miss Helen Pringle, residing there, conform to assignation by her in his favour, dated 1st October 1862, is pursuer; and Walter Hood, farmer, Lawhouses, Haddingtonshire, and others, trustees of the deceased John Hood, farmer, are defenders, the following were the issues:—

- I. "Whether, on or about Whitsunday 1843, the late John Hood, tenant Newmains, received from the trustees of his then deceased wife a legacy of £400, left by her to Helen Pringle, her niece? And whether the defenders, as trustees of the said John Hood, are due and resting-owing the said sum of £400, with interest, to the pursuer, as assignee of the said Helen Pringle?"
- II. "Whether, on or about Whitsunday 1843, the said John Hood received from the said Helen Pringle the sum of £150, to be taken care of by him for her behoof? And whether the defenders, as trustees of the said John Hood, are due and resting-owing the sum of £150, with interest, to the pursuer, as assignee of the said Helen Pringle?"
- III. "Whether, on or about Whitsunday 1849, the said Miss Helen Pringle left in Newmains farm-house, occupied by the said John Hood, in

possession and charge of the said John Hood, the articles of furniture and others, her property, specified in the schedule hereunto annexed? And whether the said articles, or some of them, were not delivered to the said Miss Helen Pringle, or to the said pursuer as her assignee, or to any one for her or his behoof? And whether the said articles were of the value of £50, or of what value?"

After the jury were sworn the case was compromised, the defenders agreeing to pay to the pursuer £140, and to give up the articles of furniture referred to in the third issue, each party paying his own expenses.

MUNRO v. CALEDONIAN BANKING COMPANY
(*ante*, p. 108).

Subscription of Deed—Testamentary Witnesses. Verdict of a jury that testamentary witnesses had not seen a bond of caution subscribed.

Counsel for Pursuer—Mr Watson. Agent—Mr L. M. Macara, W.S.

Counsel for Defenders—Mr Gordon and Mr Millar. Agents—Messrs Adam & Sang, S.S.C.

In this case, in which James Munro, tenant, Kincardine, is pursuer, and the Caledonian Banking Company are defenders, the issue submitted to the jury was—

"Whether Peter Gray and Donald Munro, two of the alleged witnesses to the bond No. 19 of process, or either of them, did not see the pursuer subscribe the same, and did not hear him acknowledge his subscription?"

The instrumentary witnesses were both examined. They had no distinct recollection on the subject, but rather thought that they did not see the pursuer sign or hear him acknowledge his subscription. The pursuer, however, and the bank agent, Mr Clark (the document was a bond of caution for a cash credit), both gave positive evidence on the subject; but they flatly contradicted each other. Lord Kinloch told the jury that it was for them to judge as to which was speaking the truth. But the pursuer and Mr Clark were more or less interested witnesses. But in order to find for the pursuer they must be satisfied that the witnesses did not see the bond subscribed or hear the subscription acknowledged. If they thought the matter involved in doubt, then their verdict should be for the defenders.

The jury, after an absence of a few minutes, found for the pursuer.

MACINTYRE v. CALEDONIAN BANKING CO.
(*ante*, p. 108).

Counsel for Pursuer—Mr Watson. Agent—Mr L. M. Macara, W.S.

Counsel for Defenders—Mr Gordon and Mr Miller. Agents—Messrs Adam & Sang, S.S.C.

The pursuer of this action was also a party to the bond of caution referred to in the previous case, and a similar issue had been adjusted. A minute was lodged for the pursuer consenting that the defenders should be in the same position as if a verdict had been returned for them upon the issue, when the question of law which now arises, comes to be discussed—viz., whether, in consequence of Munro, one of the cautioners, being now freed, the pursuer, the other cautioner, is entitled to be free also?

KNOX v. MACARTHUR (*ante*, p. 100).

Counsel for Defender—Mr Watson and Mr J. H. A. Macdonald. Agents—Messrs J. & J. Turnbull, W.S.

In this case, in which Andrew Knox, quarryman, residing at New Monkland Poorhouse, in the county of Lanark, is pursuer; and John Macarthur, parochial schoolmaster at New Monkland, and residing there, in the said county, is defender, the following is the issue—It being admitted that the pursuer

was, on or about the 13th of September 1864, an inmate of the poorhouse of New Monkland, in the county of Lanark, and that the defender was, at the date mentioned, a member of the Visiting Committee of said poorhouse:

"Whether, on or about the 13th September 1864, within the said poorhouse of New Monkland, the defender did attack and assault the pursuer—to his loss, injury, and damage?"

Damages laid at £250.

The pursuer failed to appear by himself or by his counsel or agent; and the Judge granted a certificate to that effect, in order to entitle the defender to obtain a dismissal of the action.

Thursday, March 29.

MACLEAN v. COLTHART.

Counsel for Pursuer—The Solicitor-General and Mr W. M. Thomson. Agent—Mr Wm. Burness, S.S.C.

Counsel for Defender—Mr Gordon and Mr H. J. Moncreiff. Agents—Messrs Cheyne & Stuart, W.S.

In this case Roderick Maclean, sometime merchant in Stornoway, now in Glasgow, is pursuer; and Robert Colthart, sometime wine and spirit merchant in Stornoway, afterwards residing at Abington, in Lanarkshire, Wanlockhead in Dumfriesshire, and Auchintinney of Ardnamurchan in Argyllshire, is defender. The issues were—

1. "Whether, on or about 3d November 1862, the pursuer was, on a warrant obtained against him as *in meditatione fugæ*, at the instance of the defender, wrongfully apprehended on board the steamer Clydesdale, on her voyage from Stornoway to Glasgow, and was removed from said vessel and taken to Stornoway, and kept in custody there until the following day—to his loss, injury, and damage?"

2. "Whether, on or about 4th November 1862, the pursuer was, on a warrant of imprisonment, until he should find caution *de judicio sisti*, granted by the Sheriff-Substitute at Stornoway, on the application of the defender, wrongfully imprisoned in the prison of Stornoway, and detained in said prison until on or about 23d November 1862—to his loss, injury, and damage?"

Damages laid at £2000.

The case was set down for trial to-day, but was compromised, the defender having made a tender of £105 of damages, with expenses, which the pursuer accepted.

Thursday, Friday, and Saturday,
March 29, 30, and 31.

BATEYS v. DYKES (*ante*, p. 146).

Reparation—Wrongous and Malicious Arrestment of a ship—Wrongous Exaction of Money not Due. Jury trial, in which verdict for the pursuers.

Counsel for Pursuers—Mr Gifford and Mr Trayner. Agent—Mr P. S. Beveridge, S.S.C.

Counsel for Defender—Mr Mackenzie and Mr H. J. Moncreiff. Agent—Mr A. D. Murphy, S.S.C.

In this case, John Batey, shipowner, lately residing in Leith, now in Newcastle-upon-Tyne, and Francis Batey, shipowner, also lately residing in Leith, and now in Newcastle-upon-Tyne, registered owners of the steam-vessel Montrose, afterwards called the Lord Aberdour, of Newcastle-upon-Tyne, and lately plying between Leith and Aberdour as a passenger boat, are pursuers; and James Dykes, coal merchant and shipowner, residing in Leith, is defender. The issues were—

1. "Whether, on or about the 15th day of July 1865, the defender wrongously, maliciously, and without probable cause, and for a debt not due by the pursuers, arrested the steamship or