

Monday, March 26.

JURY TRIALS.

SECOND DIVISION—SPRING SITTINGS

(Before the Lord Justice-Clerk.)

PEARSON *v.* LOCKHARTS.

*Jury Trial.* Under an issue whether a charge upon a decree had been given for behoof of a person other than the chargers—verdict for the pursuer.

Counsel for the Suspenders—The Lord Advocate and Mr Scott. Agent—Mr David Crawford, S.S.C.

Counsel for the Chargers—The Solicitor-General, Mr Monro, and Mr Thoms. Agent—Mr William Officer, S.S.C.

This action arose out of the suspension of a charge for payment of a sum of money due to Messrs N. & N. Lockhart, manufacturers, Kirkcaldy, by the late firm of Pearson & Jackson, writers there; and the issue sent to the jury was as follows:—

“Whether the charge, in name of the said N. & N. Lockhart, was given, and is now insisted on, by W. A. Taylor, writer in Cupar, and Thomas Jackson, writer in Kirkcaldy, or one or other of them for behoof of the said Thomas Jackson?”

It appeared from the evidence that the Messrs Lockhart were creditors of the now dissolved firm of Messrs Pearson & Jackson, writers, Kirkcaldy, for the sum of £1050. One-half of that sum was recovered from Thomas Jackson, one of the partners; but the balance he was unable to pay. Under these circumstances, Mr Taylor, writer in Cupar, applied to the Messrs Lockhart on behalf of Jackson; and on condition of Mr Taylor interposing his personal security they granted Jackson the indulgence required. Mr Taylor accordingly accepted a bill drawn upon him by the Messrs Lockhart for the sum of £633, 16s. 9d., being the balance, with interest and expenses, of the sum due them; and of same date the Messrs Lockhart undertook by letter to grant him, on payment of this bill, an assignation to the decree and diligence at their instance against the firm of Pearson & Jackson, Mr Taylor in the meantime being at liberty to use diligence in their name on condition of his becoming bound to keep them scatheless of all expense and responsibility in consequence. Mr Taylor then applied to, and obtained from Jackson, in security of the bill granted by him, a disposition to certain heritable property in Burntisland, and also a bill drawn by Jackson upon his father at a year's currency. Thereafter he proceeded to charge Mr Pearson, the other partner of the firm, in name of the Messrs Lockhart, and in virtue of the decree to which he had obtained right by the letter of the 18th February 1863. On the falling due of Mr Taylor's bill to the Messrs Lockhart in February 1864, neither he nor Jackson were in a position to pay. But by means of an arrangement entered into between Mr Taylor and Mr Dewar, a former apprentice of Messrs Pearson & Jackson, an instalment of £133 was paid, by the assistance of Mr Dewar, to the Messrs Lockhart, and a bill granted for the balance.

On behalf of the suspender it was now argued that the proceedings out of which this action had arisen were taken for the interest of Jackson alone; that Mr Taylor acted only by his instructions and under his authority; and that by taking security from Jackson and his father he was in a position to recover the amount advanced by him whenever he pleased.

For the chargers it was maintained that, although Mr Taylor had originally interposed his security out of friendship to Jackson, he had, nevertheless, a direct pecuniary interest in enforcing the charge against Pearson; that the security obtained from

Jackson was of little avail, in consequence of the property over which it was granted being tied up by inhibitions at the instance of Pearson and others; and that the sum of £133 had already been paid in cash by him, with the assistance of a small contribution by Mr Dewar.

The LORD JUSTICE-CLERK having summed up, the jury retired, and after an absence of a quarter of an hour, found unanimously for the suspender and pursuer upon the issue.

Tuesday, March 27.

ANDERSON *v.* M'CALL & CO.

Counsel for the Pursuer—Mr Gordon and Mr Scott. Agents—Messrs Webster & Sprott, S.S.C.

Counsel for the Defenders—The Solicitor-General, Mr Alex. Moncrieff, and Mr Lancaster. Agents—Messrs Wilson, Burn, & Gloag, W.S.

In this case the pursuer is William Anderson, accountant in Glasgow, trustee on the sequestrated estates of Andrew Jackson & Son, grain merchants there, and of the individual partners of that firm; and the defenders are Messrs John M'Call & Company, corn factors, Glasgow. The issue sent to trial is in the following terms:—

“It being admitted that on 23d May 1864 the estates of Andrew Jackson & Son, grain merchants in Glasgow, were sequestrated under the Bankrupt Acts, and that the pursuer William Anderson is trustee upon said estates:—

“Whether, after the first delivrance in the sequestration, the defenders removed from the stores situated at 69 James Watt Street, Glasgow, and took possession of the quantities of wheat specified in the schedule hereunto annexed, or any part thereof, belonging to the sequestrated estate of Andrew Jackson & Son; and are resting-owing to the pursuer, as trustee foresaid, the sums specified in said schedule, or any part thereof, as the price or value of said quantities of wheat, with interest thereon, at the rate of five per cent. per annum from the respective dates mentioned in schedule?”

SCHEDULE.

1. “The prices or value of 1386 bolls of red French wheat, *ex* ‘Agriculture,’ £1524, 12s., with interest at 5 per cent. per annum from 4th July 1864.
2. “The price or value of 1490½ bolls of wheat, *ex* ‘Ludovic,’ £1602, os. 4½d., with interest at 5 per cent. per annum from 11th October 1864.
3. “The price or value of 1324 bolls of wheat, *ex* ‘Amazon,’ and 1260 bolls of wheat, *ex* ‘Romp,’ £2647, with interest at 5 per cent. per annum from 10th August 1864.
4. “The price or value of 1729½ bolls of wheat, *ex* ‘Bonne Mere,’ £1859, 4s. 3d., with interest at 5 per cent. per annum from 13th July 1864.”

Or,

“Whether, prior to the first delivrance in the sequestration, the defenders had obtained delivery of the said grain as proprietors thereof?”

After the evidence had been led, the LORD JUSTICE-CLERK directed the jury to return a special verdict finding the facts alleged as to removal of wheat proved; but “whether the wheat so taken possession of and sold by the defenders was so taken possession of and sold under a valid title, or whether the same formed part of the estate vested in the pursuer as trustee in the said sequestration; or whether, in respect of the facts above found, the defenders obtained effectual delivery of the said grain as proprietors thereof, prior to the date of the first delivrance in the sequestration—the jury leave to the Court to determine as questions of law, and to enter up the verdict for the pursuer or defenders according to their judgment on the said questions of law.”