

been done may fail to be followed by any good or practical result. I am asked to reduce proceedings which have been regular so far as they went.

Nor am I clear that the acts done may not be to some effect useful or beneficial. It may be that there may be a power resident in the Court to direct that a meeting be called to remedy the error by fixing the number now. I see formidable objections to this course, but I see some plausible grounds on which such an exercise of our prætorian power might be vindicated. I think it a question on which different views might well be entertained, to be solved by discussion on such an application, in the event of such an application being made. It may be that the public Act may be so amended as to enable the course to be followed out; it may be that a private Act may be obtained proceeding upon the fact as ascertained by a judgment not reduced. It may be that in new proceedings before the Sheriff what has been already done may save a repetition of some, at all events, of the things well done under this application. It is enough for me to say that the Acts seem by the Statute separate and distinct, and that up to the failure to follow up what had been well done, we have nothing irregular or contrary to the Act. Whether the distinction prove in its results material or immaterial, I think we must deal with the case according to ordinary legal principles. The result of my view is, that the interlocutor should be substantially adhered to in so far as relates to proceedings subsequent to the 30th May 1866, but that the reductive and declaratory findings should be, as to the former proceedings, refused.

Agent for Pursuer—James Steuart, W.S.

Agents for Defenders—Millar, Allardice & Robson, W.S.

Tuesday, November 10.

COURT OF LORDS ORDINARY.

TAYLOR v. SHARP.

Sale—Inferior quality—Breach of contract—Consequential damage—Reparation. A seedsman held liable in damages for loss occasioned by his furnishing seed of an inferior quality and different from the kind agreed on betwixt him and the purchaser. Claim of consequential damage disallowed.

Sharp, farmer at Lindifferon, brought an action in the Sheriff-court of Fifeshire against William Taylor, seedsman, Cupar-Fife, for a sum of £157, being loss on a field of turnips by reason of the defender having wrongfully furnished a quantity of turnip seed of inferior quality, and different from the kind ordered and purchased by the pursuer. The account annexed to the summons included a sum of £40, as "loss sustained because of not having sound turnips to fatten" the pursuer's stock. After a proof, the Sheriff-substitute (TAYLOR) pronounced this interlocutor:—"Finds, in point of fact, that the defender, who is a dealer in seeds, on a verbal order by the pursuer for fifty pounds weight of Aberdeen green-top turnip seed, sold and delivered that quantity of turnip seed to the pursuer on the 29th May 1866, which seed so furnished the defender put into a bag with a ticket or label marked 'Aberdeen yellow selected stock, crop 1865,' and the defender also invoiced the same as 'Aberdeen yellow turnip,' the price being

£1, 13s. 4d., which the pursuer paid on 18th June thereafter:—"Finds that no express warranty of the quality of the said seed was asked or given, but that the defender at the time of the sale represented it to be 'pure seed' of Aberdeen yellow turnip, from selected bulbs of his own growing: Finds that the pursuer, relying on said seed being pure Aberdeen yellow turnip seed as contracted for, sowed it in the course of a week or two thereafter in portions of his farms of Lindifferon and Fernie: Finds that these sowings produced a fair average crop of turnips in point of quantity:—"Finds that 'Aberdeen yellow turnip' is a well known distinct kind of turnip, different from and more hardy and valuable than the hybrid varieties of turnip, and especially has the property of not being so readily injured by frost: Finds that on that account the bulk of pursuer's crop grown from the said seed sold by the defender as Aberdeen yellow turnip was intended by the pursuer for consumption on the ground by his stock in the spring, and was with that view accordingly left in the ground, with the exception of about three quarters of an acre at Fernie, and an acre and a quarter or so at Lindifferon, which had been drawn and carried away in December: Finds that in January 1867, after a severe frost, the pursuer seeing that the said turnips were much injured by the frost, began to suspect that the turnips so grown from the seed supplied by the defender as Aberdeen yellow were not of that description, but a different and softer kind, and he intimated so to the defender on 12th February, requesting him to go and inspect the crop; and he afterwards suggested a settlement of the matter by mutual valuation of the damage, which was not agreed to: Finds it proved that the turnips in question were not Aberdeen yellow turnips but a turnip of a different and softer description, and that they consequently yielded to the power of the frost that prevailed for some weeks in January 1867; and finds that, as compared with a corresponding crop of Aberdeen yellow turnips, the turnips in question became unfit for use and valueless as food for the pursuer's stock in the spring to the amount specified in the first branch of the account sued for, viz., £117, 6s. 11d. sterling; Finds that the pursuer thus sustained a direct loss to that amount through the fault of the defender, and that the defender is liable in reparation to the pursuer for said loss, and decerns against him therefor accordingly: Sustains the defender's sixth plea in law, so far as it relates to the pursuer's claim for £40, forming the second branch of the account sued for:—"Finds the defender liable in expenses," &c.

The claim of £40 was disallowed as being of the nature of consequential damage.

The Sheriff (MACKENZIE) substantially adhered, but reduced the sum of damages to £73.

The defender advocated.

MONRO and RHIND for advocator.

YOUNG and BALFOUR for respondent.

The Court adhered.

Agents for Advocator—Murdoch, Boyd, & Co., S.S.C.

Agents for Respondent—Jardine, Stodart & Frasers, W.S.

Thursday, November 12.

WRIGHT v. BAIRD.

Broker—Commission Agent—Bankrupt—Failure by Agent to give full information to Principal. A