

of the evidence is that they were taking it in the usual and a reasonably safe way. Now, I do not think that our law has gone any further in settling the responsibility of parties, where the action is laid on *culpa* in such services as carriage of goods, than requiring that the carriage shall be done in the usual and general way. Now, the men were doing that here, and I think they would have done it in safety if the ring had not given way, and the accident happened on account of the ring having given way from a latent defect. And I am the more satisfied in coming to that conclusion because both Sheriffs, and I think the majority of this Court, are of opinion that the men were taking the animal in what was the usual and safe method. I cannot hold that the Steam Shipping Company were liable for the breakage of the ring, and in that way the case fails against them also, although not in quite such a clear manner as it fails against the other two respondents. I think it would be a very reasonable provision in police bills, provisional orders, &c., that bulls should not be taken through crowded streets except in a covered cart. But I cannot hold the same view as to the carriage of bulls as to the presence of vicious dogs and wild animals, because as the world is at present constituted we cannot do without bulls, and therefore they must exist and be moved from place to place. But the presence of a dog known to be vicious is a very different thing. Upon the whole matter I have come to the conclusion that we must sustain the Sheriff's judgment and dismiss the appeal. I would merely wish once more to point out that the owner of the bull is not at present in this process. Perhaps there might be an action against the owner of the bull, and he might have redress against Forbes, who sold the bull, and Forbes again might have redress against the blacksmith who made the bad ring, but that would be a case on the ground of contract. No such case is presented to us here. I have stated the grounds on which I think no liability on the score of *culpa* can lie against any defender.

LORD CRAIGHILL and LORD RUTHERFURD CLARK concurred in Lord Young's opinion.

The Court pronounced this interlocutor:—

"Find in fact that on 12th February 1884, on a street in Aberdeen, the pursuer was knocked down and injured by a bull, the property of William Corrigal, Orkney, which was being led from the Waterloo Goods Station, Aberdeen, belonging to the defenders the Great North of Scotland Railway Company, to the wharf belonging to the defenders the North of Scotland and Orkney and Shetland Steam Navigation Company, in order to be carried by them to its owner in Orkney; (2) that the bull was at the time in the custody of the said Steam Navigation Company, and got loose in consequence of the ring in its nose breaking from a latent defect while being led by the said Steam Navigation Company's servants in the ordinary and in a reasonably safe manner; (3) that the defender George Bain purchased the bull for the said William Corrigal, and delivered it to the defenders the Great North of Scotland Railway Company at their station at Alford to be conveyed to the owner in Orkney, to whom it was addressed; (4)

that the said railway company carried it in safety to the said Waterloo Station, and there delivered it to the said Steam Navigation Company, by whom it was removed and was being led when it got loose as aforesaid; (5) that no fault or neglect of duty by any of the defenders has been proved: Find in law that none of the defenders are liable in damages to the pursuer; therefore dismiss the appeal and affirm the judgments," &c.

Counsel for Pursuer—Kennedy—Wilson.  
Agent—John Macpherson, W.S.

Counsel for the Steam Navigation Company—  
Comrie Thomson—Guthrie. Agents—Henry &  
Scott, S.S.C.

Counsel for the Railway Company—Jameson  
—Ferguson. Agents—Gordon, Pringle, Dallas, &  
Co., W.S.

Counsel for George Bain—Rhind. Agent—  
William Officer, S.S.C.

Saturday, July 10.

## FIRST DIVISION.

JAMES v. JAMES.

*Diligence—Arrestment—Aliment—Future Debt  
—Recal on Consignation.*

A wife who had obtained decree of separation and aliment against her husband used arrestments against his funds in respect of her claim for aliment. The husband presented a petition for recal of the arrestments, in which it was stated that all arrears had been paid. Circumstances in which the Court recalled the arrestments only on condition of the husband making consignation of a sum to meet future claims for aliment.

In 1882 Janet Sandison or James obtained decree of separation against her husband William James, and also decree for aliment at the rate of £25 per annum.

On 15th September 1884 James executed a trust-deed for behoof of his creditors, in favour of Mr John Irvine, Lerwick. The trustee entered into possession of his whole estate, and paid the creditors in full.

On 8th July 1885 an arrestment on the decree for aliment was used in the hands of the trustee for the sum of £100 more or less, and after that the trustee paid to the wife the arrears of aliment then due, with interest, and the half-year's aliment due and payable for the current period at Whitsunday 1886.

James then presented this petition for recal of the arrestments, stating there was no debt then due to his wife; that the trustee refused to deliver up the balance of the estate then in his hands—amounting to about £250—until the arrestments were withdrawn or recalled; and that this sum was the sole capital he had.

Mrs James lodged answers to the petition, in which she submitted that in the special circumstances of the case the arrestments should not be recalled except upon consignation of £100, or sufficient caution being found therefor.

The answers contained the following state-

ments:—"From the time when the respondent found it necessary to raise said action of separation and aliment, and both before and after she obtained decree therein, the petitioner has systematically attempted to defeat the respondent's just rights, and to conceal his estate from her. During the progress of the litigation the petitioner sold off his stock-in-trade, and sailed from Lerwick with the proceeds thereof, for the purpose, as the respondent believes and avers, of preventing her securing payment of any aliment. This design having been frustrated by use of inhibition against his heritage, he at the proof attempted to establish that said heritage was subject to a burden for nearly its full value, in favour of an alleged partner in business, Felix M'Shane; but the Lord Ordinary (Adam) considered that the alleged burden was only a device to defeat the respondent's claims, and the respondent believes and avers that Mr Irvine did not admit the alleged debt to a ranking on the petitioner's estate. Aliment was accordingly decreed for at the rate of £25 per annum, payable half-yearly, but the petitioner has been very irregular in his payments. The aliment due at Whitsunday and Martinmas 1884 was not paid till April 1885, and the respondent believes and avers that she would not have got payment even then had she not inhibited the petitioner from dealing with his heritage, and had not the trust-deed above mentioned been executed.

"In the month of March 1884 the petitioner's heritable property in Lerwick was discovered to be on fire. On the previous evening the petitioner had gone to Scalloway, leaving the said Felix M'Shane in charge. In consequence of suspicious circumstances connected with the said fire, the petitioner and M'Shane were apprehended on a criminal charge of fire-raising or attempted fire-raising, and after a trial before the Sheriff and jury were convicted and sentenced to a lengthened term of imprisonment. It is believed and averred that the petitioner committed the said act of fire-raising in order to defraud the insurance company, and also, by uplifting the insurance money, to defeat the claims of the respondent and other creditors, although he was perfectly solvent, and doing a fairly lucrative business.

"The respondent humbly submits that the prayer of the petition should not be granted, except on caution or consignment as aforesaid, and that on the following grounds:—(First) The petitioner's actings hitherto justify an apprehension that he will not in the immediate future duly meet the respondent's just claims: (Second) In view of the great trouble and expense the respondent has already had in recovering her aliment, it is reasonable to assume that she will never receive her future aliment if the arrestments be unconditionally recalled, more especially as the defender's heritage has now been sold, and there is no other estate to attach by diligence: (Third) The petitioner is a travelling hawker or dealer, moving about the country, and he is or was recently in Orkney; accordingly, the respondent, when her aliment becomes due, may never know where to find him: And (Fourth) The reversion of the funds in the trustee's hands, over and above the said sum of £100, is amply sufficient to meet the petitioner's business requirements."

The petitioner argued that it was incompetent for a wife to arrest the funds of her husband for

aliment which was not due. The arrestments should be recalled unconditionally—*Symington v. Symington*, Dec. 3, 1875, 5 R. 205. Diligence at the wife's instance was only competent in cases where it could be averred that the husband intended to withdraw from the jurisdiction of the Court—*Anderson v. Anderson*, Nov. 18, 1848, 11 D. 118.

The respondent argued that the point here raised had been reserved in *Symington's* case, per Lord President, 5 R. 207. There had been a course of conduct which showed that the petitioner had been trying to put away his estate. This was the same as the case of *Burns v. Burns*, Dec. 9, 1879, 7 R. 355. In the circumstances there should be caution or consignment of £100.

At advising—

LORD PRESIDENT—I do not think that this is a case to which the principle of *Symington v. Symington* applies. I think it is much more like the case of *Burns v. Burns*.

The petitioner has destroyed by his own criminal act the property he had, and has thus reduced himself to a state of comparative poverty. He has, however, a reversion of £250 after satisfying his creditors, and the question is, whether this woman is entitled to have a part of that fund consigned as security for payment of future aliment? Now, that depends upon the conduct of the petitioner, and upon the question whether there is a reasonable apprehension that the petitioner will not meet the aliment when it falls due, but attempt to defeat the wife's claims by absenting himself from the country.

I think there is reason for that apprehension, and therefore that we should only recall this arrestment upon condition of consignment of £100.

LORD MURE concurred.

LORD SHAND—I think this is a very special case. The petitioner, I am satisfied, before he set fire to his premises, had previously attempted, by burdening his property, to defeat the wife's claims. Then he set fire to his property; and again his present mode of life is that of a travelling hawker. Therefore unless he gives security I do not think the wife will get her aliment, so I am satisfied there should be consignment of £100.

LORD ADAM was absent.

The Court recalled the arrestments on condition of the petitioner making consignment of £100.

Counsel for Petitioner—Lyll. Agent—George M. Wood, S.S.C.

Counsel for Respondent—M'Lennan. Agents—Liddle & Lawson, S.S.C.