

day. I think a great reason of the unpopularity of jury trials has been the practice of continuing the trial over the one day, and thus increasing the expense against the losing party.

The Court dismissed the first objection, and sustained the second.

Counsel for Objector—C. Smith. Agent—A. Shiell, S.S.C.

Counsel for Respondent—Trayner. Agents—Horne, Horne, & Lyell, W.S.

Tuesday, December 2.

FIRST DIVISION.

HANNAY AND OTHERS, PETITIONERS.

Titles to Land Consolidation Act, 1868—Females as Instrumentary Witnesses.

A judicial factor produced on his appointment a bond of caution in which the signature of the cautioner was attested by two female witnesses. The Principal Clerk of Session declined to certify the sufficiency, on the ground that it was doubtful whether under the Act of 1868 it was lawful for females to act as instrumentary witnesses in deeds other than those relating to heritage. The preamble of the Act sets forth that—"Whereas it is expedient . . . to make certain changes upon the law of Scotland in regard to heritable rights, and to the succession to heritable securities in Scotland: Be it enacted," &c. The 149th section provides that—"All deeds and conveyances, and all documents whatever, mentioned or not mentioned in this Act, and whether relating or not relating to land, having a testing clause, may be partly written and partly printed," &c. The 139th section, on the other hand, enacting the competency of females to act as instrumentary witnesses, is in these terms—"It shall be competent for any female person of the age of fourteen years or upwards, and not subject to any legal incapacity, to act as an instrumentary witness in the same manner as any male person of that age, who is subject to no legal incapacity, can act according to the present law and practice, and it shall not be competent to challenge any deed or conveyance or writing or document of whatever nature, whether exercised before or after the passing of this Act, on the ground that any instrumentary witness thereto was a female."

The matter having been brought under the notice of the Lord Ordinary (SHAND), he reported the matter to the First Division of the Court. *Held* that under the statute females were empowered to act as instrumentary witnesses to any document whatever, whether relating to land or not.

Authorities referred to by the Lord Ordinary—Dickson, 689, 1775; Ersk. (Nicolson), i. i., 49; Broom's Com., pp. 4 to 6; *Simsour and Ors. v. The Vestry of St Leonards*, 28 L. J. Com. Pl., 290; *Lees v. Summersgill*, 17 Vesey, 508.

Counsel for Petitioners—M'Laren. Agents—Ronald, Ritchie, & Ellis, W.S.

Wednesday, December 3.

SECOND DIVISION.

[Sheriff of Fifeshire.

MILLER v. M'ARTHUR.

Trespass.

The penalties of the Act 1686, c. 11, *held* to apply to the case of trespass by sheep in a garden partially unenclosed.

This was an appeal from a deliverance of the Sheriff of Fifeshire on a petition at the instance of John M'Arthur, butcher, Cowdenbeath, against William Millar, miner, Cowdenbeath, for delivery of two sheep belonging to the petitioner, which had been seized upon by the respondent; or alternatively for a sum in name of damages.

The facts were briefly these—that on the 6th June 1873 the respondent found several sheep in his garden, two of which he pointed in virtue of the Act 1686, c. 11. They belonged to the petitioner, who was sub-tenant of a park adjoining the respondent's garden, and they had made their way through a gap in the dyke, as there was no herd with them.

The Sheriff-Substitute (LAMOND) pronounced the following interlocutor:—

"*Dunfermline, 11th July 1873.*—The Sheriff-Substitute having considered the closed record, proof, and productions, and heard parties' procurators, finds that the respondent is proprietor of a feu at Foulford, Cowdenbeath; that his feu adjoins on the west a field in grass tenanted by Dr Mungall; that along the west boundary of his feu the respondent erected on his own ground a stone wall; that a gap in this wall was made some time ago by a spate, and that the respondent holds the Lochgelly Iron Company, his superiors, liable for the damage: Finds that some weeks prior to 6th June 1873, Dr Mungall (who also holds under the Lochgelly Company) informed the respondent that he had sublet the field to the petitioner for sheep pasture, and requested the respondent to get the gap in his wall repaired: Finds that about a week prior to said 6th June the petitioner put sheep into the field; that the gap was not repaired; that on Sunday, 1st June, some of the sheep got into the respondent's garden through said gap, but were driven out by the petitioner; that on Monday, 2d June, the petitioner went to respondent and apologised, and offered to help him to repair the wall; that the respondent refused, alleging as his reason that until he got settled with the Lochgelly Company he was not disposed to mend the dyke: Finds that on 6th June some of the petitioner's sheep again strayed into the respondent's garden; that the respondent seized two of them, and has ever since detained them; Finds that the respondent knew to whom the sheep belonged, but took no step to inform the petitioner, who lives across the road almost opposite to him: Finds that on Saturday, 7th June, the petitioner's agent wrote to the respondent the letter No. 7 of process, which letter would in course of post be delivered on Monday morning; that notwithstanding of said letter the respondent, well knowing to whom the sheep belonged, went to Dunfermline on Monday afternoon and got handbills printed, of which No. 6 of process is a copy, and had the same posted up: Finds in law that the respondent's detention of said sheep is illegal, and that in the circumstances he is not entitled to found on the Act