

Thursday February 18.

SECOND DIVISION.

COCKBURN v. HOGG.

*Process—Jury Trial—Notice of Motion for New Trial—“February Week”*—A.S., 16th February 1841, sec. 34—*Court of Session Act 1868 (31 and 32 Vict. cap. 100), sec. 4.*

Held that with regard to a notice of motion to show cause why a new trial should not be granted, the “February Week” is in the same position as the Christmas recess.

By section 36 of the Act of Sederunt regulating proceedings in jury causes, dated 16th February 1841, it is enacted—“When the party against whom the verdict has been found intends, without lodging a bill of exceptions, to apply for a new trial in causes which have been tried at the sittings after the end of the session, or during the Christmas recess, or at the circuits, such party shall give notice of a motion for a rule to show cause why the verdict should not be set aside and a new trial granted, within six days after the commencement of the new session or the meeting of the Court after the Christmas recess, or ten days after the trial of the cause if the cause has been tried during the session or immediately before the sitting down of the session.”

By section 4 of the Court of Session Act 1868 (31 and 32 Vict. cap. 100) it is provided, *inter alia*—“It shall be lawful for the Court at the time of the Christmas recess to adjourn for a period not exceeding fourteen days, and to adjourn at such time during the month of February as shall be most convenient, for a period not exceeding seven days.”

The jury trial in the action at the instance of Peter Cockburn and Others v. Peter Hogg and Others took place before the Lord Justice-Clerk on Saturday, 6th February. The jury returned a verdict at 6:30 p.m.

On February 6th the Court adjourned for the “February Week,” and did not sit till Tuesday, February 16th.

On February 17th the defender gave notice of a motion for a rule to show cause. When this motion appeared in the Single Bills of February 18th the pursuer opposed the motion on the ground that the notice was too late according to the Act of Sederunt of 1841, section 36, as it had not been given till later than ten days after the trial.

Argued for the defender—The “February Week” was instituted after the Act of Sederunt 1841, and was therefore not provided for specifically. But the “February Week” was a recess of the same kind as the Christmas recess, and should be considered to be on the same footing as the latter.

LORD JUSTICE-CLERK—I think we must allow this motion.

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LORD TRAYNER—I also agree. The principle of the matter is that notice of a motion to show cause should be given within six days after the sitting of the court after vacation or recess. To make the matter quite plain, perhaps an Act of Sederunt should be passed putting the February Week in the same position as the Christmas recess.

LORD YOUNG and LORD MONCREIFF concurred.

The Court allowed the motion.

Counsel for Pursuer—Clyde. Agents—Reid & Guild, W.S.

Counsel for Defender—T. B. Morison. Agent—W. Hamilton, S.S.C.

Friday, February 19.

SECOND DIVISION.

[Sheriff of Aberdeen, Kincardine, and Banff.]

JAFFRAY'S TRUSTEE v. MILNE.

*Compensation—Bankruptcy—Lease—Insolvency of Tenant—Trust-Deed for Creditors—Arrears of Rent and Sum Due for Crop, Manure, &c.*

Under an agricultural lease the landlord, in the event of the tenant becoming insolvent, was entitled to terminate the lease, and in the event of his exercising this option he was bound to settle with the tenant as if the lease had naturally expired. With regard to certain meliorations on buildings taken over by the tenant upon his entry, the lease provided that the tenant should be entitled to payment for the same at the termination of the lease; with regard to crop, manure, &c., it provided that the outgoing and incoming tenants should settle between themselves as to payment therefor without any responsibility upon the part of the landlord unless he chose to interfere.

The tenant became insolvent and granted a trust-deed for behoof of his creditors. The arrears of rent then due to the landlord amounted to £197, 12s. 6d. Thereafter the landlord re-let the subjects and agreed with the incoming tenant to settle with the trustee for the creditors for the meliorations and for the crop, manure, &c., upon the farm, and he accordingly entered into a reference with the trustee under which the meliorations on buildings were valued at £125, 4s., and the crop, manure, &c., on the farm at £63, 17s.

In an action by the trustee against the landlord for the amount of these valuations the trustee maintained that the right to the meliorations and to the crop, manure, &c., upon the farm having vested in him at the date of deed, the defender was not entitled to plead com-

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