

the possession of Jones & Company, the appellant at the date of Jones & Company's failure had no right to obtain possession of them or to retain their price when sold by his orders. I am therefore of opinion that the Sheriff-Substitute's judgment is right and should be affirmed.

The Court pronounced this interlocutor:—

“Dismiss the appeal and affirm the interlocutor appealed against: Find in fact and in law in terms of the findings in fact and in law in the said interlocutor appealed against: Therefore of new repel the defences and decern against the defender for payment to the pursuer of the sum of £25 sterling, with interest as concluded for: Find the defender liable in expenses in this Court,” &c.

Counsel for the Pursuer and Respondent—Salvesen, K.C.—Younger. Agents—Macpherson & Mackay, S.S.C.

Counsel for the Defender and Appellant—Ure, K.C.—Hunter. Agent—William Croft Gray, S.S.C.

Saturday, December 21.

FIRST DIVISION.

WELSBACH INCANDESCENT GAS LIGHT COMPANY, LIMITED v. M'MANN.

Process—Breach of Interdict—Petition and Complaint—Failure of Respondent to Appear—Procedure—Form of Interlocutor.

Procedure and form of interlocutor pronounced in a petition and complaint for breach of interdict where the respondent, although represented by counsel, failed to appear personally, and having been ordered to attend failed to obtemper the order.

On 12th June 1901 the Welsbach Incandescent Gas Light Company, Limited, presented a petition and complaint against David M'Mann, 241 George Street, Aberdeen, in which they alleged that he had been guilty of breach of interdict.

Answers were lodged by the respondent in which he denied having committed breach of interdict.

A proof was taken before Lord Adam on 20th July 1901.

When the case came on for hearing upon the evidence before the First Division, the respondent was represented by counsel, but failed to appear personally, and the case was continued for a week to give him an opportunity of appearing. He again failed to appear, and the Court on 14th December 1901, on the motion of the petitioners, pronounced the following interlocutor:—“Appoint the respondent to appear personally at the bar of this Court on Saturday next the 21st instant at ten o'clock a.m., under certification that if he do not obtemper this order warrant for his apprehension will be issued.”

The respondent failed to obtemper this order, and on 21st December 1901 the Court pronounced the following interlocutor:—

“The Lords having resumed consideration of the petition and complaint, and heard counsel for the complainers, in respect that the respondent David M'Mann has failed to appear at the bar of this Court in obedience to the order contained in the interlocutor dated 14th December current, on the motion of the complainers grant warrant to macers of Court and messengers-at-arms, or other officers of the law, to search for, take, and apprehend the person of the said David M'Mann, now or lately carrying on business as the Incandescent Fittings Company at No. 241 George Street, Aberdeen, and residing at No. 88 Great Northern Road, Kittybrewster, Aberdeen, respondent, and if so apprehended during session to incarcerate him in the jail of Edinburgh or other jail in Scotland, and thereafter with all convenient speed to bring the person of the said David M'Mann to the bar of this Court on any sederunt-day during session to answer in the matter of the said petition and complaint, and if so apprehended during vacation to incarcerate the said David M'Mann in the jail of Edinburgh or other jail in Scotland, therein to remain till the first sederunt-day of the ensuing session, and on that day to bring the person of the said David M'Mann to the bar of this Court to answer in the matter of the said petition and complaint, and if necessary for the purpose of so apprehending the person of the said David M'Mann grant warrant to open shut and lockfast places; as also grant warrant to magistrates and keepers of prisons to receive and detain the said David M'Mann as aforesaid: Further, authorise execution hereof to pass on a copy hereof certified by the Clerk of Court, and decern *ad interim*.”

Counsel for the Petitioners—W. J. Robertson. Agents—Davidson & Syme, W.S.

Counsel for the Respondent—D. Anderson. Agent—C. M'Laren, Solicitor.

Saturday, December 21.

SECOND DIVISION.

[Sheriff Court at Glasgow.]

KERR v. DARROCH.

Process—Proof—Witness—Filiation and Aliment—Calling Defender as Pursuer's First Witness.

Opinions per Lord Justice-Clerk, Lord Trayner, and Lord Moncreiff—that a pursuer in an affiliation case is entitled to call the defender as her first witness; that as she is only exercising her legal right there is not anything improper.