the present. Without positively deciding where the truth lies, the Lord Ordinary is very clear that the pursuer has failed to establish her case. There is not only no corroboration in regard to any important matter, of her own testimony, but that testimony is in some material respects self-contradictory. Although the pursuer says that the defender very frequently visited her at her master's house during the period of upwards of six months, remaining for hours at a time, no person besides herself has spoken to any such visits, or appears to have been cognisant of them; and this is all the more remarkable, when the circumstances and manner in which the visits are said by the pursuer to have taken place are considered. It is all but incredible that none of her master's household. which consisted at least of himself, the mistress, their son, and servant man, should ever have had occasion to know of or suspect such visits. At any rate, if they did, there is no proof or attempt at proof of it. In regard to the pursuer's self-contradiction, the Lord Ordinary refers to in particular, her statement, clear and distinct in itself, in answer to a question by the Court at her first examination, that "she had connection with no person other than the defender, prior to the birth of the children," while afterwards, at her second examination, she admitted that she had previously given birth to an illegitimate child. Her explanation of this apparent contradiction is not satisfactory. The Lord Ordinary does not think it necessary to determine whether the letter which appears to have chiefly influenced the Sheriff-Substitute in deciding against the defender is or is not a forgery. He thinks it would be very unsafe to determine that matter on the evidence in process. The Sheriff seems to have relied very mnch on the circumstance of the pursuer's name Mary being commenced with a small "m" in the letter referred to, in place of a capital "M" as in the pursuer's signature at the end of her deposition. But he has, it is presumed, omitted to notice that in her letter to her father, the genuineness of which can scarcely be disputed, it having been produced by him, the pursuer subscribes "M. Scott," in place of "Mary Scott," as to her depositions. The Lord Ordinary could not, therefore, allow himself to be influenced in this case, one way or the other, by a *comparatio literarum*, which is seldom, if ever, much to be relied on, and certainly not where the individual whose handwriting is in dispute happens to be in the same station of life as the pursuer, and little practised in subscribing her name, or in writing of any kind. R. M'F.

The pursuer reclaimed.

J. CAMPBELL SMITH, for her, argued—The pursuer's evidence is more reliable than the defender's. The terms of the letter produced by the defender are such as to make it highly improbable that she ever wrote it.

BURNET, for the defender, was not called on.

The LORD JUSTICE-CLERK—In one aspect of it, this might have been a very serious case, because if there had been evidence that this letter was a forgery, the defender would have been liable to a criminal prosecution. The evidence, however, is obviously quite insufficient to prove the very serious issue which the pursuer undertook to establish. Further, I think that there is not only no evidence that the letter is a forgery, but I am of opinion, from a careful examination of it and the other letters written by the pursuer, admittedly genuine, which are in process, that it is not. The pursuer has a particular style of writing some words, and their similarity in all the letters is very great. If forgery had been committed it must therefore have been done with great pains, and in that case one would have expected to find traces of that sort of careful writing which often leads to the detection of a forgery; but there is, on the contrary, the same freedom of touch in all the letters. I think, therefore, there is no foundation for this serious charge, and, having that opinion, I think it is right, seeing that the charge has been made, that I should express it. But it is enough for the decision of the case to say that the charge has not been proved. If this element is taken out of the case the proof is quite insufficient to make out the pursuer's case. It stands entirely on her own statement, and there is no evidence of intimacy or familiarity.

The other Judges concurred, and the reclaiming-note was therefore refused.

Agent for Pursuer—James Somerville, S.S.C.
Agent for Defender—William Mason, S.S.C.

Saturday, June 16.

FIRST DIVISION.

ROUTLEDGE *v.* SOMERVILLE AND SON.

Jury Trial—Access by One Party to the Other's Premises. In a case having reference to the mode in which paper was manufactured in the defenders' premises, a motion by the pursuer to be allowed access to their premises in order to prepare for the trial, granted.

The issue for trial in this case is whether the defenders, in breach of an agreement with the pursuer, purchased esparto fibre otherwise than from the pursuer or his brokers. The defenders have taken a counter issue for the purpose of proving that the pursuer has failed to implement his part of the same agreement, by not imparting to the defenders full particulars of the method employed by him for the treatment of esparto fibre for the manufacture of paper.

GIFFORD and SHAND, for the pursuer, to-day moved for an order on the defenders to give access to their mills and works for the manufacture of paper at Dalmore to the pursuer and his agents, and Dr Stevenson Macadam, of Edinburgh, whom it was proposed to examine as a witness at the trial.

CLARK and LANCASTER, for the defenders, opposed the motion on the ground that it was not fair to give the pursuer, who was in the same business as the defenders, the means of knowing the secrets of their trade.

The LORD PRESIDENT—I rather think that from the nature of the statements on record and of the counter issue taken by the defenders, this is a motion which may be granted. There may be cases in which it may be dangerous to grant such a motion, but I do not anticipate any danger in the present case.

The other Judges concurred; and the motion was accordingly granted.

Agents for Pursuer—Leburn, Henderson, & Wilson, S.S.C.

Agents for Defenders—White-Millar & Robson, S.S.C.

BREADALBANE'S TRUSTEES *v.* CAMPBELL.

(*Ante*, p. 60.)

Process—Consigned Fund. Application for warrant to uplift a sum of money consigned in bank on the loosing of arrestments used on the dependence of an action, refused, in respect the decree in the action was not extracted.

This case was decided against the defender on 6th June current. On 13th June the defender presented an appeal to the House of Lords, on which an order of service had not yet been obtained. On 9th June the pursuers presented a note to the Court praying for warrant to uplift from the Royal Bank a sum of £6000 which had been consigned on 15th July 1865, when certain arrestments which had been used by them on the dependence of the action were loosed by the Court. The decree in the action was not yet extracted, and was not extractable, the expenses having only been decerned for yesterday.

PATTON and WATSON, for the pursuers, supported the application.

SOLICITOR-GENERAL, CLARK, and DUNCAN, for defender, opposed it. The application was premature as the decree had not been extracted. It was expected that the appeal would be served early next week.

The Court refused the application on the ground that it was an incompetent attempt to enforce execution of a decree which was not yet extracted.

Agents for Pursuers—Davidson & Syme, W.S.

Agents for Defender—Adam, Kirk, & Robertson, W.S.

SECOND DIVISION.

ARTHUR *v.* BELL.

Process — Reclaiming-Note — Reponing. Circumstances in which a reclaiming-note praying to be reponed refused. Observed that a party is not entitled to be reponed against a judgment pronounced in absence or by default simply as a matter of course.

Bell brought an action against Arthur, and decree passed in absence. Arthur suspended, and in the action of suspension the Lord Ordinary (Kinloch) pronounced the following interlocutor :—"The Lord Ordinary having called the cause repeatedly in the debate-roll, and no appearance being made for the suspender, on the respondent's motion, repels the reasons of suspension : Finds the charge orderly proceeded, and decerns: Finds the suspender liable in expenses, allows an account thereof to be lodged, and remits the same to the Auditor to tax and report."

Arthur reclaimed, and sought to be reponed, offering to pay any expenses that might have been incurred by the other party in consequence of his failure to appear.

RHIND, for him, argued that the reclaimer should be reponed, in respect of the offer to pay expenses, which he at once made. There was no case where the Court had refused to repone upon a first reclaiming-note. Hamilton *v.* Christie, 19 D. 712; Mather *v.* Smith, 21 D. 24.

MACKENZIE, for the respondent, was not called upon.

The Court unanimously refused the application. The Lord Justice-Clerk remarked that the point was one of considerable practical importance, and he was glad that the matter had been brought before the Court, because it gave them the opportunity of observing that a party was not entitled to be reponed simply as a matter of course. This was tantamount to a demand to be reponed upon a second reclaiming-note, because the relaimer had already been reponed in the action of suspension of the decree in absence, which he had allowed to pass against him.

Agent for Reclaimer—Party.

Agent for Respondent—Party.

HIGH COURT OF JUSTICIARY.

Monday, June 18.

(Lord Justice-General and Lords Cowan and Ardmillan presiding.)

H.M. ADVOCATE *v.* PETER GRIEVE.

Wilful Fire-raising—Burning Requisite to Constitute Crime. If a door is set on fire the crime of fire-raising is committed, but the fact of a door being charred does not necessarily imply that it has been on fire.

Proof. Evidence of an insurance effected by the panel over goods in his shop admitted (without objection) to prove motive, although no notice given in the indictment.

Peter Grieve was charged with wilful fire-raising, as also attempt to commit wilful fire-raising. The indictment set forth that "the fire thus set or applied by you did take effect and did burn and destroy part of said shop or premises, particularly the architrave of the door of the back shop of said shop or premises or part thereof, and part of the ceiling of said shop or premises."

The only portions of the premises proved to have been affected by the fire were the the shelving (which belonged to the tenant) and the door, and all that was proved in regard to them was that they were charred.

ALEXANDER MONCRIEFF, A.-D. (CRIGHTON, A.-D., with him), argued on the authority of the case of John Arthur, 1 Sw. 152, that the crime of wilful fire-raising had been committed because part of the door had been burned.

DUNDAS GRANT, for the panel, replied that there was no evidence that the door had been burned. It had only been charred.

THE LORD JUSTICE-GENERAL, in charging the jury, said—The question as to whether there had been a completed crime, or only an attempt, is a very nice and narrow one. I cannot say that the burning of the shelves which were put there by the tenant and might have been removed, would be sufficient burning of the premises to constitute fire-raising. If, however, a door of a building is set on fire, that is undoubtedly fire raising. According to the evidence in this case, the door was charred. That does not necessarily imply that it was on fire. Charring is a slow process, and may or may not amount to being on fire. We have not here a piece of evidence which we had in the case of Arthur, referred to by the Advocate-Depute. The door is not produced as it was there. It was a dispute in Arthur's case what charring was. Learned persons and chemists—Dr Boswell Reid and others—proved that the door was charred, but had never been on fire. It is for you to say, in this case, whether without skilled evidence, and without seeing the door, it is safe to find the panel guilty of fire-raising.

In the course of the trial, evidence was led for the purpose of proving motive as to an insurance against fire which the panel had effected over the goods in his shop, although no notice was given in the indictment that such evidence was to be adduced. Similar evidence was in the same circumstances disallowed, on objection by the panel, in the case of Daniel Black, 2 Irv. 583. No objection, however, was taken in this case.

The jury found the panel guilty of attempt to commit wilful fire-raising, and he was sentenced to penal servitude for eight years.