

WALKER v. TRADES' LANE CALENDERING
COMPANY AND OTHERS.

Statute—Factory Acts—7 Vict. c. 15. Held that an appeal taken from the Justices to Quarter Sessions, against a conviction under the Factory Acts, was competent in regard to three of the contraventions charged, but incompetent in regard to a fourth.

Counsel for Pursuer—The Lord Advocate and Mr Alexander Moncrieff. Agent—Mr Andrew Murray, W.S.

Counsel for Defenders—The Solicitor-General and Mr Gifford. Agent—Mr L. M. Macara, W.S.

This was an action of reduction of a judgment pronounced by the Justices of Peace for Forfarshire, sitting in Quarter Sessions, by which the defenders were assoilzied from a complaint presented against them by the pursuer in his capacity of sub-inspector of factories. The complaint charged the defenders with contravening the Factory Acts, in so far as (1) they employed at their works a young person under sixteen years of age, without having previously registered his name in the register kept for the purpose; (2) They employed him for more than nine hours in the day, without having obtained for him a surgical certificate; (3) They employed fifteen young persons named, after six o'clock in the evening; and (4) They employed the said young persons betwixt half-past eight o'clock in the evening and half-past five o'clock in the morning. The Justices sitting in Petty Sessions convicted the defenders, and fined them in £3, 3s. for the first offence, £2 for the second, £1 for each of the fifteen young persons referred to in the third charge, and £2 for each of the fifteen young persons referred to in the fourth charge, said penalties amounting in aggregate to £50, 3s. The defenders appealed to the Quarter Sessions, who quashed the conviction.

The ground of the present action of reduction was that the appeal to the Quarter Sessions was incompetent. The pursuer founded upon sec. 69 of 7th Vict., cap. 15, which declares "that no appeal shall be allowed against any conviction under this Act, except for an offence punishable at discretion, or when the penalty awarded shall be more than £3;" and he contended that each offence charged must be considered separately, and not only so, but that each young person must be held to constitute a separate offence, so that there were 32 offences charged, and that in this view the penalty awarded for each (except in the case of the first charge) must be held to be less than £3 in the sense of the statute. It was not disputed by the pursuer that if the appeal to the Quarter Sessions was competently taken, the judgment pronounced was not reviewable by the Court of Session.

The Lord Ordinary (Kinloch) found that the appeal was competently taken. The whole offences were charged in one complaint as committed at the same time and the same place, and the penalties were all adjudged in one conviction. He therefore assoilzied the defenders, and the pursuer reclaimed.

The LORD PRESIDENT said—The expressions of the statute here are not very clear, nor is the language of the conviction by the justices. The substance of the question we have to decide is whether the conviction was appealable to the Quarter Sessions; and within that there is another question, whether part of it was appealable, and part was not. It is admitted on both sides that as regards the offence in respect of which a penalty of three guineas was imposed, the conviction was appealable, the sum awarded being above £3. It was contended by the pursuer that in all other respects the conviction was not appealable. That depends on the construction of sec. 69 of the Act. One of the offences of which the defenders were convicted was a contravention of a statute in respect of which a penalty of only £2 was imposed, and the offences charged in the third and fourth counts, it is said, constitute thirty separate offences,

being in each case one for each of the fifteen boys who were employed. The words of the conviction are, in the one case, the sum of £1, and in the other the sum of £2 of penalty for each of the boys. The defenders contend that the aggregate sum awarded is the amount of the penalty, or otherwise that the penalties awarded under the third and fourth charges amount to £15 and £30 respectively, and that the appeal in regard to them was therefore competent. The offences charged are stated in the complaint as four different offences; they are contraventions of different statutes, and in their own nature they are different transgressions. They are substantially different cases. I have therefore difficulty in looking upon the aggregate sum as one penalty. I think that while the first charge was appealable, the second, where the penalty was only £2, was not. In regard to the third and fourth charges, it appears to me that, looking to the way the pursuer charged the offences in his complaint, and the terms in which he took the conviction, he has put it in the defender's power to appeal. In each case the employing of the whole 15 boys is set forth as one offence, and the justices have so dealt with it. My opinion, therefore, is that in regard to these charges the appeal was competent.

The other Judges concurred—Lord DEAS observing, that the manner in which the complaint was framed was important, because by the statute a right of appeal was given only to the person convicted; and Lord ARDMILLAN that the complaint not only clubbed the whole 15 boys together, but did not even entitle the Justices to convict the defenders of the employment of some of them by adding the usual words "or one or more of them."

The Court therefore recalled Lord Kinloch's interlocutor, reduced the judgment of the Quarter Sessions to the extent of the £2 penalty, and *quoad ultra* assoilzied the defenders with expenses, subject to modification.

Saturday, Dec. 23.

GUNN v. BREMNER (*ante*, p. 68.)

Process—Proof—Circumduction. (1) Held that an order circumducing the term for proving, and an order circumducing the term for reporting a proof, mean the same thing. (2) A proof which had not been reported and was tendered after circumduction had passed, allowed of consent to be received on payment of certain expenses.

Counsel for the Pursuer—Mr J. M. Duncan. Agents—Messrs Horne, Horne & Lyell, W.S. Counsel for the Defender—Mr W. A. Brown. Agent—Mr J. C. Baxter, S.S.C.

This case, which was reported when in the Outer House, involves the question of practice whether a Lord Ordinary, having pronounced an interlocutor "circumducing the term for reporting a proof," and the reclaiming days applicable to such an interlocutor having expired, it is competent for him to receive proof that was led previous to the interlocutor pronouncing circumduction, the opposite party withholding consent. A motion to that effect made by the pursuer, against whom circumduction had passed, was refused by the Lord Ordinary (Barcaple). Against this interlocutor the pursuer reclaimed. At the discussion to-day, the pursuer contended that the interlocutor was *per incuriam* worded erroneously, that the only interlocutor which the Lord Ordinary could pronounce was one circumducing the term for proving, and that he was not excluded from lodging the proof which he had led. The Court decided that circumducing the term for proving and for reporting were substantially one and the same thing, and explained their meaning to be, not that after the term appointed no more proof could be led before the commissioner, but that at that date the proof must be reported to the Court. Apart from this question, the defender submitted that the Court could not deal with the

matter by reason of the finality of the interlocutor of circumduction; and further, that even assuming the power of the Court to interfere, the pursuer was not in a position to appeal to its equitable jurisdiction, because on the face of the proceedings it was clear he was to blame, and until he had exhausted every remedy that was competent to him, the Court could give him no assistance. A remedy that was still open to him was to abandon his action. On the recommendation of the Court, the defender withdrew his opposition to the receiving of the proof, and the case was remitted to the Lord Ordinary to receive it, on condition of the pursuer paying all the expenses incurred in the action since the 1st of November. The question of the finality of the interlocutor was accordingly not disposed of.

SLOSS *v.* CATHCART.

Reparation—Wrongful Interdict—Issue. Form of issue in an action of damages for wrongful interdict.

Counsel for Pursuer—The Solicitor-General and Mr J. G. Smith. Agent—Mr Andrew Fleming, S.S.C. Counsel for defender—Mr Clark and Mr Adam. Agents—Messrs A. & A. Campbell, W.S.

This is an action of damages for wrongful application for interdict. The pursuer proposed to put in issue that the applications were made "wrongfully." This was the form of issue in the similar case of *Abel's Executors v. Edmond*, 10th July 1863. (1 Macp. 1061.) The defender contended that the pursuer should also put in issue that the applications were made "without probable grounds," as was done in the case of *Miller v. Hunter*, 23d March 1865. (3 Macp. 740.) It was explained by the Solicitor-General that in the latter case the terms of the issue were adjusted of consent. The Court approved of the issue as proposed by the pursuer, and found the defender liable in the expense of the discussion.

SECOND DIVISION.

PETITION—DAVIDSONS.

Poor's Roll—Pupil. In an application by a pupil for the benefit of the poor's roll, a *tutor ad litem* must be appointed.

Counsel for Petitioners—Mr Mackintosh. Agent—Mr R. C. Bell, W.S.

This was an application by certain pupil children for admission to the Poor's Roll in order to enable them to sue an action. The Court held that the petitioners had no *persona standi*, and before entertaining the application appointed a *tutor ad litem*.

Friday, Dec. 22.

OUTER HOUSE.

(Before Lord Kinloch).

KENNEDY *v.* MACDONALD.

Title to Sue—Proving the Tenor. Where a pursuer's title consisted of certain deeds, which she alleged the defender had fraudulently destroyed, held (per Lord Kinloch) that she must nevertheless raise an action to prove their tenor, and process sisted for that purpose.

Counsel for the Pursuer—Mr Mackintosh. Agent—Mr Wormald, W.S.

Counsel for the Defender—Mr Scott. Agent—Mr Galletly, S.S.C.

This is a reduction of the settlement of the late Mrs Macdonald of Lassintullich, the grounds of reduction being facility and circumvention, and that the testatrix was not of disposing mind. The pursuer is the daughter, and the defender the son of the testatrix, and the pursuer alleges a title to sue the action as being donee under certain previous settlements, which, she alleges, the defender fraudulently destroyed.

The defender denied the pursuer's title, and main-

tained that it could only be proved by a decree of proving of the tenor of the previous settlements founded on. The pursuer, on the authority of certain old cases, maintained that where a deed is alleged to be destroyed by the opposite party in a suit, a formal action of proving the tenor is not necessary, and the deed can be set up as against the party who destroyed it by a proof in the cause, either along with or separate from the proof on the merits. The Lord Ordinary having heard counsel upon the question of title has now issued an interlocutor sisting process to enable the pursuer to bring a proving of the tenor.

To this interlocutor the following note is appended:—

"The deeds in question constitute the pursuer's title in the present process. It appears to the Lord Ordinary that before the pursuer can insist in the action these deeds must be set up by their tenor being regularly proved. And it further appears to the Lord Ordinary that this must be done by a formal proving of the tenor carried through before the Court, not by an incidental jury trial in the present case. The deeds are not mere evidence, nor is Mrs Kennedy a defender, but a pursuer. The deeds are essentially and indispensably the title of Mrs Kennedy, and must, as such, be raised up in the formal manner required by law."

SIMPSON *v.* EDINBURGH AND GLASGOW RAILWAY COMPANY.

Statute—Construction. Held (per Lord Kinloch) that by the statute amalgamating the Edinburgh and Glasgow Railway Co. with the North British Railway Co., the former company may be sued for a claim of damages arising before the date of amalgamation.

Counsel for Pursuer—Mr John Burnet. Agents—Messrs G. & H. Cairns, W.S.

Counsel for Defenders—Mr Blackburn. Agents—Messrs Hill, Reid, & Drummond, W.S.

This is an action of damages for injuries received by the pursuer in consequence of a collision which took place at Haymarket Station on 22nd June last. The defenders in their defences admitted that the collision took place through their fault, but pleaded that they were not liable in damages, in respect all such claims were transferred against the North British Railway Company by their amalgamation with it on 1st August last. Lord Kinloch has repelled this defence, holding that by section 12 of the Amalgamation Act, 28 and 29 Vict., c. 308, the company still subsists for the purpose of enforcing payment of debts due to it and paying debts due by it prior to the date of amalgamation.

LEABURN *v.* BASSET, ETC.

Arrestment ad fundandam jurisdictionem. An arrestment against one owner of a ship who was named and others not named, held (per Lord Kinloch) sufficient to found jurisdiction against them all.

Counsel for Pursuers—Mr J. G. Smith. Agents—Messrs Ferguson & Junner, W.S.

Counsel for Defenders—Mr W. M. Thomson. Agents—Messrs J. & W. C. Murray, W.S.

This is an action against the owners of an English vessel, the Cognac, of Sunderland. The defenders themselves are Englishmen. Jurisdiction was said to be founded against them by arresting the ship at Dundee. The arrestment was used against Mr Basset "and the other owners," who were not named. The cause of action was an alleged breach of contract entered into by the pursuers and the mate of the vessel. The defenders, other than Basset, pleaded that no jurisdiction had been founded against them, because they were not named in the arrestment. Lord Kinloch has repelled this defence, holding that the arrestment is good enough for the purpose of founding jurisdiction against all the defenders, whatever may be its effect otherwise.