

Wednesday, March 28.

STEWARTS v. SCOTTISH NORTH-EASTERN  
RAILWAY COMPANY.

*Reparation—Culpa—Master and Servant—Railway Company—Onus probandi.* In an action of damages against a railway company at the instance of the widow and children of one of its servants, said to have been killed through the fault of the defenders or one of their servants, direction to a jury (per Lord Justice-Clerk) that the *onus* of proving that there was fault on the part of one of the company's servants lay on the pursuers, and that as there had not been evidence of fault on the part of any particular servant the verdict must be for the company.

Counsel for Pursuers—Mr Scott and Mr F. W. Clark. Agent—Mr D. F. Bridgeford, S.S.C.

Counsel for Defenders—The Solicitor-General and Mr Watson. Agents—Messrs Webster & Sprott, S.S.C.

This is an action of damages at the instance of Mrs Treziah Maitland or Stewart and others, the widow and children of the now deceased Charles Stewart, surfaceman, Calsies, Cove, against the Scottish North-Eastern Railway Company, for injury occasioned to them by the death of the said Charles Stewart while in the service of the railway company, through the fault of the defenders. The issue sent to trial was as follows:—

"It being admitted that the pursuers are the widow and lawful children of the deceased Charles Stewart, sometime surfaceman, residing at Calsies, Cove:

"Whether, on or about the 8th day of November 1864, the said Charles Stewart was a surfaceman in the defenders' employment, and while returning from his work was struck by a train and killed on the defenders' line of railway between Cairnrobin cutting and Cove Station, through the fault of the defenders—to the loss, injury, and damage of the pursuers?"

Damages for Mrs Treziah Maitland or Stewart laid at £300; and for each of the other pursuers—viz., Margaret Stewart, James Maitland Stewart, Charles Maitland Stewart, Jane Jemima Maitland Stewart, and Francis Maitland Stewart—at £200.

After hearing evidence for the pursuer it was contended on his behalf that by rule thirty-six of the company's regulations, the previous train which passed an hour and a-half before the special train came up, by which the deceased was killed, should have had a red board placed in front of the engine, and that the *onus* lay upon the defenders to show that the fault of this not having been done did not lie with them.

For the defenders it was maintained that by the regulations the servants of the company were directed to be prepared for the approach of special trains at any time without previous intimation.

The LORD JUSTICE-CLERK observed that rule thirty-six was a rule enacted by the company and for the guidance of their servants, and that the *onus* of proving fault on the part of the defenders lay with the pursuers. He must therefore direct the jury that it was incumbent on the pursuers to prove that the death of Charles Stewart was caused by the fault of some person for whom the defenders were responsible, and that as the pursuer had not done so in the present case they must find for the defenders.

Verdict for the defenders accordingly.

Wednesday and Thursday, March 28 and 29.

BELL v. BLACK AND MORRISON.

(*Ante*, p. 169).

*Reparation—Judicial Slander.* In an action of damages for judicial slander by Procurators-

Fiscal, ruled (per Lord Justice-Clerk) that the statement complained of was pertinent, and therefore privileged—but verdict for the pursuer.

Counsel for Pursuer—Mr George Monro and Mr E. S. Gordon. Agents—Messrs Murdoch, Boyd, & Henderson, W.S.

Counsel for Defenders—The Lord Advocate and Mr A. Moncrieff. Agents—Messrs Murray & Beith, W.S.

In this case the pursuer is John Bell, farmer, Glenduckie, and the defenders are Alexander Black and William Morrison, writers in Cupar, and procurators-fiscal for Fifeshire. The following is the issue:—

"It being admitted that, on or about the 25th day of December 1864, the defenders, as joint procurators-fiscal for the shire of Fife, presented a petition to the Sheriff of Fife, at their instance, in the terms contained in the schedule hereunto annexed; and that, in an action at the instance of the pursuer in this Court, defences were lodged for the defenders, which defences contained the following statements with reference to the foresaid petition—'The statements in the said petition were and are true, and were made by the defenders in good faith and on probable grounds:'

"Whether the said statements were maliciously inserted in the said defences by the defenders, falsely and calumniously represent that the pursuer was, during the years 1863 and 1864, or part thereof, engaged in a conspiracy for the purpose of taking the life of the Rev. James Pitt Edgar, minister of the parish of Dunbog, and the life of John Ballingall, farmer, Dunbog, or of doing them some grievous bodily harm, and for the purpose of wilfully setting fire to or attempting to set fire to their dwelling-houses or premises, or otherwise of doing serious injury and damage to their property and persons—to the loss, injury, and damage of the pursuer?"

Damages laid at £1000.

SCHEDULE REFERRED TO IN THE FOREGOING ISSUE.

(Copy Petition.)

"Unto the Honourable the Sheriff of Fife, or his Substitute, the petition of Alexander Black and William Morrison, joint procurators-fiscal of the shire of Fife for the public interest—

"Humbly sheweth—That the petitioners are in course of taking a precognition against James Pringle, millwright, residing at Barley Mill, in the parish of Abdie and shire of Fife, present prisoner in the prison of Cupar, accused of having, along with other persons, whose names are to the petitioner's unknown, during the years 1863 and 1864, or part thereof, wickedly and illegally conspired together for the purpose of taking the lives of the Rev. James Pitt Edgar, minister of the parish of Dunbog, in the county of Fife, and of John Ballingall, farmer, Dunbog, aforesaid, or of doing them some grievous bodily injury, and for the purpose of wilfully setting fire to or attempting to set fire to their dwelling-houses or premises, or otherwise of doing serious injury and damage to their property and persons: As also, of wickedly and maliciously writing and sending, or causing and procuring to be written and sent, threatening letters to the Rev. James Pitt Edgar and John Ballingall.

"That, in the course of said precognition, the petitioners have recovered various letters and other documents, showing that other persons than the said James Pringle have been engaged in said conspiracy, and in writing and sending said threatening letters—all which are herewith produced; and particularly that John Bell, farmer, Glenduckie, Barbara Honeyman or Black, wife of and residing with William Black, parochial Schoolmaster, Dunbog, George Black and William Black, sons of and residing with the said William Black, and David Nelson, a roadman, residing at Glenduckie, having been engaged in said conspiracy, and in writing and sending said threatening letters: That the petitioners are informed, and have reason to believe,