

defenders there. But probably a sufficient answer to that is, that by the time the action was raised the pursuer's connection with the farm had ceased, and all that remained was a claim for damages for breach of contract on the part of the defenders. To enforce such a claim he must, I am afraid, follow the usual rule of seeking the *forum rei*.

On one point I have no doubt, and think we should leave none, namely, that the mere fact of a contract being entered into within the sheriffdom will not confer jurisdiction without personal service within the sheriffdom. The question is not merely one as to sufficiency of citation in such a case; personal citation within the county is essential to the constitution of jurisdiction.

LORD JUSTICE-CLERK—I only wish to make one remark which is this—that though the rules of procedure which have been established may result in hardship sometimes, as in the case of this pursuer, these rules of procedure are fixed for the greatest convenience of the Courts and of the citizen, and we cannot depart from them on considerations of convenience in particular cases.

If at any time, through change of circumstances or otherwise, the question arises whether such rules should be modified, that is a question for the legislature to consider. In the meantime the law is as your Lordships have said, and we must adhere to it.

LORD YOUNG was absent.

The Court dismissed the appeal, sustained the first plea-in-law for the defenders, and dismissed the action, and decerned.

Counsel for the Pursuer and Appellant—Dundas, K.C.—J. D. Robertson. Agents—Simpson & Marwick, W.S.

Counsel for the Defenders and Respondents—Mackenzie, K.C.—Guy. Agents—Macandrew, Wright, & Murray, W.S.

Thursday, January 30.

SECOND DIVISION.

[Lord Kincairney, Ordinary.

BOSWELL v. NORTH BRITISH RAILWAY COMPANY.

Contract—Railway—Breach of Contract—Damages—Remote and Consequential—Reparation—Invasion of Rights—Railway Company allowing Officer of Law, in Execution of Duty but without Warrant, to examine Parcel, with result of Prosecution.

Miss B. delivered to a railway company a box containing a salmon caught in the river Tweed, and addressed to a consignee in Edinburgh. While the box was in the custody of the servants of the Railway Company they permitted an officer of the law to open it

and to take possession of the salmon. The officer had not obtained the warrant of a magistrate before so acting. Subsequently Miss B. was charged in the Sheriff Court at the instance of the Procurator-Fiscal with having had in her possession a salmon known by her to have been illegally caught in the Tweed, contrary to the Tweed Fisheries Amendment Act 1859. The charge was found not proven.

In an action by Miss B. against the Railway Company concluding for damages in respect of the expense to which she was put in defending herself from this charge and the injury to her feelings owing to the prosecution, *held* (*aff. judgment of Lord Kincairney*) that the action was irrelevant, and that the defenders were entitled to absolver, in respect (1) that the Railway Company being entitled to assume that the officer of the law was proceeding in execution of his duty, committed no wrong or breach of contract in permitting the officer of the law to seize the salmon, and (2) that the act of the Railway Company in permitting the officer to open the box and to seize the salmon was not the direct cause of the expense or injury to the pursuer's feelings resulting from the prosecution.

Observed (*per Lord Justice-Clerk*) that the ordinary citizen or a railway company is not committing a wrong to anyone in submitting to what the officers of the law ask to be allowed to do when they come saying that they are acting in the execution of their duty.

Miss Boswell, 56 Rosetta Road, Peebles, on October 19, 1900, delivered to the North British Railway Company at their railway station at Peebles a tin box containing articles of clothing and a salmon caught in the Tweed, addressed to a consignee in Edinburgh.

While the tin box was in the custody of the servants of the Railway Company at the Waverley Station, it was taken possession of and opened by an officer of the Forth Fishery District. Subsequently, on the same day, the said fishery officer took possession of the salmon, which was never delivered to the consignee.

On November 24, 1900, Miss Boswell was charged at the instance of the Procurator-Fiscal of the County of Peebles with having on October 19, 1900, had in her possession at her dwelling-house one salmon (being the salmon taken possession of by the said officer) known by her to have been illegally taken or caught in the Tweed, contrary to the Tweed Fisheries Amendment Act 1859. After evidence had been led the Sheriff-Substitute found the charge not proven.

Miss Boswell brought an action against the North British Railway Company concluding for payment of the sum of £200 sterling as reparation to the pursuer in respect of (1) the expense to which she was put in defending herself from said charge, and (2) injury to her feelings owing to the said prosecution.

The pursuer averred that the fishery officer in opening the box and in seizing and retaining possession of the said salmon acted illegally and unwarrantably; that he had not the authority of the pursuer or of any magistrate for acting as he did; that he opened said box and took possession of the salmon on instructions from the Fishmongers' Company, London, with the object of using the said salmon in a criminal prosecution of the pursuer; and that he acted as he did with the knowledge and approval of the defenders and of their general manager and servants.

The pursuer also averred as follows:—“(Cond. 6) The defenders were in breach of the contract of carriage which they entered into with the pursuer with reference to said tin box, inasmuch as they knowingly permitted said salmon to be abstracted from said box or negligently failed to prevent this being done. It was their duty as custodiers of said box to have prevented said fishery officer from opening it and seizing part of its contents, he having no warrant for so doing and having no authority by statute or at common law so to do, but this duty they failed to discharge. The said salmon was never delivered to the consignee, and it was defenders' duty to so deliver it. For this breach of their contract the defenders are liable to the pursuer in damages. Further, the criminal prosecution to which the pursuer was subjected was a direct consequence of the defenders' said breach of contract. The defenders were aware that said fishery officer seized said salmon with the object of prosecuting the pursuer. Without said salmon it is believed that no prosecution would have been brought. They were thus aware of the consequence which would follow their breach of contract with pursuer.”

The defenders averred that the tin box was opened by an inspector of police and the salmon was seized by a constable in the execution of his duty as a constable under the Salmon Fisheries Acts and the Edinburgh Police Act 1879. They admitted that the constable had not obtained the authority of the pursuer or the warrant of a magistrate before so acting, and that the defenders' servants were aware of and did not resist or prevent the officer's opening of the box and the seizing of the salmon.

The pursuer pleaded, *inter alia*, as follows:—“(1) The defenders having broken their contract of carriage with the pursuer as condescended on are liable to her in damages. (2) The pursuer having suffered loss and injury through the fault of the defenders is entitled to reparation therefor.”

The defenders pleaded, *inter alia* (1) that the pursuer's averments were not relevant or sufficient to sustain the conclusions of the summons.

The Lord Ordinary (KINCAIRNEY) on October 23, 1901, sustained the first plea-in-law for the defenders, assoldied the defenders from the conclusions of the summons, and found the pursuer liable to the defenders in expenses.

Opinion.—“I think that this case may be decided without further delay, on the ground that there is no relevant averment of damage caused by or resulting from the alleged fault of the defenders; or otherwise, that the damage averred is too remote.

“It is an action of damages against the North British Railway Company for breach of a contract of carriage. The breach alleged is that the Railway Company allowed an officer of the ‘Forth Fishery District’ to take possession of a salmon which had been sent by the pursuer to a consignee by the railway. *Prima facie* the duty of the Railway Company was to deliver the salmon to the consignee, and they did not fulfil that obligation. But the defenders have maintained that the officer of the Fishery District was entitled to insist on recovering the salmon, and that the defenders were not entitled to refuse his demand. If that contention be sound, then there was no fault of the defenders, and the action would fail on that ground. If that contention be not sound, then the pursuer would be entitled to maintain that there had been breach of contract, and that the defenders would be liable in damages if any damages were caused by the breach. If I were to decide whether there was fault or not I would require to make *avizandum* in order to study the statutes on which the arguments were rested. But I think it unnecessary to do so, because I think the case may be decided in favour of the defenders even on the assumption that they were chargeable with breach of contract.

“The salmon was the property of the consignee, and the pursuer has no claim, and makes none, for the value of it; and this is not an action of damages for failing to deliver it.

“Damages are claimed because the pursuer was charged criminally with breach of the Tweed Fisheries Acts. She was acquitted when tried, and she now claims damages against the Railway Company for the cost of that trial and for injury to her feelings by the trial. She avers that the trial would not have taken place had the salmon not been recovered. The questions are, whether the trial can be properly regarded as a consequence of the defenders' breach of contract, and whether the expense of it and the injury to her feelings can be held to be damages consequent on the alleged breach. I am of opinion that they cannot, but were not consequences of the alleged breach at all.

“It may be true, and is to be assumed, that the trial would not have taken place but for the recovery of the salmon; but that is only because the act of the defenders made the prosecution possible, not because it caused it or in any way gave rise to it. There is no connection of cause and effect between the delivery of the salmon and the criminal prosecution. The defenders' act, assumed to be in breach of contract, merely brought to the notice of the public prosecutor a fact which appeared to him to call for criminal proceedings. These proceedings were unsuccessful, but are not said to

have been wrongous. I do not think the one thing can be said to have been the consequence of the other.

“The pursuer quoted *Hadley v. Baxendale*, 9 Exch. 341; *Horne v. Midland Railway Company*, 1873, L.R. 8, C.P. 131; *Simpson v. London and North-Western Railway Company*, 1876, 1 Q.B.D. 274. But in my opinion these cases do not apply, and I think that this case does not fall within any of the rules about consequential damages laid down in *Hadley v. Baxendale*.

“The damage is said to have consisted in or to have arisen from the trial. The pursuer was tried in the ordinary way and was acquitted. Had she been convicted and fined her loss would have been all the greater; but I have the utmost doubt whether in either case such loss occasioned by the operation of the criminal law can be called damage. No authority to that effect was quoted.

“I am of opinion that the pursuer’s averments are irrelevant.”

The pursuer reclaimed, and argued—She had a contract with the defenders, and the defenders broke that contract. It was admitted that the officer of the law who seized the salmon had no warrant. He was bound to have a warrant, and the defenders had a duty to ask for the officer’s warrant before permitting him to seize the salmon. The defenders’ servants were in fault in allowing the officer to take the salmon, of which they had the custody, without a warrant. Unless the defenders had thus culpably and illegally allowed the salmon to be taken there would have been no prosecution of the pursuer. The prosecution was a direct consequence of the defenders’ breach of contract, and the expense of the prosecution and the injury done to the pursuer’s feelings by the prosecution had resulted naturally and directly from the breach of contract.—*Hadley v. Baxendale*, 1854, 9 Ex. 341; *Horne v. Midland Railway Company*, 1893, L.R. 8, C.P. 131; *Simpson v. London and North-Western Railway Company*, 1876, 1 Q.B.D. 274.

Counsel for the respondents were not called on.

LORD JUSTICE-CLERK—I think the judgment of the Lord Ordinary is clearly right.

An officer of the law, presumably known to the officials of the Railway Company at the station to be an officer of the law, came to the railway station and asked to be allowed, in the execution of his duty, to examine a suspected article in which a salmon was found, and he seized the salmon. Mr Anderson’s case is, that before the officer was allowed to do that the Railway Company’s servants were bound to ascertain that he was authorised and to make the fullest inquiry into the special authority he had. I do not think that can be maintained at all.

When an officer of the law comes and desires to get possession of certain property while it is in the hands of third parties in connection with an alleged breach of the law, I think those parties are entitled to

assume that the officer is proceeding in execution of his duty according to law. If he commits any breach of the law in what he does he of course is responsible, and if he does that under the instructions and orders of his superiors, who ought to know the law, they also are responsible. But I think the ordinary citizen or a railway company is not committing a wrong to anyone in submitting to what the officers of the law ask to be allowed to do, when they come saying they are acting in the execution of their duty.

Whether that be so or not, I am unable to see any ground for holding that what the defenders did in this case was the cause of the injury to the pursuer’s feelings of which she complains or the expense to which she was put in defending a criminal prosecution in which she was acquitted. The prosecution no doubt followed on what the Railway Company did, but it was in no sense a direct consequence of their action.

The question whether there was to be a prosecution or not was a question to be decided by the authorities on such information as they could get together; and having got their information together they came to the conclusion, quite independently of the Railway Company, that there was a case for prosecution, and they instituted that case. For that I think the Railway Company had no responsibility whatever; and accordingly I think the judgment of the Lord Ordinary is entirely right.

LORD TRAYNER—I am entirely of the same opinion. But I am prepared to go further than the Lord Ordinary has done, and to say that upon this record there is no relevant averment of fault on the part of the defenders in the way of breach of contract or otherwise on which an action of damages against them could be based.

LORD MONCREIFF—I am entirely of the same opinion, and I go quite as far as Lord Trayner does.

If this claim were held to be good, it might as easily be held that the pursuer would have had a good claim of damages against the consignee if after the salmon had been delivered he or she had allowed an officer to look at it with a view to a prosecution being instituted. I think there is no relevant ground of action.

LORD YOUNG was absent.

The Court adhered.

Counsel for the Pursuer and Reclaimer—M’Lennan—A. M. Anderson. Agent—John Baird, Solicitor.

Counsel for the Defenders and Respondents—Solicitor-General (Dickson, K.C.)—Constable. Agent—James Watson, S.S.C.