

ways Company, Limited, in respect of an accident which happened to her on the street. She was standing between the lines, that is to say, between the two sets of lines in the street, and a car passed. Her dress was either protruding or was blown out, and entangled itself with a portion of the car, and she fell over. In her fall her leg slipped forward and the car went over it.

The Lord Ordinary has allowed the ordinary issue of whether the accident happened to the pursuer through the fault of the defenders, and the reclaiming note to your Lordships was directed to the question whether the pursuer's case is relevant.

It is, no doubt, at first sight, somewhat startling to think that there may be a question of negligence against the defenders when as a matter of fact the pursuer was not, when the accident occurred, standing in the track of the cars. One fault that she alleges upon the part of the Tramway Company is that underneath the tramway car there was a vertical rod or stay which extended about an inch beyond a nut and made a projection upon which her dress could catch.

I confess that if that stood alone I should think the averment totally irrelevant. It is perfectly absurd to suppose that because a nut has a small portion of the screw sticking out beyond it there is faulty construction which should subject the defenders to liability. As a practical question I should say it was impossible to cut the screws off exactly flush. And even whether that is so or not, there is nothing particular in a screw protruding beyond a nut. It would come to this—that any roughness of surface which possibly could effect a lodgment in the more or less flimsy tissue of a dress constituted a fault of construction which made the defenders liable for any accident that happened.

But the much more serious averment is an averment that the construction of this particular car is faulty in this respect—that it does not have a guard or screen upon the side; and very pointed averments are made, not only that the construction of a guard or screen is easy, but that it is practically universally used on all systems. Now the defenders very strenuously argued that such averments should not be admitted to probation. I have not been able to see my way to take up that position. I do not think one is entitled to use—what, of course, one cannot help having—one's knowledge of the construction of ordinary tramway cars, and then making one's self into a jury to pronounce a judgment one way or the other upon whether a certain thing is an ordinary and reasonable precaution the absence of which means fault and negligence. I do not think one is entitled to do that. I think it can only be done by the tribunal that is to try the facts of the case.

I do not think it is advisable to say more, because it would really be sinning in the very direction which we ought to avoid. And therefore I think that, seeing that

undoubtedly a tramway car is more or less what may be called a dangerous machine, it is not irrelevant to say that that dangerous machine in this present instance was unprotected in a way in which ordinary dangerous machines of the same class are protected.

That only leaves the question of whether the inquiry should be before a jury. It was pressed upon us that this class of case would be very much better tried by a judge. That may be so, but at the same time a jury is the constitutional tribunal for this class of case, and I do not think that there is any such obvious complication as would make it unsuitable for a jury trial. I can imagine some classes of cases not resting upon negligence—I mean a certain class of case where the construction of a very intricate machine might come in—where it might be almost impossible to get a jury who could fairly be supposed to understand its intricacies. But there is nothing intricate in this case, and therefore I think the pursuer has the right to the ordinary tribunal which is appointed to try such cases.

Accordingly upon the whole matter I am of opinion that the Lord Ordinary's interlocutor is right, and that we should adhere to it, approving of the issue and allowing the trial to go on.

LORD KINNEAR—I concur.

LORD MACKENZIE—I agree.

LORD JOHNSTON did not hear the case.

The Court adhered.

Counsel for Pursuer (Respondent)—Sandeman, K.C.—MacRobert. Agents—Connell & Campbell, S.S.C.

Counsel for Defenders (Reclaimers)—Watt, K.C.—Macmillan. Agents—Macpherson & Mackay, S.S.C.

Tuesday, February 6.

SECOND DIVISION.

[Sheriff Court at Glasgow.

MACLACHLAN v. JOHN W. BRUCE & COMPANY AND ANOTHER.

Interdict—Process—Sheriff—Jurisdiction—Appeal on Question of Breach of Interdict—Sentence of Fine or Imprisonment.

It is competent to appeal to the Court of Session against a sentence by a Sheriff-Substitute imposing a fine for breach of interdict with the alternative of imprisonment.

Allan Maclachlan, residing at Glenfern, Tighnabruaich, Argyllshire, *pursuer*, presented a petition in the Sheriff Court at Glasgow against John W. Bruce & Company, accountants, 128 Great Western Road, Glasgow, and John Wilson Bruce, accountant and house factor in Glasgow, and residing at 122 Great Western Road, Glasgow, the only known partner of said

firm, *defenders*, in which the pursuer complained that the defenders had committed a breach of an interdict, granted by the Court in a previous action, and craved the Court, on the charge being admitted or proved, to fine the defender John Wilson Bruce £50, or such other sum as the Court might see fit or otherwise, or failing payment of said fine to commit him to prison for such period as the Court should see fit.

On 6th December 1911 the defender John Wilson Bruce appeared, and being judicially examined answered that he was not guilty of the breach of interdict charged. *Eo die* the Sheriff-Substitute (W. SCOTT MONCRIEFF) allowed a proof.

On 20th December 1911, after proof led, the Sheriff-Substitute (A. S. D. THOMSON) pronounced the following interlocutor:—“Finds that the defender John Wilson Bruce in acting as above has committed a breach of the said interdict: Therefore fines and americiates the said John Wilson Bruce in the sum of five pounds of penalty for said breach of interdict, payable to the Procurator-Fiscal of Court for the public interest, and failing payment thereof within fourteen days from this date, decerns and adjudges the said John Wilson Bruce to be imprisoned for the period of twenty days from the date of his incarceration (unless the said fine shall be sooner paid), and thereafter to be set at liberty: Grants warrant to officers of Court to apprehend and convey the said John Wilson Bruce to the prison of Glasgow, and to the keeper of the prison to receive him.”

The defender John Wilson Bruce appealed to the Second Division of the Court of Session.

On 18th January 1912 the case appeared in the Single Bills, when the respondent objected to the competency of the appeal.

Argued for the respondent—The proceedings and sentence were of a criminal nature, and therefore the Court of Session was not the proper tribunal to which to appeal. If an appeal were competent, it could only be to the High Court of Justiciary, but the judgment of the Lord Justice-Clerk in the case of *Monro v. Robertson's Trustees*, June 24, 1834, 12 S. 788, indicated that there was no appeal at all from the Sheriff Court to any other Court against a sentence for contempt of court. The cases of *Stark's Trustees v. Duncan*, January 24, 1906, 8 F. 429, 43 S.L.R. 288, and *The Caledonian Railway Company v. Hamilton*, August 3, 1850, 7 Bell's Appeal Cases 272, did not establish a right of appeal to the Court of Session, because in neither of these cases was the general question of the competency of the appeal to the Court of Session discussed or decided. In *Stark's* case the question under discussion was whether or not the parties had virtually constituted the Sheriff an arbiter and thus barred themselves from appealing, and in the *Caledonian Railway Company's* case also the discussion was concerned with a speciality.

Argued for the appellant—The case of the *Caledonian Railway Company v.*

Hamilton, *supra*, settled that the Court which pronounced the sentence had not sole jurisdiction. There was now a settled chain of practice which established the right of appeal against such sentences to the Court of Session—*The Caledonian Railway Company v. Hamilton*, *supra*; *Henderson v. Maclellan, &c.*, May 23, 1874, 1 R. 920, 11 S.L.R. 531; *Christie Miller v. Bain*, July 9, 1879, 6 R. 1215, 16 S.L.R. 721; *Wallace's Sheriff Court Practice*, p. 453-5.

The opinion of the Court was read by

LORD JUSTICE-CLERK—This is an appeal by the defender in a petition presented in the Sheriff Court of Lanarkshire at Glasgow to have him fined £50, or such other sum as the Court might think fit, for breach of interdict, or failing payment of the fine, to have him committed to prison. The Sheriff-Substitute imposed a fine of £5, and failing payment thereof within fourteen days, a sentence of twenty days' imprisonment. An objection to the competency of the appeal was taken for the pursuer in Single Bills, to the effect that, as a petition for breach of interdict is of a quasi-criminal nature, an appeal (if there be one) must lie to the Court of Justiciary and not to the Court of Session.

It is true that, in the words of Lord President Inglis (*Christie Miller v. Bain*, 1879, 6 R. 1215), “in one sense a petition for breach of interdict is a criminal proceeding. But one cannot help seeing that in many ways it is a civil proceeding. Civil interests are often largely concerned, and therefore it is often called a quasi-criminal proceeding.” But the procedure in the Sheriff Court seems to be by way of petition in ordinary form, and there are numerous instances in the books of appeals taken to the Court of Session in such cases, *e.g.*, *Henderson* (1874, 1 R. 920); *Brown* (1882, 9 R. 1183, 19 S.L.R. 838); *Stark's Trustees* (1906, 8 F. 429). In the last of these cases some objections of a special kind were stated to the competency of the appeal, and were repelled, but it seems to have been assumed that an appeal to the Court of Session was, in the general case, competent. An instance of an appeal in such a matter from this Court to the House of Lords is to be found in *Caledonian Railway Company v. Hamilton* (1850, 7 Bell's App. 272). The objection to the competency of this appeal seems therefore to be counter to a strong current of practice, and as we were not informed of any contrary authority we think it must be repelled. The cases referred to were all prior to the recent Sheriff Courts Act of 1907, but as counsel did not suggest that any ground of objection to the competency of this appeal is to be found in its manifold provisions we assume that none such exists.

The LORD JUSTICE-CLERK, LORD DUNDAS, and LORD SALVESEN were present. LORD GUTHRIE was absent.

The Court found the appeal competent, and appointed the cause to be put to the Summar Roll.

Counsel for the Appellant and Defender—J. R. Christie. Agents—Sturrock & Sturrock, S.S.C.

Counsel for the Respondent and Pursuer—Malcolm. Agents—Carmichael & Miller, W.S.

Tuesday, February 6.

FIRST DIVISION.

(COURT OF EXCHEQUER.)

THE SCOTTISH PROVIDENT INSTITUTION *v.* INLAND REVENUE (FARMER, COLLECTOR OF TAXES).

Revenue—Income Tax—Interest on Foreign Investments—“Sums Received in Great Britain in the Current Year”—Income Tax Act 1842 (5 and 6 Vict. cap. 35), sec. 100, Schedule D, Case IV—Income Tax Act 1853 (16 and 17 Vict. cap. 34), sec. 2, Schedule D.

A Scottish insurance company purchased bearer bonds in New York out of funds accumulated there amounting to £15,681, representing interest arising from various foreign and colonial securities in America prior to July 1907. These bonds were despatched to this country and were received at the company's head office in July 1907, and kept there for safe custody till August and October 1908, when they were sold and their proceeds received at the head office in Edinburgh.

In a claim by the Commissioners of Inland Revenue, held that the money was subject to income tax, inasmuch as, though it had been earned before the year of assessment, it had been “received in Great Britain in the current year” in the sense of the Income Tax Acts 1842 and 1853.

The Income Tax Act 1842 (5 and 6 Vict. cap. 35), section 100, Schedule D, fourth case, enacts—“The duty to be charged in respect of interest arising from . . . foreign securities. . . . The duty to be charged in respect thereof shall be computed on a sum not less than the full amount of the sums (so far as the same can be computed) which have been or will be received in Great Britain in the current year, without any deduction or abatement.”

The Income Tax Act 1853 (16 and 17 Vict. cap. 34) enacts, section 2—“ . . . The said duties shall be deemed to be granted and made payable yearly for and in respect of the several properties, profits, and gains respectively described or comprised in the several schedules contained in this Act, . . . and to be charged under such respective schedules (that is to say) . . . Schedule D— . . . For and in respect of all interest of money, annuities, and other annual profits and gains not charged by virtue of any of the other schedules contained in this Act, and to be charged for every twenty shillings of the annual amount thereof.”

The Scottish Provident Institution appealed to the Income Tax Commissioners

at Edinburgh against assessments on the sums of £129,019 and £26,557, 10s. of interest made upon it for the year ending 5th April 1909 under the Income Tax Acts 5 and 6 Vict. cap. 35, sec. 100, Schedule D, Case IV; 16 and 17 Vict. cap. 34, sec. 2, Schedule D; and 8 Edw. VII, cap. 19, sec. 7, and claimed that the assessments should be wholly discharged on the ground that no portion of the interest earned abroad within the year of assessment had been remitted to and received in the United Kingdom within the said year of assessment. The Commissioners having in part sustained and in part refused the appeal, a case was stated for the opinion of the Court of Session as the Court of Exchequer in Scotland.

The Case stated, *inter alia* — “1. The agents for the Institution and the Surveyor of Taxes adjusted and signed a joint minute of admissions, a copy of which is as follows:— . . . (2) The Institution is a corporation which carries on the business of mutual life assurance and granting annuities within the United Kingdom. The making of investments and the earning of interest both at home and abroad are necessary parts of the ordinary business of the Institution. The supreme control of the management and the administration of the Institution's business is vested in a board of directors in Edinburgh, where its head office is situated, all its principal books are kept, and the annual meeting of its members held. (3) The Institution's accounts are made up to 31st December each year, and hitherto for convenience the interest on foreign and colonial securities received in the United Kingdom during the Institution's year last immediately preceding the year of assessment for which completed accounts were available has been taken as furnishing the basis figure for the assessment. The assessments now in question were made in respect of sums arrived at in this way. The said sums of £129,019 and £26,557, 10s. represented interests which had accrued to the Institution in the United States of America and Canada, and been paid and invested there during the year ending 31st December 1907, in the purchase of bearer bonds which were thereafter transmitted to this country for safe custody. In respect, however, of the decision in the case of the *Scottish Widows Fund v. Surveyor of Taxes*, 1909, Session Cases, p. 1372, 46 S.L.R. 993, to the effect that the transmission of such securities was not equivalent to a remittance of the interest to the United Kingdom, the assessment is no longer maintained on its original ground, but is maintained to the extent of £15,681 on the ground set forth in the immediately succeeding paragraph, and in respect of sums received in the United Kingdom in the year ending 5th April 1909 and not during the year ending 31st December 1907. (4) On 8th and 9th July 1907 the Institution purchased bearer bonds in New York out of funds accumulated there amounting to £15,681. For the purpose of the present appeal the said accumu-