

Tuesday, December 7.

FIRST DIVISION.

[Lord Curriehill.

MACKINTOSH AND OTHERS *v.* ROSS AND
OTHERS (SHANDWICK SUCCESSION).

Process—Jury Trial.

Held that a jury was a proper tribunal for trying a question of pedigree in which the evidence would be chiefly documentary.

This case, which was an appeal in conjoined petitions for service from the Sheriff of Chancery, in terms of 31 and 32 Vict. cap. 101, sec. 41, came up on a report by Lord Curriehill. On May 30, 1873, the Court pronounced an interlocutor dismissing the petition of one of the parties, and appointing the others to lodge issues, and by a subsequent interlocutor, on December 30, 1873, the issues were approved of, and the case was remitted to the Lord Ordinary. One of the petitioners, John Ross Duncan, now sought to have the case tried by the Lord Ordinary without a jury, and his Lordship reported the matter to the First Division with a view to their reconsidering it.

At advising—

LORD PRESIDENT—My Lords, when this case was before us on May 30, 1873, the interlocutor which we pronounced was to the effect of dismissing the claim of one of the parties, and appointing the others to lodge issues.

We did not in express terms find that the cause was one which should be tried by a jury, but we certainly formed an opinion how it ought to be tried, and I see I said that it was a case just like other cases of pedigree, and further, that it was a matter for the discretion of the Court, and that the practice had been to send such cases to a jury. The other Judges concurred, and Lord Deas observed that the great advantage of trial by jury is that the verdict fixes the matter of fact, which otherwise would be open to controversy in this Court and in the House of Lords. Now, it is quite open to us to reconsider the view which we took then; and if I were now satisfied that the case differed from other pedigree cases, I should be ready to change my opinion, but I cannot see that any such difference exists. It is necessary to observe the position of the parties under this action. They go before the Sheriff of Chancery, and his proceedings on the fact have the same effect as the verdict of a jury. But parties who go before the Sheriff of Chancery may not desire that the question of fact should be settled by him, but by a jury, and they are entitled, under sec. 41 of the Act of 1868, to bring their competition here for that purpose, and we are directed to consider it. I think the party who appeals under sec. 41 has a certain right to be heard, and the appellant is standing on that right, and demanding to have the case tried in the statutory way. It is said, no doubt, that there is a great deal of documentary evidence, but I am by no means sure that that makes the case an unfit one to be tried by a jury. If the case is one depending to a great extent on

correspondence, I do not see that a jury under the discretion of a Judge is not a proper tribunal to deal with that. Questions may arise as to the genuineness of documents, and surely that is a jury question, and one which may often arise. We know also that tombstones and such like pieces of evidence require a great deal of investigation, and require that every-day commonsense which is the best characteristic of a jury.

The other Judges concurred.

Counsel for J. R. Duncan—Fraser. Agent—W. H. Sands, W.S.

Counsel for Mr Mackintosh—Lancaster. Agents—H. & A. Inglis, W.S.

HIGH COURT OF JUSTICIARY.

Wednesday, December 8.

STEWART *v.* EDWARDS.

(Before Lords Justice-General, Justice-Clerk, Ardmillan, and Mure.)

Police and Improvement (Scotland) Act, 25 and 26 Vict. cap. 101, §§ 130, 131—Summary Prosecution Appeals (Scotland) Act, 38 and 39 Vict. cap. 62, § 3—Common Stairs—Owner—Occupants.

Held that under §§ 130 and 131 of the Police Improvement (Scotland) Act, 1862, the owners of a common stair are bound to make provisions for lighting the stair by providing the necessary lamps, but that the duty of supplying the gas, or other lighting material, devolves upon the occupants of the buildings to which access is obtained by the stair.

This was an appeal by Stewart, factor on certain house property situated in the burgh of Partick, Glasgow, against a conviction obtained in Partick Police Court, at the instance of Edwards, the respondent, who held the offices of police superintendent and P.-F. in that burgh. Stewart was charged with a contravention of § 130 of the Police Act, in respect of his failure to supply gas for the lighting of common stairs and courts under his management as factor. He was found guilty, and fined 7s. 6d., or twenty-four hours' imprisonment in default.

The appellant argued that § 130 required the landlord to provide only the permanent requisites for lighting the common stairs and courts—that is to say, such things as gas burners and pipes, but that the duty of providing the gas or lighting material was, under § 131, clearly assigned to the occupier. Further, it was pointed out that a distinction between the lamp or permanent requisites and the "oil or gas" is recognised also in the 126th section of the Act, and that, taking the whole provisions together, the gas fell to be provided by the occupiers.

The respondent contended that the owner

being bound to "make provision for lighting" under the statute § 180, this was sufficient to justify the course taken, and the conviction which followed thereon.

At advising—

The LORD JUSTICE-GENERAL—My Lords, in this appeal I am of opinion that the duties and obligations of owners in regard to the lighting of common stairs must be regulated generally by the spirit of the provisions running through the Act. When these are looked at, not separately, but in a body, so as to employ one section as the interpreter of another, it appears clearly to have been the purpose of the Legislature that the owner was to supply such permanent materials as were necessary for the domestic use of the subjects owned by him—that is to say, the lamps where oil was to be the lighting material, or the gas-burners and gas-pipes where gas was to be used. The occupiers of the stair or court, on the other hand, were to supply the lighting medium, and to keep the lamps or burners clean and regularly lighted.

The other Judges concurred.

The Court sustained the appeal.

Counsel for Appellant—Brand.

Counsel for Respondent—Balfour.

COURT OF SESSION.

Tuesday, December 9.

SECOND DIVISION.

ADAMS v. THE GLASGOW AND SOUTH-
WESTERN RAILWAY COMPANY.

Reparation—Culpa—Collaborateur—Railway.

A single line of railway was worked by what is known as the train-staff system. In consequence of a violation of the rules of that system, an accident happened by which the stoker of a train belonging to a company having running powers over the line was killed. The parties to blame for this accident were the engine-driver and guard of the train, and one of the stationmasters on the line. In an action raised by the widow of the stoker against the company to whom the line belonged, *held* (1) That the deceased and the stationmaster being in the employment of different masters were not fellow-servants, and that, as far as the fault of the latter was concerned, the doctrine of *collaborateur* could not apply; (2) that although the engine-driver and guard of the train were unquestionably fellow-servants of the deceased, and had contributed to the accident by their violation of the rules, the pursuer was nevertheless entitled to recover damages from the defenders as the company whose servant the stationmaster was.

Observations upon the case of *Thorogood v. Bryan*, June 20, 1849, 18 L. J. C. P. 336.

This was an action raised by Agnes Hobbs or Adams, widow of the late James Adams, residing in Stranraer, against the Glasgow and South-Western Railway Company, in which she sought to recover £500 in name of damages in consequence, as she alleged, of her husband having been killed by the fault of the defenders.

The deceased's husband was a stoker in the employment of the Caledonian Railway Company. On the 20th June 1874 he was acting as goods train fireman on the single line of railway between Dumfries and Castle-Douglas. That line is the property of the Glasgow and South-Western Company, but is worked jointly by them and the Caledonian Company under the provisions of certain Acts. On the day above-mentioned Adam's train arrived at the Dalbeattie Station, which is on this line, shortly after twelve o'clock. It proceeded through the station at a slackened speed, and soon afterwards encountered a ballast train belonging to the Glasgow and South-Western Company returning towards Dalbeattie. The two trains came into collision, and Adams was instantaneously killed.

The defenders, while not disputing to any material extent the facts as set forth by the pursuer, nor imputing any blame to the deceased himself, denied liability, on the ground that the collision complained of had been caused, or at least materially contributed to, by the fault of his fellow-workmen.

The case was tried before Lord Young and a jury, when the following facts were brought out in evidence:—

The single line on which the collision took place was worked by what is known as the train-staff system. For regulating the working of this system the following rules, *inter alia*, have been made:—"1st, No engine or train shall be permitted to leave any train-staff station unless the train-staff for the portion of the line over which it is to travel is then at the station. 3d, If other engines or trains are intended to follow before the staff can be returned, a train ticket stating 'staff following' shall be given to the engine-driver, the staff being exhibited along with the ticket to both engine-driver and guard. This shall be done with all other trains till the last, when the staff itself shall be given to the engine-driver of the last train. After the staff has been sent away, no other engine or train can leave the station or junction, under any circumstances whatever, until its return. 4th, The train tickets shall be kept in a box fastened by an inside spring, and the key to open the box is the train staff, so that a ticket cannot be obtained without the train staff. 9th, No engineman is to start with a train or engine from any train staff station until he has received the train staff or ticket. 11th, When a ballast train has to work on any portion of the line, the train staff will be given to the engine-driver. This will close that portion of the line whilst the ballast train is at work. The ballast train must proceed afterwards to one of the terminal stations of the staff to open the line before the ordinary traffic can be resumed." These rules were binding not only upon the servants of the Glasgow and South-Western Company, but also upon those of