

Counsel for Pursuer (Respondent)—Guthrie Smith—R. V. Campbell. Agents—Maitland & Lyon, W.S.

Counsel for Defender (Reclaimer)—Fraser—Keir. Agents—Skene, Webster & Peacock, W.S.

Wednesday, October 24.

FIRST DIVISION.

EARL OF GALLOWAY v. NIXON.

Interdict—Breach of Interdict, where penalty inflicted.

Nature of penalty inflicted by the Court, and terms of an interlocutor pronounced, in a case of breach of an interdict against salmon fishing with bag or stake nets.

The Earl of Galloway obtained in 1868, in an action directed against the burgh of Wigtown, George Nixon, and other parties therein named and designed, a declarator and interdict from the Court of Session giving him the exclusive right of salmon fishing with bag or stake nets in the Bay of Wigtown. In 1877 he presented a petition and complaint to the Court, setting forth that in breach of the interdict the fishing was being carried on by a fisherman named Nixon. It was further stated that Nixon had returned unopened a registered letter sent to him through the post, which, along with other letters, was written by the petitioner's agents to warn him of the illegality of his proceedings, and to ask him to desist. When summoned to appear personally before the Court, Nixon failed to do so. A warrant for his apprehension was then issued, and he was brought before their Lordships of the First Division, when, after counsel had been heard, the following interlocutor was pronounced:—

“The Lords having resumed consideration of the cause, and the respondent George Nixon being placed at the bar in custody, and having admitted by his counsel that he is guilty of the breach of interdict complained of, Find the respondent guilty accordingly, and, in respect thereof, sentence and adjudge him to be imprisoned in the prison of Wigtown for the space of one calendar month, and thereafter to be set at liberty; and ordain him to be incarcerated and detained in the prison of Edinburgh till he can be removed to the prison of Wigtown: Find the respondent liable in the expenses of process, and remit to the Auditor to tax the account thereof and report: And, in respect it is admitted by the respondent that the net complained of has not yet been removed, authorise the petitioner forthwith to remove the same; and decern: Further, authorise execution hereof to pass on a copy hereof certified by the Clerk of Court, and decern *ad interim*.”

Counsel for Petitioner—Mackintosh. Agents—Russell & Nicolson, C.S.

Counsel for Respondent—J. G. Maitland. Agent—J. Macpherson, W.S.

Friday, October 26.

FIRST DIVISION.

[Lord Adam, Ordinary.]

LITTLE v. NORTH BRITISH RAILWAY CO.

Issues—Form of Issues when Damages claimed against a Railway Company by one travelling without a Ticket.

Form of issue in an action of damages by a child of eight years old against a railway company for injuries sustained by him when travelling on their line with his aunt without a ticket, his statement on record being that he did so with the licence or implied authority of the servants of the company, while the defenders averred that the intention of the aunt in failing to take out the ticket was to defraud them.

This was an action at the instance of William Little, a boy of eight years old, residing at East Borland, Denny, against the North British Railway, to recover damages for injuries received by him when travelling on their line, through their fault, or that of those for whom they were responsible.

On 4th August 1876 the pursuer was travelling with his aunt Janet Moir, who took a ticket for herself but none for the pursuer, from Balloch Pier to Glasgow station on the defenders' railway. In the course of the journey the door of the carriage in which they were travelling flew open, the pursuer fell out, had his skull fractured, and suffered other severe injuries. The fault alleged against the defenders was that they had failed to secure the door when the train was at Balloch, or that there was a defect in the door or in its lock.

It was averred for the pursuer—“The said Janet Moir took a third-class ticket for herself, entitling her to travel from Balloch Pier to Glasgow, but did not take one for pursuer, believing that no charge was made for the conveyance of children so young as he was. Denied that either she or the pursuer had any intention of defrauding the defenders. The pursuer was seen by the clerk from whom his aunt obtained the ticket, and other servants of the Company, and they one and all allowed or gave licence to the pursuer to take his place as a passenger in the railway carriage, and to remain in it. He had thus the licence or implied authority of the defenders to be in the railway carriage, out of which he fell, through their fault, as after stated.”

The defenders, *inter alia*, answered—“The defenders believe and aver that the pursuer's aunt failed to take out a ticket for him with intent to avoid payment of the fare which she well knew was due. It was well known, and the pursuer's said aunt was well aware, that railway companies do not carry children above three years of age free. Moreover, the particular train in question was one run under the provisions of the Act 7 and 8 Vict. cap. 85, section 6, by which it is *inter alia* enacted that ‘children under three years of age accompanying passengers by such train shall be taken without any charge, and children of three years and upwards, but under twelve years of age, at half the charge for an adult passenger.’”