difference—whether it has imposed any new obligation upon Mr Cochrane or given any new right to Mr Barr which he had not before. Now, although the correspondence is in somewhat peculiar terms, I think it makes no difference on the case. We have not the whole correspondence, but both parties have asked us to decide the case upon what is printed, and if anything is left doubtful, the party on whom the *onus* lies must take the risk of it.

I cannot read that correspondence as changing the nature of the obligation in the lease either as making it incompetent to discharge the obligation by estimating the repairs in money, which is a very usual and convenient arrangement, or by introducing a new and independent creditor who would be entitled to prevent Inch and Mark from accepting a sum of money and executing the repairs themselves, which was undoubtedly their right under the lease. The creation of a new obligation is against every presumption—so is the introduction of a new creditor without the consent and against the will of the sole original creditor. Such an alteration of the rights of parties would be utterly unreasonable, and would be perfectly gratuitous. Certainly Mr Cochrane was not bound to come under any new obligation, or to hamper himself by creating two creditors, who might never agree, instead of one. It cannot be presumed that he did so, and looking at the letter in the light of the circumstances I cannot give it any such effect. But all difficulty seems to be removed by the terms of Mr Barr's own letter of 22d June 1875, which shows that he himself did not consider that Mr Cochrane's obligation under the lease had been in any way altered, either as to its nature or as to the creditor therein, by the letter of 15th May. Mr Barr tells Mr Cochrane that he cannot interfere between Mr Cochrane and his former tenants Messrs Inch & Mark, and in an emphatic postscript, as if to put an end to all further discussion, he says—"It is not me, but Inch & Mark, you must satisfy with repairs and fencing."

Well, then, Mr Cochrane has satisfied Messrs Inch & Mark, and has been absolutely discharged by them. It is not pretended that Messrs Inch & Mark can make any claim on the purchaser, either by retention or otherwise. They are bound to him by the lease, because they have got the repairs or their value. It is impossible to maintain that Mr Cochrane might have satisfied Inch & Mark by giving them a few stobs and rails, of the sufficiency of which they were to be sole judges, and yet could not satisfy them by paying them £221, they undertaking as they do to discharge Cochrane and fulfil all his obligations in his place. And still less do I think is it possible to hold that Mr Cochrane, after paying £221, being the value of the repairs to the tenants, his sole creditors, is bound nevertheless to make the repairs at the purchaser's sight, just as if he had not been discharged, or, it may be, to pay the same sum over again to the purchaser. I think the purchaser never was creditor in the obligation, and has no right to enforce his present demand.

The Court adhered.

Counsel for Pursuer (Reclaimer)—Guthrie Smith—Strachan. Agent—Alexander Gordon, S.S.C.

Counsel for Defender (Respondent)—Trayner—Begg. Agents—Lindsay, Paterson, & Co., W.S.,

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Saturday, June 8.

SECOND DIVISION.

[Sheriff of Perthshire.

MENZIES *v.* HIGHLAND RAILWAY COY.

Railway—Reparation—Liability of Railway Company in Damages for Expulsion of a Passenger without a Proper Ticket, but in bona fide—*Railways Clauses Consolidation (Scotland) Act* 1845, *secs.* 96 *and* 97—*Notice—Stat.* 8 *and* 9 *Vict. cap.* 33.

A railway passenger on a Friday afternoon took a first-class return ticket from A to P, the ticket having on its face "Saturday fare." The passenger noticing this, made inquires, and was informed by the company's stationmaster at A that the ticket was available, according to the account of the latter, for all trains on Saturday and Monday; according to the passenger's account, by all mail-trains. There was no train to A on Sunday, A being a station on a branch line, but trains stopped at a junction about twelve miles off. The ticket was not available on Sunday, regulations to that effect being posted up in the station at A, though *ex facie* of the ticket there was no intimation of that fact. On Sunday morning the passenger took his seat in a carriage at P; being asked to show his ticket, he did so at once, when he was told that it was not available, and that he must get another. This he refused to do, stating that the ticket was sufficient, and that he had been told so by the stationmaster at A. Being again told that he must get another ticket, or that he would be taken out of the carriage, he still refused, and accordingly was removed from the carriage by the officials, but with no undue violence. After the train started he hired a post-chaise and drove in it to the junction named above.

In an action of damages, and for payment of the expenses incurred in the hire, at his instance against the company, *held* (*per* Lords Ormidale and Gifford) that the company were not liable in damages in respect—(1) that the ticket was not available on Sunday, and that this was sufficiently intimated to the passenger by the words "Saturday fare' and the posters in the station; and (2) that therefore the passenger was in the position of having no ticket, and notwithstanding that he had no fraudulent intent the company were entitled to expel him from the carriage, under the 96th and 97th sections of the Railways Clauses Consolidation (Scotland) Act 1845; and (*per* Lord Justice-Clerk) that the passenger, having been informed at Perth by the company's servants that he was wrongfully in the carriage, should have at once yielded, and trusted to his after remedy.

Railway—Railways Clauses Consolidation (Scotland) Act 1845, *secs.* 96 *and* 97.

Opinion (*per* Lord Justice-Clerk) that the

passenger being *in bona fide*, committed no offence in taking his seat, and that the company's servants would not have been entitled to give him in charge, and further, that expulsion from a carriage ought not to be resorted to when the passenger had a *prima facie* title to remain, but should be reserved for cases where there was an intent to defraud or a substantial interest to protect.

Sir Robert Menzies, 'Bart., the pursuer in this action, on the afternoon of Friday, 4th May 1877, went to the railway station of the Highland Railway Company, the defenders, in order to proceed to Edinburgh. He asked at the booking-office for a return ticket to Edinburgh, and was informed that he could not get one, but that the day being Friday he could get a return ticket from Aberfeldy to Perth, by which he would save 3s. 7d. He thereupon purchased a return ticket of that description, which had on it only the words—"Perth to Aberfeldy—First-class—Saturday fare—Not transferable." The pursuer travelled to Perth with this ticket on the Friday evening, and on the morning of the Sunday following he took his seat in a first-class carriage in the defenders' train then about to start from Perth to Ballinluig. On being required to show his ticket to one of the ticket-collectors, he exhibited the half-return ticket, which was then challenged as not available for that day, and the pursuer was required either to purchase a fresh ticket to Ballinluig or to leave the train. He declined to do either, and insisted as matter of right that the ticket was sufficient, and had as such been purchased by him. He also gave his name and address to the ticket-collector, but the latter, acting under the general instructions received from the company that he should not allow any person to travel on Sunday upon such tickets, refused to allow Sir Robert to proceed, and, aided by another ticket-collector and two porters, ejected him by force from the carriage. Sir Robert remained behind when the train started, and in order to get to Ballinluig was obliged to hire a post-chaise. The violence used towards the pursuer did not exceed what was necessary for his ejection. Sir Robert thereafter raised an action of damages in the Sheriff Court of Perthshire against the railway company for £50 damages and *solatium*, and £1, 12s. 3d. of expenses incurred in driving to Ballinluig.

He pleaded—"The defenders or their servants, or others in their employment, and for whom they are responsible, having committed upon the pursuer the assault condescended on, and having ejected the pursuer from the railway carriage as condescended on, are liable in damages and *solatium* to the pursuer in respect of the said assault and ejectment, and are likewise liable to reimburse to the pursuer the sum paid out by him after and owing to such ejectment as also condescended on, and further are liable in expenses."

The defenders pleaded *inter alia*—"(1) The return ticket held by the pursuer not being available for the train in which he attempted to travel, and he having refused to purchase a fresh ticket, or to vacate the carriage, the defenders were entitled to have him removed; (3) The pursuer's conduct on the occasion in question was an infraction of the 102d section of the Railways Clauses Consolidation (Scotland) Act 1845, and the defenders' second bye-law, framed in terms thereof and duly published, and rendered him liable to be removed from the carriage. (4) *Separatim*—The pursuer, by insisting on travelling with a ticket which was not available for the train, and refusing to take another ticket, was guilty of an offence within the meaning of the 96th section of the said Railways Clauses Consolidation (Scotland) Act 1845, and was by section 97 of that Act liable not only to be removed from the train, but to be apprehended and detained until he could conveniently be taken before the Sheriff or some Justice. (5) The removal of the pursuer being in the circumstances justifiable, the defenders are not liable to pay the posting account incurred by the pursuer."

The following were, *inter alia*, the excerpts from the company's public time-table, on which they relied, and which were posted at Aberfeldy station:—

"1. *Bye-Laws and Regulations.*

"(1) No passenger will be allowed to enter any carriage used on the railway, or to travel therein upon the railway, unless furnished by the company with a ticket, specifying the class of carriage and the stations for conveyance between which such ticket is issued. . . .

"(2) Any passenger using or attempting to use a ticket on any day for which such ticket is not available, or using a ticket which has been already used on a previous journey, is hereby subjected to a penalty not exceeding forty shillings.

"(5) A return ticket is granted solely for the purpose of enabling the person for whom the same is issued to travel therewith to and from the station marked thereon, and is not transferable. . . .

"2. *Notice.*

"(1) Under the 96th and 97th sections of the Railways Clauses Consolidation (Scotland) Act 1845 it is provided that if any person travel or attempt to travel in any carriage of the company, or of any other company or party using the railway, without having previously paid his fare, and with intent to avoid payment thereof, or if any person, having paid his fare for a certain distance, knowingly and wilfully proceed in any such carriage beyond such distance, without previously paying the additional fare for the additional distance, and with intent to avoid payment thereof, or if any person knowingly and wilfully refuse or neglect, on arriving at the point to which he has paid his fare, to quit such carriage, every such person shall, for every such offence, forfeit to the company a sum not exceeding forty shillings; and if any person commit any such offence, all officers and servants and other persons on behalf of the company may lawfully apprehend and detain such person until he can conveniently be taken before some justice, or until he be otherwise discharged by due course of law.

"(2) Under the 102d section of the Railways Clauses Consolidation (Scotland) Act 1845 it is provided that if the infraction or non-observance of the company's bye-laws or regulations be attended with danger or annoyance to the public, or hindrance to the company in the lawful use of the railway, it shall be lawful for the company summarily to interfere to obviate or remove such

danger, annoyance, or hindrance, and that without prejudice to any penalty incurred by the infraction of any such bye-law; and under the 16th section of the Act 3 and 4 Vict. cap. 97, it is provided that if any person shall wilfully obstruct or impede any officer or agent of the company in the execution of his duty upon the railway, or upon or in any of the stations or other works or premises connected therewith, every such person so offending, and all others aiding or assisting therein, may be seized and detained until he or they can conveniently be taken before a Justice, and shall, in the discretion of such Justice, forfeit any sum not exceeding five pounds, and in default of payment thereof be imprisoned for any term not exceeding two calendar months.

"3. *Return Ticket Regulations.*

"These tickets are not transferable, and are only available for the stations the names of which are printed thereon, and for no other, either short of or beyond those stations —the express conditions under which such tickets are granted being that they entitle the holders to travel once each way to and from the stations specified thereon. If not used within the prescribed period, they are cancelled and the amount forfeited.

"4. *Return Tickets on Sunday.*

"1st and 3d class return tickets at one fare and two-thirds will be issued by mail trains on Sundays from all stopping stations between Wick, Thurso, Keith, and Perth, to parties attending church. These tickets are available on day of issue only. Local return tickets, other than the above, are not recognised on Sundays.

"5. *Return Tickets on Fridays and Saturdays.*

"Return tickets at one ordinary fare and one-third will be issued as under:—

"On Fridays between all stations on main line and branches, also to through booking-stations on Great North of Scotland Railway, by the last train of the day from the respective stations, available to return on the following Saturday or Monday.

"And on Saturdays, by all trains between all stations on main line and branches, also to through booking-stations on Great North of Scotland Railway, entitling the holder to return the same day or following Monday.

"These tickets will only be issued when asked for, according to class of trains shown in time tables, and are only available to return by train carrying the same class, and stopping at stations marked on these tickets. In no case will these or other tickets be exchanged.

"*Cheap Fares on Fridays and Saturdays.*

"Return tickets at one ordinary fare and one-third are issued on Friday by the last train of the day to the respective stations, and by all trains on Saturday. Those issued on Friday are available to return the following Saturday or Monday, and those issued on Saturday are available to return same day or following Monday by any train carrying the same class. Local return tickets are not available on Sunday."

After a proof, the purport of which sufficiently appears from the opinions quoted below, the Sheriff-Substitute (BARCLAY) on 18th October 1877, pronounced an interlocutor in which, after certain findings in fact and in law, he assoilzied the defenders.

The pursuer appealed to the Sheriff, who on 28th November 1877 pronounced an interlocutor finding the defenders liable in damages, and assessing the damages at £21. He added the following note:—

"*Note.*—The questions in this case seem to be chiefly, if not exclusively, questions in law. There is really no material difference between the parties as to the facts out of which the case has arisen—[*states facts* ut supra]. Nor does it seem to be questionable that if the pursuer's ticket was an available ticket, to the effect of entitling the pursuer to travel to Aberfeldy, it would be contrary to the practice of the company to complain of its being used only to Ballinluig, or to refuse to recognise it as available so far merely because the train had no direct connection with a train from Ballinluig to Aberfeldy. The evidence shows that all passengers for Aberfeldy change at Ballinluig Junction, and that the pursuer had frequently travelled, and was known to have travelled, upon an Aberfeldy ticket to that station after the last train thence to Aberfeldy for the day was gone. And there is, in the opinion of the Sheriff, no ground in fact or in law for holding that under the defenders' bye-laws the use without fraud of an Aberfeldy ticket for a journey as far only as Ballinluig, and by a train which does not connect directly with any train from Ballinluig to Aberfeldy, is an offence or infraction of rules for which the user can be seized and forcibly ejected (see the *Queen* v. *Frere*, 1855, 4 Ell. and Bl. 598, and 24 L.J., M.C. 68). Accordingly, it appears that the objection which was taken at the time to the pursuer's ticket was not that the ticket was only available to Aberfeldy, but that it was not available at all on Sunday. This was the ground on which the defenders stood in ejecting the pursuer from the train; and although the Sheriff would not hold them precluded from defending the conduct of their servants upon any relevant ground, it seems to him right, if possible, to decide this case according to the merits of the dispute as it arose.

"In this view it is important to determine what was the issue raised at the time of the occurrence of which the pursuer complains? Was it whether the pursuer was entitled to travel by the defenders' train on that Sunday morning under the ticket? Or was it whether the defenders were entitled to seize him and remove him by force from the carriage in which he was seated? The Sheriff is of opinion that the latter is the question truly raised. There was at the time a subsisting contract between the defenders and the pursuer. Whether that contract was a special contract made by the pursuer with the station-agent at Aberfeldy is matter of dispute. The Sheriff holds that it was not, because he thinks it not proved that the station-agent at Aberfeldy had authority to make a special contract. But there was certainly an unexpired contract constituted by the purchase and delivery of a certain ticket. A question is raised as to the terms of that contract, and particularly whether it did or did not entitle the pursuer to travel on Sunday. However that question may be determined, the Sheriff holds

that it is incumbent on the defenders to show that by the terms of the contract or by their statutes they were entitled to act as they did. It may be that the pursuer under that contract had no right to travel on that Sunday, and that he was in error in supposing he had such right, and in maintaining a claim to exercise it. But it does not follow from such error that the defenders were justified in apprehending him by the collar and in forcibly ejecting him. Even on the supposition that the pursuer committed unwittingly a trespass in taking and retaining his seat, it does not follow that the defenders were entitled to seize and remove him. For there was in this case no reason to suppose that the pursuer was trespassing for a felonious purpose; no withholding of his name and address; no difficulty in reaching him by the law; no suspected fraud. Nothing of that kind is alleged. The pursuer was in the public conveyance which the defenders were privileged to provide under statutory powers and subject to statutory obligations. He was not without a ticket. He is admitted to have been in *bona fide*. Unless, therefore, the violence complained of was authorised by the terms of the contract, or by some special statutory enactment, it was, in the Sheriff's opinion, unlawful. For he holds that, apart from contract or special statute, the law of Scotland does not authorise the summary apprehension and forcible ejectment of one who through innocent and excusable error exceeds his right and thereby commits a trespass.

"How then stands this question? Were the defenders entitled either by the terms of the contract or by their statutes to remove the defender *brevi manu* from the train?

"In the opinion of the Sheriff this question must be answered in the negative. The pleas stated in the 97th and 102d sections of the Railway Clauses Consolidation Act are in this case inapplicable, unless in connection with the contract they can be shown to apply. The 97th section applies only to a person committing one of the offences therein referred to, viz.—(1) travelling or attempting to travel 'without having previously paid his fare, and with intent to avoid payment thereof;' or (2) knowingly and wilfully proceeding beyond the distance for which he has paid his fare, and with intent to avoid payment thereof; or (3) knowingly and wilfully refusing or neglecting on arriving at the point to which he has paid his fare to quit the carriage. It is not alleged that the pursuer was in any such case, and therefore the fact that penalties are enacted, and that powers of apprehension and detention are conferred on the company as against such persons can afford no justification of what was done to the pursuer.

"As to section 102, that part of it which was founded on applies only to cases of danger or annoyance to the public from infraction of a bye-law, and it had not been established (nor has it been established yet) that the pursuer in claiming to use his ticket on the Sunday was infringing the second bye-law, and attempting to use a ticket on a day for which such ticket was not available. The question whether he was using or attempting to use his ticket for a day for which it was not available is a question depending on the terms of the contract between him and the company. That question may have to be determined in this action. But its determination in the defenders' favour will not avail them in justifying the conduct of their officers unless they can show (which they have not attempted to do) that this infraction was such as rendered him liable to the penalty; and it appears to be the result of the decisions in this class of cases that such penalties cannot be inflicted against one who is innocent of any intention to defraud the company or of any wilful infraction of the bye-law—See *Deardon* v. *Townshend*, 1865, 1 L.R. (Q.B.) 10; *Glover* v. *London and South-Western Railway*, 3 L.R. (Q.B.) 25; *Chilton* v. *London and Croydon Railway*, 1847, 16 L.J. (Ex.) 89. The case of the *Scottish North-Eastern Railway Company* v. *Mathews*, which was cited for the company, does not seem to be in point as an authority for the ejection of a passenger who had a ticket which he honestly maintained to be available, for in that case the respondent had no ticket, and knew that he had none.

"The case of *Hamilton* v. *The Caledonian Railway Company*, 19 D. 457, shows that a man may be a lawful passenger on a railway without a ticket to the station to which he was travelling, and notwithstanding bye-laws such as were in force on the Highland line.

"And the case of *Craig* v. *The North of Scotland Railway Company*, 2 Irv. 206, is another illustration of the necessity for proving that the infraction was wilful in order to support a conviction.

"The 16th section of the Statute 3 and 4 Vict. cap. 97, is clearly inapplicable excepting to cases of wilful misconduct. In this case the pursuer was exercising in a perfectly inoffensive manner what he honestly maintained to be his right; and it is a remark which the Sheriff considers to be of some force, that there has been no attempt to obtain a conviction against the pursuer upon any of these enactments or bye-laws.

"With regard to the contract, the Sheriff is of opinion that it does not support the defenders' plea that the ejection of the pursuer from the train was justifiable. He thinks that it has not been established as matter of fact that it was a part of the contract with the pursuer that his ticket should not be available to return on Sunday, and he cannot find that the company did what was reasonably sufficient to give notice of such a condition. He therefore holds it impossible to affirm that the pursuer in taking and retaining his seat in the train did anything to render himself liable to the summary powers which were exercised against him.

"It must be observed that there seems no ground for alleging that it is matter of notoriety that return tickets are not available on Sundays. The question therefore is, Was it a special condition attached to the holding of such a return ticket as the pursuer's? Was any condition to that effect intimated to the pursuer and acceded to by him? or was any condition of that kind notified in such a manner that every passenger taking one of these tickets must be held to have assented thereto? The evidence as to what passed on the occasion of the pursuer's ticket being taken is, as the Sheriff-Substitute points out, quite unmistakeable as to the pursuer's understanding on the subject. . . . . Nor does the Sheriff see any occasion for going further into the matter proposed to be proved, as he thinks that

the evidence as a whole goes to show that the defenders' agent said nothing as to Sunday, and left the pursuer under the impression that his ticket was available by all trains, and that he could return as far as Ballinluig on Sunday. It seems to be clear that there was no express exclusion of Sunday throughout the conversation.

"It was urged at the debate that the ticket bore on the face of it the words 'Saturday fare,' that the time-bills posted at the stations, and separately issued by the company, contained notice that 'local return tickets are not available on Sunday,' and also that return tickets issued on Fridays 'are available to return on the following Saturday or Monday.' And it was contended that this was sufficient notice of the alleged condition. But, on the authorities, the Sheriff cannot sustain this contention—See *Henderson* v. *Stevenson*, H.L., 1875, 2 L.R. (Sc. App.) 470; and *Parker* v. *South-Eastern Railway Company*, 1877, L.R., 2 C.P.D. 416. The ticket in this case made no reference to the time-bills. It was not a ticket 'as per bill,' such as a case commented on in *Henderson* v. *Stevenson* (*Stewart* v. *London and North-Western Railway Company*, 33 L.J. (Ex.) 199), and cited at the debate. And there is no ground for holding, either as matter of fact or as matter of legal presumption, that the pursuer was aware of any such rule. On the contrary, it is clear that he understood that the ticket was available on Sunday, and supposed that the station-agent's reference to all trains applied to Sunday trains as well as others. Mere notice not brought home to the pursuer will not render him liable to the penalties of travelling without a ticket, or of using a ticket for a day for which it was not available, if in point of fact he had a ticket *prima facie* sufficient, and which he honestly maintained to be sufficient.

"Upon this question, however, as to the sufficiency of the ticket to give notice of the alleged condition, it may almost be said that the company stand confessed. For it appears that they had previously issued other tickets bearing expressly and on the face of them that such tickets were not available on Sundays, and it seems that the only reason for not using these tickets at Aberfeldy was that there still remained an unexhausted stock of tickets in the old form such as that given to the pursuer.

"The Sheriff is therefore of opinion that what the company had done was not sufficient to give notice to the pursuer that his right to return by all trains was subject to an exception of trains on Sunday; and he is further of opinion that, whatever may have been their powers of excluding the pursuer from the train in question, they had no right after he was seated in it, and was thus in *bona fide* possession, upon an apparently sufficient title to, seize and remove him in the summary manner disclosed in evidence.

"Assuming, then, that the acts complained of by the pursuer were done by the defenders or by persons for whom they are responsible, the Sheriff holds that these acts were unlawful and wrongful, and amounted in law to an assault upon the person of the pursuer."

[The Sheriff then went on to consider whether the defenders were responsible for these acts of their servants, and gave his reasons for holding that they were.]

The defenders appealed to the Court of Session.

Argued for them—The two questions to be decided were—(1) Was there a contract of carriage? (2) If not, were the defenders entitled to turn the pursuer out of the carriage? The ticket was the sole evidence of a contract of carriage; this bore on its face "Saturday fare," which suggested to the pursuer that it was only available on Saturday, and therefore he was bound to look to the company's time-tables for information; if he did so he would find, what was the fact, that the ticket was not available on Sunday. This case therefore was different from *Henderson's* case, 2 L.R. (Sc. Apps.) 470, for here the pursuer was put on his inquiry. There was no train to Aberfeldy on Sunday, and therefore the pursuer must have known the ticket was not available without a special contract. There was no special contract proved, and even if proved, the defenders' stationmaster could only contract between Perth and Aberfeldy; he had no authority to contract with the pursuer for a journey between Perth and Ballinluig, which was what he was alleged to have done. He had, further, no authority to vary what was laid down in the company's printed regulations—*Hurst* v. *Great Western Railway Company*, June 10, 1865, 34 L.J. (C.P.) 264; *Finlay* v. *North British Railway Company*, July 8, 1870, 8 Macph. 959. It was doubtful whether a passenger having contracted to travel between two places was entitled to travel between two other places even when there was no loss to the railway company—*Queen* v. *Frere*, 1855, 4 Ell. and Black, 598; *Moore* v. *Metropolitan Railway Company*, November 26, 1872, 8 L.R. (Q.B.) 36. The company was authorised by statute (8 and 9 Vict. c. 33, secs. 101–104) to make and publish regulations by bye-laws which were binding on all persons using the railway. It was one of their regulations that a person was not entitled to travel without a ticket. If this regulation was good at common law, which it was submitted it was by the company's bye-laws, the railway servants were entitled to remove the pursuer from the carriage without undue violence, he being without a proper ticket, and there being no penalty attached to his offence—*Scottish North-Eastern Railway Company* v. *Mathews*, April 20, 1866, 5 Irvine, 237; *M'Carthy* v. *Dublin, &c., Railway Company*, May 3, 1869, Irish Rep. (Com. Law) 511.

The following additional authorities were referred to—*Henderson* v. *Stevenson*, H. of L. 2 L.R. (Sc. Apps.) 470; *Stewart* v. *London and North-Western Railway Company*, 1864, 33 L.J. (Exch.) 199.

Argued for respondent—The pursuer's account of what occurred when he purchased his ticket was probably correct, for it was corroborated by the *res gestæ*. He certainly acquired the idea that the ticket was available on Sunday, and he must have acquired it from the defenders' servant. If this was so, he had a special contract with the defenders' stationmaster, and it was absurd to say that the latter could not bind the company in a matter of this sort—*Hamilton* v. *Caledonian Railway Company*, February 18, 1857, 19 D. 457. The words "Saturday fare" gave no information except to the railway company's servants. The ticket, if not available on Sunday, ought to have had that upon it, as it was the duty of the company to bring such knowledge home to the pursuer. The only manner in which it was even

alleged that this was done was by the printed time-tables posted on the station, which was not enough notice—*Henderson* v. *Stevenson* and *Parker* v. *South-Eastern Railway Company*. The fact that there was no train on Sunday was of no importance. The pursuer was, with the knowledge and approval of the defenders, constantly in the habit of coming as far as Ballinluig, and when there was no connecting train, of driving home. It became merely a question of the number of hours. The passenger waited at Ballinluig, because in the ordinary event it was common to have to wait hours there. If the pursuer had returned by the last train on Saturday night there was no connecting train to Aberfeldy, but surely he would have been within his right. The only force of the two names on the ticket was that the company must carry the passenger as far as the second name. The passenger surely was entitled to get out short of this second place if by so doing he did not defraud the company. II. In regard to the company's right to turn the pursuer out of the carriage, there was no doctrine of common law which could be quoted of such an abstract character as to meet every case. It was necessary to take the circumstances into consideration, and if this was done in the present case they were all in the pursuer's favour. Railway companies could point to no regulation or bye-law entitling them to do what they did to a passenger who was in *bona fide* and had an *ex facie* good ticket.

Additional authorities—*Deardon* v. *Townshend, supra; Bentham* v. *Hoyle*, January 17, 1878, L.R. 3 Q.B. 289; *Brown* v. *Great Eastern Railway Company*, June 7, 1877, L.R. 2 Q.B. 406; 3 and 4 Vict. c. 97, sec. 16; 8 and 9 Vict. c. 33, sec. 101; Hodges on Railways, 548.

At advising—

Lord Ormidale—The questions which arise in this case, and upon the solution of which its determination depends, are—First, Was the pursuer of the action, Sir Robert Menzies, entitled under the ticket which he held to return as a passenger from Perth to Ballinluig on Sunday the 6th of May 1877; and secondly, if he was not, were the defenders' servants justified in preventing him doing so in the manner they did?

The first of these questions is the more important of the two, as the answer to the second depends very much, if not entirely, upon how the first is disposed of.

According to the terms of the ticket which was issued to the pursuer, he was entitled to travel as a first-class passenger to and from Perth and Aberfeldy only. The ticket did not—expressly at least—authorise him to insist on travelling by a train on Sunday from Perth to Ballinluig. Neither were the defenders under any obligation to the pursuer independently of his ticket to convey him on Sunday by that or any other train to Ballinluig. This was a matter which they were entitled to regulate in any legitimate manner they pleased. Thus, by the 101st section of the Railway Clauses Consolidation (Scotland) Act (8 and 9 Vict. c. 33) the defenders were authorised to make regulations in relation to various specific matters, "and generally for regulating the travelling upon or using and working of the railway." And the defenders did make regulations under and in pursuance of this statutory authority. By one of these regulations it is provided that—"No passenger will be allowed to enter into any carriage used on the railway or to travel therein upon the railway unless furnished by the company with a ticket specifying the class of carriage and the stations for conveyance between which such ticket is issued." By another it is provided that "a return ticket is granted solely for the purpose of enabling the person for whom the same is issued to travel therewith to and from the stations marked thereon, and is not transferable;" and by a third it is provided in regard to "return tickets on Sunday," that "first and third class return tickets at one fare and two-thirds will be issued by mail trains on Sundays from all stopping stations between Wick, Thurso, Keith, and Perth, to parties attending church. These tickets are available on day of issue only. Local return tickets, other than the above, are not recognised on Sundays."

Clear it is therefore that if the terms of the ticket which the pursuer possessed on the occasion in question, and the regulations above referred to, are alone to be considered, he had no right to travel in a train from Perth to Ballinluig on the Sunday in question. His ticket bore merely that it was issued for his conveyance to and from Aberfeldy and Perth—Ballinluig not being mentioned or marked upon it at all. The regulations, again, to which I have referred, not only do not authorise any departure from the terms of the ticket, but are unequivocally to the opposite effect.

But then it was maintained on the part of the pursuer that he knew nothing of the defenders' regulations, and that they were not brought specially under his notice when he obtained and paid for his ticket. That may in a certain sense be so, and yet the regulations may be binding upon him. It is not by statute or otherwise made incumbent upon railway companies to bring their regulations under the special notice of travellers; and it is obvious that any such thing would be impracticable consistently with the working of a public railway. It was suggested, however, at the debate that something might have been marked on the ticket which would, in the present instance at least, have given the pursuer the requisite special notice. If, for example, it was said, the words "not available on Sundays" had been on the ticket, that would have been sufficient. But there are other regulations which he or any other traveller might attempt to contravene as well as those in question, and it could not, I think, be reasonably maintained that it was necessary to set out all the regulations on the ticket, and I do not suppose this is done by any railway company. Every traveller must know well that in regard to various matters he is put upon his own inquiry. Accordingly, even had the words "not available on Sundays" been marked on his ticket, it would still be left to him otherwise to ascertain for how long—a day, a week, a month, or what other precise time—he could use his return ticket, either on Sunday or any other day. Or, apart from the accidental circumstance of personal knowledge arising from his being a resident in the district, how could the pursuer know without taking the trouble to examine the time-tables, or otherwise ascertaining for himself, whether there was any train at all from Perth to Ballinluig on the Sunday in ques-

tion. His ticket gave him no information on the subject, and it would be contrary to what I believe to be the universal practice if it had.

The defenders did, however, all that in reason or good sense was incumbent on them to apprise the pursuer and the public generally of the regulations under and in terms of which their railway could be used by travellers. The regulations were published in their time-tables, and also by placards posted up at the Aberfeldy and other stations; and this I take to be admitted in the pursuer's answer to the defenders' statement of facts. It is at any rate proved by the witnesses—Mr Fyfe, who speaks to the placards, or posters as he calls them, and by John Beattie, who speaks to the time-tables. Both of the Sheriffs accordingly proceed on the assumption that there had been such publication, and the debate before this Court was conducted on the part of the pursuer as well as the defender on that footing.

The publication made by the defenders of their regulations as now referred to was, in my opinion, all that was necessary. Even if this had been a prosecution, which it was not, against the pursuer for the recovery of penalties in respect of the contravention of one or more of the company's bye-laws, proof of publication, such as has been proved in the present case, would have been sufficient in terms of sections 102, 103, and 104 of the Railway Clauses Consolidation (Scotland) Act. And if so, it would have been very strange if such a publication, not of the defenders' penal bye-laws, but of their ordinary regulations merely, were not to be held sufficient. I must therefore hold that the pursuer had all the notice of the regulations in question that he was entitled to, or which it was incumbent on the defenders to give him, and that he must just take the consequences of an infraction or attempted infraction of them.

But the plea or contention of the pursuer—and it formed the subject of the chief part of his argument—that the defenders' regulations were unknown to him, appears to me to be wholly inadmissible for this other reason, that at Perth on the Sunday morning, where and when he attempted to violate the defenders' regulations, he was made aware by their servants in the most unmistakeable manner that his ticket did not entitle him to travel to Ballinluig by the train in one of the carriages of which he had taken his seat. Nor will it do for him to say that his contract previously made on the Friday at Aberfeldy justified his conduct. The only evidence of contract he had was the ticket itself, and, as has been already explained, it did not bear that he had any right to return on Sunday or any other day to Ballinluig, but only to Aberfeldy. Nor can I give any effect to the argument of the pursuer, that what passed between him and the defenders' servants at the Aberfeldy station on the Friday when he applied for and got his ticket was tantamount to an assurance that it would entitle him to return on Sunday by the train from Perth to Ballinluig; and therefore that he had a right to do so independently of the defenders' regulations, whatever might be their effect in other circumstances. I am unable to see that there is evidence of any such assurance having been given. It appears to me that the evidence on which the pursuer founded at the debate can be fairly held to amount to nothing more than that the pursuer was told, in answer to his enquiry, that by virtue of his first-class ticket he would be entitled to travel by the mail as well as other trains. It is improbable—in the highest degree inconceivable, indeed—that the stationmaster, or any other servant of the defenders at Aberfeldy, would in the face of the regulations posted up at that station, and set out in the time-tables of the company, have given him any such assurance; and if they did, they must have exceeded their power, and consequently their statements could not be obligatory on the defenders. And neither can any previous transgression by the pursuer of the defenders' regulations, if there had been any such, entitle him to repeat his transgression on the occasion in question against the remonstrances of the defenders' servants at Perth. It might be a different matter if the defenders had, after examining the pursuer's ticket, allowed him to proceed by the train to Ballinluig, and afterwards at Ballinluig treated him as a trespasser.

It was further argued for the pursuer—and this is the only other point which appears to me to require notice—that supposing the pursuer is wrong in his contention as to his right to travel by the train from Perth to Ballinluig on the Sunday in question, it was unreasonable on the part of the defenders' servants at Perth to insist, as they did, on his leaving the carriage in which he had taken his seat, knowing, as they did, who he was, and that he would be ready and able afterwards to answer for the consequences of any wrong he might have unintentionally done. This, indeed, seems to be the ground upon which the Sheriff-Principal has founded his judgment, for in the note to his interlocutor he says that in his opinion the true question is, not whether the pursuer is right in his contention as to the effect of his ticket, but whether "the defenders were entitled to seize him and remove him by force from the carriage in which he was seated." I cannot help thinking that this is quite an erroneous view of the matter. If the pursuer had no right, or, in other words, was not entitled in virtue of his ticket to travel by the train from Perth to Ballinluig, the defenders had a clear and undoubted right to insist on his leaving the carriage before the train started, and his refusal to do so occasioned such "a hindrance to the company in the use of the railway" as entitled them, in terms not merely of a bye-law or regulation, but of the statute itself (sec. 102 of the Railways Clauses Consolidation (Scotland) Act) "summarily to interfere" to remove such hindrance. And, independently of this statutory enactment, the defenders' conduct was only in conformity with their legal right, as shown by the case of the *North Eastern Railway Coy.* v. *Matthews* (5 Irv., Just. Rep. 237). In that case, no doubt, the passenger who was turned out of a carriage in which he had seated himself had no ticket at all, not having been able to procure one in consequence of his not having arrived at the station till after the booking-office was closed; but it is obvious from the circumstances as reported that he was actuated by no wrongous intention whatever. In the present case the pursuer had a ticket, but as it was one which *ex hypothesi* did not entitle him to a seat in the carriage from which he was removed, he was justifiably treated as if he had no ticket at all. And neither do I think that in the present

case, any more than in the case of the passenger in the *North Eastern Railway Coy.* v. *Matthews*, was it necessary for the railway company to show that the pursuer was influenced by any fraudulent or wrongous motive. The citation of cases and reasoning of the Sheriff-Principal in regard to such of the bye-laws as are of the nature of penal enactments are consequently altogether inapplicable, for no attempt has been made by the defenders to enforce against the pursuer any penal enactment. In this respect, therefore, the learned Sheriff must have proceeded on an erroneous apprehension of the true nature of the case he had to decide.

In conclusion, I have to add that I can pay no attention to considerations arising out of the well-known respectability of the pursuer and his responsibility in any proceedings that might be afterwards brought against him by the defenders. It would be difficult, or rather impossible, to carry on the business of a public railway were they bound to give effect to such considerations. If, indeed, the pursuer had been allowed to proceed by the train to Ballinluig, it is very manifest, from the spirit he has displayed in the present litigation, that he would afterwards have refused to the defenders all redress, and resisted to the uttermost any proceedings that might be taken against him. And if the defenders were bound to content themselves with any such course in a dispute with the pursuer, I do not see how they could with propriety refuse to follow the same course in regard to all other individuals, and thereby render their bye-laws and regulations little better than waste paper. I can therefore see no good reason to doubt that the course which was followed was the right one, and that the defenders' servants at Perth had no alternative but to enforce as they did the regulations of the company. The manner, again, in which these regulations were enforced in the present instance was in my opinion quite unobjectionable, the defenders' servants having, as it appears to me, acted in the circumstances, and keeping in view that they were set at defiance by the pursuer, with great propriety and becoming moderation. They had, indeed, no alternative but to act as they did. The ticket-collector (Kinnear) says in the course of his evidence that he is aware "that ticket-collectors have been removed or suspended for allowing persons to travel with such tickets as the pursuer's."

In these circumstances, and for the reasons I have stated, the present appeal ought, in my opinion, to be sustained, the interlocutor of the Sheriff-Principal recalled, and that of the Sheriff-Substitute reverted to.

Lord Gifford—In common with the Sheriffs, and indeed with everyone to whose knowledge the circumstances have come, I think this case might and ought to have been avoided by reasonable concessions or arrangements at the time when the dispute arose. Perhaps there is blame attributable to both parties, who seem to have stood for what they supposed to be their extreme legal rights, when the most trifling concessions on either side would have avoided or prevented the painful and somewhat discreditable scene which occurred at the Perth Railway Station on the morning of Sunday, 6th May 1877. A little concession on the part of the railway officials to what they considered the mistaken view or even the obstinacy of Sir Robert might have led them under protest to allow him to travel that morning, and thereafter to have tried his legal right to do so in a civil small-debt action for the price of a ticket, and, on the other hand, it certainly would not have been derogatory either to Sir Robert's position in the county or to his character as a gentleman if, rather than engage in an unseemly squabble where force, at least constructive force, was used, he had chosen to pay under protest the two or three shillings which were asked, and then by a small-debt action try the company's right to demand them. Every courtesy was observed towards Sir Robert—the guard offered to procure a ticket for him, without even troubling him to rise from his seat, but he would listen to no such proposal. He claimed his absolute right to travel on the return ticket which he had presented, and rather than pay three shillings under protest he preferred to be ejected from the train.

I can make great allowance for the subordinate officials of the railway company. Had the stationmaster or any of the superior officers of the company been at Perth station that morning, probably the scene would not have occurred, but subordinates, porters, and ticket-collectors are and must be under precise and somewhat strict rules which they have no right or no authority to relax, and assuming them to be following regulations by which they were bound, I can excuse them for declining to exercise a discretion with which they were not entrusted, and the exercise of which might be condemned or even seriously visited by their superiors.

On the other hand, I am sorry to say that for Sir Robert Menzies I can state no such apology. He must have known that the ticket-collectors and porters were acting under authority and were bound by strict rules. I suppose he gave them credit for honesty, he must have given them credit for courtesy and civility in the discharge of what they believed to be their duty. It was his part as the man of education and position not to insist upon putting a subordinate in what might be a false or unpleasant position with his employers. It was his part far more than that of the railway porters to yield for the time even if he was right. A note to the railway manager would rectify everything, and if a serious question was to be raised, let it be done in the competent Court without a discreditable scene.

But these considerations do not seem to have occurred to Sir Robert Menzies. He stood upon his strict and abstract legal right. He thought it was becoming to defy the railway servants, and on a question of civil right involving two or three shillings he thought it was proper that Sunday morning to resist subordinates honestly acting under their instructions, and to raise the question by a scene of violence, in which Sir Robert so far forgot himself as to threaten actual and serious violence against the excuseable if not absolutely unoffending ticket-collector.

I make these observations because if there is blame in the present case it is important to see in what quarter it mainly or chiefly lies, but also for the other reason, that as Sir Robert Menzies, the pursuer, took his stand upon what he says was

his abstract legal right, and refused to make the slightest concession, even temporarily and for the purpose of avoiding a most unseemly scene of violence, so he cannot complain if the case, now that it is raised, is decided upon the strictest legal grounds, without any regard to what perhaps might have been properly yielded to avoid violence or even to avoid inconvenience. Sir Robert claimed, with an obstinacy which I cannot commend, his *summum jus*. I should imagine that he does not now claim anything more than his *summum jus* rigidly and scrupulously weighed out to him. He made no concession—it is but right that he should ask none. It is a question of rigid law, and not of discretion, yielding in circumstances. Sir Robert himself has eliminated all discretion from the case.

It appears to me that the strictly legal question, and in one view the only question, in the case is this—Had Sir Robert Menzies, in virtue of the return ticket which he purchased at Aberfeldy on Friday night, right to travel from Perth to Ballinluig on the Sunday morning by the train in question? Now, this is a strictly legal question—a question of civil right—a question as to the nature and effect of the contract of carriage into which he had entered with the defenders. Did the defenders contract to carry Sir Robert by the train in question on Sunday morning or did they not? If Sir Robert's view is right, then no doubt he was wrongfully removed, and is entitled to prevail in this action. If Sir Robert's view is wrong—if he had not purchased a right to travel by the train in question, then a further question may arise—Whether the railway company were within their powers in removing him, or whether they were not bound—absolutely bound—to allow him to travel though he had no right to do so, and should have betaken themselves to some other remedy? This is the second question in the case, and it only arises in the event of its being found that Sir Robert's return ticket did not entitle him to travel by the train in question.

The first question then is—Was Sir Robert's return ticket available by the Sunday morning's train from Perth on 6th May 1877; and this question must, I think, be decided in precisely the same way as it would be in an ordinary action by the railway company to recover the ordinary fare by that train, or an action by Sir Robert for repetition of the fare which the railway company had erroneously exacted. The question is raised in a much more unpleasant form, for which I think Sir Robert is chiefly to blame, but that makes no difference whatever in the legal nature of the question itself.

Questions as to rights under return tickets do not depend upon express enactment of statute. Provided the maximum fares allowed to be exacted by the railway company are not exceeded, I am not aware of any rule—certainly none was quoted—compelling this railway company or any railway company to issue return tickets at all, or prescribing what shall be the rights of passengers under such tickets. The railway company may use its own discretion, and provided only the statutory maximum fare is not exceeded, I think there may be attached to the use of return tickets any reasonable conditions which the railway company think proper. No one is compelled to take a return ticket, but if any one chooses to do so at the greatly reduced fares which the railway generally agrees to accept, then he must be bound by all the reasonable conditions which the railway company have thought proper to impose. I am not speaking just now of the publication of these conditions, but simply of their legality. I shall come to the question of publication immediately. I think it quite clear that the railway company may attach to return tickets any legal and reasonable condition. For example, they may declare return tickets not transferable—they may fix for what time the return tickets shall be available—whether only for the day of issue or for what other days. They may provide that return tickets shall not be available by express trains, or by limited mail trains, or indeed they may declare them only available, like a special excursion ticket, for special trains at special hours. In particular, I think the railway company may lawfully provide in reference to the local return tickets between Aberfeldy and Perth that these return tickets shall not be available on Sundays or by the Sunday trains which traverse the main line only. I think all this is clear, and indeed was hardly disputed by the counsel for the pursuer, who rested the case not on the illegality of the restriction, but solely on the want of due notice thereof.

And this brings me to what is really the only difficult question in the present case, and that is, How are the public and those who purchase railway return tickets to be certified and made aware of the conditions under which such return tickets are issued?

Now, I think there are several modes in which the railway company may give to the public and to all travellers, and in particular to all who purchase return tickets, notice of the conditions under which alone they will be permitted to use them.

In the first place, the conditions may be mentioned on the return ticket itself, either on the face of it or even on the back of it, in which case, however, to prevent mistakes, there should be some marking on the face directing the traveller to look at the back also. It was not disputed—I think it cannot be disputed—that conditions plainly printed upon the ticket itself would be binding on the purchaser, who would not be entitled to say that he never looked at or never read the terms of the ticket itself. Every traveller must be held to know that when railway companies offer return tickets at cheap fares they are giving a favour to which they are entitled to attach any reasonable condition. By the very fact of purchasing a return ticket the traveller is put upon his inquiry as to its conditions, and if the conditions are marked upon the ticket itself the traveller cannot possibly be allowed to plead ignorance thereof.

Accordingly, if in the present case Sir Robert's return ticket had on it the words "Not available on Sundays," as is the case with similar tickets now issued, I think this would have excluded all question. Sir Robert could never have claimed right to travel by that Sunday morning's train if the return ticket had borne expressly that it was not available on Sundays.

This mode of giving notice of the extent to which return tickets are available, namely, by markings on the ticket itself, is a very convenient one, and I cannot help thinking should be

adopted in reference to the one or two leading and essential conditions of ordinary returns. It is possible to do so in very few words, and it would obviate many a dispute and many a misunderstanding and disappointment.

But I am of opinion that this is not the only mode in which the railway company may intimate the terms and conditions upon which their return tickets are issued. I think the railway company may give such intimation in the bye-laws and regulations which the railway company has statutory power to make, or even in the time-tables which they issue monthly announcing the running and connections of their trains, the hours of departure and arrival, and other matters connected with the ordinary working of their traffic. By the Railway Clauses Act of 1845, sec. 101, it is provided that the railway company may from time to time make regulations for a variety of purposes, such as for fixing the times of departure and arrival of trains, and generally for regulating "the travelling upon or using or working of the railway," and by the following section (sec. 102) power is given to make bye-laws for enforcing all or any of such regulations, said bye-laws being made, approved, and published in manner directed in that and in certain other Acts. Without power to make such regulations the business of the company could not be conducted.

Now, the regulations and bye-laws of this company which have been put in evidence, and which are contained and printed not only in the monthly time-tables of the company but in large bills or posters, which are proved by the station-master at Aberfeldy to have been duly posted at Aberfeldy Station on the day when Sir Robert Menzies took his ticket, are quite explicit as to the conditions on which the return tickets in question were issued. The regulations and conditions applicable to return tickets were or ought to have been known to Sir Robert. Thus regulation 3 provides that the return tickets are not to be transferable, and are only to be available for certain stations. Regulation 4 provides for certain return tickets issued for and available by Sunday trains, which tickets are available on the day of issue only, and then it provides that "local return tickets other than the above are not recognised on Sundays," and then there is a special regulation as to cheap return fares on Fridays and Saturdays, which is in these terms—"Return tickets at one ordinary fare and one-third are issued on Friday by the last train of the day to the respective stations and by all trains on Saturday. Those issued on Friday are available to return the following Saturday or Monday, and those issued on Saturday are available to return same day or following Monday by any train carrying the same class. Local return tickets are not available on Sunday."

These rules are undoubtedly applicable to the return ticket purchased by Sir Robert Menzies. It was a local return ticket available only between Perth and Aberfeldy, and not being the special Sunday ticket mentioned in article 4 he was expressly told that it would not be recognised on Sundays.

Still further, it was a Saturday cheap ticket—that is a ticket issued at a fare and one-third, and in reference to these, the regulation expressly bears that they are available only for the Saturday and the Monday, and being local return tickets are not available on Sundays, and therefore this was the contract entered into between Sir Robert Menzies and the company.

I have no doubt whatever that these conditions were sufficiently intimated by the company. The posting of them at the railway stations was sufficient. That is all that the statute requires even for the strict and severe bye-laws of the company—bye-laws which enforce fines and penalties and found criminal prosecutions. These bye-laws when duly approved and so posted and published are part of the public law of the railway, and every passenger and servant and every member of the public who uses the railway is bound thereby. The publication which is sufficient for bye-laws is surely sufficient for those regulations which involve no penal consequence but which merely announce the terms upon which the railway is prepared to contract with those who choose to avail themselves of its services.

And here I remark that the terms of the return ticket, the words printed on its face, were amply sufficient to have put Sir Robert Menzies on his inquiry as to the terms and conditions attending its use. It bore expressly "Saturday fare" and the slightest inquiry, the slightest glance at the regulations would have informed him that this meant the cheap fare (one fare and a third) at which return tickets were issued on Saturdays including the last train on Friday. A special notice was published about these tickets which expressly bore that when local, as this one was, they were not available on Sundays.

But even apart from this specialty, I think that every one who buys a return ticket, or indeed any kind of ticket, is bound to satisfy himself of the conditions on which it is issued. The railway company cannot print all these conditions on the ticket itself—that would make each ticket a little volume. Still less can the railway company read the regulations to every purchaser, and the only alternative is that all tickets must be held as purchased under the terms and conditions contained in the regulations and bye-laws of the company duly approved and duly published and with reference to the trains and hours shewn by the current time-tables of the month. This does not make it the less expedient to print the leading features of a return ticket on the ticket itself, but if any question of ambiguity or detail arises the reference must always be to the published regulations and bye-laws of the company.

In point of fact, and in the present case, Sir Robert Menzies was put upon his enquiry as to what his rights were under the return ticket in question. He avers that he got special assurances from, or rather that he made a special contract with, the station-master at Aberfeldy, and although this part of his case has utterly failed, the fact that he did make inquiries is not unimportant as showing his own sense of what he was bound to do before relying on the ticket in question. On this point of the case I may simply remark in passing that I think there was an innocent misunderstanding between Sir Robert and the station-master at Aberfeldy. Sir Robert's question related to mail trains, and although Sir Robert may have meant by that the train to Ballinluig on Sunday, the Aberfeldy station-master, who knew there were no trains to Aberfeldy on Sunday, did not so understand it, and his answer related only to the

usual mail trains on Saturday and Monday. He did not think or speak of Sunday trains at all.

On this part of the case therefore I have come to be clearly of opinion that the return ticket held by Sir Robert Menzies did not in law entitle him to travel by the Sunday train in question from Perth to Ballinluig. The railway company never contracted to carry him by that train, and if he wished to travel thereby he was bound to take and to pay for a new and separate ticket. I would have so determined had the question been the simple pecuniary one for the price of a ticket from Perth to Ballinluig. I cannot say I have any doubt whatever upon this question.

But if I am right here, I think it conclusive of the whole question, for if Sir Robert's return ticket did not entitle him to travel by the train in question, then in strict law he had no ticket at all. A wrong ticket for a different journey is not a ticket at all, any more than an expired ticket would be, or a ticket for a different railway. Of course I am not impugning in the least the perfect *bona fides* of Sir Robert. In *optima fide* he believed he had a ticket—he believed his return ticket was available for Sunday; but he was wrong in this—he was quite mistaken; and the question is, having no available ticket, although he thought he had one, was he entitled to travel without a ticket? It is not a question regarding Sir Robert's belief, but a question of abstract legal right, which must be decided in the case of Sir Robert just as if he had been the poorest and the humblest person in the land. It can make no difference to the question that Sir Robert was known to the railway porters or officials. There is not one law for a person whose name and position is known and another person who happens to be an entire stranger from distant parts who had never been there before. In a question of courtesy or of the expediency of waiving strict rules the difference might be important; but I am not deciding a question of courtesy, but a question of strictest law, and I can regard Sir Robert in no other light than as a person who, under whatever misconception, was insisting upon travelling without a ticket.

Now, here again the published bye-laws and regulations of the company are conclusive. The first section of the first article bears—"No passenger will be allowed to enter any carriage used on the railway, or to travel therein upon the railway, unless furnished by the company with a ticket specifying the class of carriage and the stations for conveyance between which such ticket is issued." I think this is both a legal and a reasonable regulation. Sir Robert had no right to enter that carriage. He had no right to remain therein or to travel thereby. He had made no contract—he was an intruder. The guard might have refused to allow him to enter the carriage till he purchased a ticket, and if he refused to do so I think the guard was perfectly entitled to remove him. The railway company might have shunted the carriage and left it behind, transferring any other passengers to other parts of the train. Sir Robert could not have complained. He had no contract of carriage and refused to make one; but I think the railway company have also an absolute right either to exclude or remove a proposed passenger who has no ticket, and who obstinately refuses either to procure or to pay for one. In the present case, as Sir Robert was removed without violence, but on the contrary with gentleness, civility, and consideration, I think he was rightly removed, and that he has no action of damages either against the company or any of its servants. He himself, by his foolish and unreasonable conduct, is alone to blame for what took place.

I am therefore for returning to the judgment of the Sheriff-Substitute, and for assoilzieing the defenders from the whole conclusions of the action.

Lord Justice-Clerk—I agree with the proposed judgment, but on grounds much simpler than those explained by your Lordships, some of which materially affect the interests of passengers by railway. The case, in my opinion, does not depend on the solution of any question of abstract law. The action is not a declarator of right nor a question of relevancy, but an action of damages on which we are to judge as a jury would; and before I entertain the demand I must be satisfied that the injury complained of was not in effect brought on the person complaining by his own fault. I can see no subject of approval in any aspect of this unfortunate and undignified squabble at the Perth Railway Station on a Sunday morning. There was no object to be gained by it on either side. Sir Robert Menzies, if he wanted to secure his journey, had only to pay 3s. 7d., which he was certain to get back if he was right. On the other hand, the officials knew perfectly well that there was no intention on the pursuer's part to defraud the Company—that he had a ticket which he believed was a proper one, and for which he had paid. There was plenty of room in the train, and as the supposed culprit was quite well known to them, and a constant customer on their line, the 3s. 7d. was perfectly safe, and the dispute might with propriety have been adjourned to a more fitting occasion. If any superior officer of the company had been on the platform I feel persuaded that this unedifying scene never would have occurred. The only man who acted with discretion seems to have been Boyd, the porter, who suggested that they should take the pursuer's address and let him go on.

But of the two the pursuer was most in the wrong, whatever his legal rights were. It was not for him to wrangle with railway subordinates when he knew they were acting under general instructions which they thought themselves bound to obey. Still less was it becoming to use strong language or threaten personal violence. The last may perhaps of itself form a justification for the extreme measure adopted of expelling him from the train. The pursuer was informed, and therefore knew, that he was there in breach of the general rule of the company, and to that at the time he should at once have yielded. I am not therefore inclined to sustain this action to any effect. Further than that, however, I am not prepared to go. Unless justified by the pursuer's demeanour, I think the action of the railway officials was harsh and precipitate; and if the pursuer had quietly assured them that he had taken the ticket in reliance on the statements of the stationmaster at Aberfeldy, and would make up the difference if he found he was wrong, I should have thought the course adopted by the officials one of doubtful pro-

priety. It is certain in point of law that by taking his seat in the train the pursuer committed no offence under the 96th section of the Railway Clauses Act, and that if the railway servants had given him in charge they would have exceeded their right. He was not a trespasser in that sense, and without saying that forcible removal from a carriage is equivalent to apprehension and charge, I think such violent proceedings should be reserved for cases in which there is an intent to defraud or an intentional breach of the company's bye-laws, or where some interest is endangered. Such a proceeding may be unreasonable or oppressive, and may infer responsibility even although it turn out in the end that the passenger is wrong in law. I should be sorry to encourage the idea that it is not only the right but the duty of the servants of a railway company to resort to such proceedings in every case in which the correct voucher is absent, although they may know that this has occurred in the best of faith, from unavoidable accident, excuseable error, or want of distinct intimation on their own part, and that no substantial interest is in hazard. In the present case Sir Robert Menzies had no reason to expect, nor do I suppose that he even thought of claiming, any personal immunity from the ordinary rules of the line. The only element of importance which his position as a county proprietor gave him was one which he had in common with everyone who lived in the county and was known to the servants of the company to be respectable and solvent. It made it certain that if he were wrong the company had easy means of redress.

Whether such a case as the present would be one in which, apart from the circumstances which I have mentioned, the company were entitled to take the law into their own hands and resort to personal violence, is a matter on which I am not disposed to pronounce. I incline to think that if a passenger has a *prima facie* title to remain in a public conveyance, and there is no substantial interest to protect, he ought not to be summarily ejected unless the law has expressly provided for that case; and in the present instance I think Sir Robert Menzies had a *prima facie* title to occupy the train whether it could be ultimately sustained or not. The pursuer had a ticket, which is said to be insufficient on two grounds—First, it is said that the ticket professed to bind the company to carry him to Aberfeldy, whereas the train did not go to Aberfeldy; secondly, that the ticket was not available on Sunday.

As to the first, I think the contention of the company may be maintained on the words of the bye-law taken in connection with the regulation. The railway authorities are under no obligation to give return tickets at all; and as they do so as a mercantile speculation to attract traffic they may annex to these tickets what conditions they please. But if they choose to relax this rule in ordinary practice, and raise no question as to where the holder joins the train or where he leaves it, provided it be between the two termini, they can hardly resort to the high-handed step of expulsion from the train capriciously. Such I should imagine was the practice of most lines. But if the judgment here is to proceed on the ground that while the ticket was for Aberfeldy the train only went to Ballinluig, I cannot assent to that general proposition. In that view, if the pursuer had returned by the last train on Saturday night, which stops at Ballinluig, he might have been exposed to the same rough treatment. His answer in that case would have been that the company had never in his case put that construction on the rules, for he had been in the habit of using his return ticket in that way frequently and without objection. This is confirmed in the clearest terms by the station-master at Aberfeldy, and denied by no one. As matter of fact this admits of no dispute, and no evidence to the contrary has been brought. If this were the ground of objection, it must have failed as any justification of the railway's proceedings.

The other ground is, that the ticket was not available for Sundays; and according to the regulations it is true that it was not so; but if the question was whether the pursuer had a *prima facie* title to occupy the carriage, this is not material. I should have thought it went far to establish a *prima facie* right to remain in the train and to debar violent expulsion that the stationmaster at Aberfeldy knew that the pursuer was going to Edinburgh on Saturday to attend a meeting of volunteers, and that he was obliged to be at Rannoch at a sale on the following Monday; that the stationmaster with this knowledge himself recommended the pursuer to take a return ticket; that he never informed the pursuer that it would not be available for Sunday; and that although the stationmaster had been furnished with tickets on which the words "not available for Sunday" were printed, he gave the respondent one on which no such words occurred, and which gave no warning to that effect. He says that the tickets with these words printed were not used from motives of economy, but it is manifest that they were issued because the others were ambiguous, and that if he had used one of them this mistake never could have occurred. The error therefore was induced by the person whom the defenders had authorised to make the contract, and they, I apprehend, are responsible for his neglect.

I therefore would reserve my opinion on these particulars, but I concur for the reasons I have stated in the proposed judgment.

The Court pronounced the following interlocutor:—

> "The Lords having heard counsel for parties on the appeal, Find that the return ticket purchased by the respondent Sir Robert Menzies on Friday the 4th of May 1877 was issued by the appellants the Highland Railway Company on condition that it should not be available for any train on the Sunday following: Find that this condition was duly and sufficiently published by the said railway company: Find that Sir Robert Menzies had no ticket available for the train on the morning of Sunday the 6th of May, by which he proposed and attempted to travel; and find that although opportunity was given to him to do so, Sir Robert Menzies refused to purchase or procure a ticket for the said train of Sunday the 6th of May 1877: Find that he was properly and justifiably removed from the said train on that day: Therefore sustain the appeal, recal the interlocutor of the Sheriff appealed against, assoilzie the appellants from both claims made against them

by the respondent, and decern: Find the appellants entitled to expenses in both Courts, and remit to the Auditor to tax the same and to report.

Counsel for Pursuer (Respondent)—Asher—Graham Murray. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for Defenders (Appellants)—Balfour—Mackintosh. Agents—H. & A. Inglis, W.S.

Wednesday, June 12.

FIRST DIVISION.

[Sheriff of Ayrshire.

ANDERSON (INSPECTOR OF MAYBOLE PARISH) *v.* PATERSON (INSPECTOR OF IRVINE PARISH).

Poor— Relief — Act 8 *and* 9 *Vict. c.* 83 *(Poor-Law Act), sec.* 71—*Where a Pauper Child Obtained Relief from one Parish, its Father being able-bodied and having a Residential Settlement in another.*

A pauper child received parochial relief from the parish in which she was living at the time. Her father was an able-bodied man in another parish, but at the time when relief was first given he had no settlement in Scotland. After the father had acquired a residential settlement in that other parish, the inspector of poor in the parish which was affording relief gave the usual statutory notice of chargeability and a claim of relief to the inspector of poor in the parish of the father's settlement, and intimated that the father, who still continued able-bodied, refused to maintain the child. In these circumstances the Court *held* that the parish where the father had a settlement, being the parish of settlement of the pauper at the date of the statutory notice, was liable to relieve the parish which had afforded relief of advances made after the date of the statutory notice.

This was an action brought by John Anderson, inspector of poor in Maybole parish, against Andrew Paterson, inspector of poor in Irvine parish, for repayment of certain sums of money applied as parochial relief to the maintenance of Helen Higgins between 3d August 1874 and 23d July 1877. Helen Higgins was on 24th December 1873 (when parochial relief was first given to her) about 10 years of age, in a destitute condition, and suffering from an ulcer in one of her legs. She was then residing in Maybole parish, where she was born. Her father, William Higgins, was born in Ireland, and had in December 1873 no settlement in Scotland, but was living in the parish of Irvine, and on learning that fact the pursuer on 3d August 1874 gave to the defender the usual statutory notice that Helen Higgins had become chargeable, and claimed relief from Irvine as the parish of settlement. Shortly before that date William Higgins had, by five years' continuous residence in Irvine, acquired an industrial settlement in Irvine parish. During that time he had received no parochial relief, and would not have been entitled to any relief on his daughter's account. On 26th August 1874 the pursuer intimated to the defender that William Higgins refused to take his daughter or to maintain her, and it was admitted that the defender took no steps to remove the child from Maybole or to provide for her maintenance.

The defender pleaded, *inter alia*—"(5) The said Helen Higgins not having acquired a settlement, either derivatively or otherwise, in the parish of Irvine at 24th December 1873, the defender is not bound to repay any advances made or to be made, for her support by the pursuer, as concluded for. (6) *Et separatim*—the said William Higgins being at 24th December 1873 an able-bodied man, and not having then deserted the said Helen Higgins, she was not a proper object of parochial relief at said date."

The facts as stated above were admitted in a minute lodged in process.

The Sheriff-Substitute (ORR PATERSON) found the defender liable to relieve the pursuer's parish of the advances made, and which might thereafter be made, to Helen Higgins, so long as she remained a proper object of relief and continued in Irvine parish. He added this note—

"*Note*—Parties having renounced probation, and asked that the case should be disposed of on the admissions in process, the Sheriff-Substitute has pronounced judgment on the materials furnished by these admissions.

"The admission that Helen Higgins was a proper object of parochial relief being made under the qualification that had she been living in family with her father he would not have been entitled to parochial relief on her account, amounts to this, that there was nothing exceptional in respect of the state either of her body or mind which entitled her to relief notwithstanding of her father being able-bodied, and that it was only in respect of her becoming destitute in the pursuer's parish, when living there apart from her father, that relief was rightly furnished to her.

"The case of *Wallace*, 20th March 1872 (10 Macph. 675), seems to decide that relief so furnished to a wife or pupil child does not prevent the acquisition of a residential settlement by the husband or father; and that the settlement so acquired by the husband or father while the wife or child is receiving relief from and residing in another parish, inures to the wife or child (see also *Palmer*, 10 Macp. 185). If that be so, William Higgins, the father, had at the date of the statutory notice in August 1874 acquired a residential settlement in the parish of Irvine, and his settlement was the settlement of his pupil child.

"The statutory notice was therefore properly given to the parish of Irvine, which at the date of notice was the parish of the child's settlement.

"Under the 70th section of the Poor Law Act the relieving parish is bound to afford interim payment maintenance 'until the parish or combination to which such poor person belongs be ascertained, and his claim upon such parish or combination admitted or otherwise determined, or until he shall be removed.'

"Here the defender's parish on receiving the notice refused to admit liability or to remove the pauper; and under the Poor Law Act the relieving parish had no power to remove the