and has by his misconduct put his neighbour in a perilous position, it is always an unfavourable position to take up. But I do not think this is a good case of the kind, where the party injured is honestly striving to do his best to avoid the consequences of another's fault. Here it is certain that all the crew of the trawler were on deck before the cable actually snapped, doing their best to save the vessel according to the best of their ability. And if something was done which was not quite the best thing that could have been done, I do not think that it will be allowed to the wrongdoer to say that the injured parties have barred themselves from claiming damages because they culpably refrained from doing something. They did not culpably refrain; I do not say they made a mistake or not in not letting down the anchor; there is a conflict of evidence about that, and I do not think it necessary to decide that point. I think we should adhere to the judgment of the Sheriff-Substitute.

LORD CRAIGHILL and LORD RUTHERFURD CLARK concurred.

This interlocutor was pronounced—

"Find in fact (1) that on entering Wick Bay on the occasion libelled the defenders' steamer 'St Nicholas' anchored so near to the pursuers' trawler 'Palmerston' as not to leave a clear berth for the latter in the event of the wind changing; (2) that the wind did change, and the two vessels were consequently brought into dangerous proximity; (3) that while they were so situated the 'St Nicholas' left her moorings, starting her propeller, which caught and broke the cable of the 'Palmerston,' in consequence of which that vessel drifted on rocks and was damaged notwithstanding the efforts of the captain and crew to avoid the collision; (4) that the damage thus sustained was caused by fault of the defenders in not leaving a clear berth for the 'Palmerston' as aforesaid, and was not caused by fault of the pursuer: Find in law that the defenders are liable in compensation to the pursuer for the said damage: Therefore sustain the appeal, recal the judgment of the Sheriff appealed against, and affirm the judgment of the Sheriff-Substitute: Of new assess the damage at £116, 16s.," &c.

Counsel for Pursuer — Comrie Thomson —Orr. Agents—Winchester & Nicolson, S.S.C.

Counsel for Defenders — D.-F. Mackintosh, Q.C. — Jameson. Agents — Henry & Scott, S.S.C.

Wednesday, January 19.

FIRST DIVISION.

[Lord Kinnear, Ordinary.

HARVIE *v.* ROSS.

(*Ante*, p. 58.)

Process — Interdict — Breach of Interdict—Sentence.

In a petition and complaint for breach of an interdict granted against the infringement of letters-patent, the Court, after proof, *found* the respondents guilty of breach of interdict, and in respect that there had been no intention upon their part to set at nought wilfully the orders of the Court, fixed the penalty at a sum of £5.

William Harvie, lampmaker, Broomielaw, Glasgow, had acquired exclusive right to two patents granted for an improved valve to prevent waste of water in water-closets, urinals, &c.

In April 1886 Harvie brought a suspension and interdict against William Ross, brassfounder, for alleged infringement of the said letters-patent, and on 25th May interim interdict was granted by the Lord Ordinary.

Upon 18th October a petition and complaint was presented by Harvie for breach of interdict against William Ross and his son Thomas Ross. This petition craved the Court to find the respondents guilty of contempt of Court and breach of interdict, and in respect thereof to inflict upon them such punishment by way of fine or imprisonment as should seem proper.

On 13th November [*vide supra*, p. 58] their Lordships of the First Division allowed the complainer and the respondent William Ross a proof of their averments, the respondent Thomas Ross a proof of a certain part of his averments, but not of certain other averments made by him.

The proof was taken by Lord Kinnear, who on 31st December reported the cause to the First Division. The material portions of the proof are contained in his Lordship's note.

"*Note.*—The Lord Ordinary has thought it right to report this case because the only operative conclusion of the petition is a prayer for the punishment of the respondents by fine or im prisonment.

"The question is whether the manufacture and sale by the respondents of certain valves for regulating supplies of water involves an infringement of the patent set forth in the petition, and therefore a breach of interdict. The interdict which is said to have been broken is an interim interdict pronounced in the Bill Chamber in respect of the respondents' failure to find caution. There has been thus no judgment upon the construction and scope of the patents, and the parties are at issue on the question whether they include such apparatus as the respondents have manufactured since the date of the interdict.

"The patents are two in number, and were granted one in 1877 and the other in 1880 to the respondent William Ross, by whom they have been assigned to the complainer. The Lord Ordinary having considered the evidence and examined the models produced, with the advantage of the assessor Professor Armstrong's advice, is

of opinion that the apparatus manufactured and sold by the respondent is substantially identical with that described in the specification of 1877; and therefore that the respondent has infringed the patent, and so committed a breach of interdict.

"The part of the patented invention which the complainer maintains to have been infringed is that described in the specification as the first part. This is described as relating 'generally to certain improvements in that class of duplex regulating valves for the service in cisterns of water-closets, and other similar or equivalent service purposes which have the valve lid part lifted by the action of a sucker either attached to the top weighted or actuating part of the valve or the valve lid.' Neither the action of the sucker, therefore, nor the mode of attaching the sucker to the valve, forms any part of the invention. But assuming these things to be old, the patentee goes on to describe his improvement as consisting in a certain construction of the parts of the valve. It is described in detail, but the result appears to be that the invention consists in guiding the valve part by a central spindle, either hollow or solid, which works over or into a corresponding spindle solid or hollow in the lifting part; and the purpose and merit of the invention is said to be that it dispenses with the necessity of any outside guiding case such as had heretofore been used for guiding the lifting parts of sucker valves. The claim corresponding to this part of the description is the second, by which the inventor claims as novel and original 'the guiding and steadying of all the working parts of sucker lifting service regulating valves wholly by central spindles, hollow and solid, working into each other, all substantially as described and shown in the drawings or any mere modification thereof.'

"The apparatus complained of is a sucker lifting service regulating valve; and its working parts, the valve, the valve-seat, and the weight, or actuating part, are similar to those of the valves to which the patent relates. The question, therefore, is whether these working parts are guided and steadied by 'central spindles, solid and hollow, working into each other.' That they are guided by a central spindle is not disputed; but it is said that, whereas there are two central spindles—one hollow and one solid—in the patented inventions, there is only one spindle in the apparatus complained of.

"This single spindle is a solid rod attached to the valve-seat, which passes up through a bush introduced into the valve, and then through another bush in the top weight. It is said that this is not an infringement, because it is the essential feature of the invention that the spindles shall be so adjusted as to work into each other. But the bush through which the central rod of the valve complained of is made to pass, is simply a perforated box or tube of metal fitted into the machinery to receive the central rod; and if it were elongated it would be what is described in the specification as a hollow spindle. The only feature of novelty to which the second claim relates is the invention of a central guide instead of an outside case; and the apparatus complained of is undoubtedly guided from the centre, and not from the outside. The Lord Ordinary is advised by the assessor that to substitute a bush sliding upon a central rod for the two central spindles described in the specification required no invention, but, on the contrary, that the one machine is a mere modification of the other.

"In other respects the valve complained of appears to be an improvement upon that described. But the points of difference are not material to the present question."

At advising—

Lord President—I think there is no doubt upon the evidence which is before us that there has been a breach of interdict here, and it is really impossible to express more clearly than the Lord Ordinary has done in what this breach of interdict consists. His Lordship says—"The apparatus complained of is a sucker lifting service regulating valve; and its working parts, the valve, the valve-seat, and the weight, or actuating part, are similar to those of the valves to which the patent relates. The question, therefore, is whether these working parts are guided and steadied by 'central spindles, solid and hollow, working into each other.' That they are guided by a central spindle is not disputed; but it is said that, whereas there are two central spindles—one hollow and one solid—in the patented inventions, there is only one spindle in the apparatus complained of." But then he goes on to explain, and I think soundly—"This single spindle is a solid rod attached to the valve-seat, which passes up through a bush introduced into the valve, and then through another bush in the top weight. It is said that this is not an infringement, because it is the essential feature of the invention that the spindles shall be so adjusted as to work into each other. But the bush through which the central rod of the valve complained of is made to pass, is simply a perforated box or tube of metal fitted into the machinery to receive the central rod; and if it were elongated it would be what is described in the specification as a hollow spindle."

It appears also that the Lord Ordinary having called in the aid of the assessor, the question being a mechanical one, was thus advised by him—"The Lord Ordinary is advised by the assessor that to substitute a bush sliding upon a central rod for the two central spindles described in the specification required no invention, but, on the contrary, that the one machine is a mere modification of the other." I am satisfied from what I have just read that the substitution of these bushes for hollow spindles is just a mechanical variation; and that by the making and selling of the valves complained of the respondents were guilty of a breach of interdict.

Lords Mure, Shand, and Adam concurred.

The Court found the respondents guilty of breach of interdict.

Ure, for the complainer, moved the Court to pronounce sentence, and to find the complainer entitled to expenses.

Lord President—The circumstances of this case are such as to enable the Court to take a lenient view of this breach of interdict. The object of the respondents was to escape if they could from the effect of the patent and of the interdict. They have not succeeded, but I do not suppose that there was any intention on their part to commit contempt of Court in the ordi-

nary sense of the term—that is to say, to set at nought the orders of the Court wilfully. It therefore rather appears to me that a small fine is the sentence most suitable to follow upon the conviction which we have just pronounced, and I should propose to your Lordships a fine of £5.

LORDS MURE, SHAND, and ADAM concurred.

The Court found the respondents guilty of breach of interdict and fined them £5.

Counsel for the Complainer—Ure. Agents—Thomson, Dickson, & Shaw, W.S.

Counsel for the Respondents—A.S.D. Thomson. Agent—J. Stewart Gellatly, S.S.C.

Thursday, January 21.

SECOND DIVISION.

[Sheriff of Stirlingshire.

M'KECHNIE *v.* COUPER.

Reparation—Carriage—Obligations of Driver—Damages.

A man walking on a road was injured through being struck by a spring cart which overtook him, and which, though it was dark at the time, was being driven rapidly and carried no lights. The injured man did not hear its approach owing to deafness. *Held* that the owner of the cart was liable in damages for the injury.

James M'Kechnie, a labourer residing in Torrance of Campsie, left his house at about five o'clock on the morning of the 8th February 1886 in order to proceed to his work in Glasgow. The morning was dark and foggy, and the roads were wet and slippery in consequence of a thaw following upon a severe frost. While he was walking towards Glasgow, and was on the part of the roadway on which carriages pass, he was knocked down by a milk cart which belonged to Thomas Couper, a farmer at Lennoxtown, and which he did not, owing to deafness, hear coming up behind him; he was injured in the left leg, suffered considerable pain, but lost no wages by the accident, as his employers paid him in full. He raised this action against Couper for £30 damages, on the ground that the injury was caused by the fault and negligence of the lad driving the cart, who was, the pursuer alleged, driving rapidly and without lights, and keeping no look-out.

The defender denied these averments.

After a proof, in which it was proved that the cart carried no lights and was being rapidly driven when the collision occurred, the Sheriff-Substitute (MITCHELL) found for the pursuer, assessed the damages at £10, and found the defender liable in the ordinary Sheriff Court expenses, though the sum recovered was within the limit of what might have been recovered in the Small Debt Court.

On appeal the Sheriff (MUIRHEAD) adhered, but assessed the damages at £5, and found the pursuer entitled only to Small Debt Court expenses.

The pursuer appealed, and argued that the damages awarded him were inadequate. He quoted on the question of fault—*Gibson* v. *Molloy*, March 20, 1879, 6 R. 890.

The defender maintained that no fault was proved.

At advising—

LORD JUSTICE-CLERK—I have read the evidence here, and I must fairly own that I do not feel much sympathy with the argument which we have just heard from the defender. I am of opinion that the pursuer was doing nothing but what he was perfectly entitled to do when the accident happened. The driver of the milk cart was bound to take sufficient precautions to avoid all passengers on the middle of the road, where they were entitled to be. It is quite clear that he did not take such precautions, because he ran up against the pursuer.

There is no doubt as to the mutual relations to one another of drivers of wheeled vehicles on the high road and passengers on it. We have frequently before now had occasion to consider them. There is an obligation incumbent on the former to take care not to come into contact with the latter. If the fault of the latter leads to the accident, that is a different matter. But the primary obligation is such as I have stated. Here the driver of the cart was in the wrong. If he could see the way clearly before him, probably there would be no necessity for him to carry lights, but if the morning was too dark for this, then he was bound to have carried lights.

The Sheriff-Substitute found the pursuer entitled to £10 of damages, but the Sheriff reduced the sum to £5, and also found the pursuer entitled to Small Debt expenses. I am entirely unable to understand the ground on which he made this alteration. I am of opinion that even the Sheriff-Substitute has been too niggardly in his allowance of damages, and in that view and on the whole matter I propose that we find the pursuer entitled to £20 and his expenses in both Courts.

LORDS YOUNG, CRAIGHILL, and RUTHERFURD CLARK concurred.

The Court pronounced this interlocutor—

"Find in fact (1) that early on the morning of 8th February 1886 the pursuer, while walking on the public road between Torrance of Campsie and Glasgow, on his way to his work, was knocked down and severely hurt by a cart belonging to the defender; (2) that he was so injured by the fault and negligence of the defender's servant in charge of the cart in driving it rapidly in the dark without any precaution taken for the safety of persons using the road; (3) that the accident was not caused by any fault or negligence on the part of the pursuer: Find in law that the defender is liable to the pursuer in damages for the injury sustained by him as aforesaid: Therefore sustain the appeal, recal the interlocutor of the Sheriff-Substitute and the interlocutor of the Sheriff: Assess the damages at £20 sterling: Ordain the defender to make payment of that sum