

final. In the present case the interlocutor allowing a proof before answer was also brought under review, but although I thought the pursuer's case bad in law, because the lease contained no such implied obligation as the pursuer maintained, the case of *Smith v. Cameron* was a direct authority on the question of procedure, and therefore I acquiesced in the affirmance of the order for proof.

As to the case of *Campbell v. Watt*, I concur in the observations contained in the opinions of the Lord Justice-Clerk and Lord Trayner, and think there is nothing decided in that case which can support the argument for the pursuer in the present case.

LORD ADAM—I concur with the majority of the consulted Judges.

The Court pronounced the following interlocutor:—

“In terms of the opinion of the majority of the whole Judges, Recal the interlocutor reclaimed against: Assoilzie the defender Gavin Bell Millar from the conclusions of the summons, and decern: Find the said defender entitled to expenses,” &c.

Counsel for the Defender and Reclaimer—Asher, Q.C.—Comrie Thomson—Ure. Agents—Dove & Lockhart, S.S.C.

Counsel for the Pursuer and Respondent—D. F. Mackintosh—Shaw. Agents—Macpherson & Mackay, W.S.

Friday, July 20.

FIRST DIVISION.

[Lord Trayner, Ordinary.

BLAIR *v.* HUNTER.

Partnership—Dissolution of Firm—Custody of Books—Resident Partner.

A contract of copartnership entered into by the members of a firm of Writers to the Signet in Edinburgh contained a clause providing that on the dissolution of the firm the “senior resident partner” should have the custody of the books of the firm. There was also a clause permitting A, one of the partners, in the event of his obtaining the post of Sheriff-Clerk of Ayrshire, for which he was then a candidate, to devote such time as was necessary to the duties of the office. A obtained the post, which he held down to the dissolution of the firm. He had two houses, one in Ayrshire, which was his principal establishment, where his family resided, and one in Edinburgh, where he usually stayed about three days a week in order to attend to the business in Edinburgh. On the whole he resided rather more than half the working days of the year in Ayrshire. At the dissolution of the firm A was senior partner. In an action brought against A by B, the partner next in seniority, to obtain custody of the books—held that A was the “senior resident partner” in the sense of the contract, and as such was entitled to the custody of the books.

Patrick Blair, Writer to the Signet in Edinburgh, brought this action against Evan Allan Hunter and Frank Hunter, Writers to the Signet there, to have it declared that the business books of the dissolved firm of Hunter, Blair, & Cowan, W.S., were his exclusive property, in terms of the original contract of copartnership and relative minutes of agreement, and to have the defenders decerned and ordained to deliver up the said books to him upon his granting an undertaking in terms of the contract to give full inspection of the same to the defenders when required.

The firm of Hunter, Blair, & Cowan, W.S., Edinburgh, was dissolved by consent of the partners on July 31st 1887. At that date the pursuer and the defenders were the sole partners of the firm. The deeds containing the terms of the copartnership were the original contract, dated in 1858, and five relative minutes of different dates between 1860 and 1882. The parties to the original contract in 1858 were Hugh Blair, the father of the pursuer, senior partner, David Cowan, second, and the defender Evan Hunter, junior partner. The pursuer was assumed as a partner by minute dated 14th July 1860, and the defender Frank Hunter by minute dated 24th August 1882. By the minutes under which they were assumed the pursuer and the defender Frank Hunter bound and obliged themselves in terms of all the stipulations contained in the original contract of copartnership. The firm name of Hunter, Blair, & Cowan remained unchanged.

The contract of 1858, which was for seven years, *inter alia*, provided:—“*Fifth.* Each partner shall be bound to devote his whole time and attention to the management of this business, in so far as that may be necessary to its complete and speedy execution in all its departments, and none of the partners shall carry on any separate business for his individual behoof, except that, if Mr Evan Allan Hunter is appointed Sheriff-Clerk of Ayrshire, he may give such part of his time as is necessary to the duties of that office. . . . *Ninth.* It is hereby agreed that the said Hugh Blair shall be entitled to assume his son Patrick Blair into this copartnership, and to assign to him one-half of the share belonging to him, the said Hugh Blair, so soon as the said Patrick Blair is qualified to practise the profession of a Writer to the Signet, and that for the remainder of the contract. And further, in the event of the death of the said Hugh Blair during the currency of this copartnership, and before the said Patrick Blair has been assumed a partner, the said David Cowan and Evan Allan Hunter hereby agree, so soon as the said Patrick Blair is qualified as above, to assume him into this copartnership, and give him the half share to which he would have been entitled had he been assumed previously; and the said Patrick Blair, on being so assumed as a partner in either of the events foresaid, shall become bound and obliged in terms of all the stipulations and provisions herein contained. . . . *Thirteenth.* At the elapse of the said seven years, if none of the partners shall give intimation to the contrary in writing during the course of the previous year, that the contract is to come to an end at the 31st day of July next, then it shall be held to go on for another year, and so on, from year to year, until such notice of dissolution shall be given; and at such dissolution, whether by the expiry of this contract, or in any

other event not before provided for, then the books of the concern shall belong to the senior resident partner at the time, who shall be bound to give full inspection of the same to the other partners when required." . . .

At the date when this contract was entered into, the defender Evan Allan Hunter was a candidate for the office of Sheriff-Clerk of Ayrshire, which he shortly afterwards obtained, and which he held at the date of this action.

The clause referring to the custody of the books originally appeared in a contract of copartnership in 1836, entered into at the formation of the firm of Hunter, Campbell, & Company, of which Alexander Hunter, the father of the defender Evan Allan Hunter, was a partner. That firm was dissolved in 1843, and Alexander Hunter entered into partnership with Hugh Blair, the father of the pursuer, and David Cowan, under a contract containing a similar clause as to the custody of the books on the dissolution of the firm, and the defender Evan Hunter was assumed as a partner in 1848. At the time when both these contracts of 1836 and 1843 were entered into, Alexander Hunter was Sheriff-Clerk of Ayrshire, an office which he held from 1821 down to his death in 1858. He also for some time prior to 1843 was a partner in a banking business in Ayr, which was in that year made over to the Union Bank of Scotland.

By the Act 6 Geo. IV. cap. 23, section 6, it was enacted that "Every person who has been appointed since the first day of August 1814, or who shall hereafter be appointed a clerk in the said sheriff or steward courts, shall discharge the duties of the said office personally."

The pursuer pleaded—"The pursuer having been the senior resident partner of the firm at the time of the dissolution thereof, the books thereof belong to him in terms of the original articles or contract of copartnership and subsequent minutes, and he is entitled to decree in terms of the conclusions of the summons."

The defenders pleaded—" (1) The pursuer's statements are irrelevant. (3) The defender Evan Allan Hunter having been at the date of dissolution the senior resident partner in the sense of the contract, the defenders should be assoilzied."

From the evidence led it appeared that the pursuer resided principally in Edinburgh, and attended regularly to the business there. The defender Evan Hunter's principal establishment had for long been in Ayrshire. From 1860 to 1875 he had a residence at Belmont, near Ayr, from 1875 to 1882 at Adamton near Prestwick, and in 1882 he took a lease of Newark Castle from Lord Ailsa. His evidence on this point was as follows—"Upon my appointment to that office (Sheriff-Clerk of Ayrshire) I took rooms in Ayr, and shortly afterwards I took a lease of Belmont House. I was unmarried at that time. My mother and sister . . . came to live with me at Belmont. From that time to this, my family—first my mother and sisters, and then my wife—has continuously lived with me at my various houses in Ayrshire. The establishment which I have kept appropriate to my family has always been in Ayrshire." Evan Hunter had also either lodgings or a house in Edinburgh. He deposed—"I took rooms in Edinburgh when I gave up Cameron House in

1859. Previous to that I had resided with my father at Cameron House and at Drum. The first rooms I took were at 130 Princes Street, and afterwards at 121 Princes Street. (Q) And there you resided until Whitsunday 1874?—(A) Yes. I resided longer than that in Princes Street, but at Whitsunday 1874 I became tenant of the house No. 121 instead of a lodger. Since then I have had a house in Edinburgh continuously. The furniture and the servants have been mine since 1874, both in the house in Princes Street and at 11 Maitland Street. (Q) And from that period you have resided in those two houses?—(A) I have." Mr Evan Hunter's general custom was to come to Edinburgh on Tuesday evening, and stay there till Friday. For more than two years prior to the dissolution of the firm he had been in use to have the letter-book sent to his house in Edinburgh on Tuesday evening. He went to the office on Wednesday and Thursday, and sometimes on Friday morning, on which day, either by morning or afternoon train, he left for Ayrshire. Occasionally he stayed over a week in Edinburgh, and occasionally over a week in Ayrshire. On the whole he resided rather more than half the working days of the year in Ayrshire.

The Lord Ordinary (TRAYNER) on 7th February 1888 pronounced the following interlocutor:—"Finds, declares, and decerns in terms of the conclusions of the summons: And in respect the pursuer does not move for expenses, finds it unnecessary to dispose of them.

"*Opinion.*—The firm of Hunter, Blair, & Cowan, which has been long established in Edinburgh, was dissolved on 31st July 1887, at which time the defender Mr Evan Allan Hunter was senior partner, and Mr Patrick Blair, the pursuer, was second in seniority.

"Mr Blair brings this action to have it declared that he is entitled to the whole business books of the now dissolved firm as his property, undertaking that access to the books shall be given to any other partner of the firm who may require to consult them. Mr Blair's right to the books is based upon a clause of the contract which he quotes in condescendence 6—"At such dissolution, whether by the expiry of this contract or in any other event not before provided for, then the books of the concern shall belong to the senior resident partner, who shall be bound to give full inspection of the same to the other partners when required.

"The title to the books, therefore, is in the senior resident partner of the concern at the time of dissolution; and the whole question is, who was the senior resident partner at that time? The meaning of the clause in the contract of copartnership is one regarding which different opinions may be entertained. If I dealt with that clause as meaning merely 'the senior partner resident in Edinburgh at the time of the dissolution,' I should be of opinion that the description applied more correctly to Mr Blair than Mr Hunter, because although Mr Hunter had undoubtedly rooms, or a house—a small house—in Edinburgh at that time, his residence in the popular and proper sense of the term was undoubtedly in Ayrshire. His family was there, his establishment was there, he resorted there, if I may say so, whenever he could. It was the chief seat of his residence. His rooms or house

in Edinburgh were rather of the character of temporary accommodation than a residence. But the question, I think, is a little different from merely where the senior partner's residence was at the time of the dissolution. I think we must look at the three words together, 'senior resident partner.' My impression of the reading of that clause is that senior resident partner means that partner senior in the firm who was chiefly to be found at the seat of the firm's business, who was constantly in attendance upon the business, exercising his skill and occupying his time in its supervision. If that is a correct definition, then the only person who falls within it is Mr Blair. For while undoubtedly Mr Hunter was coming to the office for two, or it may be three days a-week, and giving some attention to business, the resident partner, in the sense I have just stated, was undoubtedly Mr Blair. He was not there for two days a-week; he was there every day of the week, and attending to the business of the office every day of the week. That being my view of the clause, I think Mr Blair is entitled to take the books, and I decern in terms of the conclusion of the summons."

The defender reclaimed, and argued—The Lord Ordinary had laid too much stress on the comparative amount of work done by the contending partners. That was an erroneous way of dealing with the question, as the senior partner of a firm generally desired to do less work. The fact that Evan Hunter had a house in Edinburgh, where he resided several days in the week in order to attend to the business, clearly made him a resident partner. Such residence was sufficient for taxation, voting, and kindred purposes—*Lloyd v. Solicitor of Inland Revenue*, March 12, 1884, 11 R. 687; *Warner v. Moir*, 25 Ch. Div. 605. A sheriff-clerk could have deputed, and the Sheriff-Clerk of Ayrshire always had—Dove Wilson's *Sheriff Court Practice*, 44; *Heddie v. Garioch*, March 1, 1827, 5 S. 503. Clause 13 of the contract of 1858 could not have been aimed at the defender Evan Hunter, as he was junior partner when that contract was entered into, and so could not have become senior partner of the firm then constituted. The argument on the other side founded on the contracts of 1836 and 1843, implied that Alexander Hunter in 1843 entered as senior partner into a contract containing a clause intended to deprive him of the custody of the books on the dissolution of the firm.

The pursuer and respondent argued—The meaning of the phrase "senior resident partner" must be found in the contract itself. Clause 5 must be read along with clause 13. Evan Hunter's duties as Sheriff-Clerk of Ayrshire made him non-resident, and clause 5 gave him a dispensation from such attendance as was expected from the other partners. Clause 5 interpreted the words in question in clause 13. The same words appeared in the contracts of 1836 and 1843, and they then referred to Alexander Hunter, the father of Evan Hunter, who not only was Sheriff-Clerk of Ayrshire, but carried on a banking business in Ayr. Further, Evan Hunter's real residence was clearly in Ayrshire, where he kept up a large establishment, and where his family lived, and not in Edinburgh, where he lived little, and where his estab-

lishment was on quite a small scale.

At advising—

LORD PRESIDENT—The question raised in this case is not unattended with difficulty, and at first it seemed to me possible to agree with the view of the Lord Ordinary. On reconsideration, however, and after having listened to a very good argument, I have come to the opposite conclusion.

The contract which we have to construe was entered into in the year 1858. By that time Alexander Hunter, the father of the defender in this case, was dead, and Evan Hunter and the other partners made a new contract. The senior partner of the firm at the time that contract was made was Hugh Blair, the second was a Mr Cowan, and the junior partner was Evan Hunter. The contract provided that each of the partners should have equal shares, and that each should devote his whole time and attention to the business, so far as that might be necessary for "its complete and speedy execution." An exception to this rule was made in consequence of its being expected that Mr Hunter would be made Sheriff-Clerk of Ayrshire, and he was allowed to give such time as might be necessary for the duties of that office.

The clause in which the words which we are asked to construe occur is the thirteenth. That clause provides that upon the dissolution of the partnership, "whether by expiry of this contract, or in any other event not before provided for, then the books of the concern shall belong to the senior resident partner at the time, who shall be bound to give full inspection of the same to the other partners when required."

Now, it is contended by the pursuer that that clause has reference to the fifth clause, which gives a dispensation to Evan Hunter from attendance in order to enable him to perform his duties as Sheriff-Clerk. I do not think that there is any necessary connection between these two clauses, nor do I think that the argument advanced by Mr Darling has been displaced by Mr Balfour, because, as he pointed out, under this contract Evan Hunter could never have become senior partner, for both the other partners were senior to him, and so long as the contract was undisturbed the possibility of Evan Hunter being entitled to the books on the dissolution of the partnership was altogether removed. It was said in answer—and there is some weight in the contention—that the contract contains *in gremio* a sort of power of expansion. Now, it is quite true that Mr Hugh Blair stipulated that he should have the right to bring in his son Patrick Blair, as soon as he should have qualified as a Writer to the Signet. That is not, however, a provision to take immediate effect, but looks to the future, and evidently contains merely an arrangement, not for redistribution of the shares of the partners, but for giving off part of Hugh Blair's share to his son. The provision was to the effect that Hugh Blair might assign one-half of his own share to his son; in point of fact, one-third was so assigned, as is shown by the minute, by which Mr Patrick Blair was assumed as a partner in 1860. Now, although after that minute of assumption it was possible to have Mr Evan Hunter as the senior partner of the firm, it was not possible before, and the original con-

tract must be construed according to the circumstances which existed when it was made. I think therefore that there is no necessary connection between the fifth and the thirteenth clauses.

That being so, we have to construe the thirteenth clause in a reasonable manner, and with reference, so far as we know them, to the relations and circumstances of the partners who are here in contention. It is said that Mr Hunter the defender is not a resident partner, and that therefore he is disqualified by that fact for retaining the custody of the books; to put it shortly, that unless the senior partner is resident he cannot avail himself of the clause giving him the custody of the books. Now, the word "resident" admits of construction. It cannot be held to mean constantly resident in one place. The Lord Ordinary brings as a test of the meaning of the word a more important consideration, namely, the amount of attention given to the business by the partner whose residence is in question. Now, it is a very important fact that Mr Hunter had a residence in Edinburgh, but it is still more important that he established and kept up that residence in order to attend to the business. It is perfectly plain that in keeping up that residence he had no other object. He would not have had any residence in Edinburgh if it had not been for that. His residence of choice was in Ayrshire, his family was there, and that was his home. His residence in Edinburgh was a business residence, as opposed to his residence for pleasure and enjoyment, which was in Ayrshire. That is a very important consideration to keep in view in construing the words of the contract. If a man takes a house for the sole purpose of carrying on business in a particular place, how can it be said that he is not a resident partner? No doubt it has been said that Mr Hunter's attendance was not as constant as Mr Blair's. That may be so, but I find it possible to account for that by the fact that he has a dispensation from such attendance as is expected from the other partners. If I could read the 13th clause as referring to the 5th clause, the force of that observation would no doubt be taken off, and it might be said that the very fact of his having such a dispensation from attendance proved him to be a non-resident partner. But I do not think there is any connection between the two clauses. If a gentleman who is entitled to spend some of his time in Ayrshire is still an active partner of an Edinburgh business, so far as is consistent with his Ayrshire duties, or as is necessary for carrying on the business in Edinburgh, and if he has a residence in Edinburgh for the purpose of carrying on the business there, I cannot conclude that he is a non-resident partner in that business.

LORD MURE—I agree with your Lordship's decision, and the reasons on which it proceeds.

The question in the case depends on the meaning of the contract of copartnership of 1858. Clause 13 of that contract says that on the dissolution of the partnership "the books of the concern shall belong to the senior resident partner."

Now, Mr Hunter is the senior partner, and from the evidence it appears that he has a house in Edinburgh, in which he stays on an average three days a-week. No doubt he has also a house in Ayrshire, but he has a residence for the

purposes of his business in Edinburgh.

Now, in consequence of his duties as Sheriff-Clerk of Ayrshire it is said that he must of necessity be resident there; it is admitted, however, that under the contract he is to be allowed to devote such time as is necessary to the duties of that office. The complaint is that in discharging these duties, which he has permission under the contract to discharge, he is absent from Edinburgh three of the six working days in the week, and that therefore he is not a resident partner. I cannot accept that conclusion. A man may have two residences. Mr Hunter's principal residence may be in Ayr, but he has a house in Edinburgh to enable him to carry on business there, and giving a fair construction to the words of the contract, I think he is the senior resident partner.

LORD SHAND—The word "resident" as applied to a partner seems to me to be rather unusual in such contracts as the one in question, and at first I was disposed to find an explanation attaching to the sense of the word from something else in the contract, and to hold that it was in fact implied by article fifth of the contract that the application of the word was to the case of Mr Hunter's becoming Sheriff-Clerk of Ayrshire. Mr Darling has entirely removed that idea by pointing out that Mr Hunter was the junior partner under the contract, and that the words could not be meant to strike at him, as he could not become the senior resident partner under the contract, and that there were only two persons who could—Mr Hugh Blair and Mr Cowan. The only way of meeting this argument Mr Balfour could think of was by suggesting that it was a provision for the event of Mr Patrick Blair, coming in as a partner, for which there was arrangement made in the contract. I cannot accept that answer as sufficient, nor can I refer the explanation of these words to that event.

I take the question therefore on the footing that there is nothing in the contract to explain the words "senior resident partner," and the question before us is how to interpret these words in a contract of this kind. Now, I cannot adopt the second view of the Lord Ordinary, that the question is to be decided according to the amount of work done by the contending partners. The word "resident" has reference to the place in which the partner is living, not to the amount of work he is doing. Is Mr Evan Hunter, then, the "senior resident partner?" He is the senior partner. Has he a residence in Edinburgh? He has. Apparently he does not attend so constantly to the business as Mr Blair, but the senior partner of a firm does not generally give the same constant attendance as the other partners. Mr Evan Hunter is the senior partner having a residence in Edinburgh, and within the fair meaning of the contract is the "senior resident partner."

In the end I have come to have no difficulty in holding that he is entitled to the custody of the books.

LORD ADAM—The question in the present case is, what is the meaning in the contract of the words "senior resident partner?" He must, it is said, have a residence at the place. It is not neces-

sary that the residence should be in Edinburgh, or that it should have local situation there. That is not said to be the real meaning of the contract, but it is said that the residence must be within such a *radius* as will enable him to give a proper amount of attention to the business. That is rather a curious contention, but it is entitled to some consideration. If the defender merely had a house in Edinburgh that would not make him a resident partner. He, however, not only has a house in Edinburgh, but resides there sufficiently to enable him to superintend and take an active share in the business. The house is for the very purpose of enabling him to carry on the business. It is impossible in these circumstances to say that he is not a resident partner. I think he is clearly a resident partner, for he devotes two or three days every week to the business in Edinburgh.

I have only to add that I do not think the Lord Ordinary has taken a right view of the case. The question is not to be solved by considering and calculating which partner has done the most work and devoted most time to the business.

The Court recalled the interlocutor of the Lord Ordinary reclaimed against, and assolizied the defenders.

Counsel for the Pursuer and Respondent—Balfour, Q.C. — Low. Agents — Davidson & Syme, W.S.

Counsel for the Defender and Reclaimer—Darling—C. S. Dickson. Agent—A. J. Napier W.S.

Saturday, July 21.

OUTER HOUSE.

[Lord Fraser, Ordinary.]

GALLOWAY SALOON STEAM PACKET COMPANY AND ANOTHER v. KIRKCALDY HARBOUR COMMISSIONERS.

Harbour—Harbours, Docks, and Piers Clauses Act, 1847 (10 and 11 Vict. cap. 27), secs. 33 and 83—Use of Harbour on Sunday—Byelaw—Harbour Commissioners—Ultra vires.

A byelaw was passed by harbour commissioners in virtue of the powers conferred by the 83rd section of the Harbours, Docks, and Piers Clauses Act, 1847, by which steamers and other vessels plying from certain ports were prohibited from landing passengers on Sunday at the harbour under the control of these commissioners. In an action of reduction of this byelaw decree was *granted*, in respect (1) the byelaw was inconsistent with the 33rd section of the Act, which provided that on payment of the prescribed rates the harbour should be open to all persons for embarking and landing passengers, without limitation; and (2) it was *ultra vires* of the commissioners to pass a byelaw affecting vessels from certain ports only, while vessels from other ports were free to use the harbour on all days of the week.

The Harbours, Docks, and Piers Clauses Act, 1847 (10 and 11 Vict. cap. 27), provides by sec-

tion 83 that harbour commissioners “may from time to time make such byelaws as they shall think fit for all or any of the following purposes—That is to say, . . . for regulating the use of the harbour, dock, or pier: . . . Provided always, that such byelaws shall not be repugnant to the laws of that part of the United Kingdom where the same are to have effect, or the provisions of this or the special Act.”

The same Act, by section 33, provides that “upon payment of the rates made payable by this and the special Act, and subject to the other provisions thereof, the harbour, dock, and pier shall be open to all persons for the shipping and unshipping of goods and the embarking and landing of passengers.”

The Kirkcaldy Harbour Commissioners, acting under the Kirkcaldy Harbour and Petty Customs Act, 1849, which incorporates the Harbours, Docks, and Piers Clauses Act, 1847, and the Kirkcaldy Burgh and Harbour Act, 1876, enacted certain byelaws and regulations for the regulation of the harbour under the powers conferred upon them by section 83 of the Harbours, Docks, and Piers Clauses Act, 1847.

No. 32 of said byelaws and regulations was in the following terms—“No steamer or other vessel, carrying passengers and plying for fares or hire from any harbour, dock, pier, or jetty in the Firth of Forth shall be permitted to land or embark passengers at any of the quays, piers, or breakwaters, or at any place within the limits of the harbour, between the hours of eight o'clock a.m. and eight o'clock p.m. on Sundays, under a penalty by the party or parties in charge of the said steamer or other vessel of a sum not exceeding five pounds for each passenger landed or embarked: Provided always, that nothing in this byelaw shall prevent access to the harbour within the aforesaid hours to any vessel under perilous stress of weather, or other cause of imminent danger.”

The Galloway Saloon Steam Packet Company, formed under the Companies Acts, 1862 to 1880, for the purpose, *inter alia*, of running a service of excursion or pleasure boats in the Firth of Forth, or elsewhere, during certain seasons of the year, and to conduct or carry out trips or excursions generally, either by vessel or by land carriage, and its manager Mr Matthew Pearson Galloway, upon 20th April 1888 brought an action against the Kirkcaldy Harbour Commissioners by which they sought to have the said byelaw reduced.

The said byelaws and regulations had been duly submitted by the defenders to the Sheriff of Fife and Kinross for his approval, in terms of section 85 of the said Harbours, Docks, and Piers Clauses Act. Objections to such approval had been lodged by the pursuers and two other persons, and parties heard thereon upon 31st March 1888 before the Sheriff-Substitute, who had thereafter approved of the said byelaws and regulations.

The pursuers averred that their steamers frequently called at Kirkcaldy and were largely taken advantage of by the public of that town. In summer they carried a large number of passengers both on Sundays and week days between Kirkcaldy and Leith and Kirkcaldy and other places on both shores of the Firth of Forth.

They pleaded, *inter alia*—“(1) The said byelaw is *ultra vires* of the defenders, and ought to