Counsel for the Petitioners — Balfour, Q.C.—Lorimer. Agents—Pringle & Clay, W.S.

Counsel for the Respondents—Johnston, Q.C.—Grainger Stewart. Agents—Millar, Robson, & M'Lean, W.S.

Saturday, February 5.

FIRST DIVISION.

[Sheriff Court of Renfrewshire.

MAXWELL *v.* CALEDONIAN RAILWAY COMPANY.

Issue—Wrongous Apprehension—Unnecessary Violence—Liability of Master for Act of Servant.

In an action of damages brought by a passenger against a railway company, the pursuer averred that she had been wrongfully and illegally seized and detained by one of the company's servants, and that in so seizing and detaining her he had used unnecessary force and violence. The parties adjusted an issue covering the first averments, and with regard to the second the Court *approved* an issue whether the defenders' servant "while acting within the scope of his employment in seizing and detaining the pursuer, wrongfully and illegally used unnecessary force and violence."

This was an action at the instance of Mrs Maxwell, 57 Belville Street, Greenock, against the Caledonian Railway Company, concluding for payment of £50 as damages in respect of her alleged illegal seizure and detention by one of the servants of the company.

The pursuer averred that on 2nd September 1897 she bought at Greenock a return ticket between Greenock and Gourock, but travelled only to Fort Matilda, half-way between these two stations, and gave up the outward half of the ticket, and that the next day, wishing to return from Fort Matilda to Greenock, she tendered the return half of the ticket, whereupon the ticket-collector refused to take it, and charged her with attempting to defraud the company.

The pursuer averred further—"(Cond. 4) The pursuer again tendered the said ticket to the defenders' said servant, and explained the circumstances to him under which she did so, and she was prepared to give him her name and address, but he refused to accept the ticket, to take explanation, nor did he ask her name and address. She had the means, and was also willing, to pay the defenders the fare over again if he insisted upon it. Notwithstanding these facts, the said officer of the defenders, acting as their agent and with their authority, then wrongfully and illegally seized and detained the pursuer, although she had committed no offence, as a person committing an offence against the provisions of the Railway Company Clauses Act 1845 and the Regulation of Railways Act 1889. (Cond. 5) Further, in so seizing and detaining the pursuer, the defenders' said officer used unnecessary force and violence towards her. Without the least necessity therefor he pulled and dragged the pursuer from the platform of the said station, upon which she had emerged from the train, over the bridge, crossing to the north platform thereof."

She stated that in the course of the seizure and detention she had received serious injuries.

The defenders maintained that the collector was entitled to detain the pursuer in respect of her not having paid her fare, and attempting to travel without doing so. They averred that no violence had been used by the collector, and that if he had used it, it was not in the scope of his employment to do so.

The Sheriff-Substitute (BEGG) and the Sheriff (CHEYNE) having allowed the parties a proof, the pursuer appealed to the Court of Session for a jury trial, and proposed the following issues—"Whether, on or about 3rd September 1897, and in or near the station of Fort Matilda, the defenders' servant Christopher Bailiff wrongfully seized and detained the pursuer as a person committing an offence against the provisions of the Railway Company Clauses Act 1845, and the Regulation of Railways Act 1889, to the loss, injury, and damage of the pursuer? Whether, on or about said date, and in or near said station, the defenders' said servant seized and detained the pursuer with unnecessary force and violence, to the loss, injury, and damage of the pursuer? Damages laid at £50."

The parties agreed to amend the first issue by adding the words "and illegally" after the word "wrongfully."

With regard to the second issue, the defenders submitted that there was no precedent for granting such an issue. It referred to the same act as that dealt with by the first issue, which was *ex hypothesi* a legal act, and the whole substance of the case could be tried under the first. In any case the issue should be modified in the lines of the issue approved in the case of *Lundie* v. *MacBrayne*, July 20, 1894, 21 R. 1085.

LORD PRESIDENT — I understand that there is no difference of opinion as to this proposition—that if in a seizure and detention which was justified by the circumstances there were employed an excess of violence, that would be an actionable wrong. If that be so, the use of unnecessary force and violence may aptly be characterised as wrongful and illegal. Accordingly the question, which seems to be a very narrow one, is whether the use of these admittedly appropriate words is superfluous or inconvenient. Now, it might quite well happen that in the opinion of the jury the arrest could have been effected with less violence, but on the other hand, the difference between the force actually used

and the ideal force was more or less in the region of discretion. I think that the safe course is to draw the attention of the jury to the character of the question which is before them, and that this will be best done by giving a little emphasis to the kind of excess which alone is worthy of their attention, and therefore I think the words "wrongfully and illegally" should go in. The issue should accordingly be—[*quotes*].

I have said nothing as to the first issue, there being no controversy as to it, and accordingly it will stand as adjusted by the parties.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court approved the first issue as adjusted by the parties, and the second issue in the following form—"Whether, on or about said date, and in or near the said station, the defenders' said servant, while acting within the scope of his employment in seizing and detaining the pursuer, wrongfully and illegally used unnecessary force and violence, to the loss, injury, and damage of the pursuer?"

The attention of the Court was called to the fact that the summons concluded for only one sum of damages, viz., £50, while there were two issues.

LORD PRESIDENT—Lord M'Laren points out that the position of the pursuer is, that "I am entitled at least to £50 which ever of these two issues is taken." It is practically the same thing as putting £50 on each issue.

Counsel for Pursuer—Salvesen—Wilton. Agent—R. S. Rutherford, Solicitor.

Counsel for Defenders — Balfour, Q.C. —M'Lean. Agents—Hope, Todd, & Kirk, W.S.

Saturday, February 5.

SECOND DIVISION.

[Sheriff of Lanarkshire.

JAMIESON *v.* HARTIL.

Process—Appeal for Jury Trial—Remit to Sheriff—Court of Session Act 1825 (6 *Geo. IV. c.* 120), *sec.* 40.

In an action of damages brought in the Sheriff Court for injuries sustained by being run over in the street, in which the sum sued for was £50, the pursuer, after proof had been allowed, appealed for jury trial. The defender moved that the case should be remitted to the Sheriff Court for proof, in consideration of the trifling nature of the injuries. The Court *refused* the motion.

Bethune v. *Denham*, March 20, 1886, 13 R. 882; *Mitchell* v. *Sutherland*, January 23, 1886, reported in a note to *Bethune*, *cit.*; and *Nicol* v. *Picken*, January 24, 1893, 20 R. 288, *distinguished.*

Question—Whether the pursuer in the event of success ought to be found entitled to more than Sheriff Court expenses.

John Jamieson, surfaceman, Coatbridge, as tutor and administrator-in-law of his pupil son John Jamieson, brought this action in the Sheriff Court at Airdrie against Joseph Hartil, fruiterer, Coatbridge. He craved decree for the sum of £50 as damages sustained through his said pupil son, a boy four years and three months old, being run over while walking along the pavement of Main Street, Coatbridge, by a van the property of and then being driven by the defender, who was crossing the pavement at a cart entry to his back premises.

The pursuer averred, *inter alia*—"(Cond. 4) By said accident the said John Jamieson's right ear was severely injured, being nearly severed from his head. His left leg was also badly injured, and he was otherwise bruised and hurt. He has since been confined to the house and under medical treatment. The injury to his leg threatens to be permanent in its effects. He has suffered great pain, and the pursuer has been put to considerable expense and trouble."

The defenders pleaded—"(1) The pursuer's said child not having been injured through any fault of the defender, the latter is entitled to decree of absolvitor, with expenses. (2) The injuries received by the pursuer's child are exaggerated, and the amount of compensation claimed is excessive."

By interlocutor dated 17th December 1897 the Sheriff-Substitute (MAIR) before answer allowed a proof.

The pursuer appealed to the Second Division of the Court of Session for the purpose of having the case tried by jury.

Upon the case being called in the summar roll, counsel for the defender admitted that the pursuer had a relevant action, but moved that, in consideration of the trifling nature of the injuries, the case should be remitted to the Sheriff Court instead of being sent for trial by jury. He argued that this course was within the discretion of the Court and quite competent, and quoted *Bethune* v. *Denham*, March 20, 1886, 13 R. 882, and *Mitchell* v. *Sutherland*, there reported in a note; *Nicol* v. *Picken*, January 24, 1893, 20 R. 288. Alternatively he asked for a proof in the Court of Session.

Counsel for the pursuer was not called upon.

LORD JUSTICE-CLERK—This is certainly a very small case indeed. When such a case goes to a jury it involves special proceedings and consequent expense, and the expense greatly exceeds the whole amount claimed by the pursuer. It is therefore very undesirable that such cases should be sent to a jury. But the difficulty I have is that this is just the kind of case which in ordinary course is sent for trial by jury. It is a case of damages for personal injury by being run over in the street. There are no apparent legal difficulties which would render it inappropriate for jury trial,