

Thursday, January 20.

FIRST DIVISION.

[Sheriff Court at Glasgow.]

M'ATHEY v. THE PATRIOTIC  
INVESTMENT SOCIETY LIMITED.

*Process—Joint-Minute of Settlement—Locus Pœnitentiæ — Authority of Court not Interponed to Minute.*

A joint-minute settling an action, authenticated by the parties or their agents, is binding on the parties from the date of signature, although the Court may not have interponed authority thereto.

On 15th November 1905 Thomas Hunter M'Athey, commission agent, Rutherglen, brought an action against the Patriotic Investment Society, Limited, 147 Bath Street, Glasgow, in which he sought payment of two sums of £50 each. The nature of the action and the circumstances in which it was brought appear from the opinion (*infra*) of the Lord President.

LORD PRESIDENT—This action began in the Sheriff Court at the instance of a Mr M'Athey against the Patriotic Investment Society, Limited, and asked a decree against the defenders for payment of £50 sterling, with the legal interest thereon from the 8th day of August 1905 till payment, and, second, another sum of £50 sterling. The ground of the action was improper dismissal from a post he had held under the company sued—that was the one sum; and the other sum was a return which he had advanced for shares, taking shares being part of the bargain under which he was given his place. The action came to be defended by the liquidator of the company because the company was in liquidation, and the Sheriff-Substitute gave decree to a certain extent in favour of the pursuer. The defenders appealed to the Sheriff, and then, before the Sheriff, there were negotiations between the parties for a settlement, and on the 1st February 1907 there is an interlocutor by the Sheriff, "in respect that parties are endeavouring to arrange a settlement, adjourns the debate *sine die*." Well, that was on the 1st February, and on the 19th February the procurators for the parties lodged a minute in these terms—"The parties having agreed to settle the action by a payment of £45 in name of pursuer's expenses, said payment to be made by the liquidator out of the first moneys which come into his hands, and by pursuer receiving a preferential ranking for £50 on the estate of the defending society now in liquidation, said payment for expenses and preferential ranking to be in full settlement of all claims competent to the pursuer against the defenders, they concur in craving the Court to interpose its authority hereto, and to decern accordingly."

That minute was signed by the procurators, and it was also signed by the liquidator. Well, upon that minute nothing

was done, and nothing having been done the case went to sleep. It seems that nothing was done in another sense—that is to say, the pursuer never got any money; and accordingly in June 1908, that being a period of about fifteen or sixteen months after the last interlocutor, a minute was put in in the ordinary form wakening the cause, and the cause was wakened. Being wakened, it was taken up by the Sheriff-Principal, and he pronounced an interlocutor on 10th March 1909, in which, having heard the parties' procurators, he allows the joint-minute for the parties lodged on 19th November 1907 to be withdrawn, recalls the interlocutor of the Sheriff-Substitute, and then *de novo* proceeds to find in favour of the pursuer to a certain extent, *quoad ultra* assolvieing the defenders, and finding the pursuer entitled to expenses, including the expenses of the appeal.

Against that interlocutor the present appeal has been taken to your Lordships, and the first argument that we have had is that it was wrong for the Sheriff to go and proceed upon the merits as he had done, because the case had already been settled by the joint-minute already quoted. At the first hearing it occurred to your Lordships that the expression in the Sheriff's interlocutor, "allows the joint-minute for the parties . . . to be withdrawn," was really ambiguous, because it did not exactly tell us whether he held it was withdrawn of right or that it was withdrawn of mutual consent. We remitted to the Sheriff to report upon that matter, and we have his report before us. It is sufficient to say of the report that it shows that the withdrawing was not of consent. He says quite frankly that the matter which originally weighed most with him was a view of the law which he has now come to think erroneous, although he had the opposite opinion at that time, namely, that a joint-minute could at any time be withdrawn if the authority of the Court had not been interponed. But he also states that besides that there was a moving consideration in his mind, namely, that in the whole circumstances, as no money had been paid, it was proper that the minute should be withdrawn.

In order that there should be no mistake about it, I think it as well to say that I think upon the first question the Sheriff's second thoughts were right. I think if parties by themselves or their procurators choose to make a settlement of the case, and that is authenticated in the ordinary way by joint-minute, it is out of the question to hold that there is any *locus pœnitentiæ* for the parties so bound up to the time when the Court have interponed authority. The settlement is a good settlement although the Court has not interponed authority thereto. [*His Lordship proceeded to dispose of the rest of the case.*]

LORD KINNEAR—I concur.

LORD JOHNSTON—I also concur.

LORD M'LAREN was absent.

The Court refused the appeal.

Counsel for Pursuer (Respondent) —  
D. P. Fleming. Agent—James G. Reid,  
Solicitor.

Counsel for Defenders (Appellants) —  
A. M. Hamilton. Agents—Morton, Smart,  
Macdonald, & Prosser, W.S.

Saturday, January 22.

FIRST DIVISION.

[Lord Salvesen, Ordinary.

COUTTS v. DAVID MACBRAYNE  
LIMITED.

PARK v. DAVID MACBRAYNE  
LIMITED.

*Reparation—Wrongous Apprehension—  
Ship—Issue—Malice and Want of  
Probable Cause—Merchant Shipping Act  
1894 (57 and 58 Vict. c. 60), sec. 287.*

Under section 287 of the Merchant  
Shipping Act 1894 it is lawful for the  
master or other officer of a passenger  
steamer to arrest without a warrant a  
passenger refusing to pay his fare.

In an action by a passenger against  
the owners of a steamer for alleged  
illegal arrest, the pursuer averred that  
he had been wrongously arrested by  
the officers of the ship on the ground  
that he had refused to pay his fare,  
and that in arresting and placing him  
in irons "the ship's officers acted in  
obedience to the orders of the captain,  
who was the defenders' servant in  
charge of said steamer." He proposed  
an issue whether the defenders had  
wrongfully and illegally arrested him.

*Held* that as the pursuer had averred  
that the ship's officers had, in arresting  
him, acted in obedience to the orders  
of the captain, their actings were  
privileged, and that accordingly malice  
and want of probable cause must be  
inserted in the issue.

On 25th October 1909 John Coutts, iron  
worker, Bellshill, brought an action against  
David MacBrayne, Limited, 119 Hope  
Street, Glasgow, in which he claimed £250  
damages for illegal arrest.

[A similar action at the instance of  
George Park, steelworker, Mossend, against  
the same defenders, was disposed of at the  
same time.]

The pursuer averred, *inter alia*—" (Cond. 2) On the 27th August 1909 the pursuer travelled to Dunoon from Glasgow by the steamer "Isle of Arran." He paid the fare for the voyage to Dunoon and back to Glasgow, and obtained a return ticket. On the afternoon of the same day he, along with several other persons who held similar tickets, being under the impression that they were entitled to return to Glasgow by any steamer, went on board the defenders' steamer 'Columba' at Dunoon Pier to return to Glasgow. He showed his ticket when going on board, and its

validity was not challenged. . . . (Cond. 3) While the said steamer was between Greenock and Dumbarton on its way to Glasgow, a purser in the defenders' employment named John Dobbie approached the pursuer, who was in the fore saloon, and asked for his ticket. When the pursuer produced the return half of the ticket he had obtained in the morning, the said John Dobbie stated that it was of no use and that the pursuer would require to pay the fare. The pursuer asked an explanation of his reason for refusing the ticket, but the purser declined to give any explanation and demanded the fare. The pursuer then offered to pay the fare demanded in exchange for a receipt therefor, which the purser refused to give. The pursuer then, at the purser's request, gave him his name and address, but the purser did not note or attempt to note the same. Immediately thereafter the said John Dobbie suddenly, and without warning, seized the pursuer, and, with the assistance of another purser, threw him on the deck and forcibly took the ticket which the pursuer had previously tendered and was quite willing to give. When the pursuer rose to his feet again the said John Dobbie had left the saloon. . . . (Cond. 4) Thereafter the pursuer passed up to the fore deck and took a seat, believing that the incident was ended. About ten minutes afterwards, while he was sitting quietly smoking near a passenger, George Park, who had been similarly treated, the said purser approached with some other ship's officers and asked him and the said George Park to go down to the saloon. The pursuer immediately did so, but no sooner had he arrived there than he was seized by the defenders' employees, handcuffed, and fastened to a pillar in the said saloon, and in presence of all the passengers. He protested against this treatment, but without avail, and was retained in the ignominious position described in presence of all the passengers until the steamer reached the Broomielaw, Glasgow. . . . (Cond. 5) The said arrest of the pursuer by the said purser and other officers of the said steamer and his detention in irons was wrongful, illegal, and oppressive, and was done maliciously and without probable or any cause. It was without justification or excuse. The pursuer reasonably believed that his ticket was available by the said steamer. In any event, he had tendered payment of the fare demanded, and his name and address were known to the defenders' servants. . . . (Cond. 6) The pursuer is a man of good character and reputation, and in consequence of said wrongful, illegal, and oppressive act, he has suffered severely in his feelings and reputation. There was a large crowd on the steamer, among whom were several persons known to him, and he felt his position keenly. . . . (Cond. 7) In arresting and placing the pursuer in irons it is believed that the ship's officers acted in obedience to the orders of the captain, who was the defenders' servant in charge of said steamer. In any event they acted