

the poor laws were for a long time very loosely administered, and exemptions were allowed for which there was no authority; and as regards the time since the Act was passed, the former loose practice may be said to have been continued. But this was quite insufficient to establish a usage in favour of exemption. The Lord Chancellor, in the case of the Mersey Docks, expressly said that charitable institutions were not exempt; and the law was now quite settled that nothing but property which belonged to the Crown was.

The other Judges concurred.

M'WILLIAM v. WATSON.

Reparation—Culpa. Circumstances in which held that a person who had sustained personal injuries was not entitled to recover damages, the injuries having been caused by his own negligence.

Counsel for Pursuer—Mr John Black. Agent—Mr W. H. Muir, S.S.C.

Counsel for Defender—Mr Gifford and Mr Gloag. Agents—Messrs A. G. R. & W. Ellis, W.S.

This was an advocacy from Lanarkshire of an action for damages and *solatium* at the instance of the pursuer, a ship carpenter, against the defender as owner of the steamer *Petrel*, on account of injuries sustained by him while engaged in the execution of his duty as a carpenter in making repairs or alterations upon the paddle-wheels or paddle-floats of the said steamer while lying at the Broomielaw of Glasgow on 18th January 1864, and which injuries are alleged to have been caused through the culpable negligence or recklessness of those on board the vessel, acting under the defender, and for whom he is responsible, in having suddenly, and without any notice or warning to the pursuer, set in motion the engine or other machinery of the vessel, or caused the paddles to be moved, while the pursuer was in the paddle-box in the execution of his duty in making some repairs or alterations thereon, whereby the paddle-wheel of the steamer, whereon the pursuer was at the time employed, was set in motion, and the pursuer was carried round inside the paddle-box of the steamer, and crushed between the floats of the paddles, and had his right collar-bone and shoulder-blade broken, by which his system and constitution sustained a great shock, and his health has been severely impaired, and he has been permanently disabled and rendered unfit to earn a livelihood. The defence is that the pursuer did not suffer injuries to the extent alleged by him, and that, in so far as he did sustain injury, it was caused by his own negligence or recklessness by going into the paddle-box at an improper time, and without giving notice to the engineer that he was going which it is alleged, he ought to have done.

The Sheriff-Substitute (Smith) found, after a proof had been led, that in the month of January 1864 the pursuer was a ship carpenter in the employment of William Brocket; that on the morning of 18th January he was sent along with another ship's carpenter to do some work on board the *Petrel* steamer, of which vessel the defender is owner; that the pursuer went on board the *Petrel* soon after six o'clock on the morning of that day, and that he knew that she was intended to sail at ten o'clock; that part of the work which he had to do required him to go inside the paddle-box on the paddle-wheel, and that he did not begin that work till about nine o'clock; that it is the practice when parties go inside the paddle-box of steamers that they give or send notice of this to the engineer, to prevent accidents; that on said morning the pursuer went inside the paddle-box without giving or sending any notice to the engineer, who, about a quarter before ten o'clock, in ignorance that anyone was on the paddle-wheel, set the engine in motion; and the wheel at which the pursuer was working revolved and crushed the pursuer, who was severely injured; but that the injury to the pursuer was caused by

his own carelessness and neglect, both in delaying his work within the paddle-box to so late an hour, and by going into the paddle-box without giving due notice to the engineer. In point of law he found that a party who suffers injuries caused chiefly by his own carelessness and neglect is not entitled to reparation; and he therefore sustained the defences and absolved the defender.

The Sheriff (Alison) altered this interlocutor, and found that in the circumstances of the case as proved, no fault was to be ascribed to the pursuer in obeying the orders of his employer to go into the paddle-box to make the necessary repairs, seeing he was never informed or made aware of any rule as to giving to the engineer notice of his going into the paddle-box to make repairs, and seeing that in the circumstances he was entitled to rely on receiving notice from the engineer of his intention to start the engine if the vessel moved before the advertised time of sailing, which was ten o'clock; that the engineer was clearly in fault and to blame—1st, for not making the pursuer aware of the alleged rule of any person going inside the paddle-box giving notice when he went in; 2d, for starting the engine and putting the paddle-wheels in motion, at least twenty minutes before the advertised time for the vessel sailing at ten o'clock; 3d, for not giving notice to the pursuer when he half seen him about the paddle-box, and he was himself at the other paddle-box, that he was to start the engine twenty minutes before the advertised time of the vessel's sailing, so as to warn the pursuer to get out of danger. He therefore found the defender liable in damages, which he assessed at £100.

The defender having advocated, the Court unanimously recalled the Sheriff's interlocutor, and reverted to that of the Sheriff-Substitute.

Thursday, March 29.

COLQUHOUN v. BUCHANAN AND OTHERS.

Salmon Fisheries Act—Roll of Proprietors—Reduction. In a reduction of a roll of proprietors of salmon fishings made up by the clerk, on the ground that it contained the names of persons who were not proprietors, action sustained, and issues ordered.

Counsel for Pursuer—Mr Patton and Mr Watson. Agents—Messrs Tawse & Bonar, W.S.

Counsel for Defenders—The Solicitor-General and Mr Hall. Agent—Mr James Macknight, W.S.

This is an action of reduction at the instance of Sir James Colquhoun of Luss, Baronet, and it is directed against Mr John Buchanan, of Carbeth, Miss Barbara Govane of Park, Mr Cooper of Ballindalloch, and Mr Blackburn of Killearn; and also against his Grace the Duke of Montrose, Sir George Hector Leith, of Ross, Baronet, and Mr Galbraith, the Sheriff-Clerk of Stirlingshire, for their interest. The object of the action is to reduce and set aside the roll of proprietors, or alleged proprietors, of salmon fishings within the district of the rivers Clyde and Leven, as fixed and defined by the Salmon Fisheries Act, 25 and 26 Vict. c. 97, which was prepared by the Sheriff-Clerk of Stirlingshire in pretended conformity with said Act. The ground of reduction is that the defenders do not possess the qualification required by the statute for admission to the roll, because they had no right to salmon fishings in the said district. There were also conclusions for reduction of various minutes of the proprietors so enrolled, and of the District Board elected by them.

The defenders Mr Buchanan and Mr Blackburn lodged defences, and stated the following pleas:—

"1. The action is incompetent, and cannot and ought not to be entertained in this Court, in so far as it seeks to set aside the right of the defenders to remain on the roll of proprietors of salmon fisheries in the said district of the rivers Clyde and Leven,

in respect that they have been put on said roll by the authority of the Sheriff, who is exclusively empowered to make up the roll, and to decide without review all questions arising in regard to the qualification of proprietors of salmon fisheries under the said Act.

"2. *Separatim*, the action is incompetent—(1.) In respect that the Sheriff has decided that the defenders are qualified in terms of the Act, and his judgment is not subject to review. (2.) Or otherwise, in respect that the pursuer was directed and bound by the Act to obtain a judgment from the Sheriff in the first instance upon the question of the defenders' qualification. (3.) Or otherwise, in respect that the Sheriff in making up the roll proceeded ministerially in the discharge of a duty entrusted by the Legislature exclusively to him, with his performance of which, in the circumstances set forth by the pursuer, this Court has no jurisdiction to interfere either under the Act or at common law.

"6. The pursuer is barred *personali exceptione* by his recognition of the rights of the defenders, and his concurrence in the election of the defender, Mr Buchanan, as a member of the district board from insisting in the action."

Section 18 of the statute is as follows:—"The Sheriff shall direct the sheriff-clerk to make up a roll of the upper proprietors, and also a roll of the lower proprietors in each district, and the qualification of an upper proprietor shall be the property of a fishery entered in the valuation roll as of the yearly rent or yearly value of £20 or upwards; or if such fishery be not valued on the valuation roll, of half-a-mile of frontage to the river, with a right of salmon-fishing; and the qualification of a lower proprietor shall be the property of a fishery entered in the valuation roll as of the yearly rent or yearly value of £20 or upwards; and the Sheriff shall have power to decide summarily any question arising on any claim to such qualification."

The Lord Ordinary (Jerviswoode) being of opinion that these pleas could not be disposed of without some inquiry into facts, ordered issues. The defenders reclaimed, but the Court to-day adhered.

The LORD PRESIDENT said the case stated here was that one at least of the defenders was not a proprietor of salmon fishings at all. On the other hand he said he *was*; that he had a title to "fishings;" and that that title, fortified by the use of fishing for salmon, constituted a prescriptive right to salmon fishing. But he also maintained that the question could not now be raised, that the statute gave the Sheriff a power which he had exercised, and that his decision was not reviewable. His Lordship thought the plea as to the Sheriff's judgment being final under the 28th section was altogether untenable. There was a finality only as to matters such as were referred to in that section. But, farther, it did not appear that the Sheriff had pronounced any judgment at all. He had never been called on to exercise any power given him by the Act. No doubt, under section 18, it was provided that if any dispute should arise while the Sheriff-Clerk was making up the roll the Sheriff should have power to dispose of it; but it did not appear that any such dispute arose here. Still there was a plea that there was no way of getting over the judgment of the Sheriff-Clerk but by going to the Sheriff. The Act does not give any appeal from the judgment of the Sheriff-Clerk to the Sheriff. The Sheriff-Clerk is not bound to consult anybody in the course of making up the roll. If he refuses to put anyone claiming on the roll the party may take the judgment of the Sheriff, or a party objecting to a claim may bring it before the Sheriff. That the other heritors had an interest to insist in such an action as this was beyond question; for one object of the Salmon Fishery Act was to assess proprietors for the expenses of management, and a party had surely an interest in regard to the appointment of the body that was to assess him. It was impossible to sustain an objection which amounted to holding that there was no redress

against a mistake such as that alleged here, and that the Sheriff-Clerk's procedure could not be corrected. If a party having no title were put on the roll, was not the statute violated? His Lordship could not see why in such circumstances there should be no redress by reduction. As to the plea of homologation by subsequent proceedings, it was said that a mandatory of the present pursuer was present at certain meetings where the defenders appeared and took part in the business, and made no objection to their acting. His Lordship thought that would not constitute a personal bar, the mandate not extending to challenging the right of parties to be members of the Board or to be entered on the roll. On the whole, his Lordship thought it was necessary to inquire whether these parties had the right required by the statute to entitle them to be entered on the roll. What had the Sheriff-Clerk done here? A party produced a title, according to which, *ex facie*, he had no right. The Sheriff-Clerk said he was informed that, though that title was only a title to fishings, the defenders had really been exercising for the prescriptive period a right of salmon fishing. If the Sheriff-Clerk were to take such a matter on the mere statement of a party, anyone might be enrolled. There was nothing before the Sheriff-Clerk, so far as could be seen, to show that the title constituted a right of salmon fishing. Hence the matter should be inquired into. The Lord Ordinary had ordered issues; but the pursuer wished proof by commission, and it seemed better that the proof should be taken in that way.

Lord CURRIEHILL and Lord ARDMILLAN concurred.

Lord DEAS concurred to the extent of refusing the reclaiming note and adhering to the Lord Ordinary's interlocutor, but thought he was not called on to give any opinion at this stage as to several important questions disposed of by their Lordships. There were difficulties arising from the vagueness of the Act. It was not easy to discover what were the functions of the Sheriff-Clerk, or how they were to be exercised. Were his powers judicial or ministerial? It was difficult to see how these questions were competently before the Court, if they were not before him; and it was just as difficult to see how the Sheriff-Clerk was to take a proof as to forty years' possession before making up the roll. As to the question of personal bar, it was also desirable to know the facts.

MITCHELL v. ADAM.

Landlord and Tenant. An application by a landlord for interdict against his tenant removing from his farm or selling the straw and fodder raised and grown on it *refused*, there being no steading or offices on the farm.

Counsel for Advocate—Mr Patton and Mr Clark. Agents—Messrs Baxter & Mitchell, W.S.

Counsel for Respondent—Mr Fraser and Mr Harry Smith. Agent—Mr John Henry, S.S.C.

This was an advocacy from the Sheriff Court of Aberdeenshire. The advocate, Mr Mitchell of Thainston, applied by petition to the Sheriff to have the respondent, George Adam, who was his tenant, interdicted from selling and disposing of or removing from the ground of his farm, during the currency of his lease, the straw and fodder raised and grown on the farm or any part thereof. The ground of the application was that the tenant was bound to consume the straw and fodder grown and raised on the farm in conformity with the rules of good husbandry, and not to sell it, which he threatened to do. The defence was that as there was no steading and offices on the farm whereby the grain might be manufactured and the fodder consumed, the application for interdict was unwarranted. The Sheriff-Substitute (Watson) refused the petition. In his note he observed:—

"The petition prays that the respondent may be interdicted from selling or removing, or allowing anyone to carry away or remove, the straw and