

witness was of opinion that the cause of the accident was that the driver, for some reason or other, had not control of the horses after the coach left Mr Murland's house, and could not get them on to the centre of the road. This might have been caused by the driver not having a sufficiently strong pull over the horse that had swerved, owing to the position in which he sat, at the extreme corner of the front seat. Samuel Murland, tenant of the lodge and shootings near St Catherine's, said he had examined the marks made by the coach wheels on the turf on the side of the road, and had found that the swerve towards the shore was a gradual and not an abrupt one. He was certain that the wheelbarrow could not have been seen by the horses. He did not think the driver was sufficiently experienced to be entrusted with the driving of a coach over such a bad road as the one between Lochgoilhead and St Catherine's. The evidence of Mrs Adlington corroborated that of her husband. The driver, she thought, had not strength to pull the horses back to the road after they had swerved, or had lost all power through fear. John Brodie, gamekeeper to Mr Murland, in cross-examination admitted that if the horses had seen the wheelbarrow at the side of the road, it was likely enough they would have shied. Two medical witnesses as to Mrs Adlington's condition were examined; the first of these deponed that he had seen Mrs Adlington shortly after the coach accident on 3d September, and had found that she had sustained no external injuries. An accident of the kind in question would be much more serious in the case of a lady who had suffered from any internal disease than otherwise. The other medical man had been Mrs Adlington's medical adviser for the last six years, and after the accident he found her suffering much from nervous exhaustion, a weak pulse, sleeplessness, and great internal pain. These were just the results to be expected from an accident of the kind described in the case of a lady who had suffered from an internal disease of the kind to which Mrs Adlington was subject to. She had somewhat recovered from the results of the accident; but he was not sure that she would ever thoroughly get rid of her trouble. Witnesses having been called to prove the necessity of experienced drivers being employed in driving over the road in question, and to speak to the proper place in which the driver of a stage coach or omnibus should be seated, the evidence for the pursuers closed.

For the defenders, the following, among other witnesses, were called:—John Thomson, warehouseman, employed by Messrs Philips & Company, Glasgow. He had been at St Catherine's on the day of the accident, and had seen the coach coming down the hill after passing Mr Murland's gate. While watching it, he saw the inside horse shy at a wheelbarrow on the roadside. This caused the next horse to swerve, and the third horse then went over the parapet next the shore, dragging the coach after it. The coach was nearly at a standstill before it was capsized. The driver apparently tried to stop the horses. John Mackenzie, sergeant of police at Inveraray, deponed that he had examined the scene of the accident. He had measured the ground, and had ascertained that between Mr Murland's gate and the place where the coach left the road there was a space of 90 feet, and between the place where the barrow had been lying and the point where the wheels deviated from the

road, about 40 feet. Assuming the barrow to have been lying where he had been told it was, it could have been seen distinctly from the part of the road where the coach had left the track. He did not see any wheel-marks in the grass till within a short distance of the wheelbarrow. Dr Matthews Duncan, Edinburgh, said he had visited Mrs Adlington on Saturday, and had been told by her that she had been in bad health for the last five years. He had discovered that she was suffering from an internal disease, which was quite sufficient to account for all the symptoms which he had observed. Such an accident as described would not aggravate the disease, but it might increase the sufferings from it. Such a patient would undoubtedly be injured by an accident of the kind described. Andrew Ainslie, aged 20, coach driver in the employment of the Inveraray Ferry and Coach Company, deponed that on the 3d of September he had been in charge of the St Catherine's coach, to which the accident had occurred. He attributed the accident to the shying of the horses at a wheelbarrow at a point about half way down the hill after passing Mr Murland's house. He had tried to pull up the horses immediately after they shied.

He did not use his whip in trying to get the horses back to the road after they had shied. The horses never shied before. Neil Campbell, coachman, residing near St Catherine's, deponed to the horses which his master, Mr Hopkinson, had been driving on the afternoon of the 3d of September, having shied at the wheelbarrow lying at the side of the road, which the coach-driver alleged had caused the accident.

Counsel having addressed the jury, the Lord President summed up, and the jury, after three hours' absence, returned a verdict for the pursuers by a majority of 11 to 1—damages, £25 to Mrs Adlington, and one farthing to Mr Adlington.

Counsel for the Pursuers—Macdonald and Darling. Agents—Bruce & Kerr, W.S.

Counsel for the Defenders—Asher and Mackintosh. Agents—D. Crawford & J. Y. Guthrie, S.S.C.

Friday, March 27.

FIRST DIVISION.

WILSON AND BAXTER v. HAMILTON OR
STEVENSON AND OTHERS.

Jury Trial—Right of Way.

Circumstances in which a right of way over a portion of a road was *sustained* by verdict of a jury.

This was an action at the instance of John Wilson junior, miner, and William Baxter, beetler, Millheugh, in the county of Lanark, pursuers; against Mrs Eliza Hamilton or Stevenson Hamilton and James Stevenson Hamilton, Fairholm House, in the parish of Hamilton and county of Lanark; William Smith Dixon, ironmaster, residing at Belleisle, Ayr; and his Grace the Duke of Hamilton, defenders. The question was one of right of way for foot passengers, and the issues sent to the jury were as follows:—

“(1) Whether or not there has existed for forty years prior to 1873 a public right of way for foot

passengers from the public road between Stonehouse and Millheugh, from a point at or near the west end of the bridge across the River Avon, known as Millheugh Bridge, to a point on the road known as the Glasgow and Carlisle road, at or near the west end of the bridge across the River Avon, known as the Fairholm Bridge; and (2), Whether or not there has been a similar right of way from the first-named point on the Stonehouse and Millheugh road to a part of the Glasgow and Carlisle road at or near the Quarter Brae."

Counsel for the pursuers having opened the case, evidence was adduced to show that the road in question had been used for forty years for walking purposes. One witness stated that he had seen large numbers of people using the road, and that ever since he remembered there had been a gate at the west end of Fairholm Bridge, but that he never recollected finding this gate shut. He had never had his right to use these roads questioned, and he had often gone down to the ford on the river Avon from Millheugh with a party numbering seven or eight. There had always been a gate at the end of Fairholm Bridge, as well as a lodge. The lodge was used by the gamekeepers of the Duke of Hamilton, but the gate, he thought, was merely put there to prevent cattle getting on to the path. This gate had not always been kept standing, it having been sometimes allowed to lie in disrepair on the road. The old gate had been removed, and a new one, considerably higher than the other, put up in its place. He had seen notices up at the Fairholm gardener's lodge about the road being private, but he had never read them. He did not recollect seeing any notices at the Fairholm Bridge. Another witness, aged 79, deponed to having, when young, gone messages from Stonehouse to Hamilton. On these occasions he went always by the Fairholm Bridge. He had often driven carts over the road by the Quarter Brae and across by Fairholm Bridge, but had never been stopped by any one.

Counsel for the defence in opening observed, that the road claimed here was not a road across a field, but an avenue leading to the defenders' house, and that therefore the presumption was very strongly against the defenders having intended to give the public an absolute right to come and go by it. The effect of finding that the public had a right to this road would be to entitle any one to come from any part of the world and insist upon going over the road and passing within 80 or 100 yards of the proprietor's house. The road in question had been formed for the convenience of the then proprietor of Fairholm and of the conterminous proprietor, the Duke of Hamilton, and the bridge of Fairholm had been built for the exclusive use of them and their employes. The facts that a bridge was built, that a gate was placed at one end of it with locks upon it, and that a lodge had also been erected, were sufficient indications that the proprietor meant to keep the road private, and proof that one person had been turned back by the gate-keeper would be worth the evidence of twenty people who had not been turned.

After evidence for the defence had been led, and counsel had spoken, the Lord President having summed up, the jury found unanimously for the defenders on the first issue, and for the pursuers on the second.

Counsel for the Pursuers—Macdonald and Lang. Agents—D. Crawford & J. Y. Guthrie, S.S.C.

Counsel for the Defenders—Asher and Moncreiff
Agents—Bruce & Kerr, W.S.

Monday, April 6.

[Lord Ormidale, Election Judge

IRWIN & MACGREGOR, PETITIONERS.

(RENFREWSHIRE ELECTION)

(Ante, p. 348.)

Procedure—Election Petition—Counting of Votes—Expenses.

The counting of the votes allowed by the Court in refusing the note for Colonel Mure in this petition took place before Lord Ormidale as the Judge in Election Petitions. The form of procedure adopted was to examine in the first place the Sheriff-clerk, as having had the custody of the ballot-box.

Mr Hector, Sheriff-Clerk of Renfrewshire, deponed that he had acted as Sheriff-Clerk during the election in February 1874, and that he took possession of the ballot-papers after they had been counted. He now produced the counted ballot-papers under the order of the Court, as also the order of the Court for their production, and letter to him by the parties' agents limiting the call to the counted ballot-papers. The packet was now in the same condition in which it was made up by the Returning Officer. Further, he had been called on to produce, and now produced, the account given in by the presiding officers to the Returning Officer.

After the examination of this witness, the Court ordered the enumerators who were previously sworn to proceed to count the papers in open Court, but this enumeration did not invade the secrecy of the ballot as none of the counterfoils had been produced or called for. The enumerators first separated the papers for the respective candidates, and then proceeded to count and check the total summation on each side.

LORD ORMIDALE—There is a matter that should be brought under the notice of parties, but I do not think it is one likely to give rise to any discussion. The enumerators have rightly handed to me 22 papers that certainly are not marked in strict conformity with the statute, or rather the form given in the statute. Eight of these papers are for Col. Mure, and fourteen for Col. Campbell. The result I have arrived at is this—that if these somewhat irregular papers should be set aside there will be a majority for Col. Mure on the whole counted papers of 97, and if, on the other hand, these irregular papers are sustained as good, there will still be a majority for Col. Mure of 91. I presume that in this state of matters the parties will raise no question. The result arrived at by the Returning Officer gave Col. Mure a majority of 88.

The total number of votes for either candidate, as now arrived at, is 1990 for Col. Mure, and 1899 for Colonel Campbell. Looking at the nature of the petition before the Court, that is I may say the true result, and I now declare that Colonel Mure has been duly returned and elected, and I will certify this to the Speaker.

Counsel for Col. Mure asked for expenses between agent and client, and for a remit to the Auditor of Court to tax.

Counsel for Col. Campbell submitted that the