

Glasgow and South-Western Railway Company were under obligation to see that the waggons they used under such a permission were fit for the use to which they put them. That was a duty which they owed to their own servants. But I think the Caledonian Company was not under any such obligation, and certainly not in any question like the present, arising out of a disaster, resulting from the use of the waggon, to one of the user's servants in course of their use. But it is averred that this lending of waggons was "the usual custom," and "the regular practice for many years." Take it so; the practice and custom had a beginning. If there was no obligation or duty on the part of the Caledonian Company to see that the waggons they lent were sufficient for the purpose to which somebody else was to put them at the beginning of the practice (as I think clearly there was not) the continuance of the practice would not create such an obligation. If one lends his carriage to another, and the borrower puts in his own horses, and has them driven by his own coachman on his own business or pleasure, and an accident follows through the breaking down of the carriage, I should have thought that the borrower of the carriage was liable, not the owner. The fact that this was done a dozen times would not alter the incidence of the liability. To sustain this action against the Caledonian Company is, however, to make the owner and not the borrower of the carriage liable, and such a result is not, in my opinion, well founded or consistent with the rules of our law.

LORD MONCREIFF was absent.

Counsel for pursuer moved for the expenses of the discussion against the Caledonian Railway Company.

Counsel for the Caledonian Railway Company objected, on the ground that the discussion took place on the adjustment of issues. He moved that the question of expenses be reserved.

LORD YOUNG—It was a serious argument on relevancy and taken to avizandum. I think the pursuer is entitled to expenses. We should proceed by some rule. If we are to give expenses when the relevancy is disputed, and we sustain the relevancy and adjust the issue, then this is a case for the application of the rule. If we are, as a rule, to reserve the expenses, then this is a case for reserving them. I thought the rule was to give expenses when we rejected the argument against the relevancy.

LORD TRAYNER—I think so.

LORD JUSTICE-CLERK—It is a general practice.

The Court approved of the issues, and found the Caledonian Railway Company liable to the pursuer in the expenses of the discussion.

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Counsel for the Pursuer—Jameson—Allen. Agents—Emslie & Guthrie, S.S.C.

Counsel for the Defenders the Caledonian Railway Company—Balfour, Q.C.—Nicolson. Agents—Hope, Todd, & Kirk, W.S.

Counsel for the Defenders the Glasgow and South Western Railway Company—Guthrie. Agents—John A. Brodie & Sons, W.S.

Friday, January 22.

FIRST DIVISION.

INCORPORATED SOCIETY OF LAW AGENTS IN SCOTLAND, PETITIONERS.

PURVES, PETITIONER.

*Process—Petition—Written Application by Law-Agent to have his Name Struck off Rolls—Law-Agents Act 1873 (36 and 37 Vict. cap. 63), sec. 14.*

Sec. 14 of the Law-Agents Act 1873, after enacting that it shall be lawful for the Lord President to issue directions as to the keeping and subscription of the rolls of law-agents practising in the Court of Session and in any Sheriff Court, further enacts that the name of any person shall be struck off these rolls (1) in obedience to the order of the Court, (2) "upon his own written application."

*Held* that the written application should be made, not to the Court but to those responsible for the keeping of the rolls, viz., either to the Lord President or to the actual keepers of the rolls.

An application to the Lord President by a law-agent for an order to direct the keepers of the rolls in the Court of Session and the Sheriff Court of the Lothians to strike his name off their respective rolls, *granted*, and *held* unnecessary to proceed with a simultaneous application to the Court at the instance of the Incorporated Society of Law-Agents for an order to strike the name of the same agent off these rolls.

This was an application at the instance of the Incorporated Society of Law-Agents in Scotland for an order to the keeper of the roll of law-agents practising in the Court of Session, and to the keepers at Edinburgh and Haddington of the rolls of law-agents practising in the Sheriff Court of the Lothians and Peebles, to strike the name of John Fraser Purves, law-agent, Edinburgh, off their respective rolls.

The petition proceeded on the narrative that the said John Fraser Purves having pleaded guilty to a charge of forgery, was on 20th July 1894 convicted and sentenced to fifteen months' imprisonment; that upon obtaining his liberty he had resumed practice as a law-agent; and that though at

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the petitioners' request he had instructed the Registrar of Enrolled Law-Agents to remove his name from the Register, and this had been done, he refused or delayed to have his name removed from the rolls of law-agents practising in the Court of Session and in the Sheriff Courts of the Lothians and Peebles.

The said John Fraser Purves also presented a note to the Lord President, citing section 14 of the Law-Agents Act 1873, quoted below, and craving his Lordship to direct the keepers of the registers of the law-agents practising in the Sheriff Court of Midlothian and Haddington and in the Court of Session to strike off the petitioner's name from the said registers.

It was explained at the bar that Purves' application was rendered necessary by the refusal of the keepers of the roll for the Sheriff Court of the Lothians at Edinburgh to strike off his name on his own written application, and that the practice in Edinburgh differed in this respect from the practice elsewhere.

The Law-Agents (Scotland) Act 1873 (36 and 37 Vict. cap. 63), sec. 11, provides, *inter alia*, for the appointment of a registrar of law-agents, whose duty it shall be to keep an alphabetical register of all enrolled law-agents, and who shall strike out the name of any law-agent on an order of the Court, or on application made to him by such agent in writing to that effect.

Section 12 enacts that a roll of the law-agents practising before the Court of Session shall be kept by the clerk of the Lord President, in such form as the Lord President may direct.

Section 13 enacts that a roll of law-agents practising in any Sheriff Court shall be kept by the sheriff-clerk in such form as the Lord President may direct.

Section 14—"It shall be lawful for the Lord President of the Court of Session, from time to time, to issue rules and directions with respect to the keeping and subscription of the rolls directed to be kept by the two preceding sections, and such rules and directions shall be observed and obeyed by the several keepers of the said rolls.

"The name of any person shall be struck off the said rolls (1) in obedience to the order of the Court, upon application duly made, and after hearing parties, or giving them an opportunity of being heard; (2) upon his own written application."

Argued for Purves—The application of the Incorporated Society of Law-Agents was unnecessary. The Sheriff-Clerk ought, in obedience to section 14, to have struck off his (Purves') name on his own application. In consequence of the Sheriff-Clerk's refusal, he was compelled to invoke the assistance of the Lord President, which had been successfully invoked in the case of *Dunlop*, 1881 (not reported).

The Incorporated Society of Law-Agents intimated that they had no wish to press their petition, but merely desired a judicial decision on the point whether the "written application" referred to in the Act meant application to the Court or to the keepers of the respective rolls.

LORD PRESIDENT—It is quite clear that this gentleman was entitled to have his name struck off these two rolls—the Roll of the Court of Session and the Roll of the Sheriff Court of Mid-Lothian—upon his own written application, and the written application is made, not to the Court, but to those responsible for the keeping of the roll.

An application has been made to me as Lord President in similar terms to that which was presented to and granted by Lord President Inglis in 1881, and I am prepared, seeing that there is this precedent, to follow the course taken by his Lordship. The intervention by the Lord President seems appropriate enough, as he is the official charged with the duty of regulating the keeping of the roll. But I should not suppose it to be less regular for the application to be made to the keeper of the roll, who would doubtless take the instructions of the Lord President in the absence of any general regulation. As regards the application by the Incorporated Society of Law-Agents, it seems that the proper course is, in respect this gentleman has made application to have his name struck off, to find it unnecessary to proceed with this petition.

LORD ADAM and LORD KINNEAR concurred.

LORD M'LAREN was absent.

The Court pronounced the following interlocutor:—

"The Lords having resumed consideration of the petition, no answers having been lodged, and heard counsel, in respect the respondent John Fraser Purves has presented a note to the Lord President craving that the Keeper of the Register of Law-Agents be directed to strike off his . . . name from the Register of Law-Agents in the Sheriff Courts of Mid-Lothian and Haddington, and in the Court of Session, and that the prayer of said note has been granted. Find it unnecessary to proceed further with this petition."

The following interlocutor was also pronounced in Purves' application:—

"The Lord President having considered the foregoing note, grants the prayer thereof, and directs the Keeper of the Register of Law-Agents practising in the Sheriff Courts of Mid-Lothian and Haddington, and in the Court of Session, to strike off the name of John Fraser Purves from the said respective rolls."

Counsel for the Petitioners—Macfarlane. Agents—Carment, Wedderburn, & Watson, W.S.

Counsel for the Respondent and Petitioner—Forsyth. Agent—Party.