

result of that is that the merchant must protect himself in a question with the purchaser from him, and may limit his obligation to deliver so that he only undertakes to use his best exertions to supply the goods at the time wanted, and that he is not to be responsible for the inability of the manufacturer to supply them within the specified time. There is no reason why merchants, dealing as Messrs MacLellan do, should not incorporate in their contracts those conditions which they wish now to establish, in a way which I think is inadmissible, by evidence of a rule of trade.

The LORD PRESIDENT and LORD KINNEAR concurred.

LORD ADAM was absent.

The Court adhered.

Counsel for the Pursuers and Reclaimers—Ure, K.C.—Spens. Agents—J. & J. Ross, W.S.

Counsel for the Defenders and Respondents—Campbell, K.C.—M'Lennan. Agents—Dalgleish & Dobbie, W.S.

---

Friday, July 3.

FIRST DIVISION.

WALKER v. JUNOR.

*Process—Breach of Interdict—Petition and Complaint—Penalty—Presence of Respondent not Insisted on.*

In a petition and complaint for breach of interdict the respondent appeared by counsel, who admitted an inadvertent breach of the interdict, undertook to observe the interdict for the future, and produced a medical certificate to the effect that it would be dangerous to his health to appear in Court or to be imprisoned. The complainer stated that he did not press for a sentence of imprisonment. The Court, without calling on the respondent to appear at the bar, *inflicted* a fine of £10.

In 1894 William Junor, a lessee of salmon-fishings on the river Ness, was interdicted, at the instance of Charles Fountaine Walker, the proprietor of the fishings in the said river, from fishing for salmon or grilse by means of a bag net or other fixed net, engine, or machinery in the river Ness or the estuary thereof.

In 1896 Walker brought a petition and complaint against Junor alleging breach of the said interdict. This petition was settled by a joint-minute, in which Junor admitted that he had committed a breach of interdict, explained that it had been done inadvertently by two of the men in his employment, and undertook that it should not happen again.

In June 1903 Walker brought the present petition and complaint, in which he set forth that Junor had again committed a breach of interdict, in respect that

he, or one of the men in his employment, had used a trawl net as a hang or fixed net in Rosemarkie Bay in the estuary of the Ness.

No answers were lodged, but counsel for the respondent appeared and produced a medical certificate to the effect that it would be dangerous to the respondent's health to appear at the bar of the Court or to undergo a sentence of imprisonment. He explained that the breach of the interdict was due to the inadvertence of one of the men in the respondent's employment, and undertook that precautions would be taken against any such breach in future. He moved that the Court should not insist on the attendance of the respondent at the bar, and should impose a fine, and in support of this proposal cited *Hamilton v. Caledonian Railway Company*, November 12, 1847, 10 D. 41; *Anderson v. Conacher*, December 20, 1850, 13 D. 405.

Counsel for the complainer stated that he did not desire the imprisonment of the respondent, but would be satisfied with a fine.

LORD PRESIDENT—In the ordinary case we certainly do require the attendance at the bar of a person who is guilty of a breach of interdict, as it is in the interest of the public that it should be clearly understood that the orders of the Court must be obeyed. Had it not been that in this case the person who was injured by this breach of interdict has taken up the position of not desiring to enforce the attendance of the respondent, I do not think that there would have been anything in the case to justify a departure from the ordinary rule. But having regard to the position taken up by the complainer, and the statements made as to the possible, if not probable, effect on the health of the accused of enforcing his attendance, we are prepared to abstain from making the usual order to that effect, and simply ordain him to pay a fine of £10.

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

The Court, without ordaining the respondent to appear at the bar for sentence, imposed on him a fine of £10 and found him liable in expenses.

Counsel for the Complainer—Malcolm. Agents—Carmichael & Miller, W.S.

Counsel for the Respondent—Grainger Stewart. Agent—Alex. Ross, S.S.C.