HOUSE OF LORDS.

Tuesday, July 27.

(Before the Lord Chancellor (Halsbury), Lords Watson, Morris, and Davey.)

PERTH GENERAL STATION COMMITTEE *v.* ROSS.

(*Ante*, vol. xxxiii. 786, and 23 R. 885.)

Railway—Railway Station—Right of Railway Company to Exclude from Station Persons other than those Using the Railway.

The Perth General Station Committee, as proprietors of the Perth General Station, under the Perth General Station Act 1865, craved interdict against a hotel-keeper, "himself or by his servants . . . unlawfully entering or trespassing upon any of the railways, stations, or other works or premises of the pursuers, and in particular from so entering or trespassing in or upon the Perth General Railway Station or other works therewith connected while wearing the uniform or badge" of the hotel-keeper or of his hotel, and "from waiting the arrival of passenger trains therein for the purpose of obtaining customers" for his hotel.

The respondent admitted that his servants had on various occasions attended at the station wearing the badge of his hotel, that they had been ordered to leave by the servants of the complainers, but refused to do so.

It was proved that the hotel-keeper's servants did not enter the station except for the purpose of accompanying passengers who were leaving his hotel, or of meeting passengers who had intimated that they were to arrive at his hotel, and that neither he nor his servants had caused any obstruction or inconvenience at the station.

The Second Division of the Court of Session refused to grant the interdict.

On appeal the House of Lords (*diss.* Lord Morris) recalled this judgment, and without dealing with the conclusions for interdict, pronounced a finding that "subject to any order or regulation which may be hereafter made by the Railway Commissioners, the respondent . . . as tenant of the . . . Hotel . . . has no right, by himself or his servants, to enter upon or use the Perth General Railway Station except with the leave of the appellants, and under such conditions as they may prescribe."

This case is reported *ut supra*.

The complainers appealed.

At delivering judgment:—

The LORD CHANCELLOR — In this case I have no doubt whatever of the power of the Station Committee to regulate the use of the station—"To regulate it even in the case of passengers actually going and arriving," and these words I have quoted from the judgment of the Lord Justice-Clerk. His Lordship adds that they must be subject nevertheless to being put right if they take any steps in the "regulation of the station which are not truly steps of reasonable regulation, but steps which they have no right to take." And so far I do not differ if these words point to the Station Committee of the Railway Company itself being set right by the appropriate tribunal. But I am of opinion that the station is absolutely the property of the Railway Company, and that the rights of the Railway Company are just as absolute in the first instance as those of any other proprietor. That by appeal to the appropriate tribunal they may be compelled to permit passengers and traffic under a variety of conditions under proper orders of Court is true; but that against their will any member of the public has a right to force himself upon the platform or into the booking-office I cannot agree.

The public has a right to go, and has a right to enter into a contract with them, and the Railway Company may be compelled if they refuse, either by action at the suit of the complaining party, or by an application to the Railway Commissioners. But I should be sorry to throw any doubt on the absolute right of the Railway Company in the first instance to regulate their own traffic in their own way, and to refuse access to their station under the circumstances stated in this case. Of course it would be represented as a ludicrous exercise of authority to prescribe the dress in which persons may approach their station; but I can quite understand the inconvenience which might result to the passengers, that is to say, to the public, if apart from the annoyance of actual solicitation of custom for various hotels outside, the persons who rush in to solicit custom should do it by conspicuous badges describing the hotel to which they belong.

I do not believe that any actual inconvenience to the public can result from the recognition of the right of the Railway Company to carry on their business in their own way. Their own interest is the best security that their strict legal right will not be abused.

I think there would be some difficulty in framing an interdict in the language originally asked, but the order which your Lordships have agreed to is such that I think no inconvenience will arise, and I am of opinion that the interlocutor appealed from ought to be reversed and the order which your Lordships have agreed upon, which is as follows, substituted —[*His Lordship read the order pronounced by the House*].

LORD WATSON — This appeal is from a judgment of the Second Division of the Court of Session, which recals, and in substance re-affirms, two interlocutors pronounced in the Sheriff Court of Perthshire by the Sheriff-Substitute and the Sheriff. Your Lordships are therefore bound to treat the findings of fact contained

in the interlocutor appealed as having the force and effect of the special verdict of a jury. The effect of these findings cannot in the present case be fully appreciated without referring to the circumstances which gave rise to the litigation, which appear on the face of the record, and are not in dispute.

The respondent Alexander Ross is a hotel-keeper, being tenant of the Royal British Hotel, Leonard Street, Perth, in the vicinity of the General Railway Station, the property and management of which are vested by statute in the appellants for behoof of certain companies who use the station for purposes of their traffic. Until the date of this action the appellants, who have a hotel of their own within the limits of the station, permitted all the hotel-keepers in Perth, including the respondent, to have free access to the platforms, by themselves and their servants, for the purpose of accompanying their guests to the train by which they were departing, and of meeting them upon their arrival; but that privilege was qualified by the condition that no servant should on these occasions wear a distinctive badge or livery.

The respondent was dissatisfied with the condition, of which he admittedly had notice, and on the 1st July 1894 he intimated by letter to the appellants' stationmaster—"I am resolved to send my boots to Perth General Station wearing the badge and uniform of my hotel, whereby my customers may be attended to on arrival here, as they are at other railway and steamboat stations over the country." That intimation was followed up by the respondent sending his boots, with badge and uniform, to the passenger platform on numerous occasions during the month of July 1894, who on all these occasions refused to leave the station when requested to do so by the officials of the appellants.

On 26th July 1894 the appellants presented a petition to the Sheriff Court of Perthshire at Perth, craving to have the respondent by himself, or by his servants, interdicted (1) from unlawfully entering or trespassing upon any of the railways, stations, or other works or premises of the appellants; (2) in particular from so entering or trespassing in or upon the Perth General Railway Station, or other works or premises therewith connected, while wearing the uniform or badge of the Royal British Hotel; and (3) from waiting the arrival of passenger trains therein for the purpose of obtaining customers for said hotel. The respondent by his defence denied that he or his servants had committed any trespass, and alleged that the object of the appellants in preventing hotel servants from coming to their platforms with badges, or in uniform, was to give a preference to their own Station Hotel, to his prejudice. His fifth plea-in-law is to the effect that "the object of the petition being an attempt to restrict the liberty of the defender Ross or his servants, in the matter of wearing a uniform or badge, is illegal, and the pursuers are not entitled to interdict."

A long proof was led before the Sheriff-Substitute, who on the 13th February 1896 issued an interlocutor containing various findings of fact and law, by which he refused the prayer of the petition. The basis of the decision is indicated in one of the learned Judge's findings, which is to the effect that the appellants, "as proprietors of said station, hold their said property under the condition of their not preventing its convenient use by any member of the railway travelling public, or with the presence therein of the keeper or servants of the hotel where such traveller has been staying, or which he may propose to go to, except in so far as is necessary for the proper management and control of the station, and for the securing of which the pursuers have power to make such regulation or bye-laws as they may think necessary." The learned Judge appears to have been of opinion that, it not having been proved to his satisfaction that the presence of the respondent in the station, by himself or his servants, interfered with the proper control and management thereof, their exclusion would in point of law constitute an illegal interference with the convenience of the members of the railway travelling public. The Sheriff on the 17th April 1896 affirmed the judgment of his Substitute, apparently in deference to these or similar considerations.

On appeal to the Court of Session the Second Division of the Court, on the 26th June 1896, by the judgment submitted to review, recalled the interlocutors of the Sheriff and his Substitute, and found in fact "(1) that the defender did not, by himself or his servants, enter the pursuers' station except for the purpose of accompanying passengers who were leaving his hotel, or of meeting passengers who had intimated that they were to arrive at the defender's hotel; and (2) that neither the defender nor his servants ever caused any obstruction to or inconvenience at the pursuers' station." Their Lordships found in law, upon these findings of fact, that the appellants were not entitled to interdict, and they therefore refused the petition, with expenses in the Court of Session and in the Inferior Court.

The logical connection between these two findings of fact, and between them and the conclusion of law which is deduced from them, is not supplied by any finding, and is not very apparent. The first would be a pertinent finding if it could be affirmed that every hotel-keeper and his servants have at common law or by statute a right to enter any railway station and use its platform, if they go there for the purpose of accompanying or meeting passengers who are either leaving or have intimated an intention of coming to their hotel, so long as their presence does not cause an obstruction or inconvenience. In that case it would be within the competency of an ordinary court of law to enforce such legal right. It is obvious that the second finding might apply with equal truth to many persons who enter a station without having any legal right to do so. The judgment, as framed, does not deal directly with that which is the real and only question in the

case, viz., what legal right has the respondent to use the General Station at Perth without the leave and against the will of its proprietors? As to the views entertained by the learned Judges of the Court of Session upon that point very little information can be gleaned from the opinions which they delivered at the advising of the case. I find that all of them lay great stress upon the circumstance that it is within the power of the appellants, if they think fit, to frame regulations for the use of their station, and to submit them for the sanction of the Board of Trade; and that these regulations, if approved of by the Board, will be enforceable under penalties. Some of the learned Judges have expressly said, whilst others have plainly suggested, that the proper course for the appellants, in dealing with such claims as are advanced by the respondent, is to proceed by way of regulation, subject to the sanction of the Board of Trade, and not by interdict in a court of law. I cannot concur in that opinion. It appears to me that such regulations are only intended to govern the conduct of those persons whom the owner of the station cannot exclude, or whom he may choose to admit. When their right is permissive merely, and the permission is conditional, I can see no reason why, in order to enforce the condition, a regulation sanctioned by the Board of Trade should be required. I do not think it was intended by the Legislature that the Board of Trade, in sanctioning regulations of that kind, should have jurisdiction to determine what members of the public, if any, being neither travellers nor interested in goods traffic, shall have the right to use a station, or what facilities are to be allowed to those who are entitled to use it.

The claim which the respondent sets up is, in substance, that he and his hotel servants have an absolute legal right to enter upon and use the passenger platforms of Perth General Station without observing the conditions which the appellants have attached to their admission. In my opinion that is a claim beyond the cognisance of a court of law, which can only deal with legal rights as they exist, and not with rights as they might possibly have existed if the Railway Commissioners had been applied to and had affirmed their existence. The learned Sheriff-Substitute, in affirming by his interlocutor as one of the grounds of his decision that the recognition of the respondent's claims to their full extent would be of convenience to members of what he terms the railway travelling public, does not seem to have thought that he was invading the province of the Railway Commission. Yet it hardly admits of doubt that jurisdiction to determine, in the first instance, whether the respondent has a statutory title to demand the privilege which he claims, and if he has a title, to determine finally whether and how far his claim ought to be allowed, belongs exclusively to that body. Accordingly, these are questions with which I conceive that I have nothing to do in the present case, and upon the merits of which I desire to express no opinion.

Apart from any facilities which might by possibility be given him by the Railway Commissioners, whose intervention has never been invoked either by the respondent or by anyone in his behalf, has the respondent any right, capable of being legally enforced, to use the appellant's station at all, or upon any other conditions than the appellants choose to prescribe? That is the cardinal question in this case, and one to which I cannot find that any attempt has been made to give a satisfactory reply in the courts below. The respondent makes no claim as one of the members of the travelling public, or as a person interested in goods conveyed by rail to or from the appellants' station. His counsel, in the absence of any materials for a stronger argument, very fairly and plausibly maintained that the respondent was invited to use the station, and that when using it in response to such invitation he could not be deprived of his natural liberty to clothe his servant with any badge or garment which he chose; and also that the adoption of an hotel badge or uniform was required in the interest and for the convenience of railway travellers who were to arrive at the station on their way to his hotel. The first of these arguments fails, because it is not shown that any invitation was held out to the respondent which was not coupled with the intimation that he was not to send any servant to the station with a badge or uniform. As regards the second, it is sufficient for the purposes of this case to say that the respondent is not one of the travelling public who frequent his hotel. So far as appears none of them have complained that facilities to which they were entitled have been withheld from them by the appellants, and even if they had just cause of complaint, they could have no redress except by an application to the Railway Commissioners.

It is no doubt true that whilst the appellants are vested with the ownership and administration of the station, their statutory powers were conferred upon them by the Legislature, as in the case of railway companies, with a view to the accommodation of the public. But the Legislature has not committed to the ordinary tribunals of the country the duty of determining whether the implied obligation of giving accommodation to the public has been duly fulfilled. When a member of the public, having the right to use a railway or a station, has reason, or without reason thinks fit, to complain that some facility which he ought to have has been withheld from him, or that an undue preference has been shown to others in the same position, a court of law can give him no remedy. He must resort to the tribunal which the Legislature has constituted for that purpose — the Railway Commissioners—and until they have decided in his favour he is not in a position to say, and no court would be justified in holding, that he stands possessed of the right which he asserts.

His claims to use the appellants' station, which have been maintained in defence by

the respondent, appear to me to be in excess of any legal right which he possesses. In my opinion, so long as there is no decision to the contrary by the Railway Commissioners in an application to them by some person having a proper title, it is within the discretion of the appellants either to exclude him and his servants from the station, or to admit them upon such conditions as may be thought fit. The right of the respondent, if he can be said to have any right, must depend upon the extent of the licence accorded to him by the appellants. It may have been a reasonable course, had it been adopted at an earlier stage of these proceedings, to stay the present suit until the respondent had an opportunity, either by himself or through some other person having a more direct interest, of endeavouring to bring his claims, such as they are, under the consideration of the Railway Commissioners. But seeing that the respondent has persisted in relying upon his supposed legal rights, with the barren result of three years' unprofitable litigation, I think your Lordships ought now to dispose of the case as it stands.

This action, although in the form of a petition for interdict, was obviously brought for the purpose of obtaining the judgment of a court of law upon the relative rights of the parties as they existed at the date of the petition, and still exist, and although the conclusions for interdict are so framed that they might be made to square with that view of their relative rights which I have ventured to suggest, I have come to the conclusion that the more expedient course for your Lordships to follow is to make a declaration in regard to the right or want of right of the respondent in such terms as will not exclude him from the benefit of any order or regulation which may hereafter be made by the Railway Commissioners. I am satisfied of the competency of taking that course, and I see no reason to apprehend that the respondent will proceed to act in excess of his rights as defined by the House.

LORD MACNAGHTEN — [*Opinion read by Lord Davey*]—The real question at issue upon this appeal is a very simple one, though it has been complicated to some extent by the terms in which the pursuers have framed their prayer for relief, and by the mass of irrelevant matter with which both parties have encumbered the case.

The appellants are a committee nominated by three railway companies whose lines meet at the General Station in Perth. They are incorporated by the Perth General Station Act 1865. The Act vests the station in them for the benefit of their constituents. The respondent is the lessee and manager of an hotel in Perth known as the Royal British Hotel. On behalf of himself and his servants he claims to be entitled as of right to enter the station for the purpose of accompanying hotel visitors to the railway, and also for the purpose of meeting railway passengers who propose to stop at his hotel.

The appellants apparently do not object to the respondent and his servants escorting hotel visitors to the train, nor do they object to the respondent and his servants meeting railway passengers on their arrival, provided the uniform of the hotel is not worn. Reasonably or unreasonably they object to that, and particularly to a cap which is said to display the name and badge of the hotel in a very conspicuous manner.

It is obvious that if the appellants have the right of excluding from their station all persons except those who use or are desirous of using the railway, they may impose on the rest of the public any terms they think proper as the condition of admittance. On the other hand, they have no power to regulate the dress of persons whom they cannot exclude.

The question, therefore, seems to be this —Is the respondent, when not using or desirous of using the railway, entitled as of right by himself or his servants to enter the station, or, to put the question in simpler form, Are the appellants entitled to exclude all persons other than those who use or are desirous of using the railway?

The learned Judges of the Second Division of the Court of Session, affirming interlocutors of the Sheriff-Substitute and Sheriff of Perthshire, have held that the appellants are not entitled to an interdict against the respondent.

Their Lordships find in fact (1) that the defender did not enter the station except for the purpose of accompanying passengers who were leaving his hotel, or of meeting passengers who had intimated that they were to arrive at his hotel; and (2) that neither the defender nor his servants ever caused any obstruction or inconvenience at the station. Their Lordships all agree in thinking that the broad question, which seems to me to be the only possible question in the case, was not properly raised, but, with the exception of Lord Trayner, they all express an opinion adverse to the right claimed by the appellants. The Lord Justice-Clerk says—"This is a somewhat novel case. Indeed," he adds, "none of the cases which were referred to in the course of the argument come near to it at all." He holds that a servant of an hotel going with passengers, or going to meet passengers, "is going on what is plainly in itself perfectly lawful business." So he is I should say, but it may be that he is going too far when he forces his way into a place which he is forbidden by a competent authority to enter. He says it would be "a very extraordinary thing" if an interdict should be granted against the respondent from unlawfully entering or trespassing upon any of the railways, stations, and other works or premises of the pursuers." Why so, I would ask, if the respondent insists on making an entry which is unlawful? "The station," adds his Lordship, "is a place which he has a right to enter into, and in the course of business may require to enter." Well, that is just the question. If the station is open, can he enter it at all times and under all circumstances, or only when he is tra-

velling or about to travel by the railway, or can he, as the Court seems to think, give himself the right to enter by attaching himself, with or without a special invitation, to persons who have the right of entry? It can hardly be enough that in the course of business, that is, for his own profit, he may require to enter. Lord Young says that the general proposition advanced on behalf of the appellants is "not maintainable." Lord Moncreiff calls it "a startling proposition," which as at present advised he is, he says, not prepared to affirm.

I have the misfortune to differ from the learned Judges of the Second Division on almost every point. I venture to think, with deference, that their findings in fact are not relevant. On the other hand, it seems to me that the general proposition which was advanced on behalf of the appellants, and which was put forward plainly enough in argument, whatever may be said about the pleadings, is well founded in law. I think, too, that that general proposition is sufficiently raised by the claim to interdict the defender from unlawfully entering or trespassing on the station, because I agree with the Court of Queen's Bench—*Foulger* v. *Steadman*, L.R., 8 Q.B.D. 65—in their view that if a man, not using or being desirous of using the railway, enters upon the railway premises after being forbidden to do so, or stays on the railway premises after being requested to leave, he commits a wilful trespass within the Railway Regulation Act 1840, and not the less so because he claims some right which cannot exist at law. Nor can I agree with the Lord Justice-Clerk that the case is a novel one. It seems to me that the question of law was decided, and decided rightly, forty years ago by the Court of Common Pleas, in the case of *Barker* v. *Midland Railway Company*, 18 C.B. 46, to which, unfortunately, the attention of the learned Judges of the Second Division was not directed.

In that case an omnibus proprietor claimed the right to enter a railway station with his omnibus, bringing passengers and goods for conveyance by the railway or going to fetch railway passengers. The first count related to the passengers, the second to goods. The third count stated that "on divers occasions the plaintiff was desirous of bringing his omnibus into the station for the purpose of taking away, on each of such occasions, a person who, expecting to be carried and deposited as a passenger by the defendants to and at the said station, had directed the plaintiff to meet such expected passenger with the said omnibus at the said station for the purpose of taking such passenger from the said station." Each of the first three counts alleged a malicious refusal on the part of the Railway Company to allow the plaintiff to enter. The fourth count alleged that the refusal of the Railway Company to allow the plaintiff to enter their station was a breach of their obligation under the Act 17 and 18 Vict. c. 31, to afford all reasonable facilities for receiving and delivering traffic. The defendants pleaded that the station was their private property, and demurred to the first three counts on the ground that they did not show any right on the part of the plaintiff to enter the station, nor, consequently, any wrong by them in preventing him from entering. They demurred to the fourth count on the ground that it did not disclose any cause of action, and was founded on a misapprehension of the statute for facilitating traffic arrangements.

The Court gave judgment unanimously against the plaintiff. "The declaration," said Chief-Justice Jervis, "proceeds upon the assumption that the station is the private property of the Railway Company, subject to the rights of the public using the railway. It is not contended that the plaintiff was using or seeking to use the railway. What right, then, can he have to say to the company, 'I will use your private property for my profit?' There is no pretence for the action. It has neither principle nor any colour of authority to sustain it, nor does the 17 and 18 Vict. c. 31, give any such remedy as will support the fourth count." Mr Justice Cresswell observed—"The plaintiff had no intention to use the railway, and therefore he has experienced no obstruction which gives him any right of action. He merely desired that other persons should use the railway." "It is said," added Mr Justice Willes, "that it is the duty of a carrier to allow persons who bring passengers or goods to be carried to enter his premises for the purpose of delivering there the passengers or the goods. It would certainly be somewhat extraordinary if any such right could exist in one to whom the company owes no direct duty, but who merely brings to the station the individual with whom the company contracts."

My Lords, I think the reasoning of the Court of Common Pleas is unanswerable, and I cannot think the learned Judges of the Second Division would have dissented from it if it had been brought to their notice.

It was made a matter of complaint that the appellants did not avail themselves of the summary mode of proceeding given them by the Railway Regulation Act 1840. But it must be remembered that the respondent had ample warning, and that he insisted on entering the appellants' station as a matter of right. Having regard to the view that has been taken of this case by the different courts in Scotland before whom the matter has been brought, I think it by no means unlikely that the magistrates would have refused to convict the respondent of wilfully trespassing upon the railway, and I may observe that, although according to the decision of the Court of Queen's Bench in 1872, to which I have already referred, the respondent was a wilful trespasser within the meaning of the Railway Regulation Act, 1840, there is an earlier decision—*Jones* v. *Taylor*, 1 E. & E. 20; of the same court, when presided over by Lord Campbell, in which it was held that the justices were not bound to find a person who came on the land of

a railway company under the belief that he was entitled to do so a wilful trespasser.

If your Lordships maintain the rights asserted by the appellants, I do not think there is any reason to apprehend that the decision will be followed by any of those painful separations between members of the same family which Lord Young seems to contemplate as possible. Railway companies are not insensible to public opinion, or indifferent to motives of self-interest. They are more likely, I think, to be too lax than too rigorous in the exclusion of the public from their stations. Everyone knows that there have been occasions when railway stations have been used for purposes somewhat foreign to the accommodation of travellers.

As the respondent does not claim any special or peculiar right to enter upon the appellants' property, but rests his case on the supposed rights of the public, I do not think it is necessary that he should be placed under an interdict. It will probably be sufficient that a declaration should be made in general terms. It seems to me that it would be enough to make a declaration as proposed to the effect in substance that the appellants are entitled to exclude from their premises all persons other than those who use or are desirous of using one or other of the railways served by their station. I think the appeal should be allowed.

LORD DAVEY — I will only add on my own behalf that I so entirely agree in the judgment of my noble and learned friend Lord Macnaghten, which I have just read, that I have not thought it necessary to prepare a judgment of my own.

LORD MORRIS — I am unable to concur in the judgment which has been moved by the Lord Chancellor.

The action in this case is an action upon a petition for interdict. The subject-matter on which the interdict is sought appears in the prayer of that petition. It is that the defender Alexander Ross, "himself or by his boots," should be restrained "from unlawfully entering or trespassing upon any of the railways, stations, or other works or premises of the pursuers." Stopping there, it appears to me that that is entirely too vague standing by itself. I apprehend it would be necessary in a petition for interdict to state the circumstances and the specific terms on which the person who is to be interdicted is to be prevented from doing that which he seeks. This is merely a general statement that the defender in an action should not unlawfully trespass upon the station and premises of the pursuers. The mere use of the word "unlawfully" cannot give to it any particular validity. If it were private property absolutely, the entry upon it without the assent of the owner would be unlawful, but in this case it was conceded and admitted in argument on behalf of the appellants that a passenger had a perfect right to go upon the station if he intended to use the railway. Therefore, in its generality this statement cannot in my opinion be sustained.

And that appears to have been the idea of the pleader, because, having stated it in these general terms, he points out and particularises the matters on which the defender should be interdicted. No. 1 is, "from so entering or trespassing in or upon the Perth General Railway Station, or other works or premises therewith connected, while wearing the uniform or badge of the defender Alexander Ross." The second is, "and from waiting the arrival of passenger trains therein for the purpose of obtaining customers for said hotel." The answer to the latter of those particular subjects for interdict is that the facts have been found against the appellants. It has been decided as a matter of fact that Alexander Ross or his boots were not there for the purpose of obtaining customers, or, as it is familiarly called, touting for customers, but were there for the purpose of meeting customers who had given an intimation that they were coming. Therefore that ground cannot be sustained, as a matter of fact it being found against the appellants.

Therefore, the whole petition subsides into that portion of it which deals with the defender or his servants entering the station wearing a particular badge. Now, if he had a right to enter the station, he had a right to enter it wearing any sort of badge or costume he wished. I do not feel inclined to follow this subject deeper, because it has been fully and adequately dealt with by Lord Trayner in the Court of Session, and I entirely adopt his reasoning. I am, therefore, of opinion that this petition for an interdict could not be sustained.

But it has not been dealt with in your Lordships' House upon the prayer of the petition. It has now been decided, or is about to be decided, that the appellants are not entitled to a grant of their petition of interdict, which as I understand would make the respondent amenable to contempt of Court if he violated it, but a declaration is to be made of the rights between the parties. I am of opinion that that should be done, if at all, in a suit instituted by the appellants for that purpose, and that it should not be given as a relief upon a petition of interdict which, as I understand, is an entirely different species of suit followed by entirely different consequences. There would have been nothing to prevent the appellants, if the order of the Court of Session was affirmed in this case, from instituting, upon the grounds which I have stated, a suit for a declaration of right. What course would have been taken in that case by the present respondent I cannot say. It is possible he might resist it—it is probable he might resist it. I do not know—but that is not the case which he came to meet. The case he came to meet was decided in his favour by the Sheriff-Substitute of Perthshire, by the Sheriff, and by the unanimous judgment of the Court of Session. In this case, however, the respondent is made to pay the costs of the entire suit in a matter

in which there has been, as it appears to my mind, a change of front to a certain extent, inasmuch as the petition of interdict is not persevered in, but a declaration of right is substituted for it.

Upon these grounds I am of opinion that the order of the Court of Session should be affirmed.

Their Lordships ordered "That the said interlocutor of the Lords of Session in Scotland of the Second Division complained of in the said appeal be, and the same is hereby reversed, except in so far as it recals the said interlocutors of the Sheriff-Substitute and of the Sheriff of Perthshire: And it is declared that, subject to the terms of any order or regulation which may be hereafter made by the Railway Commissioners, the respondent Alexander Ross, as tenant of the Royal British Hotel, Leonard Street, Perth, has no right by himself or his servants to enter upon or use the Perth General Railway Station except with the leave of the appellants, and under such conditions as they may prescribe: And it is further declared, that in respect of the preceding declaration, it is unnecessary to dispose of the conclusions of the present action for interdict: And it is further ordered that the cause be, and the same is hereby remitted back to the Second Division of the Court of Session, with directions to find in terms of the above declarations, and to dismiss the appellants' petition, and to find the defender Alexander Ross, respondent here, liable to the pursuers, the appellants here, in the expenses of process incurred by them both in the Court of Session and in the Sheriff Court: And it is further ordered that the said respondent do repay or cause to be repaid to the said appellants the expenses paid by them to the said respondent under the said interlocutor of the Lords of Session in Scotland of the Second Division: And it is further ordered, that the said respondent do pay or cause to be paid to the said appellants the costs incurred by them in respect of the said appeal to this House, the amount thereof to be certified by the Clerks of the Parliaments."

Counsel for the Appellants—D.-F. Asher, Q.C. — Balfour, Q.C. Agents — Loch & Company, for James Watson, S.S.C.

Counsel for the Respondent — Thesiger. Agents—Stibbard, Gibson, & Wills, for John Hay, L.A.

COURT OF SESSION.

Saturday, June 26.

OUTER HOUSE.

[Lord Pearson.

COWAN (FERRIE'S CURATOR BONIS), PETITIONER.

(Sequel to *Bringloe* (*Ferrie's Curator Bonis*), February 26, 1897, *ante*, p. 449).

Trust—Curator Bonis—Interest on Ultra vires Investment—Mode of Accounting.

A *curator bonis* was found liable for loss incurred on an investment of curatorial funds in a debenture granted by a harbour trust. The debenture bore interest at 4 per cent., but this had for some years been in arrears. *Held* (*per* Lord Pearson, Ordinary) that in accounting the curator was bound to debit himself with the interest at 3 per cent. on the sum invested from the date of the investment until payment, but was entitled to retain all payments of interest actually made on the debenture.

The late Mr James Cowan was appointed *curator bonis* to Mr J. C. Ferrie in 1855. In 1882 he invested part of the curatorial funds in mortgage debentures granted by the Greenock and Port Glasgow Harbour Trust, bearing interest at 4 per cent. In 1895, when on Mr Cowan's petition, Mr F. A. Bringloe, C.A., was appointed *curator bonis*, these lands had greatly diminished in value, and it was held, as appears in the preceding report, that they were not a legitimate investment of curatorial funds, and that the trustees and executors of Mr Cowan were liable for any loss which had been incurred or might be incurred thereon. The case was remitted to the Lord Ordinary for further procedure.

Cowan's trustees lodged a state of accounts, from which it appeared that interest at 4 per cent. had been paid on the debentures until 1887, since when interest at rates varying from 2½ to 1½ had been paid. On 26th June 1897 the Lord Ordinary (PEARSON) pronounced an interlocutor finding the petitioners (Cowan's trustees) liable in interest at 3 per cent. per annum on the sum invested in the debentures in question.

Opinion.—"It having been determined that the Harbour Trust bonds were not legitimate investments of the curatorial funds, and that the petitioners are liable for the loss thereby incurred, the question is, how is that loss to be ascertained? The capital, as I understand, is to be replaced, and the liability of the petitioners as to interest has now to be ascertained. This involves the decision of two matters—one as to the rate of interest to be charged against the curator, and the other as to how the interest already received and credited to the curatory is to be dealt with.

"On the first question, my opinion is that