agreed to protect the owner (defender) from this liability, the latter will have his action. In the meantime he must pay the pursuer's account."

The Sheriff (DAVIDSON) on appeal adhered.

The defender appealed to the Court of Session.

At advising—

LORD ORMIDALE—The justness of the pursuer's account is not disputed, and it is not alleged that it has been paid by the architect. I can find no trustworthy evidence that Deas was not employed like any other architect, and I have no doubt that an architect so employed in the general way has authority to employ a surveyor, and that the surveyor, if not otherwise paid, has a good claim against the employer of the architect.

LORD GIFFORD—I think that the architect is the general agent of his employer for all the purposes connected with carrying out the contract. Deas was the architect employed by the defender, and as such had power to employ a measurer.

LORD YOUNG—I am of the same opinion. If this architect had been employed merely to prepare plans, and he had employed a surveyor, the architect would be the person liable to the surveyor whom he had employed. But the defender wanted not merely plans but measurements, to see what the works could be executed for. The architect had full power to employ a surveyor to do what was necessary for that purpose. The architect might be liable in an intermediate contract with the surveyor to see that he was paid. But that does not arise in the present case.

The Court adhered.

Counsel for Pursuer (Respondent)—Black. Agents—Curror & Cowper, S.S.C.

Counsel for Defender (Appellant)—Lang. Agents—J. & W. C. Murray, W.S.

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*Thursday, March 20.*

## SECOND DIVISION.

[Sheriff of Ayrshire.

## GIBSON *v.* MILROY.

*Reparation—Personal Injury—Obligation to Carry Lamps when Driving at Night.*

Circumstances in which a foot-passenger walking in the roadway on a county road, and injured by a gig driving without lamps on a dark night, was *held* entitled to damages.

*Observations* (*per* Lord Justice-Clerk) on the obligation to use lamps, and upon the rights of foot-passengers in a carriage-way.

This was an appeal from the Sheriff Court of Ayrshire in an action raised by Margaret Duncan Gibson, daughter of the Rev. Henry Gibson, minister of Glenapp, against Thomas Milroy junior, farmer, Glenapp, concluding for £50 in name of damages for injuries caused to her by being thrown down on the public road near Finnart's Lodge by a dog-cart, the property of and then being driven by the defender.

The pursuer on 23d January 1878, about 7 P.M., left the manse of Glenapp with her mother to get aid in a search for her brothers, who were believed to have wandered on the hills. The night was very dark, with high wind and hail showers, which prevented them from hearing the approach of the conveyance. The defender averred that he was driving in the centre of the road when the accident happened, that the injuries were trifling, and that the pursuer had crossed right in front of the pony he was driving, and was herself solely to blame. The night, he further said, was not so dark as to require lamps, which in any view would have been unnecessary.

The Sheriff-Substitute (PATERSON) found for the pursuer, with £6, 6s. of damages. He proceeded on the ground that the accident might have been avoided by proper care and precaution, and that the gig should have been provided with lamps.

The Sheriff (CAMPBELL) on appeal recalled the Sheriff-Substitute's interlocutor, finding that the pursuer had been culpably negligent of her own safety, and had contributed to the injury. In his note he stated that there was no statutory provision that carriages must carry lights, and that there was no such custom averred.

The pursuer appealed, and argued—A passenger on foot was *ex lege* entitled to be on the road as well as on the footpath. If that was so, then the rule of the road applied, and this was violated by the defender. Further, he had no lamps.

Authorities—*Cowden*, 2 Espin. 685; *Chaplin*, 3 C. and P. 554; *Boss* v. *Lytton*, 12 C. and P. 407.

Argued for the defender—As to lamps, it was contrary to the custom of the country to carry lamps on a gig, and farmers objected to lamps as really tending rather to danger than safety. No doubt passengers were entitled to walk in the road, but if a passenger left the footpath he must exercise caution and care. This was exactly the case of *Williams*. [LORD JUSTICE-CLERK—The defender admits that he saw the pursuer fifteen yards off—that he uttered no warning sound—that he did not pull up. Are those not important facts?] The pursuer seemed to have acted on a sudden impulse to cross. This the defender could not foresee, nor could he suppose she would leave a place of safety and go to one of danger.

Authorities—*Williams*, 3 C. and Kirman, 81, and *Pollock*, C. B., there; *Cotton* v. *Wood*, 1860, 8 Scott's C.B. Reps., N.S., 568, and Erle, C. J., there.

At advising—

LORD JUSTICE-CLERK—In this case I agree with the result arrived at by the Sheriff-Substitute. On such a night as this appears to have been—dark and windy, with hail showers—the defender ought to have had lamps on his gig. I am not prepared to say he should have carried them as a matter of obligation, but he certainly should have done so as a matter of precaution. He saw the pursuer, according to his own statement, when fifteen yards in front of him, and thus had ample opportunity for avoiding a collision; but

he has not, I think, satisfactorily explained how it happened that he drove on, and without warning caused the accident. The pursuer had at common law a right to be on the carriageway, and besides that, there does not appear to be any properly constructed footpath on this road. In the circumstances, I am for sustaining the appeal.

Lord Ormidale and Lord Gifford concurred.

The Court sustained the appeal, and awarded £6, 6s. of damages.

Counsel for Pursuer (Appellant) Young. Agents—White Millar, Robson, & Innes, S.S.C.

Counsel for Defender (Respondent) Guthrie Smith. Agents—Carment, Wedderburn, & Watson, S.S.C.

*Thursday, March 20.**

## FIRST DIVISION.

[Exchequer Case.

## M'INTOSH BROTHERS *v.* INLAND REVENUE.

*Revenue—Exchequer Act (23 and 24 Vict. cap. 114), sec. 170—"Offending Herein"—Penalty—Failure to Enter Spirits in Stock-Book.*

Where a spirit dealer failed to enter in his stock-book different parcels of spirits received or sent out on a series of days, and had on the same day both sent out and received spirits also without making any entry, *held*, under section 170 of the Excise Act (23 and 24 Vict. c. 114), (1) that he was liable in a penalty for each day's failure to enter spirits either received or sent out; and (2) that to send out and to receive spirits on the same day without entry constituted two separate offences.

*Question*, Whether there was liability in several penalties for different failures on the same day?

*Exchequer Act (23 and 24 Vict. cap. 114), sec. 176—Where Unentered Spirits obtained by "Grogging."*

Where a spirit dealer had in his stock a large quantity of spirits derived by the process called "grogging," in excess of what he had entered in his stock-book, *held* that he was liable in the penalties imposed by 23 and 24 Vict. sec. 176, the fact of excess being sufficient without reference to its source.

This case was stated for the opinion of the Court of Exchequer by the Quarter Sessions of the County of Edinburgh in an appeal from the Petty Sessions at the instance of M'Intosh Brothers, spirit merchants in Leith, against James R. Wilson, the Excise officer there, the appellants having been convicted of certain infringements of the Excise Statute (23 and 24 Vict. cap. 114), secs. 170 and 176. The charges were of two kinds—"(1) That the appellants failed to enter in their stock-book, which they are ordered to keep by section 170 of that Act, certain quantities of spirits received into stock and sent out of stock; and (2) That on a balance of their stock-book being made in terms of section 176 of that Act, on the 3d and 4th days of October 1877, the appellants were found to have an excess of stock beyond what was shown in their stock-book." Under the first head there were six counts, charging in all twenty-one specific instances of infringement of sec. 170, which was as follows:—"Every rectifier, dealer, and retailer respectively shall provide himself with a book prepared according to a pattern to be given to him on his application to the proper officer, and shall on the same day on which he receives any spirits into his stock or possession, and at such time on that day as he may be requested to do so by any officer, and if not so requested, then at latest before the expiration of that day, write and enter in such book, and in the proper columns respectively prepared for the purpose, the date when, and the christian and surname of the person, or the name of the firm from whom and of what place, the spirits were received, the number of gallons, and the kind or quality of the spirits, and the strength thereof; and every rectifier, dealer, and retailer respectively shall also on the same day on which he shall send out of his stock or possession any spirits in a quantity requiring a certificate as hereinafter mentioned, and at such time on that day as he may be requested as aforesaid, and if not so requested, then at latest before the expiration of the day, write and enter in like manner in the said book the day when, and the christian and surname of the person, or the name of the firm and of what place, to whom such spirits were sent, the quantity and the kind or quality of such spirits, and the strength thereof, and also the number of gallons, and the fraction of a gallon at proof . . . ; and if any rectifier, dealer, or retailer shall refuse or neglect to provide such book, or to make due entries therein as aforesaid, or shall cancel, alter, obliterate, or destroy any part of such book, or any entry therein, or make any false entry therein, or hinder or obstruct any officer from or in examining such book, or making any minute therein or taking any extract therefrom; or if such book shall not be preserved or not produced by the rectifier, dealer, or retailer as hereinbefore directed, such rectifier, dealer, or retailer offending herein shall forfeit the sum of one hundred pounds."

It appeared that there was a failure to enter spirits received upon the 11th, 19th, 20th, and 27th September 1877, and that failure to enter spirits sent out occurred on the 10th, 11th, and several days till the 29th September, and also on the 1st and 2d October. It appeared further that upon the 11th, 19th, and 27th September there was a failure both to enter spirits received and to enter spirits sent out.

Under the second head there was one count charging one specific infringement of sec. 176, and one count for the forfeiture of the excess of stock under that section.

Section 176 was as follows:—"Any officer may at any time take an account of the quantity of all spirits in the stock or possession of a dealer or retailer, and if it be found that the quantity of spirits remaining in the stock or possession of such dealer or retailer exceeds the quantity, which ought to be therein as appears on balancing the book by this Act directed to be kept by him, of spirits received into and sent out of his stock or pos-

* Decided December 21, 1878.