might well hold them to be so. In substance, it mattered not whether they first sold the shares for what they would bring and then made a present of the profit to Mr Maitland, or gave them over to him at par and let him pocket the difference.

A minor objection was stated which at first sight seemed of technical importance, viz., the payment of dividend on a period anterior to the issue of the shares. This, again, is irregular but not substantially vicious. The payment was of so much more money which would come out of the general income of the company.

My judgment of course proceeds on the constitution of this company, and I do not wish to be deemed to approve of this mode of issuing and placing shares on a mixed view of the finances of the company and the merits of an influential individual.

I am for adhering.

LORD ADAM and LORD KINNEAR concurred.

LORD M'LAREN was absent.

The Court adhered.

Counsel for the Complainer—Kennedy—Abel. Agent—R. Cunningham, S.S.C.

Counsel for the Respondent — Balfour, Q.C.—A. S. D. Thomson. Agents—Morton, Smart, & Macdonald, W.S.

Friday, June 26.

SECOND DIVISION.

[Sheriff of Perthshire.

THE PERTH GENERAL STATION COMMITTEE *v.* ROSS.

Railway—Railway Station—Right of Access to Station by Persons not Actually Travelling—Whether Station Committee Entitled to Interdict Hotel Porters from Coming into Station—Interdict—Vagueness of Prayer.

The Perth General Station Committee, as proprietors of the Perth General Station, under the Perth General Station Act 1865, craved interdict against an hotelkeeper, "himself or by his boots or other servant . . . 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 or premises therewith connected while wearing the uniform or badge" of the hotelkeeper or of his hotel, and "from waiting the arrival of passenger trains therein for the purpose of obtaining customers" for his hotel. It was proved that the hotelkeeper did not by himself or his servants 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 Perth Station.

Held that the Station Committee were not entitled to the interdict craved—*per* the Lord Justice-Clerk, Lord Trayner, and Lord Moncreiff, on the ground that, as regards the first part of the prayer, the terms of the interdict craved were too vague and general; as regards the second part of the prayer, that the wearing of a particular badge or uniform, if otherwise lawfully worn, was not *per se* a sufficient ground of interdict; and as regards the third part of the prayer, on the ground that it was not proved that the hotelkeeper sent his servants to await the arrival of trains for the purpose of obtaining customers; and *per* Lord Young, on the ground that the Station Committee's right of property in the station was not such as to entitle them to the assistance of the Court by interdict in preventing persons, whether hotel servants, relations, friends, or private servants, from going into the station for the purpose of assisting persons leaving or arriving by train.

This was an action brought in the Sheriff Court at Perth at the instance of the Perth General Station Committee, incorporated under and in virtue of The Perth General Station Act 1865, and as such proprietors of the Perth General Railway Station, against Alexander Ross, hotelkeeper, Royal British Hotel, Leonard Street, Perth, and Charles Julius, boots at the said hotel.

The pursuers prayed the Court "to interdict the defender Alexander Ross, himself, or by his boots or other servant, or any others in his employment or acting for him, or for whom he is responsible, and the defender Charles Julius, from 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 or premises therewith connected, while wearing the uniform or badge of the defender Alexander Ross or of the said Royal British Hotel, and from waiting the arrival of passenger trains therein for the purpose of obtaining customers for said hotel."

The defender Julius failed to enter appearance, and decree in absence was pronounced against him on 19th November 1895.

The following were the material facts in the case—On several occasions in the month of July 1895 the defender Ross sent his servants into Perth Station while wearing the uniform or badge of his hotel, but they 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 neither the defender nor his servants caused any obstruction or inconvenience at the station. The pursuers had for a long time always objected to the ser-

vants of hotelkeepers in Perth coming into the station to await the arrival of trains dressed in any distinctive uniform or wearing any special badge or cap. The station officials had always regarded it as a rule, in the management of the station, that such action on the part of hotel servants was not to be allowed, and the station police had orders accordingly, but there was no bye-law duly made and sanctioned by the Board of Trade to that effect. The defender, in spite of repeated warnings, even after his boots had been ejected from the station by the station police, persisted in sending his boots to the station with a distinctive cap and badge, and claimed right to do so. The pursuers were themselves the proprietors of the Station Hotel, Perth, and they allowed the servants of that hotel on to the platforms to await the arrival of trains, and these servants were allowed to wear a distinctive uniform. The wearing of a distinctive badge was found to be a convenience to travellers who proposed to stay at a particular hotel, because it enabled them to recognise the boots whose services they wanted, and to entrust their luggage to him for conveyance to the hotel. On the other hand, if no cap was worn, it was found that a passenger who intended to come to a particular hotel was not able to find the boots, and was sometimes taken to another hotel, or went to the Station Hotel, whose servants were easily recognised from their uniform. This it was claimed by the defender was an unfair advantage to the station hotel.

The pursuers pleaded, *inter alia*—"The defenders having trespassed upon the said Perth General Railway Station, the property of the pursuers, and declined to desist, the pursuers are entitled to have such trespassers interdicted by the Court."

The defenders pleaded, *inter alia*—"(3) The defender Ross never having either by himself or his servants trespassed on the Perth General Station, and having no intention to trespass thereon, the pursuers are not entitled to interdict. (4) The pursuers having by statute immediate recourse against the defenders in the event of their wilfully trespassing on the Perth General Station, the present proceedings are unnecessary and oppressive, and the petition should therefore be dismissed with expenses. (5) 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."

The Act 3 and 4 Vict. cap. 97 (for regulating railways) enacts, section 16—"If any person shall wilfully trespass upon any railway, or any of the stations or other works or premises connected therewith, and shall refuse to quit the same upon request to him made by any officer or agent of the said company, every such person so offending, and all others aiding or assisting therein, shall and may be seized and detained by any such officer or agent, or any person whom he may call to his assistance, until such offender or offenders can be conveniently taken before some justice of the peace for the county or place wherein such offence shall be committed, and when convicted before such justice as aforesaid, shall be liable in a penalty of £5 or two months' imprisonment."

The Railway and Canal Traffic Act 1854 (17 and 18 Vict. cap. 31), section 2, enacts—"Every railway company . . . shall according to their respective powers afford all reasonable facilities for the receiving and forwarding and delivering of traffic upon and from the several railways . . . belonging to or worked by such companies respectively, and for the return of carriages, trucks, boats, and other vehicles, and no such company shall make or give any undue or unreasonable preference or advantage to or in favour of any particular person or company, or any particular description of traffic, in any respect whatsoever, nor shall any such company subject any particular person or company, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

By section 1 of the same Act "traffic" is defined to include "passengers and their luggage." By section 3 it is declared lawful for persons complaining of anything done or omitted to be done contrary to the Act "to apply in a summary way by motion or summons . . . in Scotland to the Court of Session . . . or to any Judge thereof, and for the Court by interdict to restrain the contravening company from continuing the contravention, and to enjoin obedience to the Act."

The Regulation of Railways Act 1873 (36 and 37 Vict. cap. 48), section 6, transfers the jurisdiction conferred by section 3 of the Railway and Canal Traffic Act 1854 to the Railway Commissioners, and declares "that they may make orders of like nature with the writs and orders authorised to be issued and made by the said courts and judges, and the said courts and judges shall, except for the purpose of enforcing any decision or order of the Commissioners, cease to exercise the jurisdiction conferred on them by that section."

The Sheriff-Substitute (GRAHAME) on 1st August 1895 granted interim interdict. He subsequently allowed a proof, and thereafter on 13th February 1896 he issued an interlocutor, in which, after sundry findings, he recalled the interim interdict and refused the prayer of the petition, adding the following note:—

Note—"This is an action in which the pursuers, the Perth General Station Committee, who are a body corporate under the Perth General Station Act 1865, and Acts incorporated therewith, founding upon the rights and powers thereby conferred upon them, are seeking to obtain interdict against the defender Alexander Ross, hotel-keeper, Royal British Hotel, Perth, or his servant acting under his instructions, and the defender Charles Julius, the boots at said hotel, from unlawfully entering or trespassing upon pursuers' said station or premises connected therewith, while wearing the uniform or badge of the defender

Ross, or of the said Royal British Hotel, and from awaiting the arrival of passenger trains therein for the purpose of obtaining customers for the said hotel. The pursuers allege in their condescendence that the defender Julius, acting on the order of his master, the defender Ross, and while wearing his hotel livery or badge, and for the purpose of obtaining customers to the hotel, wilfully and unlawfully trespassed on the said Perth General Railway Station, and in terms of the amended and restricted prayer of the petition, an interim interdict, which is now sought to be recalled, was on 1st August 1895 granted against both defenders, and as regarded the defender Julius, who failed to enter appearance and was held confessed, was declared on 19th November last, which was the date of closing the record, to be perpetual. Of the same date a proof was allowed to the pursuers and the defender Ross of their respective averments, and that proof having accordingly been taken, the question to be determined now is whether or not pursuers are entitled to have the interim interdict declared perpetual against the defender Ross, or whether he is entitled to have it recalled. At the hearing of parties on this question, and before considering the question on its merits as disclosed in the evidence, the defender Ross for the first time took exception to the competency of the action as brought into Court, and urged a plea which had not been stated on record, to the effect that in respect the present action was, in terms of the fifth article of pursuers' condescendence, founded on the statute 3 and 4 Victoria, cap. 97, sect. 16, the remedy therein provided against a breach of that statute was the only remedy competent, and that the pursuers not having sought the remedy thus provided, but craved interdict at common law, it must be held that the action is irrelevantly laid, and falls to be dismissed as incompetent. This plea is one which ought to have been stated and disposed of previous to the granting of the interim interdict and the allowance of proof, and in the interlocutor now pronounced I have accordingly given no formal finding in regard to it, but dealt with the case on its merits. At the same time, however, it is right that I should say that the plea in question is one which, even if more timeously urged, I could not have sustained. In the first place, and as regards the objection taken by the defender Ross, that what the pursuers found on is a statutory offence for which a statutory penalty is the proper remedy, I observe that though reference is made in the pursuers' condescendence, article 5, to the defenders' conduct as being a breach of the 16th section of 3 and 4 Vict. cap. 97, still the pursuers do not in their petition found on the statute as being their authority for the action they have raised, but proceed generally upon their right as being, in terms of the Perth General Station Act 1865, and Acts incorporated therewith, proprietors of that station, and as being in right of such proprietorship entitled to protection against the alleged trespasses of the defender on their property, the defender not being entitled under said Acts to any such privileges as he now claims to exercise, and against the exercise of which, as being an unlawful trespass on the pursuers' property, the present action of interdict has been raised. The pursuers' right of proprietorship in the Perth General Station under said Act may, no doubt, be held to be of a qualified character, and can therefore be maintained and used only subject to that use being consistent with the objects in respect of which the pursuers as railway carriers obtained compulsory powers of acquiring its possession. But what they here allege is, not that they possess any special statutory right to insist in obtaining the interdict against the conduct of the defenders in respect of its being a statutory offence, but that their right to pursue the present action is inherent in their right of proprietorship of said station, and that that right not having been conditioned by any qualifying restriction of their ordinary right of proprietorship sufficient to authorise the defender's actings, the process of interdict at common law is competent. The position of the pursuers in regard to this point seems to me to be a sound one, and reference may be made to the leading case of *Cooper* v. *Whittingham*, 15 Ch. D. 501, in which, though it was an action for injunction founded professedly and directly on a section of the statute which created a new offence and enacted a particular penalty, it was held that 'while, as a general law, where a new offence and a penalty for it had been created by statute, a person proceeding under the statute was confined to the recovery of the penalty, and nothing else could be asked for, there was an exception in the case of the ancillary remedy in equity by injunction to protect a right, that being a mode of preventing that being done which, if done, is an offence. Wherever an act is illegal and is threatened, the Court will interfere to prevent the act being done. And as regards the mode of granting an injunction, the Court will grant it even when the illegal act is threatened but has not been actually done, or when it has been done and seemingly is intended to be repeated.' On this ground I therefore am of opinion that the defender's plea of incompetency could not have been sustained, and the question therefore remaining to be considered is, whether or not the pursuers, as proprietors of the Perth General Station, have, as proceeding at common law, established such illegal trespassing on their property by the defender Ross, or those acting under his instructions, as to justify their present crave for interdict.

"Before, however, dealing directly with the question of the defender's alleged trespass as determined by the evidence, it is proper to refer to the argument urged on the defender's behalf at the debate, to the effect that under the provisions of the Railway and Canal Traffic Act 1854 (17 and 18 Vict. cap. 31), in regard to the granting of undue preferences or causing undue prejudice, the pursuers were excluded from

complaining of the defender's alleged actings, and that in seeking to prevent access by him or his servants to the station while wearing his hotel uniform or badge, and from waiting the arrival of passenger trains for the purpose of obtaining customers for said hotel while free admission for the same purpose was granted to the servants of the Station Hotel, they were thereby causing undue prejudice to the defender Ross, and were at the same time giving an undue and unreasonable preference to their said hotel, and that their complaint against the defenders and their prayer for interdict could not be sustained. To this pleading I am unable to give effect. By the Regulation of Railways Act 1873 the power of dealing with the question of undue preference under the provisions of the Railway and Canal Traffic Act is now vested exclusively in the Railway Commissioners; and it has been decided, that not only as in the case of *Murray* v. *The Glasgow and South-Western Railway Company*, 11 R. 205, Nov. 1883, where it was held that an action, founded on the Railway and Canal Traffic Act, for overcharges was only competent before the Railway Commissioners, but further, that, as was held in the English Case of *Rhymner Railway Company* v. *Rhymner Coal Company*, L.R., 25 Q.B.D. 146, and *Lancashire and Yorkshire Railway Company* v. *Greenwood*, L. R., 21 Q.B.D. 215, undue preference (which in the *Rhymner* case was held to be established) cannot be pled as a set-off to another action. The question, therefore, whether or not undue preference to the pursuer or undue prejudice to the defender Ross has been established, under the Railway and Canal Traffic Act, does not fall now to be considered, and the sole point of issue is, as already stated, whether or not the pursuers, as proprietors of the Perth General Station, are at common law, and apart from the statutory provisions of the Railway and Canal Traffic Act, entitled to obtain interdict against the defender Ross on the ground of his having, by himself or his servants, while wearing the uniform or badge of his hotel, illegally trespassed on the pursuer's property, and that he is threatening to continue to do so. In considering this it must be kept in view that an alleged trespass on a railway station is not the same as the case of an alleged ordinary trespass upon private property which has been acquired and is possessed under the ordinary conditions and for the ordinary purposes of proprietorship, and it is right in dealing with the present case that this should be kept in view. The Perth Railway Station was acquired by the pursuers compulsorily and for railway purposes, and they cannot be held entitled to exercise the powers of proprietorship thus obtained in a manner inconsistent with the purposes for which a power of compulsory purchase was given to them. The public, and especially the railway-travelling public, are entitled to require that their enjoyment of the travelling facilities in respect of affording which the pursuers compulsorily acquired the property of the Perth Railway Station should not be interfered with; and in this connection it is worthy of remark that in the Perth Station Hotel Act 1865 the convenience of the railway-travelling public is set forth as a ground on which the building of said hotel should be authorised, and the granting of the statutory authority to erect said hotel may be taken as affording a presumption as well as an illustration of the reasonableness of holding that any unnecessary interference with the convenience of the travelling public in obtaining such hotel accommodation as may be required by them for railway travelling, in connection with either the departure from or arrival by train at the Perth Railway Station, is not warranted in respect of the pursuers' right of proprietorship of said station.

"If the interdict which the pursuers here crave, will have the effect of causing such interference, and as I think the evidence shows that it will, I am of opinion it cannot be granted. Under the present arrangement, which excludes from the pursuers' said station on the arrival and departure of trains any hotel-keeper or his servants while wearing a badge and waiting for customers, except those belonging to the Station Hotel, inconvenience must, I think, be caused to a certain portion of the travelling public, who are thus unable, in consequence of this prohibition, to recognise the boots or servant of the hotel at which they intend to stay, and to whom they might apply for information, or give such instructions in regard to their luggage, or other matters bearing upon their convenience and comfort as they might think right. Such a prohibition as this is, I think, beyond the right of the pursuers to make, and appears to me to be unnecessary, for though no doubt the unrestricted presence of hotel servants in uniform, and seeking or touting for customers at the arrival of trains, would probably lead to confusion and interference not only with the orderly conduct of the railway station business but with the comfort of the railway travellers themselves, the absolute prohibition which the pursuers seek is unnecessary, and whether or not it is their right to enforce this absolute prohibition is the question here at issue, and I am of opinion that it is not. The pursuers have, under the Railway Station Act, power to make such regulations or bye-laws as they may judge necessary for the regulation and control of the station, but they have not done so, and have insisted in the enforcing of their alleged right of absolute exclusion. It has not been shown that the making of such regulations would be ineffectual to prevent the evil referred to, and looking to what is proved to have been done in other stations, the presumption is that such regulations could be made by the pursuers for the admission of hotel-keepers or servants, even while wearing the badge, to the railway station without any injurious interference with its proper management and the convenience of the travelling public. The result which in the whole circumstances I have arrived at is that while pursuers

would be quite within their right in requiring that the presence of hotel-keepers or their servants, while wearing the uniform or badge in the station, should be only allowed under such regulations as might be necessary for the proper conducting of the station business and the convenience of the travelling public, the absolute exclusion which is asked for in the present action is beyond what the pursuers are entitled to require, and that therefore the defender Ross has not unlawfully trespassed on said station, and the interim interdict which has been granted against him ought to be recalled and the prayer of the petition refused."

The pursuers appealed to the Sheriff (JAMESON), who, by interlocutor dated 17th April, adhered, adding the following note:—

Note.—"As is well set forth by the Sheriff-Substitute in his note, this case has nothing to do with the Railway and Canal Traffic Act, nor is it incompetent on the ground that the present action was, as set forth in the fifth article of the pursuers' condescendence, founded to some extent on the Statute 3 and 4 Vict. cap. 67, sec. 16, and that an action for interdict is not the remedy prescribed by said section. This action is purely an application for interdict at common law. Such applications must be very precise as to the acts against which they crave interdict, and it must be clear that the acts which are sought to be interdicted are wrongous. As was said by one of the Judges in the case of *Winans* v. *Macrae*, 12 R. 1051—'Interdicts are granted by courts of law when appreciable wrong to a man, whether in his property or other rights, is threatened;' and in the case of *Hay's Trustees* v. *Young*, 4 R. 398, it was said that 'interdict is a remedy either against a wrong in course of being done, or against an apprehended violation of a party's right, only to be awarded on evidence of the wrong, or on reasonable grounds of apprehension that such violation is intended.' Now, what is the wrong alleged here. It is said generally that the wrong was a trespass upon the private property of the Station Committee; that the station being the private property of the Committee, they are entitled to admit whom they please, and exclude whom they please, subject only to this, that they are not entitled to exclude persons who have travelled or intend to travel by their railways, or who come to receive or send away goods that have been carried or are to be carried by such railways, and that accordingly any other person whom they prohibit to come there is a trespasser if he does come there after such prohibition. I cannot accept this as a correct statement of the pursuers' rights. I think that persons having lawful business in connection with any members of the public travelling by railway are *prima facie* entitled to access to the station in pursuit of such business. In particular, I think that if a traveller by railway writes to his own servant, or to the servant of the hotel where he intends to reside, to meet him at the station and assist him with his luggage, such servant cannot be deemed to be *versans in illicito* in entering the railway station for the purpose of meeting such traveller. It is, however, manifest that the presence of indefinite numbers of such persons might obstruct the railway officials in their duty, especially if they began interfering with passengers' luggage before it was out of the hands of the station servants. Accordingly, every railway company and the present pursuers have power, subject to the sanction of the Board of Trade, to make bye-laws and regulations for the management of their stations, and if these are broken they may be entitled to interdict against such breach. But no such regulations were made in the present case. Apart from such regulations, if it were proved that any particular hotel boots was in the habit of annoying passengers by touting, or of obstructing the station servants in their duty, a good case for interdict might be established against him. But no such case has been proved here, while on the other hand it has been proved that as a rule, at all events, the boots of the defenders' hotel only went to the station to meet customers who had written that they intended to arrive by specified trains. But the groundlessness of the present application for interdict is, I think, most clearly shown by this, that according to the railway officials, and specially the railway constables, who in this matter are entirely corroborated by the witnesses for the defence, the whole *gravamen* of the offence complained of as having been perpetrated by the boots, was that he appeared in the station in uniform, or with a hotel badge on his cap. This appears clearly from the evidence of William Donald, station constable, on the one hand, and of Charles Julius on the other. But that this is so is apparent all through the proof, and the prayer for interdict as amended only craves interdict, 'in particular against the defenders entering the station while wearing the uniform or badge of the defender Alexander Ross or of the Royal British Hotel.' I must say that it appears to me to be out of the question to hold that at common law the Station Committee are entitled to an interdict against anyone wearing what clothes he pleases in their station, unless they are of such a description as to be against decency or likely to cause a breach of the peace. Besides this, it is proved that some distinctive dress or badge is needed to enable travellers to recognise the particular boots whose services they desire to obtain, and I should think it a protection alike to the public and the Station Committee that such badges should be worn. With regard to the first part of the prayer for interdict, I think it is far too general in its terms to be granted, even were there grounds for an interdict at all, which I think there are not. On the whole matter I am of opinion that no case for an interdict at common law has been made out, in respect that no wrong has been proved, and that if it should turn out that the influx of hotel boots into the station is likely to become

a source of inconvenience to the public and the railway officials, the proper remedy of the pursuers is to frame appropriate bye-laws for the regulation of hotel servants awaiting trains at the station which would be applicable to all hotels alike."

The pursuers appealed to the Court of Session, and argued—A railway station was private property, subject to a right of entry in persons coming on railway business—*Case* v. *Storey*, May 31, 1869, L.R., 4 Ex. 319, *per* Kelly, C.-B., at page 323. As regards passenger traffic, railway business was confined to arriving and departing by train—*Case* v. *Storey*, *loc. cit.*—and all other persons, except railway servants, were trespassers. Hotel porters coming with passengers or to meet them were not in the station on railway business. Neither were relatives or friends of passengers or private servants. The presence of all such persons was unnecessary, as porters were provided by the company, and they might be lawfully excluded or admitted by the company as they chose, or admitted subject to such conditions as they chose. They were therefore entitled to prevent persons entering the station wearing any cap or badge to which they might object. In many stations none but passengers were admitted to the platforms. No bye-law sanctioned by the Board of Trade was necessary to effect this. Such sanction was only required to enable a penalty to be imposed. The fact that a penalty for trespass was allowed to be exacted under section 16 of the Railways Act 1840 did not deprive the Station Committee of the right to vindicate their rights by interdict—*Cooper* v. *Whittinghame*, June 4, 1880, 15 Ch. D. 501. In this view the absence of inconvenience founded on by the Sheriff-Substitute was irrelevant, as the owner of property was always entitled to interdict a trespasser whether causing him inconvenience or not. From the case of *Beadell* v. *The Eastern Counties Railway Company*, June 1, 1857, 1 N. & M'N. 56, and 2 C.B., N.S. 509, it appeared that apart from the provisions of the Railways and Canal Traffic Act 1854 a railway company could exclude anyone it chose from a station except passengers. The provisions of that Act could not avail the defender here, as this Court had now no jurisdiction to consider questions under that Act, which were reserved for the exclusive adjudication of the Railway Commissioners—Regulation of Railways Act 1873, section 6—and consequently a breach of section 2 of the 1854 Act could not be pleaded as a defence to an action of interdict. Moreover, the provisions of that section were intended to protect the interests of the public and not those of the individual trader. The trader was therefore not entitled to found upon these enactments, which were *jus tertii* for him, with the result of compelling the Station Committee to give him facilities for carrying on his business in their premises—see *Marriott* v. *London & South-Western Railway Company*, January 30, 1857, 1 N. & M'N. 47, and 1 C.B., N.S. 499, and *Beadell*, *cit.* In these cases the ruling consideration was the interest of the public, not that of the trader. In any event, if the defender desired to found upon section 2, he must do so in an application to the Railway Commissioners. All the cases in the English Courts quoted for the defender in which questions of facilities and undue preference were considered in applications for injunction were decided prior to the Act of 1873, except *Hall & Company* v. *The London, Brighton, & South Coast Railway Company*, June 30, 1885, 15 Q.B.D. 505, which was a special case stated for the opinion of the Court by the Railway Commissioners. The cases of *Winans* v. *Macrae*, June 3, 1885, 12 R. 1051, and *The Institute of Patent Agents* v. *Lockwood*, January 26, 1893, 20 R. 315, and June 11, 1894, 21 R. (H. of L.) 61, were not in point. In the former there was no intention to invade private property, and no assertion of a right to do so, and in the latter there was no invasion of property at all. As to the argument that the interdict would be useless if it would necessarily be displaced by an order of the Commissioners, the Station Committee were willing to take their chance of what that tribunal might see fit to do in the matter. Briefly there were two questions in this case—(1) Was the defender entitled as of right to send his servants into the station? and (2) If not, then were the pursuers entitled to the remedy of interdict in order to prevent him? Both these questions ought to be answered favourably to the pursuers, and they were consequently entitled to the decree craved.

Argued for the defender and respondent—The interdict craved here ought not to be granted. The first part of the prayer was too general in its terms. The second part (the only part which was pressed and desired by the pursuers, who did not seriously object to hotel porters coming into the station unless when wearing a distinguishing dress of some kind) craved interdict against the wearing of a particular uniform or badge. That was not a wrong; interdict therefore ought not to be granted, for where there was no wrong done or threatened the Court would not grant interdict—*Winans* v. *Macrae*, *cit.* As to the third part of the prayer, touting was negatived by the proof. Moreover, interdict was not the proper remedy here. The proper course for the Committee was to apply to the Board of Trade to sanction a byelaw with a suitable penalty. That being so, they were not entitled to interdict—see *Institute of Patent Agents* v. *Lockwood*, *cit.*, *per* Lord Young, 20 R., at page 332, and Lord Herschell, L.C., 21 R. (H. of L.) at page 68. The general question was not raised here, because the Committee were prepared to allow private individuals into the station, and even hotel porters if not wearing distinctive uniforms or badges. This showed that their sole object was to obtain an illegal preference for their own hotel. On the general question there was no analogy between a railway station and the private property of an individual. The railway company were empowered to acquire and hold land subject to its being

used for the convenience of the travelling public. The case of *Case* v. *Storey, cit.*, was not an authority for the pursuers' contention, as it only decided that a station was not in the same position as a public street, a proposition which the defender was not concerned to dispute. In any view, it was conceded that the pursuers were bound to admit persons coming on railway business —*Case* v. *Storey, loc. cit.* "Railway business" covered any lawful purpose connected with traffic, and the hotel porters, acting as the defender's servants did, come under that definition. In cases where none but passengers were admitted to platforms the exclusion was partial and not from the whole station; it was justified by special circumstances, and it was in virtue of a bye-law. The attendance of hotel porters at the station wearing the badge of their hotel was a convenience to travellers. That was the primary consideration, and had always been held so in all the cases—*Beadell, cit., Marriot, cit., Hall & Company, cit.; in re Palmer and London, Brighton, and South Coast Railway Company*, February 20, 1871, L.R., 6 C.P. 194. In the last-mentioned case an injunction was granted against a railway company admitting their own vans within the gates of a station after it was closed to other carriers, on the ground that this was an undue preference. That case was directly in point here. The interdict craved would have the result, and was craved solely with the view of enabling the Committee to give an undue preference to their own hotel. That being so, they ought not to obtain an interdict. It was no doubt now the case that redress against an undue preference must be sought from the Commissioners, but if a railway company sought interdict as here, the defender was entitled to found on the 1854 Act in defence. This was entirely different from founding on it in support of a counter-claim, and therefore the cases quoted by the Sheriff-Substitute were not in point. Courts were in use to consider questions when incidentally raised in a case, or founded on in defence, which they would not have had jurisdiction to entertain originally. Indeed, this Court is not entitled to ignore a public general statute like the Railway and Canal Traffic Act 1854. Although this Court could not prohibit the Joint-Committee from giving an undue preference, they could refuse to grant an interdict which would have the effect of enabling the Committee to do so. Granting or refusing interdict was always a matter for the discretion of the Court, and the Court in exercising that discretion were entitled to give weight to the fact that by granting an interdict they would be enabling the Committee to give an undue preference. If this were not so, however, the interdict ought not to be granted, on the ground that it would be merely vexatious and useless, in respect that it would be at once recalled on application to the Commissioners as conferring an undue preference.

At advising—

Lord Justice-Clerk—This is a somewhat novel case. Indeed, none of the cases which were referred to in the course of the argument come near to it at all. The facts out of which it has arisen are these. The Perth railway station, which, of course, is a station of great size, and has a large number of passengers coming in crowds to it and leaving it in crowds, is managed by a Joint-Committee of several railways. The hotels in the neighbourhood have been in the practice, where the passengers are leaving their hotels and going out by the trains, to supply servants from the hotel to help the passengers with their small things and luggage when getting into the trains. On the other hand, they have been in the practice of sending their servants to the station to meet passengers who had given notice that they intend to come to the hotel and wished to be met by someone from the hotel at the station. There is no question here, so far as I can see, of touting at the station—meeting the trains and touting for passengers who had not expressed any intention at all of going to a particular hotel. It is only at the request of passengers that hotel servants meet them. It further appears that the servants of these hotels have been in the practice by instruction of their masters of wearing a cap or badge, by which it was made manifest to a passenger arriving that a particular individual was the boots or porter of a particular hotel. The Station Committee, while stating that they do not object to the servants of the hotels going to the station with passengers to see them off and meeting passengers by appointment, object to their coming into the station with the cap or badge showing where they come from. A dispute on this point having arisen, and intimation having been given that servants of the hotels would not be allowed to enter the station and go near the trains wearing such a cap or badge, the question was brought to an issue by a servant appearing at the station with his badge or cap on, and on the train entering the station, being ordered out of the station, and on declining to go, being taken out of the station by one of the station constables. Then the Station Committee raised this action of interdict, which is an action whereby it is sought to have it declared illegal for the servants of these hotels to enter the station wearing a badge or cap with the name of the hotel on it, and that if they do so they shall be punishable as for breach of interdict.

Now, these being the facts, I may, in the first place, say unhesitatingly that 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, subject, of course, to the Station Committee 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. But it is to be kept in view that their right to have the station there, and their right to regulate it, originates in those whom they represent having been empowered to make

the railways which come into it, and to make that station, because it was for the public advantage and convenience that it should be made in order that it might be used by the public when travelling. Therefore it is quite plain that all regulations they make must be regulations of proper management for the purpose for which they received statutory right to become proprietors of that place at all, and to erect the station as they did. Now, there is one thing certain as regards these regulations which they may make, that they can get the means of enforcing them if they are regulations that ought to be made, because they can obtain the sanction of the Board of Trade to their regulations, with penalties attached against anybody committing a breach of them. And accordingly we know very well that in all large railway stations a long list of offences which the public are not allowed to commit at stations or on the line, is posted up with a statement of corresponding penalties, and we generally see, under these, placards stating that persons named have been fined for breach of some regulations, such as regulations forbidding persons to alight from a train before it has been stopped, or from getting into the train while it is in motion. But here what is asked is that a servant of a hotel going on what is plainly in itself perfectly lawful business, and for the convenience of passengers coming to the station, shall be prevented from wearing such a cap or badge on his person as shall indicate that he is the servant of that hotel. That is the specific legal wrong which the Railway Station Committee demand shall be interdicted, so that the doing of it in future shall be followed by penal consequences. I say as regards that, which is the specific demand, that if any person goes into the station in such a manner and for such a purpose, that he could not be interdicted from going into the station if he came in what is ordinarily called plain clothes, I cannot see that there is any ground for interdicting him if he wears something of the nature of uniform which is perfectly decent and according to propriety in itself. I see no ground whatever why the company should be entitled to ask interdict against that. I could quite understand that if any person who was not a servant of the company was to insist on dressing himself up in some costume for the purpose of being mistaken, or which might from its character and style be mistaken, for the uniform of an officer of the company in order that he might do something which only officials of the company might do, then steps might be taken to prevent his doing that. But this is nothing more nor less than a demand that a servant from the hotel, of whom it is not said that he might not go into the station to meet a passenger—on the contrary it is said he may go—is to be interdicted from going merely because he has on a cap indicating that he is from the hotel. I do not think that this action forms any ground for granting interdict.

But it is also the fact that this Committee asks for an interdict in general terms. They desire to obtain an interdict against Ross and his servant—why they should have brought in the servant at all I cannot understand—from unlawfully entering or trespassing upon any of the railways, stations, and other works or premises of the pursuers. It would be a very extraordinary thing if such an interdict should be granted. If it was, they could be brought up and subjected to criminal punishment merely because they entered the station. It is a perfectly vague and general demand that the defender is to be interdicted from "unlawfully" entering the station. The station is a place which he has a right to enter into, and in the course of business may require to enter. But in this prayer for interdict there is no definition and no limitation, and to grant interdict in these general terms would I think be out of the question. I am of opinion that we should not interfere with what the Sheriff-Substitute and the Sheriff have done.

LORD YOUNG—We have a very simple case to deal with. There is a general prayer for interdict, to which your Lordship has referred, against Mr Alexander Ross, who is a hotel-keeper in Perth, by himself or by his boots or other servants or any others in his employment unlawfully entering or trespassing upon any of the railways, stations, or other works or premises of the pursuer. Now, it is not alleged that Mr Ross claims any right to be in the railway station unless he is either departing or arriving by a train there, or unless he is going or sending to meet a guest expected at the hotel, and who has sent word that he is coming, or accompanying a guest from the hotel who is going to the station with his luggage. There is no suggestion of any other pretence on his part of right, or that he ever acted otherwise than as a hotel-keeper arriving or departing at that station, or sending guests to the station with their luggage, or sending to meet guests expected at the station, and conducting them to the hotel to which they had sent notice. There is a particular reference in the prayer, no doubt, in regard to wearing a cap or badge, or anything indicating Mr Ross' hotel, but we are relieved from the necessity of dealing with that, although it would be very easily dealt with, by the very proper and candid admission of Mr Balfour that if his argument is good for anything it is good without the cap. He maintains that Mr Ross is not entitled to come with guests from the hotel or to send anybody with guests from the hotel or to meet guests for the hotel with any cap or name of the hotel on the cap. If his argument is good for anything, it is good to exclude that. And it is also good—if good for anything—to have any man interdicted from ever going to meet his wife at the station, or to take her there and see her off with her luggage, or to send his servant to meet her or to see her off. The station is private property, the pursuers say, and they are absolute private proprietors—they are curious private proprietors—the Perth Joint Station Committee incorporated by

Act of Parliament—and they maintained that they were just as much entitled to keep husbands or wives or servants, with or without livery, out of the station as any private individual is entitled to keep anybody out of his dining-room who is not invited or welcomed there. Now, I think that is absolutely ridiculous. It is not law, and it is certainly not sense. I am by no means of opinion that it is for us to say in this action, or perhaps in any action, what a railway company may do in the way of putting up rails or fences to exclude people from approaching a platform where the trains are arriving or starting, and letting in through the gate only certain people, and excluding others. But I am not disposed at all to put up the rail of an interdict against Mr Ross or his servants, or against anybody else, under such circumstances as are set forth here. If this Committee choose to take the responsibility of putting up practical physical impediments, they will be answerable for their conduct, but we are not going to put up an interdict to prevent husbands coming or going with their wives, or brothers with their sisters, or servants being sent with any of the family to see them off and their luggage fairly put on board the train. They may make any regulations they please. They will have to be submitted to another authority before they are approved of and become operative, but in the meantime, upon facts which I think we must find in conformity with the Act of Parliament, here I think there is no case whatever made out for an interdict. The proof makes clear enough—what indeed I think was not seriously disputed—that Mr Ross never sends except with guests from the hotel, or to meet guests who are coming, and therefore we may find that is the fact. But I put the question whether it had ever been disputed that that was the truth of the matter, and the answer I got was "No," and it is rather a curious observation to have to make, and with this long and ridiculous proof—for that is the character of it—that the answer I got from each of the parties to the question was that there was no fact in dispute between them. I put it distinctly to the learned counsel for the complainer here—"Was there any fact in dispute that you desired to prove as the condition of your success in the case"? and the answer was "No, nothing." "Then why was a proof granted"? "I do not know." I put the same question to the counsel for the defender here—"Was there any fact in dispute which you considered necessary to your defence"? "None whatever." "Then did you desire a proof"? "No, not in the least; we desired none,"—and yet we have about one hundred printed pages of proof — all rubbish, almost the whole of it, from beginning to end—although we will have to put findings under the Act of Parliament as to what we hold to be the facts of the case upon the evidence. I would put in merely findings to the effect which I have already stated—namely, that there was no going by the hotelkeeper or sending by the hotelkeeper with passengers or to meet passengers except guests going from or coming to the hotel. And upon that find that there are no grounds whatever for the interdict asked, and accordingly dismiss this application with expenses.

LORD TRAYNER—In the course of the debate before us on this appeal some observations were made indicating that the question here raised involved questions regarding the facilities which the pursuers were bound to afford the public, and of undue advantage conferred by the pursuers on some persons over the advantages conferred on others. In my opinion no such questions are raised here, nor involved in the question, and the only question, we are called upon to decide. Nor do I think it necessary to consider or determine what are the rights of the pursuers in their General Station at Perth and the accesses thereto. Whether their right is absolute, as that of a private proprietor, or conditional and limited by the purpose for which they are alone entitled to hold and use their railway and station, is a matter on which I give no opinion, any such opinion being in my view unnecessary for the decision of this case.

The pursuers seek an interdict in certain terms, and the question is, are they entitled to what they seek. I think they are not. The first thing prayed for is an interdict against the defender "from unlawfully entering or trespassing upon any of the railway stations," &c., of the pursuers. No interdict can be granted on these terms. It is certain that entering upon the pursuers' premises is not, in the circumstances, unlawful for the defender, and to grant interdict in the terms prayed for would leave it to be determined, and that in a *quasi*-criminal proceeding, what was lawful and what was unlawful entering on the pursuers' premises. It would be unfair to the defender to grant any interdict against him without specifying precisely what it is he is prohibited from doing, so that he may know, and know exactly, what he may not do without incurring the penalties which attach to breach of interdict. The second branch of the prayer seeks an interdict against the defender's servant from entering, and the defender from sending his servant to, the station wearing the badge or uniform of the defender or of his hotel. The pursuers have no right to such an interdict, because they have no right to dictate to the persons coming to their station what clothes they shall wear, or to prohibit anyone coming there in whatever costume or uniform he pleases, provided it be decent and one which he is otherwise entitled to wear. The last branch of the prayer of the petition is for interdict against the defender or his servants waiting the arrival of trains "for the purpose of obtaining customers for said hotel." I think this must also be refused. It is not proved that the defender ever went or sent his servant to the station "for the purpose of obtaining customers;" on the contrary, it is established that the defender's servants only went to the station to meet customers who were coming to the

defender's hotel, or with customers who were leaving it, so that there is no ground in fact on which this part of the prayer could be sustained. I am not to be understood as expressing any opinion as to whether the pursuer would have been entitled to interdict in terms of this part of the prayer had the fact averred in support of it been established.

The pursuers have the power to regulate the use of their station by rules and bye-laws issued by them with the approval of the Board of Trade. It appears to me that that affords a better way of regulating the station than is afforded by an application like the present.

LORD MONCREIFF—I am satisfied that the pursuers are not entitled to interdict in terms of any branches of the prayer. They ask, in the first place, that the defenders should be interdicted from "unlawfully entering or trespassing upon any of the railways, stations, or other works or premises of the pursuers." This is far too general. The pursuers were bound to specify wherein the unlawful entering or trespass sought to be interdicted consists. If, for instance, by the words quoted it is meant that anyone who enters the precincts of a railway station without intending to travel by the railway, or without having travelled or arrived by it, commits a trespass, this should have been distinctly stated.

In regard to the remainder of the prayer, I am satisfied from the proof (1) that it is not proved that the respondents entered the complainers' premises for the purpose of "obtaining" customers. They only went there for the purpose of meeting customers who were known to be arriving by train, or to see customers off.

It is not proved that the defender Ross's "boots" touted for business or caused any disturbance or confusion.

As to the "boots'" uniform or badge—if the complainers are entitled to exclude from the station, without reason assigned, any person except travellers, they may attach any conditions they please, and therefore they may exclude a man on account of any badge or uniform he may choose to wear. But taken by itself it is not a ground for interdict.

The more general question which was dealt with in argument, viz., whether the pursuers are entitled as matter of right to exclude not merely from their platforms, but from the precincts of their stations, anyone who has not actually travelled or is about to travel by the railway, is not properly raised. It is not covered by the prayer, and leave to amend was not asked. But I must say that as at present advised I am not prepared to affirm that broad and startling proposition. A railway company is not in the position of an owner of private property. They hold their stations for the convenience of the travelling public. It may be that the ultimate decision as to what facilities they are bound to provide for the travelling public rests with the Railway Commissioners. But when a railway company applies to this Court for interdict on such grounds, in the absence of any deliverance by the Railway Commissioners, I do not think that they should obtain the assistance of the Court unless their right is demonstrated beyond doubt. Now, *prima facie*, there are many cases in which a passenger requires as a necessary convenience the attendance of a relative or servant to see him away or meet him at the train, and to call the relative or servant a trespasser seems an abuse of the term. To recognise the traveller's right to have this accommodation in no way interferes with the railway company's right to regulate the admission of those who are not passengers. They have power to frame regulations to be approved of by the Board of Trade, and possibly they have power without any such sanction to erect barricades at the platforms or other suitable places within the station. But what the pursuers desire to do here is to exclude such persons altogether from the premises. As I have said, whatever remedies they may be able to obtain from the Railway Commissioners on cause shown, I do not think they are entitled to interdict at common law.

The Court pronounced the following interlocutor:—

"Recal the interlocutors appealed against: Find 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 have caused any obstruction or inconvenience at the pursuers' station: Find in law that the pursuers are not entitled to interdict against the defenders as craved: Therefore recal the interim interdict formerly granted: Refuse the prayer of the petition and decern."

Counsel for the Pursuers—Balfour, Q.C. —F. T. Cooper. Agent—James Watson, S.S.C.

Counsel for the Defender—W. Campbell—Graham Stewart. Agent—John Hay, L.A.

Friday, July 17.

FIRST DIVISION.

[Lord Low, Ordinary.

STEVENSON AND OTHERS *v.* STEEL COMPANY OF SCOTLAND, LIMITED.

Jus quæsitum tertio—Superior and Vassal—Obligation in Feu-Contract—Right of Disponee of Superior to Enforce such Obligation—Mutuality of Obligation.

In 1871 the proprietor of B feued to a vassal two plots of land, reserving to himself and his successors in his lands and estate the minerals therein,