

The Dean of Faculty.—I know of no such general rule: I rather think the ordinary practice is to divide the costs.

Mr Skene.—Most indisputably not.

Order given for a New Trial on payment of costs.*

CRAWFORD
v.
MILL, &c.

*Jeffrey, D. F., Hope, Sol.-Gen. and Cockburn, for the Pursuer.
Skene, Buchanan, and Robertson, for the Defender.
(Agents Carnegie & Shepherd.)*

PRESENT,

THE LORD CHIEF COMMISSIONER.

CRAWFORD v. MILL, &c.

1830.
March 15.

AN action of damages against the tacksman of a toll-bar and his servant, and the farmer of the post-horse duty and his servant, for stopping one of the mourning coaches attending the funeral of the pursuer's brother.

Damages to the relation of a person deceased, against the farmer of the Post-horse Duty, for having wrongfully stopped a coach conveying company to a funeral.

DEFENCES for the farmer of the post-horse

* The case was again tried on the 28th and 29th December 1830, when the following verdict was returned:—“ Find on “ the 1st issue, that, on the 4th of August 1826, the pursuer offered to purchase from the defender the estate of Belladrum “ at L. 80,000,—that, on the 8th of August, this offer was accepted, and, on 17th August, the contract of sale was signed “ —on the 2d issue find for the pursuer.

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duty.—There was here no damage which a court can take cognizance of. The defender is not liable for the person under him, who does not hold his commission from him, and was acting beyond it.—For the toll-keeper.—He was entitled to stop the carriage till the duty was paid, or till a ticket was produced.

ISSUES.

“ It being admitted that, on the 30th day of
“ May 1829, the pursuer hired a coach for the
“ purpose of conveying certain persons to Lib-
“ berton Churchyard,—

“ Whether, at or near Mayfield Toll-bar, on
“ the road from Edinburgh to Libberton afore-
“ said, the defenders, or any of them, by them-
“ selves, or others acting under their authority,
“ wrongfully stopped the said Coach, and pre-
“ vented the same from proceeding to the said
“ Churchyard, to the loss, damage, and injury
“ of the pursuer ?”

Cockburn opened for the pursuers and said, The duty and toll were both paid, and the coach, notwithstanding, was stopped, and the persons treated with insolence. The only question is the amount of damage.


Jeffrey, D. F. opened for the defender Mill. —There are a number of good defences for the

farmer of the post-horse duty, who knew nothing of what had taken place till long after. The action is incompetent, as the pursuer was not stopped. This arose from a mistake, and from one of the tickets being altered from two to four, and there was no signature to the alteration. It was the duty of the toll-keeper to stop the carriage; the other is an inferior officer, but not the servant of Mill; and if he had been the servant, and did stop the carriage, this was beyond his employment.

M'Neill, for the toll-keeper.—I adopt much of what has been stated; there is nothing here as to checking the insolence of toll-keepers; the whole arises from the irregularity of the tickets, as those offered were not proper.

LORD CHIEF COMMISSIONER.—The case would be different if it were clear that the ticket was written by the person who let the coach. The tickets are not according to the act, as a blank should have been left for the number of horses, instead of inserting the word two.—(To the jury.)

I am anxious to disentangle this case from the difficulties which surround it. I may think it would have been better if this case had been otherwise settled; but the Court must be open, and justice must be done. In the situation in

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which the pursuer was placed, his feelings were excited, and it is clearly a case where *solatium* may be claimed. It is a mistake to say that this was the coach of those who were in it—they were as much the guests of the pursuer as if they had been in his house. The coaches were his for the day, and he is entitled to bring the action for the disappointment.

The difficulty in the case arises from defect of evidence, as it is not proved by whom the alteration was made on the ticket, and whether the toll-gatherer was bound to notice it. If you think he was, then the farmer of the horse-duty stood in a situation to be liable in damages. By the act, the person using the ticket is bound to fill in the number of horses; and from the state in which these tickets were issued to him, the only way of doing so is by striking out “*two*,” and inserting the number. It would have been better if the *word* instead of the figure four, had been inserted, and it is a question for you whether the alteration which was made was sufficient to attract attention.

As to the toll-gatherer, the question is, whether the tickets were altered in a way to attract his notice?

The tickets are most material. If they were delivered out in a state requiring alteration, then I hold Mill, the farmer of the post-horse

duty, liable,—if the alteration was so slightly made as not to attract attention, I think the verdict ought to be in favour of the toll-gatherer and his servant ; but this is matter for you on inspection of the ticket.

DICKSON & SONS
v.
DICKSON & Co.

Verdict—“ Find for the defenders, Stirling
“ and Pearson, and for the pursuer against the
“ defender, Mill, and assess the damages at
“ L.5 Sterling.”

Cockburn, for the Pursuer.

Jeffrey, D. F., Rutherford, and M'Neill, for the Defenders.
(Agents, *Thomas Baillie*, s. s. c. and *Hugh Watson*, w. s.)

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PRESENT,

THE LORD CHIEF COMMISSIONER.

DICKSON & SONS v. DICKSON & COMPANY.

1830.
March 15.

AN action of damages for executing orders intended for the pursuers, and for violating an agreement not to open letters, the address of which was doubtful.

Finding for the defenders in an action against one company of merchants for executing an order intended for another.

DEFENCE.—The agreement was with a former company, which is dissolved. The pursuer, as an individual, cannot pursue for any