LONDON AND NORTH-WESTERN RAILWAY COMPANY, ... APPELLANTS.
LINDSAY, ... RESPONDENT.

1858. *Feb.* 18*th*, 19*th*, 23*rd*.

Jurisdiction created by Arrestment.—When a foreigner is actually out of Scotland, having at the same time no property in that country, a Scotch creditor must proceed against him in the foreign jurisdiction, according to the universal maxim, *Actor sequitur forum Rei.*

But if the foreigner be the owner of land or heritable property in Scotland, the Scotch Court will entertain jurisdiction over him in respect of that land.

Or, if the foreigner have even moveable or personal effects in Scotland; or, if there be a debt owing to him in Scotland, an arrestment may be used *ad fundandam jurisdictionem*, upon which the Scotch Court will proceed against such foreigner, though absent.

How far the jurisdiction thus created will go,—whether it will reach beyond the particular effects or debt attached,—the Lords abstained from deciding.

Authority of Decisions.—A decision may be very good law, although it has never been confirmed by the House of Lords.

Effect of Interest in a Judge.—Observations on the inconvenient operation of a remote interest in the subject matter of a cause operating to disqualify the Judge.

How far legislation may be necessary or expedient to correct this inconvenience. Peculiarity of the House of Lords in this respect.

THE summons stated that the Respondent, a fruit merchant in Edinburgh, had been in the habit of employing the Appellants to convey fruit for him from Liverpool; that on "several occasions" boxes of fruit had been "broken into and their contents abstracted;" that on the 1st June 1854 six chests of oranges having been forwarded to him, he refused to pay the freight, "except under deduction of the value of the goods

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abstracted;" that the Appellants next refused to convey for the Respondent unless he would agree that the fruit should be at his risk; that the Appellants published placards at their stations, intimating that "No oranges were to be received here for Mr. James Lindsay of Edinburgh;" that the Respondent, under the circumstances, had sustained "great damage and injury;" that the Railway Acts gave no exemption to the Appellants from the ordinary obligations and liabilities of common carriers; and, finally, that the Respondent had proceeded against the Appellants by taking a step which really formed the sole subject of the question brought before the House, namely, "arresting in the hands of the Caledonian Railway "Company, who were debtors to, or had the keeping or "custody of effects belonging to the Appellants *ad fun-*"*dandam jurisdictionem*" (*a*); the meaning of which was that the Respondent, to get over the necessity of suing in England, sought to bring the Appellants within the Scotch jurisdiction by attaching a debt due to them or effects of theirs in Scotland, so as to create a nexus, and thus prevent them from recovering, as against their own debtors, till they had first given satisfaction to him, the Respondent.

The Respondent insisted that the Appellants were bound to make reparation to him, but that they refused, or at least delayed so to do. In consequence of which the present action became necessary. The Respondent, in fact, not only claimed reparation for pecuniary loss, but "a suitable sum by way of *solatium for the injuries his feelings had sus-*"*tained*" (*a*), by reason of the loss of his oranges.

The Appellants defended themselves by denying the allegations in point of fact advanced by the Respondent, but they chiefly insisted that the Respondent

(*a*) So says the Record.

was bound to sue them in England, and that the arrestment relied upon was utterly ineffectual to constitute a forum against them in Scotland.

The question before the House, therefore, was one solely of jurisdiction.

It was stated in the pleadings, that on the 26th of June 1855 the Lord Ordinary *Neaves* had sustained the Scotch jurisdiction,—"in the event of its appearing that funds of the Appellants had been duly arrested within Scotland." His Lordship stated his reasons in the following learned note:—

Arrestment *jurisdictionis fundandæ causa* is not a source of universal jurisdiction; it may be used against absent foreigners, to support some actions, but not to support others. It is well recognized in actions of debt, but it has been held insufficient to found a declaratory action as to personal *status*. *Scruton* v. *Grey*, M. 4822; Hailes, 499.

This remedy has apparently been borrowed from continental countries; and by one of the most familiar authorities on the subject, its limitations are thus generally stated:—"Non tamen omnibus in causis admittendum ad firmandam jurisdictionem hoc sistendi jus; sed tantum, quoties quis actione personali ex contractu vel quasi, delicto vel quasi, aliisque similibus causarum figuris, obstrictus est adversario ad aliquid dandum faciendum, præstandum" (*a*).

If this be a correct view, and in accordance with the law of Scotland, it would seem that a foundation may be laid by arrestment for all *personal petitory* actions; and at least for all actions of which the conclusions could be enforced by means of an arrestment used on the dependence or on the decree.

But the Lord Ordinary does not think that the effect of this proceeding should be extended so as to found a jurisdiction for actions not petitory, but declaratory, recissory, or the like. He can find no example of this kind, and he thinks it would be anomalous and inexpedient to enlarge the rule. The principle on which the law proceeds appears to be, that by this mode of arrestment, funds are fixed within the territory of the Judge on which his jurisdiction may operate, and in respect of which, therefore, he may be required to exercise his judicial functions. But this very principle seems to confine the operation of the rule to those cases where the decree can be enforced against the goods arrested. Neither is there the same equity for allowing parties to proceed by this extraordinary

(*a*) Voet. 13. 11. 4. sect. 25. See also 3 Burge's Col. Law, 1017.

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method where the cause of action is not a special and practica. demand, but some general and comprehensive question of right.

Upon a reclaiming note to the First Division of the Court of Session, the *Lord Ordinary's* decision was substantially adhered to, with this variation, that the Inner House found that "in the event of its appearing that funds belonging to the Defenders have been duly arrested within Scotland, *jurisdictionis fundandæ causa*, the Court has jurisdiction to entertain the action as regards its petitory conclusions, and also as regards the declaratory conclusions, which, as now limited (*a*), are not to be considered as separate or substantive conclusions of declarator, but only as explanatory of and bearing reference to the petitory conclusions to which they are introductory."

In thus deciding, the following opinions were, on the 20th November 1855, delivered by the learned Judges of the First Division of the Court of Session:—

The *Lord President:* I am not much impressed with any argument which has been offered to us against the jurisdiction in regard to the conclusions for damages, and I see nothing in the nature of the particular wrong alleged which can exclude it. As to the declaratory conclusion, I do not venture to say what would be the decision of the Court in regard to actions of declarator in general, but I think that in this case the Lord Ordinary has laid down the principle too widely; and I am in favour of recalling his Interlocutor, in so far as it sustains the defence against that conclusion.

The minute given in by the Pursuer has, to some extent, explained that conclusion, but he might have with advantage gone further, and have stated still more distinctly that this is no universal declarator which he calls for, but that it is only meant to be prefatory to the petitory portion of his action.

Lord *Deas:* I have no doubt of the jurisdiction of the Court, in virtue of the arrestment, as regards the petitory conclusions of the action.

The doctrine of Erskine (i. 2. 19) on the subject (more particularly explained in the relative editorial note) has never, so far as

(*a*) The Respondent had lodged a "minute disclaiming any purpose of asking a decree of declarator more comprehensive than was necessary to clear his right in the subject matter of the petitory conclusion."

I am aware, been disputed; and I believe this is the true reason, as has been stated at the bar, why there are so few reported decisions on the subject. There may be difficulty in applying a jurisdiction so created to an action for specific implement, even of a proper mercantile contract; but if so, the difficulty would arise from there being no means of reaching the person of the debtor to compel him to perform the contract. It may be said that, if there could not be an action for specific implement, there cannot be an action of damages for non-implement. But although the premises were admitted, the consequence would not follow; on the contrary, the very fact that the one remedy could not be sought here might make the other the more necessary. But be this as it may, the jurisdiction cannot, I conceive, be confined to questions of debt arising from direct contract, but must be equally applicable to pecuniary claims of damages arising from the breach of a mercantile contract, like that alleged here, whether express or implied.

The practice being established, it is not necessary to inquire into the reason of it; but the jurisdiction being founded on usage and expediency, it is quite intelligible that it should apply only to cases in which the Court has, to some extent at least, the means of enforcing and making its decrees available, which may fairly be supposed to be the case in reference to pecuniary claims, whether of debt or damages, where the Defender has money or personal effects arrested and detained within the territory.

It is true the money or property arrested may be less than the debt, but that cannot be known at the outset of the cause; the effect of the arrestment is only to found jurisdiction. The operative *nexus* for security and payment falls to be laid on afterwards by arrestments on the dependence, and in execution. In the outset, it cannot be known for what sum, if any, a Pursuer will obtain decree, so as to compare the sum arrested with the sum actually due. Beside, there must be a general rule, and this can only be obtained by holding that the arrestment of any sum or subject, not elusory, will do to found jurisdiction.

Nor can we lay out of view the nature of the implied contract here said to have been invalid. The Defenders, it is stated, carry on the business of common carriers both in Scotland and in England. I do not understand it to be disputed that they undertake the carriage of goods between the two countries; at all events, in this preliminary stage we must assume the Pursuer's allegations to be correct. He undertakes to show that the Defenders became bound by their implied contract with himself and other members of the public to carry his goods from Liverpool to Edinburgh. We cannot assume at present that this was purely an English contract, nor that the law of England is to be held exclusively applicable to it, although, if it were so, this would not be necessarily exclusive of the Scotch jurisdiction. Moreover, I observe, that in the condescendence annexed to the summons

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there is a Statute founded on (17 & 18 Vict. cap. 31), which authorizes procedure in Scotland by motions or summons in the Court of Session; whether anything is to turn on that Statute or not I cannot tell. All these things will be for future discussion, and it will be quite consistent with sustaining the jurisdiction in respect of the arrestment (assuming there are funds actually arrested, to hold, afterwards, if cause can be shown for it, that the action ought not to proceed to decision on its merits in the Courts of this country).

As regards the declaratory conclusions I have more doubt; I do not think them necessary to introduce the petitory conclusions, and if declaratory conclusions were to be introduced at all for mere convenience, as they not unfrequently are, to enable the Court to decide (if deemed expedient) upon the law separately from the facts, I think it would have been more consistent with our practice to have limited these declaratory conclusions to the Defenders' refusal to carry the particular goods mentioned in the condescendence, than to extend them to all the Pursuer's goods which he might have occasion to send from Liverpool to Edinburgh. The damages claimed under this head are damages only in respect of the particular goods referred to, and the minute restricts the declaratory conclusions to what may be necessary to clear the petitory conclusions, so that I am disposed to waive my objections upon this point, which is not one of much practical moment. I say nothing about the conclusion for *solatium*, because any question upon that subject will be for after consideration.

In support of the Appeal the *Attorney General* (*a*) and Mr. *Anderson* contended that the Appellants were not amenable to the Scotch jurisdiction. The arrestment *ad fundandam jurisdictionem* was a barbarous contrivance—of comparatively recent introduction—having no countenance from the Roman law, and utterly opposed to sound legal principle. In *Scruton* v. *Gray* (*b*) it was treated as a novelty, and ridiculed by the more eminent of the Scotch Judges, one of whom said that, according to the doctrine contended for, it was immaterial what was the nature of the property attached or what was its amount; for if the argument were correct, "a bag containing 10,000 guineas, and a bag containing a single toothpick, being equally arrestable, were of

(*a*) Sir R. Bethell. (*b*) Morr. 4822; 1 Haile, 499.

course equally operative to constitute a forum." An umbrella or a walking-stick left by an Englishman in Scotland might be fastened on, and made instrumental in subjecting that Englishman to every sort of jurisdiction, whether to fix him with a debt, to bind him to a contract, or to subject him in damages. These consequences, arising from causes so trivial, show that the jurisdiction has no solid foundation; and in point of fact it has never yet received the sanction of this House. We therefore submit that the decision appealed from ought to be reversed.

[Lord BROUGHAM: We must not allow it to be said that a decision is not good law merely because it may not have been confirmed by this House.]

For the Respondent the *Lord Advocate* (*a*) and Mr. *Rolt*.

Lord Chancellor's opinion.

The LORD CHANCELLOR (*b*):

My Lords, this case raises a very short though a very important point; the only question being one of jurisdiction. An action was brought by Mr. Lindsay, who is a fruit merchant in Edinburgh, against the London and North-western Railway Company, a Company established in England; and the complaint that he raises is that the Defenders, being in the nature of common carriers from Liverpool to Edinburgh, contracting as common carriers to forward goods from Liverpool to Edinburgh, were guilty of misconduct in their dealing with Mr. Lindsay, in respect that they would not properly carry his fruit. It does not matter what the exact particular of the complaint is, either that they did not carry it properly, or that they refused to carry it except upon certain terms, or that they otherwise conducted themselves as common carriers ought not to have done.

(*a*) Mr. Moncreiff. (*b*) Lord Cranworth.

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To that complaint several answers were made by the Railway Company. The only one which is now before your Lordships is this. In their second plea the Defenders say that they, that is, the London and North-western Railway Company, the present Appellants, being an English Company, and their line of railway being wholly in England, and the act complained of by the Pursuer having occurred in England, and the action being an action of declarator of the Defenders' obligations under the common and statute law of England, the Pursuer is bound to sue the Defenders in the Courts of England, and the arrestment used by him is inept to found a jurisdiction in Scotland against the Defenders. This is the question.

What, then, are the authorities as to this point in the law of Scotland? The Court of Session held that they had jurisdiction; and I am prepared to state to your Lordships that, in my opinion, that decision rests upon authority which it would be impossible or improper for your Lordships to controvert, even if there were more difficulty in acting upon it than in truth I think there is.

It was urged that the decision below led to conclusions of very great inconvenience, not to say absurdity, and extreme cases were put by the *Attorney General.* It was said, for instance, if a gentleman leaves his umbrella, or as in the printed cases it appears that one of the Judges puts it, if a gentleman leaves a box of toothpicks, would that give jurisdiction? I think there are two answers to these cases. In the first place, as one of the learned Judges says, the property seized must not be so small as to make the seizure illusory. There may be difficulty in dealing with that, in determining what is illusory; that, however, is one answer. But another answer is this, that the decision of the present question does

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not determine how far the jurisdiction is to go; whether so as to enable the Court to give relief beyond the property seized. And if, according to the opinion of some of the Judges, the only effect of the arrestment is to give jurisdiction so as to enable the Pursuer to take execution against the property arrested, then the smallness of that which is arrested would only show that in such a case only a small remedy can be obtained. But in truth we are not to examine too closely into what are the consequences or into what was the origin of this jurisdiction, if we find, as I think we undoubtedly do find, that for at least a century it has been exercised; and that this arrestment has been considered to be a lawful foundation for the jurisdiction of the Court, and on which the Court has acted apparently without doubt or hesitation.

My Lords, there are earlier cases on the subject, but the first that has been referred to which is important is one which occurred in the year 1758, now exactly 100 years ago. It was as follows:—

"Ford, a merchant residing in Berwick, intended to apply to the sheriff of the Merse for a border warrant to arrest the goods of two merchants in London, his debtors, but was advised that the sheriff might have a difficulty in granting this warrant as in other cases, because Ford was an Englishman and resident in England. A petition was therefore given in to the Lord Ordinary on the bills, who reported the case to the Lords. The Court was unanimously of opinion that the Lord Ordinary should grant the warrant for arrestment, *jurisdictionis fundandæ causâ*, and approved of this method of applying to the Court, seeing a petition to the whole Lords was unnecessary, as there was no intimation to the Defenders" (*a*).

When Mr. Erskine wrote his learned work, a very few years afterwards, he treated the matter as clear, because he says:—

"When a foreigner, who is actually abroad, hath no other than moveable effects within this kingdom, he is accounted so little subject to the jurisdiction of its Courts, that no action can be

(*a*) Morr. 4835.

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brought against him till those effects be attached by an arrestment, called *arrestum jurisdictionis fundandæ causâ*."

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In 1772 the question was discussed in *Scruton* v. *Gray* (*a*), in which it is true it was held that the jurisdiction did not exist, but why? Not because it did not exist in ordinary cases, but because that was a case in which the question was as to the personal status of the individual Pursuer, whether or not she was the lawful wife of the Defender, having been married in Ireland in some way the validity of which was doubted. And it was held that for the purpose of an action of that nature this jurisdiction did not exist. But its existence ever since that case has been treated as the established law, and I cannot find that the least doubt was thrown upon it in the several cases which occurred intermediately between that case and the more modern cases, some very few only of which I will just refer to, which show clearly that this has been from the first understood to be the law, and has been always acted upon as the law.

In the year 1831 there arose the case of *Douglas* v. *Jones* (*b*), an extremely strong case to show the opinion of the Courts upon this subject. There an Englishman of the name of Jones, residing in London, took a lease of a house at Glasgow for seven years, for the purpose of carrying on the business of a grocer in partnership with other persons. An action was brought against Jones in the Court of Session, and in order to give jurisdiction the Pursuers arrested certain debts due to Jones from the firm of grocers that were carrying on the business at Glasgow. It was contended that the possession of the lease was in truth the possession of real property by Jones in Scotland, and that that undoubtedly gave jurisdiction. No doubt if a person has heritable property in Scotland

(*a*) Morr. 4822. (*b*) 9 Shaw & Dunn, 856.

that entitles the Court to exercise jurisdiction over him. But the matter being discussed, it was held that the mere possession of the lease was not sufficient to give jurisdiction, but on the other hand it was held that there certainly was jurisdiction by the seizure of the debts, though they were only unliquidated debts, to be ascertained by taking the accounts between Jones and his partners. That appears to me an extremely strong case.

But there was a still stronger case in the year 1846, fifteen years afterwards, (the case of *Douglas* v. *Jones* having been in 1831,) the case of *Parken* v. *The Royal Exchange Assurance Company* (*a*). Parken was an Englishman resident in London. The Royal Exchange Assurance Company, I need not say, is an English corporation. Lord Elibank having died in England, there was money due upon his policy, and inasmuch as the Royal Exchange Assurance Company had money deposited in a bank in Scotland, the Pursuer proceeded in the Scotch Courts to recover the money due upon the policy, and founded his jurisdiction by arresting the money that was due to the Company in the bank. There both parties were permanently resident in England. It was only the accident of there being money due to the Royal Exchange Assurance Company in a bank in Scotland which gave any jurisdiction to the Scotch Courts upon the subject. But in that case Lord *Moncrieff* says, "I can have no doubt that this Court has jurisdiction in virtue of the arrestment of the funds of the Defenders in Scotland *ad fundandam jurisdictionem* to entertain and give judgment in the present action. That form of process has been long established in our law and is in daily practice." I need hardly say that a higher authority

(*a*) 8 Sec. Ser. 365.

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than Lord *Moncrieff* does not exist, and when he treats that as a matter entirely clear, it must be a very strong ground indeed upon which your Lordships would feel warranted to depart from what is so laid down.

That, as I have stated, was in 1846, prior to what happened two years after, in 1848, namely, the case of *Cameron* v. *Chapman* (*a*), because in that case it was held that the jurisdiction did not exist. But why was that? In *Cameron* v. *Chapman* there had been an arrestment *ad fundandam jurisdictionis* against a person who before the cause came to an end died, and the question was whether that arrestment was sufficient to warrant a transference to the personal representatives of the Defender, and upon discussion it was held not to be sufficient, because though the arrestment was perfectly good to warrant a jurisdiction against the person whose goods were seized, yet it would be carrying the principle of the Scotch law a step further to hold that the arrestment gave jurisdiction against the personal representative whose goods had not been seized; and therefore upon that distinction, and that distinction only, it was held that the jurisdiction did not prevail in that case.

My Lords, these cases appear to me to put the matter beyond any reasonable doubt. Several other cases were cited, but I should be only wearying your Lordships by referring to different cases to illustrate the same principle; and I shall content myself, therefore, with merely referring to what was said by Lord *Eldon* in *Grant* v. *Pedie* (*b*), where a different question arose, a question as to whether there was jurisdiction *originis causâ* against a Scotchman, who was born a Scotchman, but who had quitted Scotland permanently and become resident abroad. Lord *Eldon*

(*a*) 16 Shaw, 907.

(*b*) 1 Wils. & Sh. 720.

in that case held that there was not; but in the course of the discussion of that case Lord *Eldon* said, "There is a law in Scotland under which if the Defender has real estate in Scotland, or if he has goods in Scotland, or if a contract upon which a party sues be a contract formed in Scotland, that, following particular forms, those circumstances would undoubtedly give a jurisdiction to the Court of Session." Of course referring to this very jurisdiction.

Lord Chancellor's opinion.

When we find, therefore, that this jurisdiction has been recognized by text writers of the greatest eminence, by Mr. Erskine, and I believe in Bell's Commentaries the same thing is stated, and that it has been clearly acted upon from 1758 downwards, and treated by Judges of the highest authority (I need not name any other than Lord *Moncrieff*), upon more than one occasion, as an undoubted source of jurisdiction possessed by the Courts in Scotland, and that it was clearly so acknowledged by Lord *Eldon*, it appears to me that your Lordships would act a very unwise part if you were to raise any doubt upon such a question by giving countenance to this Appeal. Therefore, I move your Lordships that this Appeal be dismissed, and the Interlocutors be affirmed.

Lord Brougham's opinion.

Lord BROUGHAM:

My Lords, I entirely agree in the view taken of this case by my noble and learned friend, that it is impossible for us to doubt the existence of this jurisdiction after the authorities to which we have been referred, and which we have fully considered, consisting not only of text writers, but of a decision upon the subject prior to them, because the decision to which my noble and learned friend referred was, as he observed, exactly 100 years ago, before Mr. Erskine's

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work was published, and before he wrote that passage, and that decision was in favour of this jurisdiction.

My Lords, the cases which have been cited, in later times particularly, leave no manner of doubt as to what the prevailing, I would almost say the universal, opinion of the Scotch lawyers is upon the subject of this arrestment *jurisdictionis fundandæ causâ*. The case of *Douglas* v. *Jones* has been referred to by my noble and learned friend. That case was decided by the Court below in 1831. But I refer to the more recent case, in 1846, of *Parken* v. *The Royal Exchange Assurance Company*, and I refer to it for the reason for which my noble and learned friend referred to it, namely, for the clear and unhesitating opinion, or rather I should say the clear and unhesitating judgment, there given upon this subject by that most excellent lawyer, to whose authority this House has at all times been accustomed to pay the greatest respect, I mean the late Lord *Moncrieff*. Nothing can be clearer or more unhesitating than the manner in which he states this, and treats it as a thing perfectly well known, acknowledged and admitted on all hands to be the law of Scotland.

My Lords, the dictum of Lord *Eldon* in *Grant* v. *Pedie* is said to have been so far *obiter* that it was not necessary for him to rely upon it in deciding the case then before him; but nevertheless it is of some authority, because it shows that he, with all his great knowledge of Scotch law and his long experience of Scotch practice, took for granted that this was a clear and settled point, and that there was no more doubt about it than about any other of the most certain points and the plainest elements of Scotch law.

My Lords, something has been said about this being a barbarous law. I think there was an old case

quoted from Lord *Haile's* Reports, in which it was said that this was a foreign and somewhat barbarous law. And among other grounds of objection taken by Lord *Monboddo*, a most able and eminent classical scholar, he objected to the barbarous word "*arrestum.*" We do not deny here that that is a barbarous word; but we English lawyers have no right, Heaven knows, to quarrel with this expression when we remember the barbarous Latin that is used, and used *in pari materia*, namely, to distinguish our own process. How can any one object to the phrase *arrestum jurisdictionis fundandæ causâ* (*a*), who is accustomed to hear of the writ "*De essendo quietum de theolonio*" (*b*) ?

Upon the whole, I am clearly of opinion that there is no ground whatever for calling this decision in question. A point may arise, but that we are not called upon to deal with here, it may be mooted whether or not the arrestment goes beyond the detention of the goods arrested. In the case that has been put of the umbrella, the hat, and the toothpick, that question might be got rid of by saying that in that case no harm can be done by the jurisdiction being given, because it is a jurisdiction only over those small parcels of personal property. But, my Lords, I do not enter upon that at all. It is wholly unnecessary for us to decide whether this goes beyond the goods arrested, or the debt arrested, if it happens to be a debt that is arrested. The only question for us to decide is, Does arrestment *jurisdictionis fundandæ causâ* exist in the law of Scotland? And where it has been used, does it give jurisdiction? Beyond that it is wholly unnecessary for us to go. I am clearly of opinion that upon the authorities, and, above all, upon

(*a*) 1 Haile, 501.

(*b*) This interesting writ forms the subject of a chapter in the Registrum Omnium Brevium, p. 258.

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the authority of the cases to which we have been referred, it has been for the last 100 years on all hands acknowledged to be the law of Scotland. In my own recollection I have often heard the question mooted among Scotch lawyers. Certainly when the subject has been mentioned some regret may have been expressed, and some doubt may have been expressed, whether it ought to have been the law, and whether if it were the question of now introducing it, it would be a law that ought to be introduced; but I have no recollection of ever having heard it doubted that the law has for a century existed.

Interlocutors affirmed, Appeal dismissed with Costs.

N.B.—At the opening of the above case, on the 18th February 1858, the *Lord Chancellor* (*a*) addressed the Bar from the Woolsack as follows:—I am sorry to say that in this case we shall not have the benefit of Lord Wensleydale's assistance, because he is a shareholder in the Railway Company.

Mr. *Attorney General:* (*b*) I very much regret it, my Lords. Assent on my part, as representing the Railway Company, would not be of any avail, but I rather apprehend that my learned friends who appear for the Respondent, if they had been here, would have joined with me in that regret.

The *Lord Chancellor:* I must say that in the present state of our social relations, when almost everybody has shares in some or other of these companies, to suppose that that disqualifies them from discharging judicial functions in cases in which those companies are concerned is a very dangerous doctrine.

Mr. *Attorney General:* Certainly, my Lord; I urged that very strongly in a case that arose in this House some years ago (*c*).

Lord *Brougham:* You mean in the case in which Lord Cottenham was a shareholder.

Mr. *Attorney General:* Yes, my Lord; but I am sorry to say that the rule in that case was carried to a very great extent. In former times, it will be remembered that it was not the rule acted upon. Lord Eldon was a holder of Bank stock, but he never for a moment considered that he was disqualified from adjudicating in a

(*a*) Lord Cranworth. (*b*) Sir R. Bethell.

(*c*) *Grand Junction Railway* v. *Dymes,* 3 House of Lords' Cas. 754.

case in which the Bank was concerned; but at present the law so stands, that I am afraid it would require the interference of the Legislature.

Lord *Brougham:* Even if the consent of the parties were given.

The *Lord Chancellor:* I do not think that any legislative interference can be necessary in the case of appeals to this House, for, according to that rule, in almost every case the decision must be bad, because the judgment is the judgment of the House itself, and there is, we may depend upon it, in every case some one Peer or other who has an interestin the case where a large company is concerned.