

ment of meters as well as weighers under the said Greenock Harbours Act 1866, but had not appointed or licensed in terms of the general Act of 1847, any persons to act as meters, though cargoes of timber, grain, oil, and other articles, the contents of which are ascertained by measurement, are unshipped within the limits of the port of Greenock. The licensed weighers were appointed on the abolition of the customs duties on sugar in 1874, previous to which their duties were performed by an officer of customs called a landing waiter, who attended the discharge, and an officer of customs called a weigher or weighing porter likewise attending the discharge and performing the manual labour in connection with the beam and scales. The appellant was a clerk in the employment of Messrs Robert Fraser & Co., sugar importers, Greenock. The Messrs Fraser refused to employ a licensed weigher, and sent the appellant to weigh the portion of the cargo consigned to them. The appellant was accordingly charged with the offence before the Greenock Police Court, convicted, and ordered to pay a modified fine of £3, 3s. with the alternative of five days' imprisonment.

He appealed to the Court of Justiciary, and argued—(1) The magistrate, as one of the Harbour Trustees, could not competently try the case. (2) The Harbour Trustees, not having appointed meters as well as weighers, in terms of the Act, the offence could not be committed. (3) The appointment of licensed weighers was not intended by the Act to prevent a consignee of goods weighing for himself if he chose to do so.

At advising—

LORD YOUNG—On the first objection our opinion is that as regards the jurisdiction of the magistrate there is no ground for complaint. On the second, I am of opinion that it is no objection that there were no licensed meters. The facts seem to be that certain goods were consigned to R. Fraser & Co., and they sent their clerk, who is the appellant, to weigh them. He obeyed his orders, and attended to the beams and scales which belonged to his masters. In doing so I do not think he was guilty of any offence under the statute. If it could be held that the Messrs Fraser were guilty of illegally employing an unlicensed person to weigh their goods they ought to have been prosecuted, but I think they were not guilty of a contravention of the Act. The meaning and object of these statutory provisions is to secure a trustworthy staff and to prevent interlopers. Interlopers are discouraged by being liable to fines, and also by their employers being subject to fines. But the statute does not strike at the case of a merchant sending his clerk to weigh. Illustrations of hackney coaches and porters apply. The fact that a certain number of cabs are licensed to ply within a certain district does not prevent any one from driving his own carriage, and because there are a staff of licensed porters is no reason why a person should not make his private servant carry his bag. I do not think it is incumbent on the merchant to have his goods weighed except for his own purposes, and the Harbour Trustees may weigh if they please for themselves. I am of opinion that the conviction should be quashed.

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LORD CRAIGHILL—I am of the same opinion. I think the course followed here shews that the object of the weighing was for the merchant's purpose and not for the public purpose.

The LORD JUSTICE-CLERK concurred.

Counsel for Appellant—Balfour—Robertson.  
Agents—Mason & Smith, S.S.C.

Counsel for Respondent—Dean of Faculty (Watson)—Asher. Agent—William Archibald, S.S.C.

Friday, June 30.

SUSPENSION—KAY v. LOCAL AUTHORITY  
OF KELSO.

*Public Health (Scotland) Act 1867—Summary Prosecutions Appeals (Scotland) Act, 1875 sec. 9—Conviction—Appeal.*

The 9th section of the Summary Prosecutions Appeals (Scotland) Act 1875, provides that "any person who shall appeal under the provisions of this Act from any determination of an inferior judge from which he is by law entitled to appeal in any other manner of way to any superior or other court, shall be taken to have abandoned such title to appeal in any such other manner of way as aforesaid."

A person convicted of an offence under the Public Health Act 1867, applied to the Sheriff to state a Case for appeal under the provisions of the Summary Prosecutions Act 1875, section 9, but before the case was signed withdrew from the prosecution of his appeal under that Act.—*Held* that the appeal was not taken till the Case was signed, and that in the circumstances appeal in another way was competent.

The suspender, who is a farmer, was convicted, along with his landlord, by the Sheriff of a contravention of the Public Health (Scotland) Act 1867. The appellant and the landlord both applied to the Sheriff to state a Case under the provisions of the Summary Prosecutions Appeals (Scotland) Act 1875. Caution was found, and the Case was prepared and submitted to the parties, but before it was adjusted and signed the tenant withdrew from the further prosecution of his appeal under that Act. The landlord insisted in his appeal, and the judgment of the Sheriff was reversed. The tenant then brought the present suspension.

Argued for the respondent—The suspension is incompetent. By section 9 of the Summary Prosecutions Appeals (Scotland) Act it is provided, that "any person who shall appeal under the provisions of this Act from any determination of an inferior judge from which he is by law entitled to appeal in any other manner of way to any superior or other court, shall be taken to have abandoned such title to appeal in any such other manner of way as aforesaid." Here the suspender took an appeal by applying to the Sheriff to state a Case, and he cannot by withdrawing his appeal by minute renew his right to

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suspend. Review is also excluded by section 108 of the Public Health (Scotland) Act. The suspender has lain bye for four months, until he saw the result of the landlord's appeal, and has so disenthralled himself to suspend.

At advising—

LORD JUSTICE-CLERK—I think we must give a liberal interpretation to the clause which cuts off the common law remedies. I do not think we can give so stringent a construction to it as to hold that the preparing of the Case amounts to an appeal being taken.

LORD YOUNG—I concur. The respondent's argument is strict to inadmissibility. There is nothing in the Act to prevent a party reconsidering his position after he has required the judge to state a Case, and if he thinks proper withdrawing from the prosecution of his intended appeal. The Court might prevent him abandoning his appeal at a time when to do so would be injurious to his antagonist; but we have no such case here.

LORD CRAIGHILL concurred.

Counsel then proceeded to argue the remaining questions, but ultimately consideration of the case was superseded by the Court until October.

Counsel for Suspender—Moncrieff.

Counsel for Respondent—Balfour.

Friday, June 30.

APPEAL—ARTHUR V. PEEBLES.

Act 2 and 3 William IV. c. 68—Conviction.

A person was convicted of trespass by entering, and being without leave of the proprietor "in and near," a field, &c.—*Held* that the expression being "in and near" was ambiguous, and did not warrant a conviction under the statute.

Thomas Arthur, a bolter, residing in Dundyan, in the parish of Old Monkland, Lanarkshire, appealed against a conviction obtained against him by John Kidd Peebles, procurator-fiscal for the county of Lanark. The indictment upon which the conviction was obtained set forth that the appellant, along with another man named Abraham Burton, had been guilty of an offence within the meaning of the Act 2 and 3 Will. IV. cap. 68, entitled "An Act for the more effectual prevention of trespasses upon property in pursuit of game," in so far as on the 15th of May 1876 the appellant and the said Abraham Burton did commit a trespass by entering, or being without leave of the proprietor "in and near, a field in the farm of Kirkstyle, in the parish of Old Monkland and county of Lanark (the property of the Rev. Sholto Douglas Campbell Douglas of Rose Hall, and occupied by James Buchanan, a farmer), in search of game, and did kill a hare on said field. Secondly, they were charged with committing a further trespass by entering or being without leave of the proprietor in the field on the farm of Bankhead, (the property of David Carrick Buchanan of Drumpellier, and occupied by John

Hendrie, residing at Kirkwood) in pursuit of game. The appellant, on being brought before the Justices of Peace for the county on this charge on the 1st of June, was fined £1, 10s. of modified penalty, with £2, 13s. 6d. of expenses, and in default six weeks' imprisonment. The charge against Burton, who was not charged with the offence till the 5th of June, was found not proven, although the two men were both together and the appellant had been convicted. The appellant therefore, on this ground, and also in consequence of an alleged informality in the indictment, craved a bill of suspension and liberation.

Argued for him—(1) In libelling a charge under the statute the language of the statute must be used. Accused is not charged with entering on any lands without leave of the proprietor, but with entering, and being in and near, the field. This charge contains too many alternatives, and the justice found him guilty of the offence charged. It is not clear that the justice may not have thought that being "near" a field was an offence and have found him guilty accordingly; but being "near" a field is not an offence except in regard to night-poaching. "In and near" is an ambiguous expression. The justice had it in his discretion to send the accused on conviction to prison, or to grant warrant for pointing his goods; but here warrant for imprisonment was granted without stating reason for so doing. It is evident the justice did not consider the alternative, which he ought to have done. Lastly, the two men ought to have been tried together.

Argued for respondent—The charge is not alternative; and if one be relevant and the other be irrelevant, the appellant has been convicted of both charges. At any rate the words "and near" are surplusage, and are to be disregarded.

At advising—

LORD CRAIGHILL—It is quite plain that the charge ought to set forth the statutory offence, not necessarily in the very words used in the statute, but in that case full equivalents must be used. Here the charge is that the defenders were guilty of the statutory offence by entering or being in and near the field libelled. The question is, whether "in and near" is equivalent to "upon." I think the expression is ambiguous. There is no warrant in the Act for the statement that being near a field amounts to an offence. We do not know the evidence, but the result of the trial has been that the appellant has been convicted of being near a field, which, as I have said, is not an offence. The conviction must then be quashed on this ground. As to the other objections, I think that they are quite baseless.

LORD YOUNG—The objection which has been taken to this charge is a critical one, but, upon the whole, I think Lord Craighill's opinion is the safe one to follow. The charge is slovenly, and the conviction is slovenly. For this there is no excuse, because the statute is distinct and precise in its terms. The gist of the objection lies in the fact that being near a field is no offence, while in this charge it is represented as being one. The conviction may have proceeded on evidence that the appellant was in the field, but then the justice may have convicted him of