

direct authority for the proposition he stated, but he quoted a statute (13 Geo. III cap. 31), under which alone, he said, a resetter could be tried under a different jurisdiction from that where he was proved to have obtained the stolen goods. This statute belongs to a perfectly different class of cases from the case we have here. It makes provision for the mutual transmission between Scotland and England of such culprits as after committing crimes in one of these kingdoms had passed the border and retired into the other. There was a conflict of jurisdiction between the two countries, and an Act of Parliament was necessary to settle the matter. The resetter commits a continuous crime during the whole time that the stolen article is in his possession, although he may have passed through a great many different places with the stolen articles in his possession.

In the second place, it is said that the *locus* here libelled is too wide and not definite enough. It is said that the crime must have been committed in some definite place, and no doubt this is true in regard to many cases. But it is different in the case of a crime like reset, where the crime is committed in a number of different places. It is sufficient to have libelled some place in the County of Midlothian where the person charged with reset was found in possession of the stolen goods. In regard, therefore, to the fourth contention, that the Judge had misdirected the jury, I do not think that the complainer has suffered any disadvantage.

Another set of questions arose upon the admissibility of some of the evidence which was led before the Sheriff.

The first of these relates to questions put to witnesses about the character of the man from whom the prisoner admits he had obtained the stolen watches. This is a nice question. It is said to be impossible to examine witnesses about the character of a possible or probable witness in the cause. If M'Donald had been present at the trial he might have been asked questions about his own character, and is the prosecution not entitled to ask those questions although he does not appear? The facts are these—M'Donald is cited as a witness at the trial for the defence; he does not appear when called; and then the Procurator-Fiscal asks the witness Elliot, a detective officer, the question—What kind of a man do you know this to be? He says that in 1866 M'Donald was convicted of resetting thirty different watches and alberts, and sentenced to eight years' penal servitude; that he was known by the name of "Jamie the Jeweller," and that he was not aware that he dealt in watches except stolen watches; that he had seen him about the Schipka Pass, where the prisoner's shop was, &c. I think it must be taken as a kind of cross upon the statement of the prisoner that he had got the watches from M'Donald.

The next point is as to the questions put by the police officer to the prisoner. I do not think that this kind of questions and the answers have been held to be incompetent evidence. I have always discouraged the custom of police officers asking questions of the prisoners before they are brought before a magistrate, but I have never heard that they are incompetent evidence. I do not think that any other objections to the conviction were stated to us, and, as I have indicated

I do not consider any of them are of sufficient weight to entitle us to overcome the conviction. I am therefore for refusing the bill.

LORDS YOUNG and CRAIGHILL concurred.

The Court refused the Bill.

Counsel for Complainer—Campbell Smith.
Agent—Daniel Turner, L.A.

Counsel for Respondent—Brand. Agent—
Stuart & Stuart, W.S.

Thursday, March 20.

(Before the Lord Justice-Clerk, Lords Young and Craighill).

THE GLASGOW CITY AND DISTRICT RAILWAY COMPANY v. HUTCHISON'S TRUSTEES.

Justiciary Cases—"Closed for Traffic"—*Interference with the Carriageway*—*The Glasgow City and District Railway Act 1882* (45 and 46 Vict. c. 216).

A company which was constructing an underground railway in Glasgow had power by their private Act to interfere with the streets of the town for the purposes of their undertaking, and in particular, to close for traffic the carriageway of any street, under certain limitations, one of which was, that if they closed the carriageway for traffic for a longer period than three months they should be liable in a penalty. They had partially closed up a street, but left a portion of the carriageway clear, viz., 12 feet, and continued thus partially to obstruct the street for a longer period than three months. *Held* that they were not entitled to close for traffic for a longer period than three months any portion of the carriageway of a street, and that they were liable in the penalty imposed by the Act.

Justiciary Cases—*Summary Jurisdiction (Scotland) Act 44 and 45 Vict. c. 33*—*Summary Application*.

A company which was making an underground railway in Glasgow was allowed by a private Act to interfere with and close for traffic the carriageway of any street in the town. They were, however, ordained by the Act to restore the said carriageway to its original condition within three months, and in case of failure to do so they became liable in a penalty. This penalty might be enforced by "summary application" in the Sheriff Court of Lanarkshire by any of the proprietors or tenants whose property was opposite the part of the carriageway so interfered with and closed for traffic. *Held* that the case was rightly tried in the Sheriff Court under the Summary Jurisdiction (Scotland) Acts 1864 and 1881, and that the words "summary application" meant an application to the Sheriff to have it so tried.

The Glasgow City and District Railway Act 1882 (Act 45 and 46 Vict. c. 216), sec. 37, provides—"For the further protection of the Lord

Provost, Magistrates, and Council of the city of Glasgow as a municipal corporation, and as trustees or commissioners acting in execution of the several public and local and personal Acts by which any powers, jurisdiction, or authorities are conferred on them (in this section called 'the corporation'), the following provisions, in addition to the provisions contained in the last preceding section, shall have effect and be binding on the company—that is to say. . . (b) where the railways and works and operations of the company are carried on upon the surface of the ground, the company shall not at any one time, without the consent of the corporation, interfere with or occupy, for the purposes of the said railways and works and operations, a greater extent of road or street surface than one hundred and fifty lineal yards. In every case in which the company interfere with said road or streets, the company shall, to the satisfaction of the corporation—(1) Restore the road or street, so interfered with, to its original level; (2) Cause the formation of the road or street to be properly consolidated; (3) Make good the paving and metalling of the road or street; (4) Provide and maintain all requisite communications and accesses for foot-passengers to and from the houses and other buildings in the streets or roads so interfered with."

Section 39 of the same Act provides—"In constructing the railways the company shall restore the portions of the carriageway of any street to be from time to time closed by them for traffic for the purposes of the works, within three months from the day upon which such portions shall respectively be so closed, and they shall be liable to a penalty not exceeding £20 for every day after the expiration of the said period during which such portions respectively shall not be so restored, and such penalty shall be recoverable with costs in the Court of the Sheriff of the County of Lanark, on summary application by all or any of the proprietors or tenants in that part of the street which is opposite the respective portions which shall not be restored."

The Summary Jurisdiction (Scotland) Act 1881, sec. 3 (44 and 45 Vict. cap. 33), provides—"The provisions of the Summary Jurisdiction (Scotland) Acts 1864 and 1881, hereinafter called the Summary Jurisdiction Acts, shall apply to all summary proceedings as enumerated and described in the third section of the Summary Procedure Act 1864, and to all proceedings of the like nature which by any future Act are directed or authorised to be taken summarily or under the provisions of the Summary Jurisdiction Acts."

On 8th January 1884 an action for the recovery of penalties under the 39th section of the Glasgow City and District Railway Act 1882, was brought into the Sheriff Court of Lanarkshire under the provisions of the Summary Jurisdiction (Scotland) Acts 1864 and 1881, against the said Glasgow City and District Railway Company by the trustees of the deceased Robert Hutchison, auctioneer in Glasgow. On the 28th of January 1884 the Sheriff-Substitute (GUTHRIE) convicted the company of the contravention charged, and found them liable in the modified penalty of £256, one-half to be paid to the complainers, and the other half to the inspector of poor for the benefit of the poor of the Barony Parish Glasgow.

The case arose under the following circumstances

—The railway company in the course of constructing the railway, which they were authorised to do by their said Act, had, in the month of May 1883, or at least prior to the 1st day of June 1883, for the purposes of construction, closed for traffic a portion of the carriageway of Holland Street opposite to the property belonging to Hutchison's trustees. The purpose for which the street was closed was that the company might sink a shaft from the surface for the convenience of their workmen in removing the earth, &c., dug up in constructing part of the underground railway track. The railway company were by their Act bound under a penalty to restore the portions of the carriageway which they had closed for traffic within three months of the time that they had first closed the carriageway. The railway company had in closing the carriageway left a space of the carriageway, viz., 12 feet in breadth, at the side of the street. Hutchison's trustees, whose property lay opposite the portion of the street so closed, had brought an action against the railway company in the Sheriff Court for recovery of the penalties allowed under the company's Act of 1882. That action the Sheriff had dismissed without expenses on the 2d January 1884, on the ground that under the company's Act the only way in which the penalties could be recovered was by "summary application" under the provisions of the third section of the Summary Jurisdiction (Scotland) Act 1881. The present action was then brought under that Act, and conviction obtained as above stated. In fixing the penalty at £256 the Sheriff-Substitute gave at the rate of £2 per day for the period beyond the three months up to the date of the action during which the obstruction continued, and appropriated the sum under sec. 142 of the Railway Clauses Consolidation (Scotland) Act 1845. The agent for the railway company had appeared and stated the following objections to the case proceeding—" (1) *Lis pendens*, in respect that the appealing days against the Sheriff-Substitute's interlocutor of 2d January current dismissing an ordinary action for the same penalties by the complainers (the respondents) against the respondents (the appellants) were not yet expired. (2) That it was incompetent to sue for the penalties imposed by section 39 of the respondents' (the appellants') Special Act, 45 and 46 Vict. cap. 216, in the forms prescribed by the Summary Jurisdiction (Scotland) Acts 1864 and 1881, but that the same should be sued for by summary application to the Sheriff's ordinary jurisdiction, as prescribed by the Act of Sederunt, 10th July 1839, and recognised by sec. 147 of the Railway Clauses Consolidation (Scotland) Act 1845. (3) Defect of jurisdiction by reason of such incompetency."

The Sheriff repelled these objections.

The railway company took a Case.

The questions of law for the opinion of the Court of Justiciary were—" (1) Whether, in the plea of *lis pendens* was well founded, and the circumstances stated, should have received effect? (2) Whether it was competent to bring the cause under the provisions of the Summary Jurisdiction (Scotland) Acts 1864 and 1881? (3) Whether the fact that the party complained against was an incorporation rendered the application of the Summary Jurisdiction Acts impracticable or illegal? (4) Whether,

under the provisions of section 39 of the Special Act founded on, it was necessary, before the appellants could incur the penalty therein specified, that for a greater period than three months they should occupy the carriageway of the street opposite the respondents' property to such a breadth or extent as would entirely prevent carriage traffic from passing that point; or whether it was sufficient to render the appellants liable in the penalty that they, as in the present case, for a period exceeding three months, occupied somewhat more than half of the breadth of the carriageway of the street there, while leaving clear a part of the carriageway 12 feet wide, next the property of the respondents, for vehicle and other traffic, besides the footpath?"

Argued for the appellants—*Preliminary Pleas*—This action should not have been brought under the Summary Jurisdiction Acts, but by a summary action in the Sheriff Court. The words "summary application" in section 39 of the Glasgow City and District Railway Act did not imply that the Summary Jurisdiction Act should be used to enforce penalties against the railway company. In the Summary Jurisdiction Act of 1881 the penalty of imprisonment was made to apply to all cases where penalties were sought to be enforced, but it would be impossible to imprison a corporation such as the railway company. That was sufficient to show that that Act was not applicable to the appellants.—*Magistrates of Portobello v. Magistrates of Edinburgh*, November 9, 1882, 10 R. 130. *On the merits*—Under their Act the company were entitled to close up the carriageway of any street for traffic, under section 37, sub-section B, if not greater in length than 150 yards, without express permission from the magistrates; and if they kept the whole breadth of the street closed for longer than three months they were liable in the penalty named in the Act; but if they only closed part of the street so that traffic could be carried on, they could keep the remaining part of the carriageway closed so long as is necessary.

Argued for the respondents—*Preliminary Pleas*—The words "summary application" in the company's Act meant an application to the Sheriff under the Summary Jurisdiction Acts, which allow persons who are aggrieved to sue for penalties in the most rapid way. To prevent the recovery of penalties imposed under any special Act otherwise than by the provisions of the Summary Jurisdiction Acts, that special Act must contain certain words which are inconsistent with the provisions of the Jurisdiction Acts, but that was not so here; the words in fact being "by summary application." It was no reason to say that because imprisonment was made to apply to all cases in the Jurisdiction Act, penalties could not be sought against a company under it. The penalty could be imposed upon the company, and means could be found in the Act for making it effectual against them. Imprisonment was no test of what actions are to be brought under the Jurisdiction Act. *On the merits*—The words of the Act of Parliament were quite plain. The words "portions of the carriageway" meant any portion whatever, either of length or breadth of the street; and if the company kept

any part whatever of the carriageway closed for a longer period than three months they were liable in the penalty imposed upon them in the Act.

At advising—

Lord Young—This is an appeal from the decision of the Sheriff-Substitute of Lanarkshire, by a company which is making an underground railway in Glasgow under an Act of Parliament obtained in 1882. In the making of the railway the company must interfere with the streets of Glasgow not only underground but also above ground, and there is authority given to them to do so in the Act, but only under very precise and definite limitations. The most important of these limitations is that contained in section 39 of the Act, which provides—"In constructing the railways the company shall restore the portions of the carriageway of any street to be from time to time closed by them for traffic for the purposes of the works, within three months from the day upon which such portions shall respectively be so closed, and they shall be liable to a penalty not exceeding £20 for every day after the expiration of the said period during which such portions respectively shall not be so restored." The Sheriff found in point of fact "that the portion of the carriageway of Holland Street enclosed by the appellants extends beyond the centre line of said street, and on to the half thereof embraced in the respondents' title, leaving a passage about 12 feet wide between it and the edge of the footpath on the respondents' side of the street, open for vehicles and other street traffic." It thus appears that the street is not entirely closed for traffic, but only for about half its width, 12 feet being left open, and the leading question in the case is, whether under the provisions of the railway company's statute it was necessary before the appellant could incur any penalty that the whole street should be closed for traffic for a greater period "than three months from the day upon which such portions shall respectively be closed?" The question depends upon the true construction of clause 39 taken with clause 37, sub-sec. 2, which I shall immediately refer to. I notice again clause 39—"the company shall restore the portions of the carriageway of any street, to be from time to time closed by them for traffic for the purposes of the works, within three months from the day upon which such portions shall respectively be so closed." On the one side it was maintained that the words "portions of the carriageway closed" really signified what the words *prima facie* expressed, viz., that these portions of the carriageway were closed for traffic, although other portions might be left open, and that the company might keep these portions of the carriageway closed for traffic for three months, but no longer, and if they did not restore the portions of the carriageway so closed for traffic within the said time, they became liable for a penalty not greater than £20 a day for every day beyond the three months. On the other side is presented an argument with reference to which clause 37, sub-sec. B, is relied on. That whole section is "for the protection" of the corporation of Glasgow, having charge of the streets of Glasgow in the public interest. It was contended that the words "portions of the carriageway closed for traffic" related only to

portions closed from side to side of the street, and that if the appellants get the consent of the magistrates, there is no limitation as to the time they may occupy the street. Now, sub-sec. B of sec. 37 limits the length of any street they may occupy at any one time to 150 lineal yards. They may use the surface of the street for carrying on their works without any express consent of the magistrates, and close it for traffic for 150 lineal yards. If they want more, they must, under the statute, apply for the express permission of the magistrates. The contention on the part of the respondents is, that the words "portions of the carriageway of any street" relate to any portions which may be actually closed for traffic within a space of 150 lineal yards.

The Sheriff-Substitute in his judgment has adopted this view, and I am of opinion that he is right, and for the following reasons:—Clause 37 of the company's Act, sub-sec. B, imposes a restriction on the company as to the extent to which they may close up any portion of a street for traffic, only as to length and not as to breadth. The expression used is not quite accurate, but the meaning plainly is that you are not to occupy any street for more than 150 yards in length without the consent of the magistrates, whether you occupy the whole breadth of the street or not, but that if you require a greater length than 150 yards, the consent of the magistrates is necessary. It is an extravagant proposition, that unless the company occupy the whole breadth of the street and close it for traffic there is no limitation of time upon them at all. There is a limited power given to them to occupy and close up a street under two conditions—(1) That they do not occupy more than 150 yards of the street in length without the consent of the magistrates; and (2) That they do not occupy and close for traffic any portion of any street for a longer period than three months. As the Act is framed by the Legislature, three months is taken as the longest time that it would be necessary for the railway company to occupy and close for traffic any portion of a street; it is the limit given in the statute. If the company find it convenient to have a shaft, as here, they cannot keep the street closed for more than three months. If they require any more ground to sink a shaft from the outside, they must get it elsewhere than in a street in Glasgow. This is the leading question in the case, and I am of opinion that the Sheriff's view on this question is the right one.

There were several other and minor questions stated to us on which I may give an opinion. (1) I agree with the view of the Sheriff that the bringing of this action under the Summary Procedure Act in no way implied the abandonment of the other action which had been brought in the Sheriff Court by the respondents here against the railway company. (2) The next question is, Whether this action was competently brought under the provisions of the Summary Jurisdiction Acts 1864 and 1881? Whether it was or not depends upon the words in the 39th section of the company's Act of 1882. These words are—"And such penalty shall be recoverable with costs in the Court of the Sheriff of the County of Lanark, on summary application by all or any of the proprietors or tenants in that part of the street which is opposite the respective portions which shall not be restored." Does that expression signify an application

under the Summary Procedure Acts? I am of opinion that these words entitle the complainer to make his application under the Summary Procedure Act. That Act was for regulating the summary procedure in the Sheriff Court, and for the recovery of penalties; in this case the way authorised in the statute for recovery of penalties was by "summary application," and I think, therefore, the application was rightly made under the Acts of 1864 and 1881. (3) The last question is, Whether it was competent to bring the action against the company, being a corporation, under the statute? It is quite plain that a corporation could not suffer imprisonment, but that would not hinder the parts of the Act which could be made operative against a corporation being used against this railway company.

On the whole, I am of opinion that the appeal ought to be refused.

The LORD JUSTICE-CLERK and LORD CRAIGHILL concurred.

The appellants moved the Court to modify the penalty awarded by the Sheriff.

The Court refused the motion, on the ground that no reason had been shown for interfering with the judgment of the Sheriff-Substitute as to the penalty.

Counsel for Appellants—Trayner—R. V. Campbell. Agents—Millar, Robson, & Innes, S.S.C.

Counsel for Respondents—Mackintosh—Goudy. Agents—J. & J. Ross, W.S.

Thursday, March 20.

(Before Lords Young, Craighill, and Adam.)

M'LEOD v. SPEIRS.

Justiciary Cases—Sheriff—Prevarication on Oath—Contempt of Court—Summary Punishment of Prevarication.

A Sheriff at the conclusion of the examination before him of a witness in a civil action found him guilty of contempt of Court, by having grossly prevaricated in his evidence, and committed him to prison for ten days. The witness raised a suspension on the grounds that the warrant of imprisonment did not set forth any facts from which the Court could judge whether prevarication had really been committed, and that no complaint had been preferred against him nor any opportunity given him of being heard in defence. *Held (diss. Lord Young)* that the Sheriff had power summarily to commit for contempt of Court, that prevarication on oath amounted thereto, and that it was unnecessary to set out in the warrant the facts constituting the prevarication. The Court therefore *refused* the suspension.

Process—Sheriff.

The complainer having called the Sheriff as respondent in the suspension, *held (diss. Lord Young)* that the Sheriff was right in not appearing as a party.

In an action raised in the Sheriff Court of Inverness, Elgin, and Nairn, at Portree, by Martin Martin against Alexander M'Leod and Lachlan M'Leod, for a sum of £20 as the value of a foal, Lachlan