

The Court accordingly pronounced an interlocutor directing the estate to be administered on the footing that the absentee had died at 31st July 1872, being the expiry of seven years from the year, 1865, when he was last heard of.

Counsel for Petitioner—Darling—Ferguson. Agents—Carment, Wedderburn, & Watson, W.S.

Counsel for Respondents—H. Johnston. Agents—Hagart & Burn Murdoch, W.S.

Wednesday, December 15.

SECOND DIVISION.

[Sheriff of Selkirkshire.

KEDDIE, GORDON, & COMPANY v. THE NORTH BRITISH RAILWAY COMPANY.

Reparation—Carrier—Railway—Duty of Carrier—Delay—Damages, Direct or Consequential.

A carrier to whom goods are consigned to be forwarded is entitled, if they are not securely packed, to refuse to receive them, and to return them.

Goods were delivered to a railway company, addressed to a shipping agent at a port, who was to forward them to Germany. On arrival he found the covering of them had been torn in the transit, and that some slight damage had been done, and sent them back to the sender. They were at once re-packed, and again despatched, but in consequence of the delay the customer in Germany rejected them, and they were returned and re-sold. *Held* that the railway company were liable in damages, and that the proper measure of these was the difference between the invoice price (with cost of carriage and insurance) and the sum for which they were re-sold on their being returned—the loss of that sum being the direct result of the delay due to the injury to them in transit.

On 16th January 1884 Messrs Keddie, Gordon, & Company, manufacturers, Galashiels, delivered to the North British Railway Company at their station at Galashiels a bale of tweed cloth enclosed in three wrappers. The bale was addressed to Messrs John Sutcliffe & Son, commission, shipping, and forwarding agents, Grimsby. The cloth contained in it had been sold by Keddie, Gordon, & Company to Oppenheimer & Grabowsky, Berlin, and it was being sent to Sutcliffe & Son for transmission by them to Messrs Oppenheimer & Grabowsky. Keddie, Gordon, & Company paid the carriage. On the same day Keddie, Gordon, & Company sent an invoice to Oppenheimer & Grabowsky, also a note to Sutcliffe & Son asking them to forward the bale with all speed as it was wanted urgently. When the bale, which travelled over the Midland and Manchester, Sheffield, and Lincoln Railway as well as the North British Railway, arrived at Grimsby, which it did without any undue delay having occurred, it was found by Sutcliffe & Son that the wrappers had been chafed and torn, and with the result that the cloth inside was damaged by a hole being made in one breadth of it which was next the wrapper. In consequence

Messrs Sutcliffe & Sons, according to their custom in such a case, instead of sending it on by steamer, declined to send it, and intimated to the Manchester, Sheffield, and Lincoln Railway Company's agent at Grimsby that it must be returned for repairs to the sender, and they also intimated that they would hold that company liable in case of a claim.

The bale was then sent back to Messrs Keddie, Gordon, & Company at Galashiels, where it arrived on the 25th January. It was by them re-packed, in the hope and belief that as the damage to the goods themselves was not serious Oppenheimer & Grabowsky would accept them even if the price had to be abated, as was sometimes done in their trade. They sent it back to Grimsby on the same day. On 4th February Messrs Oppenheimer & Grabowsky wrote to Messrs Keddie, Gordon, & Company that they had no notice of the bale having arrived at Hamburg, and that as it had been such a long time on the way they had now no use for the goods. The bale, after having been to Berlin, and come back as refused by Oppenheimer & Grabowsky, was redelivered at Galashiels on the 10th March 1884.

On 17th March, Keddie, Gordon, & Company sold the bale to Messrs Henry Lee & Company, merchants, Manchester, for £29, 14s. 9d., being the best price that could be got for it, as it had been specially made for Oppenheimer & Grabowsky, and did not suit the home market. On 21st January Messrs Keddie, Gordon, & Company had written to the North British Railway Company's station agent at Galashiels, stating that as the bale was urgently wanted by their customers they feared that in consequence of the delay in transmission it would now be of no use, and that they would hold the railway company responsible for any loss that they might incur by the delay. On 12th March they again wrote to him, stating that the goods had been returned to them, and that as the loss which they had incurred through having to sell the bale at a lower than contract price was occasioned by the fault of the railway company, they would hold them liable. They also enclosed a note of their loss. A correspondence ensued between the parties, as the railway company alleged that the Manchester, Sheffield, and Lincolnshire Railway Company were responsible for the damage done to the bale, but on 25th August the North British Railway Company's agent wrote to Messrs Keddie, Gordon, & Company stating that the English railway company had "definitely informed him that they cannot admit liability for the claim, for the reason that the damage by chafing referred to was not a sufficient cause for Messrs Sutcliffe & Son returning the bale, and as the claim is not for damage done, but for loss through delay that ensued, and as the Manchester, Sheffield, and Lincoln Company neither caused nor consented to the bale being returned they are not responsible for the consequences. Under these circumstances I regret I am instructed to decline the claim."

Messrs Keddie, Gordon, & Company brought this action in the Sheriff Court of Roxburgh, Berwick, and Selkirk against the North British Railway Company for the sum of £36, 1s. 2d., made up of £62, 1s., being the invoice

price of the goods, carriage to Grimsby, thence to Berlin, and from Berlin, and insurance, but deducting the £29, 14s. 9d. got from Lee & Company on the re-sale.

The defenders alleged that they did not contract to carry the bale beyond Grimsby; that they had done this, and that Messrs Sutcliffe & Son wrongfully refused to take the bale into their possession, but instructed that it should be returned to Galashiels. They also alleged that the contents were in no way damaged.

The pursuers pleaded—“(1) The defenders having undertaken as general carriers to forward the goods in question safely and with due despatch, and they having failed to do so, they are liable for the consequences of such failure. (2) The goods in question having sustained damage through the fault of the defenders in their transit from Galashiels to Grimsby, and the pursuers having sustained loss and injury through said damage to the amount concluded for, decree should be granted with expenses.”

The defenders pleaded—“(2) The pursuers' agent, by giving orders for the disposal of the bale when first offered to them, having constructively taken delivery thereof, the defenders were freed from any claim for damage. (3) The defenders, when the bale was delivered to them on 25th January, having conveyed the same to Grimsby, and delivered it to Messrs Sutcliffe & Son, fulfilled their contract with the pursuers, and are therefore not liable in damages to them. (4) Any loss sustained by the pursuers being purely consequential, the defenders are not liable therefor.”

After a proof the Sheriff-Substitute (SPITAL) found that through the fault of the defenders the goods failed to reach Messrs Oppenheimer & Grabowsky in due time, and were justifiably rejected by them, and that consequently the defenders were liable to the pursuers in the amount of the loss sustained by the latter, and gave decree for the sum sued for, £36, 1s. 2d.

“*Note.*— On the merits it is clear that when the bale was sent off from Galashiels it was securely and strongly packed, and I think it is also clear that when it reached Sutcliffe & Son it had received considerable damage, the three wrappings having been chafed through, and a hole having been made in the contents of the bale. At what part of the journey the damage was caused does not appear, but most probably the chafing was a gradual process during the journey. Sutcliffe & Son naturally refused to accept delivery, and the bale was returned to the pursuers. The pursuers, in order to save time, as their customers' order for the goods was pressing, simply repacked the bale, and sent it off immediately by the same route as formerly. There was no detention of the bale at Galashiels, but their return and re-transmission of the bale necessarily caused a good deal of delay. Accordingly Messrs Oppenheimer & Grabowsky, not having received the bale by 4th February, or heard of its arrival at Hamburg, wrote the letter rejecting the goods. If this bale had been sent on direct it would have reached its destination timeously, and would, there is no reason to doubt, have been accepted by Messrs Oppenheimer & Grabowsky. The delay caused by the damage done to the bale in transit to Grimsby

resulted in the rejection of the goods by Messrs Oppenheimer & Grabowsky. Loss has resulted to the pursuers in consequence of this rejection, and for this loss I think the defenders are clearly liable in damages.

“It was contended by the railway company that the damages sued for are consequential damages, and that it is only for direct loss that the company can in any view be made liable. But according to the view I take of the case the damages claimed are not consequential, but direct. The goods were in consequence of the delay thrown upon the hands of the pursuers, who obtained the best price for them that they could in the circumstances, and are merely suing for the difference between that price and the contract price. According to the defenders' view the pursuers' only claim would be for the cost of repairing the wrappings and the damaged cloth, a result wholly inequitable.”

The defenders appealed to the Sheriff (JAMESON), who found that the loss sustained by the pursuers in consequence of the goods not having been timeously delivered to Messrs Oppenheimer & Grabowsky was not a loss for which the defenders were liable to make reparation to the pursuers, and therefore assoilzied them from the conclusions of the summons.

“*Note.*—This action is brought to recover the loss sustained by the pursuers through the rejection by their customers, Oppenheimer & Grabowsky, of a bale of cloth of the pursuers' manufacture sent from Galashiels to Berlin. The rejection was made by Oppenheimer & Grabowsky on account of the delay which occurred in forwarding the bale, and the pursuers contend that that delay was due to the fault or breach of contract of the defenders, and that they are liable to make good the loss sustained in consequence thereof. It is not maintained that there was any undue delay in the actual carriage of the goods by the defenders from Galashiels to Grimsby on either occasion. The delay was admittedly caused by the goods being sent back from Grimsby to Galashiels by J. Sutcliffe & Son, and the main question in the case is, whether the defenders are to be held responsible for the consequence of the goods being so sent back. I am of opinion that they are not. It is proved that the bale in question sustained some damage in its transit from Galashiels to Grimsby, but the evidence both of Mr Beales and Mr Gordon shows that the damage was of a slight description—so slight, indeed, that on receiving back the bale the pursuers simply put on fresh wrappings and sent it off again the same day, apparently confident that the damage was not such as would lead to the rejection of the goods. I fail to see any reason why the same operation could not have been performed at Grimsby by Messrs Sutcliffe & Son. This firm carry on the business of forwarding agents, and were (so far as the defenders know) the sole consignees of the goods in question. It appears to me that it was their duty as forwarding agents, after they had been advised by the pursuers that the goods required quick despatch, to have held an inspection of the goods along with the representatives of the railway company, and after taking, if they thought proper, a letter of indemnity from the railway company for the damage sustained, to have put on new wrappings on the bale and forwarded it at once to Berlin,

The witness Reed, who was for thirty-seven years port-master at Grimsby, speaks to this as the practice appropriate to a case of slight damage. Instead of doing this or anything of the kind, J. Sutcliffe & Son sent the bale directly back to Galashiels, and hence the delay which gave rise to the rejection of the goods and the damage sued for in this action. The defenders, as practically insurers of the goods carried by them, are undoubtedly liable to make good any actual damage done to goods during transit over their own line, or the lines of companies for whom they are responsible, the measure thereof being the diminished value of the goods. But in the present case that damage was trifling, and it is not claimed in this action. In certain circumstances carriers may be liable for more remote consequences of their breach of contract, provided such consequences are the direct, necessary, or natural result of the breach. Now, I cannot hold that the sending back the bale to Galashiels was the direct, necessary, or natural consequence of the damage sustained during the carriage of the goods from Galashiels to Grimsby; and it is further to be observed that the defenders got no information from the pursuers as to the ultimate destination of the goods, or as to the purpose for which they were sold, nor were they told that there was any necessity for special despatch. All the defenders contracted to do was to carry the goods to Grimsby and deliver them there, and this they did with due despatch. This being so, I think that it must be held that the damage caused by the rejection of the goods on account of delay in their reaching Berlin could not have been in the contemplation of both parties at the time the contract was entered into, and was, as regards the defenders, remote and consequential, and therefore cannot be recovered from them. The loss which the pursuers have unfortunately sustained is, in my view, the direct result of the wholly unnecessary actings of J. Sutcliffe & Son, for whom the defenders are not responsible." . . .

The pursuers appealed to the Court of Session, and argued—There were two questions here—(1) Did the responsibility of sending back the goods rest on Sutcliffe & Son or on the railway company? There was no doubt that the goods had been damaged in transit by the railway company, that owing to that damage they had to be sent back, and owing to the delay so caused they arrived too late for the Berlin firm to make use of them, and were accordingly rejected. The railway company could not contend that Sutcliffe had erred, as he was their agent as well as the agent of Messrs Keddie, Gordon, & Company, and they had ample information before he sent back the goods that he was going to do so. Sutcliffe had no right to unpack the bale, as the Sheriff thought he ought to have done, to see how far the damage extended, and see if he could get it repaired without sending it back to Galashiels. It was an elementary rule that a carrier is entitled to refuse to take goods for transmission if they are damaged—*Collard v. South-Eastern Railway*, May 24, 1861, 30 L.J., Exch. 393; *Cox and Others v. London and North-Western Railway*, 1862, 3 Foster and Finlason, 77; *British Columbia Saw-Mill Company v. Nettleship*, June 2, 1868, L.R., 3 C.P. 499; *Horne and Another v. Midland Railway Company*, February 7, 1873, L.R., 8 C.P. 131; *Hadley and Another v. Baxendale*,

February 23, 1854, 9 Exch. 341. (2) The measure of the damages—The goods had been specially made for the Berlin market, and Messrs Keddie, Gordon, & Company were entitled to the sum they would have got if the goods had been duly sent to Oppenheimer & Grabowsky as originally intended. Such damages were not consequential, but the direct result of the conduct of the defenders.

The defenders argued—Sutcliffe & Son acted as agents for the pursuers, and not for the defenders. The railway company agreed to carry the bale to Grimsby and no further, and this they did, while Sutcliffe & Son were in possession of particular information, viz., that the goods were wanted to be sent abroad at once, which the railway company did not possess—*Findlay v. The North British Railway Company*, July 8, 1870, 8 Macph. 959. There was a difference between loss incurred by delay and loss by actual damage—*Smith's Leading Cases*, ii. 570; *Hadley v. Baxendale*, *supra*. The special damage claimed here was due to special circumstances not made known to the railway company—*The British Columbia Company v. Nettleship*, L.R., 3 P.C. 499; *Horne and Another v. Midland Railway Company*, February 7, 1873, L.R., 8 C.P. 131. The company might have had no answer if Keddie, Gordon, & Company had claimed only the expense of repacking and the actual damage done to the cloth, but that was no part of their claim. Sutcliffe was the person really in fault, as he ought to have repacked the goods and sent them to Berlin. The risk of the goods whenever handed over to the carrier was in the consignee, and Oppenheimer & Grabowsky were the proper persons to sue here. This defect of title could not be cured by the consent and concurrence of the Berlin firm, as the person to whom the right of action belongs, having been obtained—*Dunlop v. Lambert*, July 16, 1839, Maclean and Robinson 663; *Hishop v. MacRitchie's Trustees*, June 23, 1881, 8 R. (H. of L.) 95.

At advising—

LORD JUSTICE-CLERK—The discussion on this case raised collaterally and incidentally several interesting questions, but the real subject of the case can be stated very shortly. A firm of tweed manufacturers at Galashiels receive an order from Berlin for a supply of a particular kind of tweed. The tweed is manufactured and put on board the North British Railway to be forwarded to its destination *via* Grimsby, at which place it is consigned to Messrs John Sutcliffe & Son for two purposes, the first of which was to receive it at Grimsby, and the second to put it on board a vessel for conveyance across the sea towards its final destination at Berlin. It was forwarded, and was transferred from the North British Railway to another line of railway, and so carried to Grimsby, where it was received by Sutcliffe. But when it arrived Sutcliffe found that part of the package had been damaged. Not only were the coverings worn away, and the substance within exposed, but a hole had been made in the substance itself. In that condition of affairs Sutcliffe thought that the package was not fit for transit by sea, and refused to accept it for transmission, and he handed it over to the railway company to

be sent back to Galashiels. It was sent back there, the coverings were mended, and it was again despatched, but when the bale finally arrived at Berlin it was found that the goods had arrived too late, and that the Berlin firm could not employ the stuff as they had intended. They therefore refused to accept delivery of the goods and sent them back, and had indeed, on 4th February, before their arrival instructed that they would decline to receive them. Then this action is brought by Keddie, Gordon, & Company against the North British Railway for the damage done to their goods. The pursuer thinks that the ultimate cause of the rejection of his goods by the Berlin firm was the delay caused by the damage done to them during transit by the North British Railway. It is not denied that the railway company are liable for the injury done to the goods themselves, but they say they are not liable in damages for any loss occasioned by the delay caused through that injury, as these are consequential damages, and substantially they say that Sutcliffe & Son are the real persons liable. And further, they say that the injury was too remote to enable the pursuers to recover damages. I think these were the points raised in the case, and I shall shortly state my views on them.

In the first place, I think the North British Railway was responsible for carrying safely and delivering safely at Grimsby this bale of goods. And they did not do that. The question then arises, who is responsible for the next step? Sutcliffe was entitled, I think, to reject the goods as not being safe for transmission. It is said that he ought to have repaired the goods and have forwarded them. He did not think that there was any obligation on him to do so, and he probably thought that this bale could be better repaired at the manufactory at Galashiels than at Grimsby. He therefore sent the bale back to Galashiels, and I think he was entitled to do so. It is said that Reed's evidence shows that it was the practice of Sutcliffe & Company in cases of slight damage to forward the goods after repairing them themselves, but that does not appear very clearly, as in these cases Sutcliffe & Son took a letter of indemnity from the railway company. Now, that fact shows that in forwarding goods in that way Sutcliffe & Son were not acting strictly within their duty, as if they had been they would not have needed the letter of indemnity. The question comes to be, whether the rejection of the goods by the Berlin firm from delay occasioned by the injury done to the goods entitles the pursuers to damages from the North British Railway Company. I think it does. I think that the delay was the direct consequence of the careless manner in which the goods were conveyed to Grimsby, and that the goods were rejected in consequence of that delay. I cannot agree with the Sheriff. He rests his judgment mainly on this ground, stated at the end of his note—"This being so, I think that it must be held that the damage caused by the rejection of the goods on account of delay in their reaching Berlin could not have been in the contemplation of both parties at the time the contract was entered into, and was, as regards the defenders, remote and consequential, and therefore cannot be recovered from them." And

then he talks of the unnecessary actings of Sutcliffe & Son, for whom the defenders are not responsible. I do not sympathise with those views at all. In my opinion the delay caused by the damage, and the rejection of the goods at Berlin, are in direct sequence as cause and effect. I therefore think that we should recal the judgment of the Sheriff, and find the pursuer entitled to the damages he asks.

LORD YOUNG—I am of the same opinion as your Lordship, and I agree with the judgment of the Sheriff-Substitute. I think it is a simple case. There is no doubt that this bale of tweed was invoiced to Messrs Oppenheimer & Grabowsky of Berlin, and was delivered to the North British Railway Company on the 16th January 1884, and was returned to them on the 25th January, and that it was returned in consequence of damage inflicted in course of transit. It was stated for the North British Railway, and I assume it as a fact, that the damage took place while the bale was on the Manchester, Sheffield, and Lincoln line, which is the line directly connected with Grimsby. The North British Railway Company applied to that line to make good that damage as they had originally done the injury to the bale, and ultimately had caused the rejection of the goods by the Berlin house. Everything about the bale that could be known was known by March 1884, but the North British Railway Company, who had been applied to for reparation for the manufacturers' loss, were unable to procure any reply to their demand for redress from the English railway company until August 1885. It is rather a remarkable state of circumstances, but the letter from the North British Railway Company's agent declining liability, and stating that the English company also declined liability, states the whole case of the defenders in a sentence. "They," *i.e.*, the English railway company, "have now, however, definitely informed him that they cannot admit liability for the claim, for the reason that the damage by chafing referred to was not a sufficient cause for Messrs Sutcliffe returning the bale, and as the claim is not for damage done, but for loss through delay that ensued, and as the Manchester, Sheffield, and Lincoln Company neither caused nor consented to the bale being returned, they are not responsible for the consequences." I do not think there is anything to be said in addition to that as the case for the defenders; that is their case. That view of the case presents this question only: Was Sutcliffe entitled to reject the goods? He was a shipping agent, and his business was to forward goods to places across the sea if these goods were in a proper condition to be forwarded. Were these goods, then, delivered to him in a fit state to be forwarded? I think they were not, and therefore that Sutcliffe & Son were entitled to reject this bale. I asked during the discussion if there was authority that showed that common carriers were bound to receive goods for transmission from one place to another if they thought them in a damaged state, and I was told that there was no such authority, but a passage was read from a text-book [Ivatt's Carriers' Law, p. 73] which was in accordance with the law as I understood it to be, that a common carrier was not entitled to take such goods. It was the interest of the railway company, through Sutcliffe & Son, their agents, to see that the goods were delivered to them in a con-

dition fit to be put on shipboard, and we have the evidence of Sutcliffe and his principal clerk that this bale of goods was not in a fit condition to be put on shipboard. The consignee is absolutely entitled to reject goods sent to him with a view to have them forwarded if they are not fit to be forwarded, and Sutcliffe says that that is his custom except in cases which he says are exceptional, and Mr Reed, the harbourmaster, says the same thing. Well, in these circumstances, to say that Mr Sutcliffe was to blame in the matter is to maintain what there is no ground for at all. I should say that if the goods were damaged, and if it was for him to exercise his judgment as to whether the goods should be sent back or not, and if he exercised an honest judgment, he would not be responsible in the matter. Although that would be quite a satisfactory ground of judgment for me, I do not think that this case raises it, as I am of opinion that Sutcliffe exercised a perfectly right judgment in this case. If the railway companies had differed as to this they might have remonstrated, but there is no evidence that they did so. I cannot think that the damage is too remote to be recovered. As to the measure of the damages, it is just the difference between the contract price of the goods and the price they brought when sold in the market.

LORD CRAIGHILL—I concur in the judgment which is to be pronounced, but as regards one part of the case I have had some hesitation. If Sutcliffe & Son had rejected the bale of goods at once there would have been no difficulty about his liability. He refused the goods no doubt, but he still held on to them, and gave orders to have them sent back to Galashiels. But my doubts are not so strong as to make me differ from the opinions of your Lordships.

LORD RUTHERFURD CLARK—I concur.

The Court pronounced this interlocutor:—

“Find in fact—(1) That on 16th January 1884 the pursuers delivered to the defenders at Galashiels a bale of goods, to be carried to Grimsby, and delivered there to Messrs John Sutcliffe & Sons, shipping and forwarding agents, and transmitted by them to Messrs Oppenheimer & Grabowsky, Berlin, the consignees of the goods, to whom they were invoiced at the price of £62; (2) that the said bale was in good condition when delivered to the defenders, but when tendered to Messrs Sutcliffe & Son was damaged, and was in consequence immediately returned to the pursuers, who received it on 25th January, and after repacking, despatched it on the same day to Messrs Sutcliffe & Son; (3) that on receiving the bale Messrs Sutcliffe & Son forwarded it to Messrs Oppenheimer & Grabowsky, but on 4th February, and before the bale reached them, they intimated to the pursuers that they declined to receive the goods as their market had been lost by the delay in sending them to Berlin; (4) that the bale was returned accordingly to the pursuers, who, by arrangement with the defenders, sold its contents at the price of £29, 19s. 9d.; (5) that, including charges for insurance and carriage and interest, the loss sustained by the pursuers on the invoiced price of the said

goods amounted at the date of this action to £36, 1s. 2d. sterling: Find in law that Messrs Sutcliffe & Son were entitled to refuse to forward the bale in its damaged condition, and were entitled to return it; that Messrs Oppenheimer & Grabowsky were justified in rejecting the goods because of the delay in forwarding them; and that the defenders are responsible for the loss thereby sustained by the pursuers: Therefore sustains the appeal: Recal the judgment of the Sheriff appealed against, and affirm the judgment of the Sheriff-Substitute: Of new ordain the defenders to make payment to the pursuers of the sum of £36, 1s. 2d. sterling, with the legal interest thereon from the date of citation to this action till paid: Find the pursuers entitled to expenses in the Inferior Court and in this Court,” &c.

Counsel for Appellants — D.-F. Mackintosh, Q.C.—M'Lennan. Agents—Liddle & Lawson, S.S.C.

Counsel for Respondents — Balfour, Q.C.—Dickson. Agents—Millar, Robson, & Innes, S.S.C.

Wednesday, December 15.

FIRST DIVISION.

[Lord Fraser, Lord Ordinary
in Exchequer Causes.

DODSWORTH v. RIJNBERGEN AND OTHERS.

Revenue—Customs—Prosecution of Crew of Vessel Found in British Port or Waters having on board Spirits, &c., in Packages of a Character of which Import Forbidden—Customs Consolidation Act 1876 (39 and 40 Vict. c. 36), secs. 179, 221, and 259.

The crew of a foreign vessel were convicted in a Justice of Peace Court on a complaint under the Summary Jurisdiction Acts, charging them under section 179 of the Customs Consolidation Act 1876 with having, within one league of the coast of the United Kingdom, packages of spirits, &c., of a size and character which are prohibited to be imported. *Held*, in an appeal against the conviction, (1) that the accused were not competent witnesses in defence; (2) that assuming that the Justice of Peace was bound, if asked, to record the evidence, there was no ground of complaint against the conviction in his not having done so, since no motion was made to that effect; (3) that the proceedings being by complaint under the Summary Jurisdiction Acts, and not upon an “information” under the Customs Acts, it was not necessary that the procedure should be upon the sworn statement of the informer.

At a Justice of Peace Court held at Lerwick in August 1886 Jan Jan Rijnbergen and others, the master and certain seamen of the “Merchant,” of Schiedam, were charged (under the Summary Jurisdiction Acts) on the complaint of Jeremiah Dodsworth, superintendent of Customs at Lerwick, with an offence against the Customs Consolidation Act 1876. Their agent objected to the complaint as defective in specification, and it was amended, the respondent's agent con-