

OFFICERS OF STATE for Scotland, Appellants.
Lord Advocate Rae—Dundas.

No. 8.

COMMISSIONERS OF SUPPLY of Wigtonshire.—*James Campbell.**

Poor.—A pauper who was found guilty of theft before the Court of Justiciary, but insane at the time of committing it, having been ordained to be confined in gaol, or delivered to his friends under the usual conditions; and having been sent by the Magistrates of the burgh and the Commissioners of Supply of the county within which the gaol lay, to a lunatic asylum;—Held, (reversing the judgment of the Court of Session), that the Officers of State were not liable for the expense of his maintenance in gaol and the asylum, down to the period when, having recovered sanity, he obtained a remission from the Crown.

JAMES FISHER was born in the parish of Ochiltree, in the county of Ayr. He afterwards acquired, by residence, a settlement either in the parish of Sorn or of St Quivox. He became a wandering pauper lunatic; and, while rambling about Wigtonshire, committed various petty thefts. Being apprehended, he was brought to trial before the Circuit Court of Justiciary held at Ayr; and the jury returned a verdict finding him guilty, but that he was subject to fits of insanity at the time of committing the thefts; and the Court therefore ordered, that he should be transmitted to the ‘tolbooth of Wigton, therein to remain during the remaining days of his life, unless his friends shall find sufficient security, to the satisfaction of the Sheriff of the county, to take the custody of his person, and keep him in such security as that he may not have it in his power to commit such crimes and irregularities in time coming.’ He was accordingly transmitted, but the Magistrates of Wigton, and the Commissioners of Supply of the county, finding him a dangerous inmate of the prison, petitioned the Court of Justiciary for permission to remove him to a lunatic asylum; and the Court granted warrant for his transmission to the lunatic asylum of Glasgow or Dumfries—the petitioners to make the necessary arrangement for the lunatic’s support with the manager of these institutions; and ‘reserving to the petitioners any claim of relief they may have for such maintenance against any other person or persons.’ Fisher was removed to the Glasgow asylum,

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2D DIVISION.
Lord Pitmilley.

* No case was presented by the respondents, nor did they appear by Counsel; but, at the desire of the House, Mr Campbell supported the judgment of the Court of Session.

March 10. 1830. where he remained for some time, until he was restored to comparative sanity, and soon after was set at liberty under a remission from the Crown.

In the mean while the Commissioners of Supply brought an action against the parishes of Ochiltree, Sorn, and St Quivox, concluding for reimbursement of the sums expended on his aliment, and for relief from his future maintenance in the asylum. The Lord Ordinary sustained the defences, ‘ in respect the libel concludes against the defenders for payment of certain sums of money disbursed by the pursuers, and for relief of certain obligations undertaken by them to the lunatic asylum of Glasgow on account of James Fisher an alleged pauper, in consequence of a sentence of imprisonment for life pronounced against him by the Court of Justiciary, on a verdict finding him guilty of a certain theft, but adding that he was subject to fits of insanity at the time of committing the theft; and in respect there is no rule of law, or any precedent, for subjecting the parish of a poor person’s settlement to relieve the party on whom the burden falls of alimending him in the circumstances and in the manner occurring in this case; and further, in respect the libel concludes against the parishes which are called as defenders, not that these parishes, or one or other of them, shall be decerned in general to aliment the pauper, and that the granting of aliment shall be fixed in the usual manner, but concludes for certain specific sums, viz. for L.35. 5s. 1d. in name of aliment, during a certain named period, for L.18. 13s. 4d. as the expense of legal proceedings, and of removing him to the lunatic asylum, and to relieve the pursuers of the obligations undertaken for his maintenance in the asylum, or otherwise to pay L.50 yearly for the aliment of the pauper during his life.’ His Lordship added in a note, ‘ On the second of the above rationes decidendi, the parties may look into the case of Paton v. Adamson, 20th November 1772, Fac. Coll.’ The Court, on petition, adhered; but on a second petition, being equally divided, called in Lord Cringletie, and altered. The parishes now reclaimed; and the Court being again equally divided, called in Lord Pitmilley, and returned to their original judgment, and found the pursuers liable in expenses. The Commissioners of the county again petitioned, and, by a supplemental action, called the Officers of State of Scotland, and the Magistrates of Wigton, who appeared and entered defences. The result was, that the Court adhered to their interlocutor assoilzieing the parishes, with expenses; sustained the defences for the Magistrates of Wigton; but decerned against the Officers of State in terms

of the conclusion for relief as libelled: found no expenses due, but recommended to the consideration of the Officers of State the application made by the pursuers for indemnification of the expenses of this action. The case having been again brought under review, it stood over, in consequence of the dependence of another action,* which it was supposed might rule the decision of the present question; but ultimately the Court (5th June 1827) adhered.†

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The Officers of State appealed.

Appellants.—The appellants are not liable for the aliment of criminals after conviction. That is a burden which it has been decided falls on the burghs of Scotland. But truly this is not a question as to a criminal. Fisher was not a delinquent at all. From his insanity he could not incur guilt, or be the proper subject of punishment: accordingly, he was not treated or punished as a criminal, but was transmitted to gaol, as being, from his insanity, an unsafe person to be at large. If his friends had been able or willing to keep him, to the satisfaction of the Sheriff, he would have been delivered over to them. No doubt the criminal act brought him before the Court; but, when there, it was proved that his insanity prevented him from having been in the eye of the law guilty of a criminal act. He therefore, whether in gaol, or in the asylum, or free, was a lunatic pauper. But it is a misapplication of terms to say that he was a criminal at all. The sentence pronounced was not in modum poenæ, but in modum preventionis, as a dangerous lunatic. The Officers of State, therefore, have no concern with him as a criminal, nor is there any authority for holding that they are liable in relief to the Commissioners of the county, because he is a pauper lunatic. They would not, had he never been tried; and his trial does not create any responsibility which they had not incurred before. The enactments in the Regiam Majestatem do not impose a liability; and if at any time the Crown has supported pauper lunatics, it only occurred per incuriam. Indeed the point has been settled by the case of Scott, July 9. 1818, F. C. There is clearly nothing in the argument which was stated in the Court below, that Fisher having been imprisoned for public security, the appellants are liable. He would have been equally in confinement for public security, if his

* Ramsay v. Officers of State, &c. March 1. 1825; 3. Shaw and Dunlop, No. 400. p. 597.

† 5. Shaw and Dunlop, No. 359. p. 767.

March 10. 1830. friends had assumed the custody; but would these friends have had a claim against the Officers of the Crown? It is not incumbent on the appellants to say on which party this burden ought to fall. But if principle or authority be consulted, the parishes are liable.

Respondents.—The parishes have been finally assoilzied; the defences of the Magistrates have been sustained; and, let the burden light on whom it may, it would be most unjust to enforce it on the respondents. In every view, the Officers of the State are liable. In fact, Fisher was a criminal; and as such was placed in custody. Previous to his apprehension for the thefts he was at large; and there is no ground for saying that he would not have remained so, had he not committed these petty depredations. Besides, if being at large was dangerous to the community, then, in confining him, the public safety has been considered, and the Crown is bound to pay the expense of purchasing that security. Accordingly there are several instances in which the Crown has been at the expense of supporting lunatic paupers in gaol. The authority of the *Regiam Majestatem* is in accordance with these views.

LORD CHANCELLOR.—After giving every attention to this case, it does appear to me, that there is neither authority nor principle for this decision, and that the judgment should be reversed.

The House of Lords accordingly ordered and adjudged, that the interlocutors complained of be reversed, and the Officers of State assoilzied.

Appellants' Authorities.—1. Hume's Com. p. 43.; *Regiam Majestatem*, 1487, c. 101. *Scott v. Thomson*, July 9. 1818, (F. C.)

A. MUNDELL, Solicitor.