

viously affixed thereto by the pursuer: Finds that the whole of said goods in the pursuer's shop have been sold by authority of the Court since this action was raised, without the measurements and weights thereof having been ascertained: Finds that, in these circumstances, the contract of sale of said goods entered into between the pursuer and defender was never fully completed, and cannot now be completed: Finds that the objection, that the measurements and weights of the goods were not ascertained, was not stated by the defender before the action was raised; and that he did state, both before the action was raised and afterwards on record, other objections rested on grounds which are entirely unsupported by the evidence: In these circumstances, assails the defender from the conclusions of the libel, and decerns; and finds no expenses due to either party."

The pursuer reclaimed.

SCOTT and ORPHOOT for reclaimer.

MACDONALD for respondent.

The Court unanimously recalled the interlocutor of the Lord Ordinary, and gave judgment for the pursuer, holding that if there was any hardship in the case it was entirely due to the fault of the defender. It was clearly proved by the evidence of skilled witnesses that the valuers had done all they could be expected to do, and had followed the usual practice in such cases. If the defender was to object to the valuation, he should have done so betimes. He did not do so, and he even allowed the goods to be sold under judicial warrant, so that the measure and weight were now beyond ascertainment, without getting a new valuation. On such an informal reference it was absurd to expect a formal award, and even the signing of the inventory by the valuers seemed quite immaterial, provided they actually performed their duty of fixing the prices.

Agent for Pursuer—H. Buchan, S.S.C.

Agent for Defender—J. Keegan, S.S.C.

Saturday, February 27.

SECOND DIVISION.

GARDNER v. KESSACK.

Sheriff—Act 16 and 17 Vict. c. 80, § 4—*Record*. Mistake by a Sheriff-substitute in making up a record under the Act 16 and 17 Vict. c. 80, held not to invalidate the procedure so as to justify the action being dismissed. Remit made to the Sheriff to make up a record of new.

This was an appeal from an interlocutor of the Sheriff of Banffshire, dismissing an action in respect of irregularities committed in the course of making up the record.

The Sheriff Court Act, 16 and 17 Vict. c. 80, 4, makes certain provisions for the adjustment and closing of records; and in this case, in terms of that section, it was necessary to have closed the record on the 8th April 1868, or to have adjourned the meeting for closing for eight days, and then closed. In place of taking this course, the Sheriff-substitute, on 8th April, simply ordered answers to the defender's statement, and this order was afterwards prorogated on 6th May. The Sheriff-principal held that, in these circumstances, the whole proceedings, commencing with 8th April, were inept; and, as he could "devise no scheme for taking up the broken thread at the point where the

stitch was deserted, which would not be an evasion of the Act of Parliament," he dismissed the action.

SHAND for appellant.

ASHER in answer.

The Court recalled this judgment, and held that it was competent in the circumstances to order a new record to be made up. They accordingly remitted to the Sheriff for that purpose, and to proceed in the cause as might be just.

Agent for Appellant—David Milne, S.S.C.

Agent for Respondent—David Cook, S.S.C.

COURT OF JUSTICIARY.

Monday, March 1.

HIGH COURT.

H. M. ADVOCATE v. HOLMES AND LOCKYER.

Post-Office Act, 1 Vict. c. 36—Opening of Letters—Trap-Letter—Verdict.

Section 35 and 36 of the Act, 1 Vict. c. 36, apply to Scotland.

Relevancy of common law charge of detaining and opening post-letter *sustained*.

A "trap" letter, not posted in the ordinary way, but inserted otherwise among the letters given out for delivery, is not a post-letter.

Objection to verdict, on the ground of uncertainty, *repelled*.

George Wilkie Holmes, sometime letter-carrier in Edinburgh, and Edmond Beatty Lockyer, residing in Edinburgh, were accused—"That albeit, by an Act passed in the first year of the reign of her Majesty Queen Victoria, cap. 36, intituled 'An Act for consolidating the laws relative to offences against the Post-Office of the United Kingdom, and for regulating the judicial administration of the Post-Office laws, and for explaining certain terms and expressions employed in those laws,' it is enacted by section 25, 'that every person employed by or under the Post-Office who shall, contrary to his duty, open, or procure or suffer to be opened a post-letter, or shall wilfully detain or delay, or procure or suffer to be detained or delayed a post-letter, shall in England and Ireland be guilty of a misdemeanor, and in Scotland of a crime and offence, and, being convicted thereof, shall suffer such punishment by fine or imprisonment, or by both, as to the Court shall seem meet;' and albeit, by section 35 of the said Act, it is *inter alia* enacted that 'every person who shall aid, abet, counsel, or procure the commission of any misdemeanor punishable under the Post-Office Acts, shall be liable to be indicted and punished as a principal offender;' and albeit, by section 36 of the said Act, it is enacted, 'that every person who shall solicit, or endeavour to procure any other person to commit a felony or misdemeanor punishable by the Post-Office Acts, shall in England and Ireland be guilty of a misdemeanor, and in Scotland of a crime and offence, and, being thereof convicted, shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years;' and albeit, by the laws of this and of every other well-governed realm, the wickedly, unlawfully, and feloniously intercepting, opening, or detaining, or causing or procuring to be intercepted, opened, or detained, letters transmitted by means of the public post to any of the lieges, and not addressed to or intended for the person so intercepting, opening, or detain-