

SECOND DIVISION.

GLAS. GAS LIGHT CO. v. GLAS. WORKING MEN'S
TOTAL ABSTINENCE SOCIETY.

Sheriff—Proof—Findings—Act of Sederunt. Held incompetent, under the Act of Sederunt 15th February 1851, for a Sheriff to dispose of a case without framing findings in fact, and a case where that had not been done remitted to the Sheriff for that purpose.

This was an advocacy from the Sheriff Court of Glasgow. The case had been decided by the Sheriff after a long proof had been led, but his interlocutor contained no findings in fact. The Court held that under the Act of Sederunt 15th February 1851, this was incompetent, and they accordingly remitted to the Sheriff to pronounce such findings.

Counsel for Advocators—Young and Mackenzie. Agents—A. G. R. & W. Ellis, W.S.

Counsel for Respondents—Gordon and Scott. Agent—D. Crawford, S.S.C.

LINDSAY v. MACKENZIE AND FAICHNEY.

Poor—Settlement—Residence. Held that a person who had resided industrially in a parish for five years had thereby acquired a residential settlement there, and that the continuity of his residence for that purpose had not been interrupted by his having been for a few days detained in prison under warrant of the Sheriff, in consequence of his supposed insanity, the expenses attending these proceedings not being parochial relief.

This was an action at the instance of the inspector of the parish of Row, against the inspector of the parishes of Kiltearn and Strath, concluding for the advances made to a pauper who had become chargeable on Row against Kiltearn as the parish of his birth, and alternatively against Strath, as the parish where the pauper had acquired a residential settlement. The question arose out of the following circumstances. The pauper William Fraser, a saddler, was born in the parish of Kiltearn. He had a continuous industrial residence within the parish of Strath for a period of upwards of five years from the month of February 1856, during which period he supported himself, his wife and family. In the month of July 1860, while resident in the parish of Strath, he was placed in confinement for a few days, under warrant of the Sheriff, as a dangerous lunatic, and certain expenses connected with his apprehension, and of his maintenance while he was in confinement under the said warrant, were paid by the inspector of the parish of Strath, who thereafter claimed and received payment thereof from the parish of Kiltearn. In April 1863 the pauper went to reside in the parish of Row, and pursued his ordinary occupation there until the month of December 1863, when being again attacked by insanity, he was apprehended and committed to Gartnavel Asylum, near Glasgow. Since he left the parish of Strath he never acquired a settlement by a residence in any other parish. In these circumstances the question came to be whether the payment made by the inspector of Strath in connection with the apprehension and confinement of the pauper, constituted parochial relief in the sense of the 76th section of the Poor Law Amendment Act, so as to operate an interruption to the acquisition of a settlement by him in the parish of Strath. The Lord Ordinary (Jerviswoode) found that it did not; that he had acquired a settlement by industrial residence in the parish of Strath;

that Strath was accordingly bound to relieve Row, and he assoltized Kiltearn from the conclusion of the summons.

The Inspector of Strath reclaimed.

GORDON and LEE, for him, argued—The relief received by the pauper during his residence in Strath prevented his acquisition of a settlement there by such residence. The parish of Kiltearn, by its admissions of liability and payment, is barred from disputing the propriety of the relief afforded in 1860 and 1861, and also from contending that the pauper's residence in Strath was sufficient to give him a settlement there.

MACKENZIE (with him HAMILTON PYPFER), answered—The residence of the pauper, for the period between 1856 and 1861, in the parish of Strath, having been continuous and industrial, he acquired a settlement there. His compulsory removal to jail, and his confinement there in July 1860 was matter of police for the safety of the public, and not parochial aid received or applied for by him, which could in the sense of the Poor Law Act interrupt his residential settlement in the parish of Strath.

WATSON, for the parish of Row, was not called upon.

At advising—

The LORD JUSTICE-CLERK said—The Lord Ordinary's interlocutor appears to me to be perfectly well founded. It is not disputed that Fraser continued in the parish of Strath for five years from 1856 downwards, and that by such residence he acquired an industrial settlement, unless its continuity and effect were destroyed by what occurred in July 1860, and which is said to have been a giving of parochial relief in the meaning of the 76th section of the Act. What took place was this: Fraser was apprehended at Broadford, brought to Portree, charged before the Sheriff as a dangerous lunatic, sent to prison for a week, again brought before the Sheriff, and finally liberated. It appears to me that parochial relief is a most extraordinary name to give to these proceedings; but let us examine the statutory authority under which they were carried out, so that we may see whether, so looking at them, we may be able to construe them in such a way as to entitle them to that name. Now, under the Lunacy Act, the Sheriff is required, after hearing the statement of the Procurator-Fiscal and the relative medical certificate, to commit the lunatic in the meanwhile to some place of safe custody; and here it is important to observe that this provision is not confined to pauper lunatics, but extends to all dangerous lunatics. After hearing evidence, and being satisfied of the insanity, the Sheriff is then bound to send him to a public asylum. For the expenses of all these proceedings the lunatic is liable himself, after him the person otherwise bound to support him, failing whom the parish of his settlement. I have grave doubts whether, if such expenses were paid by the parish, this could under any circumstances be held to be a giving of parochial relief; but I am quite clear that it cannot be so held here. The principal expenses appear to have been incurred—(1) In removing Fraser from a place where he was in business for himself, and neither obtaining or asking for parochial relief, and conveying him to another place, where he was lodged in jail; and (2) in proceedings before the Sheriff, which were undertaken with a view to committing him as a dangerous lunatic, and which failed. A very important question may arise, whether, in the case of their being someone liable, in the ordinary case, to pay for the lunatic, he would be so liable where the proceedings were so abortive as these

seem to have been; but it is the merest fallacy to assume such liability in the present case. But then, besides the other expenses, there is a sum of 7s. for Fraser's maintenance in prison, and laid out by whom? By the Procurator-Fiscal, for the public interest. It appears to be as wild a statement as I ever heard to call this a receipt of parochial relief in any intelligible way. According to the showing of the parties themselves, Fraser was not in a state of mind to exercise any choice in the matter; and while in this state he was removed from a place where he was in receipt of an income, and lodged in jail to await the decision of a magistrate as to whether he should or should not be set at liberty. Still further, it is a great fallacy to assume that because the Parochial Board may be bound to relieve the inspector that that necessarily reduces the lunatic to the condition of a pauper. The statute merely says that he shall be treated as a pauper lunatic, but it does not make him one—nay, it contains provisions in case it shall eventually turn out that the lunatic is not a pauper. My opinion as to the total misunderstanding under which parties appear to have laboured is further confirmed by the fact that the notice given to Kiltearn professed to be given under the Poor Law Act—an Act under which it was no more entitled to be given than at common law. It is the Lunacy Act, and it alone, which authorises such notices. On the whole matter, I am clearly of opinion that the Lord Ordinary has come to a sound conclusion, and that his interlocutor should be adhered to.

The other Judges concurred.

The interlocutor of the Lord Ordinary was accordingly adhered to.

Agents for Strath—Mackenzie & Fraser, W.S.

Agents for Row—Tawse & Bonar, W.S.

Agents for Kiltearn—Hamilton & Kinnear, W.S.

HIGH COURT OF JUSTICIARY.

Monday, July 2.

(Lord Justice-General and Lords Deas and Ardmillan presiding.)

H.M. ADV. *v.* DOUGLAS AND IRVING.

Corrupt Practices Prevention Act. Two panels charged with contravening the Act 17 and 18 Vict. c. 102, convicted and sentenced to imprisonment for two months.

John Douglas junior, engineer, Stranraer, and James Irving, mason, Stranraer, were indicted under the fifth section of the Act 17 and 18 Vict. cap. 102, entitled "an Act to consolidate and amend the laws relating to bribery, treating, and undue influence at elections of members of Parliament" (the Corrupt Practices Prevention Act 1854), by the fifth section of which it is enacted that "every person who shall, directly or indirectly, by himself, or by any other person on his behalf, make use of, or threaten to make use of, any force, violence, or restraint, or inflict, or threaten the infliction, by himself, or by or through any other person, of any injury, damage, harm, or loss, or in any other manner practise intimidation upon or against any person in order to induce or compel such person to vote, or refrain from voting, or on account of such person having voted, or refrained from voting at any election, or who shall, by abduction, duress, or any fraudulent

device or contrivance, impede, prevent, or otherwise interfere with the free exercise of the franchise of any voter, or shall thereby compel, induce, or prevail upon any voter either to give or to refrain from giving his vote at any election, shall be deemed to have committed the offence of undue influence, and shall be guilty of a misdemeanor, and in Scotland of an offence punishable by fine or imprisonment, and shall also be liable to forfeit the sum of fifty pounds to any person who shall sue for the same, together with full costs of suit."

The indictment set forth that "you, the said John Douglas junior, and James Irving are, both and each or one or other of you, guilty of the offence of undue influence, set forth in the above recited section of the Act first above-mentioned, more particularly of the offence of, by abduction, duress, or any fraudulent device or contrivance, impeding, preventing, or otherwise interfering with the free exercise of the franchise of a voter, or thereby compelling, inducing, or prevailing upon a voter to refrain from giving his vote at an election, actors or actor, or art and part, in so far as Thomas Wallace, cattle-dealer, now or lately residing at or near Glenluce, in the parish of Old Luce, and shire of Wigtown, being, at the date hereinafter libelled, a person entitled to exercise the franchise and to vote at the election of a member of Parliament for the shire of Wigtown, and the 18th day of July 1865 having been fixed as the day on which the election of a member of Parliament for the said shire should take place, the poll to be open between the hours of eight o'clock in the morning and four o'clock in the afternoon, and the town of Stranraer, in the shire aforesaid, being the polling place where the said Thomas Wallace behoved to record his vote, and the said Thomas Wallace, as you well knew, intending to vote at the said election, you, the said John Douglas junior, and James Irving did, both and each or one or other of you, on the evening of the 17th or early in the morning of the 18th day of July 1865, wickedly and feloniously,—abduct the said Thomas Wallace from the dwelling-house or premises situate in or near Hanover Street, in or near Stranraer aforesaid, now or lately occupied by William Yates, grocer and spirit-dealer, now or lately residing there, or from some other place in or near Stranraer, to the prosecutor unknown, while he, the said Thomas Wallace, was in a state of total or partial intoxication, or otherwise unable to resist, and put him into and convey him in a carriage or other vehicle, away from the said town of Stranraer, and out of the said shire of Wigtown, by the road known as the Ballantrae and Girvan road, or as the Glasgow road, or by some other road to the prosecutor unknown, to the house or premises at Lovestone, in the parish of Dailly, and shire of Ayr, now or lately occupied by Robert Inglis, now or lately residing there, the said last-mentioned house or premises being at a distance of thirty-five or thereby miles from the said town of Stranraer, and put him, the said Thomas Wallace, or cause him to be put, to bed in the said house or premises at Lovestone while still in a state of intoxication or incapacity; and then in the said house or premises at Lovestone you did, both and each or one or other of you, wickedly, feloniously, and fraudulently take, or cause to be taken out of his custody, his watch, and cover up the face of a clock which stood in the said house or premises, so as to keep him in ignorance of the progress of time; and you, the said John Douglas junior and James Irving did, in or near the said house or premises at Lovestone, it