

and therefore I am of opinion that this conviction should be set aside.

LORD YOUNG—The question here is of some interest to the parties, and, indeed, it is not without some difficulty. We have had the case before us several times, and we delayed it that certain information, both as to past and future, with regard to the trade of the appellant, which the Case does not give. We might in other circumstances have sent it to be amended, but it is not suggested that the evidence before the Magistrate was such as to enable him to amend it in the particular required. By the Glasgow Police Act everybody who carries on the business of a broker must have a licence, the object being of course security against thieves. A register of purchases must for the same reason be kept. The appellant says that he is a wholesale dealer, and that his business is not such as comes within the definition of a broker by the statute, which by sec. 200 defines "broker" as meaning any person who occupies or uses any building, or part of a building, or other place, including a stall in a public market, as a dealer in second-hand goods or articles, or in old metals, bones, or rags. That language conveys a pretty vivid idea of the people who require for the safety of property to be licensed and to keep a register of purchases. The appellant objects to the relevancy of the complaint because it does not set forth that he is not of that class. I agree with both your Lordships that the complaint does set forth that he is of that class, for it sets forth that he carried on the trade of a broker within the meaning of the Glasgow Police Act 1866, without having obtained a licence so to do from the Magistrates' Committee of the city of Glasgow. I am not disposed to read the words which follow—"and this the said Thompson M'Mullan did by then and there purchasing from some person or persons to the complainant unknown second-hand articles or goods, viz., 23½ or thereby potato bags"—as being a statement of the only thing done to constitute the ground for a charge of carrying on business as a broker without a licence, but only as a specific instance. The complaint, I think, must be held as implying that this purchase was only an individual act in a course of trade. The appellant says he is really a wholesale dealer, but on this occasion at all events he made a purchase of 23½ bags, which is a retail purchase such as a broker might make. I am averse to the contention that a man who makes such a purchase is not "dealing" because he only sells wholesale. A man who sells must acquire what he sells somehow, and people who sell wholesale often buy retail. A business may consist in that, or in the converse, buying wholesale and selling retail. I think, therefore, that there is nothing in the objection to relevancy.

But then it is not proved that this was other than an isolated transaction. It is not stated in the Case that there has been a single other instance of such dealing. And indeed it is clear from the implication to be derived from the second question put to us that there was no other such case proved, because we are asked "whether the appellant in making the said purchase carried on the trade of a broker as defined by sec. 200 of the Glasgow Police Act 1866?" Now, that purchase may have been one of many such transactions in a course of trade, showing that the appellant carried on such a trade, but when we are asked whether this one

purchase constituted a carrying on of such trade, I think we must answer that question in the negative. We thought, however, that it would not be satisfactory to proceed to give judgment on this view without delaying the case in order to see whether this generally wholesale dealer would give an undertaking that this would be an isolated transaction. He gave such an undertaking, stating as to the past that his other dealings had been on a large scale with dealers only, and that he would undertake that hereafter he would make no purchases of the sort complained of in this complaint, but make them from merchants only. The counsel for the respondent, on being asked if there was any reason to suppose that this was not so, or that any purchases had been made other than of a wholesale character, said that they knew nothing of the matter, and had not thought it necessary to inquire. I read the case by the light of all this, and am prepared to answer the question exactly as it is put. I am of opinion that the evidence of this one transaction is not evidence on which the appellant can reasonably be convicted of carrying on the trade of a broker. It was evidence in the matter, and might have been made sufficient, but that was not done. I am therefore of opinion that we must answer the second question in the negative.

Conviction quashed.

Counsel for Appellant—Murray. Agents—J. & A. Hastie, S.S.C.

Counsel for Respondent—Mackintosh—Lang. Agents—Campbell & Smith, S.S.C.

Friday, June 9.

(Before Lords Young, Craighill, and Adam.)

LENNOX v. FERGUSON.

Justiciary Cases—Grocer's Certificate—25 and 26 Vict. c. 35, No. 3 of Certificates in Schedule A.—"Permitting Exciseable Liquor to be Drunk."

Under the above enactment certificates are granted to grocers trading in exciseable liquors "upon condition that they do not traffick in or give any exciseable liquors to be drunk or consumed on the premises."

Where a grocer was convicted of a breach of certificate "in so far as he had permitted one gill of whiskey to be drunk on his premises," the Court *quashed* the conviction.

Counsel for Appellant—Jameson. Agents—Boyd, Macdonald, & Jameson, S.S.C.

Counsel for Respondent—Keir. Agent—Party.

Friday, June 9.

(Before Lords Young, Craighill, and Adam.)

M'DONALD v. WHITE.

Justiciary Cases—Relevancy—Wilful Obstruction of Street—Obstruction—Annoyance—Annoyance or Danger of Residents or Passengers—Act 25 and 26 Vict. c. 101 (General Police and Improvement (Scotland) Act 1862), sec. 251.

The General Police and Improvement (Scotland) Act 1862 provides by section 251 that every person who in any street or private street, "to the obstruction, annoyance, or danger of the residents or passengers, . . . places or uses any bench or stall on any footway" shall be liable in certain penalties. A person was charged before a Police Magistrate under this section with "wilfully causing an obstruction" on a footway by means of a bench or stall. *Held* that the complaint was relevant—*diss.* Lord Craighill, who held that the words "to the obstruction, annoyance, or danger of the residents or passengers" were essential to the relevancy of the complaint.

Jurisdiction—Public Thoroughfare—Street—Act 25 and 26 Vict. c. 101 (supra).

It having been objected to a conviction for the offence of obstructing the footway of a public street, obtained before a Police Court, that the part of the footway on which the obstruction was said to have been caused was the private property of the accused, the proprietor of a shop and tenement abutting on the footway in question, and that a question of heritable right being thus involved, summary proceedings in the Police Court were incompetent—*held* that the Magistrate was entitled to decide for the purposes of the case whether the place in question was actually part of the public thoroughfare or not, and that in convicting the accused he must be held to have considered and decided that question of fact.

It is provided by section 251 of the General Police Act 1862 (25 and 26 Vict. c. 101) that "Every person who in any 'street' or 'private street,' to the obstruction, annoyance, or danger of the residents or passengers, commits any of the following offences, shall, on conviction, be liable in a penalty not exceeding 40s., or to imprisonment not exceeding 14 days. . . . Every person who places or leaves any furniture, goods, wares, or merchandise, or any cask, tub, basket, pail, or bucket, or places or uses any standing place, stool, bench, stall, or showboard on any footway. . . . Every person who places, hangs up, or exposes to sale any goods, wares, merchandise, matter, or thing whatsoever, so that the same project into or over any footway or beyond the line of any house, shop, or building at which the same are so exposed, so as to obstruct or incommode the passage of any person over or along such footway."

James M'Donald, proprietor of a tenement in High Street, Portobello, in part of which he carried on the business of a greengrocer and provision-dealer, was charged before the Magistrates of Portobello with a contravention of the section

of the General Police Act of 1862 above quoted, in so far as on the 4th day of March 1882, or about that time, and upon High Street, within the burgh of Portobello, he the said accused did, by means of a bench or stall loaded with flowers, fruit, and vegetables, or other goods, wares, or merchandise, wilfully cause an obstruction on the footway in front of the shop occupied by him at 190 High Street aforesaid.

A preliminary objection was made to the competency of the proceedings, on the ground that the titles of the accused and relative plans which were produced in Court disclosed the fact that the alleged obstruction was on his own private property, and that he was entitled, in the exercise of his right of property, to place the board with shrubs and flowers complained of as and where he had placed them. The following averment as to this right of property is taken from the statement in the note of suspension hereafter referred to:—"II. The premises in which the complainer carries on business as a provision merchant are situated at No. 190 High Street, Portobello. These premises are part of a tenement of houses of which the complainer is proprietor, and are erected on ground which was formerly separated from the highway or public turnpike road, now the High Street of Portobello, by a stone wall, and are built backwards thirty-three feet from the centre of the highway, and are about six feet and a half from where the boundary-wall formerly stood. The line of the old boundary-wall is marked out in the pavement in front of the complainer's tenement of houses. The breadth of the pavement between the old boundary-wall and the High Street is six feet and a-half. On the eastward of the complainer's tenement of houses is another tenement which is nearly built close up to the old boundary-wall, and projects about six feet further forward towards the High Street than the complainer's property. An iron railing is erected in front of this house where the old boundary-wall formerly stood. III. In front of the complainer's shop is an entrance to a cellar beneath his premises, which is used constantly in connection with his business. This entrance is within the property contained in the complainer's title, and within the old boundary-wall. In order to protect people from falling into this entrance when open, the complainer placed four iron posts and chains around the same, and placed boards over the chains, on which were placed shrubs and flowers so as to make the protection more ornamental."

The presiding Magistrate having repelled this objection to the competency of the proceedings, it was, *inter alia*, objected to the relevancy of the complaint that it was not therein set forth that any obstruction or annoyance or danger to the residents or passengers had been caused by the alleged obstruction complained of, and also that the penalty or forfeiture and the alternative, in which the accused was liable for the alleged contravention, were not set out as was required by the Summary Procedure Act of 1864, under which the complaint bore to be taken. The Magistrate repelled these objections, and after hearing evidence convicted the accused, and found him liable in a penalty of twenty shillings with the alternative of five days' imprisonment.

This suspension was then brought.

The suspender pleaded, *inter alia*—"No ob-