

ship in thinking that the suspender would be no better if we granted this suspension. The same reasons which would have moved us to that course might be sufficient to prevent his re-apprehension and so enable him to get off altogether. I think he would be entitled to have sufficient time allowed him to return to the place from which he had been illegally brought. After a certain time no doubt he would be held to be staying here of his own free will, and so liable to be apprehended.

On the whole matter, I am of opinion that the suspension should be refused.

LORD M'LAREN—It must be kept in view that all the regulations for the endorsement of warrants and transit and delivery of persons under arrest are precautions for the protection of the liberty of the subject, and are designed to prevent injustice being done to innocent and law-abiding persons. We must be careful to apply these rules in a reasonable way, and not so as to make the apprehension of persons who have fled from justice an impossibility. With regard to the competency of the proceedings in Portugal, I think this is a matter with which we really have nothing to do. The extradition of a fugitive is an act of sovereignty on the part of the State who surrenders him. Each country has its own ideas and its own rules in such matters. Generally it is done under treaty arrangements; but if a State refuses to bind itself by treaty, and prefers to deal with each case on its merits, we must be content to receive the fugitive on these conditions, and we have neither title nor interest to inquire as to the regularity of proceedings under which he is apprehended and given over to the official sent out to receive him into custody. In the present case the suspender was delivered to the officer Warnock on board the British vessel "Malaga," which was then in the roads at the mouth of the Tagus, by two Portuguese officers. Thereupon the officer Warnock assumed the custody of the suspender, and immediately afterwards the vessel sailed. I have no doubt that Warnock was entitled to take the suspender into custody as soon as he was on board a British ship. The objection that the ship was then in Portuguese waters, is one belonging to the region of diplomatic controversy, and could only be taken by the Portuguese authorities. But they were not objecting. On the contrary, by handing the prisoner over to a British officer they intimated that their authority ceased. It is said that the warrant to arrest granted by the Sheriff of Lanarkshire was not endorsed and was therefore invalid. It may be that Britannia rules the waves, but I have never heard that the British Government has established magistracies in the Atlantic for the purpose of endorsing warrants. If the Sheriff's warrant had been confined to Lanarkshire it might have been proper to proceed upon a warrant from the Court of Justiciary. But the warrant of the Sheriff now runs over Scotland, and is therefore as universal in its

character as the warrants of this Court. It is also pleaded that when the vessel stopped at Vigo the prisoner should have been released or surrendered to the Spanish Government. This seems to me to be a rather extravagant application of a principle otherwise sound, considering that the prisoner was on board a British ship in lawful custody and *in transitu* to the courts of his country for trial. In London we are informed the officer in charge of him proposed to take the prisoner before a magistrate, but the suspender waived the proposal, preferring to go straight to Scotland. It is not necessary to proceed upon this statement, because I am of opinion with your Lordships that when a fugitive is brought before a magistrate in Scotland on a proper warrant, the magistrate has jurisdiction and is bound to exercise it without any consideration of the means which have been used to bring him from the foreign country into the jurisdiction. In a case of substantial infringement of right this Court will always give redress; but the public interest in the punishment of crime is not to be prejudiced by irregularities on the part of inferior officers of the law in relation to the pursuer's apprehension and detention. I may say further that as the Lord Advocate might have the suspender immediately re-apprehended I should on this ground also be indisposed to sustain this bill because the liberation obtained under it would not be effective. If the suspender were liberated now he would be in the same position as that of an accused person under an indictment that had been found irrelevant, or which had been deserted *pro loco et tempore*.

The Court refused the suspension.

Counsel for the Suspender—J. C. Lorimer—A. S. D. Thomson. Agent—Wm. Officer, S.S.C.

Counsel for the Respondent—D. Robertson. Agent—Crown Agent.

COURT OF SESSION.

Tuesday, May 27.

FIRST DIVISION.

[Sheriff of Ayrshire.

KEITH BROTHERS v. DONALD (MAXWELL'S JUDICIAL FACTOR).

Process—Appeal for Jury Trial—Competency—Judicature Act (6 Geo. IV. c. 120), sec. 40—Sheriff Court Act 1853 (16 and 17 Vict. c. 80), sec. 24.

In an action for the balance of an account claimed for work done in erecting and repairing fences on an estate, the defender appealed to the Court of Session under sec. 40 of the Judicature Act, against an interlocutor of the Sheriff allowing parties a proof of their averments, and moved the Court to

send the case to the Summar Roll. The pursuers objected to the competency of the appeal on the ground that the appeal was really taken for the purpose of obtaining the judgment of the Court on the relevancy of the action, the case being quite unfitted for trial by jury, and founded on sec. 24 of the Sheriff Court Act of 1853.

Authority—*Shirra v. Robertson*, June 7, 1873, 11 Macph. 660.

The Court held the appeal competent, and sent the case to the Summar Roll.

Counsel for the Pursuer and Respondent—A. S. D. Thomson. Agent—David Turnbull, W.S.

Counsel for the Defender and Appellant—Macfarlane. Agents—Carment, Wedderburn, & Watson, W.S.

Wednesday, May 28.

SECOND DIVISION.

[Sheriff Court of Aberdeen.]

ANNANDS *v.* ABERDEEN DISTRICT TRAMWAYS COMPANY.

Reparation—Person Injured by Tramway Car—Negligence.

A woman who was travelling in a tramway car placed a basket containing clothes upon the front platform of the car, as she was allowed to do by the regulations of the tramway company. On arriving at her destination, she got out and went to the front of the car, but while she was removing her basket the car was started, with the result that she was knocked down and seriously injured.

In an action by her against the tramway company, held that the defenders were liable in damages in respect that the accident was caused by the negligence of their servants.

Upon Monday 10th June 1889 Mrs Annand, a laundress, had occasion to travel upon one of the tramway cars of the Aberdeen District Tramways Company. She had with her a basket of clothes which she placed upon the front or driver's platform of the car in terms of article 12 of the company's byelaws and regulations. She then got into the car. Upon reaching her destination she alighted and went to the front of the car, but while she was in the act of stretching out her hand to pull the basket off the platform, the starting whistle sounded, and as the car was moved forward it struck her, knocked her down, and inflicted severe injuries upon her.

This action was raised by Mrs Annands and her husband against the Tramway Company for payment of £500 as damages for the injuries she had sustained. The pursuers averred that the car was started "by or through the fault, culpable negligence, and gross carelessness of the conductor and driver of the car."

After a proof, the result of which sufficiently appears from the note of the Sheriff-Substitute and the opinions of the Judges, the Sheriff-Substitute (DOVE WILSON) on 27th December pronounced this interlocutor—"Having considered the cause, finds that the pursuer was injured through the negligence of the defenders' servants; assesses the damages at £200 sterling, and decerns for that sum; finds the pursuer entitled to expenses, &c.

"*Note.*—This is a very narrow case upon the evidence, the accident having happened within a very brief time, and the witnesses to it being very few. This much is clear, namely—that the pursuer, while engaged in removing her basket from the defenders' vehicle, was knocked over by it, and very seriously injured. There is no evidence that she acted improperly in trying to remove her basket. No doubt she was removing it while the vehicle was moving, but she had reason to believe that the vehicle would stop again to let her get it, because after the vehicle had stopped to allow, among other purposes, her to get down, she called out loudly to those in charge to stop to let her get her basket when she saw the vehicle moving off again before giving her time to remove it. If she acted in any way indiscreetly, she cannot be blamed, as she was doubtless alarmed at the prospect of losing her basket, and had to act on the spur of the moment. On the other hand, if the defenders are to carry articles of luggage, as they are willing to do, it is clear that they must give the passengers time to remove them; and I think that when the pursuer called out, either the defenders' servant, who was at the rear of the car at the time, or the driver in front, should have heard and attended to her; and it is difficult to avoid the suspicion that the accident happened because those in charge thought that, although the vehicle was not at rest, the pursuer might safely enough remove her basket, as a younger person would easily enough have done. Be this, however, as it may, the fact remains that the defenders' servants ran down a person who has been able to show that she was not to blame, and that they have been unable to show that they were not to blame. In the circumstances, I think it was for them in a civil claim to make out that the injury they undoubtedly did was a thing which they could not avoid, and I think they have failed in doing so. As the pursuer has unfortunately suffered very serious injuries, which will affect her for life, the damages, if they are to be given at all, are moderately fixed at the amount stated in the judgment."

The defenders appealed, and argued—The pursuer was herself to blame. If she wanted to get her basket off the front platform she ought to have informed the officials in charge of the car, and they would have seen that she was not injured in doing so, but she did not. It was impossible for the driver to see her, because the stair to the top was built in such a way as to prevent him seeing anyone who came on that side of the car. The conductor was