with them. Can it be said that a person following this practice of trade is to be presumed to be guilty of fraud? I think not, and that this conviction must be quashed.

LORD WELLWOOD — The provisions of the section of the Glasgow Police Acts which are libelled in this case are highly penal, involving a fine of £5 with alternative of 30 days imprisonment, and therefore it is incumbent on us to scrutinise the terms of the complaint and conviction, and the facts found proved somewhat closely.

The conviction and penalty imposed in this case proceed on the assumption that the appellant was guilty of misrepresentation—fraudulent misrepresentation. Therefore, we must look at the facts as stated to have been found proved by the Magistrate to see whether this assumption is well founded. I agree with Lord Adam in holding that when the facts found are examined there is such an absence of misrepresentation and fraudulent intent on the part of the accused as to the weight of the contents of the packets in question as to justify us in refusing to sustain the conviction.

LORD JUSTICE-CLERK — I concur. I should have had very great doubts as to the relevancy of the complaint had it been necessary to consider that question. The appellant is charged with having kept for sale packets of tea represented as ¼ lb. packets of tea, and this representation not being true he had incurred the penalty prescribed for a breach of a section of the Glasgow Police Act. And the way this is said to have been done is that the contents of certain of the packets having been weighed, turned out to weigh less than a ¼ of a lb. when weighed without the paper wrapper, although when tea and wrapper are weighed together the combined weight is slightly over the weight represented. I doubt most seriously whether this is a relevant charge of selling a quantity of tea on the representation that it amounted to a ¼ lb. of tea when in truth the quantity was less. But as your Lordships are prepared to decide this matter on the legal merits of the case I concur in doing so.

Now, all we know about the packets in this case is that when they were seen by the inspector in the appellant's shop they bore no representation at all of what their weight was. It is true that in the window tea was weighed out into packets on a pair of scales with a ¼ lb. weight in one scale, but that weighing gave the true weight of the packet, including the wrapper. The packet only bore that the tea in them was priced at 1s. 6d. a lb. What appears to have happened was that the inspector entered the shop and asked to have certain packets he found there weighed. I cannot accept the assumption that the inspector even asked for ¼ lb. of tea when he got the packet now before us. All that we are told is that he asked that certain packets of tea should be weighed. I find no statement in the case that the accused did represent that the packets contained a ¼ lb. of tea. I have no difficulty in holding that the facts as proved do not justify the conviction and sentence pronounced, which must therefore be quashed.

The Court quashed the conviction.

Counsel for the Appellant—Ure—Cook. Agents—Simpson & Marwick, W.S.

Counsel for the Respondent — Lees — Ralston. Agents — Campbell & Smith, S.S.C.

COURT OF SESSION.

Tuesday, June 12.

SECOND DIVISION.

[Sheriff of Sutherland.

MACKAY *v.* MACKENZIE.

Process — Sheriff — Interlocutor—Findings in Fact — A.S., 15th February 1851—*Sheriff Court Act* 1853 (16 *and* 17 *Vict. cap.* 80), *sec.* 13.

An interlocutor of a Sheriff disposing of a case in which a proof had been led, contained no findings in fact as required by the Act of Sederunt of 15th February 1851. The Court remitted to the Sheriff to recal the interlocutor and pronounce one in the form prescribed by the Act of Sederunt.

Glasgow Gaslight Company v. *Glasgow Working-Men's Total Abstinence Society*, July 11, 1866, 4 Macph. 1041, and *Melrose* v. *Spalding*, June 25, 1868, 6 Macph. 952, *followed.*

By the Act of Sederunt of 15th February 1851 it is enacted that "When in causes commenced in any of the courts of the sheriffs or of the magistrates of burghs or other inferior courts, matters of fact shall be disputed, and a proof shall be allowed and taken according to the present practice, the sheriffs or other judges in the said courts shall in their judgment proceeding upon such proof distinctly specify the several facts material to the case which they find to be established by the proof, and express how far their judgment proceeds on the matter of fact so found or on the matter of law, and the several points of law which they mean to decide."

By section 13 of the Sheriff Court (Scotland) Act (16 and 17 Vict. cap. 80) it is enacted—"In all cases where a sheriff-substitute or sheriff pronounces an interlocutor disposing of a dilatory defence, or sisting process, or deciding on the admissability of evidence, or any plea of confidentiality, or giving any interim decree or disposing in whole or in part of the merits of the cause, it shall be the duty of such sheriff-substitute or sheriff, as the case may be, to set forth in the interlocutor, or in a note appended to and issued along

with it, the grounds on which it has proceeded."

Angus Mackay, farm servant, raised an action in the Sheriff Court at Dornoch against John Mackenzie, farmer, for payment of (1) £34 as the amount of wages, &c., due to him, and (2) £20 damages.

After proof the Sheriff-Substitute (MACKENZIE), by interlocutor dated 23rd January 1894, pronounced certain findings in fact, and decerned against the defender for payment to the pursuer of (1) £33, 15s., and (2) £5.

On appeal the Sheriff (JOHNSTON) on 14th April 1894 pronounced this interlocutor:—"Having considered the minutes of debate for the parties, proof, record, and whole process, Recals the interlocutor of the Sheriff-Substitute of 16th January 1894, and assoilzies the defender from the conclusions of the summons," &c.

The pursuer appealed.

When the appeal came on for hearing, counsel for the pursuer drew the attention of the Court to the fact that the Sheriff's interlocutor contained no findings in fact as required by the Act of Sederunt of 15th February 1851, and was therefore bad in form—*Glasgow Gaslight Company* v. *Glasgow Working-Men's Total Abstinence Society*, July 11, 1866, 4 Macph. 1041, and *Melrose* v. *Spalding*, June 25, 1868, 6 Macph. 952.

Argued for defender—The case of *Caird* v. *Sime*, June 13, 1887, 14 R. (H. of L.) 37, showed that although the Sheriff ought to have inserted in his interlocutor findings in fact, yet the Court was entitled, if both parties assented, to hear the appeal as if the interlocutor was correct in form.

At advising—

LORD JUSTICE-CLERK—We must remit the case back to the Sheriff in order that he may pronounce the findings in fact required by the Act of Sederunt.

LORD YOUNG, LORD RUTHERFURD CLARK, and LORD TRAYNER concurred.

The Court pronounced the following interlocutor:—

"In respect the Sheriff in the interlocutor complained of has failed to comply with the provisions of the Act of Sederunt of 15th February 1851, remit to the Sheriff to recal the said interlocutor, and to pronounce an interlocutor on the defender's appeal against the interlocutor of the Sheriff-Substitute in the form prescribed by the Act of Sederunt."

Counsel for the Pursuer—Guy. Agent—James Hepburn, S.S.C.

Counsel for the Defender—Kincaid Mackenzie—Glegg. Agents—Macpherson & Mackay, W.S.

Tuesday, June 12.

SECOND DIVISION.

[Sheriff of Lanarkshire.

THE GLASGOW POLICE COMMISSIONERS *v.* DONALD.

Police—Private Improvement Assessment—Recovery of Abortive Assessments—Reparation—Action of Damages by Police Commissioners against Collector for Amount of Assessment—General Police and Improvement (Scotland) Act 1862 (25 *and* 26 *Vict. cap.* 101), *sec.* 106.

The police commissioners of a burgh imposed a private improvement assessment on the owners of property within the burgh, under the powers conferred on them by the General Police and Improvement (Scotland) Act 1862. Section 106 of that Act enacts that a notice stating particulars of the assessment and the dates fixed for payment of the assessment and for hearing appeals, shall be sent by the clerk or collector to the person assessed through the post office at least two weeks preceding the date fixed for hearing the appeal. Notice was sent by the collector to the owner assessed, but on a later date than that required by the Act, and the owner assessed refused to pay the assessment. The police commissioners brought an action against the owner for the amount of the assessment, but the action was dismissed in respect of the notice having been sent too late. The police commissioners then raised an action against the collector for the amount of the assessment, on the ground that they had suffered loss to that extent on account of the collector having failed to perform his statutory duty.

The Court *dismissed* the action as premature, holding that the police commissioners had not proved that they had sustained any loss through fault on the part of the collector, as they had failed to show that they could not recover the assessment from the owner assessed by imposing the assessment anew and giving him timeous notice in terms of the statute.

Opinion by Lord Young that if a person to whom an assessment under the Act applies declines to pay upon the ground that he has not got notice fourteen days before a day appointed to hear his appeal, he was still liable for the assessment, and that in order to enforce his obligation to pay, the proper remedy was for the police commissioners to give him notice anew fourteen days before a day appointed to hear his appeal.

By section 106 of the General Police and Improvement (Scotland) Act 1862 (25 and 26 Vict. cap. 101) it is enacted that rates and assessments under the Act "may be imposed and levied yearly, half-yearly, or