difficulty in ascertaining the person who is meant. I have therefore no difficulty in holding that the conviction cannot be set aside upon that ground. It would be absurd to hold otherwise. The total omission of the name of a witness from the list is quite a different matter. But a slight mistake in the name of a witness is not material provided the person is sufficiently identified.

The complainer also objects to there being no finding by the magistrate specifying the particular places, times, and articles as to which he was found guilty. It is an entirely new idea to me that where alternatives as to time and place have been stated in a complaint, and these allegations as to time and place have been held relevant to be remitted to probation, it is necessary to have special findings in the conviction and sentence as to the particular times and places at and on which the crime has been committed. But it is said here that the prosecutor took too great a latitude. The place of the crime is stated as, *inter alia*, "or elsewhere in Glasgow to the prosecutor unknown." I should like to say that prosecutors ought always to avail themselves of the simpler forms of stating place and time which are authorised by the statute, which makes a great deal that is often found in complaints like this—such as this statement of "elsewhere to the prosecutor unknown"—quite superfluous. But as regards the latitude here taken, such latitude has been long ago decided to be legitimate in cases of reset. There are two cases in Bell's Notes which clearly show this. In the first of these cases (*M'Intosh*, January 4, 1831, Bell's Notes to Hume on Crimes, 213) the place libelled was "within your house in King Street, Leith, or in some other part within the town or in the vicinity of Leith to the prosecutor unknown." In the second case (*Wilkinson*, September 30, 1835, Bell's Notes to Hume on Crimes, 213) the place libelled was "some place in the county of Perth to the prosecutor unknown." Such latitude is necessary in cases of reset. It is a continuing crime. The person accused may originally have got the goods honestly, but if he afterwards finds that he got them from a thief, the moment he knows this he is guilty of reset unless he takes steps at once by informing the police to show that he has no guilty intention with regard to the goods.

But it is said further that this is a general conviction of resetting a great number of different articles, and that the complainer has been put at a disadvantage because he did not know from the conviction which articles he has been found guilty of resetting. The Magistrate was not bound to make any such finding. He pronounced a verdict of guilty as libelled. Now, that means guilty of resetting all the articles or part thereof. It may sometimes be important to distinguish as to particular articles—for example, where the charge is resetting one article of great value and also other articles of comparatively small value. In such cases it might be right to limit the verdict to particular articles, and the matter should be attended to at the trial. But in the ordinary case when there is a doubt regarding the guilt of the accused as to two or three of the articles libelled there is no need to mention that in the conviction. A general conviction of guilty means guilty of all that is charged, or of a substantial and material part thereof, and that is enough. I may add that reset is in many ways peculiar. For example, it is competent in a case of reset to prove previous convictions for the purpose of showing guilty intention.

On the whole matter I think everything in this case was done regularly and properly, and that there is no ground for setting aside the conviction.

LORD STORMONTH DARLING—I concur.

LORD LOW—I concur.

The Court refused the bill of suspension.

Counsel for the Complainer — A. M. Anderson. Agents—Bryson & Grant, S.S.C.

Counsel for the Respondent—The Lord Advocate (Shaw, K.C.)—M. P. Fraser—Crawford. Agents—Campbell & Smith, S.S.C.

COURT OF SESSION.

Tuesday, November 12.

SECOND DIVISION.

[Sheriff Court at Glasgow.

LANG *v.* ST ENOCH SHIPPING COMPANY, LIMITED.

Ship—Seaman—Wages—Articles of Agreement—Breach—Refusal to Sail with Contraband of War—Imprisonment—Damages—Maintenance—"Final Settlement"—Merchant Shipping Act 1894 (57 *and* 58 *Vict. cap.* 60), *secs.* 134, 186, *and* 187.

A British seaman, who signed articles for an ordinary commercial voyage to any ports within specified geographical limits, *held*, in an action at his instance against the owners of the vessel, (1) justified in having refused to obey the master's order to proceed to a belligerent's port within the specified limits with a cargo contraband of war; (2) entitled to decree for (*a*) a sum representing damages and maintenance, he having been wrongfully dismissed at a foreign port, imprisoned on a charge of insubordination preferred by the master, and left with no provision for his return to this country as required by section 186 of the Merchant Shipping Act 1894, (*b*) the amount of his wages so far as unpaid down to the date of judgment, that being the date of "final settlement" within the meaning of section 134 (*c*) of the Merchant Shipping Act 1894.

Caine v. *Palace Shipping Company, Limited*, [1907] A. C. 386, 44 S.L.R. 1008, *followed*.

The Merchant Shipping Act 1894 (57 and 58 Vict. cap. 60), enacts:—Section 134—"In

the case of foreign-going ships (other than ships employed on voyages for which seamen by the terms of their agreement are wholly compensated by a share in the profits of the adventure), (*a*) the owner or master of the ship shall pay to each seaman on account, at the time when he lawfully leaves the ship at the end of his engagement, two pounds or one-fourth of the balance of wages due to him, whichever is least, and shall pay him the remainder of his wages within two clear days (exclusive of any Sunday, fast day in Scotland, or Bank holiday) after he so leaves the ship. (*b*) If the seaman consents, the final settlement of his wages may be left to a superintendent under regulations of the Board of Trade, and the receipt of the superintendent shall in that case operate as if it were a release given by the seaman in accordance with this Part of this Act. (*c*) In the event of the seaman's wages or any part thereof not being paid or settled as in this section mentioned, then, unless the delay is due to the act or default of the seaman, or to any reasonable dispute as to liability, or to any other cause not being the wrongful act or default of the owner or master, the seaman's wages shall continue to run and be payable until the time of the final settlement thereof."

Section 186—"(1) In the following cases . . . (*b*) Where the service of any seaman or apprentice belonging to any British ship terminates at any port out of Her Majesty's dominions, the master shall give to that seaman or apprentice a certificate of discharge in a form approved by the Board of Trade . . . (2) The master shall also, besides paying the wages to which the seaman or apprentice is entitled, either—(*a*) provide him with adequate employment on board some other British ship bound to the port in Her Majesty's dominions at which he was originally shipped, or to a port in the United Kingdom agreed to by the seaman; or (*b*) furnish the means of sending him back to some such port; or (*c*) provide him with a passage home; or (*d*) deposit with the consular officer or merchants aforesaid such a sum of money as is by the officer or merchants deemed sufficient to defray the expenses of his maintenance and passage home. . . . (4) If the master fails, without reasonable cause, to comply with any requirement of this section, the expenses of maintenance or passage home (*a*) if defrayed by the seaman or apprentice shall be recoverable as wages due to him, and (*b*) if defrayed by the consular officer or by any other person shall . . . be a charge upon the ship . . . and upon the owner . . . and may be recovered against the owner. . . ."

Robert Lang, fireman, Glasgow, raised an action in the Sheriff Court, Glasgow, against the Saint Enoch Shipping Company, Limited, Glasgow, in which he sued for (*first*) the sum of £4 per month from 24th January 1905 till date of settlement, less £4, 12s. 5d. paid to account (representing "unpaid wages"); and (*second*) the sum of £100 sterling (representing "maintenance and damages").

The *facts* of the case appear from the opinions *infra*, and from the following finding of facts made by the Second Division upon consideration of a proof taken by the Sheriff-Substitute (Boyd)—"Find in fact (1) That on 24th January 1905 the pursuer agreed to serve as a fireman on board the defenders' steamship 'St Helena' under articles which are admitted on record; (2) that the said steamship loaded at Cardiff a cargo of Welsh coal, and on 16th April 1905 she arrived at Gap Rock, the signal station for Hong Kong; (3) that the master there received orders to take the vessel to Nagasaki in Japan; (4) that the master in accordance with these orders altered the ship's course for Nagasaki and communicated the change to the crew; (5) that at this time a state of war existed between Russia and Japan, while towards them Great Britain maintained an attitude of neutrality; (6) that some time previously Russia had notified as contraband of war every kind of fuel, including coal; (7) that the pursuer along with the majority of the crew refused to go to Nagasaki with this cargo, and was entitled under the articles so to refuse; (8) that it is not proved that the pursuer and the rest of the crew refused to work the ship from Gap Rock or the vicinity thereof to Hong Kong; (9) that the defenders thereafter wrongously charged the pursuer and the rest of the crew before the police magistrate at Hong Kong with refusal of duty, and that the said magistrate convicted each of them of the said offence, and sentenced them to three weeks' imprisonment with hard labour; (10) that while they were still undergoing imprisonment the said ship was despatched from Hong Kong, and that, the defenders having made no provision for the passage home of the pursuer, in terms of the Merchant Shipping Act 1894, he was sent home as a distressed seaman."

On 9th June 1906 the Sheriff-Substitute assoilzied the defenders, holding it as proved in fact that the master had withdrawn his illegal order to proceed to Nagasaki, and had issued a legal order to proceed to Hong Kong, which the crew had refused to obey.

On 22nd November the Sheriff (Guthrie) recalled the Sheriff-Substitute's interlocutor on the ground that it had not been proved that the master had ever withdrawn his illegal order and substituted in its place a legal order which the crew were bound to obey. He decerned against the defenders for (1) the sum of £6, 8s., being the unpaid balance of the pursuer's wages up to his arrival in Hong Kong; (2) the sum of £40 under the head of maintenance and damages.

The defenders appealed to the Court of Session, and argued—The Sheriff-Substitute was right and the Sheriff wrong. The real question at issue in the case was purely a question of fact, viz., what was the order which the pursuer had ultimately refused to obey? Admittedly he was justified in refusing to obey the order to proceed to Nagasaki — *Caine* v. *Palace Shipping*

Company, Limited (1907), A.C. 386, 44 S.L.R. 1008. But it was clearly proved that the master had withdrawn that order and issued in its place a perfectly legal order, with which the pursuer had refused to comply. It was for disobedience to this last order that he had been dismissed and imprisoned, and therefore no wages or damages were due, he being a mutineer. But in no event could the pursuer be awarded wages down to the date of judgment in this appeal. For, on the assumption that section 134 of the Merchant Shipping Act 1894 applied, and that the case was ruled by *Caine*, the date of the Sheriff's judgment was the latest date possible, that corresponding to the date of the judgment of the Court of Appeal, which was the date adopted by the House of Lords in *Caine*. Section 134, however, did not apply, as there was here a "reasonable dispute as to liability." Sections 134 and 186 of the Act when read together showed that a seaman could not get both damages and continuing wages. In any view, in assessing the amount of damages, the wages the pursuer had earned since the date of his discharge should be deducted.

Argued for the respondent—The Sheriff was right except as regarded the date down to which wages were due, which ought to be the date of judgment in this appeal. The evidence showed that the illegal order had never been superseded. The case was accordingly indistinguishable from *Caine*, where section 134 and the other sections of the Act had been carefully considered, and all the pursuer's arguments considered and rejected. The reason for limiting the decree for wages in that case to the date of the judgment of the Court of Appeal was the fact that there had been a payment into Court of their amount as at that date. The defenders had not proved that the pursuer had earned any wages since his discharge; that disposed of the last point.

LORD JUSTICE-CLERK—The pursuer seeks compensation under the following circumstances. He was a fireman—one of the crew of a vessel called the "St Helena." The vessel being on the way to Hong Kong, which by her papers was her port of destination on the voyage she was making at the time, was signalled, when still at sea, from the signal station on the coast near Hong Kong, to proceed to Nagasaki, in Japan, and her course was altered accordingly. The war between Russia and Japan being in progress at the time, and the cargo, which was coal, having been declared contraband by both belligerents, the crew in a body refused to work the ship in the direction of Nagasaki. They had various interviews with the master, in which they consistently refused to serve the ship in a voyage to Nagasaki, and accordingly they remained on board idle. That being the position, the master, after consultation with his officers, who in the meantime were navigating the vessel, altered her course, and made for Hong Kong. He says that he summoned the men aft to inform them that he was going to Hong Kong, but that they refused to come aft. The crew say that the delay in coming aft was only a few minutes, while they cleared away their dinner things, and that when they came aft he waved them back, saying he "wanted nothing more to do with them." Whoever is right as to what happened, the important point is that the master did not take proper steps to test whether the crew would assist in taking the vessel to Hong Kong, but navigated the vessel by the officers only for some time. No new order was issued. The crew were under the order to go to Nagasaki, or if that order was one that the master had no legal right to enforce, it was for him to cancel it and issue other orders. It therefore becomes the crucial point in the case, whether from the time when the order to set the course for Nagasaki was given until the time when the crew were landed at Hong Kong, any order was given by the master which the crew were bound to obey and which they refused to obey. The occasion was an important and a serious one, the master having maintained that the crew were bound to give their services to go to Nagasaki, in which he was wrong. It lay with him to take proper measures to bring the working of the vessel into normal conditions if he could do so. In testing this, one naturally looks to the log to see what was recorded at the time, that being the official statement made on the responsibility of the master, when the events were recent, and by which the position must be judged in any question with him. Now, the log records the abandonment of the voyage to Nagasaki, and gives the details of the duties undertaken by the officers plainly upon the footing that the master had not then informed the crew or called on them to return to duty. The day after this entry was made there appears an entry which is of great importance in the case. It is in these words:—"The foregoing entry had been read over to the members of the crew interested, who replied as follows, that they refused to go to Nagasaki as ordered, but they professed their willingness to take the ship into Hong Kong." That entry follows immediately on the entry mentioned above. It is very difficult to see how in the face of that entry it can be said that the crew ever refused to assist in navigating the vessel into Hong Kong. That being so, the sole question between pursuer and defender is narrowed down to this. Had the master the right to demand that the crew should work the ship on a course for Nagasaki? That is the question which was raised by the master before the magistrate in Hong Kong, and on which the master succeeded in having the men imprisoned. It is plain that the master proceeded throughout upon the footing that the crew were bound to obey his order to work the vessel to Nagasaki, and that they refusing to do so, he did not put them to the duty they were willing to undertake, viz., to navigate the vessel to Hong Kong.

The conviction in Hong Kong was plainly

wrong, and cannot be maintained. The risk of sailing into waters in which capture for carrying contraband of war was probable, was not a risk which the men in signing articles had undertaken. Therefore the men were in no default in refusing to go to Nagasaki, and it is plain that had that been accepted they might have been used to do what they had undertaken to do, namely, to work the vessel on the course for Hong Kong.

In these circumstances the pursuer sues for wages in so far as not paid down to the date of final settlement, and for damages. The damages found are not impugned, but the Sheriff has not given wages down to the date of settlement. In that I think the Sheriff has erred. I am clearly of that opinion on section 134 (*c*) of the Merchant Shipping Act, the wages under that clause running to the date of final settlement, there being no ground for attributing the delay in the settlement to the pursuer or anyone else than the master or owners.

The view I take in this case is strongly confirmed by the case of *Caine* v. *The Palace Shipping Company* recently decided in the House of Lords.

Accordingly, my view is that the pursuer is entitled to the damages as found in the Court below, and to his wages as far as not already paid down to the date of settlement.

LORD STORMONTH DARLING—In my opinion this case is indistinguishable in point of principle from the case of *Palace Shipping Company, Limited* v. *Caine and Others*, decided by the House of Lords on July 29th last. If so we are bound to follow that case.

There, as here, the question arose out of the war between Russia and Japan, and out of a demand by the master that the crew (including in this case the pursuer, who was a fireman and therefore a "seaman" in the sense of the Merchant Shipping Act 1894) should go with the cargo of coal, which had been declared contraband of war by both belligerents, to a port in Japan. The information as to the destination of the ship was communicated to the crew for the first time in this case when the ship reached Gap Rock, the signal-station for Hong Kong, while in the House of Lords' case the information was given at Hong Kong itself. But it is not contended that this trifling variation in the facts makes any distinction in principle. The only difference which the defenders represent as material is that the refusal of the pursuer and the rest of the crew to obey a lawful order applied, as they say, to an order to take the vessel to Hong Kong, and had nothing to do with the orders to go to Nagasaki in Japan. But this, though quite distinctly averred by the defenders on record (Ans. 10) is not borne out by the proof. The master nowhere says that he ever asked the pursuer and the others to take the vessel to Hong Kong. On the contrary, he says that after he had twice asked the men, first collectively and then individually, to "continue on the voyage," the course being at that time set for Nagasaki in accordance with orders which had been received at the signal-station, and they had twice refused in the face of his remonstrances, he had a conference with the chief officer and the chief engineer as to the possibility of continuing the voyage, and it was then for the first time decided to go into Hong Kong with the aid of the officers and engineers, the course being changed for Hong Kong in consequence of this decision. The Sheriff-Substitute discusses the precise sequence of events and prefers the evidence of the officers examined to that of the men, but the Sheriff, on the other hand, accepts the evidence of the men, which is to the effect that they were in the act of going forward in response to the master's command delivered by the third officer, when he held up his hand on the bridge and "said he wanted nothing more to do with us." Though personally I am disposed to agree with the Sheriff, I do not think that it is necessary to decide absolutely between these two slightly different versions of what occurred, seeing that there is no attempt on the part of the defenders to prove that any order or even suggestion was ever made to the pursuer and the others, that whether they were willing to go to Nagasaki or not, they were at least bound to work the vessel into Hong Kong. The most that is attempted on the part of the defenders by way of suggestion is to say that the men must have seen that the ship was turned towards Hong Kong, and might then have offered to do their duty. But if the men were right in their refusal to carry contraband of war to a port of one of the belligerents, their legal position could not be reversed or affected so long as this order was never withdrawn or a new order substituted. And that this was the truth of the case sufficiently appears, I think, from the log-book of the ship on the two critical days. After the entry about the refusal of the crew "to do any more work or continue the voyage" (*i.e.*, to Nagasaki) there is an entry—"In consequence of the above refusal we were compelled to abandon the voyage and take the ship into Hong Kong"—and then there is a description of the several duties undertaken by the officers. That again is followed by an entry made next day, and signed not only by the master and the chief officer but also by the chief engineer, in the following terms:—"The foregoing entry has been read over to the members of the crew interested, who replied as follows, that they refused to go to Nagasaki as ordered, but they professed their willingness to take the ship into Hong Kong." I regard this statement not only as a *de recenti* record made by the officers of the ship of the true position of the contending parties but it squares with all that followed. Acting on his erroneous views of the crew's rights, the master had the men put on shore, tried before the police magistrate of Hong Kong, and sentenced to three weeks' hard labour for refusal of duty. After three days of the sentence had

elapsed the Governor of Hong Kong, in the exercise of his discretionary powers, released the men because, as appeared from subsequent correspondence with the Colonial Office, there had been an opposite decision in Hong Kong on a similar charge. In that opposite decision it had been held that in view of the proximity of belligerent ships special risks not covered by the crew's agreements did exist. It is therefore plain that the whole question turned, not on any minor point connected with the few hours' steaming from Gap Rock to Hong Kong, but on whether the crew, having signed an agreement to serve on an ordinary commercial voyage subject only to perils of the sea, were justified in refusing to serve after the agreement had been broken by the shipowner requiring them to serve on a voyage which, although within the geographical limits of the articles, was yet attended with risks not contemplated by the articles. The consequences, as regards the pursuer, were that, when he was released, the ship was gone, and that he had to accept a passage home as "a distressed seaman." He accordingly now sues the defenders (1) for wages at the rate of £4 per month from the date of the articles till the date of final settlement, in terms of section 134 of the Merchant Shipping Act 1894, less a small sum paid to account, and (2) for the sum of £100 of damages. The Sheriff deals with the claim for wages merely by giving decree for the sum of £6, 8s. admitted in the defences as the amount of the pursuer's wages up to his arrival in Hong Kong. The damages he assesses at £40.

The pursuer is satisfied with this latter award as covering maintenance and every other claim except money wages. But I am of opinion that we must follow the rule applied by the House of Lords with regard to wages; and to that extent we must recal the Sheriff's interlocutor. In other words we must hold that the master acted wrongfully in procuring the imprisonment of the pursuer on an unlawful ground, and in bringing his engagement to an end without making any provision for his passage home, in terms of section 186 of the Merchant Shipping Act 1894. In these circumstances it follows that the matter is regulated by section 134 (*c*) of that Act, which declares that the seaman's wages shall continue to run and be payable until the time of the final settlement thereof. There has been no final settlement thereof down to the present time, and the delay is not due to any cause other than the wrongful act or default of the owner or master. We must therefore give decree for the pursuer's wages at the admitted rate of £4 per month down to the date of our judgment hereon, under deduction of the sum of £4, 12s. 5d. admitted to have been received by him in Cond. 11, but without any reference to the sum of £6, 8s. alleged to have been paid by the defenders to the superintendent of shipping in Hong Kong as the balance of wages due to the pursuer, and *quoad ultra* we must affirm the Sheriff's award of damages (including maintenance) with which the pursuer declares he is satisfied.

This does not mean that we dissent from the main findings of the Sheriff. On the contrary we agree with them; but it is necessary formally to recal his interlocutor and to vary his findings in order to bring his judgment into harmony with a later decision of the House of Lords.

LORD LOW concurred.

LORD ARDWALL was not present.

The Court pronounced this interlocutor—

"Recal the interlocutor of the Sheriff of Lanark dated 22nd November 1906, as also the interlocutor of the Sheriff-Substitute dated 9th June 1906: Find in fact . . . . (*ut supra*): Find in law that in these circumstances the defenders are liable to the pursuer in damages; and also that under and by virtue of section 134 (*c*) of the said Merchant Shipping Act the pursuer's wages continue to run, and are payable, until the time of the final settlement thereof: Therefore assess the damages at £40 (including maintenance); find the pursuer entitled to wages at the admitted rate of £4 per month from 24th January 1905 until the date hereof, under deduction of the sum of £4, 12s. 5d. received by him to account (£134, 9s., less said £4, 12s. 5d.); and accordingly decern against the defenders to make payment to the pursuer of the said sums of £40 and £129, 16s. 7d., being together the sum of £169, 16s. 7d., with interest thereon at the rate of 5 per centum per annum from the date hereof until payment," &c.

Counsel for the Pursuer (Respondent)—Kennedy, K.C.—M. P. Fraser. Agent—D. Hill Murray, S.S.C.

Counsel for the Defenders (Appellants)—Hunter, K.C.—Spens. Agent—Campbell Faill, S.S.C.

Tuesday, November 12.

OUTER HOUSE.

[Lord Mackenzie, Ordinary on Teinds.

ALPINE (MINISTER OF DUMBARTON) *v.* THE HERITORS OF DUMBARTON.

Church—Glebe—Burghal Parish—Royal Burgh—Landward District.

In 1609 a royal burgh, erected in 1222, received a charter from the Crown confirming to the bailies, &c., of the burgh the common lands "within the special bounds and marches thereof in terms of their annual perambulation." It gave the marches of the lands included, and these corresponded throughout with the boundaries of the parish save at the north end, where the burgh lands