regard to the mode of awarding damages, the pursuer complained of the injury that had been done to his business during the time he had suffered from the accident. It had, however, been shown that during the first three months after he returned to business his income was decidedly greater than during the corresponding period of the previous year, amounting in October, November, and December 1865, to £474, and for the same months in 1866 to £572. In awarding damages, the jury should deal with a railway company on the same principles, and with reference to the great ends of justice, precisely as they would do if they had an individual suing an individual. They ought not to permit themselves to be influenced by any consideration that the railway company should be made to pay damages according to a greater scale because they were a corporate company and possessed of funds. Such compensation should be measured out as was justly due. Let other considerations with reference to the parties stand aside. Such things might distract the jury, but could not aid them, in reaching a conclusion in accordance with the principles of law and justice.

The jury, after being absent about a quarter of an hour, returned a verdict unanimously for the pursuer—damages, £88.

Agents for Pursuer—Hunter, Blair, & Cowan, W.S.

Agents for Defenders—Dalmahoy & Cowan, W.S.

Friday, December 27.

(Before the Lord Justice-Clerk.)

WUSTRAU *v.* JAMESON.

Reparation—Culpa—*Injury to Person.* Verdict for pursuer.

This was a case in which Gottlieb Wustrau, seaman, at present an inmate of the Convalescent House, Sciennes, Edinburgh, and David Philip, S.S.C., his curator *ad litem*, were pursuers; and George Jameson, steamboat-owner, Leith, and Thomas Scott, of the Custom-House, Leith, accepting and acting executors of the deceased Mrs Helen Jameson or Stoker, steamship-owner in Leith, one of the registered owners of the steam-tug or vessel 'Garibaldi,' of Leith, and the said George Jameson, as a registered owner of said steam-tug or vessel, were defenders.

The issue sent to the jury was in the following terms:—

"It being admitted that the defenders were, in January 1867, and still are, owners of the steam-tug or vessel 'Garibaldi,' of Leith, and that on or about the 31st day of January 1867 the pursuer was serving as a seaman on board the foreign vessel 'Æolus,' of Wismar, then lying in the harbour of Burntisland, in Fifeshire:

"It being also admitted that while the 'Æolus' was being moved, on the 31st day of January 1867, from her berth on the west or north-west side of the said harbour to the coal spout on the east or south-east side thereof, a rope was put over her bow and fastened to the said coal spout, and another rope was put over her stern and fastened to the pier on the west or north-west side of the said harbour:

"Whether, on the 31st day of January 1867, the said steam-tug or vessel 'Garibaldi,' through the fault of the defenders, or those for whom they are responsible, came in contact with the said last-mentioned or stern rope of the 'Æolus,' and thereby caused severe injuries to the pursuer in his person—to his loss, injury, and damage?"

Damages were laid at £1000.

MACKINTOSH opened for pursuers.

TRAYNER opened for defenders.

From the statement of the pursuer, it appeared that when the "Garibaldi" came against the rope fastened to the pier, the pursuer got his leg entangled in the rope, and he met with a compound fracture of the thigh bone, his leg being also much twisted, his nervous system shaken, and his health impaired. The injured limb of the pursuer is now shorter than the other, and having been permanently disabled from following his occupation as a seaman, the pursuer was thereby deprived of his ordinary means of subsistence and providing for his mother, who is a widow, and entirely dependent on him for support. The defenders contended that the injuries sustained by the pursuer were caused either by his own fault or the fault of those in charge of the "Æolus." They maintained that the rope should have been fixed to one of the buoys in the harbour instead of to the pier; that those on board the "Garibaldi" did not observe the rope until they were approaching it, when they called out to those on the "Æolus" to slacken the rope. They alleged that no attention was paid to their call, and that the "Garibaldi" was under such way that she could not avoid coming in contact with the rope.

ASHER addressed the jury for the pursuers.

GIFFORD addressed the jury for defenders.

LORD JUSTICE-CLERK summed up.

The jury returned a verdict unanimously for the pursuer.

Damages, £80.

Agents for Pursuers—Murdoch, Boyd, & Co., W.S.

Agent for Defenders—P. S. Beveridge, S.S.C.

COURT OF SESSION.

Monday, December 29.

FIRST DIVISION.

HOLLAND *v.* GAUCHALLAND COAL CO.

Statute—Construction—Master and Servant Act 1867 *—Citation—Recovery of Compensation. Held,* in a suspension of a conviction under the Master and Servant Act 1867, (1) that an objection taken to the citation was formal and technical, and therefore excluded by section 20; and (2) that under section 11 of said Act, and section 19 of the Summary Procedure Act, a Sheriff has power, if he thinks it expedient, to order recovery of a sum awarded as compensation by means of instant imprisonment.

The suspender, John Holland, was tried before the Sheriff-substitute of Ayrshire, at Kilmarnock, in September 1867, upon a complaint at the instance of the respondents, presented under the Master and Servant Act 1867. The complaint set forth that "the said John Holland being the servant of the said Gauchalland Coal Company and partners thereof in their trade or business of coal-masters, under a certain contract of service to work to the complainers as a collier in their works at Gauchalland for a period now unexpired, did, on

9th September 1867, unlawfully neglect, and has ever since neglected to fulfil the said contract, and has absented himself from the service of the said employers without just cause or lawful excuse." The complaint also set forth that the amount of compensation claimed for the said breach of contract was £20, and prayed that the said John Holland might be summoned and adjudicated upon under section 9 of the Master and Servant Act 1867.

By section 9 of said Act (30 and 31 Vict. c. 141) the Sheriff is empowered, on the hearing of any complaint under the Act, to make one or other of various orders. One of these is thus expressed—"Or else shall assess and determine the amount of compensation or damage, together with the costs, to be made to the party complaining, inclusive of the amount of wages abated, and direct the same to be paid accordingly."

By section 11 it is enacted that "where, on the hearing of an information and complaint under this Act, an order is made for the payment of money, and the same is not paid as directed, the same shall be recovered by distress or poinding of the goods and chattels of the party failing to pay, and, in default thereof, by imprisonment of such party according and subject to the Acts described in the second schedule to this Act; but no such imprisonment shall be for more than three months, or be with hard labour." The only Act mentioned in the schedule which applied to Scotland is the Summary Procedure Act 1864.

By section 19 of the Summary Procedure Act, it is enacted—"In all cases instituted under this Act, in which any penalty is or shall be recoverable by poinding, or distress and sale, arrestment or other summary process of execution, and in which the respondent is also liable to be imprisoned for a term to be specified in the warrant of imprisonment, either immediately or in default of the recovery of the penalty by execution, the Court, in lieu of granting warrant for recovery by poinding and sale, may issue a warrant for the immediate imprisonment of the respondent for any term not exceeding the term specified in the Act of Parliament, in one or other of the forms appended to Nos. 4, 5, and 6 in schedule (K)."

On the hearing of the complaint, "the Sheriff-substitute, in respect of the evidence adduced, convicts the said John Holland of the contravention charged, and therefore adjudges him to forfeit and pay the sum of £20 of compensation, with the sum of 30s. of modified expenses, and that to the complainers: And, in respect it is inexpedient to issue a warrant of poinding and sale, ordains instant execution by imprisonment, and grants warrant to officers of court to apprehend the said John Holland, and convey him to the prison of Kilmarnock, and to the keeper thereof to receive and detain him for the period of one calendar month from the date of his imprisonment, unless the said compensation and expenses shall be sooner paid." The warrant of imprisonment was in the terms of the schedule (K) to the Summary Procedure Act.

Holland having brought a suspension of the above sentence,

J. Campbell Smith and Cattanach for him argued—1. The suspender was cited to appear in answer to the complaint on 16th September 1867. The officer had no warrant for doing so. Neither the complaint nor the warrant of citation was dated, and the latter granted warrant for citation to appear "on the 16th day of September current" which might mean any September. 2. The Sheriff had no power to grant warrant for the suspender's instant imprisonment. Section 19 of the Summary Procedure Act applied to the recovery of *penalties* and not of *compensation*, such as had been ordered to be paid in this case.

Burnet (A. R. Clark with him), for the respondents, replied—1. The objection to the warrant of citation was untenable. September 1867 was the only September which could have been intended; but the objection at best was one in regard to a matter of form, which by section 20 of the Act was excluded. 2. Section 11 of the Act contained the only provision in regard to the mode of recovering money ordered to be paid, whether fine or compensation, and unless compensation is recoverable under that section, and the Summary Procedure Act imported into it, there is no mode prescribed for recovering it at all, which cannot have been intended. The warrant of immediate imprisonment was thus in conformity with the statute.

Lord Justice-General—The citation given to the suspender professed to furnish him with a true copy of the complaint and warrant, and summoned him to appear on 16th September 1867. That was complete in itself, if the copy served had been a correct copy. But the complainer says that the officer had no sufficient warrant so to cite him, because there was no date on the copy of the complaint, or of the concurrence of the public prosecutor, or of the warrant of citation, and all that the latter said was, that the party complained on was to appear personally to answer to the complaint on 16th September current. Now that, he says, is a relative term, and if you cannot ascertain to what it is relative, you cannot find out what is meant. It is said that the officer got out of the difficulty arising from the terms of the warrant by inventing a form of citation not authorised by the warrant. It must be kept in view that the forms in the third schedule are provided for in the 20th section, which says [*reads*]. Now, in the first place, it is clear that it is optional for a party to use the forms in that schedule or not as he thinks proper. He must use forms which are equivalent, and he may be safer to adhere strictly to these forms, but this is not imperative. In the second place, no mere objection in point of form applicable to proceedings which follow, or are equivalent to, the forms in that schedule, is of any avail. It appears to me that the objection here is merely formal and technical. It has no substance in it, and, even if it had, objections in regard to substance are also excluded. But I prefer resting my judgment on the ground that this is a mere formal objection. It is impossible that the warrant of the Sheriff could mean any other month of September than that of the current year in which the offence charged in the complaint had been committed; and I think the officer only did his duty in making his service copy more distinct in this particular.

But then an objection is taken to the form of the sentence, which must be carefully handled. The 9th section of the Act presents a great number of alternatives to the sheriff or justices sitting to administer this statute. It enables them to annul the contract, or to enforce it, or to impose penalties, or award compensation, singly or in combination. Here what the petitioners asked the Sheriff to do was this. They prayed that the suspender might be summoned and adjudicated upon under section 9. The Sheriff was left free either to award

compensation or to take any of the other courses mentioned in section 9; and therefore there is no good objection on the ground that the Sheriff was limited to awarding compensation, or to his being tied down to award only the amount claimed, which was £20. The Sheriff thought that an award of compensation was, in this case, the most just course to follow, and accordingly, in respect of the evidence, he convicted the suspender, and adjudged him to forfeit and pay to the employers the sum of £20 of compensation. So far, there is no doubt the Sheriff was quite correct. But he goes on to ordain instant execution by imprisonment. This is said to be *ultra vires*. Now, the whole of this matter depends on the 11th section of the Act, and it comes to be a question of considerable importance, and, so far as I know, it is the first time the question has arisen. The great bulk of the sentences to be pronounced under the 9th section must depend on the 11th for the manner in which they are to be put into execution. Certainly, both a sentence to pay compensation and one to pay a penalty are within the operation of that section, and there is not, so far as I see, any provision for putting such sentences to execution except in section 11. Now, what that 11th section says is, "where, on the hearing of an information or complaint under this Act, an order is made for the payment of money, and the same is not paid as directed"—that unquestionably comprehends both cases, compensation as well as penalties—"the same shall be recovered by distress or poinding of the goods and chattels of the party failing to pay, and, in default thereof, by imprisonment of such party, according and subject to the Acts described in the second schedule to this Act." This provision is conceived very much in the terms your Lordships have had occasion recently to construe in cases under the Small Debt Act and the Debts Recovery Act, where there was provided a certain form for carrying the Act into execution, which we held to be exclusive of every other mode, and to be the only one which could be resorted to. (*A v. B*, *ante*, p. 83.) I think this section must have the same construction. The 11th section provides for recovery of the money ordered to be paid according and subject to the Acts described in the second schedule. In regard to the whole kingdom, the Acts so described are statutes of the same kind. In regard to Scotland, the Summary Procedure Act is the statute described. It provides machinery for the recovery of penalties and expenses, but none for the recovery of compensation, and that for this very good reason, that there was no statute then existing to which the Summary Procedure Act could be applied, authorising any decree for compensation. That is a novelty introduced by this Act. It may very fairly be said that this Act might have been framed with more perspicuity if the framer of it had had more distinctly the fact in view that this mode of awarding compensation is a novelty. But the question is, Are we to defeat this reference to the Summary Procedure Act in respect of this ambiguity? That would be an unfair construction of the statute, and it is not necessary, for if we go to the 19th section of the Summary Procedure Act, we find provision for the recovery of penalties, but the whole machinery is equally applicable to the recovery of other sums as well as penalties. There is no reason for making any difference. I therefore hold that when this 11th section refers to the Summary Procedure Act for directions as to putting the decree for compensation into execution, we must read that Act as if it had referred to such proceedings as the present. Then the whole difficulty disappears. For in such cases as that before us, the sheriffs or justices are entitled to take into consideration whether it is expedient to issue a warrant of poinding or to dispense with all trial of that remedy. The Sheriff has here adopted the alternative of imprisonment, and, assuming the correctness of the view which I take of the statute, I think it was within his power to do so.

The other judges concurred.

The suspension was accordingly refused with expenses.*

Agent for Suspender—David Forsyth, S.S.C.

Agent for Respondents—John Thomson, S.S.C.

JURY TRIALS—CHRISTMAS SITTINGS.

Monday–Tuesday, December 30–31.

(Before the Lord President.)

BUCHANAN AND M'GAAN AND OTHERS *v.* BARR & SHEARER.

(*Ante*, iv., 158).

Ship — Salvage — Towage. Verdict for pursuers with £250 salvage.

This was an action raised at the instance of Norman Buchanan, distiller in Islay, for himself, and as specially authorised by and on behalf of the master and crew of the steam-vessel "Xantho;" and now insisted in by John M'Gaan, merchant in Glasgow; and Peter Thomson, master; Allan Cameron, engineer; John Carmichael, second steward; James Ferguson, stoker; John Kennedy, seaman; Coll M'Donald, seaman; Donald M'Lean, seaman; David Clacher, steward; and Donald Brown, second mate, all of the said steam-vessel "Xantho" on 2d January 1866, pursuers against Messrs Barr & Shearer, shipowners, Ardrossan.

It was alleged, on the part of the pursuers, that when the steam-vessel "Xantho" was on the voyage from Glasgow to Islay, she fell in with the defenders' vessel the "Lorena" about a mile to the north of the Mull of Cantyre, bound from Ardrossan to Kurrachee, East Indies, with a cargo of coals. The "Lorena" was in a disabled state, with nearly all her sails blown away, and some of her spars gone. She had been fourteen days at sea, and had experienced very severe weather, in the course of which she had had her bulwarks stove in, one of her boats washed overboard, and the remaining ones stove in, and she was otherwise injured. The crew were quite exhausted, and only five out of the whole, which consisted of twenty or twenty-two persons, were fit for duty. The master and crew requested the aid of the "Xantho," and every effort was at once made by the master and crew of that vessel to save the "Lorena." The pursuers believed that, but for the timely and effective assistance rendered to her by the "Xantho" and her crew, the "Lorena" would have become a total wreck, the cargo would have been lost, and the persons on board of her would have perished. The value of the "Lorena" and her cargo was at least £6000. The captain of the "Lorena," in recognition of the services rendered by the "Xantho" and her crew, sent Norman Buchanan an order for £50;

* *Note.*—This case and the cases of *Smith* v. *Andersons*, p. 135, *Morris and Boyd* v. *Earl of Glasgow*, p. 136, and *Kennedy* v. *Cadenhead*, p. 138, ought to be under the head of High Court of Justiciary, all of date Tuesday, December 24.