

a moment think it would have been open to the railway company to plead that they had not these goods upon the contract to carry them and deliver them to John Hunter; they suggest nothing of the kind here, and I do not think it would have been open to them to do it. It is quite true that the drover who booked the cattle said they were for Peebles, and that they were booked by the drover to Peebles, but he is followed—almost accompanied—by a superior servant of the company, who says—“Oh no! they are not to be booked to Peebles; they are to be booked to John Hunter.” That was done, and that was the contract upon which the Caledonian Railway Company carried the goods and had them in their possession, when they were forcibly or improperly deprived of their possession in the manner in which they allege. I must therefore, with the Lord Ordinary, reject this ground of defence also. It is not on record, and it is not consistent with the law as applicable to the facts of the case.

I think that exhausts the whole matter, except the only point in issue which has been treated in the manner I have stated. Upon that matter I have already said that I agree with the Lord Ordinary, to the effect that John Hunter the pursuers' servant was sent to Glasgow to take possession of the cattle, they being consigned to him, and to sell them in the market at Glasgow and bring the price home to his employers, but that he had no authority to condone, to ratify, or forgive any breach of contract by the railway company, and did not do so. He had no authority to do it, if he had done it, but he did not do it. On that matter I have stated that I agree with the Lord Ordinary. I do not see very well what Hunter could have done except what he did. He did say to Peebles, who had got the cattle, that if he took the money back with him to his employers he thought it would have been all right—and no doubt it would have been—but to say that that would imply a condonation of the railway company's breach of contract is, I agree with the Lord Ordinary in thinking, entirely out of the question. There was a point in one of the English cases where a railway company had a contract. The company delivered the goods to the wrong party, and the servant of the owner, who sued the railway company for breach of contract, had been in communication with the party who improperly received delivery. He said—“If you pay the price it will be all right enough; it is the price we want, and if that is paid it will be all right;” and I rather think in that case part of the price was received. That is not condonation; it is not ratification of the breach of contract. What, then, is the result? More than a year has now elapsed, and the pursuers are without their cattle and without the price. But for this breach of contract, Hunter would have got the cattle, and sold them in the market in Glasgow as he was sent to do. In consequence of the breach of contract, the cattle are removed from the pursuers' possession, and put into the possession of Peebles, who turns them into money; and now at the distance of a year not one farthing of the price is paid. The railway company have recourse against Peebles no doubt, if the facts be proved as they aver upon record; they have recourse against Peebles if he is good

for anything.

I am therefore of opinion that the Lord Ordinary's judgment ought to be recalled, and that the breach of contract complained of ought to be affirmed, and that the damages ought to be assessed at the sum concluded for, which is the price at which the cattle were sold to Peebles.

LORD CRAIGHILL and LORD RUTHERFURD CLARK concurred.

The LORD JUSTICE-CLERK was absent.

The Court pronounced this interlocutor:—

“Find that the defenders wrongfully, and in breach of their contract with the pursuers, delivered the cattle referred to on record to James Peebles, to the loss, injury, and damage of the pursuers: Repel the defences: Assess the damages at £275, 15s.: Ordain the defenders to make payment of that sum to the pursuers, with interest thereon,” &c.

Counsel for Reclaimers—Darling—Chisholm. Agent—David Milne, S.S.C.

Counsel for Respondents—Balfour, Q.C.—R. Johnstone. Agents—Hope, Mann, & Kirk, W.S.

Thursday, December 8.

## FIRST DIVISION.

[Police Commissioners of  
Dundee.

### THOMSON v. DUNDEE POLICE COMMISSIONERS.

*Delegation—Delegatus non potest delegare—Statutory Commissioners—Dundee Police and Improvement Act 1882 (45 and 46 Vict. c. cxxxv.), sec. 28 (e)—General Police and Improvement (Scotland) Act 1862 (25 and 26 Vict. c. 101), sec. 63.*

*Held*, in a case where police commissioners had delegated certain of their duties to a committee of their number, in terms of section 63 of the General Police Act of 1862, that this committee could not delegate their duties to a sub-committee.

This was an appeal by Thomas Thomson against a deliverance of the Dundee Police Commissioners, by which they disapproved of certain plans and sections submitted to them by the appellant with a view to the erection of new buildings in Dundee.

The Dundee Police and Improvement Consolidation Act 1882, by sections 121 and 122, requires persons intending to erect new buildings to submit plans and sections thereof to the police commissioners for approval, and prohibits the commencement of any new building until the plans and sections thereof, with or without modifications, have been previously approved of by the commissioners.

Section 28 (e) of the Act incorporates section 63 of the General Police Act of 1862, which is in these terms—“The commissioners shall have power to form committees of their number, either with directions to report to the commis-

sioners, or for carrying the various purposes of this Act into execution, and to delegate to such committees the powers competent to the commissioners under this Act, in whole or in part, with regard to the subject which may be remitted, to name the convener, and to fix the numbers of such committees who shall form a quorum; and the convener who shall preside at such committees shall be entitled to a deliberative, and, in case of equality, a casting vote, and to convene the members by notices in the way he shall think most convenient."

The Police Commissioners of Dundee, in terms of this section, had delegated their whole powers in regard to such matters as the erection of buildings to the Works Committee.

The Works Committee remitted the plans and sections submitted by the appellant to a sub-committee of their number, with powers. The deliverance appealed against was pronounced by this sub-committee in name of the Police Commissioners.

Argued for the appellant—The deliverance was issued by a sub-committee of the Works Committee on the legal hypothesis that they had power to do so under the statute. They had no such power. They could not represent the Commissioners, who could only be properly represented by the Works Committee. The Works Committee were the delegates of the Commissioners, and they could not re-commit their duties to others—*Thomas v. Elgin*, July 4, 1856, 18 D. 1204; *Lord Advocate v. Sinclair*, November 26, 1872, 11 Macph. 137.

Argued for the respondent—The Police Commissioners were not acting *ultra vires* in delegating their powers to the Works Committee. The statutory quorum acted, and the character of the statutory quorum was not altered by calling it a sub-committee. The appellant's argument was founded upon the words, not upon the substance of the enactment. There was no true delegation here. The delegation was contemplated by the Act, and that distinguished the present case from *The Lord Advocate v. Sinclair*, *supra*. *Gillespie v. Young*, July 20, 1861, 23 D. 1357. There was no true delegation unless a principal body re-committed to others its powers and duties, and retired itself from the consideration of them. The quorum consisted of competent men. The appointment of such committees secured despatch, and such procedure was therefore in the public interest.

At advising—

LORD PRESIDENT—I do not think that we have anything to do with public interest, or the interests of the appellant, or general considerations of expediency. The question we have to determine is, whether this deliverance is good under the statute. Now, it certainly bears to be a deliverance by the Commissioners, and therefore, *ex facie*, it seems to be regular and good. But it is not disputed that the deliverance is not that of the Commissioners or of the committee appointed, but of a sub-committee of the committee appointed by the Commissioners, and the question is whether the committee appointed by the Commissioners had power to delegate their duties to this sub-committee. If they had not this power the deliverance is bad; if they had, the deliverance is good—the case therefore lies in a nutshell.

Now, the powers of delegation given by statute to the Commissioners are provided by section 63 of the General Police Act, incorporated in the Dundee Police Act sec. 28 (e). That section clearly provides a power to appoint committees to carry out the purposes of the Act, but does it import that the committees can re-commit to a certain number of their body to do their work in name of the Commissioners or of the committee? It appears to me that to hold that would be to disregard the well-known rule of law, *delegatus non potest delegare*. This committee has a delegated power from the Commissioners, and that delegated power cannot be re-committed or delegated to anyone else. I therefore think we must hold that this deliverance is null, and must be quashed.

LORD MURE concurred.

LORD ADAM—There is no doubt that this is a deliverance by a sub-committee of the Works Committee of the Dundee Commissioners, and it appears to me that a remit to this sub-committee with powers is just a delegation of authority. Such a case answers the definition proposed by Mr Balfour, who said that delegations arose when persons who owned powers committed them to others and retired from their performance. Now, that was just what happened here, for when the Works Committee appointed the sub-committee with powers all the other members of the committee retired from the consideration of the matter, and that simply amounted to delegation proper. I have no hesitation in concurring with your Lordships.

LORD SHAND was absent from illness.

The Court set aside and quashed the deliverance complained of.

Counsel for the Appellant—Sol.-Gen. Robertson—Kennedy. Agent—Gregor M'Gregor, S.S.C.

Counsel for the Respondents—Balfour, Q.C.—Macfarlane. Agent—J. Smith Clark, S.S.C.

Thursday, December 8.

## FIRST DIVISION.

[Sheriff of Lanarkshire.

M'ARTHUR v. BOUCHER.

*Process—Appeal for Jury Trial after Appeal to Sheriff—Judicature Act 1825 (6 Geo. IV. c. 120), sec. 40—Sheriff Courts (Scotland) Act 1876 (39 and 40 Vict. c. 70), secs. 27, 28, 29.*

*Held* incompetent, in a case where the Sheriff-Substitute had pronounced an interlocutor allowing a proof, to remove the process to the Court of Session under the 40th section of the Judicature Act while the interlocutor of the Sheriff-Substitute was under appeal to the Sheriff.

In an action of damages in the Sheriff Court at Glasgow at the instance of Arthur M'Arthur against James Boucher, the Sheriff-Substitute (EBSKINE MURRAY) repelled the preliminary