respondents to abate the nuisance, subject to a daily penalty during non-abatement. The Sheriff is satisfied that the open gutter must be covered over, but he says he is unable to ascertain who is the author, and therefore he cannot order abatement by a particular respondent. Accordingly, under section 22, which applies to the case, he orders the Local Authority to execute the necessary works, and this is done, and the Sheriff proceeds to order the respondents to pay the whole expense thus incurred by the Local Authority. This procedure was totally irregular. If in the original process he could have ascertained the true author, he ought to have ordered the author to execute the works, and expenses would have followed their natural course. But there is here no contumacy possible, for the respondent liable has not been ascertained. The Local Authority is not without remedy, for they might have proceeded under section 24 of the statute, there being a sewer injurious to health, to construct the necessary works, and then to assess for the cost of that the owners of all the premises from which anything except pure water flowed into the sewer.

Lord Adam—I concur in the result. I think that all the appellants were properly brought into Court, either as owner of lands or as contributors to the nuisance. They were all liable to abate the nuisance, and therefore ultimately liable in expenses. I agree that it was out of the question that this nuisance should stand until the parties ultimately liable should be ascertained. The parties might have executed the works ultroneously, or an order might have been pronounced on them. The Sheriff, instead of waiting for a failure to comply, proceeds on the assumption that it is impossible to ascertain the person truly liable.

Lord Justice-Clerk—I concur with Lord Adam. The parties were properly called, and the Sheriff ought to have pronounced an order under sections 17, 18, and 19 of the Act; and on the failure of the respondents he ought to have directed the Local Authority to execute the necessary works. The respondents might then have been found liable in expenses, with rights of relief *inter se*. Instead of that, he has chosen to proceed on the view that the person truly liable cannot be ascertained.

Counsel for Appellants—M'Laren—Black—Keir—Maconochie. Agents—Mason & Smith, S.S.C., &c.
Counsel for Respondent—Kinnear.

Monday, June 18.

ROBERT M'ELFRISH.

Post-Office Act, 7 Will. IV. and 1 Vict. c. 36—Relevancy.

A letter-carrier received an open letter, with instructions to post it with a money-order, which he received money to purchase. He destroyed the letter and kept the money. *Objection*, that this was not a post-letter in the sense of the statute, *repelled*, but charge withdrawn.

This was an indictment charging a high crime and offence under the 26th section of the Post-Office Act, 7 Will. IV. and 1 Vict. c. 36, which provides that "every person employed under the Post-Office, who shall steal, or shall for any purpose whatever, embezzle, secrete, or destroy a post-letter," shall be transported for seven years, or imprisoned for a term not exceeding three years. There were also charges of theft and breach of trust and embezzlement applicable to the letter and money after mentioned. It appeared from the narrative that M'Elfrish, a rural letter-carrier authorised by the Post-Office to receive letters for the post, received from the Inspector of Poor at Ecclesmachan an open letter with addressed envelope and the sum of £1, 16s. 6d., with which he undertook to purchase at Linlithgow a Post-Office order in favour of the addressee, and then deliver the letter with order enclosed to the postmaster at Linlithgow for transmission to the addressee. The panel destroyed the letter and kept the money.

Argued for panel—The indictment, so far as laid on the statute, is irrelevant. There was no post-letter in the sense of the statute. By sec. 41 of the statute, delivery to a letter-carrier is made equivalent to delivery to the Post-Office, but here the panel became the agent of the sender, and until the money-order was purchased and enclosed there could be no implied delivery to the Post-Office.

Argued for the Crown—The objection would apply to every case in which a letter-carrier receives money for the post stamps to be put on the letter. In *Regina* v. *Bickerstaff*, Aug. 14, 1868, 2 Carrington & Kirwan, 761, the plea in precisely similar circumstances, that it was not the panel's duty to procure money-orders, and that he had an act of agency to perform, was repelled by J. Cresswell.

Lord Craighill repelled the objection, but in the course of the trial the statutory charge was withdrawn, and the panel was convicted of theft and sentenced to 10 days' imprisonment.

Counsel for Panel—Mair.
Counsel for Crown—Solicitor-General (Macdonald)—Muirhead. Agent—J. A. Jameson, Crown Agent.