

and that, as she had appeared voluntarily, and had not requested delay, she had no ground to complain of the proceedings.

A party was charged before the Sheriff summarily at Dumfries with falsehood, fraud, and wilful imposition. The complaint concluded for imprisonment for a period not exceeding sixty days. The sheriff, after evidence was led, found the charge proven, and was about to pronounce sentence of imprisonment, when the prisoner, by his agent, requested, as matter of favour, that a *fine* might be imposed to save him from going to prison. Thereupon the sheriff, not keeping in view the limited conclusions of the complaint, imposed a fine, with the alternative of imprisonment. The fine was paid, and a suspension was forthwith raised on various grounds, and *inter alia* on the ungracious one that the imposition of a fine was incompetent, as not within the prayer of the complaint. This ground of suspension alone prevailed, and the conviction was set aside. We question whether a like favour would be shewn to this prisoner by the sheriff if brought before him a second time.

A somewhat similar case is the following: A farm-servant was convicted, under the Master and Servant Act, before a Justice of Peace court, of having deserted his service, and he was sentenced to fourteen days' imprisonment. He complained, by bill of suspension, of this sentence, because the justices had not *added hard labour* to his imprisonment; and the Lords set aside the sentence as not conforming to the statute. Lord Neaves in delivering his opinion, said that the farm-servant had a substantial interest to object to the want of hard labour, because the legislature intended thereby that the working man's bodily strength and habits of industry should be kept up!

This was an interesting theory, apparently invented by his Lordship to suit the occasion. It is certainly the first time we ever heard that hard labour was not intended as an additional punishment. The effect of this case however was to enforce a more rigid practice, more suited to the ingratitude of Scotch criminals, or shall we say to their praiseworthy desire to retain their "bodily strength and habits of industry."

In contrast to the above the following case of *Whitman v. Ogilvie* is referred to in the periodical from which we make these extracts.

Ogilvie was charged by the justices at Banff, with having in his possession, after the prescribed period, forty-four partidges, in contravention of the Game Act 13 Geo. III., cap. 54, under which he was liable to a penalty of £5 for each bird, or two months imprisonment.

The justices found the complaint proven, and sentenced Ogilvie to pay a fine of £11, with the alternative of 132 days imprisonment, being 5s. or three days imprisonment for each bird. The prosecutor appealed against this judgment, on the ground that he was entitled to have the full penalties under the Act awarded. The judges certified the case to the High court, where it was held, that punishment had not been imposed in terms of the statute, and that the justices had no power to mitigate the penalties. The prosecutor, however, on the suggestion of the court, restricted the conclusions of the libel to four birds, embracing a penalty of £20 or eight months' imprisonment; and the court remitted the case to the justices to award the sentence accordingly. The full penalty under the complaint, had it not been restricted, would have amounted to £220, or imprisonment for seven years and five months. In a Perthshire case the justices modified the penalties where the number of birds was above one hundred, and the imprisonment would have amounted to upwards of twenty years. The accused in these cases might have had the conviction quashed, according to the principle adopted in the hard labour case, if they had had the sagacity to complain that they had not received the full punishment under the act.

Not a year ago a case was determined quite as absurd as any of those we have mentioned, and shewing how justice is sometimes defeated by a blind adherence to antiquated rules and formalities.

A man was charged before the Sheriff's court, Perth, with having unseasonable salmon in his possession, in contravention of the Salmon Fisheries' Act. Being found guilty, he was sentenced to pay a fine and expenses, with the alternative of thirty days' imprisonment. The sheriff, however, allowed him fourteen days to pay the money, failing payment by which time the warrant of imprisonment was to be put into execution. The prosecutor appealed against this judgment, in order to have that part relating to the fourteen days struck out, on the ground that the act of Par-