tracted for was exorbitant and ruinous to the interests of the company, and of the pursuer as one of the shareholders. It was an attempt by a majority of the company personally to benefit themselves at the expense of a minority—*Menier* v. *Hooper's Telegraph Works*, 1874, L.R., 9 Ch. App. 350; *Mason* v. *Harris*, 1879, L.R., 11 Ch. Div. 97; *Athoel* v. *Merryweather*, L.R., 5 Eq. 464, note.

Argued for the defenders—The pursuer had no title to call in question the actings of the defenders in the absence of the other parties to the contract. The defenders could in their discretion set aside the stipulation regarding the throwing open of contracts to competition, and that did not of itself necessarily invalidate the agreement, but only left it open to those whose interests were affected to sue upon the contract. The pursuer's interest was identical with the other shareholders, and could not be dissociated from theirs—*Orr* v. *The Glasgow and Monklands Railway Company*, 3 Macq. 799—and no one shareholder or a minority had any title to sue.

At advising—

Lord President—There are two preliminary defences to this action, "no title to sue" and "all parties not called." The Lord Ordinary has sustained the first of these, and to that course I am not prepared to assent. There is a distinct and intelligible ground of reduction stated here, namely, fraud, in respect of which it cannot be said "that one or more of the shareholders cannot sue though the company can do so." I think, therefore, that the Lord Ordinary is wrong. It is probably the fact that the pursuer relied too much on the ground of *ultra vires* in the discussion before the Lord Ordinary, and did not sufficiently attend to the question of fraud.

But, on the other hand, there are other parties to the agreement under reduction who must be called. The pursuer is prepared to call these persons, and the best form of order for us to pronounce would be to repel the first preliminary defence, reserving its effect on the merits, and in respect that the pursuer undertakes to call the other parties to the agreement, to repel the second preliminary defence. I think it premature to go into any examination in detail of the averments, or as to what their effect will be when the case comes to be tried on the merits, particularly if the pursuer amends his record as he says he intends doing.

Lord Adam and Lord Lee concurred.

Lord Mure and Lord Shand were absent from illness.

The Court pronounced the following interlocutor:—

> "Recal *in hoc statu* the interlocutor reclaimed against, and sist process till the 12th of March current to enable the pursuer to call as defenders the other parties to the agreement of 15th June 1888 sought to be reduced, viz., The Patent Cable Corporation and the liquidator of that company, and Messrs Dick, Kerr, & Company."

Counsel for the Pursuer—H. Johnston—G. W. Burnet. Agent—A. & G. V. Mann, S.S.C.

Counsel for the Defenders—Graham Murray—Sir L. Grant. Agents—Graham, Johnston, & Fleming, W.S.

Saturday, March 2.

SECOND DIVISION.

[Sheriff of Lanarkshire.

JAMES EAGLESHAM & COMPANY *v.* DICKSON AND OTHERS.

Process—Action—Delivery of Stolen Goods.

The owner of stolen goods which have been lodged in the hands of the official custodier for the public interest, may present a petition in the Sheriff Court to have the custodier ordained to deliver them.

James Eaglesham & Company were manufacturers at 128 Ingram Street, Glasgow. Between 5th March and 11th October 1888 a person in their employment named James Patrick stole from their premises a quantity of goods, and on 22nd October he pled guilty under an indictment charging him with the theft thereof. The stolen goods were given into the charge of Adam Dickson, custodier, Central Police Office, Glasgow.

Eaglesham & Company brought an action in the Sheriff Court of Glasgow for delivery to them of the stolen goods as being their property. They called as defenders the said Adam Dickson, and a number of pawnbrokers with whom the goods had been pledged. Upon 1st December 1888 the Sheriff granted warrant to cite the defenders, and ordained them, "if they intend to show cause why the prayer of the petition should not be granted, to lodge in the hands of the Clerk of Court at Glasgow a notice of appearance within the *inducie* of citation hereon, under certification of being held as confessed." No appearance was made for any of the defenders.

Upon 20th December the Sheriff-Substitute (Lees) dismissed the petition, and in respect no appearance had been entered by any person called as defender, found no expenses due.

"*Note.*—So far as my experience goes, cases of this kind are always raised in the form of a multiplepoinding, and there is good ground for such form of action being adopted. The main defender Mr Dickson is custodier under the Glasgow Police Act of property taken possession of in the public interest in criminal cases; therefore the property which he holds in such circumstances comes into his possession in no casual way or under any wish or act of his own, but under the duty imposed on him by a public statute. That being so, it would be an improper addition to his duties to cast on him the *onus* of seeing that the proper defenders have been called into the field, and that he is free from any risk of subsequent question at any party's instance. Now, the form of action adopted here will not give him the necessary protection. It is an action for delivery. But I apprehend it is not for Mr Dickson to decide who is entitled to the goods. It is for the Court to do so, and more than that, I have the very gravest doubts as to the competency of a claim by the pursuer against Mr Dickson for delivery of the goods. The proper form of action is a multiplepoinding. Such an action amounts to an application to the Court to distribute the goods which are the subject of it amongst the parties who may have right thereto, whether they are called to the action or not. In such a form of action the

Court takes such steps as it thinks proper by advertisement or otherwise to find out who may have claims upon the goods, and all the holder of the subject *in medio* has to do is to see that it is correctly stated, and he leaves the Court to take what further steps of procedure it thinks proper. More than that, on simply putting the subject *in medio* into the possession of the Court he gets an order of protection against all possible claims that may be made in the future in regard to the subjects, and he is therefore relieved from any anxiety as to the procedure that may be taken. The only reason assigned for deviating from the usual form of action on the present occasion is that it may save expense; for if Mr Dickson is satisfied, as no other defender has entered appearance, the pursuer will get what he wants. But this amounts to imposing on Mr Dickson a duty that should be discharged by the Court, and, as a matter of fact, if he thought fit to avail himself of the right of bringing a multiplepoinding, the result would only be the extra expense of the present action and further delay. On all these grounds, but mainly in respect of the incompetency of subjecting statutory officials to direct actions against them, I cannot sustain the competency of the present case."

Upon appeal the Sheriff (BERRY) adhered.

The pursuers appealed to the Second Division of the Court of Session. The Court sustained the appeal and granted the application.

Counsel for the Appellants—Ure. Agents—Dove & Lockhart, S.S.C.

HIGH COURT OF JUSTICIARY.

Monday, March 4.

(Before the Lord Justice-Clerk, Lord Adam, and Lord Trayner.)

SKENE *v.* FALCONER.

Justiciary Cases — The Vaccination (Scotland) Act 1863 (25 *and* 26 *Vict. cap.* 108), *sec.* 18—*Refusal to allow Vaccination.—Previous Conviction—Competency.*

In a prosecution by a parochial board for failure to vaccinate a child in compliance with an order issued under the Vaccination Act 1863, sec. 18, *held* that it was no defence that the accused had been previously convicted of a similar offence with regard to the same child.

James Gentle Falconer, residing at No. 11 Erskine Street, Aberdeen, in the parish of Old Machar and county of Aberdeen, was charged at the instance of Thomas Skene, Inspector of Poor of the parish of Old Machar, before the Sheriff Court of Aberdeen, Kincardine, and Banff, at Aberdeen, upon a complaint which set forth "that he was guilty of an offence within the meaning of the Act 26 and 27 Vict. cap. 108, entitled an Act to extend and make compulsory the practice of vaccination in Scotland, in so far as the said James Gentle Falconer having failed to transmit to the registrar of births, deaths, and marriages of the Aberdeen district of the said parish of Old Machar, in terms of the said last-mentioned Act, a certificate of vaccination of Margaret Sim Falconer, a child aged twenty-one months or thereby, born in the said Aberdeen district of the said parish of Old Machar, and of which child the said James Gentle Falconer is the father, the said Parochial Board did issue an order to John Gregory, bachelor of medicine and master of surgery, a vaccinator appointed by them for the said district, to vaccinate the said Margaret Sim Falconer, and gave notice in writing of the said order to the said James Gentle Falconer, said order and notice having been both dated and made on the 19th day of October 1888, the said James Gentle Falconer did, on or about the 2nd day of November 1888, refuse to allow the operation of vaccination to be performed on the said Margaret Sim Falconer, who was then residing with the said James Gentle Falconer at No. 11 Erskine Street, Aberdeen, aforesaid, although the said John Gregory then attended to perform the same in terms of the said order, whereby the said James Gentle Falconer was liable to a penalty not exceeding twenty shillings, and failing payment to be imprisoned for any period not exceeding ten days."

The respondent was cited to appear to answer to the complaint on 30th November 1888. At this diet it was stated, on behalf of the respondent, that he was convicted on 28th December 1887 of an offence under the same section of the statute, and in respect of the same child, as that libelled in the present complaint, and that therefore the complaint was incompetent. The previous conviction was admitted on behalf of the prosecutor.

The Sheriff-Substitute (DOVE WILSON) at an adjourned diet on 18th December 1888 sustained the objection to the competency and dismissed the complaint.

The Inspector of Poor took a case.

The case contained the following opinion delivered by the Sheriff-Substitute in giving judgment.

"*Opinion.*—This is a case which raises a question under the Scotch Vaccination Act, and I have had the advantage of a very able argument upon the subject, and of a great deal of information which the parties have been good enough to get for me as to the practice. The result of that investigation has been that there is no authoritative decision in Scotland on the point involved, and that the practice is of too small and conflicting a nature to throw light upon the construction of the statute. The question that is raised is, whether a person who has been already convicted for an offence under section 18 of the Scotch Vaccination Act of 1863 may again be convicted for failing to vaccinate the same child? That question resolves itself into the two questions, whether the offence consists in the refusal to vaccinate the child, or whether there is under the Act a renewal of the offence on the lapse of every six months during which the refusal to vaccinate the child continues? These questions turn on the construction to be given to the Vaccination Act of 1863. The provisions of that Act, so far as they bear upon the present question, I shall relate. The preamble bears that it is expedient to extend, and in certain cases make