the 14th to the 1st day of September, and this was declared to apply to the whole of the kingdom of Great Britain, and then the third section of the Partridges Act 1799 proceeds to say that any person transgressing the Act should be liable to the same penalty and to be recovered in the same way as is provided by the Act of 2 Geo. III, c. 19.

Referring now to the Act of 2 Geo. III, c. 19, it does not appear that the penalty there prescribed is recoverable in any of the courts in Scotland but only in any of the courts of Record at Westminster. This view derives support from the observations of Mr Hutchison in his work upon Justices of the Peace, vol. ii, p. 550, note C, and a case was tried in the Sheriff Court of Dumfriesshire referred to in a Treatise on the Game Laws by John William Ness, 1818, p. 123, in which it was held that the statutory penalty of £5 could not be recovered in the Sheriff Court. It will be noticed that by the Act 2 Geo. III, c. 19, it is declared that "nothing therein contained shall be construed to extend to that part of Great Britain called Scotland." I think it follows from these provisions of 2 Geo. III, c. 19, that the provision to the effect that an informer may prosecute for a penalty under the Act cannot be held to apply to Scotland, because such informer is only authorised to prosecute for a penalty in the Courts of Westminster. Now, without statutory authority a private informer is not in Scotland entitled to prosecute for penalties or fines, and if this is so the concurrence of the procurator-fiscal cannot supply the defect in the instance of a complaint brought by a private informer—*Duke of Bedford*, 20 R. (J.) 65. In the present case the complainer prosecutes merely in the character of an informer, because it is not maintained that he had any other interest in the matter, the offence having been committed not on land belonging to the complainer but on the seashore.

I am accordingly of opinion that under the Act of 1799, which is the only Act we have to deal with in this case, the complainer had no title to prosecute the complaint in question, that the concurrence of the Procurator-Fiscal did not supply the defect in the instance, and that accordingly we should answer the question put in the stated case in the negative.

The Court answered the question in the negative and dismissed the appeal.

Counsel for the Appellant—Chree—W. T. Watson. Agents—E. A. & F. Hunter & Company, W.S.

Counsel for the Respondent—Moncrieff. Agents—Simpson & Marwick, W.S.

Saturday, November 2.

FIRST DIVISION.

GOVAN PARISH COUNCIL *v.* GLASSARY PARISH COUNCIL.

Poor—Settlement—Residential Settlement—Capacity to Acquire Residential Settlement — Forisfamiliation — Education (Scotland) Act 1901 (1 *Edw. VII, cap.* 9), *sec.* 2—*Age at which Residential Settlement may be Acquired.*

The Education (Scotland) Act 1901, section 2, enacts—"It shall not be lawful for any person to take into his employment any child . . . (2) who, being of the age of twelve years and not more than fourteen years, has not obtained exemption from the obligation to attend school from the school board of the district. . . ."

Held that this enactment, having no reference to the poor law, did not affect the capacity to acquire a residential settlement, and consequently that, in spite of it, a female orphan could begin to acquire a settlement by residence on her attaining puberty, at the age of twelve.

The Parish Council of the Parish of Govan (*first parties*), and the Parish Council of the Parish of Glassary (*second parties*), presented a special case dealing with the settlement of Joanna Margaret Robertson Mackenzie, a pauper lunatic.

The pauper was born at Lochgilphead in the parish of Glassary on 19th December 1885, and was the lawful daughter of John Mackenzie, architect's draughtsman, who died on 18th February 1894 at Slockvullin, in the parish of Kilmartin. He had no residential settlement, and the settlement of his birth was Glassary. The mother, Joanna M'Corquodale or Mackenzie, died at Shettleston, in the parish of Glasgow, on 26th September 1901.

The case stated—"(4) From 3rd July 1894, when she was between eight and nine years of age, until 15th April 1902, when she was aged sixteen years and four months, the pauper resided continuously in the Orphan Homes, Whiteinch, in the parish of Govan. During her residence in these homes up to the age of fifteen the pauper was sent out each day to a public school for her education. . . . (6) If the pauper became capable of acquiring an independent settlement when she attained the age of twelve years, in December 1897, then, by her continued residence in the said Orphan Homes thereafter until April 1902, the pauper acquired a residential settlement in the parish of Govan, which settlement she had not lost at the date of her becoming chargeable as a pauper. The parish of Govan would accordingly, in that event, be the parish liable for the pauper's maintenance."

The questions for the opinion and judgment of the Court were—"(1) Did the said Joanna Margaret Robertson Mackenzie, the pauper, become capable of acquiring an

independent settlement on attaining the age of twelve years? or, Did she become capable of acquiring an independent settlement only on attaining the age of fourteen years? (2) Are the first parties, the Parish Council of the parish of Govan Combination, liable for the maintenance of the said Joanna Margaret Robertson Mackenzie, the pauper, so long as she continues chargeable? or, Are the second parties, the Parish Council of the Parish of Glassary, liable for such maintenance?"

Argued for the first parties—Formerly a female minor who was an orphan could acquire an independent settlement as from her attaining the legal age of puberty, viz., twelve years, that being taken as the possible date of forisfamiliation—*Craig* v. *Greig & Macdonald*, July 18, 1863, 1 Macph, 1172, Lord Jerviswoode at p. 1188, and Lord Ormidale at p. 1189. This rule had now, however, been altered by the Education (Scotland) Act 1901, which had postponed the time when a child could begin to earn its own living to the age of fourteen. Capacity to earn a living was the test of forisfamiliation—*Greig* v. *Ross*, February 10, 1877, 4 R. 465, Lord Gifford at p. 468, 14 S.L.R. 346—and consequently it was only residence subsequent to attaining an age when a living might be earned which could count towards the acquisition of a residential settlement. It was therefore only the pauper's residence in the parish of Govan after the age of fourteen which was to be looked to. That residence was insufficient to enable her to claim a settlement there, as it had only lasted two years and four months, and her father having a birth settlement only at his death, the pauper's settlement was in Glassary, the parish of her birth. The first branches of the first and second questions should be answered in the negative.

Argued for the second parties — The statute cited dealt with education, not with the law of a pauper's settlement. Had the purview of the enactment included the latter it would have been expressly mentioned. Mere residence after puberty gave a settlement if the child was *sui juris*, and not a common beggar or in receipt of parochial relief—*Craig* v. *Greig and Macdonald, ut supra*, Lord Justice-Clerk Inglis at p. 1179; *M'Lennan* v. *Waite*, June 28, 1872, 10 Macph. 908, Lord Kinloch at p. 910, and Lord Ardmillan at p. 911, 9 S.L.R. 566; *Parochial Board of Elgin* v. *Parochial Board of Kinloss*, June 1, 1893, 20 R. 763, Lord Trayner at p. 764, 31 S.L.R. 684, *sub nom. Elder* v. *Leitch*. The pauper attained puberty when she reached the age of twelve, and her residence in the parish of Govan was therefore to be calculated from that date. Doing so, she had acquired a settlement in that parish, which was liable for her maintenance. The first branches of the first and second questions were to be answered in the affirmative.

LORD PRESIDENT—It seems to me that this is a very plain case. It is admitted that but for the Education Act this case falls directly under the decision in *Craig* v. *Greig and M'Donald*, because here is a child with her father dead, who since the time of her father's death and at her puberty acquired a residential settlement. Now, the only thing that is said to prevent the application of the decided case is that since the time of the decision the Education Act of 1901 has been passed. The Education Act of 1901 by the first section thereof makes it the duty of every parent to provide efficient elementary education in reading, writing, and arithmetic for his children who are between five and fourteen years of age. Accordingly the second section prohibits persons from taking into their employment children, being of the age of twelve and not more than fourteen, who have not obtained an exemption from the school board. It is argued that because of that Act there is therefore a disability upon a female child who although of the age of puberty—that is to say, over twelve—is still under fourteen, doing these things which really go to the acquiring of a residential settlement.

It would be a very curious result if it were so, because undoubtedly I think it is easy to say that the Legislature in passing the Education Act of 1901 had not the remotest notion that they were dealing with the poor law. I do not think any such result follows, for a very simple reason. It has been said again and again, alas too truly, that all these poor law rules embodied in the decisions are artificial to the highest degree. How artificial in cases of this sort can easily be gathered when one thinks how practically impossible it is for a female child of twelve years of age to earn its own livelihood. But there is the rule, artificial as it is, that when the father is dead, and the child is emancipated and comes to the age of puberty, it is in a position in which it is theoretically supposed to be earning its own livelihood. Therefore I think the answer to the argument is a very easy one, that although the Act imposes certain duties upon parents to provide the child with elementary education, it does not affect the theoretical capacity of the child to earn its own livelihood. The practical capacity, as I understand, in 999 cases out of 1000, is not there although theoretically it is. One can conceive of a child who for some reason or other was so gifted as to be able to perform upon an instrument such as the violin, and who at such tender years could make sufficient money to earn her own livelihood, and who at the same time might have quite enough hours of the day which she might devote to reading, writing, and arithmetic. But the answer is a simple one—that the Act which has been quoted has really nothing to do with the subject which is before us. Accordingly I am for answering the first branch of the first question in the affirmative, and the first branch of the second question in the affirmative also.

LORD DUNDAS—The question raised in this special case is a very short one, and (although it has to deal with Poor Law settlement) I think it is a very simple one

The first parties maintain that in consequence of the Education (Scotland) Act 1901 no child can now be held to become capable of acquiring an independent settlement until it has attained the age of fourteen; and they seek to apply that doctrine to the effect that in the case of females the age at which they become capable of acquiring such a settlement has been altered from twelve to fourteen. I think that contention is unsound. The Act 1 Edw. VII, cap. 9, is entitled "An Act to regulate the employment and attendance of children at school in Scotland." It is an Education Act, pure and simple. It does not profess in any way to deal with the poor law, nor can it, in my judgment, be held to do so by any reasonable implication. I think it is plain, as your Lordship has pointed out, that the statute relied upon has nothing at all to do with the subject of the Poor Law. We must therefore, in my opinion, negative the contention of the first parties, and I agree that the questions should be answered as your Lordship proposes.

LORD MACKENZIE—I concur.

The Court answered the first branch of each question in the affirmative.

Counsel for the First Parties—The Dean of Faculty (Campbell, K.C.)—Orr Deas. Agents—Mackenzie, Innes, & Logan, W.S.

Counsel for the Second Parties—Hunter, K.C.—Addison Smith. Agents—R. Addison Smith & Company, W.S.

HIGH COURT OF JUSTICIARY.

Thursday, November 7.

(Before the Lord Justice-Clerk, Lord Stormonth Darling, and Lord Low.)

GOLD *v.* NEILSON.

Justiciary Cases—Complaint—Relevancy—Specification — Reset — Locus — Latitude Admissible in Libelling Place where Alleged Crime was Committed.

A summary complaint set forth that the accused had been guilty of reset at certain specified places in Glasgow, "or at one or other of said places, or elsewhere in Glasgow, the particular place or places being to the complainer unknown." *Held* that the latitude of *locus* was permissible in a libel for reset.

M'Intosh, January 4, 1831, and *Wilkinson*, September 30, 1835, Bell's Notes to Hume on Crimes, p. 213, *followed.*

Justiciary Cases — Conviction — Reset — Charge Containing Alternatives of Times, Places, and Articles Alleged to have been Received—General Conviction.

A person was charged with reset of a number of specified articles of similar nature and value, at various places in Glasgow, either named, or described as unknown to the complainer, and at times between certain dates, the particular occasions being similarly described as unknown. He was convicted of "the crime charged." *Held*, in a a suspension, that it was unnecessary to specify in the conviction following on such a complaint the particular times and places where it was held proved the crime had been committed, or, in the circumstances of the case, to specify the particular articles as to which the accused was found guilty, and conviction and sentence *sustained.*

Justiciary Cases—Summary Procedure—Record of Proceedings—Inaccurate Entry of Name of a Witness—Summary Procedure (Scotland) Act 1864 (27 *and* 28 *Vict. cap.* 53), *sec.* 16.

The Summary Procedure (Scotland) Act 1864, sec. 16, provides—"It shall not be necessary in any proceeding under the authority of this Act to record or to preserve a note of the evidence adduced, but the record shall set forth . . . the respondent's plea, if any, the names of the witnesses, if any, examined upon oath or affirmation, with a note of any documentary evidence that may be put in."

Where the name of a witness examined was inaccurately entered in the record, but his designation and address were correctly given, and there was no difficulty in identifying the person to whom the entry applied, *held* that the name was sufficiently set forth.

David Gold, 74 Parson Street, Glasgow, was charged in the Police Court in Glasgow on 25th October 1907, at the instance of George Neilson, writer, Procurator-Fiscal of Court, on a complaint which stated that he "did during the period between 19th July and 9th August 1907, in his licensed broker's shop at 75 Glebe Street, in his house at 74 Parson Street, in his store at 64 Parson Street, and in a close at 14 Albert Street, Townhead, all in Glasgow, or at one or other of said places, or elsewhere in Glasgow, the particular place or places being to the complainer unknown, on different occasions during said period, the particular occasions being to the complainer unknown, reset in all ten rubber cycle tubes, eight free wheel clutches, twenty-four cycle inflator connections, one cycle hub, and one horn, the particular articles resetted on each occasion being to the complainer unknown, the said articles having been dishonestly appropriated by theft from the shop of Joseph Milliken at 6 George Street, Glasgow, by Arthur Hughes, now of West Thorn Reformatory, Parkhead, Glasgow, and Robert Ralston of 300 Charles Street, Townhead, Glasgow, and the value of the property above libelled is under ten pounds sterling, and the said accused has been previously convicted of reset of theft, conform to the conviction specified in the subjoined schedule, and to be put in evidence at the trial."