

No. 6.  
Wother-  
spoon v.  
Lang.

BRAND, in reply, maintained the same line of argument previously urged.

High Court  
Oct 8,  
1867, and  
April 23,  
1868.  
Appeal.

LORD JERVISWOODE held that, in the circumstances, the police magistrate had jurisdiction, and dismissed the appeal with expenses as these should be taxed by the Clerk of Court.

Agents for Appellant—MITCHELL, ALARDICK, & MITCHELL, Writers, Glasgow.

Agent for Respondent—GEORGE PATERSON, Writer, Glasgow.

## SOUTH CIRCUIT.

### DUMFRIES.

Present,

April 28,  
1868.

The LORD JUSTICE-CLERK and LORD NEAVES.

HER MAJESTY'S ADVOCATE—*Lee A.D.*

AGAINST

ROBERT SMITH—*J. Gibson Starke.*

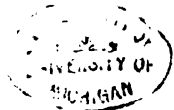
RAPE—MURDER—ASSAULT—DISCHARGING LOADED FIREARMS—CUTTING OR STABBING—CONTRAVENTION OF 10 GEO. IV., c. 38, SECT. 2—INDICTMENT—RELEVANCY—MAJOR PROPOSITION—MINOR PROPOSITION—SEPARATE NARRATIVE.—Objection to an indictment charging, *inter alia*, both murder and rape, that the minor proposition did not contain a separate narrative applicable to each crime, repelled.

No. 7.  
Robert  
Smith.

Dumfries,  
April 28,  
1868.

Rape,  
Murder,  
&c.

ROBERT SMITH was accused of the crimes of 'Rape; as also Murder; as also Theft; as also Assault, especially when committed by Discharging Loaded Firearms, and by Cutting or Stabbing, and to the great effusion of blood, serious injury of the person, and danger of life, and with Intent to Kill,' and 'of the statutory crimes or offences set forth in the second section of the statute 10th Geo. IV., cap. 38,' of 'wilfully, maliciously, and unlawfully shooting at any of Her Majesty's subjects; and of wilfully, maliciously, and unlawfully stabbing or cutting



‘ any of Her Majesty’s subjects, with intent in so doing,  
 ‘ or by means thereof, to murder, or to maim, disfigure, or  
 ‘ disable, such Her Majesty’s subject or subjects, or with  
 ‘ intent to do some other grievous bodily harm to such  
 ‘ Her Majesty’s subject or subjects ; and of wilfully, mali-  
 ‘ ciously, and unlawfully attempting to suffocate or to  
 ‘ strangle any of Her Majesty’s subject or subjects, with  
 ‘ the intent thereby, or by means thereof, to murder or  
 ‘ disable such Her Majesty’s subject or subjects, or with  
 ‘ intent to do some other grievous bodily harm to such  
 ‘ Her Majesty’s subject or subjects, or of one or more of  
 ‘ them, actor, or art and part :’

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IN SO FAR AS (1.), on the 1st day of February 1868, or on one or other of the days of that month, or of January immediately preceding, in or near a wood or plantation called or known by the name of Croftheads Plantation, situate on the farm of Howes, in the parish of Annan, and shire of Dumfries, then and now or lately occupied by Thomas Marshall, farmer there, and on the north side of the public road leading betwixt the village of Cummertrees and the burgh of Annan, both in the shire aforesaid, and at or near a part of said wood or plantation opposite, or nearly opposite to a part of said public road 517 yards or thereby eastward from the fifteenth milestone from Dumfries on said road, and at a distance of thirteen yards or thereby from said part of said road, or at some other part of said wood or plantation to the prosecutor unknown, you the said Robert Smith did, wickedly and feloniously, attack and assault the now deceased Thomasina Scott, then a girl of nine years of age or thereby, or otherwise under the age of puberty, daughter of, and then residing with, John Scott, shoemaker and grocer, at Burnside Cottage, in the parish of Cummertrees, and shire aforesaid, and did introduce your private member into her private parts, and had carnal knowledge of her person, and did ravish her ; and did, then and there, forcibly grasp and compress her neck and throat, and did with your hands, and by means of a piece of cord, or other ligature, which you tied or drew tightly round her neck, strangle or choke the said Thomasina Scott, and did otherwise maltreat and abuse her ; by all which, or part thereof, the said Thomasina Scott was grievously and mortally injured, and in consequence thereof, immediately or soon thereafter died, and was thus murdered by you the said Robert Smith : LIKEAS (2.), you the said Robert Smith having so attacked and assaulted and murdered the said Thomasina Scott in manner above libelled, did thereafter, time and place above libelled, wickedly and feloniously,

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steal and theftuously away take, from the pocket or person of the said Thomasina Scott, nine shillings and elevenpence sterling or thereby, in silver and copper money, the property or in the lawful possession of the said John Scott, the particular amount and description of each of said kinds of money being to the prosecutor unknown : LIKEAS (3.).

Then followed a specification applicable to the statutory charge of shooting at Her Majesty's subjects, &c., setting forth that the panel, on 1st February 1868, at Longford Cottage, parish of Cummertrees, Dumfriesshire, occupied by Robert Crichton, farm manager, wickedly and feloniously attacked and assaulted Jane Paterson or Crichton, wife of the said Robert Crichton, and did wilfully, maliciously, and unlawfully shoot at her with a pistol loaded with powder and leaden shot or pellets, which contents struck and wounded her about the head ; that he seized her, and wilfully, maliciously and unlawfully cut or stabbed her with a knife or other cutting instrument on or near her neck or throat, with intent to murder, or to maim, disfigure, or disable her, or do her some grievous bodily harm ; that he forced her down upon the floor and seized hold of her, and violently compressed her throat or neck, and wilfully, maliciously, and unlawfully attempted to suffocate her, or to strangle her, with intent thereby to murder or disable her, or do her some grievous bodily harm ; and that he otherwise maltreated and abused her. And the specification concluded 'and by ' all which, or part thereof, the said Jane Paterson or ' Crichton was cut, wounded, and bruised, to the great ' effusion of her blood, serious injury of her person, and ' danger of her life.'

STARKE, for the panel, objected to the relevancy of the indictment. In the major proposition two distinct capital crimes are charged, viz., rape and murder ; but the minor contains only one narrative applicable to both, and in it, viz., in the clause relating to the alleged strangulation of the deceased, there were facts narrated entirely unconnected with the crime of rape. These crimes, it was submitted, were distinct in their character,

and the minor proposition should therefore have contained a separate narrative applicable to each crime, and they should, at least, have been distinguished in the subsumption by the introduction of some such words as 'Likeas' or 'Further.' It was also objected that in the narrative applicable to the charge of murder the words 'wickedly and feloniously' were not inserted, and that the omission failed to bring home to the prisoner a charge of wilful murder: and reference was made to the opinion of Lord Justice-General M'Neill in the case of *Elizabeth Kerr*, High Court, 26th November 1860, Irvine, vol. v., p. 627.

LEE.—The facts of the case are such that a separate narrative for each of the crimes of rape and murder is unnecessary. The panel is charged, in the first place, with having violated the person of the deceased with great brutality, and with having followed up that assault by seizing the unfortunate victim by the throat, and by afterwards strangling her with a cord—the whole being a narrative of a continuous course of violence, ending in the death of the person assaulted; and at the end of the narrative there follows, 'by all which or part thereof the said Thomasina Scott was grievously and mortally injured, and in consequence thereof immediately or soon thereafter died, and was thus murdered by you the said Robert Smith,' that is to say, by all which acts of violence the deceased was murdered by the panel. As regards the other objection the same argument applied. The words 'wickedly and feloniously' were used at the beginning of the narrative, and applied to each one of the series of acts of violence charged as having terminated in the death of the deceased.

LORD NEAVES.—It is right in counsel to direct the attention of the Court to any ambiguity that appears to exist in the indictment, more especially in a case of such importance to the panel as the present. I do not think, however, that there are sufficient grounds here for sustaining the objection. If the public prosecutor under-

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takes to prove a continuous course of violence ending in the death of the deceased, and of which the crime of rape formed a part, it appears to me to be unnecessary that there should be a separate narrative applicable to each of the charges of rape and murder. And in like manner where the words '*wickedly and feloniously*' are applied to the narrative of the assault at the commencement of the enumeration of the injuries alleged to have been inflicted, it is unnecessary, I think, to repeat these words in that part of the minor proposition which describes more particularly those injuries that were the cause of death. On these grounds I am for repelling the objections.

The LORD JUSTICE-CLERK.—I entirely concur in the opinion expressed by your Lordship.

The objections were accordingly repelled.

The panel pleaded guilty to all the charges except the charge of murder, as to which he pleaded guilty of culpable homicide.

The Advocate-Depute declined to accept the plea.

A jury was accordingly empannelled, and the case went to trial upon the evidence of the prosecution. No evidence in defence was led.

The Advocate-Depute and Mr. Starke addressed the jury, and the Lord Justice-Clerk delivered a charge, whereupon the jury returned the following verdict:—

'We unanimously find the prisoner guilty of all the charges contained in the libel.'

The Lord Justice-Clerk then addressed the panel, and pronounced upon him a sentence of death.

Robert Smith was afterwards executed at Dumfries upon the 12th day of May 1868.

Agent for the Panel—Mr. K. MUIR, Writer, Dumfries.