

**REPORTS**  
**OF PROCEEDINGS**

**IN THE**

**HIGH COURT OF JUSTICIARY,**

**FROM 1826 TO 1829.**

**BY**

**DAVID SYME, Esq. ADVOCATE.**



**EDINBURGH:**  
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witnesses in regard to all that took place before and after the robbery.\* It was so far in prisoner's favour that he had not made use of the stick. For, if he had, the libel would, in all probability, not have been restricted by the Lord Advocate.

*Verdict*—Unanimously find the pannel *Guilty* of the crimes libelled.  
LORD MEADOWBANK proposed transportation for life.

*Sentence*—To be transported for the whole period of his natural life.

For Lantwheler, &c.—C. FERGUSSON.

For W. Law.—LESLIE MELVILLE.

Diet called against

DANIEL LANTWHELER, tailor, DANIEL M'LAREN, mason, WIL-  
LIAM LAW, brassfounder, MARGARET DESLEY, *alias* DUGGAN, and D. Lantwheler,  
ANNE WESTWATER, charged with theft, aggravated by being accom- &c.  
plished by housebreaking, (and against Lantwheler and Desley, by their THEFT AND  
being habite and repute thieves,) with an alternative charge of reset HOUSEBREAK-  
against the two females;—in so far as, on Thursday, 5th October 1826, ING.  
they did break into the house of James Smith Mack, solicitor-at-law, in  
Howard Place, by lifting the sash of one of the windows, and did steal  
and carry off a great quantity of wearing apparel belonging to Mr and  
Mrs Mack, as contained in an inventory annexed to the indictment;—or  
otherwise, that the said M. Desley or Duggan, and A. Westwater,  
within the house of Elizabeth Rule or Marshall, Halkerston's Wynd,  
did reset and receive said goods.

PLEADED NOT GUILTY.

Defence for Law — *Alibi*.

Two female servants (sisters) being in the house together alone, heard feet in the room above the kitchen about seven o'clock of the evening of Thursday the 5th. One of them went for assistance; and on going up stairs, they found the window open, and the bedroom and lobby robbed of a great many things. Mr and Mrs Mack (who were out that evening) identified the various articles.

All these, it appeared by the evidence of the police-officers, had been found on the morning of Saturday 7th, in a room rented by the prisoners Lantwheler, M'Laren, Desley and Westwater, of Mrs Marshall, Halkerston Wynd. The three boys at the Bar were apprehended there. On Lantwheler were found a shirt and pair of trowsers; and Law was in the act of putting on a pair of lilac-coloured trowsers, belonging to Mr Mack. The girls were apprehended in the course of the same day; and they also were wearing part of the stolen property.

\* There were two other witnesses for the Crown. One of them (Barbara Hynd) changed a shilling for the pannel, who had a dram in her house at one o'clock of the Sunday morning.

Their declarations were read. Law's account of himself, for the Thursday libelled on, was, that he went down to Leith at ten o'clock; got a horse to hold at Newhaven about 12 o'clock; sat for two or three hours on the stone pier; returned home about five o'clock; remained about half an hour, and had his dinner; went out and walked by himself in the Meadows till it was dark, as he had nothing else to do; came home again, it might be about half past eight, and did not go out afterwards. He acknowledged his previous acquaintance with all the prisoners except Westwater, and that he had been twice in Mrs Marshall's that week, with M'Laren—on Thursday at two o'clock (he afterwards said five), and on Saturday, when apprehended there; but denied all knowledge of the theft, or of their having stolen property in their possession.

In support of his plea of *alibi*, Mrs Bell, and his mother, brother and sister, were called to prove that he had been constantly at home that evening after half past six o'clock.

*Mrs Bell* lived in Campbell's Close, on the same floor with Law's family. She went into their house on the evening of the day on which, as she afterwards heard, the housebreaking was committed, to get the key of her own house, which she had left there when she went out in the morning. She had been out washing all day, and this was about half past six o'clock. The little boy William Law (pannel) was sitting with his sister by the fire. There was nobody else, and witness did not sit down. She took her key from the drawer's head, on which it was lying; went to her own house; and about an hour later, heard William at her door calling to his elder brother James, who had come in to ask for her husband, who was unwell. Heard him say, 'Jamie, do you want me?' and saw no more of him that night.

*Cross-examined.*—Could not recollect where she had been washing that day, but was quite sure that she came home at half past six, as there was a day-clock in her house, at which she looked on coming in. She was at home on the Tuesday, Wednesday, Friday and Saturday of that week. Washed for various families. Spoke to Law when she went in for her key, and saw him distinctly. He was sitting with his coat off, and wore a striped shirt. When he came to ask for his brother, his coat was on. She saw him, although he did not enter. Heard first from his mother of his apprehension, on suspicion of being concerned with the theft. It was in the following week, but she did not recollect the day. It was in her own house she spoke of it, and said it was on that Thursday when he had been at home all evening—all his folks said so. Nothing was said to her about being a witness. There was a fire in witness's house when she returned; she had gone out at five in the morning. The fire was put on by her daughter. There was a candle burning when James Law came in.

*By the Court.*—Was not asked by pannel's mother to say that it was on the Thursday evening she saw him. She had known the Laws since the term, (the witness here added, that they were decent people, and that she had no interest to tell any thing but the truth.) Thought it was about half past seven that William called for his brother, judging from the time of her first coming in.

*Christian Law.*—Her brother, the pannel, came home on the Thursday preceding the Saturday when he was apprehended, at half past six o'clock, and was at home all night afterwards. Her other brother James worked with Mr Milne, brassfounder. William also expected to obtain employment there, and to be taken that night. James generally returned from work about seven, and William (pannel) was in before him. James brought word that Mr Milne was engaged, and neither of her brothers went out that evening again. Her mother was also in the house; and there was a lad, Thomas Brown, lodging with them then; but who, in consequence of bad health, had gone to Glasgow, where his friends were, and was still so unwell as to be unable to attend to give evidence. Nearly the same facts were sworn to by the pannel's mother and elder brother, both of whom were sure of the day, from Mr Milne having promised to give an answer about William on Thursday.

THE LORD ADVOCATE.—It was another mournful proof of the prevalence of juvenile delinquency. The case against the prisoners rested on their recent possession of the stolen property, under circumstances which left no doubt of their guilt, and on their declarations, in which they gave no satisfactory account of their possession. His Lordship noticed the case of each separately. In regard to Law, there was his own declaration, backed by the circumstance of his having been seized while in the act of dressing himself in part of the clothes stolen. He put it to the Jury if he would have been allowed a share in that property, without having been concerned in its abstraction. Opposed to this was a plea of *alibi*. But in his declaration, there was not a word of this; and, extraordinary as that might appear, it was not all. For the story told by himself was at variance with that of his own witnesses. He could recal no instance in which, under such circumstances, an attempt of the kind had been made. Independently of this, the testimony of witnesses so situated, in regard to the pannel, was to be very cautiously received; and he always felt great pain when individuals were placed in so perilous a situation.—(Libel restricted.)



FERGUSSON, for the pannels (except Law), addressed the Jury, and hoped that, as the evidence was rather stronger against Lantwheler than the others, they would make a distinction in their cases.

MELVILLE, for Law.—There was no direct evidence against him. It was constructive merely; and if one link in the chain had given way; he had succeeded. His witnesses were brought honestly forward; and his object had been to discover the truth. It was always on such occasions said, that the evidence of near relations was not entitled to credit. He would ask who could be so naturally called? The members of one's family were, of all others, the persons most likely to know if one had been at home on any particular occasion. His own conviction was, that they had told the truth; and that their evidence, far from being impaired, had been materially strengthened and confirmed by the severe cross-examination they had undergone. A number of little circumstances, previously unknown to himself, had come out in the course of it; and any slight discrepancies that occurred were but additional proofs of its being no made up story between them. Had there been none, it would not have had so strong a character of truth. As to Law's declaration, he really believed that the poor little boy had just made a mistake. He spoke of its being dark, and that he supposed it might be about half past eight when he came home for the night. Such as it was, it was the only evidence against him; and they would not, on that single ground, find him guilty of the theft and housebreaking.

LORD JUSTICE-CLERK, in that part of his charge which related to Law, said, that as the Public Prosecutor had remarked, it was the only instance he had known in which a plea of *alibi* was not only not mentioned in, but was contradicted by a prisoner's own declaration. If they were to believe his friends, he was certainly at home on the night in question. But witnesses could never appear in a more trying situation. The Jury would weigh with caution every thing they said; and it was for them, when they had done so, to say what credit their evidence deserved. It was clear that mother, brother and sister, had held repeated conversations with Mrs Bell, and had stated circumstances which must have influenced her testimony. For he had it down, that to a question, 'why she knew so well that it was on that particular Thursday she was in their house for her key?' her answer was, 'because every

‘ one of his people said so.’ She was very minute in her recollection of every thing that took place on the Thursday night, but beyond it her memory was not so good. She could not tell where she had been washing, which it would have been satisfactory to know, that by ascertaining the distance, and when she left the place, they might have had the means of verifying her statement of the time of her return home.

Her story of the key was completely confirmed; but the Jury would remember, that the only persons she then saw were William Law and his sister; while that Mrs Law, his mother, was also present, was positively sworn by herself, and by James and Katherine Law. Mr Milne should have been called. A few words from him would have had more weight than the evidence of Mrs Bell and Mrs Law, and the son and the daughter, from beginning to end. However, if there was enough to satisfy their minds that, contrary to his own declaration, he was within the walls of his own house all that Thursday evening after half-past 6 o’clock, it would be extremely unsafe to find him guilty of being either actor, or art and part, on the simple fact of his having been found on Saturday morning, with the others, in Marshall’s house. If they had any reasonable doubts, he was entitled to the benefit of them.

*Verdict.*—‘ Unanimously find the pannel, Daniel Lantwheler, *Guilty* of the theft by housebreaking libelled; and find it *Proven* that he is habite and repute a thief. Unanimously find Daniel Maclaren *Guilty* of the theft by housebreaking libelled; and find the indictment against William Law *Not Proven*. By a plurality of voices, find Margaret Desley or Duggan, *Guilty*, art and part, of the theft by housebreaking libelled, and find it *Proven* that she is habite and repute a thief; and, by a plurality of voices, find Ann Westwater *Guilty*, art and part, of the theft by housebreaking libelled.’

**LORD MEADOWBANK.**—The verdict was most accurately expressed, and the Jury had evidently paid great attention to the case. Having doubts as to Law’s guilt, they did perfectly right in giving effect to them. Proposed that Lantwheler and Desley, on account of the aggravations proved, should be transported for life, and Maclaren and Westwater for fourteen years.

*Sentence.*—Lantwheler and Desley, or Duggan, to be transported beyond seas for the whole period of their natural lives; Maclaren and Westwater, for fourteen years; William Law, assoilzied and dismissed.

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