and no compliance with the requirements of the statute.

LORD NEAVES—I concur. I would be sorry to countenance the doctrine contended for by the respondent. Corn and grass are protected by the statute. Are orchards not protected? and if they are, why should gardens be excluded from protection? Under the Act the burden is laid upon a person keeping a straying animal and he is bound to keep it from wandering. The other defences I consider quite irrelevant.

LORD COWAN—The first question is whether the statute 1686 is applicable to the case of a field where there are sheep adjoining a garden partially unenclosed. I concur with your Lordships that the Act does apply. I cannot see why an unenclosed garden is not to be protected as well as any other land from straying animals kept by an adjoining proprietor—the statute expressly requires that a herd shall be kept by the party owning the animals. The only other question is, If the statute applies, did the facts here entitle the appellant to poind? I am clear they did. I do not attach weight to the consideration that the appellant stood on his legal rights—he was quite entitled to say, as he did, that he would not build, and would shut up the sheep if they came on his ground. Where then did the legal obligation lie? The party putting the sheep into the field must either herd or enclose the sheep, and here there was no herd. It is quite true intimation might have been made to the owner, but that does not affect the legality of the original seizure. How then was the poinding to be loosed? I am clear the application should have been accompanied with an offer to pay the penalties and any damages.

The Court sustained the petition, and dismissed the appeal with expenses.

Counsel for Appellant — Rhind. Agent — R. Menzies, S.S.C.

Counsel for Respondent—Pearson. Agents—Dewar & Deas, W.S.

Wednesday, December 3.

SECOND DIVISION.

SPECIAL CASE—WALTER RITCHIE'S TRUSTEES AND OTHERS.

Settlement—Construction—Vesting—Liferent.

A testator left his whole estate to two of his daughters in liferent; but in event of either or both being married, he directed that their liferent should cease, and the funds be divided between them and certain other beneficiaries. Further, the deed provided that in the event of the death of either of the daughters unmarried, then "the share which would have belonged to the deceaser, had she married, should accresce and be divided equally among the whole beneficiaries." Neither of the daughters married, and on the death of one,—*held*—(1) that there was no vesting *a morte testatoris*; (2) that either the marriage or death of one of the sisters terminated the liferent; (3) that a like event vested the fee in the beneficiaries.

This was a Special Case submitted for the opinion and judgment of the Court by the following parties viz., (1) W. D. Anderson, merchant in London, sole surviving assumed and acting trustee of the late Walter Ritchie, *of the first part;* (2) Martha Ritchie, daughter of the truster, *of the second part;* (3) Thomas Ritchie, Walter William Ritchie, and Helen Ross Ritchie, sole surviving children of the deceased Agnes Ritchie, another daughter of the truster, *of the third part;* (4) Agnes Ritchie, granddaughter of the truster, and daughter of his son Thomas, *of the fourth part;* (5) Captain Edward Draper Elliot, R.H.A., and Isabella Agnes Elliot or Percival, wife of Captain Percival, only surviving children of the late Isabella Ritchie or Elliot, a daughter of the truster, and Captain Percival for his interest, *of the fifth part;* (6) The surviving, accepting, and acting trustees under Isabella Ritchie or Elliot's marriage contract, *of the sixth part;* (7) The residuary legatees of Thomas Alexander, husband of Janet Ritchie, also a daughter of the truster; the sole executrix and universal legatee of Margaret Ritchie, also a daughter of the truster; and the surviving executors of James Ritchie, son of the truster, *of the seventh part;* (8) Thomas Kenneth, James and John Ritchie, and Isabella Ritchie or Macarthur, surviving children of John Ritchie, a son of the truster; and the Rev. James Macarthur for his interest, *of the eighth part;* (9) Henrietta Ritchie, widow of Walter Adolphus Ritchie, son of the truster's son John, and her husband's sole executrix, *of the ninth part.*

The circumstances under which the Special Case came before the Court were as follows:—

Walter Ritchie, the truster, died at Greenock in November 1827, leaving a trust-disposition and settlement, by which he conveyed to trustees his whole estate, heritable and moveable. The original trustees are all dead, and William Dunlop Anderson, the party *of the first part,* is the sole surviving assumed trustee acting under the trust-deed. The purposes of the trust were, firstly, to convert the whole estate into cash, and to pay all debts, and thereafter the truster gave directions as to the residue of his estate in the following terms:—'And with regard to the residue and remainder of my estate, after the payment of my debts as aforesaid, they shall hold the same for the use and behoof of Agnes Cuthbert Ritchie, my spouse, in case she should survive me, but that in liferent, for her liferent use allenarly, and failing her, by death, for the use and behoof of Margaret Ritchie and Martha Ritchie, my two unmarried daughters, and that also in liferent, for their liferent use only; but in the event of either or both being married, their liferent right therein shall thereafter entirely cease and determine, and the fee of the said remainder and residue of the estate shall then belong to and become the absolute property of the said Margaret Ritchie and Martha Ritchie, and of Janet Ritchie, spouse of Thomas Alexander, in Greenock, and of Agnes Ritchie, spouse of John Ritchie, sometime merchant in Liverpool, my daughters, and of Catherine Noble, relict of Thos. Ritchie, my deceased son, equally among them, and share and share alike, but if any of my said daughters or the said Catherine Noble shall have then deceased, leaving a child or children, such child or children shall be entitled among them to the same share of my estate which their mother would have been entitled to had she been in life, it being my intention that, in case my daughters, or any of them, or

my said daughter-in-law, shall die before the succession to my said means and estate opens to them, that their child or children, that is the child or children of my said daughters, and the child or children of my daughter-in-law by my said son Thomas, who may survive them, shall have their right equally among them to the same share of my estate which their mother would have been entitled to if in life; and in the event of the death of either of the said Margaret Ritchie and Martha Ritchie without being married, then, and in such an event, I hereby appoint and ordain that the share which would have belonged to the deceaser, had she married, shall accresce and be divided equally among my other daughters and my daughter-in-law before specially named, and failing any of them by decease, their children shall succeed to the mother's share in the manner and terms before pointed out.' The free residue now in all amounts to £4356, 9s., and the truster's widow received the annual proceeds thereof until her death in 1835, after which Margaret and Martha Ritchie, the truster's daughters, enjoyed the liferent until Margaret's death on 7th April 1872. Margaret Ritchie was never married; she left a testament, dated 28th November 1848, by which she bequeathed her whole estate and effects to her unmarried sister Martha Ritchie, the party *of the second part*, as her sole executrix; in her capacity of executrix, also, the party *of the seventh part*. Janet Ritchie or Alexander, the eldest daughter of the truster, died in 1841, and her husband in 1838, leaving no surviving children. Their residuary legatees were also included as parties of the seventh part in the case. Agnes Ritchie or Ritchie, the second daughter of the truster, died on 9th June 1857. Her husband, John Ritchie died November 1830. They had four children, of whom three survive, viz., Thomas Ritchie, Walter William Ritchie, and Helen Ross Ritchie, the parties *of the third part*. Catherine Isabella Noble or Ritchie (designed in the trust-deed 'Catherine Noble, relict of Thomas Ritchie, my deceased son'), died in 1830. She had three children, of whom one survives, viz., Agnes Ritchie, the party *of the fourth part*. Another child, Isabella Ritchie or Elliot, was married to Major-General Edward Alured Elliot. She died in 1843, leaving three children, of whom two survive, viz., Edward Draper Elliot and Isabella Agnes Elliot or Percival, spouse of Lewis Percival. The truster had three sons, named Thomas, James, and John Ritchie. Of these Thomas predeceased him, and is described in the trust-settlement as 'my deceased son.' His children and grandchildren were respectively the parties *of the fourth and fifth parts*. The truster's son, James Ritchie, died in November 1844, unmarried, leaving a testament, dated 22d September 1841, by which he bequeathed his whole means and estate to his sisters Margaret and Martha Ritchie, and the survivor of them, and appointed them and his nephew, Thomas Ritchie to be his sole executors. Martha Ritchie and Thomas Ritchie, as surviving executors, were two of the parties, *of the seventh part*. The truster's son John died in August 1836. He was married to Isabella Ogilvie, and they had five children, viz.—(1) Walter Adolphus Ritchie, who died in June 1861, leaving a widow, Henrietta Anne Goodenough, and an only child, Annie Ritchie, both of whom survive. He also left a testament, dated 11th August 1858, by which he named the said Henrietta Anne Goodenough or Ritchie as his sole executrix and universal legatee, the party *of the ninth part;* (2) Thomas Kinneth Ritchie; (3) James Ritchie; (4) John Ritchie; (5) Isabella Buchanan Ritchie or Macarthur, wife of the Rev. James Macarthur, all of whom survive, and were called as parties *of the eighth part*.

In consequence of the death of Margare Ritchie, one of the liferenters, questions to the following effect have arisen—(1) Whether the whole or part of the residue of the trust-estate is now to be divided among the beneficiaries? and (2) Who are the parties entitled to participate in such division.

It was maintained for the second party, that on the death of Margaret Ritchie on 7th April 1872, unmarried, she became, and is now, entitled to the liferent of the whole of the residue and remainder of the truster's estate; or otherwise, in the event of the said residue being now divisible, that no right of fee therein vested in any of the beneficiaries until after the death of the said Margaret Ritchie, and that the said second party is now entitled to one-third part or share of the said residue or remainder of the truster's estate.

It was maintained for the parties of the third, fourth, fifth, sixth, and seventh parts, that on the death of Margaret Ritchie, on 7th April 1872, unmarried, the fee of the whole residue became divisible among the parties entitled under the trust-disposition and settlement to participate in the residue.

It was maintained for the parties of the fifth, sixth, and seventh parts, that a right to the fee of the residue of the trust-estate vested *a morte testatoris* in each of the truster's four daughters, Janet, Agnes, Margaret, and Martha, and in his daughter-in-law, Catherine Isabella Noble or Ritchie, subject to the successive liferents of the truster's widow, and of his daughters, Margaret and Martha, and that equal shares of the residue, in so far as now divisible, belong to Martha Ritchie, to the representatives of Janet Ritchie, to the representatives of Margaret Ritchie, to the children of Agnes Ritchie, and to the children of Catherine Isabella Noble or Ritchie, *per stirpes et non per capita*.

It was maintained for the parties of the second, third, fourth, eighth, and ninth parts, that no right to the residue vested *a morte testatoris* in any of the daughters, or in the daughter-in-law of the truster.

In the event of the residue being held not to have vested in any of the beneficiaries until the death of Margaret Ritchie, and of the contention of the second, third, and fourth parties being sustained, it was further maintained for the parties of the fifth part, that they (the said fifth parties) were entitled, as coming in place of their deceased mother, Mrs Elliot, one of the children of Mrs Catherine Noble or Ritchie, to participate (*per stirpes*) with the parties of the fourth part in the share of the residue falling to the children of Mrs Catherine Noble or Ritchie.

It was maintained for the parties of the eighth and ninth parts that the right to a share of the residue vested in the children of John Ritchie, the truster's son, as heirs *in mobilibus* of the truster *ab intestato*, and that they were entitled to participate in the said residue rateably along with the other descendants of the truster, to the extent of the share which John Ritchie would have taken if alive.

The parties agreed that the expense of the proceedings should be paid out of the residue, or such part thereof as might be found to be divisible."

The following questions of law were submitted for the opinion and judgment of the Court:—"(1) Whether, on the death of the said Margaret Ritchie, on 7th April 1872, the liferent of the residue fell to be enjoyed exclusively by the said Martha Ritchie, or the whole of the residue of the trust-estate became divisible, in terms of the directions contained in the said Walter Ritchie's trust-disposition and settlement? or Whether, on the death of the said Margaret Ritchie, one-half, or any other, and if so what, parts of the said residue became divisible as aforesaid? (2) Whether, at the death of the truster a right to an equal share of the residue vested respectively in Janet Ritchie or Alexander, Agnes Ritchie or Ritchie, the daughters of the truster, and Catherine Isabella Noble or Ritchie, the daughter-in-law of the truster, all of whom predeceased the said Margaret Ritchie, and in the said Margaret Ritchie herself, and passed to their respective representatives and assignees? (3) Whether, of the residue, or such part thereof as may be found to be now divisible, one-third share belongs to the said Martha Ritchie, the party hereto of the second part; one-third to the children of the said Agnes Ritchie, the parties hereto of the third part; and one-third to the children and grandchildren of the said Mrs Catherine Noble or Ritchie, the parties hereto of the fourth and fifth parts, *per stirpes;* or Whether the parties hereto of the fifth part, as the children of the deceased Isabella Ritchie or Elliot, grandchildren of Mrs Catherine Noble or Ritchie, are not entitled to participate in the said equal third part of the share of residue falling to the children of the said Catherine Noble or Ritchie? (4) Whether the residue, or such part thereof as may be found to be now divisible, is to be held as intestate succession of the said Walter Ritchie; and Whether the parties hereto of the eighth and ninth part are entitled to participate in the same, and if so, to what extent?"

Argued for parties of the second part—Where you have a liferent in favour of two sisters, and there are no words such as "share and share alike," or words implying division, then, on the death of the one sister, the other one takes by accretion. We maintain that there is no vesting here until the termination of the liferent—(*Paul* v. *Home; Fergus* v. *Conroy*, — and Lord Benholme there). The sisters are conjunct liferenters, *Non verbis tantum conjuncti sed etiam re*—(*Barber* v. *Findlater*).

Argued for parties other than the second party—The vesting took place at the testator's death. [Lord Justice-Clerk—Upon what do you rest to show that there was vesting?]—(*Mackintosh* v. *Wood*). If the liferent ceases upon either the marriage or death of one sister, then on this authority the fee vests *a morte testatoris.*

Argued for parties of the eighth and ninth part—We claim as *heirs-at-law* of the testator, on the ground that a portion of the estate is not disposed of by will, and is therefore intestacy—*Paterson; Rose; Torrie.*

Authorities quoted—*Paul* v. *Home*, July 5, 1872, 10 Macph. 937, 9 Scot. Law Rep. 594; *Fergus* v. *Conroy*, July 13, 1872, 10 Macph. 968; *Barber* v. *Findlater*, Feb. 6, 1835, 13 S. 422; and Nov. 23, 1838, 1 D. 94: *Mackintosh* v. *Wood*, July 5, 1872, 10 Macph. 933, 9 Scot. Law Rep. 591; *Torrie* v. *Munsie*, May 13, 1832, 10 S. 597; *Paterson*, June 4, 1741, M. 8101; *Rose*, Jan. 15, 1782, Elch. *voce* Legacy, No. 9.

At advising—

Lord Benholme—In this case we had an able argument upon the import of the clause of the settlement on page 5, the interpretation of which presented some little difficulty, in respect that the residuary legatees, in favour of whom this testator certainly intended that the settlement should operate, do not seem to be called to the succession unless one or other of the daughters of the truster, Margaret Ritchie or Martha Ritchie, should be married. After giving a liferent to his spouse, and appointing the trustees to hold afterwards for the use and behoof of Margaret and Martha Ritchie, his two unmarried daughters, the settlement proceeds—"but in the event of either or both being married, their liferent right therein shall thereafter entirely cease and determine, and the fee of the said remainder and residue of the said estate shall then belong to and become the absolute property of," the various persons named. Now, the first difficulty in the interpretation of this case is, that it does not appear that the division of the fee and the devolution upon the residuary legatees was ever to take place unless one or both of these ladies were married; and the argument was, that the testator must have intended that if either of them was not married, upon some other event the devolution of the residuary legacies should take place; and a sentence towards the foot of the page suggested the idea that besides marriage the death of either of these parties would be a contingency which would put an end to the liferent on the one hand, and open the succession to the fee of the estate on the other. That sentence is in these terms—"and in the event of the death of either of the said Margaret Ritchie and Martha Ritchie without being married," then he ordains that the share which would have belonged to the deceaser, had she married, is to be divided equally among his other daughters. This clause, though it is not very distinct in its effect, suggested, and I think properly suggested, to the parties who argued the case, that in fact the death, as well as the marriage of either of these two first liferentrixes, was to be the event upon which the devolution of the fee—the ceasing of the liferent and the vesting of the fee in the residuary legatees—was to take place. There was some little difficulty in adopting this view, but I confess that I was at last induced to do so from the consideration that we are not to suppose that intestacy was intended by the testator, he having made such special provisions for the distribution of the fee among his residuary legatees and their descendants as you find in the other parts of this deed. And, therefore, I am of opinion that we should hold that upon the death of Margaret the fee vested in the residuary legatees who were then alive, or who had left descendants to take up their share. Now, the residuary bequest is this, that upon the happening of the event upon which this is to take place the liferent of these two ladies was entirely to "cease and determine, and the fee of the said remainder and residue of the said estate shall *then* belong,"—I emphasise the word "then" as apparently ascertaining that it was not till then that anything should vest, and consequently that those parties to this case who state an interest either under intestacy or upon

the supposition that there was a vesting of the fee on the death of the testator, seem to me to be excluded by that word "then"—"shall then belong to and become the property of the said Margaret Ritchie and Martha Ritchie, and of Janet Ritchie, spouse of Thomas Alexander in Greenock, and of Agnes Ritchie, spouse of John Ritchie, sometime merchant in Liverpool, my daughters, and of Catherine Noble, relict of Thomas Ritchie, my deceased son, equally among them and share and share alike, but if any of my said daughters, or the said Catherine Noble, shall have then deceased leaving a child or children, such child or children shall be entitled among them to the same share of my estate which their mother would have been entitled to had she been in life, it being my intention that, in case my daughters, or any of them, or my said daughter-in-law, shall die before the succession to my said means and estate opens to them,"—again suggesting a delay of the vesting of the fee to that extent,—"that their child or children, that is the child or children of my said daughters, and the child or children of my daughter-in-law by my said son Thomas, who may survive them, shall have their right equally among them to the same share of my estate which their mother would have been entitled to if in life; and in the event of the death of either of the said Margaret Ritchie and Martha Ritchie without being married, then, and in such an event, I hereby appoint and ordain that the share which would have belonged to the deceaser, had she married, shall accresce and be divided equally among my other daughters and my daughter-in-law before specially named; and failing any of them by decease, their children shall succeed to the mother's share in the manner and terms before pointed out." Now, upon the death of Margaret there were surviving Martha and the children of Agnes, and certain descendants of the daughter-in-law. The division therefore will take place—one-third to the surviving daughter Martha, another third divisible among the children of Agnes, and the third third divisible into two shares, one going to a child, and another being divided between two grandchildren. In that way Martha gets one-third, the children of Agnes another third between them, (that is one-ninth part each) a child of Catherine gets one-sixth, and the two grandchildren of the other child one-twelfth each—which exhausts the whole succession. In that view, I propose that we should return the following answers to the queries appended to this case, The 1st query is, "Whether, on the death of the said Margaret Ritchie, on 7th April 1872, the liferent of the residue fell to be enjoyed exclusively by the said Martha Ritchie, or the whole of the residue of the trust-estate became divisible in terms of the directions contained in the said Walter Ritchie's trust-disposition and settlement? or, Whether, on the death of the said Margaret Ritchie, one-half, or any other, and if so what, parts of the said residue became divisible as aforesaid?" I propose that that query should be answered in this way, that on the death of Margaret Ritchie the liferent of Martha, the survivor, came to an end, and that the whole residue of the trust-estate became divisible in terms of the directions contained in Walter Ritchie's trust-disposition.

The 2d query is "Whether at the death of the truster a right to an equal share of the residue vested respectively in Janet Ritchie or Alexander, Agnes Ritchie or Ritchie, the daughter of the truster, and Catherine Isabella Noble or Ritchie, the daughter-in-law of the truster, all of whom predeceased the said Margaret Ritchie, and in the said Margaret Ritchie herself, and passed to their respective representatives and assignees? This supposes a vesting of the fee previous to the event that I have suggested as alone opening the succession, and therefore I think the second question should be answered in the negative.

The third question is, "Whether, of the residue, or such part thereof as may be found to be now divisible, one-third share belongs to the said Martha Ritchie, the party hereto of the second part; one-third to the children of the said Agnes Ritchie, the parties hereto of the third part; and one-third to the children and grandchildren of the said Mrs Catherine Noble or Ritchie, the parties hereto of the fourth and fifth parts, *per stirpes?*" This question precisely tallies with the distribution of the estate which I propose, and consequently this first alternative ought to be answered in the affirmative. The latter part of the third question is not very intelligible, and it seems in one sense to be the same as the first. It is, "or whether the parties hereto of the fifth part, as the children of the deceased Isabella Ritchie or Elliot, grandchildren of Mrs Catherine Noble or Ritchie, are not entitled to participate in the said equal third part of the share of residue falling to the children of the said Catherine Noble or Ritchie?" Now, in one sense they do participate under the division that I have suggested by the first paragraph. But I suppose the meaning was that there was to be an equal distribution, which would be inconsistent with the previous part. I think we should answer that query in this way,—that the first paragraph and alternative of the third question ought to be answered in the affirmative; and I don't think we need say anything more, because, if there is a contrariety in the meaning of the last paragraph, it is dealt with by our affirming the first.

The last question is, "Whether the residue or such part thereof as may be found to be now divisible, is to be held as intestate succession of the said Walter Ritchie? and whether the parties hereto of the eighth and ninth parts are entitled to participate in the same, and if so, to what extent?" I would answer that in the negative, for we have gone upon an interpretation of the settlement which excludes the notion of intestacy.

LORD NEAVES—I concur, and I have nothing to add. The settlement is a difficult one to interpret, but I think that interpretation which we have put on it is the most probable and the most reasonable.

LORD COWAN—Having regard to the terms of this settlement, I am of opinion, in the first place, that no vesting took place *a morte testatoris;* in the second place, that either the marriage or the death of one of the sisters had the effect of terminating the liferent provided by the deed; and, in the third place, and in consequence, Margaret's death vested the fee in the parties entitled on that event to the succession under the trust-disposition and settlement. Having regard to these three principles, I think your Lordship's proposal as to the mode in which the questions should be answered is perfectly correct. I would only say, as to the last part of the third query, that we might perhaps find it unnecessary to answer it; and I rather think the same as to the fourth.

LORD JUSTICE-CLERK absent.

Lord Cowan mentioned that the Lord Justice-Clerk entirely coincided in the result at which they had arrived.

Counsel for First, Third, Fourth, Fifth, Sixth, and Seventh Parties—Marshall. Agents—Graham & Johnston, W.S.

Counsel for Second Party—Duncan. Agents—Jardine, Stodart, & Frasers, W.S.

Counsel for Eighth and Ninth Parties—Hall. Agents—Graham & Johnston, W.S.

HIGH COURT OF JUSTICIARY.

Thursday, November 27.

(Before Lord Justice-Clerk and Lords Cowan and Neaves.

WRIGHT *v.* DEWAR.

Suspension — General Police Act, 1862—*Summary Police Act—Exclusion of Evidence.*

In a suspension of a sentence of a burgh magistrate, where allegations were made that the witnesses for the suspender had been excluded from Court, a proof of these averments before answer *allowed.*

This was a suspension of a sentence, dated the 23d of August last, by a magistrate of the burgh of Wishaw, whereby the complainer, John Houston Wright, was ordered to forfeit the sum of 21s; or, in default of payment, be imprisoned in the prison of Hamilton for ten days. The ground of the application for suspension was that the complainer having been convicted upon incompetent evidence was entitled to have the note of suspension granted; that he was tried and convicted upon a complaint which had, prior to the trial, been otherwise finally disposed of; and that the whole proceedings and sentence complained of were informal, irregular, and contrary to law. The statement of facts went to show that, along with John M'Readie, a collier, the complainer, at the instance of the Wishaw prosecutor, was charged with a breach of the peace committed on 12th August. The complainer had been apprehended on the 16th of August, without any warrant, and taken to the Police Office, where he was made to leave the sum of £1 for his appearance at Court. On the 18th of the month, on the complaint being called, he was there to answer to the charge, and having pleaded not guilty, the procurator-fiscal (Mr Dewar) requested an adjournment to the 23d of August. On the 23d M'Readie failed to put in an appearance, and accordingly his pledge of 20s. was forfeited. The complainer having on the 23d business in Lesmahagow—of which he had given notice to the Court on the 18th—was not present at the time appointed, and on the following day he was apprehended by two policemen, and taken to the Police Office, where he was detained for a period of an hour or thereby. After the expiry of that time, Wm. Anderson, Esq., one of the magistrates, who keeps a tailor's shop next door to the station-house, was procured to preside in the Police Court at the trial of the complainer, for which the said Court-house was opened at 9 P.M. After hearing the evidence of several witnesses, among whom was M'Readie, the sentence complained of was pronounced. The sentence was pronounced long after the Police Court had adjourned for the day, and at an hour when it was not customary to hold diets. Complainer alleges he was sentenced notwithstanding the magistrate being requested to adjourn the diet to enable him to procure the assistance of his agent and the attendance of his witnesses, the latter of whom were excluded by the court officer. Upon the complainer making this motion for the adjournment, he was threatened by Mr Anderson to the effect that if the motion was persisted in he would be committed for contempt of what the said Mr Anderson called the authority of the Court. And at the said last-mentioned diet, and also prior thereto, and while the complainer was being detained, the procurator-fiscal, who is also superintendent of police for the Wishaw district of Lanarkshire, declared his intention of making an example of the complainer now that, in the absence of his agent, he had him in his power. The complaint was presented on 10th October. The Circuit Court was held at Glasgow on the last week of September. The complainer submitted that he was not shut up to the remedy prescribed by the General Police Act, (1) Because the proceedings were not instituted under that Act; and the Summary Procedure Act, 1864, which regulated the procedure in the case, repealed the clause of appeal in the General Police Act; (2) The case was of such a character that the Supreme Court should interfere in order to see justice done.

The respondent contended that under the General Police Act appeal was competent only to the next Circuit Court, and that the Summary Procedure Act did not affect that provision, which must be held to regulate the competency of the appeal.

Cases cited:—*Halliday*, 5 Irv., 382; *Crawford*, 2 Irv. 511; *Blyth*, 1 Stewart, 242; *Kirkpatrick*, 1 Cooper, 438; *Graham*, 7 D. 515.

At advising—

Lord Justice-Clerk—It does not seem to me that the prosecutor has any interest to object to farther inquiry. I can give no sanction to the contention as to the effect of the Summary Procedure Act. I find in the case of *Halliday* the Lord President dealt with that very point.

Lord Cowan—The question as to finality depends on the particular statute which the party had contravened, and effect is always given to the clauses there. The other branch of the case is one of great delicacy. The allegations are very vague, but I understand inquiry is to be confined to the allegations in the 6th article, as to the exclusion of evidence.

Lord Neaves—I concur. I think the argument as to the effect of the Summary Procedure Act is unfounded; if it is adopted as here, the procedure becomes summary, but in its main branch the cause is still under the original Act of Parliament. I have great doubt about the validity of the conplaint.

The Court pronounced the following judgment:—

"The Lord Justice-Clerk and the Lord Commissioners of Justiciary having considered this appeal and heard counsel for both parties, before answer, and reserving all questions as to the competency of this suspension in respect of the averments made by the suspender in the 6th article of his statement of facts, remit to William Gillespie Dickson,