a tenant. The true view in my judgment is that stated by Lord Fraser, that the net income derived from the water-rates after deduction of all necessary outlays is the yearly rent or value of the water-works.

"The question as to the allocation of the valuation among the various parishes in which the works are situated would have been one of difficulty were it now to be decided for the first time, but it has been fully considered and determined by Lords Lee and Fraser in the case of the *Dundee Waterworks*, and their judgments must be taken as ruling the present case. The main ground on which it is challenged appears to be founded on a misconception of the principles of valuation. It is said that the only profit-producing part of the undertaking is the area of distribution. But there is no profit from the undertaking except what represents the rent of the entire heritable subjects, and if there were any such profit it would not enter the valuation. It is true that the area of distribution derives an advantage from the distribution of cheap water, in which the parishes outside that area do not participate, and that advantage will be represented by an increase in the rateable value of the houses within the area of distribution. But the water-rates which are levied in return for that advantage are payable for the use which the ratepayers may take of the entire works and reservoirs which are required for bringing the water of Loch Katrine into Glasgow, and not for the use of that part of the works alone which is situated within Glasgow.

"I agree with Lord Fraser that no sound distinction can be taken between different portions of the entire works as being more or less direct or indirect sources of revenue.

"I should add that in allocating the valuation according to the cost of the structural works, I understand the assessor to have taken also into account the value of the *solum* which had been acquired. The allocation would otherwise be inequitable. But as the point is not taken in the appeals against the allocation, I assume that it is not raised by the method of valuation adopted, and have not thought it necessary to deal with it in the interlocutors disposing of these appeals."

In the appeal by the Parochial Boards the Lord Ordinary dismissed the appeal, referring in his note to the interlocutor and note in the appeal by the Corporation of Glasgow as fully stating the ground of judgment.

Counsel for Parochial Boards—Lord Advocate Balfour, Q.C.—Dickson—Ure. Agents—James M'Caul, S.S.C.—John Gill, S.S.C.—Mackenzie, Innes, & Logan, W.S.—W. & J. Burness, W.S.—Morton, Neilson, & Smart, W.S.

Counsel for Commissioners of Supply—Keir—Guthrie—Dundas. Agents—Dundas & Wilson, C.S.

Counsel for Corporation of Glasgow—J. P. B. Robertson—Hay. Agents—Millar, Robson, & Innes, S.S.C.—Rhind, Lindsay, & Wallace, W.S.

Thursday, October 17.

SECOND DIVISION.

[Sheriff of Forfarshire.

MACFARLANE *v.* THOMSON.

(See *ante*, vol. xxi. p. 577.)

Process—Sheriff—Appeal to Court of Session—Extracted Decree—Court of Session Act 1868 (31 *and* 32 *Vict. c.* 100), *sec.* 68—*Competency.*

In a Sheriff Court action the defender was assoilzied with expenses by the Sheriff Substitute. On appeal the Sheriff adhered, and thereafter the Sheriff-Substitute gave decree for the taxed amount of the defender's expenses. The defender extracted only the decree for expenses, and the pursuer paid part of them. Thereafter the pursuer appealed to the Court of Session against the interlocutor of the Sheriff. The defender objected to the competency of the appeal. *Held* that the interlocutor of the Sheriff disposing of the merits of the cause not having been extracted the appeal was competent.

The Court of Session Act 1868 provides by sec. 68 that at expiration of the period of twenty days after the date of a judgment in a Sheriff Court the Clerk of the Court may, if no appeal have been taken, give out the extract, "it being competent however to take such appeal at any time within the period of six months from the date of final judgment in the cause unless the judgment has previously been extracted or implemented.

David Macfarlane, boiler maker, raised an action in the Sheriff Court of Forfarshire at Dundee against William B. Thomson, engineer, for compensation for bodily injuries sustained by him while working in the defender's employment.

On 20th July 1883 the Sheriff-Substitute (CHEYNE) pronounced an interlocutor containing certain findings in fact, assoilzieing the defender from the conclusions of the action, and finding him entitled to expenses.

On 6th October the Sheriff (TRAYNER) adhered with additional expenses.

On 16th October the Sheriff-Substitute decerned against the pursuer for payment of the taxed amount of the defender's account of expenses.

On 31st October the defender extracted the last-mentioned decree, viz., that for expenses. He did not extract that of the Sheriff.

This decree for expenses was in part implemented by the pursuer by payment to the defender of a portion of the expenses decerned for.

On 13th March 1884 the pursuer lodged an appeal to the Court of Session against the interlocutor of the Sheriff of 6th October.

At the calling of the case on the Short Roll the defenders objected to the competency of the appeal and argued that the appeal was incompetent because it was lodged after final judgment in the cause had been both extracted and implemented. He had no interest to extract anything but the decree for expenses. That decree was included in, and could not be separated from, that on the merits, and extract of it was equivalent to extract of the decree of absolvitor.

Pursuer replied—The defender could not bar

the right of appeal by merely extracting a decree for expenses which was quite distinct from the decree on the merits. The only way he could have put an end to the case was by extracting the decree of absolvitor.

At advising—

Lord Justice-Clerk—In such a case as this, which is under a statute by which there is an exclusion in a special case of a right of appeal otherwise competent, one rather leans towards the exercise of the right of appeal than towards its exclusion. Here my own impression is that the extract of the decree of expenses was not equivalent to extract of the decree of absolvitor, although in this case it is of consequence to observe that the decree of absolvitor was followed by decree for expenses in favour of the defender, for there are many cases where the award of expenses may be inconsistent with the judgment of absolvitor. But the ground of my judgment here is that the interlocutor disposing of the merits of the case was not extracted, and therefore that the appeal is not excluded by the statute.

Lord Craighill concurred.

Lord Rutherfurd Clark—I am also inclined to read the statute as your Lordship has done. The statute declares in very express terms that the right of appeal is competent for six months, provided that it has not before the lapse of that time been extracted or implemented. There is here a decree of absolvitor. Has it been extracted or implemented? Now, I think the meaning of the statute is that a party shall not be cut out of his appeal unless the right of appeal is expressly excluded by the statute. But it is said that the appeal is barred here because the decree of absolvitor was followed by a decerniture for expenses, and that has been extracted. I do not think that extracting that decree is equivalent to extracting the decree of absolvitor, and therefore I think that the appeal is competent.

The Court repelled the objection and sustained the competency of the appeal.

Counsel for Pursuer (Appellant)—D.-F. Macdonald, Q.C.—Gardner. Agent—A. Trevelyan Sturrock, S.S.C.

Counsel for Defender (Respondent)—Darling—Law. Agents—Rhind, Lindsay, & Wallace, W.S.

Friday, October 24.

SECOND DIVISION.

CLAPPERTON, PETITIONER.

Poor—Admission to Poors'-Roll—Act of Sederunt 21st Dec. 1842, secs. 2 and 3—Declaration of Poverty—Procedure to be adopted where Applicant is unable from Bodily Injuries to Appear before the Minister and Elders and Emit a Declaration.

Alexander Clapperton, residing at No. 7 Spence Place, Edinburgh, having been run over by an omnibus belonging to the Edinburgh Tramways Company, and being desirous of obtaining admission to the benefits of the poors'-roll to enable him to raise an action of damages against the Company, applied to the Session-Clerk of St Cuthbert's Parish (in which parish he was resident) requesting that a meeting of the minister and elders of the parish should be held within his house for the purpose of taking his declaration of poverty in terms of the Act of Sederunt 21st December 1842, which enacts:—Sec. 2—"That no person shall be entitled to the benefit of the poor's-roll unless he shall produce a certificate under the hands of the minister and two elders of the parish where such poor person resides, setting forth his or her circumstances according to a formula hereto annexed (Schedule A)." Sec. 3—"That if the party's health admit of it, he or she shall appear personally before the minister and elders, at the time and place to be appointed by them, to be examined as to the facts required by said formula."

He produced a medical certificate to the effect that he was unable to leave his own house to appear before the minister and elders.

The request having been refused by the session-clerk, who acted on his own responsibility in the matter, Clapperton presented this petition praying the Court "that the minister and elders of the parish of St Cuthberts be ordained to hold a meeting within No. 7 Spence Place, Edinburgh, for the purpose of taking the declaration of poverty in terms of the Act of Sederunt 21st June 1842."

It was stated at the bar that regular meetings were held by the Kirk-Session for the purpose of meeting with poor persons applying for such certificates; that the parish contained 85,000 parishioners, and the parochial duties were very heavy, and therefore it was not expedient that such an additional duty as would be involved in such special meetings as was here applied for should be imposed.

The Court, without pronouncing any order, intimated that they were of opinion that the request was a reasonable and proper one, and ought to be complied with.

Lord Craighill was absent.

Counsel for Petitioner—Salvesen. Agent—Arthur Adam, W.S.

Counsel for Respondents—Lyell. Agents—Horne & Lyell, W.S.

Friday, October 24.

SECOND DIVISION.

[Sheriff of the Lothians and Peebles at Edinburgh.

M'DERMAID *v.* THE EDINBURGH STREET TRAMWAYS COMPANY (LIMITED).

Street—Tramway Car—Duty of Driver to pull up if Necessary till Temporary Obstruction is Removed—Reparation.

The driver of a cab stopped in a crowded street to take up a passenger, in such a manner that one wheel of the cab was on tramway rails which ran along the street. A driver of a car coming behind saw the obstruction, and whistled, but did not stop, and his car struck the cab and upset it.