A question, however, was raised as to the applicability of the rule of practice which is understood to obtain in parliamentary elections, viz., that a member elected and sitting for one constituency cannot so long as he so sits stand as a candidate or be elected for another constituency — Sir Erskine May's Parliamentary Practice, 10th ed. p. 287—but I do not think that we would be warranted, without statutory authority, in introducing this rule or practice into municipal elections, which are regulated not by historical usage or custom but by statute. I may add that I think it would be a misfortune if the rule were introduced into municipal elections in Scotland, as it might in some cases seriously hamper the choice of a councillor by the electoral body.

In this connection I may refer to the case of *The Queen* v. *The Mayor and Corporation of the Borough of Bangor*, 1886, 18 Q.B.D. 349, and 13 App. Cas. 241 (1888), in which it was held by the Court of Appeal in England that a person was not by reason of his being an alderman disqualified for election to the office of councillor, but that by accepting the latter office he vacated the former, as the offices cannot be held together. This seems to me to be a convenient rule of practice. In the view which the House of Lords took of the case it was not necessary for them to express an opinion upon this question. It appears to me, however, that the view taken by the Court of Appeal was reasonable, and that it affords material support to the opinion which I have already expressed.

LORD ADAM—I concur.

LORD M'LAREN — I am of the same opinion. It is clear that there are only two possible solutions for a double election of this kind. The first is that a person who is already a member of the Town Council is ineligible as a candidate. The second is that if a member of a Town Council is elected as a representative of another ward, then by accepting the second election he ceases to represent the ward for which he previously sat. The first solution, which represents the usage of the House of Commons, is not founded on statute but upon considerations of good sense and expediency. The second solution derives certain support from the case of the alderman who was afterwards elected a common councillor, I mean the case of *The Queen* v. *The Mayor and Corporation of Bangor*, L.R. 18 Q.B.D. 349. The case is not strictly in point, and perhaps not more so than the practice of the House of Commons, because the constitution of English municipal bodies differs materially from that of burghs in Scotland, and especially in the rule that in England a man cannot be an alderman and a councillor at the same time. In a question where the considerations are so nearly balanced I think the determining consideration ought to be that, while certain statutory restrictions are placed upon the choice of a candidate (chiefly in relation to business connection with the Corporation), there is no statutory restriction debarring a ward from choosing as its representative one who is already in the Council. In the absence of any decision or precedent I think that our judgment should be in favour of freedom of choice, which I understand is also one of the reasons given in your Lordship's opinion.

LORD KINNEAR—I concur on the ground that I think Mr Scott Gibson vacated his office as Councillor for the 6th Ward by his acceptance of the office of Councillor for the 17th Ward and thereupon making the requisite declaration. I consider that his acceptance of the election for the 17th Ward was incompatible with his continuing to hold his seat for the 6th Ward. For these reasons I concur with your Lordships' decision.

The Court pronounced this interlocutor—

"Find in answer to the first question in the petition that Mr Gibson is now entitled to sit as member of Council for the 17th Ward of the city of Glasgow: And in answer to the second question in the petition, that there is a vacancy in the 6th Ward but not in the 17th Ward, also that the vacancy in the 6th Ward should be filled up by an election held under the provisions of section 25 of the Glasgow Corporation (Tramways and General) Order Confirmation Act of 1901 (1 Edw. VII. cap. lxxiv), and Decern: Find the petitioner entitled to the expenses of the petition and following thereon as shall be taxed by the auditor out of the common good of said city, and *quoad ultra* Find no expenses due, and Remit the account of said expenses to the auditor to tax and to report."

Counsel for the Petitioner — Solicitor-General (Dickson, K.C.)—Deas. Agents—Simpson & Marwick, W.S.

Counsel for the Respondent—Campbell, K.C. — Munro. Agents—Sibbald & Mackenzie, W.S.

Tuesday, December 2.

SECOND DIVISION.

[Lord Low, Ordinary.

HART *v.* COUNTY COUNCIL OF THE COUNTY OF LANARK.

Local Government—County—County Council—Administration of Criminal Law—Remuneration of Procurator-Fiscal — Administration of Justice—Procurator-Fiscal—County General Assessment Act 1868 (31 *and* 32 *Vict. cap.* 82), *sec.* 3 (2) *and* (3) —"*Rogue Money*" *Act* 1724 (11 *Geo. I. cap.* 26), *sec.* 12.

Held (*diss.* Lord Young) (1) that the County Council of the county of Lanark were bound out of the county general assessment levied by them under the County General Assessment Act

1868, as coming in place of the rogue money formerly levied under the Act 11 Geo. I. cap. 26, sec. 12, to provide reasonable remuneration for work done by the Procurator-Fiscal of the Lower Ward of Lanarkshire in the administration of the criminal law other than work done in connection with cases reported to Crown counsel, and prosecutions under warrant from the Sheriff resulting in trial or commitment for trial, which two latter classes of work alone were covered by the salary paid to him from Exchequer; and (2) that the County Council could not escape liability for such remuneration upon the ground that for some fifteen years prior to the passing of the County General Assessment Act of 1868 the Commissioners of Supply had refused to pay anything in respect of such work.

Local Government — County Council — County of City—County General Assessment — Remuneration of Procurator-Fiscal of County for Administration of Criminal Law in City Within which County Council have no Powers of Assessment—County of the City of Glasgow Act 1893 (56 *and* 57 *Vict. cap. clxxxviii.*), *sec.* 7.

The city and extended royalty of Glasgow were created a county of a city and severed from the county of Lanark by the County of the City of Glasgow Act 1893, but it was provided that nothing in that Act should prejudice the civil or criminal jurisdiction of the Sheriff, as they existed prior to the passing of the Act. The County Council of the county of Lanark, who had no power to levy assessments in the county of the city, having been held liable, in an action raised in 1899 to remunerate the Procurator-Fiscal of the Lower Ward of Lanarkshire for certain work done by him in the administration of the criminal law, and not covered by his salary from Exchequer, *held* that the County Council of Lanark were liable in payment for such work when arising in the county of the city as well as when arising in the county of Lanark proper.

This was an action at the instance of James Neil Hart, Procurator-Fiscal of the Lower Ward of Lanarkshire at Glasgow, against the County Council of Lanark, concluding for declarator in the following terms:—"That the defenders are liable and are bound and obliged to pay or provide to the pursuer, as holder of the said office of procurator-fiscal of the Lower Ward of Lanarkshire, at Glasgow, reasonable remuneration in respect of all business performed and discharged by him as holder of said office, other than such as is covered by the salary paid to him by her Majesty's Exchequer—that is to say, other than business performed and discharged by him in connection with (1) criminal and other cases in which precognitions of witnesses or reports are submitted by him for the instructions of Crown counsel, and (2) criminal prosecutions in the sheriff court instituted under warrant from the sheriff which result in trial or in which the accused party is served with a libel or warrant of commitment for trial." The summons further concluded for payment of a sum of £297, 7s. 6d., being the amount of an account for work done by the pursuer in performance of the duties of his office in the county of Lanark and in the county of the city of Glasgow.

The "Rogue Money" Act 1724 (11 Geo. I. cap. 26) enacted:—Sec. 12 "And whereas for want of a sufficient fund for defraying the charges of apprehending criminals in North Britain, and of subsisting them when apprehended until prosecution, and of carrying on the necessary prosecutions against them, it often happens that criminals there escape the punishment due to their offences; for preventing of which inconveniences for the future, be it enacted by the authority aforesaid, that it shall and may be lawful to and for the freeholders of every shire, county, or district in North Britain to assess the several shires or stewartries where their estates lie, at their meetings at any of their head courts yearly, in such sums as they shall judge reasonable and sufficient for the purposes aforesaid, and that such monies so from time to time to be assessed . . . shall be applied for defraying the charges of apprehending of criminals, and of subsisting of them in prison until prosecution, and of prosecuting such criminals for their several offences by due course of law, and to and for no other use or purpose whatsoever."

The duty of assessing for "rogue money" was transferred from the freeholders of the counties to the Commissioners of Supply by the Parliamentary Reform Act 1832 (2 and 3 William IV. cap. 65).

By a course of policy terminating in a Treasury Minute of 10th July 1861 the counties in Scotland were relieved by Exchequer of the burden imposed upon the "rogue money" for the remuneration of procurators-fiscal for criminal investigations and prosecutions in cases reported to Crown counsel, "leaving them still to be remunerated by fees for the business payable by the counties out of the 'rogue money.'" This relief was afforded at first by payment of fees, but after 1850 by way of salary, and in 1855 the salary of the Procurator-Fiscal of Lanarkshire was increased in consideration of the transference to him of the duties in connection with criminal prosecutions and investigations within the burgh of Glasgow, which had formerly been performed by the procurator-fiscal of the burgh, appointed and paid by the magistrates.

"Rogue money" was abolished, and the county general assessment was substituted for it by the County General Assessment (Scotland) Act 1868 (31 and 32 Vict. cap. 82). That Act provided for the payment out of the county general assessment of certain salaries, fees, outlays, and expenses specified in section 3 of the Act, *inter alia*, as follows:—Sub-section (2)—"The salaries or fees and necessary outlays of procurators-

fiscal in the sheriff and justice of peace courts, and clerks of justice of peace court, in so far as such salaries, fees, and outlays are at present in use to be paid by each county. (3) The expenses incurred in searching for, apprehending, subsisting, prosecuting, or punishing criminals. . . . (7) All expenses or payments presently directed by any Act of Parliament to be defrayed out of the rogue money."

The Local Government (Scotland) Act 1889 (52 and 53 Vict. cap. 50), sec. 11, transferred to the county councils the powers of assessment theretofore exercised by the Commissioners of Supply.

The County Council of Lanark were deprived of their powers of imposing assessments within the city of Glasgow by the County of the City of Glasgow Act 1893 (56 and 57 Vict. cap. clxxxviii.), whereby the city and royal burgh of Glasgow, which had been extended by the City of Glasgow Act 1891 (54 and 55 Vict. cap. cxxx.), were created a county of a city "for the purposes of" that Act, and severed from the county of Lanark. Section 7 of the Act of 1893 enacts as follows:—"Nothing in this Act shall prejudice or affect the civil or criminal jurisdiction or administrative powers of the Sheriff or Sheriff-Substitutes of the county of Lanark as they existed prior to the passing of this Act."

The present action was raised against the County Council of Lanark by the Procurator-Fiscal in 1899. The account sued on was for work done during 1898 in connection with 793 cases not reported to Crown counsel, and not resulting in prosecution, and of these 729 were Glasgow cases. The following excerpts from the account show the nature of the work charged for:—

"1. Accident to Margaret Muir or Sharp and Andrew Sharp.

1898. Jan. 1.	Receiving Police Report, perusing and considering same, interrogating police officer, receiving explanations, and directing further inquiry, -	£0	7 6
,, 5.	Receiving and perusing further report, and marking no further proceedings, - - - -		

2. Accident to Thomas Brady.

Jan. 1.	Receiving Police Report, perusing and considering same, and marking no further proceedings,	0	7 6

3. Alleged assault on David Hunter.

Jan. 1.	Receiving Police Report, perusing and considering the same—no evidence as to assailant, but directing further inquiry, - - - - -	0	7 6
,, 5.	Report that no further evidence obtainable, and Hunter now recovering, marking same no further proceedings, - - -		

4. Accident to Alexander Frame.

Jan. 1.	Receiving Police Report, perusing and considering same—no evidence of blame, marking same no further proceedings, -	0	7 6"

The pursuer was appointed to his office in 1883 "with right to the salary or emoluments attached thereto." The duties of procurators-fiscal were prescribed in orders issued by successive Lords Advocate.

The pursuer pleaded—"(1) Reasonable remuneration for criminal business performed by the pursuer as Procurator-Fiscal in so far as not covered by the salary paid to him from Her Majesty's Exchequer being properly chargeable against the County and the County Council thereof, the pursuer is entitled to decree in terms of the conclusions of the summons. (2) The defenders being liable under and in terms of the County General Assessment Act 1868 and the Local Government Act 1889, to provide such remuneration, the pursuer is entitled to decree as concluded for. (3) The sum concluded for being reasonable remuneration to the pursuer for the business performed by him, and which is not covered by the salary paid to him as aforesaid, the pursuer is entitled to decree for payment of the same."

The defenders pleaded—"(1) The pursuer's statements are irrelevant and insufficient in law to support the conclusions of the summons; *et separatim*, the account sued on is wanting in specification. (2) The pursuer having no contract with the defenders and no right to demand remuneration from them, the defenders are entitled to absolvitor. (3) The charges made by the pursuer being for business falling within the scope of his duties as Procurator-Fiscal, and duly and fully compensated by the salary paid to him from Exchequer, the defenders are entitled to absolvitor. (4) Charges of the class now sued for never having been properly payable out of the rogue money, *et separatim* not being in use to be paid by the County of Lanark at the time of the passing of the County General Assessment Act, the defenders are entitled to absolvitor. (5) In any case the defenders are not liable for the account sued for in so far as it includes cases arising within the city of Glasgow, in respect (*a*) that the defenders have no jurisdiction or rating power within the city; (*b*) that the county authority has not and never had any duty or liability with regard to the expense of investigating or prosecuting cases arising within the city either under the Rogue Money Act or otherwise; and (*c*) that the Treasury salary of the pursuer is in full of his duties with regard to all such cases."

A proof was allowed, from which it appeared that such charges as those sued on had been repudiated by the county of Lanark for more than forty years, but that they were paid by most of the other counties in Scotland. The nature of the proof otherwise sufficiently appears from the opinion of the Lord Ordinary *infra*.

On 24th January 1902 the Lord Ordinary (Low) pronounced the following interlocutor:—"The Lord Ordinary having considered the cause, Finds, decerns, and de-

clares in terms of the declaratory conclusions of the summons in so far as the business therein referred to relates to the county of Lanark, and assoilzies the defenders from said conclusions in so far as the said business relates to the county of the city of Glasgow: Before further answer appoints the pursuer to amend the account No. 6 of process by deleting therefrom all charges for business not relating to the said county of Lanark: Reserves the question of expenses, and grants leave to reclaim."

Opinion.—"In this action the Procurator-Fiscal of the Lower Ward of Lanarkshire seeks to have it found that the County Council are bound to remunerate him for work done as Procurator-Fiscal which is not covered by the salary paid to him by His Majesty's Exchequer, and he also concludes for payment of the sum of £297, being his account for the year 1898.

"The work for which the pursuer claims that the county is bound to pay him consists of investigations which do not result either in a report being made to the Crown Office or in a prosecution.

"The two main questions raised in the case are, first, whether, in any view, the defenders are liable to pay the pursuer for work done within the city of Glasgow; and secondly, whether the work for which the pursuer claims remuneration is of a kind for which the defenders are liable.

"In regard to the first question the position of matters is as follows:—The county authorities have never been liable for the expense of criminal administration within the royal burgh of Glasgow. Prior to 1855 the magistrates had their own procurator-fiscal, whom they paid out of the common good, but in that year the Treasury, upon the recommendation of Lord Advocate Moncreiff, directed that the criminal work in Glasgow (other than police cases) should be conducted by the procurator-fiscal of the county and paid in Exchequer.

"Lord Moncreiff's letter to the Home Secretary recommending the change will be found at p. 45 of print A. In that letter he thus succinctly stated the then existing position of matters in Glasgow:—'At the present moment all criminal cases occurring within the ancient and extended royalty of the city of Glasgow are investigated by the procurator-fiscal of the burgh, who is appointed and paid by the magistrates, and the burgh also bears the expense of the criminal investigations and precognitions previous to the trial of criminals, whether these are tried before the Circuit Court of Justiciary or the Sheriff.'

"Lord Moncreiff's recommendation which was given effect to by the Treasury) was as follows:—'My recommendation is that all criminal prosecutions and investigations within the burgh of Glasgow other than police cases should be conducted by the procurator-fiscal of the county under the superintendence of the Sheriff, and that the expense of the same shall be charged and paid in Exchequer agreeably to the practice in the other burghs and counties in Scotland.'

"In making that recommendation Lord Moncreiff seems to have been under the belief, in common I think with all the county authorities, that the Treasury had taken over the whole expense of criminal administration in Scotland. The Treasury, however, subsequently explained that although they had relieved the counties of the expense of unreported criminal prosecutions, they had not done so as regarded inquiries into sudden deaths or investigations regarding alleged crimes, the perpetrators of which had not been discovered.

"The result is that as regards the latter class of work the Procurators-Fiscal of Lanarkshire have received no remuneration, and hence the present action. I shall by-and-by consider how the question stands as regards the county of Lanark, but in the meantime I am only dealing with work done for and in the city of Glasgow.

"In so far as the royal burgh is concerned it is sufficient to say that the county authorities have never been under any liability for the expense of criminal administration, and I do not see how they can be made liable now for the first time.

"The city of Glasgow, however, now extends greatly beyond the limits of the royal burgh, and includes a considerable area which used to form part of the county of Lanark. By the County of the City of Glasgow Act 1893 the city and royal burgh of Glasgow (as its boundaries were defined by the City of Glasgow Act 1891) were constituted a county of a city by the name of the County of the City of Glasgow, and for the purposes of the Act the said city and royal burgh were severed from the county of Lanark. The defenders have no power of imposing assessments within the county of the city of Glasgow, and accordingly as regards the Glasgow work the pursuer's demand is that the defenders shall pay him for work done in and for another county within which they have no jurisdiction.

"In such circumstances I think that it would require a special enactment to render the defenders liable to pay the pursuer for Glasgow work, and it was contended that such an enactment was to be found in the 7th section of the Act of 1893. That section provides that nothing in the Act shall 'prejudice or affect the civil or criminal jurisdiction or administrative powers of the Sheriff or Sheriff-Substitutes of the County of Lanark,' or their judicial or official names, or the official names of the several officers of the Sheriff Courts of the county. That, however, is merely a saving of the jurisdiction of the Sheriff and Sheriff-Substitutes, and cannot, in my opinion, be construed as laying upon the restricted county of Lanark the obligation to pay out of the assessment levied within that county the expense of criminal administration within the new county of the city of Glasgow.

"I am therefore of opinion that the pursuer's claim is not well founded in so far as the Glasgow work is concerned. That disposes of the larger part of the pursuer's claim, because out of 793 cases in connection

with which fees are charged in the account no fewer than 729 occurred in Glasgow.

"There still remains, however, a certain amount of work which is done within the county of Lanark, and in regard to it the question is whether it is a kind of work for which the defenders are liable, and which forms a good charge against the county general assessment.

"That question depends in the first place upon the construction of the Rogue Money Act (11 Geo. I. cap. 26) and the County General Assessment Act 1868.

"The former Act authorised, by section 12, the raising of money by assessment for the purpose of 'defraying the charges of apprehending of criminals, and of subsisting them in prison until prosecution, and of prosecuting such criminals for their several offences by due course of law, and to and for no other use or purpose whatever.'

"I am of opinion that the phrase, 'the charges of apprehending of criminals,' cannot be limited to the mere cost of actually taking criminals into custody, but must include the expense of the investigations which generally precede the apprehension. I regard the purposes specified in the Act as general heads or divisions under which the criminal administration of a county may be embraced, and I think that the words 'for no other use or purpose whatever' mean that the money must be applied only for the purpose of criminal administration. The preamble of the 12th section is that 'Whereas for want of a sufficient fund for defraying the charges of apprehending criminals in North Britain and of subsisting them when apprehended until prosecution, and of carrying on the necessary prosecutions against them, it often happens that criminals there escape the punishment due to their offences.' It was 'for preventing of such inconveniences for the future' that the levying of rogue money was authorised, and there was no other fund available for the expenses of criminal administration. Therefore, so far as I can find, the Act was in practice construed as authorising the use of the rogue money to defray any expenses properly incurred in criminal work, even although no prosecution resulted. I am confirmed in that view by the terms of section 3 (3) of the County General Assessment Act, which authorises payment out of that assessment of 'the expenses incurred in searching for, apprehending, subsisting, prosecuting, or punishing criminals.' These words are substantially those of the Rogue Money Act, amplified so as in terms to include investigations preceding apprehension, and I think that they express the interpretation which had in practice been put upon the latter Act.

"The Act of 1868 abolished rogue money and substituted the county general assessment, and the 3rd section enumerates the purposes to which money raised by that assessment may be applied. Sub-section 2 deals with payments to Procurators-Fiscal. It is in these terms—'The salaries or fees and necessary outlays of Procurators-Fiscal in the Sheriff and Justice of Peace Courts . . . in so far as such salaries, fees, and outlays are at present in use to be paid by each county.'

"Now, the Procurators-Fiscal in the Justice of Peace Courts have always been wholly paid by the counties, and so also were the Procurators-Fiscal of the Sheriff Courts down to 1776, when Exchequer relieved the counties of certain expenses in reported cases. Afterwards further relief was given from time to time by Exchequer, until in 1868, when the Act was passed, the only expenses not defrayed out of the public funds were, as I have already said, those relating to investigations not resulting either in a report or in a prosecution. For the work which was not paid by Exchequer the general rule (I shall deal with the particular case of Lanarkshire presently) seems to have been that the county remunerated the Fiscal either by salary or by fees. In such cases I do not think that the provision of the Act in regard to salaries or fees presents any difficulty. In so far as these were then paid by Exchequer there was no authority given to charge the county general assessment, but in so far as the county had been in use to pay (whether by fees or salary or other allowance) for work for which Exchequer had not undertaken liability, the Commissioners of Supply were authorised to continue such payments out of the new assessment.

"There is more difficulty in the case of Lanark (and I think one or two other counties are in the same position) which at the date of the Act were paying nothing whatever to the Sheriff Court Procurators-Fiscal for ordinary work not covered by the payments made to him in Exchequer. After 1851 or 1852 the Commissioners of Supply of Lanarkshire seem to have refused to make any payment (except certain outlays which were paid under protest, and fees for work done under special statutes, such as the Lunacy Acts) to the Procurators-Fiscal. The Commissioners seem, in the first place, to have taken up the position that the Treasury had by their minute of 6th June 1851 undertaken to relieve the counties of the whole expenses of criminal administration except in the Justice of Peace Courts, but the Treasury would not accept that view of their minute. The Commissioners, however, further maintained that the work for which the Treasury had not undertaken liability did not fall within the scope of the Rogue Money Act, and therefore could not be charged against the assessment levied in terms of that Act.

"Now, I do not think that the fact that for some fifteen years prior to 1868 the Commissioners of Supply of Lanarkshire had refused to pay the Procurators-Fiscal any salary or fees is conclusive of the question. Although the Procurators-Fiscal did not press their claims in a Court of law, they never agreed to do the work for nothing, and if the Commissioners were wrong in the view which they took of the scope of the Rogue Money Act, and were wrong in refusing to remunerate the Pro-

curators-Fiscal for work not paid in Exchequer, I do not think that the Act of 1868 was intended to relieve them of all liability. If there were expenses not undertaken by Exchequer, which formed a proper charge against the rogue money, and which the Commissioners ought to have paid, then it seems to me that for the purposes of the Act of 1868 these expenses must be regarded as if they had in fact been paid. The only question therefore seems to me to be whether the fees claimed by the pursuer would have formed a good charge against the rogue money or the county general assessment.

"It is accordingly necessary to see what is the nature of the work for which the pursuer claims remuneration. In his account fees are charged in connection with 793 cases, which may be tabulated as follows:—689 accidents, 9 sudden deaths, 44 fires, 43 cases of alleged crime, and 7 attempted suicides.

"All these are cases which were brought under the notice of the Fiscal by reports sent to him by the police, and in none of them was there anything criminal discovered. The practice is for the police to report all sudden deaths, accidents, fires, and the like to the Fiscal, who reads the report, makes such inquiries as he thinks necessary, and then either reports the case for instructions or institutes proceedings, or resolves that no further proceedings are necessary. All the cases now in question fall under the latter category.

"The cases which bulk most largely in the account are accidents. The defenders argued that there is nothing criminal in an accident, and that the fact that the practice has grown up for the police to report all accidents, and for the Procurator-Fiscal to consider these reports, is no reason why the latter should charge fees against the county for doing so. Now, the practice of police reports is of comparatively recent growth, as police forces were not established until the middle of last century, the Lanarkshire police force being established in 1857. I do not know precisely how the practice of police reports arose, but it is a practice which is firmly established, and which has the recognition and approval of the criminal authorities. Therefore it must be taken to be one of the ordinary duties of a procurator-fiscal to read the police reports, and to consider whether any, and if so what, further inquiries or proceedings are necessary. I do not think that the defenders went so far as to say that that was not now part of the Procurator-Fiscal's duty, but they argued that the county was not bound or entitled to remunerate the Fiscal for considering reports in regard to such matters as pure accidents or sudden deaths from natural causes, because nothing of a criminal nature was involved. The very object, however, of the reports being made to and considered by the Procurator-Fiscal is to ascertain whether or not a crime has been committed. What may at first sight appear to be the result of a mere accident or of natural causes may turn out to be the result of crime, and the practice of the police making reports in all such cases appears to me to be one of the methods by which the search for criminals is now carried out. The expenses properly incurred in doing that work therefore seem to me to be *prima facie* a good charge upon the fund which is provided for defraying the cost of criminal administrations.

"The defenders, however, further argued that the charges in question should not be allowed, because so long as payments were made by the county to the Procurator-Fiscal the practice or use was not to pay him for any work which was not done under warrant of the Sheriff.

"Generally speaking that appears to have been the case, although my impression is that it was more a matter of taxation than anything else. Prior to the establishment of a police force the Fiscal made his own inquiries, and if he considered it necessary he applied to the Sheriff for warrant to precognosce. I apprehend that in those days the Fiscals did not make inquiries unless the circumstances coming to their knowledge appeared to be suspicious, and I imagine that when the Fiscal applied to the Sheriff for a warrant to precognosce, it was generally speaking granted as a matter of course. Therefore fees charged for investigations which resulted neither in a report to Crown counsel nor in a prosecution were as a rule disallowed, unless the necessity for investigation was vouched by a Sheriff's warrant. I do not, however, think that that is a sufficient ground for holding that (unless the Procurator-Fiscal can induce Exchequer to pay him out of the public funds) he is bound to do work of the kind in question gratuitously. It is work which it is his duty to do, and which now forms part of the recognised criminal administration of the country, and I am therefore of opinion that such work forms a proper charge against the county general assessment. I say nothing in regard to the rate of remuneration, because that, in the first instance at all events, is for the person who audits the accounts.

"I shall therefore assoilzie the defenders in so far as the pursuer claims remuneration from them for work done for and in the county of the city of Glasgow, and I shall sustain the pursuer's claim as regards work done for and in the county of Lanark."

The defenders reclaimed, and argued—It was not the Procurator-Fiscal's duty to make investigation in non-suspicious cases, as the majority of those in the account sued on were. The police reports referred to in the account were made without authority, and the perusal of them was not within the proper duties of the pursuer, and could not be regarded as falling within the purposes for which the assessment for "rogue money" was instituted by the Act of 1724. Assuming that the charges in question were proper charges against the rogue money, those charges were not "in use to be paid" by the county of Lanark at

the passing of the Act of 1868, and so were not proper charges on the county general assessment; section 3, sub-section 2 of the Act of 1868 contained the sole provision for the remuneration of Procurators-Fiscal, sub-section 3 did not affect them. What was "in use to be paid by each county" fixed the liability of each. The Lord Ordinary had proceeded upon his view of what ought to have been paid, not upon what had in fact been paid. The work charged for was just such abortive work as the pursuer had to do for nothing when he was paid in Exchequer by fees, and if the salary which had taken the place of fees did not cover the work charged for, and the Exchequer declined to meet these charges, that did not render the county liable. The County had been relieved by Exchequer of the burden of remunerating the pursuer. In any case the defenders were not liable for work done in the county of the city of Glasgow, within which they had no powers of assessment.

Argued for the respondent—The pursuer only asked to be put in the same position as the Procurators-Fiscal in the other counties of Scotland. The defenders would have been liable in payment of the charges sued on under the Act of 1724, but the terms of that Act were not so wide as those of the Act of 1868, which provided in sub-section 3 of section 3 for the expenses of "searching for" criminals. In so far as the work charged for was in connection with cases to which suspicion attached, it was in connection with searching for criminals. So far, therefore, the pursuer was entitled to declarator that payment was due to him by the defenders for that work. The pursuer was ready to submit to taxation of his account, and to have those charges taxed off which were made on account of cases in which there was no suspicion; therefore he was entitled to declarator in terms of the summons, as the salary paid by Exchequer did not cover the work for which it was sought to have the county found liable. The relief given to the counties by Exchequer was not intended to be exhaustive. Though the county of the city of Glasgow was not assessable by the defenders, it did not follow that that county was not entitled to any benefit from the county general assessment levied by the defenders in Lanarkshire—*Macarthur* v. *County Council of Argyll*, March 18, 1898, 25 R. 829, 35 S.L.R. 612. The county of the city of Glasgow was created and severed from the county of Lanark by the Act of 1893 only for the purposes of that Act, and section 7 of the Act preserved the powers and duties of the pursuer within the new county, and the Act could not be read as depriving him of his right to remuneration for these duties as existing before the passing of the Act, or as altering the liability of the defenders for that remuneration. At the passing of the Act of 1868, and up to 1893, the charges now made by the pursuer undoubtedly fell within the purposes of the "Rogue Money" Act of 1724. That Act did not exclude charges for apprehending, subsisting, and prosecuting criminals within burghs.

Parties further founded on the regulations made by successive Lords Advocate with regard to the duties of the Procurators-Fiscal, and upon numerous communications between the Treasury and the Commissioners of Supply, and the Procurators-Fiscal, all of which it is unnecessary to narrate for the purposes of this report.

At advising—

LORD JUSTICE-CLERK—The general question in this case is whether certain claims made against the County of Lanark by the Procurator-Fiscal of that county constitute proper charges against the county general assessment, in respect that they are charges for which the rogue money raised under the Act 11 Geo. I. c. 26, would have been liable had that assessment been continued, instead of the payments for which it was liable being made charges on the general assessment. Many years ago the burgh of Glasgow conducted the investigation of crime by a Procurator-Fiscal of its own, but this was brought to an end by the Treasury nearly half a century ago on the advice of the Lord Advocate of the day. The County Procurator-Fiscal became the only official in that office who was recognised as being entitled to remuneration from the Exchequer for work done in the investigation into charges of crime which were of sufficient importance to be taken up by the Sheriff to be dealt with under the directions of Crown counsel. After this new arrangement had been made, difficulties arose in regard to remuneration of the Procurator-Fiscal relating to charges for expenses connected with preliminary investigations into cases in which there was nothing discovered which called for any report to Crown counsel or proceedings in prosecution. The Procurator-Fiscal maintained that for this work he was entitled to remuneration out of the rogue money, even in those cases in which the work was done within the burgh of Glasgow. This was resisted by the Commissioners of Supply, their contention being that these charges did not fall within the rogue money; and further, that even if it were otherwise, they were relieved by the Treasury Minute of "every part of the expense of criminal proceedings in the Sheriff Courts which is imposed upon the county by the Rogue Money Act." The Treasury declined to assent to this view, holding that the cases to which the remuneration by the Exchequer was intended to be applied did not extend to the cases of such investigations as are in question in the present litigation. For several years this dispute was carried on, and there were numerous communications between the Treasury, the Commissioners of Supply, and the Procurators-Fiscal, and during these years no payments were made by the county of such charges as are now in dispute. But I agree with the Lord Ordinary in holding that the fact that for many years the County did not meet these

claims cannot be conclusive in any way. The Procurator-Fiscal, if he was not remunerated for part of his proper work, was entitled to remuneration, and if it was work for which the rogue money was liable in payment, the delay, such as it was, cannot be held to wipe out the right. Therefore, the question comes to be whether the Procurator-Fiscal had a claim against the rogue money, in virtue of which he now has a claim against the county general assessment which was substituted for it in 1868.

The class of work for which the claim is made is that of investigation into cases of accident, sudden death, fires, and attempted suicides, where the investigation made does not supply ground for a report to Crown counsel. The investigations are made for the most part by reports from the police being laid before the Procurator-fiscal for his consideration so that he may decide whether anything further, and if so what, should be done, which is obviously the most practical mode of procedure in modern times, when there is an organised police force in the country. It is the practice now in universal use as one part of the work of criminal investigation for the purpose of determining whether a prosecution for crime is called for. I consider that this work properly falls within the duties connected with the "apprehending of criminals," for I hold with the Lord Ordinary that that expression cannot be in reason restricted to the mere act of taking accused persons into custody, but must include the preliminary steps in ascertaining whether there is ground for proceeding to apprehension, including investigation as to whether there has been crime committed, and whether any person can be fixed upon as reasonably suspected of having committed crime. The purpose of the Rogue Money Act was, *inter alia*, to prevent what the Act itself says often happens, "that criminals escape the punishment due to their offences." It is not conceivable how this purpose could be efficiently served if the words of the Act were to be read in a restricted sense as covering only the act of apprehension, and not these preliminary inquiries without which, except in the case of persons caught red handed, no apprehension could take place. The Act was always so construed in practice, and any other reading of it would be against its plain intention. The County General Assessment Act adds to the words of the Rogue Money Act the words "searching for," which are words exegetical of the phrase used in the Rogue Money Act.

I am therefore of opinion that these charges fall within the range of the Rogue Money Act, and as they are not met by payment from the Exchequer or any other public source, they fall to be met out of the county general assessment, against which the charges applicable to rogue money now fall to be made. It is true that to some items in the account which is put in there may be good grounds for objection, both as regards particular charges not falling within the scope of the words of the Rogue Money Act, and also as regards the sum charged for particular items. But these are matters for audit, to which of course the accounts of all public officials must be subject, or matters of detail, legal objection to which, if sound, can be made good in a legal manner. But upon the general question I entertain no doubt that the view taken by the Lord Ordinary is sound.

There remains behind a very important question. The claim in this case relates to work done both in the county of Lanark proper, and also in the burgh of Glasgow as being within the county. If the views I have expressed are sound, then the decision of the Lord Ordinary must be affirmed as regards the landward part of the county. But the question remains as regards work done within Glasgow. Can the charges for such work be exacted from the county general assessment? The Lord Ordinary has held that they cannot. He proceeds upon the fact that the city of Glasgow has been formed into a county by itself, and that the county of Lanark cannot be required to pay out of the assessment levied in it "the expense of criminal administration within the new county of the city of Glasgow." I am unable to agree with the Lord Ordinary in this view. The establishment of the city of Glasgow into a county is not the establishment of a county in the full sense. It is strictly declared to be "for the purposes of this Act" (viz., the City of Glasgow Act 1893) that the city and royal burgh were separated from the county of Lanark. It was certainly not separated for legal administration, for the Sheriff of the county of Lanark holds the same jurisdiction, civil and criminal, as he did before 1893, and it is as Sheriff of the county of Lanark that he has power to deal with both branches of the law, and both judicially and administratively. I see no ground for holding that the erection of the city of Glasgow into a county for certain purposes places it in any different position from any other burgh, being of the class of burghs from which it was not lawful to exact rogue money under the Act of 11 George I. The remarks I have made on the Act of 1893 apply equally to the Act of 1891. Now, it is an undoubted fact that in many counties of Scotland there are burghs which are exempt from county assessment, but as regards which the investigation of crime, to the extent to which that fell under the Rogue Money Act, was carried out at the expense of the funds raised under it. From 1776 downwards those entrusted with the investigation of crime in a county —the investigations necessarily extending over the burghs within the county—were under an order in Exchequer precluded from obtaining payment for part of their work from Exchequer, and the right saved to them to recover the amount "out of the rogue money or county funds of their respective counties or stewartries." And this was the mode in which such charges were met throughout Scotland. Thus, it

was only by relief given from time to time by Exchequer that the charges on rogue money came to be narrowed down to what they were at the time when the changes were made in the middle of the last century, when the present question arose. Up to that time there was no doubt or dispute, and if the dispute as regards work done outside of Glasgow in the county must be decided as I have indicated, I am unable to see that there is anything to make the case different as regards Glasgow itself, by the passing of an Act which expressly retains as in the county of Lanark "the civil and criminal jurisdiction or administrative powers of the Sheriff and Sheriff-Substitutes of the county of Lanark." I agree with the Lord Ordinary in holding that this could not "lay obligation" upon the restricted county of Lanark. I hold, however, that it equally cannot relieve the county of Lanark of a burden which was upon it before the passing of the Act, that burden being to pay out of the assessment the charges which in former times fell upon the rogue money, in so far as the county has not been relieved of these either by Statute or by the Treasury. There may be room for a very strong argument against the hardship of a county, large parts of which are being absorbed at intervals into such a burgh as Glasgow, having to meet the charges of the preliminary investigation of crime, while having no power to assess within the area in which the larger proportion of the crime is committed. It is of course in degree more burdensome than in counties where the burghs not liable to county assessment represent a very much smaller assessable area in proportion than is the case where large urban populations have grown up. But such hardship is matter for the Legislature, and cannot be considered by a court of law.

I would move your Lordships to recal the Lord Ordinary's interlocutor, and to decern in terms of the declaratory conclusions of the summons as amended, and to remit to the Lord Ordinary to proceed further with the cause.

LORD YOUNG—This case is of comparatively small importance to the pursuer. I say "comparatively" being of opinion that it is of great importance to the local ratepayers of every county in Scotland. I think so because the declaratory conclusion of the summons is based upon the proposition that by substituting Acts of the British Parliament the liability to pay all proper expenses incurred in the investigation of criminal charges, the apprehension, commitment, and prosecution of persons charged with crime in every county of Scotland, is upon the county council of the county to be met out of the county general assessment, and that the contributions by the Treasury out of the public revenue to meet these expenses are and always have been only kindly, or, as the Lord Advocate expresses it in his minute, *ex gratia* contributions to relieve the local ratepayers, and may accordingly be reduced or stopped at any time. The Lord Ordinary, as I understand his judgment, accepts this proposition as sound, and bases upon it the judgment which we have now to review. The affirmance of his judgment by this Court would thus announce (of course properly) to the public and to Parliament, that the Government of the day is and for a long time has been *ex gratia* relieving the county ratepayers of a statutory liability which the Legislature itself has never seen fit to modify or remove. Should the *ex gratia* contributions by the Treasury be discontinued, the pecuniary consequences to the county ratepayers of Scotland may possibly be estimated by ascertaining the amounts of the discontinued contributions.

I have therefore considered the legal questions which the case presents as important having regard to the consequences to which the decision of them may lead, and have made these preliminary observations as suggesting some excuse for, I fear, the excessive length to which the expression of my views and opinion on the various questions presented has extended.

The pursuer has not averred any contract or referred to any rule of the common law whereby the defenders are under the liability or obligation to him of which he asks declarator. It is therefore necessarily the condition of his success that he shall satisfy us that there is a *statutory* liability upon them to the effect expressed in the declaratory conclusion, and a consequent obligation to pay the account specified in the petitory conclusion of the summons.

The defenders objected to the declaratory conclusion as too general and as wanting in specification, and it seemed to me that there were *prima facie* grounds for the objection which it might be necessary or not to dispose of according to the opinion we might form of the claim in the petitory conclusion. The account there referred to consists of 793 items of claim for business performed by the pursuer, which are specified not indeed very distinctly, but sufficiently to show such variety as may possibly have a bearing on the validity of the claim therefor. This account specifies, as I understand, the items of debt which the pursuer avers to be due to him by the defenders at the date of the action by reason of their legal liability to him of which he asks general declarator. The account may therefore be taken as illustrative of the intended import and comprehension of the declaratory conclusion. The pursuer's case is presented on record, and was argued to us on the footing and in the view that as regards the legal liability of the defenders of which declarator is asked, the varions items of this account are undistinguishable, and the Lord Ordinary, if I rightly understand his opinion, accepts this view, and in accordance with it gives the judgment reclaimed against. His observations on the account show this clearly, and are in themselves important. His Lordship says—"The only question therefore seems to me to be whether the fees claimed by the pur-

suer would have formed a good charge against the rogue money or the county general assessment."

"It is accordingly necessary to see what is the nature of the work for which the pursuer claims remuneration. In his account fees are charged in connection with 793 cases which may be tabulated as follows:—689 accidents, 9 sudden deaths, 44 fires, 43 cases of alleged crime, and 7 attempted suicides."

"All these are cases which were brought under the notice of the Fiscal by reports sent to him by the police, and in none of them was there anything criminal discovered. The practice is for the police to report all sudden deaths, accidents, fires, and the like to the Fiscal, who reads the report, makes such inquiries as he thinks necessary, and then either reports the case for instructions, or institutes proceedings or resolves that no further proceedings are necessary. All the cases now in question fall under the latter category." I think the nature of the work for which the pursuer claims remuneration from the defenders is here accurately and sufficiently stated. The question in the case is whether this work is all or any and what parts of it, of a kind for which the defenders are under statutory obligation to remunerate the pursuer. The Lord Ordinary by his judgment on the declaratory conclusion has decided that all of it is so, making no distinction of "accidents," "sudden deaths," "fires," "alleged crimes," and "attempted suicides." In pronouncing the general declarator of liability his Lordship very properly takes no account of the amount of remuneration or fees charged, about which indeed the defenders, as I understand, desire not to raise any question. I have not yet noticed the exclusion from the liability declared by the Lord Ordinary, of business relating to the county of the city of Glasgow, and do so now only to observe that in what I have immediately to say I shall avoid referring to the reasons which his Lordship gives for this exclusion. It is I think undisputed and certainly indisputable that if the defenders are not liable for the work or business charged for by the pursuer with reference to the County of Lanark of which they are the County Council, they are not liable for similar work or business with reference to the county of the city of Glasgow.

The Lord Ordinary says that the question of liability which he decides "depends in the first place upon the construction of the Rogue Money Act (11 Geo. I. cap. 26) and the County General Assessment Act 1868."

"The former Act authorised by section 12 the raising of money by assessment for the purpose of defraying the charges of apprehending of criminals and of subsisting them in prison until prosecution, and of prosecuting such criminals for their several offences by due course of law, and to and for no other use or purpose whatever."

The language of this clause of the Act of 1724 indicates, I think, unmistakeably that there was then no statutory or common law provision of funds for defraying the charges therein referred to. It is possible and probable that in and prior to 1724 the Treasury, of course with the sanction of Parliament, contributed some funds to meet these charges, and equally so that county landed proprietors did the like voluntarily, but there was certainly no obligation or legal liability in the matter on either Treasury or county proprietors. The Lords of the Treasury having the public revenue in hand required only the authority of the periodical appropriation Acts to pay out of it contributions of such amounts as they in the public interest from time to time thought fit. The county proprietors were in a different position, which required that statutory power should be given to them to raise a common fund by local rating or assessment, if county contributions were to be made otherwise than by individual subscriptions. The Legislature, deeming it desirable that such power should exist, conferred it on the "freeholders of every shire," &c. The pursuer contends, and the Lord Ordinary seems to favour the contention, that by conferring the power the Legislature impliedly imposed on the freeholders of every shire liability to defray "the charges of apprehending criminals," &c., specified in the clause, and also, I assume, a continuous enforceable obligation to exercise the power at their "head courts yearly." This contention is in my opinion unwarranted by the enactment, the import and purpose of which, as I read it, was not to impose a legal liability not previously existing or indicated as contemplated, but to facilitate the reasonably fair distribution among the whole landowners of "such sums as they (the freeholders, the most numerous and important of them) shall judge reasonable and sufficient" to be contributed by the county to meet "the purposes aforesaid." Any other construction would signify that nothing whetever was committed to the judgment of the freeholders, and that an unqualified obligation was imposed on them to pay all charges of the kind referred to, and to assess yearly for such sums as other and unspecified authorities should yearly determine or decide that they amounted to.

By the Parliamentary Reform Act of 1832 (2 and 3 William IV. cap. 65) the county freeholders (who had theretofore constituted the Parliamentary electors) were, with respect to the assessment authorised by the Act of George I., replaced by a body thereby created and nominated "Commissioners of Supply." The produce of the assessment had somehow got the quaint, and perhaps appropriate, name of "rogue money," and as the Commissioners of Supply by the Act of 1832 came exactly in place of the freeholders, no further reference need be made to that Act, which contains provisions on many subjects, all of them quite foreign to the case before us.

I have thought it proper to express, as I have done, my views regarding the position, powers, and duties with respect to rogue

money of the freeholders under section 12 of the Act of 1724, and of the Commissioners of Supply who came in their place by the Reform Act of 1832, although of opinion that the provision of the County Assessment Act of 1868 (31 and 32 Vict. cap. 82), sec. 3, sub-sec. 2, to which the Lord Ordinary specially refers, is sufficient for the decision of the case. By this Act the power to impose and levy the assessment known as rogue money was ended, and power given to the Commissioners of Supply to impose and levy what is called a "county general assessment." The purposes for which the produce of this assessment may be used, which are numerous and various, are specified in the Act; those with which alone we are in this case concerned being those which are specified in section 3, subsection 2—"The salaries or fees and necessary outlays of Procurators-Fiscal in the Sheriff and Justice of Peace Courts and Clerks of Justice of Peace Courts, in so far as such salaries, fees, and outlays are at present in use to be paid by each county." The only other statute to be noticed is the Local Government (Scotland) Act 1889 (52 and 53 Vict. cap. 50), whereby county councils were created and substituted for the commissioners of supply. The defenders occupy that position in the county of Lanark, and the pursuer's case against them in support of the declaratory and petitory conclusions of his action is that they, as coming in place of the Commissioners of Supply of Lanarkshire, are by section 3, sub-section 2, of the Act of 1868 under the legal liability to him of which he asks declarator. If the pursuer founds on anything else as putting the defenders under that liability, I have not yet heard, or at least have hitherto failed to comprehend, what it is. The defenders are a statutory body, having at their disposal only statutory funds (the produce of the county general assessment), and no authority to pay out of them to the Procurator-Fiscal, or any other, on any account whatever, except what their predecessors — the Commissioners of Supply — were by the Act of 1868 authorised to pay. I have cited the clause of the Act which gives this authority in language admitting as I think of no doubt as to its meaning. What is the import and meaning of the words, "in so far as such salaries, fees, and outlays are at present in use to be paid by each county?" The words "at present" clearly mean at the date of the Act; and the words "in each county" must I think mean that the usage at the date of the Act of each several county shall limit the power of its county council to pay salaries, fees, &c., to fiscals, &c. out of the county general assessment. It can indeed mean nothing else unless on the assumption of uniformity. Let it be supposed for illustration that at the date of the Act one county was in use to pay to the sheriff's fiscal a salary of say £100, that another county was similarly in use to pay him a salary of £200, that a third was then in use to pay him certain fees amounting to £300, and a fourth different fees and amounting to say £400. I make such suppositions only to illustrate my meaning when I say that if the clause I am referring to signifies as it certainly does a limitation of the power to defray out of the county assessment, it must do so with reference to the different usages at the date of the Act of different counties.

What then at the date of the passing of this Act was the usage of the county of Lanark with respect to the salary, fees, outlays, and expenses of the Procurator-Fiscal of the Lower Ward—that is to say, of the official then holding the office as the present holder of which the pursuer is suing? Or, to express the question otherwise, what were the salary, fees, and outlays of the Procurator-Fiscal of the County of Lanark in so far as such salary, fees, and outlays were at the passing of the Act in 1868 in use to be paid by that county?

The defenders aver, and the Lord Ordinary assumes it to be the fact, that at the date of the passing of the Act—for sixteen years before and thirty-four years since (that is for the last fifty years)—no salary, fees, or outlays have been paid by the county to the Procurator-Fiscal of the Sheriff Court. The Lord Ordinary says—"Now, I do not think that the fact that for some fifteen years prior to 1868 the Commissioners of Supply of Lanarkshire had refused to pay the Procurators-Fiscal any salary or fees is conclusive of the question." I am unable to concur in this view, or in the reasons for it given by his Lordship. When the Treasury in 1851 or 1852 resolved and announced their resolution to give out of the public revenue—the produce of public taxation—a salary of say £1000 a-year to the Sheriff's Fiscal of Lanarkshire I am of opinion that it was for the Commissioners of Supply of the county to judge whether or not it was reasonable that so long as that salary continued the Fiscal's emoluments should be increased to any, and if so to what, extent by rogue money assessment and payments to him by them out of it. Their judgment, which has been acted on for half-a-century, was in the negative, and no power is given to this Court to correct it should we think it erroneous, which I see no reason for thinking. The salary has been for the last fifty years and still continues to be voluntary in the sense that it is not statutory, and so may be in the future, as it might have been in the past, increased, diminished, or ended. This is equally true of the salaries or other emoluments of some—indeed many—of the highest officials in the land. Such salaries, certainly including Fiscal's salaries, are annually fixed by the Government of the day (the Lords of the Treasury) in the exercise of the judgment which they are required to exercise in the discharge of their duty to the public, and are submitted to Parliament for approval, without which none of the public revenue could be appropriated to pay them. I see no reason to doubt that the Commissioners of Supply of Lanarkshire prior to the passing of the Act of 1868 were entitled and in duty required to take into account the amount of the Fiscal's salary paid by the Treasury out of

the produce of public taxation in considering any application by him to them for a further payment out of county taxation. I have said prior to the Act of 1868, being of opinion, as I have already said, that after the passing of that Act they could entertain no application for any increase of the amount then in use to be paid by the county. Let me, for illustration, suppose that at any time between 1852-3, when the Treasury salary began, and 1868, the Fiscal had applied to the Commissioners of Supply to give him fees or salary out of the rogue money for work which as he alleged was not covered by the Treasury salary, and that the Commissioners had assented to the extent of giving him from the rogue money a salary of say £20, which they thereafter paid to him regularly till the passing of the Act of 1868. In that case I think it could not be successfully maintained that power was conferred on the Commissioners to give a larger salary out of the county general assessment.

I have already made special reference to the passage in the Lord Ordinary's opinion in which he refers to the pursuer's account, which he says "shows the nature of the work" for which he claims remuneration from the defenders, and for which his Lordship has, as he distinctly explains, decided that they are liable. The work is reading reports sent to him by the police, and on reading which he was of opinion that no proceedings by him were necessary. The Lord Ordinary says very pointedly that "all the cases now in question" are of that character. We have not been informed, and the Lord Ordinary says he was not, when the police of the county were instructed by their head to send such reports to the Fiscal, or the Fiscal was desired, if he ever was, by the Sheriff or the Lord Advocate, to read them. It is a novelty, and may be a useful one, and such as a salaried Fiscal would not, I should have thought, have complained of as oppressive if his salary was not raised. It is, and has always been, the duty of a county Fiscal to receive from the police or any others complaints or information of crime committed in the county, and to take proceedings thereon or not as he thinks fit. Should he take proceedings he will, if not salaried, charge and be paid the ordinary and well-established fees therefor. Assuming it to be probable that some of the police reports might have induced the pursuer to take such proceedings as I have indicated—that is, to apply to the Sheriff for a warrant of apprehension, and for the examination and commitment of the accused on a criminal charge, and citing and precognoscing witnesses, and resulting in apprehension, precognition, commitment, and it might be the trial of any one or more on a criminal charge—I ventured to put two questions to the learned counsel for the pursuer—(first) whether this sometimes happened? and when it did, then (second) whether the pursuer acted on the footing that his whole work, including the reading of the policeman's report, was covered by his salary from the Treasury? The answers to both questions were, as I anticipated, in the affirmative. It thus seems that the pursuer's case comes to this, that if a policeman's report to him leads to anything which imposes on him work, however laborious and anxious, his salary is not thereby increased, but if it leads to nothing his salary ought to be increased by a payment out of the county assessment for reading it. I am certainly not surprised that neither the County Council nor their predecessors the Commissioners of Supply countenanced his claim. I have already stated the reasons for my opinion that after the passing of the Act of 1868 it was not within their power to admit it even if they thought it was in itself reasonable, which I agree with them in thinking it was not.

I have already, and perhaps sufficiently, referred to the proposition maintained on the pursuer's part that the payments by the Treasury to Fiscals and others of fees or salaries for their services, and for outlays in the administration of the criminal law in Scotch counties are and always have been made in kindly or *ex gratia* relief to the County Councils (Commissioners of Supply, &c.) and ratepayers of their liabilities under subsisting Acts of the Imperial Parliament. These are determined yearly by the Government in the exercise of its judgment of what is just and expedient in the interests with which it is charged—that is, of the public at large—the taxpayers who supply the revenue out of which the payments are made. This yearly judgment and determination of the Government must, as I have pointed out, be approved of by Parliament before it is acted on. I cannot conceive it to be reasonably probable that Revenue and Government authorities ever entertained the idea that they were thus *ex gratia* relieving local taxation of the statutory burden upon it and putting that burden on the public revenue, the House of Commons being informed that this was the purpose and effect of what it was asked by the Government to sanction. If, however, it be assumed, in accordance with the opinion which I have expressed, that by the Act of 1724 no obligation on this subject was imposed upon but only permission given to the freeholders, and that by the Act of 1868 this permission was limited to the ascertained practice upon it of the Commissioners of Supply in each county—on that assumption the yearly conduct of successive Governments for at least a century and a-half to which I have been referring was and is intelligible, and, so far as we can judge, commendable in the legitimate interests of the public at large with which alone these successive Governments were charged. Parliament may of course interpose at any time, and regulate the whole matter as it may judge proper. It has not heretofore interposed except by the Acts of 1724 and 1868, and the only question we can now decide is whether either of these Acts, or both taken together, impose on the County Councils (who are now in place of the Commissioners of Supply) the obligations and liabilities which we are

asked to declare. We have been referred to Treasury minutes and memoranda, and to letters by Lords Advocate and Queen's and Lords Treasurer's Remembrancers. I have not thought it necessary to notice these or the arguments based on them, being of opinion that they have no legitimate bearing on what I think is the only question before me, and would not even had they been other than private minutes, memoranda and letters, which they are not.

LORD TRAYNER—There are two conclusions in the summons before us—one for declarator and the other petitory. The second conclusion, although not so put, is really dependent upon the first, for if the pursuer is refused the declarator which he seeks he cannot obtain decree against the defenders under the petitory conclusion. In that respect, and indeed in all respects, the conclusion for declarator raises the important question which we have to determine. The pursuer seeks a declarator that the defenders are bound to pay or provide to him as Procurator-Fiscal of the Lower Ward of Lanarkshire reasonable remuneration in respect of all business performed by him as holder of such office *in the administration of the criminal law* other than such as is covered by the salary paid to him by His Majesty's Exchequer. The words I have here italicised are not in the conclusion of the summons, but I understand that the pursuer is willing that the limitation which these words express (if it is a limitation) should be inserted. They only express what the pursuer intended his conclusion to cover. Even if these words were not added to the conclusion of the summons they could be inserted in our decree, if we grant one, as a limitation on the decree sought.

The account sued for contains a great many items for which I think it very clear that the pursuer can have no claim against the defenders. These items refer to police reports made to the pursuer concerning "accidents" where no crime has been committed, and in relation to which the existence of crime is not suggested. With such matters the pursuer has no concern, as he is concerned only with the administration of the criminal law. There may, of course, be cases, as figured by the Lord Ordinary, which appear at first sight to be cases of accident which may turn out to be cases of crime, and *vice versa*. Charges in such cases would require to be justified before the auditor. But the pursuer's account contains items of charge for considering police reports where crime has been committed, or, in some cases, where crime might *prima facie* reasonably be supposed to have been committed. These matters did fall within the duty of the pursuer, and he was bound to investigate the circumstances of the cases reported to him. For doing so I think he is entitled to remuneration. The question is, who is liable for this remuneration. The pursuer asks declarator that the defenders are liable, and the defenders resist that on the ground (1) that the pursuer is remunerated for the work in question by the salary which he receives from Exchequer, (2) that the defenders are not liable to the pursuer for any charge to the payment of which the general county assessment (which now takes the place of rogue money) cannot be applied, and (3) that the services charged for by the pursuer are not of that character. There is a further question raised by the defenders, namely—whether, in any view, they can be called upon to pay the pursuer for work done by him in investigating into the circumstances of crime committed or supposed to have been committed in the city of Glasgow.

On the first of these defences I think the defenders are wrong. The salary received by the pursuer from Exchequer does not cover the charges which he now seeks to recover. Originally paid by fees, the Fiscal of the Lower Ward of Lanarkshire has for many years back been paid by a fixed salary, but that salary only came in place of the fees paid by Exchequer (to the relief of the county) at the time when the salary was fixed. The Exchequer, however, never undertook to relieve, and does not now relieve, the county of the expense of preliminary investigation, and fees or remuneration for that class of work did not enter into consideration when the Fiscal's fees were commuted for a salary. On the second and third grounds of defence, as I have above stated them, I think also that the defenders are wrong. By the Act 11 George I. cap. 26, sec. 12, the Commissioners of Supply were authorised (and as I read the statute, were required) to levy an assessment called rogue money to meet the expense attending "the apprehending of criminals, and of subsisting of them in prison until prosecution and of prosecuting such criminals." The power to levy rogue money was abolished by the Act 31 and 32 Vict. cap. 82, and in lieu thereof the Commissioners of Supply (in whose place, rights, and duties the defenders now stand) were authorised to levy a county general assessment, to be applied, *inter alia*, to meet "the expenses incurred in searching for, apprehending, subsisting, prosecuting, or punishing criminals." It is said for the pursuer that this latter statute extends the purposes to which the assessment levied under it may be applied. In words perhaps it does, because the language of the older statute commences with the apprehending of the criminal, while that of the later statute commences with the search for the criminal before his apprehension. But I regard the language of both statutes as amounting practically to the same thing, and they appear to me to cover all the expense incurred in connection with the search, apprehension, subsisting, and prosecution of criminals, and everything necessary towards the fulfilment of each and all of these acts. A criminal, in the ordinary case, has to be searched for before he can be apprehended, but he cannot (again in the ordinary case) be searched for before the crime or supposed crime has been reported to the fiscal,

on which report he proceeds to take the necessary steps and give the necessary instructions for the search and apprehension. The preliminary investigation by the Fiscal of the reported circumstances is a necessary part of the proceedings towards the search for and apprehension of the criminal or supposed criminal, and the expense attending such investigation is, in my opinion, part of the expense to which the rogue money could have been, and the county general assessment may now be, applied.

It was argued for the defenders that under the statute last mentioned there was no authority for any payment to Procurators-Fiscal except such as "are at present in use to be paid by each county," and that as the county of Lanark had not paid the pursuer any remuneration for preliminary investigations for fifteen years before the passing of the Act, and was not paying such remuneration at that date, it was absolved from all future liability on that head. I cannot assent to that; I think such an argument proceeds upon a misapprehension of the purpose and effect of the clause relied on. I think the purpose of the clause was to provide that Procurators-Fiscal were to continue to be paid by fees, salary, or whatever mode of remuneration was then in use. It imposed no new burden on the county—conferred no new right on the procurator-Fiscal. But to quote that clause as supporting the view (now contended for) that the county was no longer to be bound to pay what was its statutory obligation because it was not "in use" to pay it (that is, refused or delayed to pay it) at the date of the passing of that Act, appears to me quite untenable, and I concur in what the Lord Ordinary has said upon this head. If then the Fiscal is entitled to remuneration for his preliminary investigations, if this is not covered by his salary from Exchequer, if this may lawfully be paid out of the county general assessment, the defenders must pay it. Up to this point, therefore, I practically agree with the Lord Ordinary. There remains the question whether the defenders are liable for the expense attending the Fiscal's investigations into crime or supposed crime committed in the city of Glasgow. The Lord Ordinary has held that they are not, and in this I differ from him.

I assume now that the pursuer is entitled to remuneration for his preliminary investigations, and that that remuneration is chargeable against the county general assessment. But the Lord Ordinary is of opinion that, *quoad hoc*, the city of Glasgow is no longer to be regarded as part of the county of Lanark, because it has been "severed" from the county by the Act passed in 1893, by which the city of Glasgow was constituted "a county of a city." It will be observed, however, (1) that the severance effected by the Act was only a severance "for the purposes of this Act," none of which affect the question before us; and (2) that the civil or criminal jurisdiction or administrative powers of the Sheriff of the county of Lanark, "and of the several officers of the Sheriff Courts of the county" (of whom the pursuer is one) were not prejudiced or affected, but continue "as if this Act had not been passed." Indeed, I think it was admitted at the bar on the part of the defenders that the Act of 1893 did not affect the question before us. Nor does the Act of 1891, by which the boundaries of the city of Glasgow were extended. By that Act (secs. 24-26) the jurisdiction and powers of the corporation had by them over and in the original area are extended to the increased area, but the jurisdiction, powers, and rights of the Sheriff and his officers are not restricted or diminished. I take it, therefore, that the city of Glasgow is now, as formerly, a part of the county of Lanark, and that for all that is done there in searching for, apprehending, subsisting, and prosecuting criminals, the County Council must provide. It is no doubt anomalous that the landward part of the county should be taxed for work done in the administration of the criminal law in the city of Glasgow. But this is not a new thing. No rogue money could be levied in a royal burgh having a police establishment of its own, and it is out of the rogue money, or what now comes in place of it, that the pursuer must be paid. The Legislature might perhaps be induced to alter this state of matters, but standing as the law does, I think the pursuer is entitled to the decree of declarator he concludes for, subject to the slight alteration in the form of his conclusion to which I adverted in the outset. *Quoad ultra*, the case must go back to the Lord Ordinary in order that the pursuer's account may be adjusted and taxed.

LORD MONCREIFF—The account sued on embraces a number of charges by the pursuer in respect of investigations made by him during the year 1898 in connection with assaults, fires, and sudden deaths. The bulk of these cases, we are told, were connected with the city of Glasgow, the remainder occurred in the Lower Ward of Lanarkshire. The Lord Ordinary in his judgment holds that the pursuer is not entitled to decree in respect of business relating to the county of the city of Glasgow, but he has pronounced decree of declarator in favour of the pursuer as regards business performed in connection with the Lower Ward of Lanarkshire exclusive of Glasgow, and appointed the pursuer to amend the account accordingly.

Against the Lord Ordinary's interlocutor, in so far as adverse to them, the defenders the County Council of the county of Lanark reclaimed. I shall therefore first deal with the question raised by the defenders, which is of general application, and shall afterwards have something to say in regard to the peculiar position of Glasgow.

1. On the first question, I agree with what I understand to be the opinion of the Lord Ordinary. It is not disputed that the work for which the pursuer charges was all business properly performed and discharged by him as holder of the office of Procurator-Fiscal of the

Lower Ward of Lanarkshire. The cases are all cases in which, after consideration or investigation, the pursuer did not find it necessary to make a report to Crown counsel, or to cause anyone to be apprehended. They are all cases which were reported to the pursuer by the police and considered by him, and for that consideration and such investigation as he made a uniform charge of 7s. 6d. is made.

The history of allowances made in Exchequer to counties in Scotland, and in particular to the defenders' county, in relief of their liability for Procurator-Fiscal's remuneration and charges for business done in the county, bulks very largely in the present inquiry, but I do not think that it has a very material bearing on the question which we have to decide. If the defenders could have shown that the pursuer's salary allowed in Exchequer and accepted by him covers the whole of the pursuer's duties as Procurator-Fiscal within the county, they would, no doubt, have a good defence to the present demand. But it is perfectly clear that the allowances made in Exchequer, and the salary calculated on the footing of these allowances, were not intended to cover all the work done by the Procurator-Fiscal.

At the same time, the Treasury minutes and the memorials by the Commissioners of Supply are not without importance, as they show pretty distinctly that the Commissioners of Supply were quite alive to the fact that there was work properly falling within the Procurator-Fiscal's duty for which the Exchequer did not acknowledge responsibility, and for which the county remained responsible. In short, the question which we have to decide would have been the same if no relief had been given in Exchequer, viz.—Are these charges such as the defenders are bound under statute to pay?

This depends upon whether in a reasonable sense they fall within the terms of the "Rogue Money" Act 1724 and the County General Assessment Act 1868, sec. 3 (2) and (3); in particular, whether they fall under the head in the latter Act, sec. 3 (3) "of searching for and apprehending prisoners." I think they do or may.

Unless a criminal is apprehended red-handed it is necessary when a sudden death, fire, assault, accident, or other occurrence of a suspicious or doubtful character is reported, to consider, first, whether a crime has been committed. If in the judgment of the Procurator-Fiscal after inquiry a crime has been committed, the next step is, if possible, to ascertain and apprehend the criminal and bring him to trial. In such a case it is clear that the initial steps are just as important as the later, and as deserving of remuneration.

But if after consideration and investigation the Procurator-Fiscal decides not to proceed either because he has come to be satisfied that no crime has been committed, or because the criminal cannot be found, or the evidence is insufficient to warrant a prosecution, why should he not equally be paid for his trouble? The question has I think been a good deal obscured by two things, both of which are immaterial—(1) The limitations imposed by the Treasury upon allowances made to counties; and (2) the fact that by arrangement the preliminary inquiries in many cases are now made by the police.

On this I would observe (1) the Treasury is entitled to limit the relief which it gives to cases which have reached a certain stage, but it does not follow that the Procurator-Fiscal is not to be paid by anyone otherwise liable for work properly done at previous stages. (2) Again, the assistance given by the police cannot be relied on by the defenders; it only goes to reduce the Procurator-Fiscal's investigations and diminish his charges. In the public interest it is not desirable that occurrences which may involve crime should not be investigated, and in my opinion such investigation is a proper part of the Procurator-Fiscal's criminal duties, and is sufficiently covered by the words "searching for and apprehending prisoners."

It may be that it may under audit be shown that some of the cases considered and charged for cannot in any legitimate sense be considered criminal. That is a matter to be ascertained by remit or audit, but I should not be disposed to encourage such objections as it may often be difficult at the outset to determine the significance of the occurrence reported.

The pursuer's case receives considerable support from the fact that, as we were told, the other counties in Scotland have been in use to remunerate the Procurator-Fiscal for work of a precisely similar character to that now charged for either by fees or a small additional salary. In the proof the pursuer has adduced a considerable body of evidence to this effect.

It is true that, especially since 1855, the Commissioners of Supply of the County of Lanark, and subsequently the County Council, have resisted the Procurator-Fiscal's demands for such remuneration. But I think that the explanation of this may be found in the fact which is disclosed in the documents in process, that at first they were under the impression that the Treasury had undertaken to relieve the county not only of reported cases and trials before the Sheriff, but of the whole of the Procurator-Fiscal's charges of whatever kind. The Treasury, however, declined to accept further responsibility. Upon this the Commissioners of Supply of the County of Lanark in 1861 joined the other counties in a memorial to the Treasury, which proceeded on the footing that the allowance in Exchequer did not cover the whole of the Procurator-Fiscal's duty, and praying the Exchequer to relieve the counties of the charges which were disallowed by Exchequer. I may say in conclusion on this part of the case that I do not agree with Lord Young as to the meaning of the concluding words of section 3 (2) of the Act of 1868, "in so far as such salaries, fees, and outlays are at present *in use to be paid* by each county." In my opinion the words, "in use to be paid," simply mean such

salaries, &c., as the county was paying or was bound by law to pay, and which no other body was paying or was bound to pay.

2. There is a greater difficulty as to that part of the Lord Ordinary's interlocutor in which he assoilzies the defenders from the conclusions of the summons in so far as relates to business performed in the county of the city of Glasgow. The pursuers have availed themselves of the present reclaiming-note to object to this part of the judgment. At the hearing I felt doubt of the soundness of that part of the Lord Ordinary's interlocutor, and further consideration has satisfied me that it is erroneous. It must be observed at the outset that this part of the case must be considered on the assumption that the charges for payment of which the pursuer sues, would have been good and proper charges against the defenders if connected with business in the landward part of the county of Lanark. At first sight the position of the defenders seems strong. The city and extended royalty of Glasgow were formed into a county of a city and severed from the county of Lanark by the County of the City of Glasgow Act 1893; and it is admitted that the County Council of Lanarkshire have no power to assess for the purposes of the county rate within the limits of the city of Glasgow.

But this is by no means conclusive. The city and royal burgh of Glasgow were made a county of a city and severed from the county of Lanark simply for the purposes of that Act, and by the seventh section it is declared that "nothing in this Act shall prejudice or affect the civil or criminal jurisdiction or administrative powers of the Sheriff or Sheriff-Substitutes of the county of Lanark as they existed prior to the passing of this Act." Now, prior to the passing of that Act, for nearly 40 years, the Procurator-Fiscal of the county had under the orders of his superiors discharged precisely the same duties in Glasgow as in the landward parts of the county, and since 1893 he has continued to do so. The Act was therefore not intended to affect, and did not affect, the discharge of those duties, and therefore I think the question is exactly the same as if it had arisen before 1893.

It follows, I think, from the decision of the whole Court in the case of *M'Arthur* v. *County Council of Argyll*, 25 R. 829, that the power of assessing royal and parliamentary burghs within a county is not the measure of the duties of a county council to levy assessments on the remainder of the county for county purposes, even although the burghs which are thus exempted from assessment may derive benefit from the assessments thus imposed upon the rest of the county. One of the strongest arguments in that case against the exemption from assessment of such burghs was that the burghs got the benefit of the county general assessment. But that contention was overruled, the majority of the Court holding from the terms of the Local Government Act 1889 that it was not intended that the burghs should contribute directly or indirectly towards county general expenditure. I think it is observed by some of the Judges that the explanation of the exemption of the burghs from assessment may be found in the fact that large contributions are made by Exchequer in aid of various branches of county expenditure, and, in particular, in aid of the salaries and fees of the Procurator-Fiscal.

It may have been thought when the criminal work in Glasgow was handed over to the Sheriff's Procurator-Fiscal in 1855 that the additional salary allowed in Exchequer was intended to cover everything, but it very soon became apparent that in respect of work in Glasgow, as in the rest of the county, there were many charges which the Treasury refused to recognise, and which therefore, if proper charges, fell to be defrayed by the county, there being no other fund out of which they could be paid.

Therefore, on the whole case, I am of opinion that the pursuer is entitled to the declarator which he asks, subject perhaps to this limitation, that after the words, "of said office," on the twelfth line of the summons, the following or equivalent words should be introduced, viz.—"in the investigation of crime," or as suggested by Lord Trayner, "in the administration of criminal law," and that the accounts sued on should be remitted for audit.

The declaratory conclusion of the summons was amended by adding the following words, viz.:—"in the administration of the criminal law," to read after the words "in respect of all business performed and discharged by him as holder of said office."

The Court pronounced this interlocutor—

"The Lords having heard counsel for the parties on the defender's reclaiming-note against Lord Low's interlocutor of 24th January 1902, Recal said interlocutor: Find, decern, and declare in terms of the declaratory conclusions of the summons as amended: Remit the case to the Lord Ordinary to proceed therein as accords: Find the pursuer entitled to expenses since 24th January 1902," &c.

Counsel for the Pursuer and Respondent —Ure, K.C.—T. B. Morison. Agents—Webster, Will, & Co., S.S.C.

Counsel for the Defenders and Reclaimers —H. Johnston, K.C.—Constable. Agents —Bruce, Kerr, & Burns, W. S.