sunday 1873, amounting to £33, 18s. sterling, being at the rate of tenpence per £ upon the said yearly rent or value as entered in the said valuation roll. But the second party has declined to pay the assessment, and maintains that the tramways are not lands and heritages in the sense of the Poor Law Act, and that, even assuming them to be lands and heritages, the second party is neither owner nor occupier thereof.

Cases cited—*Hay* v. *Edinburgh Water Company*, 12 D. 1240, H. of L. 1 Macq. 682; *Pimlico Tramway Company* v. *Greenwich*, L. R. C. J. vol. ix, p. 9

At advising—

LORD BENHOLME—Two questions are raised in this Special Case.

On the first question I am moved by the statement in the 18th article, that the assessor has valued the line of tramways and included the said line in the valuation roll as lands and heritages belonging to or leased by the second party.

Besides, the English authority stated leaves no room for doubt that the parties here who occupy, and I think are owners in the sense of the statute, are liable to be assessed.

If the question was, are they feudal owners? there might be some difficulty, but the Poor Law Act removes any such difficulty and defines owners to "be persons who shall be in the actual receipt of the rents and profits of lands and heritages," and so clearly ascertains these parties to be owners. They have a permanent right, and their engagement is as long as they choose to be a company.

LORD NEAVES—I concur. The case of *Hay* was the first to bring this species of occupancy into prominence, and applied to a state of things which must include tramways.

The English authorities also throw light on it. The only specialty founded on here is, that in the Tramway Act, § 57, it is enacted that the promoters are not to have any right higher than that of user, but the fact that they are in the actual receipt of the profits is sufficient without a feudal title.

LORD ORMIDALE—I concur. There is no doubt the Tramway Company occupies lands. They are in the permanent and exclusive occupancy, and they are in receipt of the rents and profits of lands so occupied. The only doubt which occurred to me arose from the expression user in the 57th section. I do not require to state the meaning of the term in England, but I think it just amounts to this, that occupation of lands which is permanent and exclusive, and accompanied by receipt of rents and profits according to the Poor Law Amendment Act, are requisite to constitute liability as owner and occupier.

LORD JUSTICE-CLERK—I concur. On the question whether these rails and sleepers are lands and heritages I think the case of *Hay* is conclusive, and that they must be put in same class as water and gas pipes. When they have been put on the valuation roll, then comes the question, Who is the owner? It is clear no one is owner but the Tramway Company. Whatever the term user may mean, the Tramway Company have the right of receiving the rents and profits, and that, taken along with the terms of the Poor Law Amendment Act, is sufficient to constitute liability.

Counsel for Parish of St Cuthbert's—Marshall. Agent—E. Miln, S.S.C.

Counsel for Tramway Co.—Mansfield. Agents—Lindsay, Paterson & Hall, W.S.

Wednesday, May 27.

FIRST DIVISION.

[Lord Mackenzie, Ordinary.

STIRLING & FERGUSON *v.* MAGISTRATES OF TURRIFF.

13 *and* 14 *Vict. c.* 33—25 *and* 26 *Vict. c.* 101—*Finality of Sheriff's judgment.*

The Police Commissioners of a Burgh elected under the Act 13 and 14 Vict. c. 33, resolved to adopt the Act 25 and 26 Vict. c. 101, in accordance with a resolution passed at a public meeting. The statutory provisions as to notice and advertisement were not complied with, but a petition was at once presented to the Sheriff, on consideration of which he declared the Act to have been duly adopted, his judgment being declared by section 20 of the latter Act to be final. *Held* that the proceedings on which his judgment was based having been informal and reducible, his judgment fell with them, notwithstanding the finality clause.

The Magistrates of Turriff, elected under the Act 13 and 14 Vict. cap. 33, resolved to adopt the more recent "Police and Improvement Act" 25 and 26 Vict. cap. 101, according to the provision contained in section 15, (sub-section 3) which provides that the Act may be adopted "In burghs, not being royal or parliamentary burghs, which have adopted in whole or in part the provisions of the said Act 13 and 14 Vict., cap. 33, or which have Commissioners or Trustees of Police under the provisions of any local Act of Parliament, by a special order, as hereinafter defined, of the Commissioners or Trustees of Police acting in and for such burghs respectively." At a special meeting of said Commissioners, under 13 and 14 Vict., held in the Town-Hall on 24th November 1873, it was unanimously resolved that the Magistrates and Commissioners should adopt the said Act 25 and 26 Vict., cap. 101, and that they should meet in the Town-Hall at 8 o'clock on the evening of Friday the 26th day of December then proximo, and then and there adopt said Act. The clerk was accordingly instructed to give a month's notice in writing of said meeting to each of the Commissioners. A minute of the meeting was made and signed by the clerk and the chairman of the meeting. In terms of the said minute the clerk served upon each of the Commissioners a notice of the resolution come to at said meeting, and of the meeting to be held on 26th December to adopt the Act. No other notice was given of said resolution, or of the meeting to be held. The public were not made aware thereof in any way.

By section 15 of the said Act 25 and 26 Vict., cap. 101, provision is made for the adoption of said Act by Magistrates and Councils, or Commissioners, or Trustees of Police. It is thereby enacted that "This Act may be adopted either in whole or in part, (that is to say), in parts, sections, or clauses;" and, *inter alia*, that it may be so adopted (sub-section 3) "in burghs not being royal or parliamentary burghs, which have adopted in whole or in part the provisions of the said Act 13 and 14 Vict., cap. 33, or which have Commissioners or Trustees of Police, under the provisions of any local Act of Parliament, by a special order, as hereinafter defined, of the Commissioners or Trustees of Police, acting in and for such burghs respectively." There is no statutory definition of what is a

'Special Order," except in section 365. By section 365 of said Act it is provided that where the 'Commissioners are empowered to do anything by special order only, it shall not be lawful for them to do such thing unless the resolution to do the same have been agreed to by two-thirds of the Commissioners present at a meeting whereof special notice has been given, and has been confirmed by two-thirds of the Commissioners present at a subsequent meeting, held not sooner than four weeks after the preceding meeting, and which subsequent meeting has been advertised once at least in each of the weeks intervening between the two meetings, in some newspaper circulating within the burgh, if any be, or otherwise in some newspaper circulating in the county in which the burgh is situated, and of which special notice in writing has been given to each of the Commissioners." And by section 366 it is farther provided that "after any resolution has been confirmed in a subsequent meeting as aforesaid, the Commissioners shall not proceed to carry the same into effect until after the expiration of one month from the date of such second meeting, and during such month such resolution shall be advertised once at least in each week in such newspaper as aforesaid, and public notice thereof shall also be given by means of placards posted in public places within the burgh." Said section further makes provision for remonstrances being lodged by seven or more householders before the expiration of the month, against carrying into effect the resolution, in which case the resolution, or part remonstrated against, shall not be carried into effect unless confirmed by a majority of the householders qualified, and voting at the poll to be taken thereanent. In terms of the said provision in section 15, sub-section 3, the resolution come to by the said Magistrates and Police Commissioners at said meeting on 26th December 1873 could only be carried out by special order, in terms of sections 365 and 366, above quoted. Of the meeting on 24th November 1873, at which the resolution was first come to, no special notice was given, as required by section 365; and the resolution come to at the meeting on 26th December 1873, of which special notice was given, was not confirmed by a subsequent meeting, in terms of said section. No notice of either of said meetings, nor of the said resolution, was inserted in any newspapers. Nor was one month allowed to elapse before carrying the resolution into effect, in terms of section 366. Said resolution was adopted on 26th December, and a petition to the Sheriff was presented on the 30th of that month, to have the resolution given effect to.

On December 31, 1873, the Sheriff-Substitute (COMRIE THOMSON) issued an interlocutor finding and declaring that the said Commissioners of the said burgh had adopted the whole of said statute, and that the provisions of the said Act should apply to said burgh in manner therein set forth; and appointed said resolutions, and his deliverance, to be recorded in the Sheriff-court books of the county of Aberdeen, and in the books of the said burgh of Turriff, all in terms of the 20th section of said Act. Said resolutions and deliverance were accordingly so recorded.

The pursuers, who were householders in the burgh, raised an action of reduction and declarator in the Court of Session, in which the Lord Ordinary pronounced the following interlocutor:—

"*Edinburgh, 20th March* 1874.—The Lord Ordinary having heard counsel, and considered the closed record, joint minute for the parties, and process, sustains the first plea in law of the defenders: Assoilzies the defenders from the conclusions of the summons, and decerns: And in respect the defenders do not ask expenses, finds expenses due to neither party.

"*Note.*—The pursuers object to the validity, and conclude for reduction of the proceedings under which the General Police Act of 1862 is maintained by the defenders to have been adopted, that certain of the provisions of sections 15, 365, and 366 of the Act, and in particular those which relate to notice and advertisement, were not complied with. But the Lord Ordinary considers that he is not entitled to consider and give effect to those objections, in respect of the provisions contained in sections 20 and 437 of the Act.

"By section 20 it is provided that all resolutions in reference to the adoption of the Act shall forthwith be reported to the Sheriff, who is required within forty-eight hours to pronounce a deliverance thereon, finding and declaring that the Act has, or has not, been adopted; and, if adopted, that the Act shall apply to the burgh in manner therein set forth; and also forthwith to cause such resolutions and deliverance to be recorded in the Sheriff-court and burgh books; and such deliverance by the Sheriff is declared to be final. The statute also provides, section 437, that wherever any deliverance of the Sheriff 'is by this Act declared to be final, the same shall not be subject to be set aside, or reviewed, or affected by any court or judicature, upon any ground, or in any manner of way whatever.'

"The resolutions of the Commissioners to adopt the Act, agreed to at their meetings of 24th November and 26th December 1873, were reported to the Sheriff on 30th December 1873, and he, by deliverance dated 31st December 1873, having considered the said resolutions, found and declared that the Commissioners of the burgh of Turriff have adopted the whole of the statute, and that the provisions of the said Act shall apply to the said burgh in manner therein set forth, and appointed the said resolutions and his deliverance to be recorded in the Sheriff-court books of the shire of Aberdeen, and in the books of the said burgh, all in terms of the 20th section of the Act.

"The Lord Ordinary is of opinion that this deliverance of the Sheriff is, in respect of the express provisions of the statute, final, and not subject to be set aside, reviewed, or affected by any Court, upon any ground, or in any manner of way. That being the case, and it being committed by the statute to the Sheriff alone to decide whether the Act has been adopted, and shall apply to the burgh, the Lord Ordinary must, he conceives, give effect to the deliverance of the Sheriff finding and declaring that the Act has been adopted, and that the powers and provisions thereof apply thereto. The procedure upon which that deliverance was pronounced was taken under the statute. The pursuers' objections thereto are, that the whole formalities required by the Act were not complied with; and in respect of these objections they maintain that they are entitled to decree reducing the resolutions of the Commissioners and the deliverance of the Sheriff, and declaring that the Act has not been adopted. But the Lord Ordinary cannot get behind the Sheriff's deliverance, and inquire into its validity, or into the question, with a view to test such validity, whether the whole statutory provisions in regard to the resolu-

tions on which it followed were complied with. That deliverance is final, and not subject to review. It is *ex facie* unexceptionable and valid; and it must, the Lord Ordinary thinks, receive effect.

"If the Lord Ordinary is right in the view which he takes as to the validity and effect of the Sheriff's deliverance, it follows that the Act 13 and 14 Victoria, chapter 33, is, in respect of the provisions of section 18 of the Act 1862, repealed as regards the burgh, excepting in so far as it may relate to matters not provided for in the Act of 1862: And it also follows that the procedure provided for the election of Commissioners by the 46th section of the Act 1862 should now be taken, seeing that the election of Commissioners is the next statutory proceeding, and that it is thereby provided with reference to such a burgh as the burgh of Turriff that 'as soon as may be after the deliverance of the Sheriff declaring that this Act shall apply,' the Sheriff shall convene a meeting of the householders for the election of the Commissioners for the purpose of executing the Act, the said meeting being summoned in the manner and at the distance of time thereby prescribed.

"When the case was called in the motion roll of this day, to which it was put by the Lord Ordinary for the purpose of disposing of the question of expenses, and after he had intimated his decision on the merits, and the question of expenses was disposed of, counsel appeared, and asked on behalf of a number of the inhabitants of the burgh that judgment should be delayed until his clients should have an opportunity of considering the process. The Lord Ordinary declined to give effect to the said motion."

The pursuers reclaimed, and pleaded—"(1) The adoption of the said Act 25 and 26 Vict., c. 101, by the defenders, the said Magistrates and Commissioners, at the meetings condescended on, not having been made in the manner required by the said Act, the same is null and void, and the pursuers are entitled to have the minutes of said meetings reduced, in terms of the conclusions of the summons. (2) The petition to the said Sheriff, of date 30th December 1873, and the deliverance or interlocutor following thereon by the said Sheriff-Substitute, of date 31st December 1873, having proceeded upon the said adoption, and on said minutes of meeting, which are inept, the pursuers are entitled to have said petition and deliverance reduced, in terms of the conclusions of the summons. (3) The adoption of said Act 25 and 26 Vict., c. 101, could only be made by the defenders, the said Magistrates and Commissioners, by special order; and this not having been done, the pursuers are entitled to decree of declarator to this effect, in terms of the conclusions of the summons. (4) The adoption of the said Act 25 and 26 Vict., c. 101, by the defenders, Magistrates and Commissioners foresaid, not having been made in terms of said Act, the said defenders are still Magistrates and Commissioners of Police under the Act 13 and 14 Vict., c. 33, and the pursuers are entitled to decree of declarator to this effect, in terms of the conclusions of the summons."

Argued for them—(1) There was no special notice given as required by section 365. (2) There was no advertisement for four weeks. The only thing of the kind was an *ex parte* report in one newspaper on one occasion. (3) The Commissioners proceeded to petition the Sheriff at once without a month's interval (section 366). (4) The finality of the Sheriff's judgment is given by section 20, and "finality" is interpreted by section 437. The Sheriff's judgment is only final if pronounced in terms of the statute. The Court of Session has a common law power of review in questions affecting the election of public officers.

Authorities—*Campbell* v. *Police Commissioners of Leith*, Dec. 21, 1866, 5 Macph. 247; *Anderson* v. *Widnell*, Nov. 6, 1868, 7 Macph. 81; *Lord Advocate* v. *Police Commissioners of Perth*, Dec. 7, 1869, 8 Macph. 244; *Macdonald* v. *Dobbie*, Jan. 14, 1864, 2 Macph. 407.

The defenders pleaded—"(1) The deliverance or interlocutor of the Sheriff-Substitute, dated 31st December 1873, being final, the defenders are entitled to absolvitor. (2) Sections 365 and 366 of the Act 25 and 26 Vict. c. 101, being inapplicable to proceedings for the adoption of that Act, the defenders were not bound to conform to the provisions of these sections in their proceedings for the adoption of the Act. (3) The proceedings of the defenders, the Police Commissioners, having been public and well known to the whole householders and community of Turriff, and the Commissioners having thus complied with the spirit of the Act, any mere irregularity in the form of their proceedings is insufficient to vitiate them. (4) The Act having been duly adopted by the defenders, the Magistrates and Commissioners of Police of said burgh, and the deliverance of the Sheriff-Substitute having been duly pronounced and recorded, the pursuers are not entitled to decree of reduction as craved. (5) The said Act having been duly adopted, the defenders ceased to be Magistrates or Commissioners of Police of the burgh, and new Commissioners fell to be appointed in terms of the Act."

Argued for them—If there was an informality it was in the proceedings prior to the Sheriff's judgment. The only object of a finality clause was to protect an objectionable judgment, and the only objection which can be brought against this judgment is its incompetency, and the clause protects it against that objection. The cases quoted do not apply.

At advising—

LORD PRESIDENT—The respondents in this case were elected Commissioners of Police for the burgh of Turriff under the provisions of the Act 13 and 14 Vict. c. 33, and they resolved to adopt the more recent Police and Improvement Act for that burgh,—the Act 25 and 26 Vict. c. 101. Now the mode in which commissioners acting under the previous statute may proceed to adopt the more recent statute is fixed by the 15th section of that more recent statute. It differs from the mode in which Royal or Parliamentary burghs may adopt the Act, in this respect, that the Commissioners who are situated in the position in which the present respondents are can only do so by what is called a special order. The 15th section says, "by a special order as hereinafter defined." Now, the only place in the statute in which there is any definition or description of a special order is the 365th section. If we do not find a construction of the term "special order" in that section of the statute, we cannot find it anywhere else. But it was contended by Mr Birnie, on behalf of the respondents, that that section could not apply. He said, in the first place, that it is found in a

part of the statute which has no connection with this matter of adopting the Act; that it is under a part of the statute which contains general police regulations, and therefore he said that cannot be the place referred to in the 15th section as containing the definition or description of a special order. I do not think that that is a good objection, but I suspect if it were this statute would be found to be not so very logical in its divisions, and that great difficulty would occur in carrying it into execution. I think we have had some examples of that before us in previous cases. But then it was argued very ingeniously, still further in regard to the 365th section, that it refers only to proceedings by the Commissioners, and that term is defined in the interpretation clause as being Commissioners acting under the statute 25 and 26 Vict., whereas the Commissioners referred to in the 15th section, and the Commissioners now before us, are not Commissioners acting under that statute, but acting under the previous statute of 13 and 14 Vict. Now that is a very ingenious suggestion, but it is carrying the definition in the interpretation clause rather too far, because the provision in that clause is that the words and expressions there defined shall have the meaning thereby assigned to them unless there be something in the subject or context repugnant to such a construction. Now, if it be once seen that this 365th section is intended to describe or define what a special order is, then the term "commissioners" must not be used in so restricted a sense, but it will apply to and cover all Commissioners who are directed to act in the form of a special order, and for that reason I do not think that the objection to the application of the 365th section well-founded. If, then, the section applies, it very clearly settles what a special order is. It provides that "where by this Act the Commissioners are empowered to do anything by special order only, it shall not be lawful for them to do such thing unless the resolution to do the same shall have been agreed to by two-thirds of the Commissioners present at a subsequent meeting, held not sooner than four weeks after the preceding meeting, and which subsequent meeting has been advertised once at least in each of the weeks intervening between the meetings in some newspaper circulating within the burgh, if any be, or otherwise in some newspaper circulating within the county in which the burgh is situated, and of which special notice in writing has been given to each of the Commissioners." Now, there is here a variety of things required as essential to a special order, but the one of them which is important to the present case is this, that in the interval of four weeks between the two meetings there must be an advertisement of the second meeting and its purpose once in each of these weeks in some newspaper circulating within the burgh or the county. Confessedly, that has not been done in the present case. The first meeting was on the 24th November, the second meeting was on the 26th December, and the proceedings at the meetings, so far as I can see, were regular enough, but it is admitted that in the interval between these two meetings there was no such advertisement as this section of the statute requires. Now, the reason for requiring all these notices and advertisements is very obvious in the case before us. The Commissioners here were appointed by the householders of the burgh under 13 and 14 Vict., and the plain object of the provisions of the 15th section, that they must proceed by way of special order, is that the householders may intervene and stop them from going on to adopt this new Act. The whole authority of the Commissioners being derived from the householders, it seems very natural and very proper that if the Commissioners are to be allowed to adopt the Act, there must at least be an opportunity given to the householders to express their opinion on the proposal. If the Commissioners had not the power to adopt this Act in the manner prescribed by the 15th section, then it could only be adopted by the householders in terms of the other sections regarding the adoption of the Act. Now, that appears to me to constitute a very fatal objection to the proceedings. It is not a mere formal objection by any means; on the contrary, it is a very substantial and weighty objection, because the householders, some of them, are complaining here, and say they have not had the opportunity afforded them which was intended to be afforded them by the Act of Parliament. But then the Commissioners meet this objection by saying that there is a finality attending these proceedings which bars all such objections, and prevents the interference of this Court. There is no finality in so far as the resolutions of the Commissioners are concerned—there is nothing said about their being final—but it is quite true that under the 20th section of the statute, when the resolutions have been carried through in terms of the statute, and come up to what the statute recognises as a special order, then the proceedings are to be reported forthwith to the Sheriff. The terms of that section are important; the proceedings are "to be reported to the Sheriff, and he shall within 48 hours after the receipt thereof pronounce a deliverance thereon, finding and declaring as the case may be, either that this Act has not been adopted, or that the powers and provisions thereof have been adopted, and that this Act shall apply to such burgh as aforesaid in the manner therein set forth, and shall forthwith cause such resolution and deliverance to be recorded in the Sheriff Court books of the county and in the books of the burgh to which they specially apply, and such deliverance by the Sheriff shall be final." And "final" in this statute means, according to another clause, the 437th, "that it shall not be subject to be set aside or received, or affected by any court or judicatory upon any ground or in any manner of way whatever," so that the language of the statute in regard to finality is no doubt very strong. But it is abundantly clear that no such resolution can be confirmed with effect by the Sheriff unless they are resolutions made and passed in terms of this statute. In the case of a special order, which is the one we are dealing with, it is not a special order unless the provisions of the 365th section have been complied with. Suppose it was a resolution of a single meeting, instead of a resolution of two meetings, it would not be a good special order, and could never be made final by anything that followed upon it. In short, it appears to me that the finality intended to be provided by the 20th section of the statute is a finality in regard to that which the Sheriff has to do and to judge of, but nothing more. The Sheriff has no evidence before him — I do not see how he can have—of whether the advertisements are all right in the case of a special order, or whether all the provisions of the 365th section have been complied with. What he has

got to look to is the terms of the resolution where there is but one, or of the resolutions where there are two, in the case of a special order, and if he finds upon the face of these resolutions that they bear that this Act has been adopted in whole or in part, then he is bound to find and declare accordingly. The finality intended, I apprehend, is that it shall not be in the power of any one hereafter to say that the resolution is not explicit to the effect of adopting the Act in whole or in part, or of refusing to adopt, as the case may be. But when the resolution or the special order which is laid before the Sheriff is liable to fatal objection and violations of the Act of Parliament, there can be no finality in these resolutions; and the mere fact that the Sheriff has pronounced a deliverance echoing the resolutions, and recorded that in the sheriff court books or the burgh books, can never make it good. It is impossible, I think, to hold that this is the finality contemplated by this Act of Parliament. The resolution is bad; the special order is bad; it is not a special order under the statute, because it has not complied with the conditions of the statute, and therefore it must be reducible. And there is no finality declared as regards the special order, but the deliverance of the Sheriff is merely something that has followed upon that to give it publicity and effect if it be a good special order; and therefore it appears to me that, the resolutions themselves being bad and reducible, the deliverance of the Sheriff upon them falls as a matter of course, and is not protected by that clause of finality which for other purposes undoubtedly is applicable. For these reasons, I am of opinion that the reasons of reduction ought to be sustained, and these resolutions set aside, and for that purpose that the interlocutor of the Lord Ordinary be recalled.

Lord Deas—I understand that there were two things not disputed; in the first place, that there was no special notice given of the special meeting, and, in the second place, that there were no advertisements between the two. [Lord President—You mean there was no special notice of the meeting of November 24th.] Well it does not affect the result, because one of these objections would probably be just as fatal as both of them. It so happens that either of them would have this effect, and here they both occur. There was neither special notice of the meeting of November 24, nor was there the notice given between the two meetings by advertisement, as required by the statute. But although neither of these things was done, the argument is, and the Lord Ordinary has given effect to that view, that in respect of the finality clause—the clause which declares that the Sheriff's deliverance shall be final and not subject to review—all review by this Court, and all interference with that judgment, is excluded. The objection upon record is perfectly explicit, but the denial even upon record is very equivocal, because it is "denied that no special notice was given." But then it goes on to explain what that means—"explained, that the said meeting, and that upon Dec. 26, were, as before mentioned, open to the public and newspaper reporters, and that the proceedings at the meetings were reported in the *Banffshire Journal*, and were well known to the householders and community." According to my notes and my memory, it was explained at the bar on both sides that really in point of fact there had been no special notice given of the original meeting of Nov. 24, but except for accuracy that really does not matter, because, as I said before, the one objection, if it is one, is a statutory objection, that one real act of contravention of the statute must have all the effect one way or the other that they both could have had. The question just comes to be, whether, if the express provisions of the statute have not been observed, this finality clause prevents the reduction of the deliverance of the Sheriff and consequently of the proceedings of the commissioners. Now, as matter of result, I am of opinion with your Lordship that that finality clause has not the effect of preventing the interference of this Court by reduction where the proceedings are outwith the statute and entirely contrary to the statute. To a case of that kind the finality clause has no application.

In pronouncing his deliverance, the duty of the Sheriff was one of two things. He was either entitled to look into the proceedings and see that the pre-requisites of the statute had been complied with, and that all had been done which ought to have been done, or he was bound simply to put his imprimatur on the proceedings when called upon to do so, without looking at them. In that case the parties here must be held to have misled him by what may be called legal fraud on their part. In either case, whether he acted *quasi* judicially or only ministerially, the result is the same. The proceedings cannot be allowed to stand.

In cases of this kind there have sometimes been difficulties as to the particular Court which should give redress. If the jurisdiction of a particular Court is exclusively appropriated by statute to the class of cases, then it belongs to that Court to deal with all objections. But whatever Court may be of exclusive statutory jurisdiction, it is yet always open to the Supreme Court to interfere where the proceedings have been outwith and contrary to the statute. It is within the power, as it is the duty, of this Court to interfere and set things right.

The Sheriff's deliverance must be reduced, for while it stands the previous proceedings cannot be got at. But, notwithstanding the finality clause of the statute, I think it is reducible in either view of the Sheriff's duty. If he was bound to look into the proceedings and see that they were regular, he neglected to do so. If he was bound to take things as they stood, the magistrates were in fault for bringing before him proceedings which had been so irregularly conducted. But I should be slow to give countenance to the view that the Sheriff had not power to inquire into the question whether the pre-requisites of the statute had been complied with. I should hesitate to say that the dissenting parties in this burgh might not have brought before the Sheriff the objections which they have pleaded before us, and that the Sheriff would not then have been constrained to find that the Act had not been adopted in the burgh. Where no one appears before the Sheriff, it may be difficult for him, in the short space of time allowed, and with the means at his disposal, to ascertain whether the proceedings have been in all respects regular, but the question of time and means does not affect the question of what it is his duty to do. That is a question which it is not necessary to decide here, and I do not give, or intend to give, an opinion upon it. Whatever may be the law on that matter, it is clear that this deliverance of the

Sheriff must be reduced, and the proceedings which preceded it swept away.

LORD ARDMILLAN—There are I think one or two points which must be borne in mind before proceeding to the question of the finality of the Sheriff's interlocutor. In the first place, looking generally at the nature of the proceedings in question, the application for review by reduction is one that falls naturally and ostensibly within the jurisdiction of the Court, unless that jurisdiction is especially excluded by statute or otherwise.

In the second place, were it necessary to enter upon this question, I am of opinion that, as a matter of pleading, it is not sufficiently averred by the defenders that special notice of the meeting of 24th November 1873 was given. All that I find stated by them on this point is contained in their answer to Cond. 7, where they say—"Denied that no special notice was given of the meeting of 24th November, and reference is made to the minute of that meeting." As a question of strict pleading, I am of opinion that that does not amount to a denial, for the minute referred to does not instruct the notice. Neither does the farther explanation, that the meeting was open to the public and newspaper reporters, and that the proceedings thereat were reported in the *Banffshire Journal*, and were well known to the whole householders and community, relevantly aver an equivalent for notice. I should therefore be inclined to hold, if necessary, that the averment of want of notice is not denied. But the other objection, namely, to the want of proper advertisements and notice of the second meeting, is sufficient in itself to warrant reduction, provided the finality clause offers no obstruction.

I am quite satisfied that this second objection is one not of form merely, but of substantial importance and sufficient to vitiate the proceedings of the Commissioners, provided they are not protected by the finality clause of the statute. The determination of the Commissioners to put the burgh under the New Police Act was arrived at without the statutory notice being given to all concerned to enable them to come forward and object to the proposed proceedings. The resolution of the Commissioners was therefore come to in a manner contrary to the provisions of the statute. Having thus proceeded irregularly, the Commissioners go to the Sheriff with a petition craving him to find and declare that the Police Amendment Act has been adopted in the burgh of Turiff. Having proceeded irregularly—for want of notice and advertisement is a failure for which they are responsible—they yet go to the Sheriff and crave a deliverance from him not warranted by their preliminary proceedings, and which was therefore beyond the scope and contrary to the provisions of the Act, and having obtained this deliverance they now seek to protect it by a statutory finality. They invoke the statute, the provisions of which they have disregarded, to protect what they have done.

To give them the benefit of the clause of finality, the means taken to adopt the Act, not merely the Sheriff's deliverance itself, must be found within the statute. It is only the Sheriff's deliverance, if within the statute, that is protected by finality, not the proceedings of the Commissioners when without the statute. In that view, the Commissioners' proceedings having been irregular in a substantial particular there is no clause protecting them. On these irregular proceedings, it is true, they obtained the Sheriff's deliverance, but even if final in itself, it is not to protect these previous irregular proceedings. They may certainly be reduced, for they are clearly contrary to the statute. And if they are reduced and swept aside, the deliverance of the Sheriff must fall with them, for it has no ground to stand on except these preliminary proceedings. I am therefore of opinion that the Lord Ordinary's interlocutor should be recalled.

I do not think it necessary to decide whether the Sheriff in this matter is called upon to exercise a ministerial or a judicial function. I think it most reasonable that, if sufficient time was allowed to him under the Act, he should apply his mind to the question whether the provisions of the Act have been properly complied with. But the difficulty lies in the extremely short time, twenty-four hours only, I think, which is allowed by the Act. It therefore does look somewhat as if his duty were merely ministerial. But on this matter I would reserve my opinion.

LORD JERVISWOODE concurred.

The Court pronounced the following interlocutor:—

"The Lords having heard counsel on the reclaiming note for James Stirling and John Ferguson against Lord Mackenzie's interlocutor of 20th March 1874, Recal the said interlocutor; sustain the reasons of reduction; reduce, decern, and declare in terms of the reductive conclusions of the summons; *quoad ultra* of consent dismiss the action, and decern."

Counsel for Pursuers—J. M'Laren. Agents—Henry & Shiress, W.S.

Counsel for Defenders—Birnie. Agent—David S. Shiress, S.S.C.

HIGH COURT OF JUSTICIARY.

Thursday, May 28.

(Before the Lord Justice-Clerk, Lord Neaves and Lord Young.)

SUSPENSION—HILL *v.* GALBRAITH.

Suspension—Act 13 *and* 14 *Vict., c.* 33, §§ 210, 212.

Held that the provisions of the 210th clause of 13 and 14 Vict., c. 33, did not exclude the right of the Commissioners under the Act to compel owners to pave footpaths on roads under the management of Turnpike Road Trustees, and that the Commissioners were entitled to serve a new notice of complaint after the expiry of six months from the commission of the offence; and accordingly suspension of an order made by the Commissioners *refused*.

The suspender here, who is a solicitor in Stirling, and proprietor of the villa and grounds of Spring Bank, situated within the burgh, asked the Court to suspend an order of the Police Commissioners of Stirling, dated 11th March last, under the Act 13 and 14 Vict., c. 33, section 212, requiring him within 14 days from that date to