distance therefrom, without the complainer's authority or permission to do so."

The complainer set forth that he was heir of entail in possession of the said estates, including the ancient baronies of these names. The estates extended for several miles along the sea. Under his titles to the said lands and estates the complainer had the sole and exclusive right to the sea-ware, whether growing or drifted, upon the shores or beach *ex adverso* of his said lands and estates, and to remove and dispose thereof at pleasure by himself or others having his authority. No such authority has been given to the respondent by the complainer, or by any one acting for him. The complainer further averred (Stat. 3)—"The respondent is tenant of the farm of Abercrombie, the property of Sir Robert Anstruther of Balcaskie, Baronet, and is situated about one and a half mile from St. Monance, and notwithstanding that he has no authority from the complainer, or any one acting for the complainer, to do so, the respondent has recently removed from the beach near St. Monance, *ex adverso* of the complainer's said lands and estates, large quantities of sea-ware, which is valuable manure, and has used the same as manure for his farm. At all events, he has carted and taken away, and used as manure for his farm, large quantities of said sea-ware which had been at his instigation, or in consequence of inducements held out and payments made by him, gathered by women and boys, or others of the St Monance villagers, from said beach and removed a short distance therefrom."

The complainer further averred that the respondent had been warned that the villagers had no authority to remove the ware.

The respondent admitted that previous to 1875 he had removed some sea-ware, but the complainer having objected, he ceased doing so, and the only ware used by him since that date he had purchased in open market from the inhabitants of the burgh of St. Monance, who claimed to have right to gather the ware under the charters of the burgh.

The Lord Ordinary on the Bills pronounced the following interlocutor:—

"*6th March* 1877.—The Lord Ordinary having heard parties' procurators, passes the note, but recals the interim interdict formerly granted.

"*Note.*—It is not disputed that a traffic in the sale of sea-ware by the inhabitants of St Monance has been publicly going on for a considerable period to the knowledge of the complainer. It also appears that this is done in the assertion of a right by these inhabitants. The complainer, however, has taken no steps to put an end to this traffic by proceeding against them. In these circumstances the Lord Ordinary does not think the complainer is entitled to interim interdict against the respondent, who merely purchases from them."

The complainer reclaimed.

Authorities—*M'Taggart* v. *M'Douall*, Mar. 6. 1867, 5 Macph. 541; *The Officers of State* v. *Smith*, Mar. 11, 1846, 8 D. 711; *Paterson* v. *Marquis of Ailsa*, Mar. 11, 1866, 8 D. 752; and *Lord Saltoun* v. *Park*, Nov. 24, 1857, 20 D. 89.

The Court adhered.

Counsel for Reclaimer—J. P. B. Robertson. Agents—Webster, Will, & Ritchie, S.S.C.

Counsel for Respondent — Asher — Graham Murray. Agents — Gibson-Craig, Dalziel, & Brodies, W.S.

Friday, March 16.

FIRST DIVISION.

CLIFT *v.* THE PORTOBELLO PIER COMPANY. *et e contra.*

(*Ante*, p. 344.)

Process—Expenses.

Held that where there are two actions about the same subject-matter, and between the same parties, the account for expenses in the one case can be set off against the account for expenses in the other, just as if the actions had been conjoined.

These were two actions between the same parties. The first was a petition by the Portobello Pier Company againt Clift, who was manager of their refreshment rooms. Clift had been dismissed by the Company, and the object of the petition was to obtain from him an assignation of the certificate and licence for the sale of liquors which he had obtained. The second action was a petition for interdict against the Company carrying on business in the refreshment rooms. The first case was decided in favour of Clift, with expenses; the second in favour of the Company, also with expenses. The Company having got their account audited, obtained decree in the agent's name, and Clift sought to obtain decree for his expenses, likewise in the name of the agent-disburser. The Company objected, on the ground that they were entitled to set off the one account against the other, and to pay the balance, a course they could not adopt if the decree was given against them in the name of the agent-disburser. It was argued for Clift that compensation of one account against the other did not take place unless in the same litigation, and that where the debt was extrinsic, as here, compensation did not take place at all.

Cases cited—*Gordon* v. *Davidson*, June 13, 1865, 3 Macph. 938; *Stothart* v. *Johnston's Trustees*, Dec. 3, 1822, 2 Mor. 549; *Warburton* v. *Hamilton*, May 30, 1826, 4 S. 639; *Graham* v. *M'Arthur*, Nov. 28, 1826, 5 Shaw 46.

The Court refused the application, on the ground that the two actions being about the same subject-matter, and between the same parties, might have been conjoined, and that if they had there could have been no doubt, on the authorities, that the second account compensated the first.

Counsel for Clift—J. C. Smith. Agent—W. N. Masterton.

Counsel for Portobello Pier Company—A. J. Young. Agent—Thomas Lawson, S.S.C.

HIGH COURT OF JUSTICIARY.

Friday, March 16.

LOWSON *v.* GORDON.

Process—Suspension—Competency.

Bill of suspension of a statutory notice given by Police Commissioners to execute certain works, with certification that in the event of non-compliance the Commissioners would proceed by way of complaint for fine in Police Court—*held* to be incompetent.

This was a bill of suspension for John Lowson junior, manufacturer, Forfar, in the following circumstances :—

A notice had been served on him as proprietor of certain heritable subjects in the burgh of Forfar by the Superintendent of Police for the burgh, acting under the authority of the Police Commissioners for the burgh, requiring him, in terms of the "Forfarshire Roads Act 1874," sec. 22, and of the Act 13 and 14 Vict. cap. 33, (Police and Improvement (Scotland) Act, 1851) and particularly sec. 212 thereof, to cause the Prison Road fronting the complainer's property, within 14 days from the date of service, to be provided with a footway well and sufficiently paved in the manner minutely specified in the notice, with certification that if the complainer should refuse, neglect, or delay to carry out the notice, the Commissioners would proceed against the complainer as authorised by the said Acts. The complainer set forth that hisd roperty consisted to the extent of two-thirds of vacant ground, and was thus, in terms of the Forfarshire Roads Act, not in the situation contemplated in the notice; that the pecuniary liability entailed on him by the said notice amounted to at least £700 ; that the notice given was harsh and oppressive, there being a sufficient footway already existing on each side of Prison Road; and that in particular the Commissioners had no power to order the construction of curb-stones and channel-stones. He further averred that on the expiry of the term limited by the notice he would be tried as for an ordinary police offence in the Police Court of the burgh of Forfar, and that the police magistrate might grant warrant to imprison him in default of payment of the fine to be imposed for non-compliance with the notice. He accordingly prayed the Court in the meantime to interdict and prohibit the Commissioners from carrying out any proceedings under the notice, and on advising the bill, after service, to suspend the notice and its warrants and all following thereon, *simpliciter*.

Argued for the complainer—This is a criminal matter of which the necessary result will be imprisonment, as the complainer cannot pay these large sums. The legal process has begun by the statutory notice; there will be no trial of fact and law before the magistrate; the real judgment is the resolution of the Commissioners to proceed. [Lord Young—Hume says (vol. ii., p. 513)—"The remedy of suspension applies after conclusion of a trial in the Inferior Court to prevent execution of the sentence." I know of no case in which the Court has interdicted criminal proceedings unless it be the case of *Wm. Hare*, when the Court suspended a warrant of commitment by the Sheriff in respect that William Hare could not be criminally tried for the crime charged in the warrant of commitment. (See sep. rep. of Burke's Trial, Append. p. 142.] In *Hill* v. *Galbraith*, May 28, 1874, 3 Couper 1, the Court did not object to the competency of a suspension of a similar notice. It is a mere question of what court of review. The Summary Procedure Act, sec. 28, makes imprisonment the test of criminality for the purpose of jurisdiction. A suspension of a threatened charge is competent in the Bill Chamber. A similar remedy is competent in criminal matters.

The respondents were not called on.

At advising—

Lord Justice-Clerk—I do not give any opinion on the question whether if the procedure had been taken before the police magistrate and a fine imposed, this matter might not competently have been brought to this Court. There may also be cases in which we might find ourselves entitled and bound to interfere with further proceedings in an Inferior Court. I quite agree with the observations which have been made on the meaning of sec. 28 of the Summary Procedure Act, but the objection to this suspension is that it is entirely premature, and that there is nothing to suspend. Were we to entertain this suspension we should practically be making this Court a court of first instance. We have no means of judging what the police magistrate will do, or whether the Police Commissioners will ever proceed in terms of the notice.

Lord Young—I concur. The suspender says that he has been required by notice to construct works costing £700 within a fortnight, and I assume the question to be one of serious pecuniary liability on the part of the suspender. The Commissioners have no doubt a power to present a complaint in terms of the statute, but it does not appear whether or not they will exercise that power. I should have thought that if the suspender has a serious question of liability to try he might try it better on a record made up for the purpose in an action of declarator or in an action by the Commissioners for payment of the sums they allege to be due. On a police complaint the question which the suspender indicates could hardly be tried to advantage. When a sentence imposing a fine has been pronounced, it may be suspended, but suspension is a mode of reviewing decrees, not of interdicting proceedings.

Lord Craighill concurred.

Bill of Suspension dismissed.

Counsel for Suspender—Fraser—M'Kechnie. Agent—Robert Finlay, S.S.C.

Counsel for Respondent—Mackintosh. Agent—T. J. Gordon, W.S.