Counsel for Appellants—C. K. Mackenzie—Christie. Agent—Robert Reid, Solicitor.

Counsel for Respondent—Craigie—A. M. Anderson. Agents—Miller & Murray, S.S.C.

Thursday, January 25.

SECOND DIVISION.

[Lord Kyllachy, Ordinary.

SHEPHERD *v.* MENZIES.

Trespass—Interdict—Police Constable—Entering Lands to Investigate Crime—Cruelty to Animals (Scotland) Act (13 *and* 14 *Vict. cap.* 92), *sec.* 6.

By section 6 of the Cruelty to Animals (Scotland) Act 1850 it is enacted—"When and so often as any of the offences against the provisions of this Act shall be committed, it shall be lawful for any constable, upon his own view thereof, or on the complaint and information of any other person who shall declare his name and place of abode to such constable, to seize and secure by the authority of this Act any offender, and forthwith, and without any other authority or warrant, to convey such offender before a magistrate, to be dealt with for such offence according to law."

A farmer presented a note of suspension and interdict against the chairman, directors, and secretary of the Scottish Society for the Prevention of Cruelty to Animals, and against one of their inspectors, to have the respondents and others acting on their instructions interdicted from trespassing on his farms.

The admitted facts showed that the reason of the raising of the action was that the Society's inspector had gone to the farm accompanied by a police constable, and they had examined the horses used on the farm in consequence of information received of an alleged offence under the above statute, with the result that one of the complainer's ploughmen was tried for cruelty to animals and convicted.

Held that the visit in question was authorised by the Act, and interdict *refused.*

Thomson Chiene Shepherd, tenant of the farms of Gleghornie and Blackdykes, North Berwick, presented a note of suspension and interdict against Fletcher Norton Menzies, chairman, William Traquair and others, directors, Archibald Langwill, secretary of the Scottish Society for Prevention of Cruelty to Animals, and David Proudfoot, inspector, in the employment of the Society. The complainer asked the Court to interdict the defenders in their official capacity and as individuals, and all others acting by their authority or on their instructions, from entering or trespassing on his said farms.

The complainer averred that his farms extended to 729 acres, and that he employed twenty to thirty horses at a time. "(Stat. 2) In the spring of 1896 two officers of the Scottish Society for the Prevention of Cruelty to Animals, acting on the instructions of the respondents, or of one or more of them, illegally and unwarrantably entered upon the complainer's said farms and examined every horse then on the complainer's farms, some twenty-six in number. The horses were then in the stable, it being the dinner hour. The matter was reported to the complainer, but he allowed it to pass for the time. (Stat. 3) On the 31st of March last 1898, the respondent Proudfoot, acting on the instructions of the other respondents, or of one or more of them, or on his own initiative, came to the complainer's said farms accompanied by a police constable. They entered every field on the farms in which horses were working, and insisted on stopping the horses and examining each one, as had been done on the previous occasion, and this without any warrant or authority whatever. In reference to the statements in the answer, it is explained that the charge made against the complainer's said servant was one of cruelty to one horse, in respect that he drove it in yoke with another horse while it was suffering from a raw wound in the shoulder under the collar. The only evidence adduced in support of the charge was that of the respondent Proudfoot and a police constable. A veterinary surgeon was examined for the defence, and he deponed that he had examined a horse which he understood was the horse in question, and found that the wound referred to was merely a small abrasion, which caused no pain to the horse in working. In respect that no evidence was adduced to identify the horse examined by the veterinary surgeon with that referred to in the complaint, the magistrates convicted the servant and fined him five shillings with ten shillings expenses. As matter of fact it was the same horse, and had evidence of this been forthcoming the magistrates would have found that no cruelty had been committed. The complainer had not this evidence ready for the trial, because, having previously called upon the Procurator-Fiscal in reference to the matter he understood from him that the charge was to be departed from. An excerpt from the local newspaper containing a report of the case is produced herewith and referred to. Explained further that in their answers to the note in this case lodged by the respondents in the Bill Chamber they stated that they maintained their right to authorise their inspectors, who are constables, to enter upon the complainer's lands for the purpose of preventing cruelty to animals if they have good reason to suspect that such cruelty is being committed. (Stat. 4) The complainer thereupon wrote to the respondent's Society complaining of said illegal actings, and requested from the Society an assurance that they would not be repeated in future. The Society and the respondents refuse to give such an assurance, and intimate that they intend to continue the same illegal conduct in the future. This application has accordingly been rendered necessary."

In regard to the visit on 31st March 1898 the respondents in their answers "Admitted that upon the occasion in question the respondent Proudfoot, who is one of the Society's inspectors, and also a justice of peace constable, along with a police constable for the county of Haddington, examined the horses which were working on the complainer's farms. The County Police authorities had reported to the Society that breaches of the Prevention of Cruelty to Animals Act 1850 (13 and 14 Vict. cap. 92) were being committed upon the said farms. On the occasion in question both Proudfoot and the local constable had reason to suspect that a breach of the statute was being committed upon the complainer's farms. They then ascertained that four of the horses were being worked while suffering from sores, and were being cruelly treated in being compelled to work under such circumstances. As the result of the information thus obtained the complainer's ploughman William Whigham was tried for cruelty to animals at the Justice of Peace Court, Haddington, on 10th May 1898, and after pleading not guilty was convicted on evidence and fined. The respondent Proudfoot was legally justified in entering upon the complainer's lands on the occasion in question as he did. Since then he has not entered upon the complainer's farms for any purpose, and none of the other respondents have ever illegally entered or trespassed upon the said farms at any time, nor do they intend to do so."

On 20th July 1899 the Lord Ordinary on the Bills (KYLLACHY) refused the prayer of the note and decerned.

Opinion.—"This is an action of interdict brought by a farmer in Haddingtonshire against the directors of the Society for Prevention of Cruelty to Animals, and David Proudfoot, who is one of their officers. The question in substance is whether the respondent Proudfoot illegally entered upon the complainer's farm, in company with a County Police officer, on 31st March last, and made an examination, without the complainer's leave, of certain of his horses. That, I think, is the question, and the only question, at issue, because as I read the record no complaint is made of the earlier visit referred to in statement 2; and with respect to the responsibility of the directors of the Society for Proudfoot's action, I am prepared for the present purpose to assume that they are so responsible. Indeed, while they do not expressly admit that Proudfoot acted with their authority, they do not allege the contrary, and concur in justifying his action.

"Further, I do not require to decide whether Proudfoot could have lawfully paid the visit, and made the examination except in conjunction with an officer of the County Police. He (Proudfoot) is said to be a justice of peace constable for Midlothian, but that is not, formally at least, admitted. I must therefore take the case as depending on the authority of the police officer whom Proudfoot called in, and who, there is no dispute, associated himself with the whole proceeding. If the police officer was entitled to do what was done, it does not seem to me that it makes any difference that Proudfoot accompanied him.

"It must also, I think, be taken as sufficiently appearing on the record that the police constable, or Proudfoot and the police constable, had reasonable grounds for believing that at the time in question cruelty to animals was being practised on the complainer's farm. The respondents allege that their officials had information from the County Police that such was the fact; and it is admitted by the complainer that one of his servants was, as the result of the visit in question, tried for and convicted of cruelty to animals. No doubt the complainer alleges that the conviction proceeded on a mistake. But the conviction stands, and I cannot assume that the charge was unfounded. The question therefore is whether a police officer having reasonable grounds for believing that cruelty to animals is being practised on a farm within his district is not entitled, with or without a warrant, to enter on the farm and take such steps as were taken here.

"It has, of course, to be assumed that cruelty to animals is an offence, that is to say, a crime. It is not at common law, but it is made so by the statute 13 and 14 Vict. cap. 92; and accordingly I should at least greatly doubt whether, even apart from the procedure clauses of that statute, it could be held to be illegal for a police officer to do, and to do without a warrant, all that is here alleged. I rather imagine that at common law a police officer who has information that an offence is being committed, may, if necessary, with or without a warrant, enter upon private property for the purpose of ascertaining the fact,—of stopping the commission of the offence, and if necessary of apprehending the wrongdoer.

"But section 6 of the statute in question appears to me to place the matter beyond doubt. That section provides that when and so often as any of the offences against the provisions of this Act shall be committed, 'it shall be lawful for any constable, upon his own view thereof, or on the complaint and information of any other person who shall declare his name and place of abode to such constable, to seize and secure by the authority of this Act any offender, and forthwith, and without any other authority or warrant, to convey such offender before a magistrate, to be dealt with for such offence according to law.'

"And by the interpretation clause of the Act 'the word "constable" shall be taken to mean any sheriff-officer, police officer, special constable, justice of the peace constable, or any person belonging to any constabulary force in any part of the United Kingdom.'

"It cannot, I apprehend, be doubted that under this enactment, and in the circumstances of the present case, the police officer here was entitled to enter upon the complainer's farm for the purpose of finding and apprehending the person who was responsible for the alleged cruelty. And if the entry was lawful for that purpose, it did

not, in my opinion, become unlawful because the officer before apprehending took means to test by his own view the correctness of his information, or because finding that the offender was a law-abiding person he abstained from apprehending and reported the matter with a view to citation and trial.

"I am therefore of opinion that upon the admitted facts the note of supension and interdict should be refused."

The complainer reclaimed, and argued—He was entitled to the interdict asked. Even if the respondent Proudfoot was a Midlothian justice of the peace constable in Haddington, he was outside the bounds of his jurisdiction. Then as regards the police constable, he had no reasonable information which entitled him to make an examination of the pursuer's horses. There had been no specific charge which would have entitled him to act as he did. There had been a tentative search and nothing more. A general allegation was not sufficient to entitle a constable to go upon a farm and examine all the horses against the wish of the tenant.

Counsel for the respondents were not called upon.

LORD JUSTICE-CLERK — In the circumstances of this case I see no ground for altering the judgment of the Lord Ordinary. In consequence of a report that a breach of the Prevention of Cruelty to Animals Act was being committed on this farm, the police constable went there and found a horse being worked while suffering from a sore. As the result of this a servant of the complainer was charged under the Act and convicted. Now, because the police constable was accompanied by an official of the Society, we are asked to interdict the directors of the Society and its officers from going to the farm again. I do not think that any such interdict should be granted. Whether the Society's inspector took the police constable, or the police constable took the inspector, does not appear to be material. The police constable was entitled to go there if he thought that a breach of the Act was being committed, and the presence with him of an official of the Society does not appear to me in the circumstances to be illegal. If not illegal, it cannot be the basis of an interdict.

LORD TRAYNER—I agree. I think the complainer has not presented a relevant case. Interdict is asked against the chairman, the directors, and the secretary of this Society. They have never trespassed, and do not appear to have any desire to trespass on the complainer's farms. What is said to constitute the trespass is a visit paid to these farms by a police constable accompanied by an official of the Society. I think with your Lordship that it does not in the least matter whether the policeman took the official or the official took the policeman. The policeman and the official were on the farm, not for the purpose of trespassing, but they went there on information received that there was an offence against the statute being committed. That was not illegal. It was not trespass, for the statute authorises it. It turned out that they were well informed because a conviction followed. But even if no conviction had followed, the policeman and his companion were quite entitled to go together into that field if they had reasonable ground for believing that the statute against cruelty to animals was being violated.

LORD MONCREIFF—I am of the same opinion. I think that the judgment of the Lord Ordinary is right. The case cannot be considered apart from the special facts. The entering on the farm was confined to the one occasion. On that occasion an official of the Society had reason to believe that a horse was being cruelly used. Accompanied by a police constable he entered on the farm for the purpose of investigation, and their examination proved that the cruel treatment was a fact, and a conviction followed. That is the sole ground for this action for interdict, and I do not think it is a good one. I am of opinion that the action complained of was authorised by the statute. I shall only add that I do not think that in deciding as we do we will be giving any encouragement to inquisitorial action on the part of the Society or its officials, or any invasion of private rights.

LORD YOUNG was absent.

The Court adhered.

Counsel for the Complainer—R. V. Campbell—Fleming. Agents—J. & J. Milligan, W.S.

Counsel for the Respondents—Solicitor-General (Dickson, Q.C.)—Cook. Agents—Traquair, Dickson, & M'Laren, W.S.

Thursday, January 18.

SECOND DIVISION.

[Lord Low, Ordinary.

CATHCART *v.* CATHCART.

(*Ante*, March 15, 1899, vol. xxxvi., p. 597, and 1 F. 781.)

Husband and Wife—Divorce—Desertion—Act 1573, *cap.* 55.

Evidence upon which *held* (1) that a husband had used all reasonable means to induce his wife to return to him; (2) that certain forcible measures taken by him in the *bona fide* belief reasonably entertained that his wife was insane did not justify her in continuing her desertion after she had been declared sane by the verdict of a jury; and that consequently (3) the wife having continued in desertion for more than four years after the date of that verdict, the husband was entitled to decree of divorce.