

bound to account to the pursuer for the intromissions had by him and William Speedie, or either of them, with the funds and estate of the joint-venture constituted by minute of agreement dated 13th October 1877 between the defender and the said William Speedie, and another minute of agreement of the same date executed between the defender and the said William Speedie on the one part, and Mr John Cockburn, wine merchant in Edinburgh, on the other part: Find that the defender is not bound to bring into said account any profits made under or in consequence of the rights acquired by him from the Tarapaca Water Company, Limited, in 1878 and thereafter in 1881, or to render any account to the pursuer of the intromissions had by him under and in virtue of his contracts with the said Tarapaca Water Company; And remit to the Lord Ordinary to proceed as shall be just."

Counsel for the Pursuer and Reclaimer—Sol.-Gen. Asher, Q.C.—Wilson. Agents—J. & A. Hastie, Solicitors.

Counsel for the Defender and Respondent—Graham Murray, Q.C.—N. J. D. Kennedy. Agent—Alexander Campbell, S.S.C.

Tuesday, November 29, 1892.

## OUTER HOUSE.

[Lord Low.

### MARQUESS OF AILSA, PETITIONER.

*Entail—Improvement Expenditure—Entail Amendment Act 1875 (38 and 39 Vict. c. 61), sec. 3.*

*Held* that repairs on the roofs of farm buildings which made the buildings practically as good as new, the walls being in good order and capable of lasting out new roofs, were improvements in the sense of the Entail Amendment Act 1875.

*Entail—Improvement Expenditure—Shop or Store—Rutherford Act (11 and 12 Vict. 36), sec. 26—Entail Amendment Act 1875 (38 and 39 Vict. c. 61), sec. 3.*

*Held* that the erection of a store or shop was a permanent improvement in the sense of section 26 of the Rutherford Act, but was not an improvement in the sense of the Entail Amendment Act 1875.

This was a petition at the instance of the Marquess of Ailsa, heir of entail in possession of the entailed estates of Cassilis and Culzean, under the Entail Acts, and particularly under the Acts 11 and 12 Vict. c. 36, and 38 and 39 Vict. c. 61. The petitioner craved the Court to find that a sum of £6844, 0s. 3d., expended by him on the entailed estates, had been expended "on account of improvements of the nature

contemplated by the said Act 38 and 39 Vict. c. 61," and to authorise him to uplift a sum of £1758, 4s. 4d. of consigned money, and apply the same *pro tanto* in repayment of said sum of £6844, 0s. 3d., and to charge the balance of said sum upon the entailed estates.

On 3rd August 1892 the Lord Ordinary on the Bills appointed Mr A. O. M. Mackenzie, advocate, to be curator *ad litem* to the three next heirs of entail, two of them being in minority and one in pupillarity, and further remitted to Mr George Dunlop, W.S., and Mr James Johnstone, Ayr, to report.

The curator *ad litem* thereafter lodged a minute objecting to certain of the items included in the account of expenditure lodged by the petitioner, viz. (1) sums amounting to £348 expended in stripping and re-slating the roofs of various farm buildings on the estates, and (2) a sum of £258 expended in erecting a new bake-house, stable, cartshed, and wash-house in connection with a store or shop at the village of Maidens. He submitted that the operation of stripping and re-slating roofs was a repair necessary for the upkeep of existing buildings, and was not an improvement in the sense of the Entail Acts, and that a store or buildings in connection with the same were not improvements in the sense of the Entail Act of 1875.

Mr Dunlop and Mr Johnstone reported that in their opinion the items objected to by the curator were improvements in the sense of the Entail Acts. With regard to the buildings erected in connection with the store at the village of Maidens, Mr Dunlop explained that the store was of great benefit to the inhabitants of the village, as otherwise they would have to go some distance for their supplies; that the whole of the village was upon the petitioner's estate, and that accordingly there was no risk of competition. He expressed the view that the buildings were beneficial to the estate, and that if not an improvement in the sense of the Act of 1875 they were a permanent improvement in the sense of the Rutherford Act.

With reference to the first head of his objections the curator explained at the bar that he had ascertained from the reporters that the nature of the operations described as "stripping and re-slating roofs" was as follows—The roofs having fallen into considerable disrepair the old slates had been stripped off, the sarking had been renewed where necessary, in a few instances new joists had been put in, and the roofs had then been re-slated, the old slates being used if in good order, and new slates where required.

Curator's Authorities—*Fraser v. Lord Lovat*, December 16, 1841, 4 D. 266; *Hope Johnstone, Petitioner*, November 21, 1856, 19 D. 68.

Petitioner's Authority—*Carnegie, Petitioner*, January 19, 1856.

LORD LOW—I have been in communication with the reporters, and am satisfied that the improvements to which the curator

*ad litem* very properly objected should be allowed. It appears that the buildings which have been repaired are otherwise in excellent condition, that the walls are good walls and capable of seeing another roof through, and that the putting on of the new roofs has practically made the buildings as good as new, and that these are proper improvements under the 1875 Act. In regard to the store, I am very clearly of opinion that that cannot be allowed under the 1875 Act; but the reporters, who have gone very carefully into the matter, have no doubt that it is an improvement upon the entailed estate; that it has increased the value of the entailed estate; and that provided the petition is amended so as to bring in the Rutherford Act I may allow that also. The petition will therefore be amended, and on that being done I shall allow the amendment and approve of the reports.

The suggested amendment having been made, the Court approved of Mr Dunlop's and Mr Johnstone's reports.

Counsel for the Petitioner — Dykes.  
Agents—G. A. & F. Hunter & Co., W.S.

## HIGH COURT OF JUSTICIARY.

Monday, December 12.

(Before Lord M'Laren, Lord Wellwood,  
and Lord Low.)

ARMSTRONG AND STEWART *v.*  
STEVENSON.

*Justiciary Cases — Summary Prosecution  
—Amendment — Citation — Informality  
in Service Copy.*

In a prosecution under the Summary Jurisdiction (Scotland) Acts 1864 and 1881, held competent to amend the complaint by adding to the heading "and the Criminal Procedure (Scotland) Act 1887."

*Opinion* that the amendment was unnecessary.

*Held* that the omission from the service-copy of the copy of the signature of the prosecutor was not a ground for setting aside the conviction, the accused having answered the citation and having suffered no prejudice.

This was an appeal upon case stated at the instance of George Armstrong, fishmonger and game dealer, and David Stewart, labourer, both residing in Hawick, against a conviction upon a complaint at the instance of James Charles Stevenson, Procurator-Fiscal of Roxburghshire, under the Summary Jurisdiction (Scotland) Acts 1864 and 1881, which set forth "that the said George Armstrong and David Stewart had contravened the 2nd section of the Poaching Prevention (Scotland) Act 1862, in so far as upon the 21st day of October 1892, or

about that time, the said George Armstrong and David Stewart were found upon or near the public road leading between Langholm and Hawick, and at a part thereof near Branxholm Bridge, in the parish of Hawick and shire of Roxburgh, the same being a highway or public place, having in their possession seven hares, a rabbit, three game-bags, and nine game-nets, which hares and rabbit had been unlawfully obtained by them from land where they had been unlawfully in search or pursuit of game, or were accessory thereto, the said land being situated in the county of Roxburgh, by which offence the said George Armstrong and David Stewart incurred a penalty not exceeding £5, and forfeited the said hares, rabbit, game-bags, and game-nets, and failing payment at the time appointed by the said Sheriff, to be imprisoned in the prison of Edinburgh, with or without hard labour as to the said Sheriff should seem meet, for any term not exceeding two calendar months, the imprisonment to cease on payment of the penalty."

The case set forth the following facts— "The agent for the appellants at the trial objected to the relevancy of the complaint, inasmuch as the copies of the complaint served upon the appellants bore to be raised 'under the Summary Procedure Act 1864;' (2) that the principal complaint bore to be brought under the Summary Jurisdiction (Scotland) Acts 1864 and 1881; (3) that the copies of the complaint so served on the appellants did not bear to be signed by the procurator-fiscal or anyone on his behalf. The Procurator-Fiscal, in answer, stated that through an oversight the complaints had been written on old forms, and under the 5th section of the Summary Procedure (Scotland) Act (27 and 28 Vict. cap. 53) asked permission to make certain alterations on the principal copy of the complaint by inserting the words 'Criminal Procedure (Scotland) Act 1887,' and adding the signature of the Procurator-Fiscal-Depute to the service copies. Having heard the objections and answers, and satisfied myself that the complaint was otherwise worded much in the usual form, and could be amended under the powers conferred by the Act above referred to, I allowed the proof to proceed, and heard the Procurator-Fiscal and agent for the appellants (who contended that the evidence was not such as to warrant a conviction). Thinking the case was of some doubt, and as there were several other cases to be called, I continued it for judgment for short time, and having finished the rest of the criminal work gave the sentence appealed against. The appellants and their agent were both present when the sentence was pronounced. As a matter of fact the alterations were not actually made on the complaint till just before sentence was pronounced. The question for the decision of the High Court is, whether I was warranted in allowing the Procurator-Fiscal as the complainer to add the words 'and Criminal Procedure (Scotland) Act 1887' to the principal complaint, and (second) whether the omission of the words 'and 1881 and Criminal Pro-