

[16th May 1834.]

JAMES STUART, Superintendent of Police, THOMAS No. 17.  
CRIGHTON, some time one of the Judges of Police,  
and JOHN THOMSON, clerk to the Police Commis-  
sioners, Edinburgh, Appellants. — *Attorney General*  
(*Campbell*)—*Lord Advocate (Jeffrey)*.

WILLIAM KELLY, Tailor, Edinburgh, Respondent.—  
*Murray—Milne.*

*Reparation.*—By statute 3 Geo. IV. c. 78. s. 134. (Edinburgh Police Act) it is provided, that “no action shall be  
“commenced against the Judges, &c. for any thing done  
“in the execution of this act, in any case, unless wilful  
“corruption or oppression, or culpable negligence, out  
“of which real injury has arisen, be charged.” In a summons of damages against a Judge of the Police Court, and others, on account of proceedings in the Police Court, issuing in the imprisonment of the pursuer, he averred that they were incompetent, malicious, wilfully oppressive, and unwarrantable; and in the condescence he stated facts which amounted to a charge of wilful corruption and oppression, out of which real injury arose: Held (affirming the judgment of the Court of Session), that the summons and condescence were relevant, although the precise words of the statute were not used.

KELLY raised an action before the Court of Session 1ST DIVISION.  
against the appellants, setting forth in the summons, Lord Fullerton.  
“That on or about the 14th day of November last a  
“petition and complaint to the acting judge in the

No. 17.  
 —  
 16th May  
 1834.  
 —  
 STUART  
 and others  
 v.  
 KELLY.

“ police court of Edinburgh was presented at the in-  
 “ stance of James Stuart, superintendent of police and  
 “ procurator fiscal of court, for the public interest,  
 “ against Michael Cannan, broker, St. Mary’s Wynd,  
 “ Edinburgh, and Mary Cannan his wife, charging  
 “ them with assault and breach of the peace, on which  
 “ a warrant was granted for their apprehension: That  
 “ on the 15th day of said month of November, being a  
 “ Sunday, the pursuer subscribed a bail bond to the  
 “ extent of 5*l.* for the due appearance of the said  
 “ Michael Cannan to answer the diets of court for  
 “ trying the complaint, and thereupon the said Michael  
 “ Cannan was liberated: That on the 16th day of that  
 “ month, being the day fixed for the trial, the said  
 “ Michael Cannan was prevented by indisposition from  
 “ attending; and, in consequence of this fact being stated,  
 “ the diet of court was adjourned till Friday the 20th  
 “ of same month, as appears from the police records:  
 “ That upon that day there appears the following minute  
 “ of court:—‘ Edinburgh, 20th November 1829.—The  
 “ ‘ complaint having been read over, the defender  
 “ ‘ Michael Cannan having failed to appear, grants  
 “ ‘ warrant to apprehend and bring him into court to  
 “ ‘ be examined; continue the diet against the other  
 “ ‘ defender. (Signed) *C. Muirhead.*’ That during  
 “ the afternoon of the same day the pursuer was first  
 “ apprised of the non-attendance of Cannan by the  
 “ following petition and complaint, which was then  
 “ served upon him:—‘ Unto the honourable the judge  
 “ ‘ acting in the police court for the city of Edinburgh,  
 “ ‘ and liberties of the same, and adjoining territory  
 “ ‘ over which the police act extends, humbly complains  
 “ ‘ James Stuart, superintendent of police and pro-

“ ‘ curator fiscal of court, for the public interest, that  
 “ ‘ William Kelly, tailor, south back of Canongate, by  
 “ ‘ his bail bond in the books of this court, dated the  
 “ ‘ 15th day of November 1829, bound himself as cau-  
 “ ‘ tioner for Michael Cannan, broker, St. Mary’s  
 “ ‘ Wynd, under a penalty of 5*l.* sterling, that he should  
 “ ‘ appear at all diets of court, but which party failed  
 “ ‘ to appear on the 16th day of November current, in  
 “ ‘ the prosecution at the instance of the complainer  
 “ ‘ against him. May it therefore please your honour  
 “ ‘ to grant the necessary orders for levying the said  
 “ ‘ penalty, and for imprisoning the said cautioner, in  
 “ ‘ terms of the police act, 3 Geo. IV. cap. 78. § 115.  
 “ ‘ According to justice, &c. (Signed) *Jas. Stuart,*  
 “ ‘ superintendent.’ That on this complaint the fol-  
 “ ‘ lowing deliverance was made:—‘ Edinburgh, 20th No-  
 “ ‘ vember 1829.— The judge appoints the before-  
 “ ‘ named cautioner to be cited by constables of court  
 “ ‘ to pay 5*l.* sterling, the before-mentioned penalty, to  
 “ ‘ the clerk of court, within twenty-four hours after  
 “ ‘ such service, with certification. (Signed) *C. Muir-*  
 “ ‘ *head.*’ That in order to protect himself against the  
 “ ‘ forfeiture of his bond, the pursuer, instantly on re-  
 “ ‘ ceiving this notice, attended at the police office, and  
 “ ‘ in consequence of his exertions and assistance, certain  
 “ ‘ of the police officers succeeded in apprehending and  
 “ ‘ bringing him to the police office about eight o’clock  
 “ ‘ of the same evening: That on the next day the fol-  
 “ ‘ lowing sentence was pronounced in the complaint  
 “ ‘ against Cannan and his wife:—‘ Edinburgh, 21st No-  
 “ ‘ vember 1829.— The judge finds this complaint  
 “ ‘ proved against the defenders by the witnesses before  
 “ ‘ named and designed, and therefore fines and amer-

No. 17.

---

 16th May  
 1834.
 

---

 STUART  
 and others  
 v.  
 KELLY.

No.17.  


---

16th May  
1834.  


---

STUART  
and others  
v.  
KELLY.

“ ‘ ciates the defender Michael Cannan in ten pounds  
“ ‘ sterling, and ordains him to find caution for his  
“ ‘ good behaviour for twelve months, under the penalty  
“ ‘ of 20*l.* sterling, and failing his obtempering this  
“ ‘ sentence, to be confined in the tolbooth of Edin-  
“ ‘ burgh for a period not exceeding sixty days; and  
“ ‘ adjudges Mary Cannan to be confined eight days  
“ ‘ in the tolbooth of Edinburgh, and thereafter ordains  
“ ‘ her to find caution for her good behaviour for twelve  
“ ‘ months, under the penalty of 10*l.* sterling; and  
“ ‘ failing her finding such caution, to be confined eight  
“ ‘ days longer. (Signed) *C. Muirhead.*’ That not-  
“ withstanding that the pursuer had thus implemented  
“ his bond by the presentment of the said Michael  
“ Cannan in the course of the same day to which the com-  
“ plaint against him was adjourned, and on which his  
“ conviction had followed, the proceedings against the  
“ pursuer were not abandoned; for three days after  
“ Cannan’s conviction the following minute, under the  
“ hands of John Thomson, clerk to the commissioners  
“ of police, appears on the police records: — ‘ Edin-  
“ ‘ burgh, 24th November 1829. —The clerk of court  
“ ‘ certifies that the above-named cautioner has not  
“ ‘ made payment in terms of the preceding order.  
“ ‘ (Signed) *John Thomson,* clerk.’ Upon which the  
“ following interlocutor was pronounced by Thomas  
“ Crichton, rectifier of spirits, Edinburgh, the acting  
“ judge of the police court: — ‘ Edinburgh, 24th No-  
“ ‘ vember 1829.—The judge declares the above-men-  
“ ‘ tioned penalty of 5*l.* sterling to be forfeited, and  
“ ‘ grants warrant to officers of court to charge the  
“ ‘ above-named cautioner to make payment thereof to  
“ ‘ the clerk of court within ten days after the charge,

“ ‘ under certification of poinding and imprisonment.  
 “ ‘ (Signed) *Thos. Crighton.*’ That thereafter there  
 “ appears the following minute on record, under the  
 “ hands of the said John Thomson, as clerk foresaid:—  
 “ ‘ Edinburgh, 9th December 1829.—The clerk of  
 “ ‘ court certifies that the above-named cautioner has not  
 “ ‘ made payment in terms of the preceding order.  
 “ ‘ (Signed) *John Thomson*, clerk.’ And thereupon  
 “ the following deliverance by the said Thomas Crigh-  
 “ ton, as judge foresaid, was made:— ‘ Edinburgh,  
 “ ‘ 9th December 1829.—The judge grants warrant to  
 “ ‘ officers of court to levy the penalty of 5*l.* sterling  
 “ ‘ before mentioned, and also the expense of poinding  
 “ ‘ and sale, by immediate poinding and sale of the  
 “ ‘ goods and effects of the said cautioner. (Signed)  
 “ ‘ *Thos. Crighton.*’ That the officer employed to exe-  
 “ cute this poinding having returned an execution that  
 “ there was not sufficiency of goods whereon to levy  
 “ the penalty and expenses of poinding and sale, the  
 “ following sentence was then pronounced:— ‘ Edin-  
 “ ‘ burgh, 11th December 1829.—The judge grants  
 “ ‘ warrant to constables of court to incarcerate the  
 “ ‘ before named and designed William Kelly, cau-  
 “ ‘ tioner, in the tolbooth of Edinburgh; the keepers  
 “ ‘ whereof are hereby ordered to receive and detain  
 “ ‘ him for fifteen days from this date, if he is imme-  
 “ ‘ diately apprehended, or if otherwise, from the date  
 “ ‘ of his incarceration. (Signed) *Thos. Crighton.*’ That  
 “ by the act 3 Geo. IV. cap. 78. sec. 116. it is provided,  
 “ ‘ that a record shall be preserved of the charge, and of  
 “ ‘ the judgment’ pronounced by the police magistrates,  
 “ but no such record was kept or preserved in the pur-  
 “ suer’s case: That on the foresaid warrant the pursuer

No.17.

---

 16th May  
 1834.

---

 STUART  
 and others  
 v.  
 KELLY.

No. 17.

---

 16th May  
 1834.
 

---

 STUART  
 and others  
 v.  
 KELLY.

“ was taken by one of the police officers to the Edinburgh  
 “ lock-up house, and confined there during the whole  
 “ period of his sentence, along with other persons who  
 “ either had been tried and found guilty for criminal  
 “ offences, or who had been committed for trial: That  
 “ the cell where the pursuer was confined was a small,  
 “ damp, and unwholesome place, not exceeding six  
 “ feet by eight, with only one bed, and no other article  
 “ of furniture: That some time after being confined  
 “ here the pursuer’s health, from the close and  
 “ polluted air, became so much impaired that it was  
 “ found proper to remove him to one of larger dimen-  
 “ sions: his health, notwithstanding, still was affected  
 “ by his severe confinement, and he has not yet fully  
 “ recovered from the effects of it: That before his con-  
 “ finement, the pursuer was enabled, by means of his  
 “ earnings in his trade, to support his wife and family,  
 “ but since then, he has been thrown entirely out of  
 “ employment, and has no means of support: That  
 “ besides the injury occasioned to the pursuer’s health  
 “ by his said imprisonment, and his being left without  
 “ employment, he has suffered otherwise greatly in his  
 “ character and feelings, through the proceedings taken  
 “ against him: That by the act 56 Geo. III. cap. 42.  
 “ sect. 4. entitled ‘ An act to alter and amend two acts  
 “ ‘ of the 53d and 54th years of his present Majesty, for  
 “ ‘ erecting and maintaining a new gaol, and other  
 “ ‘ buildings for the county and city of Edinburgh;  
 “ ‘ and to alter and amend two acts of the 43d and 49th  
 “ ‘ years of his present Majesty, in regard to the statute  
 “ ‘ labour of the middle district of said county,’  
 “ which explains and defines the description of prisoners  
 “ to be confined in the lock-up house of Edinburgh, it

“ is enacted, ‘ That the said small gaol, or place of  
 “ ‘ temporary confinement (meaning the lock-up  
 “ ‘ house), shall not be held or considered as a prison  
 “ ‘ for the reception or confinement of debtors ; but the  
 “ ‘ same shall be held and considered, to all intents and  
 “ ‘ purposes, as part of the felons gaol :’ That by the  
 “ present Edinburgh Police Act, of the 3d year of our  
 “ reign, cap. 78. sect. 115. before mentioned, which  
 “ prescribes the forms to be observed in proceeding  
 “ against a cautioner in a forfeited bail-bond, it is  
 “ enacted, in the event of the non-payment of the sums  
 “ thereby due, and there not being sufficient effects of  
 “ the cautioner to discharge these sums and expenses,  
 “ that ‘ the cautioner or cautioners may be imprisoned,  
 “ ‘ by warrant of any of the said sheriffs depute or  
 “ ‘ substitute, or bailies or old bailies respectively, in the  
 “ ‘ tolbooth of Edinburgh, for a space not exceeding  
 “ ‘ thirty days :’ That the whole of the proceedings  
 “ against the pursuer, and more especially those  
 “ subsequent to the date of the presentment of the said  
 “ Michael Cannan, have been grossly irregular,  
 “ illegal, and wilfully oppressive, dictated by malice, or  
 “ arising out of the most gross and culpable negligence,  
 “ inasmuch as, 1st, the said bond is altogether irregular  
 “ and improbativ, neither holograph of the pursuer,  
 “ nor subscribed, or bearing to be so, before witnesses,  
 “ and because it was subscribed, and bears to have  
 “ been so, on a Sunday, and is therefore altogether null  
 “ and void. 2d. Even giving effect to the bond, the  
 “ pursuer, by his instant and timeous presentment of  
 “ the said Michael Cannan, after his failure to appear  
 “ had been intimated to the pursuer, sufficiently imple-  
 “ mented the terms of his bond ; and the subsequent

No. 17.

---

 16th May  
 1834.

---

 STUART  
 and others  
 v.  
 KELLY.

No. 17.  
 16th May  
 1834.  
 —  
 STUART  
 and others  
 v.  
 KELLY.

“ proceedings against the pursuer were incompetent,  
 “ malicious, wilfully oppressive, and unwarrantable.  
 “ 3d. The forfeiture of the pursuer’s bond is said to  
 “ have been incurred by the non-attendance of Cannan  
 “ on the diet of court of 16th November, on which  
 “ occasion he was prevented by indisposition from  
 “ attending, and the diet against Cannan, in consequence,  
 “ continued by the Court till the Friday following.  
 “ The petition and complaint against the pursuer, on  
 “ which the warrant of imprisonment and other pro-  
 “ ceedings complained of proceeded, was thus altogether  
 “ irregular, unjust, and wilfully oppressive. The diet  
 “ having been continued by the Court against Cannan  
 “ on the 16th November, his non-appearance on that  
 “ day could not, without wilful and gross oppression,  
 “ have been made a pretext for forfeiting the bail found  
 “ by the pursuer. 4th. Supposing the pursuer’s bond  
 “ regularly forfeited, it could only warrant imprison-  
 “ ment as for a civil debt; and the pursuer’s impri-  
 “ sonment in a felons gaol was not only in gross violation  
 “ of the provisions of the foresaid statute, 56 Geo. III.  
 “ cap. 42., and the police statute above referred to, but  
 “ also the terms of the warrant of imprisonment itself;  
 “ and no record of the charge and judgment against  
 “ the pursuer having been preserved, as required by the  
 “ police statute, the consequent incarceration was far-  
 “ ther illegal, and wilfully oppressive and malicious:  
 “ That for these said irregular, illegal, malicious, and  
 “ wilfully oppressive proceedings, consequent imprison-  
 “ ment, and the consequent injury sustained by the  
 “ pursuer therethrough in his health, character, and  
 “ feelings, and also in his means of livelihood, the said  
 “ James Stuart, as prosecutor thereof,—the said Thomas



“ Crichton, the Judge by whose decision the pursuer’s  
 “ bond was declared forfeited, and the warrant for his  
 “ imprisonment granted,—as also the commissioners of  
 “ police of Edinburgh, as responsible for the regularity  
 “ of the proceedings of their officers,—and the Lord  
 “ Provost, Magistrates, and Town Council of the city of  
 “ Edinburgh, for themselves, and on behalf of and as  
 “ representing the whole body and community of the  
 “ city of Edinburgh, under whose control the gaols of  
 “ Edinburgh are placed, as responsible for the conduct  
 “ of their officer, in receiving and detaining the pur-  
 “ suer in the said felons gaol or lock-up house of Edin-  
 “ burgh, on the foresaid warrant, or pretended warrant,—  
 “ are all, conjunctly and severally, or severally, liable in  
 “ damages, and in solatium to the pursuer.” He there-  
 fore concluded that the defenders (appellants) “ should  
 “ be decerned and ordained, by decree of the Lords of  
 “ our Council and Session, conjunctly and severally, or  
 “ severally, to make payment to the pursuer of the sum  
 “ of 500*l.* sterling, in name of damages, and as a sola-  
 ‘ tium to the pursuer, for the injury sustained by him  
 “ as aforesaid, through the foresaid irregular, illegal,  
 “ wilfully oppressive, and malicious proceedings, and  
 “ consequent imprisonment of the pursuer in manner  
 “ before specified.”

Defences were lodged by the appellants ; but although they objected that the summons was defective, in so far as it did not charge what it complains of as having been done without probable cause, yet no objection was made to its relevancy in other respects, and this objection was of consent repelled.

In his revised condescendence the respondent repeated the detail of the proceedings alleged in the summons ; but he did not in words state that they were, as alleged

No. 17.

---

 16th May  
 1834.

---

 STUART  
 and others  
 v.  
 KELLY

No. 17.  
 —  
 16th May  
 1834.  
 —  
 STUART  
 and others  
 v.  
 KELLY.

in the summons, “irregular, illegal, wilfully oppressive,  
 “and malicious,” and productive of “consequent  
 “injury.” He, however, alleged, in the 17th article,  
 “that in consequence of the confinement the pursuer  
 “was seized with catarrh, and his health was perma-  
 “nently impaired; and he was thereupon admitted as  
 “a patient in the New Town Dispensary.” And he  
 averred, in the 18th, “that before the pursuer’s confine-  
 “ment, as above stated, he was enabled, by means of  
 “his earnings in trade, to support his wife and family  
 “of three children; but in consequence of his con-  
 “finement, and of the said injury to his health, he lost  
 “his employment, and was for many months deprived  
 “of all means of support; and, in addition to his loss of  
 “health, he has also suffered in his character and  
 “feelings from the above cruel and injurious treat-  
 “ment.”

In his pleas in law he pleaded that “the whole pro-  
 “ceedings against the pursuer were grossly irregular,  
 “incompetent, illegal, and oppressive.”

The appellants, in their pleas in law, objected that  
 “the action is excluded by the 134th section of the  
 “act 3 Geo. IV. cap. 78.”\*

By this section it is provided “that no action shall  
 “be commenced against the judges, commissioners,  
 “superintendent, or any other person or persons, for  
 “any thing done in the execution of this act, in any  
 “case, unless wilful corruption or oppression, or  
 “culpable negligence out of which real injury has  
 “arisen, be charged; nor in any event shall such  
 “action be competent after three calendar months  
 “from the time the fact is committed; and the defen-

---

\* The Edinburgh Police Act.

“ ders in such action or process may produce this  
 “ act, and plead that the said things were done by  
 “ authority and in virtue thereof; and if these shall  
 “ appear so to be done, then and in that case the said  
 “ defenders shall be assoilzied from such action or  
 “ process, and the pursuers in such action shall be  
 “ found liable to pay the said defenders the whole  
 “ expenses of process incurred by the said defenders.”

The Lord Ordinary, on 20th December 1832, pronounced this interlocutor:—“ Finds, that the re-revised  
 “ condescence for the pursuer, on which the record  
 “ on his part is now closed, does not contain any of  
 “ those special allegations against the defenders, of  
 “ which one or other is, by the 134th section of the  
 “ 3d of Geo. IV. cap. 78., declared to be indispensable to  
 “ the support of any action against judges, commis-  
 “ sioners, superintendents, or any other person or  
 “ persons, for any thing done in the execution  
 “ of the said act; and therefore dismisses the action,  
 “ assoilzies the defenders, and decerns: Finds the  
 “ defenders entitled to expenses,” &c.

The respondent reclaimed to the First Division of the Court, who pronounced the following interlocutor:  
 “ —(22d January 1833.) The Lords having heard  
 “ counsel, and advised the cause, Find, that the state-  
 “ ments in the summons, taken along with these in the  
 “ condescence, are sufficient to support the action  
 “ as relevantly laid under the statute; therefore alter  
 “ the interlocutor of the Lord Ordinary reclaimed  
 “ against, repel the preliminary defence, and remit  
 “ to the Lord Ordinary to proceed with the cause:  
 “ Find the pursuer entitled to expenses,” &c.\*

No. 17.  
 —  
 16th May  
 1834.  
 —  
 STUART  
 and others,  
 v.  
 KELLY.

---

\* 11 S. & D., p. 287.

No. 17.  
 —  
 16th May.  
 1834.  
 —

STUART  
 and others  
 v.  
 KELLY.

The superintendent, the judge, and the commissioners of police appealed.

*Appellants.*—1. The appellants are public functionaries, upon whom the performance of very important public duties is imposed by the police statutes for the city of Edinburgh; and while they admit that they ought not to be altogether free from personal responsibility in the discharge of these duties, it is manifest that the useful and practical administration of the police of a great metropolis requires that those to whose management it is committed shall be protected against frivolous and vexatious complaints, and that the right of action against them for any thing done in their official capacity, shall be limited. This principle, which exists at common law in regard to magistrates and other inferior judges, has been invariably recognized in police legislation.

Accordingly, the 134th section of the Edinburgh Police Act provides that no action shall be commenced, or, in other words, shall be sustained as relevant against parties in the situation of the appellants, for any thing done in the execution of the statute, in any case, unless wilful corruption or oppression or culpable negligence shall be charged. This is the first limitation of the right of action,—that it shall be laid expressly upon one or other or all of these three grounds. Then follows the farther and most important limitation, that the wrongful actings of parties under the statute must be charged as having caused real injury to the party complaining. The statute contemplates no case in which an action shall lie against the members of the police establishment for any thing done in the execution of the act, out of which real injury has not arisen. This

particular quality of the alleged wrong attaches equally to wilful corruption, oppression, and culpable negligence, as affording a relevant ground or cause of action. For example, suppose a summons to be laid strictly in terms of the statute, and to charge wilful corruption, out of which real injury has arisen; it seems impossible to doubt that it would be relevant to meet such an action by the defence that the pursuer had sustained no real injury from the wilful corruption or wrong of which he complained. The same defence would be applicable to an action laid upon oppression followed by real injury, or upon culpable negligence coupled with a similar qualification; and in all these cases a failure, on the part of a pursuer, to prove real injury, or proof by a defender that no real injury had truly arisen from the wrongs complained of, would entitle the latter to be assoilzied.\*

If the appellants are right in their construction of the statute it is clear that neither the summons nor the re-revised condescendence contain statements "sufficient to support the action as relevantly laid under the statute." It is not set forth in the summons that real injury has arisen to the respondent from the proceedings on the part of the appellants of which he complains; he merely libels, that these proceedings "have been grossly irregular, illegal, and wilfully oppressive, dictated by malice, or arising out of the most gross and culpable negligence." But that which is introduced into the re-revised condescendence is incomparably weaker. There the respondent merely describes his treatment by the appellants as "cruel and injurious." This is the statement to which he

No. 17.

16th May  
1834.STUART  
and others  
v.  
KELLY.

---

Nimmo v. Stuart, 17th July 1832, 10 S. & D., p. 844.

No.17.  
 16th May  
 1834.  
 STUART  
 and others  
 v.  
 KELLY.

betakes himself in the pleading upon which he finally closed the record, and upon which the effect of the judgment appealed from is, to send the appellants to issue with him before a jury.

2. But the Court below have held, that, in judging of the relevancy of the action, the statements in the summons are to be taken along with those in the revised condescendence; and the next question is, whether it be competent to supply any defect in the statement contained in the condescendence, upon which the record has been closed, by a reference to the narrative of the summons?

According to the long established form of process in the Courts of Scotland, the purpose of a condescendence is to enable a pursuer to set forth with precision the whole facts pertinent to his cause of action, and of which he is willing to undertake a proof in support of the same. The condescendence cannot enlarge the grounds of action, as laid in the summons, but it may have and often has the effect of greatly narrowing them.

This principle was recognized by the Court even prior to the statute 6th Geo. IV. cap 120., in the case of Forteith against the Earl of Fife.\* The ground of action was laid upon judicial slander, and the summons expressly libelled malice. In the revised condescendence the pursuer did not aver malice, and issues were prepared accordingly. But the Court found, “in respect  
 “ that malice upon the part of the defender is not  
 “ expressly averred in the revised condescendence, the  
 “ first four issues, as prepared by the jury clerk, are  
 “ irrelevant to be tried by the jury.”

---

\* Forteith v. Earl of Fife, 18th Nov. 1820, Fac. Coll.

This rule is now enforced by statutory enactment, because the late Judicature Act ordains that “in such “condescendence and answers, or mutual condescendences, the parties shall in substantive propositions, “and under the distinct heads or articles, set forth “all facts and circumstances pertinent to the cause “of action, or to the defence, and which they respectively allege and offer to prove.” It is manifest, therefore, that wherever a condescendence becomes necessary the statute imperatively requires that a pursuer shall state therein the whole facts pertinent to his cause of action, and of which he is prepared to undertake a proof. The statement must be complete in itself, and relevant, without reference to the narrative of the summons to support the action. And so the Court below, with the single exception of the present case, have uniformly interpreted the statute.\*

No. 17.  
 —  
 16th May  
 1834.  
 —  
 STUART  
 and others  
 v.  
 KELLY.

*Respondent.*—1. In construing the section founded on, it is clear that an action would be competent wherein the pursuer libelled either “wilful corruption” by itself, or “oppression” by itself, or “culpable negligence followed by real injury.” Any one of these charges might separately form a ground of action against individuals officiating under the act. It is also obvious that the quality of real injury attaches only to the last of these separate grounds of action with which it is coupled in the construction of the sentence; for it is natural to suppose that the legislature could never intend to encourage actions of damages against magistrates for

---

\* Act of Sederunt, 11th July 1828; Ross v. Hutton and Henderson, 15th June 1830, 8 S. & D., p. 918.

No. 17.  
 16th May  
 1834.  
 STUART  
 and others  
 v.  
 KELLY.

negligence merely, however culpable, unless real injury had therefrom arisen; whilst, on the other hand, wilful corruption or oppression, formed of themselves delicts of so flagrant a nature as to entitle a party to redress and damages, though bodily harm might not have actually occurred. But even if it be necessary to aver in the way contended for by the appellants, it is not requisite that the precise words of the statute be employed. It is sufficient if there be averments amounting in substance to what is required by the act.

Now, in the summons it is expressly stated, “that the  
 “ whole of these proceedings against the pursuer, and  
 “ more especially those subsequent to the date of the  
 “ presentment of the said Michael Cannan, have been  
 “ grossly irregular, illegal, and wilfully oppressive, dic-  
 “ tated by malice, or arising out of the most gross and  
 “ culpable negligence, inasmuch as, 1st,” &c. Then are set forth the reasons on which the respondent maintained that these proceedings showed wilful oppression as well as culpable negligence. The summons next proceeds:—“ That for these said irregular, illegal,  
 “ malicious, and wilfully oppressive proceedings, conse-  
 “ quent imprisonment, and the consequent injury sus-  
 “ tained by the pursuer therethrough in his health,  
 “ character, and feelings, and also in his means of live-  
 “ lihood, the said James Stuart, as prosecutor thereof,  
 “ the said Thomas Crichton, the judge by whose deci-  
 “ sion the pursuer’s bond was declared forfeited, and  
 “ the warrant for his imprisonment granted,—as also the  
 “ commissioners of police of Edinburgh, as responsible  
 “ for the regularity of the proceedings of their officers,  
 “ &c.,—are all conjunctly or severally liable in damages,  
 “ and a solatium to the pursuer;” and he afterwards



details explicitly the way in which he had so suffered. There is thus an express averment, both of wilful oppression and of culpable negligence, as well as of real injury sustained by the respondent in consequence thereof.

Then the facts and circumstances detailed in the re-revised condescendence, when taken together, support, and, if proved, will establish, the charges of oppression and culpable negligence, followed by the real injury libelled in the summons. In the 17th article of the re-revised condescendence the respondent explains the manner in which he sustained injury in his health by confinement for fifteen days in the cell of the felons gaol, where he was deprived of all comfort and proper sustenance; and in the 18th article he averred, “that before the pursuer’s confinement, as above stated, he was enabled, by means of his earnings in trade, to support his wife and a family of three children; but in consequence of his confinement, and of the said injury to his health, he lost his employment, and was for many months deprived of all means of support; and, in addition to his loss of health, he also suffered in his character and feelings from the above cruel and injurious treatment.”

It was not necessary to wind up the narrative of these special facts given in the condescendence with an inference or a repetition of the statement in the summons, that these facts made out a case of oppression; but, if it was so, this was done in the plea in law, where it was maintained, as a legal inference from the facts specially condescended on, that “the whole proceedings against the pursuer were grossly irregular, incompetent, illegal, and oppressive.”

No. 17.

16th May  
1834.STUART  
and others  
v.  
KELLY.

No. 17.

16th May  
1834.

STUART  
and others  
".  
KELLY.

But further, the appellants, not having, in the proceedings complained of, observed the provisions of the Edinburgh police statute, and, on the contrary, having contravened and violated them, are not entitled to avail themselves of and plead the protection which that statute confers for any thing done "in the execution of " the act," or "by authority and in virtue thereof."\* The respondent's allegation and plea is, that the whole proceedings adopted against him by the appellants were in direct violation of the statute which they refer to for protection,—but which protection is only conferred for what is done "in the execution " or "by " authority " of the act ; so that even though it could otherwise be maintained, that the summons and condescence do not relevantly set forth and make out the charges of oppression and culpable negligence required by the statute, the appellants cannot competently insist upon the respondent stating or proving these charges at all, in consequence of their contravention of the act.

2. The object of a condescence is to set forth facts in support of a summons, and not to embody grounds of action or statutory words. Accordingly, the Judicature Act provides, by section 8th, that "where " the parties do not agree to hold the summons and " defences as setting forth fully the facts and pleas " respectively founded on, or where the Lord Ordinary " shall think fit, he shall order the pursuer or defender,

---

\* Anderson v. Campbell, 28th Feb. 1811, Fac. Coll. ; Shand v. Henderson, 17th June, 1814 Dow's Reports, vol. ii. p. 519. ; Goldie v. Oswald, 1st June 1814, Dow's Reports, vol. ii. p. 534 ; Strachan v. Stoddart, 13th Nov. 1828, 7 S. & D., p. 4. ; Richardson v. Williamson, 1st June 10 S., D., 1832, p. 607.

“ as the case may be, to give in, the one a condescend-  
 “ ence, the other an answer or mutual condescendence,  
 “ setting forth, without argument, the facts which they  
 “ aver and offer to prove in support of the summons  
 “ and defences.”

The case of *Forteith v. the Earl of Fife* is inapplicable ; because, although the pursuer in his summons libelled malice, he in his condescendence not only abandoned that charge, but ascribed the slander to a different cause. In this respect, therefore, the statements in the condescendence not only fell short of and did not bear out the allegations in the summons, but expressly contradicted them.

**LORD CHANCELLOR.**—My Lords, this case is one of considerable importance, not only to the parties themselves, but to the rules of pleading in the Court below. It is of great importance that the protection given by Acts of Parliament conferring powers upon public functionaries, which bring them constantly into contact and frequently into conflict with members of the community who are, generally speaking, persons of precarious subsistence and circumstances, and even residence, should be made substantially available to the functionary, who may be unjustly sued for a breach of duty. On the other hand, it is very material, that, under the guise of protecting those functionaries against unjust actions, the remedy of those parties who may be injured by their malversation in office and their abuse of power should not be too much narrowed. The course which the Legislature has adopted in the act now under consideration, for the purpose of giving such protection, is this :— It contains a provision which has been usually made in

No. 17.

---

 16th May  
 1834.

---

 STUART  
 and others  
 v.  
 KELLY.

No. 17.

16th May  
1834.STUART  
and others  
v.  
KELLY.

all the English acts to the same effect, from the time of James the First downwards, with respect to magistrates and other functionaries. In the one hundred and thirty-fourth section a reasonable time (three months) is fixed within which the proceedings must be taken; notice (which is usually another protection afforded) I do not think is required here,—but the power of pleading (as we should say here) the general issue, and producing evidence upon it, seems to be given; and another protection (which I am not aware of being a usual protection afforded in such matters) is given, by requiring a specification in the action, of the charge upon which the action proceeds. This latter part of the section, upon which the question at present exclusively turns, may be taken in two senses. It may either mean to exclude all actions which in substance do not proceed upon corruption, oppression, or that which is reckoned equivalent to corruption and oppression—very gross negligence; that you shall not sue the magistrates, or you shall not sue the policemen, unless for that which amounts to corruption, oppression, or gross negligence: or it may mean (and that is the construction which is assumed on the part of the appellant, the magistrate, to be the sound construction) that the action shall not only not be maintainable for any thing short of that which amounts in substance, and is in its own nature corrupt, oppressive, or grossly negligent, but that there shall be an explicit charge in words by the party bringing that suit of corruption, oppression, or gross negligence. If the former of these constructions were the sound one, it would be unnecessary to dwell for a moment longer upon the facts of this case, or upon the construction of this act, or the course of procedure, with a view to support the

judgment of the Court below, and to sanction their reversal of the interlocutor of the Lord Ordinary; but I shall assume that it is the second construction which is the sound one, namely, that the pursuer must charge, as well as mean to charge, that which in substance amounts to corruption, oppression, and so forth; that he must not only have that as the foundation of his action, but that he must make the charge; and that, without his making the charge, the action cannot be maintained. Now, let us attend to the construction of this section, and see how far the pursuer has complied with the requisition of the section, and brought himself within that clause which provides, “that no action shall be commenced,”—every word is of importance, and none of more importance, in my view of the case, than that material word “commenced:”—“that no action shall be commenced against the judges, commissioners, superintendent, or any other person or persons, for any thing done in execution of this act, in any case, unless wilful corruption or oppression, or culpable negligence out of which real injury has arisen, be charged; nor in any event shall such action be competent after three calendar months from the time the fact is committed.” I throw out of view one argument on the part of the respondent, upon which it would be wholly impossible, in my view of the case, to defeat the appellants case and to maintain the judgment of the Court below, were there nothing more than that in the respondent’s case—namely, that this is not brought for any thing done in the execution of the act, but for something done in contravention of the act. We cannot for a moment admit that any such protective clause has a meaning of that description; for if a breach of the act

No. 17.

---

 16th May  
 1834.

---

 STUART  
 and others  
 v.  
 KELLY.

No. 17.

---

 16th May  
 1834.
 

---

 STUART  
 and others  
 v.  
 KELLY.

took the case out of the protection, it is needless to observe that protection never would be afforded at all, since it is only where the act has not been strictly complied with,—since it is only in cases where there has not been a legal act done, that there is any occasion for protection. If it has been done according to the act, if it has been altogether lawful and justifiable, the magistrate wants no such protection as this. But passing that, we come to another part of the section, upon which an argument was raised on the part of the appellants, but upon which no material reliance was placed. It says, “unless  
 “wilful corruption or oppression, or culpable negligence out of which real injury has arisen, be charged.” Now, it was momentarily contended, and no more, that it was not merely necessary in the summons to charge corruption, and so forth, but that it should also have added, out of which arose the real injury whereof the pursuer complains. I am clearly of opinion that that is by no means required, and that it is perfectly sufficient if there is a charge of wilful corruption, and if there is an injury stated, in the manner which is now to be made the subject of remark. And here I have to observe, in the first place, that this is by no means a section of the Act of Parliament, which is at all artificially, or skillfully, or even in common technical drawing, expressed. There are several instances of this through the whole—for example, “wilful corruption.” Did ever any man hear of corruption which was not wilful? You cannot be guilty of corruption without knowing it, or without intending it, otherwise it ceases to be corruption. Wilful corruption, therefore, means simply corruption; and the use of this word “wilful” is extremely slovenly, or at least I should be disposed to call it slovenly if I had seen

it in the composition of any other penman than the Legislature, the composition of which one is bound to treat with the greatest possible respect. But it is not technically penned in other respects. It then says, “wilful oppression.” The word “wilful” applies also to oppression, and it is just as correct in the one case as in the other. It is no more absurd to say “wilful oppression” than “wilful corruption;” and a party who uses the term wilful oppression, may be justified in using the term wilful corruption, as one expression is not more absurd or untechnical than the other. We have to deal, therefore, with a section where there is no very nice regard, in this first branch of it, to technical language. But in the second branch there is an equal departure from strict form of expression, because in that material part which relates to the plea it is given thus: that the defender in such action or process may produce this act, and plead that the said things were done (as if they were to plead after they had produced the act in evidence) “by authority and in virtue thereof.” The first part uses another form of expression; it says, “any thing done in execution of this act,”—and yet it is perfectly clear that this latter part, “by authority and in virtue thereof,” is meant to bear reference to the former part, and to enable them to plead that the thing was done “in execution of this act.” Now, supposing a person in his plea were to say, I went upon the act, and I aver, that what I did was done under that act, or done according to the powers of that act, or in execution of the act—would that not be sufficient for the purpose of pleading, “by authority and in virtue thereof?” But the appellants contend for a strict and rigid construction of the act; and if we were to go

No. 17.

---

 16th May  
 .1834.

---

 STUART  
 and others  
 v.  
 KELLY.

No. 17.  
 16th May  
 1834.  
 STUART  
 and others  
 v.  
 KELLY.

on that principle it would not be sufficient to plead the act, and that what was complained of was done according to the provisions of the act, or done in such manner as to be justified by the act, because, according to this construction, the party must plead that it was done “by authority and in virtue of the act.” I think that this would be a very absurd nicety of construction of these words—an interpretation which common sense repudiates. Or suppose I had chosen to plead, not that the fact was done under the powers of the act, or by virtue of the act, but that it was done in execution of this act, could it be contended that I had not done sufficient to satisfy the words, and that I had not pleaded the plea which is here given, merely because I had not used those precise words, “done by authority and in virtue of the act”? I apprehend that it could not; and yet, upon what is meant by these words depends my being assoilzied from the action and obtaining the costs from the other party; because the section goes, “and if these shall appear to be so done,”—meaning, “and if these things shall appear to be so done, then and in that case the defender shall be assoilzied.” It is a condition precedent to my being assoilzied with costs, that it shall appear that what I did was done “by authority and in virtue of the act,” and that I shall have pleaded a plea to that effect; but I am sure no man will go so far in strictness of construction as to say that those words must be pleaded, otherwise I cannot recover a verdict, and shall not have the costs. Now, the way I use this argument is this,—If such strictness is not to be applied to the plea of the defender which is given in words, why should the same strictness be applied to the plea of the pursuer, which is



also given him in the body and by force of the same section? I should say, that if in the case of the defender it is sufficient to plead that which comes up to the substance, so in the other case the substance is to be regarded; and that which comes up to the substance is to be considered as being that which is required to be charged, and if charged shall be dealt with as sufficient to maintain the suit. This is a general view of the construction of the section, and of the argument from the one part to the other, which goes very far to prepare us for coming to a more minute discussion of the part of the section upon which this case depends. And now, coming to that, I confess it appears to me so clear as to leave no doubt. The case, in point of fact, is this: In the summons the words, even to the letter of the section, appear to me to be contained. There is a charge in the summons of oppression, of malicious, wilfully oppressive, and unwarrantable proceedings; and in one place they are said to be grossly illegal, — illegal and wilfully oppressive, dictated by malice or arising out of the most gross and culpable negligence. But it is said that this is in the alternative, and that it is followed out in only one or another branch; and that the pursuer must say, that the defender's conduct was either grossly and culpably negligent, or that it was wilfully oppressive, or that it was malicious, and then bring forward his facts upon which he relies. But in various other parts we have it without the alternative, and though they are in form prefaced, "inasmuch as," yet they must be taken to be substantial averments. I have therefore no doubt that the summons uses those words, and uses even those terms, "wilfully oppressive," which, according to the most rigorous construction under the 134th section, is

No. 17.

---

 16th May  
 1834.

---

 STUART  
 and others  
 v.  
 KELLY.

No. 17.

---

 16th May  
 1834.
 

---

 STUART  
 and others  
 v.  
 KELLY.

sufficient. But then it is said, (and upon that the whole question arises,) that though it is used in the summons, it is dropped in the condescendence. If you require the words wilful corruption, or wilful oppression, or culpable negligence, to be used, and if you hold that no words shall be sufficient as equipollents, I agree that the words are not used; but I am sure that the words used come as near to those contended for as it is possible to come to any one object without actually touching it; for after setting forth, under seventeen heads, various facts, amounting each of them to somewhat of an oppressive proceeding, it says, “ Before his confinement  
 “ he was enabled, by means of his earnings, to support  
 “ a wife and family, but since then he has been thrown  
 “ entirely out of employment, and has no means of  
 “ support. In addition to his loss of health, he had  
 “ also suffered in his character and feelings from the  
 “ above cruel and injurious treatment.” Now, I think it is going to the very outside of rigour in construction, and almost refinement, to say, that if you are required to charge, as the condition of maintaining your action, oppression, wilful corruption, or culpable negligence, and if you do charge cruel and injurious treatment, it shall not be held equal to charging oppression. Equivalent it is certainly; for I cannot agree with the argument of the learned Attorney General, who held that “ cruel ” was a word of equivocal import. He said that the operation of a surgeon for the sake of saving your life, or relieving you from a long endurance of pain when you are tortured with the stone, and want to be saved a life of thirty years of agony, putting you to very great pain for thirty seconds that you may be relieved the rest of your life, may be characterized as a cruel

operation. I think, in common parlance, it would not be called cruel. Cruel means unjustifiable pain,—putting you to pain for the purpose of putting you to pain, to please the person who inflicts the pain, or for the mere pleasure of giving you pain; but that which is done for your own good cannot in any way be called cruel. I hold cruelty, therefore, to be an unequivocal expression, and to mean that which is tantamount to oppression, and that the allegation of cruel and injurious treatment in the condescendence amounts to a charge of wilful oppression. If so, then there is in the second branch of the case, as well as upon the general construction, a substantial charge according to the act, and the judgment below is supported. But I shall now suppose that it is to be construed more rigorously,—that no equipollents will do,—that it will not do merely to state facts which amount to oppression, but that you must charge the words “wilful oppression.” Now the question is, has not the exigency of the section been complied with by the statement of the summons, or is it necessary that it must be repeated in the condescendence? I am clearly of opinion that it is not necessary that it should be repeated in the condescendence, but that it is well charged under the authority of this section if it is so charged in the summons. It is very material to consider how the section puts it. It does not say at what stage of the cause the charge shall be made; it is sufficient that the charge shall be made. It does not say when. But if I were called upon to say, from the words of the section, whether it would be more complying with the requisition of the section, that it should be charged in the early stage, or at a later stage, I have no doubt that it is better and safer for the party,

No. 17.

---

 16th May  
1834.

---

 STUART  
and others  
v.  
KELLY.

No. 17.  
 —  
 16th May  
 1834.  
 —  
 STUART  
 and others  
 v.  
 KELLY.

if he is only to charge it once, that he should do it in the summons rather than in the condescendence; and my reason is this, that the words are, that no action shall be *commenced*.—It does not say that no action shall be maintained or prosecuted or continued or carried on, but it says, that no action shall be “commenced” for any thing done, unless wilful oppression shall be charged. Now, is it not a most natural inference, when the legislature has not told you where it is to be charged or when it is to be charged, to infer that the legislature, in using the word “commence,” intended that the charge should be as near the beginning of the proceedings, and as near that which forms the first stage and is the foundation of the whole, as may be possible? and consequently, that it should be rather in the summons, which is the commencement of the whole, than that it should be deferred to a later period. I am therefore of opinion, that these words indicate that it should be made in the summons rather than in the condescendence. To be sure, the condescendence may be so framed as to make the charge in the summons nugatory. The summons is the writ which brings the party into Court, and calls the attention of the Judge and of the opposite party to the claim of the pursuer. The condescendence has another kind of office altogether: it is for the purpose of setting forth the particular facts which the party who has brought the suit is ready to prove, in support of the summons, and to maintain the conclusions of that summons. Now, if the condescendence,—which, by the terms of the Act of Parliament, as is justly stated by the Lord President in the case of Ross and Hunter, is required to state the whole facts which the pursuer offers to prove—if it leaves out a material fact—if it drops

those facts which are necessary to support the summons—it is clear that there has not only been a departure from the summons, but a total shortcoming of the case, and the party may be said to be out of Court on his own showing; for he having pretended that he had a case of this description in the summons, when he comes to condescend on the facts which he is prepared to prove it turns out that the facts alleged do not support the case in the summons. Therefore, I agree perfectly in the argument which has been maintained, and which is also the ground of some of the decisions referred to on the part of the appellant, both in this House and below, that the condescendence may be so defective or depart so widely from the summons, as to frustrate the whole proceeding on the part of the pursuer. But if all that the condescendence is defective in be, that it does not reiterate the words “wilful oppression,” while at the same time it sets forth facts which amount in themselves to that which forms the foundation of the summons, and which will bear out the summons in charging wilful oppression, I think it is a very gross absurdity to say that the summons and the condescendence may not be taken together, and that upon the two together you may not have such a charge as the section requires to support an action, or rather to commence an action, for wilful oppression. Now, with this view, let us look at the cases. The earliest case we have appears to have been the subject of grave deliberation, I mean the case of Forteith, which was made the subject of very great discussion at the bar, and of some of the most elaborate and able judgments that I have ever seen in that or in any other Court. That case did not proceed upon a view of the statutory requisition as to the pleading,

No. 17.

16th May  
1834.STUART  
and others  
v.  
KELLY.

No. 17.  
 16th May  
 1834.  
 STUART  
 and others  
 v.  
 KELLY.

but it went upon the kind of view which I am now taking of the condescence and the summons as applicable to the common law position, namely, this,—the summons charged malice, or was supposed to charge malice, but the condescence stated facts in proof of malice, which might, according to the view you took of them, either prove malice or no malice at all; for it was said that it was done, either for this purpose, which would be malicious, or for that purpose, which would not be malicious at all and would not support the summons. Then, said the Court, as you have chosen to put it in two ways, and have not said that it was maliciously done, this condescence is not sufficient; but had you excluded that which makes your charge equivocal, and confined yourself to that which would have been explicit, or had you added that which would have made your equivocal statement unequivocal, then we should have held that that was sufficient. That was a very singular case in more respects than one. It is a very extraordinary doctrine, to hold that a party is liable in such a case as that to an action of damages. However, it appears to be the law (though cases are scanty upon the subject, and I doubt whether cases can be found in which damages have been recovered) that a party instructing his counsel to make an allegation in the course of his written pleadings or of his parole argument, to represent his adversary in an unfavourable light, may be sued as a libeller and slanderer, and as a wilful wrongdoer, for having instructed his counsel to state what his counsel says in Court against the opposite party. That is certainly a most extraordinary doctrine. I will not say that it is without precedent and without analogy, but it certainly is a doctrine in support of which, prac-

tically, I think that very few, if any, cases in any country are to be found. Then comes the case of *Ross v. Hunter*. In that case the material fact, without which neither the summons nor the condescendence could stand,—namely, the knowledge of the bankrupt's insolvency, and the date of the deed which was in question,—was not stated in the condescendence; and there the Court said, you cannot go back to the summons, because you ought to have stated it in the condescendence, inasmuch as the condescendence must contain the whole of the material facts. The other case was one in which I moved your Lordships to decide,—the case of *Luke v. the Magistrates of Edinburgh*. I had not seen the report before, and I do not object to the form in which I now see it for the first time. There the most material fact of the whole was this: the case turned, in one of its most material branches, upon the notice or summons having been given to the magistrates; that was omitted in the condescendence. Whether it was in the summons or not, I do not recollect, but it was attempted to call in aid the pleas of law, and it was said, you cannot call in aid the pleas of law; because the office of the pleas of law is to set forth a note of those conclusions in point of law, or those arguments in point of law, which are raised upon the fact stated in the condescendence; and accordingly you cannot, when you are out of Court, as far as regards the averment of facts, supply them by any new statement of facts in the pleas of law. When you look at the statement in that case, the more you look to it the more you will be disposed to adopt this conclusion; you will find that it wholly proceeds upon the distinction I have now made. We are now upon a perfectly different question, whether a section of an Act of Parlia-

No. 17.

---

 16th May  
 1834.

---

 STUART  
 and others  
*v.*  
 KELLY.

No. 17.  
 ———  
 16th May  
 1834.  
 ———  
 STUART  
 and others  
 v.  
 KELLY.

ment, which requires wilful oppression to be charged, is complied with, even to the letter; for I go so far as to say, that the action shall not be commenced unless wilful oppression be charged. But in the present case wilful oppression is in terms charged in the commencement of the action. It is charged in the summons, and there is no departure from it in the condescendence; on the contrary, the condescendence sets forth facts, which facts in themselves not only do not negative the charge of wilful oppression in the summons, but all more or less tend to support it. It is for the Court and jury, in the ulterior stage of the cause, to say whether they do so in truth or not. Upon these grounds, I have no doubt that the case has been well decided in the Court below, and I shall move your Lordships to affirm the judgment of the Court below, with costs.

The House of Lords ordered and adjudged, That the said petition and appeal be and is hereby dismissed this House, and that the interlocutor therein complained of be and the same is hereby affirmed: And it is further ordered, That the appellants do pay or cause to be paid to the said respondent the sum of 200*l.* for his costs in respect of the said appeal.

RICHARDSON and CONNELL.—JOHNSTON and  
 FARQUHAR, Solicitors.