it does not say that they are not to be accused or suspected in the ordinary way, according to law. It would be a strange interpretation that this discretion was committed to these inferior officers to apprehend whomsoever they thought proper, without any written warrant, on some suspicion of their own, which may or may not be well founded. That is not the meaning of the Act. I agree with your Lordship that there are many cases in which a police constable may, and in which it is his duty, to apprehend without a written warrant. If he sees a crime committed, or finds a person in the act of committing a crime, there can be no doubt he has power to apprehend that individual. If there is reasonable ground for supposing that a man has taken the life of another, so as to found a charge of murder, there is no doubt there that it is the duty of the constable to apprehend the man, for the nature of the crime renders it probable that the criminal will not await the course of justice. So, if there is reasonable ground for supposing that a person is going to abscond, or is in hiding; or if he belongs to that class of the community which are reputed to live by thieving or crime, or to that peripatetic class which are in one place one day and in another the next, so that no one ever knows where to find them—in these and other cases it is the duty of the constable to apprehend without a warrant. But I agree in holding that there is a heavy responsibility on these officers not to overstep the necessary and reasonable requirements of the particular case. If a person, though regularly charged with a crime or offence, is a well known householder, or resident in a place and carrying on business; in short, if he is what we call a law-abiding individual, I find nothing in this Act more than at common law to authorise his apprehension without a warrant. Therefore I do not proceed on any such ground, but on the special circumstances of this case, and I agree entirely with what your Lordship has said. No doubt this person had a house in Kinross. He was acting as a carrier, but the only account we have of his trade is as to that particular day. He brought no money to any one, but admitted that he appropriated a considerable part to his own use. That is, he admits embezzlement, which the law holds to be theft. The officer goes, I think rightly, to his house; he does not appear till Monday, and then with only seventeen shillings, the rest being spent on his own purposes; there was a rumour that he meant to make a moonlight flitting. I think there is every probability in the circumstances that, though the money which he had taken was not very much, the position into which he had got was such as to lead him to believe that he could do no more good in that place, and that the sooner he was out of it the better. In the circumstances, I think there was enough to justify the officer in apprehending him. I see nothing wrong in the search or apprehension, and though he was detained for two hours, I cannot say that was an unreasonable detention. If a man is rightly apprehended and taken before a magistrate, the question how long he is kept before a warrant is obtained is always a question of circumstances. There was nothing unreasonable here. This judgment must not be misunderstood, but must be made to stand on its proper ground.

Lord Kinloch—I have had some difficulty in this case; chiefly from the fear lest any possible encouragement should be given to undue tampering with the liberty of the subject. But on the whole matter, I have come to the same conclusion with your Lordships.

I think the conduct of the pursuer Peggie was such as to awake grave suspicions. He had got meat to deliver, and had received the price to bring back. He not only did not pay it, but spent part of it on his own purposes; and, by his absence for a couple of days, created serious apprehension that he meant to abscond. It was, *prima facie*, a fitting case to bring before the notice of the defender, the Superintendent of Police, and for him to inquire into. He properly went to the house of the pursuer; and I think nothing can be made of what is called the search of that house. He asked if the pursuer was at home, and, after being informed that he was not, was invited by the pursuer's wife to satisfy himself on the subject; which he appears to have done without any undue intermeddling. The pursuer's absence, as I have said, naturally confirmed the suspicions previously entertained; and, on his appearance in the afternoon of next day, he was apprehended under the directions of the defender. It is here that the true question in the case arises. I have no doubt that the defender was entitled in the circumstances to apprehend the pursuer without a warrant—but only to take him before a magistrate, or to apply for a warrant for his detention without any undue delay. If I thought that the defender kept him in the lock-up for the purpose of himself examining him, and thereafter detaining or liberating him as he himself might think fit, I would consider that he was acting beyond his competency, and had made himself liable in damages. But the view is fairly presented that in all that he did he was only in course of taking the pursuer before a magistrate, or of applying for a warrant for his detention; and that the liberation of the pursuer took place, not unreasonably, in consequence of his refunding the money to the party entitled to it. I am disposed to give to the defender the benefit of this favourable view, as fairly warranted by the evidence, and, on this account, to hold that he was acting within his duty, and is not liable to any claim proceeding on an opposite assumption. Whilst we take care that personal liberty is not unduly interfered with, we must be equally careful, on the other hand, that no undue discouragement is given to the detection and punishment of crime.

Agent for Pursuer—W. B. Glen, S.S.C.
Agents for Defender—H. & A. Inglis, W.S.

Tuesday, November 10.

BUCCLEUCH *v.* DARLING (COMMON AGENT IN INVERESK LOCALITY).

Teinds—Decimæ inclusæ—Res judicata—*Common Agent.* Circumstances in which the Court sustained a plea of *res judicata* stated by a heritor in support of his claim of exemption from stipend in respect of a *decimæ inclusæ* right. In a question litigated with an individual heritor, the actings of the common agent bind the whole other heritors, if they do not appear and object.

In the locality of Inveresk the Duke of Buccleuch contended that his lands of Smeaton were exempt from the burden of stipend, alleging that he held these lands *cum decimis inclusis*, and pleading *res judicata* in respect of proceedings in a previous locality instituted in 1775, in which it was found

by a judgment of the Lord Ordinary, allowed to become final, that as the then proprietor of Smeaton had produced a right to the lands of Smeaton *cum decimis inclusis*, the lands fell to be struck out of the rental given in by the minister.

The Lord Ordinary (BARCAPLE) sustained the plea of *res judicata*.

The Common Agent reclaimed.

WATSON and DARLING for reclaimer.

SOLICITOR-GENERAL and JOHN MARSHALL for respondent.

At advising—

LORD PRESIDENT—In this locality the Duke of Buccleuch, who is said to be the patron and titular of the parish, objects to have any portion of the augmentation laid on his lands of Smeaton, on the ground that he has a title to these lands *cum decimis inclusis*. The Common Agent objects to this title, and says it is not a good title to a *decimæ inclusæ* right, and he proposes to examine the title on its merits in order to give effect to that objection, but he is met with the plea that that question is *res judicata*, and that is the plea which the Lord Ordinary has sustained.

Now the proceedings which are said to constitute this *res judicata* took place in a former process of locality in the same parish in the last century, and the particular proceedings which are more immediately under consideration occurred in 1778.

It appears that when the interim scheme of locality was in course of preparation there were certain persons who came forward to object, and who are called proprietors of land in the Fields of Inveresk, and it was in the answers for the Duke of Buccleuch that his Grace first asserted his right to *decimæ inclusæ*. To the answers which he lodged he appended objections of his own to the proposed scheme: "But, in the interim, he objects to any part of the stipend being laid on his lands of Smeaton because they are his property, and he has right to them *cum decimis inclusis*, and is ready to produce his rights, to prove that this is the fact at any day the Lord Ordinary pleases to appoint." He did not produce his title on that occasion, and the Common Agent, in making observations on these objections, says there was a meeting of heritors, "and His Grace the Duke of Buccleuch, and all the other heritors, produced rights to their teinds which satisfied the Common Agent, and likewise the Clerk to the Teinds, who attended with him and inspected the different rights produced at the different meetings, at which time it was not so much as surmised the Duke's right extended so far to any of the teinds of his lands as a *decimis inclusis*, and the only question which appeared to them could occur is that mentioned in the objections and answers now under the consideration of the Lord Ordinary. But before entering on the objections and answers, as the minister in his rental has not been so explicit as to condescend whether it includes the rental of Smeaton, or that it excludes it, it will be necessary that the minister confess or deny if or not Smeaton is included. And if it is as the Duke alleges,—he has a right *cum decimis inclusis* to his lands,—the Duke should condescend on what part of the *cumulo* rental applies to Smeaton."

It appears from these observations—(1) that all the heritors of this parish had heritable rights to their teinds; and (2) it is clear that the Common Agent did not at this time make any admission as to the Duke's right to *decimæ inclusæ*. The next step of procedure was, that on 22d June 1778 the Lord Ordinary pronounced this interlocutor:—"Having considered the objections for Oliver Coult, &c., and these answers for the Duke of Buccleuch, with the observations of the Common Agent, appoints the minister to confess or deny whether he included the lands of Smeaton in his rental, and the Duke of Buccleuch to condescend on what part of the *cumulo* rental applies to Smeaton, if it is included."

This interlocutor proceeded on the suggestion of the Common Agent to clear the way for discussion. Thereafter, on 25th June, this interlocutor was pronounced:—"Having considered the within locality, with the objections thereto for the feuars of the fields of Inveresk, and answers thereto for the Duke of Buccleuch, Common Agent's observes, and above debate, is of opinion the locality ought to be approven, with this declaration, that the Duke of Buccleuch shall be obliged to relieve the feuars of the fields of Inveresk of the stipend, both old and new, allocate on their lands in terms of the contract produced."

This was an interlocutor adverse to the pleas of the Duke of Buccleuch, in respect (1) that it saddled him with an obligation to relieve the feuars of Inveresk; and (2) it disregarded his allegation of his possessing his lands *cum decimis inclusis*, for the locality proceeded on the footing of his lands of Inveresk not being exempt. Accordingly the Duke represented against that interlocutor, and, so far as it relates to the lands being held *cum decimis inclusis*, he makes this statement:—"The representer has only further to observe, that the above interlocutor seems to have proceeded upon the supposition that the lands of Smeaton had not been included in the rental produced for the minister. But the fact is, the representer is given up in that rental at £400, which can only apply to Smeaton, as he has no other property lands in the parish; and as he possesses these lands *cum decimis inclusis*, and herewith produces his right thereto, he therefore apprehends that no part of the augmentation can be localled on them;" and the prayer of the representation asks the Court to find "that no part of the augmentation can be localled upon the representer's lands of Smeaton."

The Lord Ordinary having considered this representation, with answers for the feuars of Inveresk, but there not being at this time any answers as to the question of the Duke having a right to his lands *cum decimis inclusis*, pronounced this interlocutor:—"Finds, that as the representer has now produced a right to the lands of Smeaton *cum decimis inclusis*, the said lands must be struck out of the rental given in by the minister." Now had the matter stopped then there would have been little finally determined as yet, because, as I said, no one had appeared to question this right of the Duke. But against this interlocutor, dated 26th November 1778, the Common Agent presented a representation. In that he submits to the Lord Ordinary that the interlocutor would require to be altered, because it appeared to him that his Lordship had misunderstood the situation of the titles produced; but as to that part which sustained the Duke's right to his lands *cum decimis inclusis*, the Common Agent makes this statement:—"The representer, in order that he might bring this matter to an issue as speedily as possible, had a communing with the Duke's doer, and satisfied him that the locality as it stands was made up upon proper principles, except as to His Grace's lands of Smeaton, —these the representer is now satisfied cannot be touched by any augmentation whatever, because the same are held *cum decimis inclusis* and, there-

fore, in terms of your Lordship's interlocutor, the rental thereof falls to be struck out."

The Lord Ordinary, on 22d January 1780, pronounced this interlocutor:—"Having advised this representation with what is above represented, recals the interlocutor complained of except so far as respects the lands of Smeaton; refuses the representation offered for John and Archibald Cochrans, and ordains a rectified locality to be made up on the same principles the former one was done, without prejudice to such heritors as think themselves entitled to relief to be heard thereon." A rectified locality was accordingly made up in terms of this interlocutor, and this rectified locality was reported to the Teind Court, and became the final locality in terms of which the Court decerned. That final locality was made up on the principle of exempting the lands of Smeaton from all payment of stipend on the ground of His Grace having a right to them *cum decimis inclusis.*

Such are the proceedings on which the Duke relies as constituting *res judicata* in this locality, to the effect of securing for his lands of Smeaton complete and permanent exemption from stipend. The Lord Ordinary has sustained this plea of *res judicata*, and I concur in his opinion.

But it is said by the Common Agent that there was not then any true discussion of the question. He does not say the proceedings were in absence—there is no doubt they were *in foro*—but he says it is merely an opinion of the Common Agent on which the Lord Ordinary went, a sort of consent, and that the question was never judicially determined. That leads one to ask—What is the precise position of the Common Agent in such a case? and there is no doubt that in a question with individual heritors seeking relief on such a ground, to establish a heritable right, or to have a valuation given effect to, the Common Agent represents and binds the whole other heritors. He is entitled to act for them, and in the exercise of his judgment all he does for them is binding on them; and therefore the consent of the Common Agent to sustain a right of this kind is the consent of the whole heritors of the parish. If there is any doubt on this subject, it must be set at rest by the case of *Lord Hopetoun*, (1 D. 685; 5 Bell, App. 69), so that that contention of the Common Agent will not avail him.

But he says, in the second place, that these proceedings before Lord Monboddo being before the Judicature Act were not binding as judgments of the Court, because the Court of Teinds had not power then to delegate its judicial authority to the Lord Ordinary; all that they could remit to do was to prepare the case for them, and it was a judgment of the Teind Court only that bound. That is quite true. An interlocutor of the Lord Ordinary at that time was not good unless approved by the Court; but then all these proceedings before the Lord Ordinary were approved and given effect to by the Court approving the final scheme of locality made upon the footing of that prepared by the Lord Ordinary. That exempts the lands of Smeaton, and therefore the interlocutor of the Lord Ordinary was thereby approved of by the Court in the most effectual manner. All this is well stated in the Lord Ordinary's note, where he says:—"The Lord Ordinary thinks that, independently of the final approval by the Court, the consent of the Common Agent, in his representation in reference to the interlocutor of 26th November 1778, must be held to bar the heritors from now disputing the validity of that or the subsequent interlocutor by which it was adhered to, as regards the lands of Smeaton. But when the locality was approved of, the whole proceedings in regard to it in the Outer-House became final; and the only question as to them is, whether, being by the approval authoritative judgments and final, they were of such a nature as to constitute *res judicata* in regard to the permanent rights of parties, which were the subject of judgment. For the reasons already explained, the Lord Ordinary thinks that was the nature of the proceedings now in question." If it is necessary to go to authorities, the case of *Dunnichen* (1 Connell, 519) is directly in point.

But, in the third place, the Common Agent says that a judgment of this kind in the process of locality is not *res judicata* in a subsequent process—that the only effect is to settle the liability of the heritors for the stipend that is awarded in that process, but that the judgment will not affect the question in another process of locality. If that were an open question, it might admit of discussion. I must own my opinion would be pretty strongly with the Lord Ordinary. But I don't think the matter is open, for this question is also settled against the Common Agent by the case of *Blantyre*. No doubt there was one of the Judges there who dissented, and it is true that the judgment of this Court was reversed by the House of Lords. But the reversal proceeded not on this, but on a different ground, which does not effect the authority of this case on that question; and I cannot but think the weight due to the opinions of Lords Corehouse, Gillies, and Cunninghame is a sufficient justification to me in holding that decision to be a good authority on this general question, that a judgment pronounced on the liability or non-liability of a heritor in one process of locality, becoming final in that process, as in a question with the other heritors, is *res judicata* in subsequent localities.

These appear to me to be all the grounds on which the Common Agent endeavoured to avoid the plea of *res judicata*. I think his argument is inconsistent with the authorities I have referred to, and would not, independently of them, be a good answer to the plea. I am therefore for adhering.

Lord Deas—I concur with your Lordship. No doubt many things may occur in a process of locality which will not form *res judicata*, but it will not be easily held that a right to *decimæ inclusæ* is to be sustained in one locality and not in all. There are cases in which the fact that a valuation was given effect to in one locality was held entitled to some weight, but was not *res judicata*. But there is as little doubt that a judgment may be pronounced in a locality which shall be *res judicata*. The Common Agent represents the heritors. I don't say that though there is a Common Agent, any individual heritor who does not concur in his views may not appear for himself and object to what the Common Agent proposes. But if there is full opportunity for that; if none of the heritors, through having full acquaintance with all the proceedings, do actually come and object, then what is done by the Common Agent is done by the whole heritors. Here the Common Agent at first objected that the Duke had not a right *cum decimis inclusis*. His title is produced, and then there is a discussion on which the Lord Ordinary pronounced his interlocutor of 26th November 1778. Then the proceedings go on till January 1780, and in the meantime the Common Agent has given in that re-

presentation which bears that the representer is now satisfied (reads *ut supra.*) That is a plain consent to the judgment which the Lord Ordinary pronounced being given effect to. That was in January 1780, when all his constituents knew what he meant to do, and no one objected. In January 1780 an interlocutor is pronounced (reads *ut supra*), and that locality is afterwards, in 1781, approved of. The thing is deliberately done in the face of the whole heritors, and must be held to have been done with their consent. In such circumstances, everything being done *bona fide*, if the interlocutor had borne the consent of the Common Agent, that would have been the case of *Lord Hopetoun*. The only difference between that case and this is, that in place of the consent being recorded in the interlocutor, it is in that paper on which the interlocutor proceeded. That is a distinction without a difference. If we give effect to the contention of the Common Agent here, we must hold that the House of Lords and this Court were wrong in the former cases.

Lord Kinloch—There has been an aspect of complexity thrown around this case, chiefly in consequence of the somewhat anomalous character of a process of locality, and a certain vagueness of practice in the conduct of that process. But, on careful consideration, I have reached the same conclusion with your Lordships, that the plea of *res judicata* should be sustained, and the Lord Ordinary's interlocutor adhered to.

I think it cannot be disputed that what is done in one locality is not binding in another and a subsequent, arising under a new process of augmentation, apart from what effect may be attached to special judicial findings. An heritor who in one locality has submitted to be localled on, as having no valuation, or no heritable right to teinds, or no exemption in respect of a *decimis inclusis* right, may, in an after process, by production of the sufficient documents, become entitled to bring the matter under judicial cognisance, and to have his true place assigned in the new locality.

This holds good in every case in which the heritor has merely submitted to a particular allocation, with no further appeal to judicial authority than may be implied in the formal approval of the scheme of locality. It may be fairly added that the case will not be varied by the most direct expression of acquiesence in the mode in which the locality is framed, given either judicially or otherwise, provided that no judgment is taken from the Court on any legal question of right.

But the case is altogether altered whenever the judicial function of the Court is invoked for the determination of a specific legal question. There is then pronounced a judgment of the Court, in the proper sense of the term, having the ordinary effect of all judgments. Where the Court has, *causa cognita*, determined a specific legal question raised between certain parties, as, for instance, on the efficacy of a particular deed to convey exemption from tithes, the judgment pronounced is a proper decree *in foro*, and will form *res judicata* both in that and all after localities, between the same parties or those representing them.

The same result will, I conceive, arise where, in place of discussion, the judgment is made to rest on the consent of the parties interested, formally expressed as its groundwork. A judgment of consent is in some respects the most authoritative of all judgments. It is the expression of a legal right, so clear that it cannot be controverted. There must, *ex hypothesi*, be a judgment on the specific point. The existence of such a judgment is the necessary condition of the result. But if such a judgment is found pronounced, it is *res judicata* between the parties or their representatives, equally whether pronounced after discussion, or of consent of parties.

In the present case it cannot be said that there was the mere framing of a locality with the acquiescence, implied or expressed, of all concerned. There was pronounced an express judgment, finding that, in respect of a right held *cum decimis inclusis*, the Duke of Buccleuch's lands of Smeaton were exempt from payment of stipend. The true question in the case is, whether this judgment must be held to have been pronounced of consent of the parties concerned? Admittedly, it was not pronounced after discussion; but if pronounced expressly of consent, it must be held to be in the same position.

I am of opinion that this question must be answered in the affirmative. I need not, after what your Lordship has said, resume the proceedings in detail. A discussion arose between the Duke of Buccleuch and certain feuars of Inveresk on another matter. In a paper of answers given in by his Grace he distinctly set forth his alleged right to hold the lands of Smeaton *cum decimis inclusis*. The Common Agent was fully aware of this claim, for he gave in written observations on this very paper. In these observations he neither admitted nor denied the alleged right. The Lord Ordinary having pronounced an interlocutor, in which the locality was approved of without reference to the alleged exemption (the Duke having as yet produced no titles), the Duke gave in a representation, along with which he produced his title to the lands of Smeaton, and craved the Lord Ordinary "to find that no part of the augmentation can be localled on the representer's lands of Smeaton."

The feuars answered this representation; the Common Agent did not. No objection was stated by the feuars against the Duke's alleged right, except that it had not been previously advanced. The Lord Ordinary, on 26th November 1778, pronounced an interlocutor, by which he "Finds that, as the representer has now produced a right to the lands of Smeaton *cum decimis inclusis*, the said lands must be struck out of the rental given in by the minister."

The interlocutor contained certain other findings; and against these other findings the Common Agent now gave in a representation. But in this representation he expressly said as to the lands of Smeaton—"These, the representer is now satisfied, cannot be touched by any augmentation whatever, because the same are held *cum decimis inclusis*, and therefore, in terms of your Lordship's interlocutor, the rental thereof falls to be struck out." He therefore prayed that the interlocutor should be altered, "except so far as regards the lands of Smeaton." An interlocutor to this effect was ultimately pronounced. The interlocutor stood as to the lands of Smeaton. A locality was prepared on this footing, was reported to the Inner-House, as was then the practice, and was finally approved.

I am of opinion that this constitutes a judgment expressly pronounced of consent of the Common Agent, the representative of all the heritors of the parish besides the Duke of Buccleuch on this question, and that it therefore now forms *res judicata.*

I consider this conclusion to be not only sup-

ported by principle but by the tenor of all the authorities. Indeed, I think no other conclusion is consistent with the decision in the case of *Lord Hopetoun* v. *Ramsay*, referred to in the discussion, as decided both in this Court and the House of Lords. The true ground of judgment in that case appears to me simply to be that there was an interlocutor pronounced by the Lord Ordinary on the matter of legal right of consent of the common agent. Though certain pleadings appear to have been given in on both sides, these were not considered by the Lord Ordinary, whose judgment is simply—"Of consent sustains the claim of *decimæ inclusæ* in regard to the lands of Hallyards."

Allusion is made in the opinions of the judges to an alteration created by the Judicature Act, inasmuch as now a locality did not require to be reported to the Inner-House in order to become final, but became so simply by the Lord Ordinary's interlocutor approving of the locality not being reclaimed against. But this alteration was of no moment as affecting the intrinsic character of the judgment pleaded as *res judicata*, on a consideration of which the opinion of the Court substantially rested. The observation was only of importance as meeting the objection that the locality was still a depending process, which, in the earlier practice would, anterior to their approval by the Inner-House, have kept the interlocutors of the Lord Ordinary open to alteration.

I consider the authority of this case unaffected by the decisions quoted to us, in which the plea of *res judicata* was repelled. In some cases, as in the *Marquis of Queensberry* v. *Wright*, the ground of judgment was, that the interlocutor on which this plea was rested had never been approved by the Court, and, according to the then existing practice, was still liable to rectification. In the case of *Lord Blantyre* v. *Lord Wemyss*, the House of Lords altered the judgment of this Court sustaining the plea, on the ground that the interlocutor held to constitute *res judicata* had become of no moment in the ultimate adjustment of the locality, and could not therefore be held embodied in the final judgment in the cause. The present case must, I think, be ruled by the judgment in that of *Hopetoun* v. *Ramsay*.

Agents for Buccleuch—J. & H. G. Gibson, W.S.
Common Agent—J. Stormonth Darling, W.S.

Friday, November 6.

SECOND DIVISION.

ANDERSON AND OTHERS *v.* WIDNELL AND OTHERS (LASSWADE POLICE COMMISSIONERS).

General Police and Improvement (Scotland) Act 1862, *sec.* 36—*Nomination of Commissioners.* Proceedings under the General Police and Improvement Act 1862 set aside in respect of nonconformity with essential provisions of the Statute.

This was an action of reduction of declarator brought by certain inhabitants of Lasswade for the purpose of setting aside the proceedings by which the "General Police and Improvement (Scotland) Act" was adopted in that place, and commissioners elected, and an assessment of 6d. per pound imposed upon the inhabitants. The defenders called were six individuals who claimed to have been elected as commissioners, and by whose authority the assessment was imposed; and the grounds of reduction were (1) certain alleged irregularities in the outset of the statutory procedure; and (2) the omission of the householders at the meeting where the Act was adopted to fix, in terms of the Statute, the number of the commissioners to be elected. It was said that, in respect of the said irregularities, and of the omission so made at the said meeting, the whole procedure was rendered null and void, and must be begun again *ab ovo*.

The Lord Ordinary (KINLOCH) repelled the first, but sustained the second of the above grounds of reduction; and, in respect thereof, he reduced the whole procedure.

The following is the interlocutor of the Lord Ordinary:—"*Edinburgh, 10th June* 1868.—The Lord Ordinary, having heard parties' procurators, and made avizandum, and considered the proceedings—Finds that the meeting of householders held on 29th May 1866 ought, in terms of the Statute 25 and 26 Vict., cap. 101, to have fixed and determined by a majority of votes, and set forth in their minutes, the number of commissioners to be elected by the householders to carry the Act into operation; and that, in consequence of their failure so to do, the alleged resolution of the said meeting to adopt the said Act, and the interlocutor of the Sheriff, dated 30th May 1866, finding and declaring the powers and provisions of the said Act to apply to the burgh of Lasswade, were and are inoperative and void: Finds that, in respect of the failure to fix and determine at the said meeting the number of commissioners to carry the Act into operation, the meeting of householders held on 1st March 1867 had no power to elect commissioners, and the alleged election by the said meeting of the defenders, Henry Widnell senior, William Todd junior, Robert Blair, John Porteous, William Thomson, and John Macdonald, to be commissioners under the said Act, and the interlocutor of the Sheriff, dated 1st March 1867, finding and declaring the said defenders to have been duly elected commissioners aforesaid, were and are inoperative and void: Finds that the said defenders are not entitled to act as such commissioners, nor to make and levy any assessment for police or other purposes, nor to perform any other acts or duties competent to commissioners duly elected under said Act: To the foregoing extent and effect finds, declares, reduces and decerns, interdicts, prohibits and discharges, in terms of the conclusions of the summons; to any other extent or effect assoilzies the defenders from the conclusions of the action, and decerns: Finds the pursuers entitled to expenses, allows an account thereof to be given in, and remits to the Auditor to tax the same, and to report.

"*Note.*—The Lord Ordinary is not prepared to sustain any of the objections to the proceedings anterior in date to the meeting of 29th May 1866. He considers all the things objected to as, at worst, those trivial irregularities which cannot be held to overcome the statutory finality of the proceedings.

"But he thinks a fatal blunder was committed at the meeting of 29th May 1866, and such as altogether threw the proceedings out of the statutory course, and so admits judicial interposition. After providing for a meeting of householders to decide whether the Act should be adopted in whole or in part, and also for the adjournment of the meeting when a poll should be demanded, the Statute enacts in section 36—'Where this Act shall be adopted in any burgh in whole or in part, the resolution to