have any interest, or be present during the trial; and a conviction is sufficient which neither directs forfeiture of the fish nor prescribes to whom the penalties shall be payable.

John Hanvy and William Orr, fishermen in the employment of James Buchanan, fish merchant, Ayr, were charged before a Justice of the Peace Court, sitting at Irvine, with contravention of the Salmon Fisheries Act 1868, in that during a weekly close time they took two Salmon in the district of the Irvine and Garnock rivers. The complaint was brought at the instance of James Stirrat, junior, secretary of the Dalry Garnock Angling Club, with concurrence of the Procurator-Fiscal at Irvine; and the proceedings took place under the Summary Procedure Act. On conviction, they were each adjudged to pay a modified penalty of five shillings, and one shilling for each salmon, and one pound ten shillings and two pence of expenses. Appeal was taken to the Circuit Court.

LEES, for the appellants, argued—The complaint does not set forth any right or interest in the private complainer. The complainer must have some interest, and must prosecute in person, as the proceedings are of a criminal nature, and to allow of the oath of calumny being administered to him. The occupier of the fishery should have been charged, and not his servants. There is no direction to whom the penalties are to be paid, as prescribed in the Act, when the complaint is brought by a private prosecutor. The conviction does not adjudge the salmon to be forfeited, as directed in sec. 15. Authorities cited, *Herbert*, 2 Irv. 346; 2 Hume 128; *Blair*, 4 Irv. 545; *Ferguson*, 4 Irv. 196; *Morton*, 5 Irv. 356.

D. CRICHTON for the respondent, replied,—The Act does not require the prosecutor to appear personally, or to have any interest. The proceedings are only quasi-criminal. It is not essential that the conviction should adjudge forfeiture of the salmon, nor declare to whom the penalties are to go. Authorities cited, *Raper*, 3 Irv. 529; *Tough*, 4 Irv. 366; *Morton*, 5 Irv. 356.

The Court repelled the pleas for the appellant, holding the complaint had been properly brought, and the terms of the conviction sufficient, and that the penalties were recoverable by the usual officer of Court when it was not specified to whom they were to go.

Agent for the Appellants—William D. M'Jannet, Solicitor, Irvine.

Agent for the Respondent—W. S. N. Patrick, Solicitor, Dalry.

Thursday, September 30.

INVERARY.

(Before LORD DEAS.)

H. M. ADVOCATE *v.* M'DONALD.

Relevancy — Indictment — Aggravations—Narrative. Objection to the relevancy of an indictment, that the narrative did not support the aggravations charged in the major proposition, *repelled.*

The panel was charged with culpable homicide, with an alternative charge of assault to effusion of blood and serious injury of the person. The narrative set forth, that on a certain day the panel did, at a certain place, "wickedly and feloniously attack and assault the now deceased Robert Easton," and after giving details, concluded with the words "his (*i.e.*, deceased's) face being cut and bleeding, and blood being effused on the brain."

W. F. HUNTER, for the panel, argued—The aggravations of assault charged in the major, on the ground of their not being supported by the statements in the minor, are irrelevant. The words "his face being cut and bleeding, and blood being effused on the brain," denote a state of the face and of the brain not on the face of the libel due to the acts of the panel, and which might have existed prior to the alleged assault. The sense would have been the same had these words occurred at the commencement instead of the conclusion of the narrative.

DEAS, A.-D., replied for the Crown.

The Court repelled the objection, holding that the narrative, though ungrammatically expressed, evidently meant to connect the injuries to the face and brain of deceased with the assault committed by the panel.

The case went to trial, and resulted in a unanimous verdict of "Not proven."

Agents for Panel—M'Ilwraith & Swan, Writers, Greenock.

COURT OF SESSION.

Friday, October 15.

FIRST DIVISION.

STEUART *v.* HARPER.

Sheriff—Sheriff Court Act 1853—*Process.* An irregular order was pronounced in a Sheriff-court process, on the defender's motion. The case went on, and was decided against the defender, who appealed on the ground of the irregularity. Appeal *dismissed*, the appellant having himself been the cause of the irregularity.

Harper brought an action against Steuart in the Sheriff Court of Banffshire. On 18th July 1866, the Sheriff-Substitute (GORDON) pronounced this interlocutor:—

"*Banff*, 18*th July* 1866.—Having heard parties' procurators—Finds that a record is necessary, and appoints the pursuer to condescend, and the defender to lodge defences, in terms of the Act of Parliament."

Defences were lodged on 8th October. These interlocutors were then pronounced;—

"*Banff*, 10*th October* 1866.—The Sheriff-Substitute appoints the pursuer to answer the defender's separate statement of facts within ten days from this date.

"*Banff*, 12*th December* 1866.—The Sheriff-Substitute appoints parties' procurators to meet with him in terms of the statute, and assigns first calling at twelve o'clock noon.

"*Banff*, 27*th February* 1867.—As craved and consented, continues the enrolment till next court-day.

"*Banff*, 28*th March* 1867.—The Sheriff-Substitute having considered the motion made by the defender's procurator at the bar, that in respect he has large additions to make to the defences, and that parties be allowed to revise their respective papers on separate papers—Allows both parties to revise accordingly, as craved and consented to, within ten and ten days from this date: Further,

having considered the mutual minute and production therewith tendered at the bar, allows the same to be received and marked, but refuses to hold the said production as a true copy of the letter No. 6–7 of process, alleged to have been mislaid, until the same be certified by the parties themselves to be a true copy of, and held by them as equivalent to, the said letter."

After some further procedure, judgment was given against Steuart, who now appealed, objecting to the interlocutor of 10th October 1866, that the Sheriff-Substitute, by the Sheriff Court Act 1853, sec. 4, ought then to have appointed a meeting for closing the record, and to the interlocutor of 27th February 1867, that only eight days adjournment was lawful.

BIRNIE, for appellant, cited *Kessack* v. *Garden*, 27th February 1869 7 Macph., 588.

MACKAY, for respondent, was not called on.

LORD PRESIDENT—We must not encourage irregularities; at the same time, the way in which this point presents itself leaves little doubt of what we should do. The first interlocutor is admitted to be quite correct. The next is that under date 10th October, and it is said to be irregular. It is said that what the Sheriff-Substitute ought to have done was to appoint a meeting. I am not prepared to hold that an interlocutor was necessary for the appointment of a meeting, and if the Sheriff-Substitute appointed a revisal when the parties were before him, it appears to me to have been sufficient. Now there is nothing on the face of the interlocutor of 10th October to shew that the parties were not present, so we must assume that they were, and what the Sheriff-Substitute did was this. He had before him a condescendence and defences and an allegation of a counter claim in the defences. He was satisfied that the pursuer's own record was sufficient, but he felt that the defender's statement required an answer. He accordingly ordered it to be answered within ten days. I cannot say that was incompetent. It was a limited and proper exercise of his power of ordering a revisal. Well then, this order is implemented, and the Sheriff appoints a meeting and an adjourned meeting in terms of the statute. It is said that the adjourned meeting was held at too distant a date, but whether that was the case or not the parties appeared at it, and what was done was not of consent, for the purpose of defeating the provisions of the statute, but on the motion of the present appellant. That there was an irregularity at that meeting in ordering revised papers is no doubt true, but the party now complaining is the very man who proposed it. If the irregularity had affected the jurisdiction of the Sheriff-Substitute, that would have been a different matter, but this is not a case of that kind. It is merely a question of the regularity of process; and though a party may make such an objection, and get the irregular proceeding set aside from the time when the irregular proceeding took place, we are not bound to listen to a party who has himself been the cause of the irregularity. The case of *Kessack* is quite distinct. Nothing was done there of consent, or on the motion of one of the parties, but all by the Sheriff-Substitute himself disregarding the statute. The Sheriff dismissed the action; but that was a mistake. Accordingly the appellant was the defender, who contended that he was entitled to expenses. The pursuer, on the other hand, contended that though there was an error, the Sheriff was not entitled to dismiss the action. The Court gave effect to the argument of the respondent, and remedied the whole matter by recalling and remitting to the Sheriff to take up the case at the point where the irregularity commenced. But neither the pursuer nor the defender was there to blame. This is a contrast to that case, and I am against listening to the complaint of a party in the circumstances of the appellant.

The other Judges concurred.

Agents for Appellant—Maitland & Lyon, W.S.
Agent for Respondent—Alexander Morison, S.S.C.

Saturday, Oct. 16.

SECOND DIVISION.

STEWART *v.* PAROCHIAL BOARD OF KEITH.

*Poor—Assessment—*8 *and* 9 *Vict., c.* 83, § 37—*Deductions—Surcharge—Suspension—Declarator. Held,* (1) that in calculating the deductions allowed by the 37th section of the Poor Law Act, "rates, taxes, and public charges," must be stated at their actual amount, and not upon an estimate. (2) That the probable annual average cost of repairs, insurance, and other expenses," may be covered by a percentage. (3) Circumstances in which held that a ratepayer who complained of the amount of assessment imposed upon him had failed to prove that he had not been allowed the deductions to which he was entitled under the 37th section of the statute. (4) Held that suspension is the proper and only remedy against a surcharge.

Observed, that the mode of imposing the assessment forms part of the duty of the Board, with which the Court will not interfere if a just conclusion has been reached.

Mr Stewart of Auchlunkart brought an action of suspension of a threatened charge for £70, 3s., being the amount of poor's assessment imposed upon him by the Parochial Board of Keith for the year 1866-67. This assessment in the parish of Keith is imposed according to the first mode authorised by the 34th section of the Act 8 and 9 Vict., c. 83, viz., one-half on the owner and the other half on the tenants. The deductions allowed under the 37th section of the statute are calculated by allowing 5 per cent. off agricultural and 20 per cent. off urban subjects. The suspender's annual value was stated by the Board at the sum of £1443, 11s. 3d., and, making the allowance of 5 per cent., he was assessed on the sum of £1371, 9s. 9d. It afterwards appeared that the suspender's annual value according to the valuation roll was £1523, 11s. 3d. The assessment amounted to £70, 3s. Mr Stewart complained that this was a surcharge, and that he had not got the benefit of the deductions to which he was entitled under the 37th section of the statute. These he stated as follows:—

"Those deductions from the annual value of the complainer's property which ought to have been allowed, according to the 37th section of the Act, are as follows:—

County rates, including prison, police, lunatic asylum, and rogue-money, .	£34	18	3
Cess, ...	6	0	0
Carried forward,	£40	18	3