pose and reconvey over the same" . . "to the same series of heirs as are called by the said disposition and deed of tailzie above-mentioned." There is here no condition that the lands of Barnaline remain intact as in the case of Soroba; it is not needed; it is imperative that when provisions affecting Barnaline are fulfilled, and we have seen that these are temporary and affect merely the rents, then the old entail must be re-established and the lands restored to the position they held before this deed was executed. These are all the provisions it is necessary to advert to, except one by which he revokes all prior settlements with the exception of the deed of tailzie, executed by his father and himself before-mentioned.

Now, it seems to me from a construction of this trust-deed, taken by itself, that there cannot be a doubt of the intention of the testator. It was at all costs to save Barnaline and hand it down intact to the heirs of the original deed of tailzie, and for that purpose the testator is prepared to sacrifice all his other property. He says, take my moveable property; and, if that won't do, then take Soroba. Burden it, sell it if necessary—do what is necessary to free it from debt, then, if anything is left, entail it on Archibald Macarthur; but the lands of Barnaline, in any event, are to revert to the heirs called in the deed of tailzie.

But now we come to a circumstance which raises the only doubt in the case, and certainly it was an act in some degree inconsistent with the original and presumed intention of the testator. In 1839 he had occasion to borrow £1500, and in granting security for it he included in the bond the lands of Barnaline and Soroba.

Now it must be observed that this was done before the trust-deed came into operation; it was still undelivered, and remained in the repositories of the testator. Had the deed been executed and delivered, and the estates been in the hands of the trustees, this act of the testator might have led me to a different construction of his intention, and one more or less in favour of the heir of Barnaline. But it was not so; it remained an undelivered and inoperative trust-deed, which he could alter at any time before his death.

It is said that it would have been unnecessary to include Barnaline in the bond along with Soroba had the only object in view been to afford a good security to the creditor, because the security of Soroba was ample. It is worth observing that creditors and debtors often take different views of the value of a security, and some people like a large margin and a first security; and after all this was a second security on Soroba. Soroba was already burdened with a bond for £2700. We are told in a loose way that Soroba was bought for £5000. £1500 plus £2700 make £4200, which can hardly be said to leave a large margin when the property is worth only £5000. It is in vain to talk to a creditor of the increase of value of the property since the purchase. I have no hesitation in saying that if Soroba alone had been offered as security for the £1500 it would not have been regarded as a sufficient security, and that is a very good reason why Barnaline was included; and this implies no alteration of the ultimate intentions of the testator. If Soroba and his moveable estate were not insolvent, Barnaline would never suffer by being included in this bond.

It is said, that if he still intended that Barnaline should never be used to pay his debts, he should have made an alteration in his trust-deed to that effect. No doubt had he done so all difficulty would have vanished, but then people do not always do what they ought to do; and it is a sufficient proof of the intention of the testator that, notwithstanding that he included the lands of Barnaline as a security for this £1500, he still allowed the trust-deed to remain unaltered. The estate of Barnaline was worth something like £137 per annum. Had it been burdened in the way suggested, the entail was not worth the paper it was written on, because at any moment the creditor might step in and sell the property to pay his debt.

Upon the whole matter, I have no doubt that the intention of the testator was to save Barnaline for the series of heirs to whom he had destined it under the entail, and that in no event should it bear the burden of his debt; and accordingly I think the query in this case should be answered in the negative.

The other Judges concurred.

Agents for Mr Carter—Macnaughton & Finlay, W.S.

Agent for Miss Macarthur—William Sime, S.S.C.

HIGH COURT OF JUSTICIARY.

Friday, February 4.

KIRKPATRICK *v.* MACKAY.

(Before Lords Cowan, Neaves, and Jerviswoode).

Suspension—Conviction—General Police Act (25 *and* 26 *Vic., c.* 101, §§ 130, 430, 437)*—Circuit Court of Justiciary. Held* that a person convicted under § 130 of the General Police Act 1862, must appeal to the next Circuit Court of Justiciary of the district.

This was an application by John Kirkpatrick, house-factor, Dennystown, Dumbarton, for advocation and suspension of a sentence, dated 25th October 1869, whereby the magistrate presiding in the Police Court of Dumbarton found the complainer guilty of a contravention of the 130th clause of the General Police and Improvement (Scotland) Act 1862, and fined him in a penalty of £6, 10s., with the alternative of thirty days' imprisonment. The question raised was as to the meaning of the words "private street" in the General Police Act. That Act was adopted and brought into operation in Dumbarton in September 1863, and since then the lighting, cleansing, paving, draining, supplying water to, and the police generally of the burgh, have been conducted under it. The complainer in this action is local factor for certain subjects known as Dennystown, consisting of houses laid out in streets and squares, and inhabited by about 3000 persons, which were erected by the late William Denny, shipbuilder, Dumbarton, and now belong to his son William Denny, who resides at Woodyard House there. The present proprietor is a minor, and the complainer is local factor for him and his curators. The subjects lie within the burgh of Dumbarton, and embrace what are known as (1) the Upper Square, (2) Levenhaugh Street, (3) the Lower West Square, (4) Levenbank Street, (5) William Street, and (6) the East Lower Square. The whole of these streets and squares, the complainer says, are public places. On the first erection of the

buildings at Dennystown, and until the adoption of the General Police Act, the proprietor lighted the streets and squares at his own expense. After the adoption of the Act the subjects were assessed and rated for police purposes, and the proprietor, and tenants paid rates for these purposes, and, *inter alia*, for lighting and cleansing the subjects. The lighting and cleansing were, after the adoption of the Act, carried out by an arrangement between the proprietor and the Police Commissioners, whereby the Commissioners paid annually the sum of £15 to Mr Denny and his curators, and they, in consideration thereof, cleansed and lighted all the streets and squares of Dennystown. Mr Denny and his curators, under the arrangement, collected and sold all the fulzie, and expended the price thereof in lighting and cleansing the streets and squares. This arrangement was terminated on the 17th October 1866, when the complainer received from the clerk of the Commissioners a notice informing him that the Commissioners had resolved to take the lighting and cleansing of Dennystown under their own charge, and requesting to know the sum which the proprietor would be willing to accept for the gas-lamps and fittings-up connected therewith belonging to him in Dennystown. The curators of the minor proprietor were advised that there were doubts as to their being entitled to dispose of the gas-lamps and fittings; but they informed the Police Commissioners that they sanctioned their using them meanwhile, and matters could be arranged when Mr Denny attained his majority. The Police Commissioners, availing themselves of this permission, have, since October 1866 down to the present time, lighted the three streets of Dennystown; but they have not lighted the three squares—though they have conducted the cleansing of both streets and squares. On the 22d September 1869 the complainer, as factor of the subjects, received an intimation from the respondent, Adam Mackay, Superintendent of Police, stating that the Commissioners of Police had instructed him to require the complainer, within seven days from date, to make provision for lighting "the undermentioned private courts"—these being the three courts already referred to. On the following day an answer was returned, stating that in 1866 the Police Commissioners had taken over the lighting and cleansing of Dennystown; and that in consequence no part of Dennystown could be held to be "private" under the 130th clause of the General Police Act, but all fell to be dealt with as public under the 126th clause. No notice was taken of this answer; but, on the 30th September, the complainer received a notice from the respondent that unless he made arrangements for lighting the courts he would be summoned to attend the Police Court on the following Monday. On the 13th October, the respondent's threat was carried out, the complainer being summoned on a charge of committing a breach of the 130th section of the General Police Act by not lighting the three squares in question. On the 18th October the complainer appeared and pleaded not guilty, and the diet was adjourned for a week. On the 20th October a petition was presented to the Sheriff by the complainer's landlord, Mr Wm. Denny, with consent of his curators, craving that the Police Commissioners should be ordained to make provision for lighting Dennystown, and particularly the three courts already referred to. On the 25th the complainer appeared in the Police Court, and besides adhering to his former plea of not guilty, moved the Court, in respect of the dependence of the action before the Sheriff, not to proceed with the complaint against him. The magistrate (Bailie Callen) resolved, however, to proceed, and the case was gone into. The result was that the magistrate found the complainer guilty, and fined him as already stated, whereupon the complainer made this application for advocation and interdict.

SOLICITOR GENERAL and THOMS for him.

LANCASTER in answer.

At advising—

LORD COWAN—It is pleaded that this advocation is incompetent, in respect that under section 430 of the General Police Act, where a party complains of oppression, corruption, or want of jurisdiction of the Judge in any matter of this kind, he must appeal to the next Circuit Court of Justiciary of the district. I am of opinion that this objection is well-founded. The whole matter began with the order upon the complainer contained in the letter of 22d September 1869. It was said in argument that this was not a proper order under the Act, but there seems to me to be nothing in that objection, because there is no special form required by the Act, and I know of no other or more formal way than by letter.

Now, by section 397 of the Police Act any person complaining of such an order as this may appeal to the Sheriff within seven days, but this remedy was not adopted here. The complainer pleads to us that there was oppression on the part of the magistrates in deciding the case against him, pending his appeal to the Sheriff.

This resolves itself into an appeal on the ground of oppression or want of jurisdiction of the Judge, but such appeals must go, under sec. 430, to the next Circuit Court of Justiciary of the district—that is Glasgow. The 437th section makes this even more clear. There are no regulations laid down by the Circuit Court for the regulation of such appeals, and I give no opinion on the question, whether this appeal might still be competently carried to the next Circuit Court of Justiciary at Glasgow.

I am therefore for dismissing this suspension on the ground that we have no jurisdiction to consider it.

The other Judges concurred.

Agents for Suspender — Lindsay & Paterson, W.S.

Agents for Respondent—Murray, Beith & Murray, W.S.

COURT OF SESSION.

Saturday, February 5.

FIRST DIVISION.

CRUICKSHANK *v.* SMART.

Final Judgment—Extract—Expenses—Merits. Held (*diss.* Lord Kinloch) final judgment means judgment on the merits, not the last judgment in the cause; and decree for expenses, when given separately, may be extracted and a charge given thereon immediately, if twenty days have elapsed since judgment was given on the merits.

On 18th May 1869 the Sheriff-Substitute of Aberdeenshire (SKELTON) pronounced an interlocu-