by the Superintendent of Police, who had not, under the General Police Act, any power or authority in connection with orders or intimations as to lighting or the service of orders thereanent. It was only "after service of an order" by the Commissioners that jurisdiction as to penalties, under section 130 of the General Police Act, arose; *M'Millan*, 21st January 1832, 10 S. 220; *Campbell* v. *Leith Police Commissioners*, H.L., 28th Feb. 1870, 7 Scot. Law Rep., 441. If inquiry was necessary to ascertain the facts raising this plea, as well as the facts raising the question whether the squares of Dennystown were public squares or private courts, it was quite competent; *Lockie*, 15th February 1848, John Shaw, 167; *Graham* v. *Moxey*, 17th February 1849, John Shaw, 178, and authorities there quoted by Lord Justice-Clerk; *Burns*, 12th June 1850, John Shaw, 373; *Cogan or Devany* v. *Anderson*, 16th December 1854, 1 Irv., 588. But as there was here a competent process depending before the Sheriff-court of Dumbarton, in which the respondent's preliminary pleas had all been repelled by the Sheriff-Substitute and Sheriff-Depute, and the question as to the character of the squares would then be decided authoritatively, not only should the police magistrate have delayed to convict appellant, but his sentence should be recalled and a sist granted till the Sheriff's decision was obtained, as in *Neilson*, 20th November 1837, 1 Swinton 583.

R. V. CAMPBELL, for the Commissioners, answered, that they had an extensive but still statutory and exclusive jurisdiction, which had been here competently and properly exercised. The grounds of appeal stated did not fall under those on which, by section 430 of General Police Act, appeal was alone competent. It would paralyse the operation of Act if such an appeal were sustained.

At advising—

LORD NEAVES—I have no idea that Police Commissioners can in the way contended for evade a decision by a competent Court of the rights of parties. But the view I take of this case supersedes the necessity of disposing of any such considerations. There is no order here, and no service of any order by the Commissioners. Their duty was to make an order on the appellant, and cause their clerk to enter it in their records, and serve it before any jurisdiction could arise to the Police Magistrate under the Act. No inquiry is necessary as to the facts raising this point, as the facts relied on by the appellant are not denied. I therefore sustain the appeal and quash the sentence, and ordain repetition of the fine, with £7, 7s. of expenses to the appellant.

Agents for Appellant—J. L. Lang, Glasgow, and Lindsay & Paterson, W.S., Edinburgh.

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

PERTH.

Friday, May 6.

ABERDEEN *v.* WALKER.

(Before Lord Jerviswoode.)

Appeal—Want of Notice. An appeal held incompetent, in respect it was not timeously lodged, and no proof offered of notice of intention to appeal being given when decree was pronounced.

This was an appeal against a Small-Debt Court decree of the Sheriff of Cupar, decerning against the appellant (an illegitimate son) for past aliment to his mother.

YOUNG, for the respondent, objected—The appeal is incompetent, in respect that it was not lodged and served within ten days of the decree appealed against. The Small-Debt Act, in terms of which the Act of Sederunt of 10th July 1839 was prepared, provides that appeal before the Circuit shall be brought under the rules contained in the Jurisdiction Act; and the appeal ought therefore to have been taken in open Court at the time judgment was pronounced, or within ten days thereafter, by both lodging the appeal in the clerk's hands, and serving the other party or his procurator with a copy. The decree in the cause was pronounced on 7th October 1869; the appeal was not taken in open Court, was not lodged until the 25th October, and was not served until the 27th; it was therefore incompetent; *Henderson* v. *M'Aulay*, 1849, J. Shaw 219.

SCOTT, for the appellant, replied—The appeal has been taken timeously, and according to the rules prescribed by Act of Parliament and Act of Sederunt, inasmuch as at the time judgment was given the appellant notified in open Court to the clerk and the respondent his intention to appeal.

It was replied to this, that such a fact did not appear from any entry in the Sheriff-court Book, and that the lodging of the appeal on the 25th of October did not consist with the statement that the rules of procedure had been previously complied with by notice in Court.

LORD JERVISWOODE considered that the appeal itself raised a presumption against the unsupported statement of the appellant; and though the Sheriff-court Book was not produced, he would therefore hold that the statutory rules of appeal had not been observed.

The appeal was accordingly dismissed, with £3, 3s. of modified expenses.

Agent for Appellant—Party,

Agent for Respondent—Henry White, Solicitor.