sum sued for by the appellants appears to me to be in the sense of this enactment of the nature of a penalty. True, no doubt, it is only a civil debt, but this is not a test by any means decisive; for penalties—to say nothing of sums which are to be regarded as only of the nature of penalties—are in numerous instances, with which we are all familar, simply civil debts. The things which persuade me that the sum sought to be recovered by the proceeding before the inferior judge is of the nature of a penalty, are, in the first place, that it might be sued for under section 105 of the Public Health (Scotland) Act 1867, inasmuch as it is a sum due to the Local Authority in virtue of this Act. In the second place, that not only might that sum have been decerned for, and this decree have been enforced by poinding or arrestment, but warrant for the imprisonment of the respondent, "unless he shall pay the whole sums found due within a specified time, until the same be paid, such imprisonment not to exceed a specified time," might have been granted. And, in the third place, that by section 27 of the Summary Procedure Act 1864, a case of this nature, where the decision of the inferior judge may be reviewed, is appointed to be reviewed, not by the Court of Session, but by the Court of Justiciary. For these reasons, I am of opinion that the exception which has been taken to our jurisdiction ought to be overruled. I may add, that this view of the law seems to me to be supported by the cases of *Robertson* v. *Duke of Atholl*, 1 Couper 348, and *Holland* v. *Gauchalland Coal Company*, 5 Irvine 561, both cited upon p. 71 of Mr Moncreiff's Treatise on Review on Criminal Cases, just published.

Lord Justice-Clerk—This question of jurisdiction is one of some doubt and difficulty, but I have come to agree with Lord Craighill. The proceedings in the Court below were founded on sec. 24 of the Public Health Act of 1867, which empowers the Local Authority to assess the owners of premises affected by the operations authorised by the section for payment of the expenses, and to levy and collect the sums so assessed with the same remedies in case of default of payment "as are hereinafter provided with reference to the general charge and expenses incurred by the Local Authority under this Act." The question therefore is, how these expenses are to be recovered. It is said the case is covered by sec. 105, which provides that the Sheriff "may, without prejudice to diligence by poinding or arrestment, grant warrant for the imprisonment of the person convicted or found liable in a penalty or sum of money, unless he shall pay the whole sums found due within a specified time, until the same be paid, such imprisonment not to exceed a specified time." Now, the powers of this section are not confined to matters of penalty, but they extend to "sums of money becoming due," and it is provided that the imprisonment shall not exceed a term specified. The next point is, whether this is a cause under the recent Appeals Act, and that seems to depend on the question whether it might have been brought under the Summary Procedure Act. Section 28 of that Act provides that a proceeding by way of complaint "shall be deemed and taken to be of a criminal nature where, in pursuance of a conviction or judgment upon such complaint, or as part of such conviction or judgment, the Court shall be required or shall be authorised to pronounce sentence of imprisonment against the respondent, or shall be authorised or required, in case of default of payment or recovery of a penalty or expenses, or in case of disobedience to their order, to grant warrant for the imprisonment of the respondent for a period limited to a certain time." The mode of recovery settles that the civil debt here sued for is of the nature of a penalty. The only remaining point is, whether the case is not one of those "not herein otherwise provided for" in the sense of the 105th section. I think that secs. 94 and 95 relate to the recovery of general assessments, not to claims against individual ratepayers, or to the recovery of new assessments imposed upon the whole community. I think, moreover, that it was the policy of this statute to provide rapid and stringent remedies for the current requirements of the Local Authority.

Lord Young differed, holding that the proceeding did not fall under sec. 105 of the statute, but was simply a proceeding to recover a particular assessment under sec. 24, which, if not recovered from the individual ratepayer, might afterwards be included in a general assessment under sec. 94.

The Court therefore sustained the jurisdiction.

Counsel for Appellants—Fraser. Agents—Mylne & Campbell, W.S.

Counsel for Respondent—J. P. B. Robertson. Agent—Wm. Spink, S.S.C.

COURT OF SESSION.

Saturday, March 17.

SECOND DIVISION.

[Lord Adam, Ordinary.

JUNNER *v.* NORTH BRITISH RAILWAY COMPANY.

Reparation—Skilled witness.

Circumstances in which the pursuer of an action of damages for personal injury against a railway company was *held* bound to submit to examination on behalf of the defenders by a particular physician.

This was an action brought by Mr J. C. Junner, W.S., residing at Portobello, against the North British Railway Company for £500 as damages sustained by him in consequence of injuries received through a collision which occurred on the defenders' line.

The defenders did not dispute their liability for damages, but pleaded that the amount claimed was excessive.

It was arranged between the parties that the pursuer should be examined for the defenders by physicians named by them. They named Professor Spence and Drs Dunsmure and Watson. The pursuer objected to be examined by Professor Spence, on grounds which are stated as fol-

lows in a letter from his agent to the defenders' agent:—"Mr Junner will be in attendance at that time and place to be examined by Dr P. H. Watson, Dr Dunsmure, and any other medical gentleman you may choose to send except Professor Spence. Mr Junner declines to be examined by him because of the treatment he received from the Professor when he called upon him as an ordinary patient, while suffering greatly both in body and mind through the results of the accident. On that occasion Professor Spence declined to look at him, or to give him any advice which would tend to relieve his pain and anxiety, because he (the Professor) stated that he could not do so, being retained by the North British Railway Company to examine patients, and give evidence in their behalf. Mr Junner on that occasion was very much hurt in his feelings when he reflected that a gentleman of the eminence and high standing of Professor Spence should allow himself to be feed or retained by the North British Railway Company so as to be prevented in giving his advice or assistance to any member of the public who might be hurt through the carelessness of the North British Railway Company."

In their answer to this letter the defenders' agent stated:—"Professor Spence states that nothing that took place at the interview between him and Mr Junner and Dr Young warrants the statements in your letter. Nothing said by Professor Spence was intended, or could reasonably be supposed to be in the least calculated, to hurt the feelings of any one, and the statements as to his being retained and feed by the defenders are unfounded and uncalled for."

The defenders therefore moved the Lord Ordinary for an order on the pursuer to submit to examination by Professor Spence.

The Lord Ordinary pronounced this interlocutor:—

"13*th March* 1877.—Having heard counsel on the motion of the defenders for an order ordaining the pursuer to submit himself, on behalf of the defenders, to examination by Professor Spence and other surgeons, Refuses the motion as regards Professor Spence, on the ground that the pursuer is unwilling to consult with that gentleman, and, as regards the others, that the motion is unnecessary, in respect that the pursuer states that he is willing to submit to examination by any other surgeon or surgeons: Grants leave to the defenders to reclaim against this interlocutor."

The defenders reclaimed.

At advising—

Lord Justice-Clerk—There is no doubt that we have the power to make the order which the Lord Ordinary has refused. The only question is, whether the pursuer, who says he is ready to submit to the inspection of any medical man for the defenders except Professor Spence, is bound to submit to examination by that gentleman, against whom he seems to entertain some not very intelligible grudge or pique. I should be slow in a matter of such delicacy as this to disregard any objection made to examination by a particular doctor even though the objection appeared to be altogether fanciful, though the result was to deprive a litigant of the services of an expert whom he was in the habit of employing. But looking to the explanations given by Professor Spence, I am clear there is no ground for refusing the motion.

The other Judges concurred.

The Court pronounced the following interlocutor:—

"The Lords having heard counsel on the reclaiming-note for the North British Railway Company against Lord Adam's interlocutor of 13th March 1877, Recal the said interlocutor, and, on the motion of the reclaimers, appoint Mr J. C. Junner to allow himself to be examined by Professor Spence, along with the other medical gentlemen, on behalf of the Railway Company, reserving the question of expenses; and decern."

Counsel for Pursuer—Fraser—Rhind. Agent—Robert Menzies, S.S.C.

Counsel for Defenders—Jameson. Agent—Adam Johnston.

Tuesday, March 20.

SECOND DIVISION.

[Lord Curriehill, Ordinary.

STANDARD PROPERTY INVESTMENT COMPANY *v.* COWE AND OTHERS.

Husband and Wife—Marriage Contract Provision—Infeftment—Power of Renunciation.

Where a wife, by virtue of an antenuptial marriage-contract, had been infeft in a liferent out of her husband's estate, *held* that she was capable of renouncing such provision *stante matrimonio* by consenting to onerous alienation of the estate by her husband.

This was an action raised by the Standard Property Investment Company against Henry Cowe, fishcurer in Edinburgh, Mrs Patricia Chalmers Hunter or Cowe, his wife, and others. The following narrative is taken from the Lord Ordinary's note:—"The defenders, Henry Cowe and his wife Patricia Chalmers Hunter, on the occasion of their marriage in 1869 entered into an antenuptial marriage-contract, by which Henry Cowe, on the one hand, disponed certain subjects belonging to him at Bonnington, near Edinburgh, to his wife in the event of her survivance, and so long as she should remain his widow, in liferent, for her liferent use allenarly, declaring that in the event of her entering into a second marriage a liferent annuity of £25 should be substituted for the foregoing liferent. These provisions were accepted by her as in full satisfaction of her claims for terce and *jus relictæ*. On the other hand, Mrs Cowe conveyed the whole estate, heritable and moveable, then belonging to her or which she might acquire or succeed to during the marriage, to trustees, for the purposes specified in the contract. Her own estate was thus protected against her husband and his creditors, and against her own acts, during the subsistence of the marriage, by the interposition of trustees for her behoof; but the liferent right provided to her by her husband was not so protected. She was, however,