or each of them been guilty of an offence against the 'Contagious Diseases (Animals) Act 1878,' section 31, in so far as they had during a period of fourteen days immediately preceding 28th February, and at all events on that date, sixteen cows at the farm of Oliverburn belonging to them, or in their possession, or under their charge, some or all of which cows were affected with foot-and-mouth-disease, and both and each or one or other of them failed to give with all practicable speed notice to a police constable as required by the Act." The case came before the Magistrates on 19th March 1883, and both respondents appeared and pleaded not guilty. Evidence was led on both sides. The facts proved as set forth in the case for appeal were these—The appellant was tenant and occupant of Oliverburn, and the cows upon the farm belonged to him and were housed by him, and in his possession. The farm-house was really occupied by the other accused John Robertson, the appellant's nephew, who paid an annual sum for the milk of each cow, and was bound to replace any which died. The appellant lived at another farm several miles away. The cows were milked by a servant of John Robertson, who, however, obeyed the orders of both accused. On the day libelled several cows were suffering from foot-and-mouth disease, and no notice had been given by either of accused.

The Magistrates convicted the appellant, and fined him £4, with £2 of expenses. The grounds of their determination were thus set out in the Case—"(1) That the appellant was in possession of said cattle, which belonged to him, and which were housed on his own said farm of Oliverburn, and that said cattle were, on the 28th February 1883, either suffering from said foot-and-mouth disease or had been suffering therefrom within the period specified in said complaint; (2) That the Court were not satisfied that the appellant had no knowledge of the existence of said disease, or, at all events, that he could not with reasonable diligence have obtained that knowledge; and (3) That he did not give notice with all practicable speed of the fact of the animals being affected with said disease to a constable of the police establishment for the county of Perth."

The question of law stated for the High Court of Justiciary was, Whether the appellant was, under the circumstances above set forth, rightly convicted under the Contagious Diseases (Animals) Act 1878?

Argued for appellant—The conviction here was wrong, and ought to be quashed. The Magistrates had made an error in law. The evidence of possession was not sufficient in law The words of the section were, "Every person having in his possession or under his charge an animal suffering from disease, shall," &c. The person who was in fault here, if there was any fault, was John Robertson, who had the animals in his possession under a well-recognised contract of "bowing." They could not also be in the appellant's possession, and the Magistrates in stating that they were so had really gone wrong on a matter of law.

The respondents' counsel were not called upon.

At advising—

Lord Young—This is an appeal under the Contagious Diseases (Animals) Act, which allows any party to appeal to this Court who thinks himself aggrieved on the ground that the magistrate has fallen into error on a point of law. The facts here stated show no error at all. The man who bows out the cows, as in this case, may still have the cows in his own possession or under his charge, and the Magistrates have found that that is the case here, and I can see no legal error whatever. If the facts had been such that the appellant here had no possession or charge, there might have been a legal error.

Lord Craighill—I am of the same opinion, and think it a pity that the case was ever brought here. The material fact, as set forth in the appeal and as proved to the satisfaction of the Justices, is that the cows are still in the appellant's possession. I think the case is one within the statute.

The Lord Justice-Clerk concurred.

The Court refused the appeal.

In the case against John Robertson the Local Authority had entered an appeal.

This appeal was withdrawn.

Counsel for Appellant (William Robertson)—Shaw. Agents—J. & J. Galletly, S.S.C.

Counsel for Respondents (Local Authority)—J. P. B. Robertson—Dickson. Agents—Graham, Johnston, & Fleming, W.S.

Wednesday, June 13.

HUTTON *v.* GARLAND AND ANOTHER.

Justiciary Cases—Case for Appeal—Summary Prosecutions Appeals (Scotland) Act 1875 (38 *and* 39 *Vict. cap.* 62), *sec.* 3.

The Summary Prosecutions Appeals Act 1875 provides, that in order to an appeal being taken against the decision in point of law of an inferior judge, the appellant shall, within three days after the determination of the inferior judge, find caution for or consign a sum sufficient to meet any penalty imposed, and also the costs of the appeal.

A person who had been convicted of a police offence on a Saturday, desired the magistrate by whom he had been convicted to state a Case for the consideration of the High Court of Justiciary in terms of the Summary Prosecutions Appeals (Scotland) Act 1875, sec. 3, but did not lodge the necessary sum to meet the costs of appeal, as directed by the 1st sub-section of the same clause, till the following Wednesday. *Held* that the Sunday must be counted as one of the days, and that therefore he had not complied with the provisions of the statute, and was not entitled to have a Case stated.

The Summary Prosecutions Appeals (Scotland) Act 1875, sec. 3, provides—"On an inferior judge hearing and determining any cause, either party to the cause may, if dissatisfied with the judge's

determination as erroneous in point of law, appeal thereagainst notwithstanding any provision contained in the Act under which such cause shall have been brought excluding appeals or review in any manner of way of any determination, judgment, or conviction, or complaint under such Act, by himself or his agent applying in writing within three days after such determination to the inferior judge to state and sign a Case setting forth the facts and the grounds of such determination, for the opinion thereon of a superior court of law, as hereinafter provided; and on any such application being made the following provisions shall have effect—1. The appellant shall not be entitled to have a Case stated and delivered to him unless within the said three days he shall (1) lodge in the hands of the clerk of court a bond with sufficient cautioner for answering and abiding by the judgment of the superior court in the appeal, and paying the costs should any be awarded by that court, or otherwise, in the discretion of the inferior judge, shall consign in the hands of clerk of court such sum as may be fixed by the inferior judge to meet the penalty awarded, if any, and the said costs of the superior court."

John Hutton was convicted of assault at the Leith Police Court on Saturday 19th May 1883. He was sentenced to pay a fine of 7s. 6d. He paid the fine, and on Tuesday 22d applied in writing, through his agent, to have a Case stated for appeal to the High Court of Justiciary. A reply was received by his agent from the Clerk of Court the same day, stating that before any Case could be stated the sum of £8 must be lodged in the Clerk's hands in terms of the Summary Prosecutions Appeals (Scotland) Act 1875, section 3, sub-section 1. On the morning of Wednesday the 23d May the money was sent to the Clerk, who refused to receive it, on the ground that the time for lodging it had expired.

In these circumstances Hutton lodged this application, to which the Magistrate and Clerk of Court were called as respondents, to have the former ordained to state a Case for the consideration of the Court.

Argued for the Complainer — The application for a Case had been lodged in time. Sunday must not be counted as a day in the meaning of the Act, which allowed three working days. The sum required was lodged. The Act was passed to admit of appeals, and should not be rigidly construed against admitting them.

Authorities—Moncreiff on Review, 202; *Jex Blake* v. *Craig*, March 16, 1871, 9 Macph. 715; *Russell* v. *Russell*, November 12, 1874, 2 R. 82; Court of Session Act 1868, sec. 28.

Lord Young—When this case was first presented to us, I understood it was a case in which a convicted person had stated to the Magistrate his desire to have a Case stated for the Appeal Court, and that the Magistrate had refused to grant a Case, at the same time refusing to give a certificate of refusal, as provided by statute. But it has been explained to us now that the case is not one of that kind, but that the Magistrate refused to state a Case on the ground that the statutory conditions had not been complied with, and if that is so the Magistrate was not only entitled to refuse to grant a Case, but even bound to do so. The question here depends upon the consideration, whether when one of the days within which a convicted person is entitled to appeal to this Court is a Sunday, that day is to be counted as a *dies non*. The trial took place upon the Saturday, and the appellant did not comply with the conditions, upon which alone he was entitled to have a Case stated, till the Wednesday following. If Wednesday is to be counted as the third day from Saturday, then he is entitled to have a Case stated. Three days is no doubt a short period, and to deduct one working day may no doubt be a serious matter, but I am afraid the law is quite settled. The short period of three days within which an appeal may be taken is fixed by the Legislature, and Sunday is counted one of them, and looking at the English authorities on the construction of an analogous statute, the point seems quite settled in that country. Of course, if the Sunday is the last day of the three, and it is impossible to lodge the papers at the office because it is shut, then it cannot be counted, and Monday must be taken as the last of the three days appointed.

I am relieved of a feeling of anything like practical hardship in not allowing a Case, because from the note I see that the objection to the decision is insufficient evidence, the party in the case in the Police Court being too drunk at the time the assault was committed on him to remember anything of the occurrence.

The Lord Justice-Clerk and Lord Craighill concurred.

The Court refused the application.

Counsel for Petitioner — Rhind. Agent — Andrew Clark, S.S.C.

Counsel for Respondent—Moncreiff. Agent—J. Campbell Irons, S.S.C.

Wednesday, June 13.

HENDRY *v.* FERGUSON (P.-F. OF BURGH OF STIRLING).

Justiciary Cases—Relevancy—Specification—Alternative.

A complaint charged a person with committing a breach of the peace in a hall occupied by, and during a meeting of, a religious body, by "shouting and screaming at the top of his voice, or otherwise creating a noise and disturbance." *Held* that there was sufficient specification to infer a relevant charge.

Breach of the Peace—Religious Meeting—Police Offence.

A person went to a religious meeting held by the "Salvation Army" in a hall hired by them for their services, and while there wilfully made such a disturbance as to interrupt the service and annoy those engaged in it for nearly an hour. *Held* that this conduct constituted a breach of the peace, and that a conviction for that offence obtained against him in the Police Court was *right*.

Thomas Hendry, a waiter in a hotel in Stirling, was brought before the Police Court of that burgh on a complaint by Thomas Ferguson, Procurator-Fiscal for the burgh, charging him with breach of the peace, "In so far as between the hours of