to be removed into the county of Lanark, was guilty of the offence charged."

If it had been stated as a finding in point of fact that the appellant did permit the cattle to be removed without the required declaration, I could not have answered the question before us in the negative, because I see no reason to doubt that the Justices were right in holding that under the regulations the appellant, as owner, selling and allowing the removal of the cattle, was the only person who would make a declaration of the kind required, and ought to have seen that it was made, not the less so that he ceased to be owner before the removal into Lanark district took place. But the difficulty is that the essential fact in the case is not stated as a fact, but merely as matter of opinion. That is not sufficient, and I therefore agree that we cannot answer the question stated in the case in the affirmative.

I have had some doubt, however, whether, on the case as stated, we can answer it either way? and whether we ought not to deal with the case as insufficiently stated, and to remit to the Justices to give us the facts on which they founded their opinion. It is not satisfactory to my mind to quash the conviction merely because the Justices have not stated these facts, which might or might not if stated have been sufficient to support it. I should have preferred for my own part to make a remit. But as your Lordships are against that course, and there certainly are many objections to getting the case re-stated now, I do not dissent from a finding that in the circumstances set forth it is impossible to find the appellant guilty.

Lord Justice-Clerk—I am of the same opinion. I sympathise with what Lord Lee has said with reference to the question whether there is enough in the case to allow us to dispose of it. But looking to the form in which the question is put, viz., "In the circumstances above set forth was the appellant guilty of the offence charged?" I have no difficulty in answering it in the negative. And with reference to the sending back of cases to be amended, I only say this, that that is a practice which ought to be strictly safeguarded, because it is well that magistrates should understand that they are bound to state their cases with care and attention, and to consider well whether they have fully stated the facts which are suggested in their question as justifying a conviction. I think it is proper to send back a case to be amended in circumstances where some slight alteration may bring out clearly some important point; as, for example, where a fact of importance is stated with ambiguity, or where a matter of fact is not stated with such clearness as to enable an important point of law depending upon it to be decided satisfactorily. But I am clearly of opinion that no case should be sent back where practically the case has to be set aside and a new one stated, or where there is a failure to state the facts, because the person convicted is entitled to have a case stated when the facts are fresh in the recollection of the Justices. Therefore, although sharing the difficulty of Lord Lee, I think the proper course is to deal with this case as one which fails to state facts necessary to a conviction for the offence charged.

The Court quashed the conviction.

Counsel for the Appellant—A. S. D. Thomson. Agent—J. Stewart Gellatly, S.S.C.

Counsel for the Respondent—Dundas. Agents—Bruce & Kerr, W.S.

COURT OF SESSION.

Saturday, November 24.

FIRST DIVISION.

[Sheriff of Argyllshire.

CAMERON AND OTHERS *v.* THE DUKE OF ARGYLL.

Crofter—Crofters Holdings (Scotland) Act 1886 (49 *and* 50 *Vict. cap.* 29), *secs.* 25 *and* 28—*Order of Commissioners—Finality—Sheriff—Appeal—Competency.*

The Crofters Holdings (Scotland) Act 1886, sec. 25, provides—"The decision of the Crofters Commissioners in regard to any of the matters committed to their determination by this Act shall be final." Section 28 provides—"Any order of the Crofters Commission . . . may be presented to the Sheriff, and the Sheriff if satisfied that the order has been made in conformity with the provisions of this Act and has been duly recorded, may pronounce decree in conformity with such order on which execution and diligence shall proceed."

Certain crofters in the island of Tiree presented an application to the Crofters Commission praying the Commissioners to fix fair rents to be paid by them and to deal with the question of arrears. The Commissioners pronounced an order, which was recorded in the Crofters Holdings Book for the county of Argyll. The Duke of Argyll, as landlord, presented a petition to the Sheriff praying the Court to interpone authority to said order, and to pronounce decree in conformity therewith. *Held* that the decision of the Commissioners being final, and the Sheriff having satisfied himself that their order was in statutory form, and having pronounced decree, an appeal thereagainst was incompetent.

The Crofters Holdings (Scotland) Act 1886, sec. 25, provides—"The decision of the Crofters Commissioners in regard to any of the matters committed to their determination by this Act shall be final." Section 28 provides—"Any order of the Crofters Commissioners . . . may be presented to the Sheriff, and the Sheriff if satisfied that the order has been made in conformity with the provisions of this Act and has been duly recorded, may pronounce decree in conformity with such order on which execution and diligence may proceed."

Archibald Cameron and others, crofters in the island of Tiree, presented an application in December 1886 to the Crofters Commission in terms of the Crofters Holdings (Scotland) Act 1886, praying the Commission to fix the fair rent

to be thereafter paid by them for their holdings, and dealing with arrears.

After sundry procedure the said Commissioners in October 1887 pronounced an order which was duly recorded in the Crofters Holding Book for the county of Argyll at Tobermory. The schedule appended to the order set out—(1) The total amount of arrears due by the applicants; (2) the amount cancelled; (3) the amount ordered to be paid; (4) the number of instalments; (5) the amount of each instalment and the dates when payable.

In June 1888 the Duke of Argyll presented a petition in the Sheriff Court of Argyllshire at Oban, against the said Archibald Cameron and others, and prayed the Court to interpone authority thereto, and to pronounce decree in conformity therewith. He pleaded that he was entitled to decree as craved in terms of the Crofters Holdings (Scotland) Act 1886, sec. 28, with expenses.

On 27th July 1888 the Sheriff-Substitute (MacLachlan) refused the motion for the pursuer that the cause should be tried summarily, continued the cause until the first vacation court, and allowed the defender to lodge defences within that time.

"*Note.*—The pursuer contended that parties should be heard summarily, but as the Crofters Holdings Act makes no provision for summary procedure in applications such as the present, the Sheriff-Substitute was obliged to refuse the pursuer's motion as incompetent. It is also to be noticed that the warrant for service obtained on the pursuer's application is in the ordinary form, and not in the form provided by section 52 of the Sheriff Courts Act 1876 for having causes disposed of summarily."

The pursuer appealed to the Sheriff (Forbes Irvine) who on 22nd September 1888 sustained the appeal, interponed authority to the said order, and granted decree in terms thereof.

"*Note.*—The Crofters Commission not being a court of record, their orders can be enforced only through the interposition of a court of law. The Act therefore provides, by section 28, that 'any order of the Crofters Commission or two of their number acting as hereinbefore provided may be presented to the Sheriff, and the Sheriff, if satisfied that the order has been made in conformity with the provisions of this Act, and has been duly recorded, may pronounce decree in conformity with such order on which execution and diligence shall proceed.' The statute does not set out any precise form in which this and similar applications may be made, but it may be remarked that soon after its passing it was ably analysed and annotated by Mr C. N. Johnstone, advocate, who added a set of suggested forms, many of which have not been superseded by the official forms issued by the Commission (Rankine on Leases, p. 513, note 1). The application by the pursuer in the present case is substantially in terms of one of these forms (No. 8, p. 60).

"Neither does the Act point out any particular mode of inquiry by which the Sheriff before pronouncing this 'decree conform' is to satisfy himself that the order of the Commissioners, or the decision of a single arbiter mutually chosen (section 30), is in conformity with the statutory provisions. It would, indeed, seem that this important matter is left pretty much to the discretion of the Judge, subject always, as his decision is, to the review of the higher Court. In the present case, however, owing to the form which the cause took in the first instance the Sheriff has had the advantage of the able pleadings of the parties on the question at issue.

"It is indeed true that the Act does not say in set terms that the proceedings under it are to be summary, but this would seem to be in conformity with the general tone and tenor of the statute. By section 25 the decision of the Crofters Commission is final. The pursuer has here produced an order by the Commissioners, with a certificate thereon that the same has been recorded in the book kept for that purpose by the Sheriff Clerk in terms of section 27 of the Act, and it does not appear to be contemplated that a formal record should be made up, with its necessary delay and eventual cost; it indeed seems difficult to conceive a case where it is more for the interest of all parties that the question at issue between them should have an early settlement."

The defenders appealed to the Court of Session, and argued that they were entitled to lodge defences, as the Act nowhere said that the procedure under it was to be summary.

The respondent argued that the appeal was incompetent. Sec. 25 of the Act declared that the decision of the Commissioners was to be final. The Sheriff had pronounced decree in terms of sec. 28, and there was nothing to appeal from. The proceedings were summary—*Bone* v. *School Board of Sorn*, March 16, 1886, 13 R. 768.

At advising—

Lord President—I think this appeal incompetent, and the subject-matter of it is such that we cannot entertain it or look at it at all. The 25th section of the Crofters Act provides that a decision under the Crofters Commission in regard to any matters committed to their determination by that Act shall be final. Now, that clause of itself creates a finality at a very early stage of the proceedings. The determination of the Crofters Commission is to be final; there is not an appeal against it, but there is a process of registering that determination in the Sheriff Court books as provided by the 27th section. The 28th section of the Act provides that any order of the Crofters Commission or two of their number acting as therein provided may be presented to the Sheriff, and the Sheriff, if satisfied that the order has been made in terms of the Act, and has been duly recorded, may pronounce decree in conformity with such order, on which execution and diligence shall proceed. The object of the Crofters Act is plainly that the order of the Commission may be enforced by the ordinary diligence of the law where necessary. It is not imperative that the order of the Crofters Commission should be presented to the Sheriff, it is only declared that it "may be presented to the Sheriff." As I understand the 28th section, the only object of presenting an order to the Sheriff is to make it the foundation of a diligence. Now, what is the Sheriff to do when the order is presented? He is to pronounce decree conform to it, but he is to satisfy himself at the same time that the order has been made in conformity with the provisions of the Act. But I do not understand these words to import that the Sheriff is to

have a process before him, or that he is to hear parties, but that he is to read the order for himself and see that it is in the statutory form, and then pronounce decree. Now, the notion of there being an appeal to this Court against the decree in conformity with the Act is quite out of the question. Never was there such a thing heard of. The sole object of a decree conform to the Act is to make the order a basis for a diligence. If anything has gone wrong in the course of the proceedings, either before the Crofters Comission or in the deliverance of the Sheriff in pronouncing the decree as conform to the Act, of course that may be set aside in the ordinary way by suspension or reduction, but certainly it is not intended by the statute that there should be a process in the Sheriff Court. And there being no process in the Sheriff Court, there can be no judgment of the Sheriff which can form the subject of an appeal.

LORD MURE, LORD SHAND, and LORD ADAM concurred.

The Court dismissed the appeal as incompetent.

Counsel for the Appellant—Watt. Agents—Clark & Macdonald, S.S.C.

Counsel for the Respondent — Mackay — H. Johnston. Agents—Lindsay, Howe, & Company, W.S.

Thursday, November 22.

FIRST DIVISION.

[Lord Lee, Ordinary on the Bills.

LAURIE *v.* MOTHERWELL.

Bankruptcy — Sequestration—Recal—Affidavit—Right in Security—Bankruptcy (Scotland) Act 1856 (19 *and* 20 *Vict. cap.* 79), *sec.* 22.

Where the oath of a petitioning creditor in a sequestration was *ex facie* conform to statute, but omitted to specify as security of the debt certain valueless inhibitions, a petition for recal of sequestration *refused.*

The directors of a public company became jointly and severally liable under a bond for £4300 to one of their number, who, under a charge upon the bond, obtained sequestration of the estates of one of his co-obligants. The creditor deponed that the debtor owed him £3583, 6s. 8d., being the balance of £4300, less the sixth part due by himself in his character of co-obligant, and that he held the other co-obligants—naming them, but making no mention of himself—liable for the debt. He omitted to state among the securities held by him for the debt certain inhibitions over the creditor's estate which had attached nothing.

In a petition for recal of the sequestration —*held* (1) that the oath of the creditor specified all those who were, besides the bankrupt, liable for the debt, and (2) that it was within the discretion of the Court to consider that no prejudice had arisen from the omission to specify the inhibitions over the creditor's estate, and the petition *refused.*

This was a petition by John Laurie for recal of the sequestration of his estates. Answers to the petition were lodged by William Motherwell, the creditor at whose instance sequestration had been awarded.

The petitioner and respondent were both directors of the Rawyards Coal Company (Limited). The respondent had advanced various sums to the company, amounting in all to £4300, for which he received a bond dated 15th April 1884 by the company and its directors, William Mitchell, William Motherwell (the respondent), Andrew Aitken, John Laurie (the petitioner), John Motherwell, and George Walkinshaw. Under this bond the granters bound and obliged the company, and themselves as individuals, and their heirs, executors, and successors, all jointly and severally, without the necessity of discussing them in their order, to repay the sum of £4300 to the respondent with interest and penalties.

On 4th June 1888 the bond was recorded in the Books of Council and Session, and on 18th July the petitioner was charged to make payment of £3583, 6s. 8d., or five-sixths of the sum of £4300 due under the bond. The charge having expired without payment the respondent applied for sequestration of the petitioner's estate, and on 9th August 1888 sequestration was awarded by the Lord Ordinary on the Bills.

In the affidavit produced along with his application the respondent deponed that the petitioner owed him the sum of £3583, 6s. 8d., being the balance of the sum of £4300 contained in the bond above mentioned, after deduction of £716, 13s. 4d., "being the deponent's one-sixth share or proportion thereof as co-obligant" under the bond. He further deponed that no part of the debt had been paid or compensated, and that besides the petitioner he held "the said Rawyards Coal Company (Limited), the said Andrew Aitken, John Motherwell, William Mitchell, and George Walkinshaw, liable for the said debt;" that he held a security to the extent of £500 for the debt; and that he held "no other obligants or securities for the said debt than those above specified."

By the 22nd section of the Bankruptcy Act the creditor applying for sequestration of his debtor's estate is required to state "what other persons, if any, are, besides the bankrupt, liable for the debt or any part thereof, and specify any security which he holds over the estate of the bankrupt or of other obligants, and depone that he holds no other obligants or securities than those specified; and where he holds no other person than the bankrupt so bound and no security, he shall depone to that effect."

The petitioner averred, *inter alia*, in his petition that the affidavit made by William Motherwell in support of his application for the petitioner's sequestration did not comply with the statutory requisites above described. In particular, (1) it did not specify among the securities held by William Motherwell for the debt two inhibitions duly executed on 4th June 1888 over the estates of the petitioner and William Mitchell, a co-obligant; and (2) it did not specify all the co-obligants. William Motherwell, the creditor in the bond, was also debtor in the bond for the whole debt, the parties being liable *singuli in solidum.* He was not therefore entitled to