have been prepared long ago, and therefore I feel constrained to say that I think an insufficient case has been made for this application. It really comes to no more than this, that the pursuers having originally appreciated the nature of their case, and the time it would take to prepare, now that they see the defenders' case more fully developed, think better of it. I cannot say that I think the question is of very great importance, for this reason, that the alternative is between postponing the trial and abandonment, but at the same time I think we are bound to regard the duties of litigants in relation to one another at the various stages of a jury trial, and for my part I cannot bring myself to think that sufficient ground has been given under the first head of the application.

As regards the second, the Dean of Faculty was very frank in saying that it was of subsidiary importance in their view, and I do not think it would have afforded adequate ground for this application if it had stood by itself. It does not fit in with any precision as affording any corroboration of the first ground. On the whole matter I think the motion should be refused.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court refused the motion.

Counsel for the Pursuers—D.-F. Asher, Q.C.—Sol.-Gen. Dickson, Q.C.—Christie. Agents—Clark & Macdonald, S.S.C.

Counsel for the Defenders—Balfour, Q.C. — Guthrie — W. Campbell. Agents — Simpson & Marwick, W.S.

Friday, March 5.

SECOND DIVISION.

HEDDLE *v.* MAGISTRATES AND COUNCIL OF LEITH.

Burgh—Assessments—Appeal by Ratepayer against Resolution to Apply Funds Raised by Assessment to Certain Purposes—Competency—Burgh Police (Scotland) Act 1892 (55 *and* 56 *Vict. c.* 55), *sec.* 339.

The magistrates and town council of a burgh passed a resolution to apply funds out of (1) the burgh general assessment, and (2) the public health assessment, in payment of expenses incurred by them in opposing three private bills in Parliament. An individual ratepayer lodged an appeal against both assessments with the magistrates. This appeal was dismissed. The ratepayer then appealed to the Court of Session against the resolution and deliverance "in virtue of section 339 of the Burgh Police (Scotland) Act 1892, the Public Health (Scotland) Act 1867, and to the extent, if any, that the said appeal may be found to be justified at common law."

Held that the appeal was incompetent, the proper mode of bringing such a resolution under the review of the Court being by declarator and interdict or one or other of them.

Part IV. of the Burgh Police (Scotland) Act 1892 (55 and 56 Vict. cap. 55) deals with "police administration." By section 339 of the Act, which is one of the sections under Part IV., it is enacted—"Any person liable to pay or to contribute towards the expense of any work ordered or required by the commissioners under the Act, and any person whose property may be affected or who thinks himself aggrieved by any order or resolution or deliverance or act of the commissioners made or done under any of the provisions herein contained, may, unless otherwise in this Act specially provided, appeal either to the Sheriff or to the Court of Session by lodging a note of appeal within fourteen days after intimation of the order or deliverance of the commissioners complained of, or within fourteen days after the commission of the act complained of, with the sheriff-clerk of the county in which the burgh is situated if the appeal is made to the sheriff, or with any principal clerk of session at Edinburgh if the appeal is made to the Court of Session, which note of appeal shall state the grounds of such appeal and be signed by the appellant or by his counsel or agent, and the sheriff or Court shall order a copy of the appeal to be served on the clerk to the commissioners and appoint him within six days after such service to lodge answers thereto, and shall thereafter hear further and determine the matter of the appeal, and shall make such order thereon either confirming, quashing, varying, or redressing the order, resolution, deliverance, or act appealed against, and shall award such costs to either of the parties as the sheriff or Court shall think fit."

At a meeting of the Magistrates and Council of Leith, as Commissioners for the burgh, held on 6th October 1896, they resolved to charge (1) the expenses incurred by them in their opposition to the Edinburgh Extension Bill, which had for its object the annexation of Leith to Edinburgh, to the Public Health Assessment, and (2) the expenses incurred by them in their opposition to the Edinburgh Improvement and Tramways Bill and the Edinburgh Street Tramway Company's Bill, to the Burgh General Assessment, the expenses to be spread over a period of five years.

An appeal under section 340 of the Burgh Police (Scotland) Act 1892 to the Magistrates and Council of Leith was lodged against the assessments by James Heddle, a tenant householder in Leith, and as such subject to both of the foresaid assessments. This appeal was unanimously dismissed.

Thereupon Mr Heddle presented an appeal to the Court of Session, in which he averred—"The appellant considers himself aggrieved by the aforesaid resolutions of 6th October 1896 to charge to any assessment or rate as condescended on by the

respondents, the expenses incurred in opposing or promoting the above-mentioned three bills, and now appeals against the afore-mentioned resolutions, deliverance, or judgment, and statement aforesaid, in virtue of section 339 of the Burgh Police (Scotland) Act 1892, the Public Health (Scotland) Act 1867, and to the extent, if any, that the said appeal may be found to be justified at common law."

He prayed the Court "to recal the judgment, decision, or deliverance aforesaid *simpliciter*, and to require and ordain the respondents to withdraw and exclude from the statutory estimates and assessments the sums complained of, and to ordain that inasmuch as the assessments for the year now current are in course of being levied, and the sums complained of in whole or in part paid, the respondent shall place and pay into the bank account of the respective rates, and keep to the credit of the next respective estimates of income and expenditure and assessments the respective sums so charged and complained of."

In the appeal the appellant stated that the expenses of the opposition to the Edinburgh Extension Bill amounted to £3510, 7s. 6d., and the expenses of the opposition to the Tramway Bills £1461, 9s. 3d.

The Magistrates and Council of Leith objected to the competency of the appeal, and argued—Appeals under sec. 339 of the Burgh Police Act 1892 could only deal with matters relating to police administration dealt with in Part IV. of the Act. Appeals under that section could not be presented in connection with rating and borrowing which was dealt with in Part V. of the Act. There was also no provision for an appeal of this kind under the Public Health Act 1867. The proper remedy of a ratepayer who was of opinion that he was improperly assessed was by interdict or declarator and interdict.

Argued by appellant—Section 339 of the Act was in general terms, and gave the right of appeal to any person who thought himself aggrieved by an order or resolution of the magistrates. Even if the objection of the respondents were sound, it was a technical one, and should not be given effect to. Parties were here prepared to argue the case on its merits, and the objection should be overruled—*Ward* v. *Mayor of Sheffield*, 1887, L.R., 19 Q.B.D. 22, opinion of Cave, J., 28.

LORD YOUNG—We have been told, and I think quite accurately, that there is no previous instance of an appeal resembling this. An appeal against the resolution of the proper authority as to what they will assess for is without precedent, and *prima facie* it looks an incompetent way of bringing under the consideration of this Court the question whether the Magistrates are entitled either to raise by assessment a fund in order to meet such charges as those which are here in question or out of the proceeds of an assessment laid on to take money to pay these charges. Now, it is certainly a matter of interest and importance to have it decided whether or no the police authority here—the Magistrates and Town Council—are entitled to raise by assessment funds to meet such charges as are here in question, or to take money out of the proceeds of an assessment in order to meet them, and if there is a dispute as to that question, it is very proper that it should be brought before the Court for determination. But to bring it before the Court by appeal against a resolution to raise an assessment, which contains, I assume, some statement indicating that they had in view these charges in fixing the amount of the assessment to be raised—to say that that would be brought under the consideration of the Court by appeal at the instance of any individual ratepayer—is a proposition for which I would require some authority. If clause 339 of the Police Act were, upon the face of it, plainly an authority for that, it would, of course be sufficient, but I incline to think that it is not, and that the proper way to raise the question—the way to which the burgh authority assent—is by declarator and interdict, or declarator without any interdict, because we have no reason to suppose that the burgh authority would act against a judgment of this Court—either not appealed against or confirmed upon appeal—finding what was the law, and consequently their duty in the matter. Therefore I think it would not be the proper course to proceed in this appeal to try that question, as I think it is not properly brought before us by the appeal. I think the proper case for appeal under the section is, where any individual under the jurisdiction of the police authority suffers in his person or property by any proceeding of theirs under the Act. He may appeal against them with respect to any assessment imposed upon him, and say, "That is more than my share; I complain against the assessment so far as I am concerned; you have overrated my premises, or I am not the party that is liable in respect of the premises for which you have assessed me." All those are individual things which he may bring forward individually by appeal to the Sheriff or by appeal to this Court. But a general question, such as the right of a public authority to apply funds raised by assessment, either under the Burgh Act or under the Public Health Act, to these purposes, or to take funds out of the proceeds of an assessment previously imposed for these purposes, is, I think, not conveniently, and certainly in my opinion not competently, brought before us by appeal. I am therefore, upon the whole matter, of opinion that this appeal ought to be dismissed as incompetent.

LORD TRAYNER—The question that the appellant really desires to have determined is plainly enough brought out in the statement of facts in the appeal, and is an important enough question, and upon the mere question of technicality of form, I would not have been without a desire to aid the appellant in having it settled without putting him to the expense of bringing

another action if that could have been done. But the important question which is raised, as I say, on his statement, is not the question which he asks us to determine in the prayer of the appeal. The prayer of his appeal contains several clauses. The first part of it—and upon the success of which all the other parts of the prayer depend—runs thus—It asks us "to recal the judgment, decision, or deliverance aforesaid *simpliciter*." Now, the only judgment, decision, or deliverance referred to in the appeal is the judgment of the Magistrates and Council themselves upon an appeal which Mr Heddle took against an assessment which has been made and imposed upon him individually. That was an appeal which he took under section 340 of the Burgh Police Act—an appeal which is there specially provided for. He does not ask us to review that decision, and I doubt very much whether we would have any competency to review that decision. But he asks us to recal it as a means of enabling him to get into the general question, which, as I have already indicated, plainly could not give him the remedies and relief that he prays for in this prayer. I rather think that the section on which he bases his right of appeal—the 339th—although it is exceedingly broad in its terms, has no reference to the case we are dealing with, and certainly is not a section under which the question that Mr Heddle wants to have determined can be brought up. Therefore if the first part of this prayer is refused, necessarily the whole of it follows, and upon that ground I agree in the judgment which Lord Young has proposed, that this appeal ought to be dismissed. There is a remedy open to Mr Heddle as he well knows—a form of process—in which the question he wants to have settled can be raised and determined, and if Mr Heddle persists in trying the question, he must do it in the form which the Court has provided. This is not such a form, and therefore I am of opinion that this appeal ought to be dismissed.

LORD MONCREIFF—I agree with both your Lordships that the appeal is incompetent. I think there is no warrant for the appeal either at common law or under either of the statutes mentioned in the petition.

LORD JUSTICE-CLERK—I am of the same opinion.

The Court dismissed the appeal as incompetent.

Counsel for Appellant—Party.

Counsel for Respondents—Balfour, Q.C.—Clyde. Agents—Irons, Roberts, & Co., S.S.C.

Friday, March 5.

FIRST DIVISION.

COUNTY COUNCIL OF ROXBURGH v. MELROSE DISTRICT COMMITTEE.

Process—Special Case—Competency—Title to Appear.

In a special case raised by a county council and a district committee for the purpose of determining whether a certain assessment fell to be levied upon the ratepayers of the whole county or on those only of the district represented by the committee, the Court *dismissed* the special case as incompetent on the ground that the district committee had no title to appear.

A special case was presented to the Court by (1) the County Council of Roxburgh and (2) the Melrose District Committee of the County Council for the purpose of determining whether certain operations requiring to be executed upon Melrose Bridge amounted to a "rebuilding" of the bridge or were only of the nature of "maintenance" or repairs. The importance of the distinction lay in the fact that in the former case the expense of the operations would be defrayed by assessments levied over the whole county, while in the latter it would fall only upon the ratepayers in the Melrose district.

The second parties maintained that they had a right to appear as representing a separate body of ratepayers, who would be seriously affected if the contention of the first parties were affirmed.

LORD PRESIDENT—I do not think that the special case will do.

The District Committee has administrative duties, but it is not a contributory to the rate which it maintains ought not to be levied, and accordingly it has no concern with or interest in the question from what rateable area the money has to be found to pay for the bridge.

It is no part of our duty to suggest other people who might competently raise the question, but the statements of the case would point to the ratepayers.

LORD KINNEAR—I agree that there may be persons with a good title and interest to raise this question, but it has not been shown that the District Committee have any. Accordingly, we can no more entertain a special case between that committee and the other party than we could hear an action raised at the instance of a party who has no title to sue.

LORD ADAM and LORD M'LAREN concurred.

The Court dismissed the special case as incompetent.

Counsel for the First Parties—J. Wilson. Agent—William Boyd, W.S.

Counsel for the Second Parties—A. J. Young. Agent—Alex. O. Curle, W.S.