intention of introducing that provision into the Act was to provide an additional protection and additional security in favour of the pupils. I altogether demur to the proposition that that clause removes any liability which prior to the Act rested upon the judicial factor. Indeed, it would be a very strong thing to say that the factor and the Accountant, in the absence of the parties truly interested, namely, the wards themselves, could finally decide as to the permissibility and sufficiency of an investment. Therefore I am of opinion that the 13th section is not applicable as contended for by Mr Salvesen. I do not think it is necessary to advert in detail to the other clauses, because I think the 14th and 15th clauses point in the same direction.

LORD KINNEAR—I entirely agree with Lord Adam for the reasons he has given, that this case is not distinguishable from that of *Bringloe*. The only additional observation which I desire to make is that it appears to me that the statute itself expressly provides against the contention of Mr Salvesen that an audit by the Accountant is equivalent to a discharge. It appears to me to be quite clear that the Accountant's audit is merely an additional precaution for the protection of the pupil. But the statute makes that perfectly obvious by providing in the 17th section that it shall be competent to any party beneficially interested in the estate to make appearance, and upon cause shown to open up the audit of all accounts which have been audited by the Accountant in absence of such party. Therefore when the factor or his representatives come and apply for a discharge, it appears to me that the statute has made express provision that his liabilities shall not be held to be discharged by any audit, but, on the contrary, that every question which has not been already decided between the parties shall still be open.

The LORD PRESIDENT concurred.

LORD M'LAREN was absent.

The Court adhered to the interlocutor of the Lord Ordinary with this variation, that the words "in the circumstances" be deleted; and refused the reclaiming-note.

Counsel for the Pursuer—Sol.-Gen. Dickson, Q.C.—Deas. Agents—W. & J. Burness, W.S.

Counsel for the Respondent — Balfour, Q.C.—Salvesen. Agents—Webster, Will, & Ritchie, S.S.C.

Friday, May 21.

FIRST DIVISION.

[Lord Pearson, Ordinary.

COCHRAN'S TRUSTEES *v.* CALEDONIAN RAILWAY COMPANY.

Process — Suspension — Sheriff — Interim Decree ad factum præstandum—Sist of Execution.

In a Sheriff Court action of interdict, concluding also for restoration of property to its condition as existing before an alleged encroachment, the Sheriff granted interdict, and also granted warrant to the pursuers to carry out the restoration at the sight of a man of skill, and at the defenders' expense. The Sheriff's interlocutor did not exhaust the merits of the cause, there being no finding as to the expenses of process. The defenders thereafter brought a suspension of the Sheriff's interlocutor in the Bill Chamber, and the Lord Ordinary sisted execution of the interlocutor and passed the note of suspension. The respondent then applied to the Sheriff to deal with the question of expenses so as to enable the merits of the cause to be brought under review by an appeal. The Sheriff refused this motion on the ground that the action could not finally be disposed of in the Sheriff Court until the expense of the restoration had been ascertained. The respondents reclaimed against the Lord Ordinary's interlocutor, and maintained that as the merits could not be reviewed until execution of the restoration, the passing of the note effected a permanent and not merely a temporary sist of execution. The Court *adhered*, holding that it was sufficient to support the interlocutor passing the note of suspension, that there was a question between the parties, viz., the propriety of a sist of execution at this stage.

The trustees of the late Robert Cochran, of the Verreville Pottery, Glasgow, presented a petition in the Sheriff Court of Glasgow craving the Court to interdict the Caledonian Railway Company from encroaching on their property at Verreville Pottery, and from interfering with the retaining wall forming the boundary of the pursuers' and defenders' property, and to ordain the defenders to restore the wall to the condition in which it was before their interference, or failing that to grant warrant to the pursuers to restore the wall at the expense of the defenders.

The pursuers founded on an agreement which gave them certain rights to make cellars in the wall so far as it stood on their property, which rights they averred had been violated by the defenders having, in order to accommodate electric-light machinery, cut two large recesses in the wall, which weakened it to a dangerous extent.

The defenders maintained that they were

within their rights, the operations having taken place entirely within their own ground, and causing no danger to the pursuers' property.

The Sheriff-Substitute (SPENS) pronounced the following interlocutors:—"*Glasgow, 8th November* 1895.—Interdicts the defenders from interfering to any further extent than what they have already done with the retaining wall in question, except by agreement with the pursuers, or unless warrant be granted by a competent court of law on the application by the defenders, and declares the same perpetual: *Quoad ultra* appoints the case to be enrolled on the Procedure Roll of the 27th inst. with regard to the other cravings of the petition.

Note.—"If the question above decided is to be further contested on the part of the Railway Company, I suggest that it should be appealed at once. The ground of my judgment can be stated in a few words. The retaining wall in question is a mutual wall of great thickness. I understand it to be at least 6 feet in breadth, though it is not stated either in the condescendence or defences. Admittedly it is built partly on the ground of pursuers and partly on the ground of defenders. By the agreement produced it was built by the Railway Company, and at the expense of the Railway Company. That does not, however, affect in any way the question, so far as I can see. The wall being built partly on the land of A and partly on the land of B, they have a joint property in the wall. The legal result is this, that, apart from any conditions in the agreement, neither party can at their own hands interfere with the wall in question. I can find nothing in the agreement which confers upon the Railway Company a right at their own hands to interfere with the retaining wall by cutting openings or spaces in it. Such interference as matter of law can only take place where there is a mutual agreement, or by the authorisation of a court on application by either of the parties, where, perhaps, it appears to the court that the withholding of consent on the part of one of the parties to the proposed interference is wholly unreasonable on the part of one of the parties, and of material advantage to the other.

"It appears that certain openings have already been made, and there is an allegation, which forms the subject of another action, that a breach of the interim interdict granted by Sheriff Strachan has been committed. I arranged with the parties that that action should be sisted *hoc statu* pending the proceedings in this action. In the prayer of the petition in this action there is a further craving to restore the retaining wall to the state in which it was previous to the interference complained of. I send the case to the Procedure Roll of Wednesday the 27th inst. with reference to this other craving. If the above judgment be acquiesced in or becomes final I will then deal with the other point."

"*Glasgow, 9th December* 1895.—Finds it is stated by the respondents' agent that an order in this Court on the respondents to restore the retaining wall in question to the condition in which it was before it was interfered with by respondents will not be complied with: Finds it therefore unnecessary to order the respondents to restore as craved within a certain period; but, in terms of the said alternative craving, grants warrant to pursuers to restore the said wall to the same condition in which it was previous to the interference therewith, at the sight of Mr William Crouch, C.E., Glasgow, reserving to pronounce further.

"*Note.*—This order seems naturally to follow from the view of the law taken in the interlocutor of date 8th November. There is no suggestion that there is any difficulty about restoring the *status quo ante* of the wall in question, nor is it suggested that the work would be very expensive. The respondents take up the position that they are entitled to do what they like with the 3 feet 6 inches in breadth of wall which rests upon their own ground."

On 29th October the Sheriff (BERRY) adhered to this interlocutor, and appended the following note:—

Note.—"The retaining wall, as provided for in the agreement between the parties, has been erected now for some time, and I am of opinion that the defenders, the Railway Company, are not entitled at their own hand, and without the consent of the pursuers, to alter or interfere with it.

"I think that on general principles of law they would be precluded from doing so; but independently of these I think that in the present case any such interference as is now sought to be justified would be in violation of the agreement of September 1890. Under that agreement, clause 2, a right is reserved in perpetuity to the first party—that is, the pursuers—to make openings in the wall to the southward of the boundary line, and to use such openings as cellars or for other purposes so long as no such openings are such as to endanger the stability of the wall. No similar power is reserved to the Railway Company, and I think that by implication they must be held to be excluded from it. It is obvious that, were such openings or excavations to be made by them on their side of the boundary, it would practically prevent, or at least interfere with, the exercise of the reserved power given to the proprietors on the other side."

Thereafter on 11th November the Sheriff-Substitute refused the defender's motion that the Court should *hoc statu* deal with the question of expenses, in the circumstances set forth in his Lordship's note.

"*Note.*—Defenders' agent requested me to deal at this stage of the case with the question of expenses of process, I understand, on the theory that he could at once appeal to the Court of Session if I did so. I do not express an opinion as to whether an appeal *hoc statu* is or is not competent to the Court of Session. I am, however, clear that this is not the stage for me to deal with the question of expenses of process, because one very material part of the petition remains undisposed of. It is

part of the petition that the respondents shall be made liable for the expense to which the petitioners may be put in restoring the wall in question to the *status quo ante*. The defenders have declined to restore, and the petitioners have been authorised by the Court to restore, in consequence of that refusal, at the sight of a civil engineer of eminence. No doubt, when that work is carried out, the petitioners will ask decree for the expense of that work against defenders, and the appropriate time to deal with the question of expenses of process is when the substantive cravings of the petition have been exhausted."

Finally, the Sheriff-Substitute on 19th February 1897 pronounced the following interlocutor:—"Grants warrant to and authorises Alexander Morton, one of the sheriff-officers of the Sheriff Court of Lanarkshire, and as representing the said Court, to take possession of the retaining wall in question, to the effect of seeing that the operations authorised by the interlocutors of 9th December 1895 and 29th October 1896 to be done by pursuers at the sight of Mr Crouch, C.E., are duly carried out; and for that purpose grants warrant to the said Alexander Morton to enter the defenders' premises, and to take and use such assistance as he may think necessary, but supersedes extract hereof for fourteen days from this date."

Note.—"I intimated at the Court that I proposed to consult Sheriff Berry as to the form of interlocutor to be pronounced, and to this course both agents assented. This interlocutor and note embody our joint views. The Court has held, rightly or wrongly, that pursuers are entitled to restore the retaining wall to the *status quo ante* defenders interfered with it. Defenders have refused to make that restoration and pursuers have been authorised to do it; but with the object of minimising the inconvenience and loss to which the Railway Company may be put, a civil engineer of eminence, in whom the Court has confidence, has been nominated to superintend the work; and it is not to be doubted that, so far as consistent with the proper carrying out of the work, Mr Crouch will defer to the suggestions made by the Railway Company's engineer. It appears from the statements made that defenders have refused to allow pursuers' workmen to enter the defenders' premises for the purpose of doing the work which this Court has authorised. That is a thing, of course, which cannot be permitted, and this Court formally authorises possession of the retaining wall in question to be taken by a sheriff-officer of this Court as representing the Court; and it is well it should be understood that interference with him by anyone in the duty entrusted to him may be taken up and dealt with as a criminal offence. It will be his duty to see that the pursuers' contractor and workmen get access to the premises, and he will report to the Court any interference by anyone which may have the effect of preventing this. Meanwhile, neither Sheriff Berry nor myself have the least desire to throw any obstacle in the way of a review by the Court of Session of the judgment of this Court on the merits. No opinion is expressed as to the competency of a note of suspension of this interlocutor; but that defenders may, if so advised, present a note of suspension to the Court of Session, extract of this interlocutor is superseded for a fortnight."

The Railway Company then presented a note of suspension and interdict in which they set forth that the respondents (Cochran's trustees) were threatening to enforce the said decrees of 9th December 1895 and 19th February 1897, and craved the Court "to suspend the said pretended decrees and charge, and whole grounds and warrants thereof; and further, to suspend the proceedings complained of, and to interdict, prohibit, and discharge the respondents (Cochran's trustees) and Alexander Morton, or either of them, or any person authorised by them or either of them, from entering the complainers' premises at Finnieston Street, Glasgow, and from taking possession of, trespassing on, or otherwise interfering with any part of said premises, including the retaining wall between the complainers' property and that belonging to the respondents (Cochran's trustees) on the south, and from restoring, altering, or executing any works whatsoever upon the said retaining wall, and from enforcing the said pretended decrees, and from acting under or carrying out the same in any manner of way; and to grant interim interdict to the effect above stated; or to do otherwise in the premises as to your Lordships shall seem proper."

The note of suspension and interdict contained, *inter alia*, the following statements and answers:—"(Stat. 5) After the retaining wall had been completed, the complainers proceeded to erect at the south-west corner of the plot of ground acquired from the respondents (Cochran's trustees) certain buildings to accommodate the electric lighting machinery used for lighting the complainers' railway and works. In connection with those buildings which adjoin the retaining wall the complainers formed two recesses in the wall required for part of the electric lighting machinery. These recesses do not encroach on the respondents (Cochrane's trustees) property, but are formed in the breadth of the wall built on the complainers' own ground, and they do not in any way weaken or endanger the stability of the wall. (Ans. 5). . . . Admitted also that the complainers have erected buildings to accommodate electric lighting machinery, and have formed two recesses in the wall. *Quoad ultra* denied. . . . Explained further, that the said retaining wall has been much weakened by the making of said recesses by the complainers, and that the respondents could not erect buildings of any considerable weight near the northern boundary of their property where said recesses are, nor could they make openings in the wall as provided to them in the said agreement of 1890 near the said recesses,

without the danger of said wall giving way and the buildings collapsing." "(Stat. 9) The complainers maintain, and in the Sheriff Court action above referred to, have pled that the formation of the said recesses in the retaining wall afore mentioned is within their rights. The recesses in question are wholly within the complainers' property, and do not in any way interfere with the strength and stability of the retaining wall, nor is the formation of them inconsistent with or contrary to any of the provisions of the agreements above mentioned. The complainers are accordingly desirous of bringing the said interlocutors under review before the existing state of matters is interfered with, as the proposed restoration of the wall would cause great injury to the complainers and the public using their railway, and the present application has accordingly been rendered necessary. (Ans. 9) Denied."

On 27th February 1897 the Lord Ordinary on the Bills sisted execution and granted interim interdict, and by an interlocutor of 13th March his Lordship passed the note without caution and continued the sist and interim interdict.

Note.—"The Caledonian Railway Company ask for suspension of two decrees of the Sheriff Court of Lanarkshire, pronounced in an action raised against them in August 1895 by Cochran's trustees.

"The parties are owners of contiguous plots of ground at Finnieston, Glasgow, the Railway Company having acquired their plot from the trustees for the purposes of the Glasgow Central Railway. The company having lowered the level of their ground it became necessary for them to build a retaining wall to support the trustees' ground and buildings. A wall of considerable thickness was accordingly built, partly on one plot and partly on the other, under an agreement which gave the trustees certain rights to make cellars in it so far as it stood on their ground.

"Some time after the wall was completed the Railway Company erected buildings and plant for electric lighting, and in connection therewith they proceeded to form two recesses in the retaining wall, when they were stopped by the petition to the Sheriff, in which the decrees now complained of were pronounced. The petition craved interdict and an order to restore the wall, and, failing the Railway Company restoring it, the Court was asked to grant warrant to the trustees to restore it at the company's expense.

"The Sheriff-Substitute granted interim interdict against further interference with the wall, and on 8th November 1895, after hearing parties, he declared the interdict perpetual, and appointed the case to be enrolled for disposal of the question of restoration. In ordinary course the Railway Company would have been ordered to restore the wall, but the company's agent stated to the Sheriff 'that an order in this Court on the respondents to restore the retaining wall to the condition in which it was will not be complied with.' The Sheriff accordingly found it unnecessary to order the company to restore, and granted warrant to the trustees to do so at sight of a man of skill. This is the first of the two interlocutors now in question. It was appealed to the Sheriff, who affirmed it on 29th October 1896.

"On 11th November the company moved the Sheriff-Substitute to dispose of the question of expenses. I was informed that the purpose of this motion was to have the cause finally disposed of with a view to an appeal; but the Sheriff treated it as a motion that he should deal with expenses of process before dealing with the expenses of the restoration, and he declined to do so. Thereupon the trustees attempted to execute the warrant for restoration; and the Railway Company having refused to give them access to their premises, the Sheriff-Substitute pronounced the second interlocutor now before me, dated 19th February 1897. By this he authorised a sheriff-officer, as representing the Court, to take possession of the retaining wall, to the effect of seeing the restoration duly carried out, and for that purpose he granted warrant to the officer to enter the railway premises, and to take and use such assistance as he might think necessary.

"The suspension now brought proceeds as upon a threatened charge. This would have been appropriate if the Railway Company had been ordered to restore the wall; but it is doubtful whether any charge would be competent upon these interlocutors. However, the interlocutors are certainly being put in execution through the warrants which have been granted; and assuming the suspension to be otherwise competent, I see no objection to the form of it.

"The respondents challenge it as incompetent, on the ground that it is substantially an attempt to review interlocutors in a case where review is excluded by the statute. The complainers do not dispute that neither of the interlocutors is reviewable at this stage; but they say that their purpose is not review but a sist of execution until they are in a position to appeal on the merits. This distinction received effect in the case of *Wilson* v. *Bartholomew*, 1860, 22 D. 1410, and in my opinion that case rules the present.

"In passing the note and continuing the interim interdict I desire to make it quite clear what, according to my opinion, is the question, and the only question, for decision under this note, and what are the limits within which I hold such procedure competent. The question I take to be this—whether it is more expedient and more in accordance with justice that the proposed restoration of the wall should now proceed, or should await the result of an appeal.

"It will be observed that that question can be determined without touching in any way the merits of the Sheriff Court action. It is not quite so obvious that it can be determined without touching the merits of the two interlocutors sought to be suspended. But the point is, whether a stay of execution involves the review of either interlocutor;

and it seems to me that it does not. On the contrary, I assume that the Sheriff was quite right in pronouncing both interlocutors, that they followed from his previous decision as to interdict, and that he could not have done otherwise than he did. But inasmuch as an appeal from the final judgment will bring up for review all prior interlocutors, it is certain that the interlocutors now in question may ultimately be submitted for review; and the question now is, not whether they are right, or whether they should be reviewed, but whether their execution should be sisted in order to enable them to be effectively reviewed when the time comes.

"In certain classes of cases it is obvious that this power must exist in the Bill Chamber. Interim warrant may be granted in the Sheriff Court to do something absolutely irreparable, such as the cutting down of timber, and if the Appellate Court should ultimately reverse on the merits, it would find itself powerless to give an effective decree. The same may be said of operations not in themselves irreparable, but so expensive or so risky that justice and common sense alike demand that they should await the result of an appeal. On the other hand, there is a large class of cases where the thing ordered to be done is so trivial, or so easily restored against, that it is not worth while to stop it, and where its execution would not hamper an Appellate Court in dealing with the whole case as it saw fit.

"Between these extremes there lie a large number of cases, each of which must be judged of according to its circumstances, and, in my opinion, this is one of them. When the parties meet on a closed record, it will be seen whether the sist should be continued, and on what conditions. Beyond that I do not, as at present advised, see that there will be any question to try, though the complainers may state such objections as they can, so long as they do not involve review on the merits. The complainers, indeed, set forth in this note their position on the merits of the Sheriff Court litigation, and none of their pleas-in-law expresses the ground on which, and on which alone, I think the note should be passed. If this is not remedied at the next stage, the note may have to be refused. But meantime the reasons of suspension seem to me to be capable of being read as presenting a competent and relevant case for interference on the limited ground I have mentioned.

"It was suggested that this may lead to a deadlock, and indeed it would do so if any step necessary towards an appealable judgment in the Sheriff Court were rendered impossible by the suspension of the warrants. If, for example, the Sheriff were not in a position to dispose of the case so as to let in an appeal, without ascertaining and decerning for the expense of restoring the wall, the case might be hung up indefinitely. But this is not so. The statute, as expounded in the case of *Malcolm* v. *M'Intyre*, 1877, 5 R. 22, seems to admit of an appeal even before such steps have been taken, provided the expenses of process have been disposed of by a finding. The Sheriff-Substitute indeed declined to deal with expenses of process until he had disposed of the liability of the company for the expenses to which the trustees may be put in restoring the wall. But he has not been asked by either party (so far as the process discloses) to pronounce a finding as to liability for the expenses of restoration. If that were now done, and the other statutory conditions of appeal were observed, the somewhat protracted dispute would speedily come to an end."

Thereafter the respondents again applied to the Sheriff-Substitute to pronounce an interlocutor dealing with the expenses in the Sheriff Court process in order that the merits of the cause might be submitted for review in the ordinary course. This application the Sheriff-Substitute refused on the grounds explained in his note appended to the interlocutor of 11th November 1896.

The respondents then reclaimed against the interlocutor of the Lord Ordinary on the Bills.

Argued for reclaimers—No appeal on the merits was competent against these interlocutors till the Sheriff-Substitute pronounced a finding as to expenses—Sheriff Court Act 1853 (16 and 17 Vict. cap. 80), sec. 24; Court of Session Act 1868 (31 and 32 Vict. cap. 100), sec. 53; *Malcolm* v. *M'Intyre*, October 19, 1877, 4 R. 22; *Parochial Board of Greenock* v. *Miller*, May 25, 1877, 4 R. 737. But the reclaimers had, since the Lord Ordinary's interlocutor, presented a note to the Sheriff-Substitute, craving him to give a finding as to expenses, and he had refused to do so. The suspension, instead of acting as a mere temporary sist of proceedings till the merits could be reviewed, had in this case the effect of permanently suspending the execution of the Sheriff's judgment, because it was not possible to bring the merits under review. Accordingly, the result of passing the note was to produce a deadlock. The result was that though the reclaimers held the Sheriff's judgment, they could do nothing in consequence of this sist. This distinguished the case from that of *Bartholomew*, relied on by the Railway Company. The proper course was to remit to the Sheriff to make a finding as to expenses, or to hear the parties now on the merits.

Argued for respondents — The Sheriff had pronounced interlocutors which were clearly wrong, he having only taken one alternative by allowing the reclaimers to restore without ordering the respondents to do so. Then by refusing to give any finding as to expenses he had prevented an appeal on the merits. Accordingly, the only method open to the respondents was a note of suspension, which in a case of an *interim* order *ad factum præstandum* was clearly competent—*Wilson* v. *Bartholomew & Company*, February 4, 1860, 22 D. 693; July 7, 1860, 22 D. 1410; *Hunter* v. *Turnbull*, 10th March 1824, 2 S. 786.

Both parties expressed their willingness to discuss the merits of the case at this

stage if the Court would assent to such a course.

LORD PRESIDENT—Two courses are before the Court — to adhere to the interlocutor passing the note, or to recal the interlocutor and refuse the note.

It appears to me that the case of *Bartholomew* is sufficient to support the Lord Ordinary's interlocutor. In the Bill Chamber it is enough to show that there is a question to be tried, and that being so I am for adhering to the interlocutor of the Lord Ordinary.

The Court would gladly aid the parties in having the merits decided, and grant the motion made if that were possible, but we must have a question to decide and be able to pronounce an operative judgment.

In the present case, as I have said, there are but two alternatives, and I am for adhering to the Lord Ordinary's interlocutor.

LORD ADAM — The alternatives are to pass the note or to refuse it. Now, we do not refuse a note unless we think there is no question to try, and we think there is a rather serious question to try here. In passing the note we are, in my opinion, following the authority of the case of *Bartholomew*.

LORD M'LAREN—I agree with what has been said by your Lordships—that there is a proper question to be tried, and that is enough to warrant us in passing the note. But the Lord Ordinary has gone somewhat further, for it is not unusual in passing a note to express an opinion as to the grounds for doing so. Now, his Lordship has pointed out the inconvenience — the possible hardship—which might result to the Caledonian Railway Company if the order which has been made against them were carried into execution before the company has had an opportunity of bringing that order under review. Nothing has been said that tends to displace in my mind the impression made by what his Lordship says; and while we can do no more than pass the note I should hope that it will not be necessary to rehear the case on the question of the proper procedure, but that the parties will accept Lord Pearson's view that there are grounds for staying execution on the interlocutor of the Sheriff-Substitute until the merits of the case can be brought competently before the Court of Appeal.

LORD KINNEAR concurred.

The Court adhered.

Counsel for Reclaimers—R. V. Campbell —Deas. Agents—W. & J. Burness, W.S.

Counsel for Respondents—Clyde. Agents —Hope, Todd, & Kirk, W.S.

Saturday, May 22.

FIRST DIVISION.

LINDSAY AND OTHERS *v.* MAGISTRATES OF LEITH.

Burgh — Revision of Boundaries — Decree in respect of No Appearance—Appeal—Burgh Police Act 1892 (55 *and* 56 *Vict. c.* 55), *secs.* 11 *and* 13.

Under section 11 of the Burgh Police Act power is given to the Sheriff, on the application of the police commissioners or council of any burgh, after due advertisement and "after hearing all parties interested, from time to time to revise, alter, extend, or contract the boundaries of such burgh for the purposes of this Act," and also to revise the boundaries of the wards of the burgh.

Section 13 provides a method of appeal for any party who may consider himself aggrieved by such a deliverance of the Sheriff.

A petition was presented by the town council of a burgh for revision of the boundaries of its wards, and after due advertisement had been made no answers were put in. The Sheriff thereafter, without inquiry, granted decree in terms of the prayer of the petition "in respect no appearance has been made to oppose the prayer of the petition." A petition was presented against this deliverance by certain ratepayers, who objected to the proposed changes.

Held that the Sheriff should have satisfied himself that the proposed changes were expedient before granting decree, that as he was exercising an administrative and not a judicial function, decree in respect of "no appearance" was incompetent; and petition *remitted* to a Lord Ordinary to direct inquiry.

Section 11 of the Burgh Police Act 1892 (55 and 56 Vict. cap. 55) provides—"Upon the application of the commissioners or of the council of any burgh, and after publication in the *Edinburgh Gazette*, and in any newspaper published in such burgh, and if no newspaper be published therein, then in a newspaper circulating in such burgh, and such other notice and inquiry as he may deem necessary, it shall be lawful for the Sheriff, after hearing all parties interested, from time to time to revise, alter, extend, or contract the boundaries of such burgh for the purposes of this Act, but so as not to encroach on the boundaries of any other burgh, and where not divided into wards, to divide the same into wards, and where divided into wards, to revise the boundaries of such wards; and where in any burgh wards exist at present, the Sheriff may increase their number or lessen their number by combination or re-arrangement, and the Sheriff shall define, in a written deliverance on such application, the new boundaries of such burgh and wards, for the purposes of this Act; and such deliverance, unless appealed against in manner