of Guild and the other practical members of his Court—inspected the premises in the presence of the parties, and came to the conclusion that this lower flat was also ruinous and dangerous and must be removed. Now the question is, whether we are to set aside in the first place the opinion of the Burgh Engineer, made after due inspection, that this building is ruinous and dangerous and must be removed, and secondly, the opinion of the Dean of Guild Court, which is composed as we all know of practical men experienced in this particular matter, that the Burgh Engineer is right and that the building is dangerous, and to substitute for them our own opinion which we are to arrive at either by setting up the opinion of one man of skill of our own selection against the opinion of the men of skill appointed by Parliament, who are public officers responsible for the performance of their duty, or our own opinion founded upon a proof to be taken in this Court. I confess I think neither one course nor the other would—to say the least of it—be at all expedient. The whole proceedings directed by this clause in the statute are intended to be summary. The Burgh Engineer is to proceed immediately, and that arises from the very nature of the case—namely, that the building is ruinous and that the safety of the lieges is endangered by its condition. Now, if that question is not to be determined until after proof is taken in a court of law, and the court have had sufficient opportunity for coming to a conclusion upon the conflicting testimony of experts, it is obviously very probable that in many cases the question would be solved by a high wind before the Court had time to consider it. Then I think it is equally out of the question to set up the opinion of one man whom the Court may select as conclusive against the men of skill selected by Parliament. Without suggesting that these considerations should lead to a different conclusion from that of your Lordships, I think they at least afford sufficient ground for refusing to disturb the determination of the Dean of Guild Court, when nothing can be said against the procedure and nothing against the determination itself, except that the appellant thinks it wrong. I observe that the reason which the Dean of Guild gives for the ultimate course of procedure which he took is a perfectly good one, because he says that after the second inspection which the Court ordered, because they thought they would then be in a better position to judge of the condition of the premises than on the first inspection, it was moved for the appellant that she should be allowed to lead proof as to the condition of her premises. The Dean of Guild says—"The Court repelled this also, because they considered the matter which was to be the subject of proof is one which they are able to judge of without proof, and in respect that the members of the Court are men of skill in this partienlar matter." I think the Dean of Guild Court was perfectly justified in arriving at that conclusion, and that we should not be justified in disturbing it upon any grounds which have been argued to us.

The Court dismissed the appeal and affirmed the interlocutor appealed against.

Counsel for the Appellant--W. Campbell, K.C.—T. B. Morison. Agents—Nisbet & Mathison, S.S.C.

Counsel for the Respondent—Lord Advocate (Murray, K.C.)—Cook. Agents—Graham, Johnston, & Fleming, W.S.

Saturday, January 26.

SECOND DIVISION.

[Sheriff Court at Glasgow.

M'GILVRAY *v.* BERNFIELD.

Reparation — Wrongous Apprehension — Wrongfully and with Unnecessary Force and Violence—Police Constable—Issue.

In an action of damages against, *inter alios*, two police constables, the pursuer averred that the defenders came to her house and apprehended her on a charge of making a disturbance in a shop, that she denied the charge, and signified her willingness to accompany them to the police office, but "before she could put on her hat or jacket or any other thing properly," they seized hold of her and in presence of her neighbours and a large number of people dragged her out of her house down the stairs into the street, and thence to the police office, that throughout she offered no resistance, and said to the defenders that she would go quietly with them if they would release their hold of her, but that they paid no heed to her requests. The pursuer proposed an issue—Whether the defenders "wrongfully and with unnecessary force and violence" apprehended the pursuer in her house and conveyed her to the police office?

The Court *held* that the action was relevant, and approved of the issue as the issue for the trial of the cause.

Isabella Fraser or M'Gilvray, wife of John M'Gilvray, with consent of her husband, raised an action in the Sheriff Court at Glasgow, against William Bernfield, 102 North Woodside Road, Glasgow, Fanny Cohen also residing there, Alexander Main and William Nisbet, both police constables at Camperdown Police Office, Glasgow, and Samuel Glass, Inspector at said office, all jointly and severally or severally. The pursuer prayed the Court to ordain the defenders jointly and severally, or severally, to pay to the pursuer the sum of £500 as damages for slanderous charges, assault, and wrongous and oppressive apprehension.

This case is reported solely upon the points involved in the case made against the police constables for wrongous and oppressive apprehension,

The pursuer averred that she was forty years of age, and resided with her husband at 30 Kelvin Street, Glasgow; that on 2nd October 1899, at noon, she called at the shop 102 North Woodside Road, where the defenders Bernfield & Cohen, carried on business as brokers, for the purpose of making inquiry regarding a chest of drawers, and that after transacting her business with Cohen she went home. She also averred as follows:—"(Cond. 3) About three hours afterwards, on said date, and while the pursuer was in her house at 30 Kelvin Street aforesaid, which is one stair up from the ground level, and on the door thereof the pursuer's husband's name appears on a brass plate, the defenders Main and Nisbet called on her along with the defender Cohen, and stated in the hearing of Mrs Young, 30 Kelvin Street, Glasgow, and pursuer's daughter Catherine, and her neighbours, that Cohen had charged pursuer with cursing and swearing and making a disturbance in the said shop at 102 North Woodside Road aforesaid on that day, and that pursuer must come with them at once to the police office at Camperdown Street, Glasgow. Pursuer immediately denied the charge, and signified her willingness to accompany them to the police office, but before she could put on her hat and jacket, or any other thing properly, the said constables suddenly seized hold of her, and in the presence of her neighbours and a large number of people dragged her out of her said house down the stairs into the street, and thence to the Camperdown Police Office. Pursuer throughout offered no resistance, and said to the constables that she would go quietly with them if they would release their hold of her, but they paid no heed to her requests." The pursuer further averred that at the police office the charge was repeated to the defender Glass, who ordered her removal to a cell, and detained her therein for five hours, after which she was released on bail, that on the following morning she appeared to answer to the charge, but that no one appeared against her, and that she was allowed to go; and that her bail money was returned to her. "(Cond. 7) The whole of the said proceedings were wrongous, irregular, and oppressive, and the charge made by Bernfield & Cohen, and repeated by the two constables, was false and most slanderous. The pursuer was apprehended without a warrant of any kind, and was subjected to the indignity of being dragged from her house through the public streets of Glasgow, and of being detained in the public cell without a warrant of any kind having been first obtained from the proper authorities. The defenders, in apprehending and detaining the pursuer in the manner above mentioned without legal warrant, and in treating her in the manner before described, acted maliciously, oppressively, and illegally, and without any just or probable cause. In executing the arrest they used great harshness and acted with quite unnecessary force and violence. The charge preferred against her was utterly groundless, and was also made maliciously and oppressively."

The pursuer pleaded—"(2) The pursuer having suffered loss, injury, and damage through said slanderous charges and the acts of defenders, or all or one or other of them, is entitled to reparation, *solatium*, and damages, and decree should be granted, with interest and expenses, as craved. (3) The pursuer having been assaulted by the defenders Main and Nisbet, the latter are liable in damages to her. (4) The pursuer having been illegally, wrongously, and oppressively seized and marched in custody of the defenders Main and Nisbet, and afterwards detained by the defender Glass in the police office, these defenders are liable to pursuer in reparation, and decree should be granted, with interest and expenses as craved."

Defences were lodged (1) for the defenders Bernfield & Cohen, and (2) for the defenders Main, Nisbet, and Glass.

All the defenders pleaded, *inter alia*, that the action was irrelevant.

On 13th February 1900 the Sheriff-Substitute (STRACHAN) pronounced the following interlocutor:—Before answer allows parties a proof of their averments, other than the defender Samuel Glass, and appoints the case to be sent to the diet roll of the 23d current: Finds that no relevant case has been stated against the said Samuel Glass: Therefore assoilzies him from the conclusions of the action: Finds no expenses due, and decerns."

The defenders Main and Nisbet appealed to the Sheriff (BERRY), but he adhered.

The pursuer appealed to the Court of Session for jury trial.

She proposed two issues for the trial of the cause. The first embodied her case against the defenders Bernfield & Cohen, damages being laid at £250. The second was in the following terms:—"(2) Whether on or about 2nd October 1899 the defenders Alexander Main and William Nisbet, maliciously and without probable cause apprehended the said pursuer in her house at 30 Kelvin Street, Glasgow, and conveyed her to the police office at Camperdown Street, Glasgow, to the loss, injury, and damage of the pursuer? Damages laid at £250."

When the case was before the Court the pursuer amended her second issue by striking out the words "maliciously and without probable cause" and inserting "wrongfully and with unnecessary force and violence."

Argued for the defenders Muir and Nisbet—The action as against them was irrelevant. The averments of the pursuer were not sufficiently distinct and substantive to go to trial. They were expressed in the language of exaggeration. When an accused person was apprehended it was quite a common occurrence for resistance to be made, and if so it was impossible for the constables to avoid exercising a certain amount of violence. It required a very clear case of injustice to entitle a person who had been apprehended to an action against the constable who had performed the duty of arresting him—*Malcolm* v. *Duncan*, March 17, 1897, 24 R. 747.

Counsel for the pursuer and appellant maintained that the action was relevant, and that the issues as amended should be allowed and approved.

LORD JUSTICE-CLERK—I see no ground for not allowing the second issue as now amended. The pursuer makes a distinct averment on record of a wrongful act in which unnecessary violence was used towards her by the police constables. The wrongfulness of the act consists in what they did. It is said on behalf of the defenders that the language must be assumed to be exaggerated. I do not think we are entitled to assume that. In the meantime we must take the statement that a law-abiding citizen was not allowed to put on decent apparel, but was seized and dragged through the streets. If that were done, she being willing to go peaceably, it is impossible to consider it as otherwise than wrongful. It was said it would be very hard on the police if charges of this kind were made against them when there was no ground for them. I can only say that it is hard on any citizen to have a charge made against him which cannot be justified. Charges are often made by the police themselves which in the ultimate inquiry cannot be justified. I can see no reason for protecting the police more than any other citizen from inquiry where distinct averments of excess are made. The fact is that very few cases of such a kind come before the Court, just for this reason, that in nine cases out of ten the police act within their rights and with fairness, and if they use violence it has been necessary in the carrying out of the law.

In the present case, with the clear averment before us on record, we have no option, in my opinion, but to send this case to be expiscated by evidence.

LORD TRAYNER—I am of the same opinion. The second issue as amended is, whether the police in the execution of their duty behaved wrongfully and with unnecessary force and violence. I quite agree that we should not do anything which would hamper the police in the performance of their duty, but care must also be taken that the police in the performance of their duty do nothing that is wrongful or tyrannical. In the present case what is averred is that the policemen called at the pursuer's house, charged her with a criminal offence, and desired her to go with them to the police office; that before she could dress herself to go out with decency, they seized hold of her and dragged her with unnecessary violence to the police office. If that statement is true, then the policemen exceeded their duty.

There appears to be some doubt as to whether the word "wrongfully" should be inserted in the issue. I am of opinion that it should be inserted. The meaning to be attached to the word is shown by the words with which it is connected, namely, "with unnecessary force and violence." The question is not as to whether the pursuer was apprehended wrongfully because the police had no warrant. If it had been intended to try that question, it would have had to be stated plainly in the issue whether the police acted "wrongfully and without a warrant." But that is not the question sent for trial. That question is whether the police in the execution of their duty acted "wrongfully," because they acted "with unnecessary force and violence."

LORD MONCREIFF—I am of the same opinion. It appears plainly from the pursuer's averments that the police constables in making the arrest acted on information supplied to them. I therefore think that they were justified in apprehending the pursuer. The question comes really to this—Were the police constables justified in their mode of carrying out the arrest? I agree that we should not interfere unnecessarily in cases like the present, but if the facts stated on record are assumed to be true, it is impossible to hold that the pursuer's case is irrelevant. It may turn out that the pursuer's averments are not true, and that the police constables did not act as stated, or that the pursuer resisted, and they were compelled to arrest her violently, but the true facts can only be ascertained at the trial.

The only other point is as to the insertion of the word "wrongfully" in the issue. I have some doubt as to whether this word should be inserted, because it might suggest to the jury that if the pursuer proved that the defenders acted without a warrant they acted "wrongfully," and were not entitled to make the arrest. But it must be understood by the parties and explained to the jury that the word "wrongfully" is not used in that sense, but refers merely to the mode in which the police constables carried out the arrest.

LORD YOUNG was absent.

The Court approved of the issues as amended as the issues for the trial of the cause.

Counsel for the Pursuer—Hunter. Agent—Henry Robertson, S.S.C.

Counsel for the Defenders Bernfield & Cohen—Trotter. Agent—James Bryson, Solicitor.

Counsel for the Defenders Main and Nisbet—Shaw, K.C.—Lees. Agents—Campbell & Smith, S.S.C.