Tuesday, November 3.

SECOND DIVISION.

[Sheriff Court at Edinburgh.

ALLEN & SONS BILLPOSTING, LIMITED *v.* EDINBURGH CORPORATION.

Sheriff—Jurisdiction—Appeal—Edinburgh Corporation Act 1899 (62 *and* 63 *Vict. cap. lxxi*), *sec.* 45, *as Amended by the Edinburgh Corporation Act* 1906 (6 *Edw. VII, cap. clxiii*), *sec.* 77 (8)—*Appeal to Sheriff on Reasonable Exercise of Discretion by Corporation—Competency of Appeal from Sheriff-Substitute to Sheriff-Depute.*

The Edinburgh Corporation Act 1899, section 45, as amended by the Edinburgh Corporation Act 1906, section 77 (8), enacts—"For the purpose of protecting the amenity of the city and of enabling the Corporation to exercise control over any sites or hoardings to be erected and used for the purpose of advertisements, the following provisions shall have effect—(1) No person shall erect, exhibit, fix, maintain, retain, or continue any advertisement, whether now existing or not, upon any land, house, building, or structure, except on such sites, hoardings, or other structures as the Corporation may in writing licence (and for which licence no fee shall be charged), and such licence may be granted for any period not exceeding four years. . . . . Provided always that when the Corporation refuse to grant any such licence they shall state their reasons for such refusal, and any person aggrieved by the refusal to grant any such licence may appeal to the Sheriff, by lodging with the Sheriff-Clerk of Midlothian a note of appeal within fourteen days after intimation of the resolution of the Corporation to refuse the licence, which note of appeal shall state the grounds of such appeal and be signed by the appellant, or his counsel or agent, and the Sheriff shall order a copy of the note of appeal to be served on the Corporation, and appoint them, within six days after such service, to lodge answers thereto, and shall thereafter hear parties, and may, if he so requires, take such means as he may consider proper for obtaining further information, and either dismiss the appeal, or if he finds that the Corporation in refusing the licence have not reasonably exercised their discretion under this Act, he may grant the licence for a period not exceeding three years, and shall pronounce such order regarding expenses as he may deem just. . . . . "

Held that where an appeal under the foregoing provisions has been entertained and decided by the Sheriff-Substitute, his judgment is final, and appeal to the Sheriff-Depute is incompetent

Burgh—Police—Advertisement-Hoarding—Licence—Reasonable Exercise of Discretion—Reversal by Sheriff of Decision of Corporation—Edinburgh Corporation Act 1899 (62 *and* 63 *Vict. cap. lxxi*), *sec.* 45, *as Amended by Edinburgh Corporation Act* 1906 (6 *Edw. VII, cap. clxiii*), *sec.* 77 (8).

Circumstances in which a Sheriff, in appeals to him, held that a Corporation had not reasonably exercised the discretion conferred upon them by their private Act with regard to licensing advertisement-hoardings, and reversed their decision.

Process—Appeal—Jurisdiction—Sheriff—Appeal from Sheriff where he is Final, but Ground of Appeal is Excess of Jurisdiction—Competency.

Opinions that the Court may entertain an appeal from the Sheriff in a matter in which he is final if the ground of appeal is want of jurisdiction.

Messrs David Allen & Sons Billposting, Limited, 74 Hanover Street, Edinburgh, applied to the Corporation of the City of Edinburgh, under section 45 of the Edinburgh Corporation Act 1899 (62 and 63 Vict. cap. lxxi), as amended by the Edinburgh Corporation Act 1906 (6 Edw. VII, cap. clxiii), section 77 (8) [quoted in rubric *supra*], for a licence for a hoarding on the south side of Bread Street, Edinburgh, of which they were tenants, for the purpose of placing advertisements upon it. [They also applied at the same time for licences for certain other sites, which applications were similarly dealt with.] The facts of the case are given in the note (*infra*) of the Sheriff-Substitute.

On 13th December 1907 the Corporation, having before it a report by a committee and adopting the reasons of that committee, refused to grant the licence for the following reasons—"(1) The hoarding is, especially in view of the improved condition of the neighbourhood, a most objectionable feature in, and detrimental to the amenity of, the district; (2) the hoarding projects over, encroaches upon, and limits the carriageway of the street, which for the greater part is very narrow; and (3) the advertisements displayed on the hoarding might cause the traffic to stop or loiter, and that portion of it facing north being at a narrow part of the street would thus constitute an obstruction and danger."

Messrs David Allen & Sons Billposting, Limited, and Messrs J. K. Munro & Hall, 17 West Nicolson Street, Edinburgh, the proprietors of the site, presented a note of appeal to the Sheriff of the Lothians and Peebles, craving his Lordship to hold that the Corporation had not reasonably exercised their discretion under the statute, and to grant a licence for the site for a period not exceeding three years. Answers were lodged for the Corporation.

On 3rd July 1908 the Sheriff-Substitute (GUY) pronounced an interlocutor finding that the Corporation in refusing the advertisement licence had not reasonably exercised their discretion under the foregoing provisions as amended, and granting the licence for a period of two years.

Note.—"'For the purpose of protecting the amenity of the city (of Edinburgh), and of enabling the Corporation to exercise control over any sites or hoardings to be erected and used for the purpose of advertisements,' Parliament has conferred upon the Corporation certain licensing powers, and has imposed upon the Sheriff what has proved to be the troublesome and thankless task of determining, when the Corporation refuse a licence for an advertisement site, whether the Corporation have not reasonably exercised their discretion under the statutory provisions. The first appeals that came before the Sheriff were in cases where the Corporation in refusing licences gave no reason at all. In these cases I held, and my judgment was affirmed by the Sheriff, that nothing could be more unreasonable than to give no reason at all. In each of these cases the licence was granted. Parliament took the same view, for it subsequently amended the statutory provisions by expressly enacting that 'when the Corporation refuse to grant any such licence they shall state their reasons for such refusal.' One appeal, however, came before me, before that amending statutory provision was made, in a case where the Corporation did have before them the grounds of refusal, and stated them as their reasons. In that case I held that, though the reasons might be inadequate and might not commend themselves to me, I could not hold that the Corporation had unreasonably exercised their discretion. I dismissed the appeal, and my judgment was affirmed by the Sheriff.

"After the passing of the amending provisions, certain further appeals were taken against refusal by the Corporation of licences. These appeals may be classed under two heads, namely—(1) amenity, and (2) encroachment on public places. The appeals under the head of 'amenity' disclosed the fact that the Corporation had before them when they deliberated and resolved to refuse nothing more than a report of a committee recommending in general terms that the grant of the licence would interfere with the amenity of the city or the neighbourhood. The Corporation in these cases approved of that general report, refused the licences, and in refusing the licences only sought to comply with the statutory obligation that rested upon them to state their reasons for refusal by repeating, without any specification, the general reason given by the committee. In the appeals in these cases the Corporation strenuously urged that it was sufficient for them in refusing a licence merely to state that the ground of refusal was amenity, and to formulate in any appeal that might be taken the specification of the details. It is obvious that the amenity of a place is in every case a question to be regarded from the point of view of the particular circumstances of the place. The amenity of Princes Street is different from that of the Cowgate. To have given effect to such a contention as that put forward by the Corporation would have meant that the important statutory obligation to which I have referred might be evaded by the use in all cases of a rubber stamp with the word 'amenity' thereon. It would further have meant that an applicant for a licence would only be able to find what the Corporation's reasons for refusal were by appealing to the Sheriff, and then reasons might afterwards be formulated which were never present to the mind of a single councillor. I accordingly expressed the view that to do as the Corporation had done was no better than what they had done at first, namely, refuse a licence without giving any reason at all. I accordingly sustained these appeals and granted the licences, and the Sheriff affirmed my judgment. It has been said that 'the Sheriff on a technical ground reversed the decision of the Corporation.' The technicality consisted in deciding that, if an Act of Parliament authorises a body such as the Corporation of Edinburgh to take from any individual a valuable right of property, they must do so in the way prescribed by the Act of Parliament authorising them, and if they choose to evade the provisions of the Act, then the result must necessarily be that they have not effectually taken away the right, and cases of real interference with the amenity of particular parts of the city may be thus allowed to remain. The right of property remains because it has not been validly taken away.

"The second class of these last appeals were under the head of encroachment. They were cases—three in number—where the ground for refusal stated by the Corporation was that the advertisement hoardings constituted an encroachment on public places. Two were in lanes running off Thistle Street and Rose Street respectively, where passengers along Rose Street or Thistle Street could see the advertisements on the hoarding affixed to the wall of the lane. The other was on the brick wall of the railway buildings at Granton, opposite the north gable of the Granton Hotel, and along the Granton to Newhaven road. The extent of the encroachment was not in any case put before the Corporation when they refused the licences. It was, however, argued to me in these cases that if there was any encroachment at all the appeal to the Sheriff was incompetent, as the Corporation had other statutory powers to deal with encroachments from which there was no appeal. I could not adopt that view, and I thought it right to avail myself of the provision which Parliament had given the Sheriff in further amending the statutory enactments on this matter of taking such means as he might consider proper of obtaining further information. In presence of the agents of the parties I visited the sites, and I found that the encroachment was, if any, at the most, only about an inch or an inch and quarter, and consisted of the thickness of the wooden hoarding affixed to the wall on which the advertisements were pasted. In one of the Rose Street cases I found the hoarding was exceeded in encroachment by an iron con-

ductor, an adjunct of the heritable property to which the hoarding was affixed, and which was about 3 inches in diameter, and I further found that a few feet further up the lane barrows were allowed to be stationed unattended. The opinion I formed was that no reasonable man who saw the sites could possibly object to them on the ground of encroachment, and that if the extent and character of the encroachment had not been withheld from the Corporation, and had the true circumstances been before them when they refused the licences they would have granted them and not refused them. I accordingly sustained the appeals, and that judgment also became final.

"I have written the foregoing to make the position of the Sheriffs in this matter of advertisement sites quite clear, and also to preface certain observations which I desire to make on the statutory powers of the Corporation in the matter under consideration.

"Certain arguments were used to me on the analogy of the law of licensing for the sale of intoxicating liquors. In my judgment any analogy that might be drawn fails from the fact that the liquor traffic is placed under universal restriction, whereas the right to advertise is under no such universal restriction, and any restriction upon the right to advertise and use heritable property suitable for the purpose so as to make rental out of it must only be exercised strictly within the scope of the statute restricting. Would any town councillor who himself owned an advertising site capable of yielding an annual rental of say £50 — which I believe is got for some such sites — be satisfied to lose £50 per annum without seeing that every member of the town council, before it refused the licence, had all the facts before him? I venture to think no. If, however, the Corporation thought, knowing all the circumstances, that it was in the public interest that the site should not be licensed, the individual owner of the site would have no ground of complaint. He would see, however, that before the Corporation came to a decision they should know all the facts. The attitude of mind which every town councillor should adopt to each question of this kind should be—If the rental were mine, is it my duty to sacrifice it to the public interest? There are many cases where the public interest should prevail over the private interest. But I venture to think that in the vast majority of cases the private interest ought to prevail over the public. Still the field of discretion is that of the Corporation, and within it a large margin of error must necessarily be allowed so long as they give themselves reasonable ground for coming to an error of judgment or an error in discretion.

"And now to come to the case under consideration, which is one opposite No. 41 Bread Street. It is admitted that it has been for years used as an advertisement site, but the grounds of refusal now are that (1) The hoarding is, especially in view of the improved condition of the neighbourhood, a most objectionable feature in and detrimental to the amenity of the district; (2) the hoarding projects over, encroaches upon, and limits the carriageway of the street, which for the greater part is very narrow; and (3) the advertisements on the hoarding might cause the traffic to stop and loiter, and that portion of it facing north (*i.e.*, to the street) being at a narrow part of the street, would thus constitute an obstruction and danger. It is to be kept in view that these are summarised reasons. A statement of fact was put before the Corporation with these suggested reasons for adoption, The statement of fact in this case was partly direct and partly by adoption from a report on another site. This should not be done in future, as it becomes necessary in such a case more or less to enter into the circumstances of another case that may be quite different. But taking the statement submitted to the Corporation (reasons included), a fact was alleged to them that 'the whole hoarding encroaches materially upon the carriageway of the street.' I visited the site in presence of parties' representatives. The whole hoarding does not encroach on the carriageway of the street. But the building to which the hoarding is attached, on account of the building adjoining it having been set back to widen the street and form a pavement, appears to encroach on the carriageway of the street. The only possible encroachment on the street in this case is again only the thickness of the hoarding board. The hoarding is partly facing west to Lothian Road over the pavement which proprietors of newer buildings to the west have sacrificed for more space, and partly along Bread Street itself. The Corporation having stated that immediately opposite 49 Bread Street they have acquired a strip of ground to widen the street, but that the width of it (43 feet) is still insufficient. Presumably what they now desire to acquire is on the other side, namely, that on which this advertisement site is situated. Why they should have stated this fact I do not know, unless it be to show that they desire to acquire the other side for widening purposes without paying compensation for advertising value. But to return to the reasons expressed: It is to be observed that the appellants say that the site has been used as an advertisement site without complaint from the residents in the district that it was injurious to amenity, without any inconvenience to traffic in the street being created, and without any suggestion on the part of the Corporation as street authority that it was an encroachment upon their rights. The Corporation content themselves with a denial of these assertions, but do not condescend on any complaint or any inconvenience to traffic, and do not state when, if ever, they complained of it as an encroachment. I think I am right in taking such a denial on the part of the Corporation as of no avail. If any instances were to be founded on in a proceeding of this kind they should have been averred. Having

visited the site, I think the first reason of refusal, namely, that of amenity, is quite unreasonable. The site is on an old building within 100 yards of the West Port. The reason as stated that the whole hoarding encroaches on the carriageway of the street is untrue, and the amount of the encroachment on the carriageway at any point was not put before the Corporation, and the actual encroachment is of no material consequence. The reason that the advertisements might cause congestion of traffic, in view of the fact that no past inconvenience is averred, is quite unreasonable.

"I have accordingly sustained the appeal and licensed the site.

"Other questions have been raised as to the way in which the Corporation deal with their own property in the matter of advertisement sites. It is unnecessary for me to deal with this. I prefer to deal with each case on its own circumstances."

The Corporation appealed to the Sheriff (MACONOCHIE), who, by interlocutor dated 15th July 1908, recalled the interlocutor of the Sheriff-Substitute, found that the Corporation had not unreasonably exercised their discretion in refusing the licence, and refused the appeal against the decision of the Corporation.

Messrs David Allen & Sons Billposting, Limited, and J. K. Munro & Hall, appealed, and argued—(1) Where a new jurisdiction was conferred by statute, the exercise of it must be regulated entirely by the conditions of the statute, and remedies which might have been competent in civil process were not to be presumed to be given—*Magistrates of Portobello* v. *Magistrates of Edinburgh*, November 10, 1882, 10 R. 130, 20 S.L.R. 92, *per* Moncreiff, L.J.-C. The provisions of the Act here negatived the view that the ordinary remedies of civil process were applicable, for the functions discharged by the Sheriff under the Act were ministerial and not judicial. The proceedings were not initiated in the Sheriff Court in the ordinary way, but came before the Sheriff by way of appeal. The question he had to consider was not a legal one, but whether a certain body had exercised a statutory discretion reasonably. The procedure was specially provided by the Act, and differed entirely from the ordinary procedure of the Sheriff Court. The Sheriff might inform his mind in any way he pleased, and if he did elect to have witnesses examined, no provision was made for keeping a record of the evidence. Power of awarding expenses was specially provided. Similar proceedings under the Burgh Police (Scotland) Act 1892 (55 and 56 Vict. cap. 55) had been held to be ministerial and not judicial—*White* v. *Magistrates of Rutherglen*, January 28, 1897, 24 R. 446, 34 S.L.R. 387; *County Council of Dumbartonshire* v. *Clydebank Commissioners*, November 14, 1901, 4 F. 111, 39 S.L.R. 57; *Glengarnock Iron and Steel Company* v. *M'Gregor*, July 7, 1904, 6 F. 955, 41 S.L.R. 727. Where the Sheriff was exercising ministerial powers conferred on him by statute, it was well settled that there was no appeal—*Strichen Parish Council* v. *Goodwillie*, 1908, S.C. 835, 45 S.L.R. 684; *Liddall* v. *Ballingry Parish Council*, July 4, 1908, 45 S.L.R. 816; *Balderstone* v. *Richardson*, February 20, 1841, 3 D. 597; *School Board of Lorn* v. *Bone*, March 16, 1886, 13 R. 768, 23 S.L.R. 537; *Main* v. *Lanarkshire and Dumbartonshire Railway Company*, December 19, 1893, 21 R. 323, 31 S.L.R. 239. The cases of *Leitch* v. *Scottish Legal Burial Society*, October 21, 1870, 9 Macph. 40, 8 S.L.R. 8; and *Fleming* v. *Dickson*, December 19, 1862, 1 Macph. 188, were distinguishable. In the former the subject-matter was a dispute to be decided according to ordinary rules, and appeal was appropriate. In the latter the proceedings were under a statute which provided for the taking of evidence in the same way as in civil process. (2) Alternatively, if an appeal from the Sheriff-Substitute to the Sheriff was competent, it necessarily followed that an appeal from the Sheriff to the Court of Session was likewise competent. On this view counsel argued that on the merits the Sheriff-Substitute's interlocutor was right. [It was conceded by counsel for the respondents that if the appeal to the Sheriff was incompetent, the Court of Session could competently review his judgment in a simple appeal.]

Argued for the respondents—(1) Where a special jurisdiction was conferred by statute on the "Sheriff" and no express provision was made with regard to appeal, it was not to be presumed that the Sheriff-Substitute in his exercise of the jurisdiction so conferred was final—*Fleming* v. *Dickson*, *cit.*; *Leitch* v. *Scottish Legal Burial Society*, *cit.*; *Magistrates of Portobello* v. *Magistrates of Edinburgh*, *cit.* If the statutory jurisdiction were judicial and not ministerial there would admittedly be a right of appeal from the Sheriff-Substitute to the Sheriff. The distinction between ministerial and judicial proceedings was that in the former the intervention of the Sheriff was necessary to enable the proceedings to be carried through, while in the latter the Sheriff was invoked only in case of a dispute arising between the parties to the proceedings. In that view the functions of the Sheriff under the present Act were judicial. He was not invoked at all in the event of the Magistrates granting the licence, but only when a dispute arose as to the reasonable or unreasonable exercise of the Magistrates' discretion. In the cases of *Strichen Parish Council* v. *Goodwillie*, *cit.*; *Liddall* v. *Ballingry Parish Council*, *cit.*; *Main* v. *Lanarkshire and Dumbartonshire Railway Company*, *cit.*, the functions exercised by the Sheriff were clearly ministerial. In the case of the *School Board of Sorn* v. *Bone*, *cit.*, there was a provision in the statute that the proceedings should be summary, and that excluded the idea of appeal. (2) Even if in the ordinary case there were no appeal from the Sheriff-Substitute to the Sheriff, it would be competent to appeal to the Sheriff where the Sheriff-Substitute had exceeded his jurisdiction. The Sheriff-Substitute here had exceeded his jurisdiction. He was not

entitled to overturn the decision of the Magistrates merely because if he had been judge of first instance he would have come to a different conclusion—*Guthrie and Others* v. *Millar*, May 25, 1827, 5 S. 711 (663); *Nicol* v. *Aberdeen Town Council*, December 20, 1870, 9 Macph. 306, 8 S.L.R. 231; *Small & Company* v. *Dundee Police Commissioners*, November 14, 1884, 12 R. 123, 22 S.L.R. 92; *Somerville* v. *Macdonald's Trustee*, January 25, 1901, 3 F. 390, 38 S.L.R. 296. The Sheriff-Substitute was only entitled to sustain the appeal if he was satisfied that the Magistrates had exercised their discretion unreasonably, and that meant that the reasons given by them were either not legitimate or not honest. It was clear that in this case the Sheriff-Substitute could not have held that; he had proceeded simply on a difference of view as to the merits of the question. (3) Unless the Sheriff-Depute had exceeded his jurisdiction there was no appeal to the Court of Session. Where a new jurisdiction was conferred by statute on the Sheriff Court, there was, in the absence of express provision, no appeal to the Court of Session—*Main* v. *Lanarkshire and Dumbartonshire Railway Company*, *cit.*, *per* Lord Adam; *Lundy* v. *Magistrates of Falkirk*, October 31, 1890, 18 R. 60, 28 S.L.R. 72; *Walsh* v. *Magistrates of Pollokshaws*, 1907 S.C. (H.L.) 1, 44 S.L.R. 64, *per* Loreburn, L.C., at p. 3 and p. 65.

At advising—

LORD JUSTICE-CLERK—That the appeal to this Court is competent I have no doubt, because it is based on the contention that the Sheriff had no jurisdiction to review the judgment of the Sheriff-Substitute. On the question whether there was an appeal from the Sheriff-Substitute to the Sheriff I have also no doubt. The Act of Parliament plainly says that "the Sheriff"—that is, whoever is competent to exercise the jurisdiction—is to hear parties and consider any case that is brought up before him against the decision of the Town Council of the City as regards the putting up of advertisements, and I do not doubt that the clause in the Act means the Sheriff in the sense that whether the case is heard by the Sheriff or by the Sheriff-Substitute, whoever takes up the matter can dispose of it finally. The proceeding in itself is an appeal to the Sheriff from a deliverance outside the Sheriff Court, and therefore is not of the nature of a case arising in the Sheriff Court.

I quite see that it may be very proper that in cases of this nature the Sheriff, if he thinks proper, should make it part of his Court arrangements that the Sheriff-Substitute shall not take up such cases, but that they shall be brought before himself. But where in the exercise of his rights as Sheriff he allows his Sheriff-Substitute to act as Sheriff, then the Sheriff-Substitute is the Sheriff for that matter. If that is so, that is an end of the case, because I can give no effect to the argument of Mr Cooper that in what the Sheriff-Substitute decided here he exceeded his jurisdiction. I think he had to consider whether the decision given by the Town Council was reasonable in the circumstances or not. I cannot see any ground for holding that in this case anything was done which was not within the power of the Sheriff-Substitute.

LORD LOW—By the Edinburgh Corporation Act 1906 it was enacted that for the purpose of protecting the amenity of the city no person should be authorised to exhibit advertisements upon hoardings or buildings without a written licence granted by the Corporation. That was a very delicate and very important power which was conferred upon the Corporation, because while no one could doubt that it was most desirable that some authority should have control over the exhibition of advertisements, yet it is to be remembered that if the Corporation refused a licence it meant that they refused to allow the owner of property to use that property in a perfectly legitimate and profitable manner. I think it was for that reason that the Legislature did not allow the discretion of the Corporation to be altogether uncontrolled, and accordingly it is provided that when the Corporation refuse to grant a licence any person aggrieved by the refusal may appeal to the Sheriff, and the Sheriff is empowered after certain procedure, upon which I shall have a word to say presently, either to dismiss the appeal, or if he finds that the Corporation in refusing the licence have not reasonably exercised their discretion under the Act, to grant a licence for a period not exceeding three years. Now it is admitted that in that enactment the expression "the Sheriff" includes the Sheriff-Substitute, and in the cases which have been brought before us the appeals were in fact brought before, and disposed of by, the Sheriff-Substitute, and the first question which we have to determine is whether, that being so, it was competent to appeal from the decision of the Sheriff-Substitute to the Sheriff. There is in the Act no clause declaring the decision of the Sheriff to be final, and I think that the question whether an appeal from the Sheriff-Substitute to the Sheriff-Depute was or was not competent depends upon whether upon a sound construction of the enactment the expression "the Sheriff" is to be read as meaning the Sheriff Court or the individual Sheriff, whether Sheriff-Substitute or Sheriff-Depute. I think that the answer to that question must depend upon the terms of the procedure provided by the Act, and upon a consideration of the character of the jurisdiction which is conferred upon the Sheriff.

I shall first say a word or two with regard to the procedure which is provided by the Act. The first remark which I have to make upon that is that it is not the ordinary procedure of the Sheriff Court, but is a special procedure provided by the Act and made imperative for the peculiar purposes of the enactment. That in itself to my mind goes a considerable way to solve the question at issue, because although

there are cases in which the expression "the Sheriff" has been read as meaning the Sheriff Court, these were cases in which the context showed that that was really what the Legislature intended, and I think in these cases the important thing was that the ordinary procedure of the Sheriff Court was invoked. But apart from any such context, I think the natural meaning of the expression "the Sheriff" is the individual judge, whether it be the Sheriff-Substitute or the Sheriff-Depute, and it does strike me as anomalous that when a statute declares that a special matter is to be determined by "the Sheriff," it should be competent first of all to have that matter determined in one way by a judge who fully satisfies that description, and then to have it determined in another way by another judge who also answers the description.

But the matter is made more clear when we come to see what is the precise procedure which is provided by the Act. In the first place the appeal is to be by note of appeal lodged with the Sheriff-Clerk, which note of appeal shall state the grounds of appeal. Now I think that one reason for that provision was to prevent multiplication of pleadings. The Act allows only a note of appeal, stating the grounds of appeal and answers for the Corporation. Then the appeal must be lodged within fourteen days after intimation of the resolution of the Corporation to refuse the licence, and answers must be lodged within six days after the service of the appeal on the Corporation. These enactments are imperative. If an appeal, for whatever reason, was not lodged until after the expiry of the fourteen days, it would fall to be thrown out, and I do not think the Sheriff could, except perhaps with consent of parties, prolong the time for lodging answers. It is evident that these periods were fixed because they were thought to be sufficient and not more than sufficient to enable the parties to consider and prepare their case. Then it is provided that the Sheriff shall hear the parties, and then there follows a most significant provision that he "may if he so requires take such means as he may consider proper for obtaining further information." I think that probably it was not contemplated that the Sheriff should take evidence, although there is nothing that I can see to prevent him doing so. But whether he gets his information by examining witnesses or in any other way, there is no obligation laid on him to keep a record of the evidence, and that is just one of the characteristics of summary proceedings in which there is no appeal, because a Court of Appeal on the merits cannot possibly exercise its function unless it has some record of the evidence on which the judge of first instance proceeded. I therefore think that that part of the procedure clause is almost conclusive in support of the view that the decision of the Sheriff-Substitute or the Sheriff-Depute, as the case may be, is to be final. That view is confirmed by the last provision of the procedure clause, which is that the Sheriff, after dealing with the case, "shall pronounce such order regarding expenses as he may deem just." Now if the appeal when once brought substantially became a Sheriff Court process there was no necessity for giving the Sheriff the power of awarding expenses, because he would have had that power by implication, but if this was altogether a special procedure in which the Sheriff was to sit more in the character of a referee than of Judge in the Sheriff Court, then it was necessary to give him special power to award expenses. Accordingly, taking the procedure clauses, I think there is no doubt that they are of a nature which may properly be described as summary, and if so there is no appeal on the merits from the judge to whose decision the matter is by statute committed.

The nature of the jurisdiction conferred seems to me to point very strongly in the same direction. The Sheriff is not to act in a judicial capacity in the ordinary sense; he is not to decide a question of law between the parties; he is not to review the determination of the magistrates in the sense of weighing considerations for and against, and deciding to which side the balance inclines. He is not entitled to interfere except in the one case when he is satisfied that the Corporation have not reasonably exercised their discretion under the Act. Now I agree with what the learned Sheriff says, that that is a very delicate and somewhat invidious jurisdiction, but I take it that it was conferred simply because it was thought right that some independent judge in the responsible position of Sheriff of the County should have the power of correcting the determination of the Corporation, and protecting the rights of the owners of property if the Corporation (which is a body representing very many different and conflicting views and interests) should, perhaps from excess of zeal to preserve the amenity of the city, capriciously or arbitrarily deprive an owner of a valuable right of property. Well, that is the kind of jurisdiction which would very naturally be entrusted to a single responsible individual, and in which one would not expect that an appeal would be allowed from judge to judge or from tribunal to tribunal; for if it was competent to appeal from the Sheriff-Substitute to the Sheriff, I do not see any grounds on which an appeal could be disallowed from the Sheriff to this Court, and if a question of law could be discovered, from this Court to the House of Lords. It seems to me that this is a matter in which such a multiplication of appeals would be altogether out of place, and would be plainly contrary to the whole scope and purpose of the enactment.

I therefore without any doubt come to the same conclusion as your Lordship, that an appeal from the Sheriff-Substitute to the Sheriff was incompetent.

Like your Lordship I would not desire to say one word about the merits of the case, because that is a matter with which, if the views which I have expressed be sound, this Court has nothing to do, but as

Mr Cooper argued that the Sheriff-Substitute had gone so extravagantly wrong that his decision was really in excess of the powers conferred upon him, I feel bound to say that in my humble judgment, having read all the papers with care, it is clear that there is no foundation whatever for that objection.

LORD ARDWALL—I agree with both your Lordships. The first question that arises in considering this case is whether we are entitled to deal with the judgment of the Sheriff, which is the last judgment in this case. However, any difficulty there was has been obviated by the very reasonable admission given by Mr Cooper, and I need say no more than that there are authorities which were quoted to us from one side of the Bar which show that this Court has frequently entertained questions of excess of jurisdiction on the part of inferior judges, not only when brought before them by way of reduction and suspension but also by way of appeal. But as that matter was not argued out I do not pursue it further.

We come now to the question whether the Sheriff was acting within his competency in reviewing the judgment of the Sheriff-Substitute, and on that question I entirely agree with what has been said by both your Lordships. In the first place, this is not a proceeding initiated in the Sheriff Court. It was initiated before the Magistrates of the city, and accordingly it cannot be viewed as an ordinary process in the Sheriff Court. In the next place the appeal to the Sheriff is not properly an appeal to him in his judicial or legal capacity but truly in his administrative capacity. In the third place, the code of procedure which we have set forth in the 45th section of the Corporation's Act of 1899, as amended by sec. 77, sub-sec. 8, of the Edinburgh Corporation Act 1906, is in accordance with summary procedure and inconsistent with procedure in which a review is contemplated. There is a special power given to the Sheriff to take such means as he may consider proper for obtaining further information. Now I take it that the object of that was that he might get that further information in such way as he liked, but one thing is plain, that however got that information is for himself alone, for there is no provision for its being recorded in any way. Now, without a record of the evidence on which the inferior judge proceeded, it is clear that a Judge of Appeal cannot review his decision on its merits. This I think again indicates that this procedure was intended to be of a summary nature without an appeal to another Judge.

Last of all, there is a special power given of awarding expenses, and as pointed out by my brother Lord Low that would not have been given if this had been an ordinary Sheriff Court action, because then the Sheriff would have had power to award expenses without anything being said about it in the Act. A number of cases have been quoted to us which were to the effect that in a special statutory jurisdiction such as that under consideration, unless power is given to award expenses, the judge cannot deal with them, and I have no doubt that that was the reason for inserting the power to award expenses in the clause referred to. Therefore I have no doubt that there is no room in this case for an ordinary appeal to the Sheriff. On the contrary, a special power of review of the resolution of the Corporation is given to one person answering to the description of "Sheriff," be he the Sheriff or the Sheriff-Substitute, and once that power is exercised the proceeding is at an end.

Like your Lordships, I think we have nothing to do with the merits of this case, but I think it is only just to the Sheriff-Substitute to say that I do not think he has in the least exceeded his jurisdiction; and I may further say that my impression is that if I had been in his place I would have decided the cases in the same way as he has done.

LORD DUNDAS was absent.

The Court sustained the appeal, recalled the Sheriff's interlocutor as incompetent, and affirmed the interlocutor of the Sheriff-Substitute.

Counsel for the Appellants—Constable, K.C.—A. M. Stuart. Agent—J. Ferguson Reekie, Solicitor.

Counsel for the Respondents—Cooper, K.C.—Morton. Agent—Thomas Hunter, W.S.

Wednesday, November 4.

EXTRA DIVISION.

(Before Lord M'Laren, Lord Pearson, and Lord Dundas.)

[Sheriff Court at Kilmarnock.

BOYD *v.* DOHARTY.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 13—*Workman—Sub-Contractor—Stone-breaker Engaged at Fixed Rate per Cubic Yard.*

A was engaged to break stones for road metal, at a fixed rate per cubic yard, by B, who had a contract for the supply of road metal with a county road authority, and who furnished A with material. A was injured while engaged on the work, and claimed compensation from B under the Workmen's Compensation Act 1906.

Held, on appeal, that A was a "workman" in the sense of the Act, and not a sub-contractor, and was entitled to compensation.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *Schedule* I (1) (*b*)—*Compensation—Incapacity for Work.*