manner. If my recollection serves me right, that is in accordance with the provisions of section 16 of the Act of 1903 (3 Edw. VII, cap 33), and therefore I think there is no substantial difficulty with regard to that matter.

The Court dismissed the appeal as incompetent.

Counsel for Appellants—Sandeman, K.C. —J. A. Christie. Agents—Mylne & Campbell, W.S.

Counsel for Respondents—D.-F. Dickson, K.C.—D. P. Fleming. Agents—Lewis & Somerville, W.S.

Saturday, March 9.

EXTRA DIVISION.

DAVIDSON'S TRUSTEES *v.* DAVIDSON.

Process—Special Case—Questions of Law—Form.

Observations per curiam on the proper method of stating questions of law in a special case.

George Gilbert Ramsay and others, trustees of the late Miss Grace Davidson, Rannagulzion, Perthshire—*first parties*—and others presented a Special Case for the opinion and judgment of the Court of Session.

At advising—

LORD DUNDAS—I agree with the opinion just delivered by your Lordship, and have nothing further to say about the merits of the case. I desire merely to add a few observations which occur to me, arising out of the way in which the questions of law have here been stated. They are nominally thirteen in number, but if regard is had to divisions and subheads, amount to at least two dozen. One of your Lordships, I think, remarked during the discussion that they resemble an examination-paper set to the Court more than anything else. It may be that such prodigality of interrogation (which seems to me to be growing more and more common in practice) is the outcome of an over-zealous attempt to satisfy some supposed requirement or *desideratum* of the Court, but I think it is both unnecessary and undesirable. There ought not to be any undue difficulty about stating the questions of law in special cases within reasonable compass if broad considerations of sense and expediency are kept in view. Each of the questions should, of course, embody a proposition of law, and not (as sometimes occurs) more or less of fact, or of mere arithmetic. The questions come substantially in place of the pleas-in-law which counsel for the various parties would have had to frame if the dispute had arisen in the form of an action of some sort. It is generally convenient that they should be capable of a categorical answer—yes or no; but this is not indispensable; and if for any sufficient reason another form is adopted, the answer can be (and often is) given by way of a finding in appropriate terms. The questions ought to raise the legal issues which the parties wish to have determined; but I do not think it is necessary or desirable for counsel to endeavour (as was perhaps intended in this case) to anticipate and cover in specific detail the whole gamut of possible contingencies which may arise as affecting the individual interests of each and every party to the case. On the other hand, it would obviously not do for counsel to table to the Court a deed or deeds of some sort, with a few relative dates and facts, and a bare general "question of law," such as, "Upon a sound construction of the said deeds, who are the parties amongst whom the estate should be distributed, and at what time or times, and in what shares or proportions, and subject to what (if any) conditions, restrictions, or limitations?" Between the two extremes indicated, a reasonable medium must in each case be aimed at. It sometimes happens that during the arguments a suggestion from the Bench may indicate, as the true legal solution of some point, one which is not specifically covered by any of the questions stated, and the parties agree in adjusting and adding a new question to meet the situation. But I do not think it is necessarily the Court's duty or function to investigate and determine, *ex proprio motu*, all the possible legal aspects of a special case; it is for the parties to present the questions of law which they seek to have decided, and for the Court (primarily at least) to answer these, and these only. It would not, I apprehend, be difficult to point to reported cases where a solution—I do not say the correct solution, but at least a very plausible and attractive one—of some problem of vesting or the like has apparently escaped the notice of all concerned, and which, if the parties had suggested it, might have affected the result of the decision. The proper statement of questions in a special case, just as of pleas-in-law, or of declaratory (or other) conclusions in the summons of an action, is a matter requiring skill, care, and discrimination, but I do not see why it should present any special or peculiar difficulty. I shall say no more, and these few observations, which are, of course, merely the expression in a general way of my own individual views, are obviously not intended as an exhaustive treatment of this interesting topic of practice and procedure.

LORD KINNEAR and LORD MACKENZIE concurred in the foregoing observations.

Counsel for the Parties—Blackburn, K.C. —Leadbetter—Cooper, K.C.—Chree—Jameson—T. G. Robertson—Ramsay. Agents—Mackenzie & Black, W.S.—John C. Brodie & Sons, W.S.—L. & J. M'Laren, W.S.—T. & R. B. Ranken, W.S.—Russell & Dunlop, W.S.

HIGH COURT OF JUSTICIARY.

Tuesday, March 12.

(Before Lord Dundas, Lord Salvesen, and Lord Guthrie.)

M'INTYRE *v.* THOMSON.

Justiciary Cases—Police Offences—Brothel—Person Managing Brothel—"Found in the Building or Part of Building"—Common Stair Leading to Brothel—Glasgow Police Act 1866 (29 *and* 30 *Vict. cap. cclxxiii), secs.* 136, 137, 142.

The Glasgow Police Act 1866, sec. 142, provides that any building or part of a building used for harbouring prostitutes for the purpose of prostitution may be entered on a warrant of the magistrates, "and every person found therein who manages or assists in the management" thereof shall be subject to a penalty.

Held that a person found on the landing of a common stair outside the door of a house used as a brothel, and managed as such by him, was found in the house in the sense of the Act.

The Glasgow Police Act 1866 (29 and 30 Vict. cap. cclxxiii), enacts—Section 142—"The provisions hereinbefore contained with respect to entering unlicensed or improper places of resort under a warrant of the magistrates shall apply to any building or part of a building ordinarily or shortly before the date of entry under such warrant used for the purpose of harbouring prostitutes for the purpose of prostitution; and by virtue of such warrant it shall be lawful for any constable to take into custody and convey to the Police Office, in order to be brought before the magistrate, the occupier of such building, or part of a building, or any person found therein, who either temporarily or permanently manages or assists in the management of the business conducted therein; and the proprietor and occupier of such building, or part of a building, and every person found therein who manages or assists in the management of such business shall be subject to the same penalties and provisions as are hereinbefore enacted with respect to the proprietor and occupier of, or to any person who manages or assists in the management of the business conducted in any other unlicensed or improper place of resort."

The same Act provides (section 136) for entry, under warrant of the magistrate, of any "building or part of a building or other place" believed to be kept for (1) stage plays, where admission may be obtained on payment and where the premises are not licensed as a theatre, (2) fighting or baiting any animal, (3) playing any unlawful game, (4) selling wine, spirits, beer, cider, or other fermented or distilled liquors without a licence, and for taking into custody all persons found therein; and provides further (section 137) that every person "who aids or assists or takes any part in the management thereof" shall be liable to a penalty.

William Thomson, 6 West Russell Street, Glasgow, *respondent*, was charged in the Police Court there, at the instance of John James M'Intyre, Procurator-Fiscal, *appellant*, on a complaint which was thus stated—"On the 20th day of November 1911 you, being a person found in a house at No. 6 West Russell Street, Glasgow, used ordinarily or shortly before the date above libelled for the purpose of harbouring prostitutes for the purpose of prostitution, did manage and use said house, or assist in managing the same, for said purpose, and did harbour, and knowingly suffered to be harboured, in said house for said purpose one prostitute, viz., Kate Dougan, of 81 Bernard Street, Glasgow, contrary to the Glasgow Police Act 1866, secs. 137 and 142: whereby you are liable to a penalty. . . ."

On 25th November 1911 the accused pleaded not guilty, and after evidence had been led the Judge found the charge not proven.

The Procurator-Fiscal took a Case for appeal.

The Case gave the following *facts*—"That the house in question is situated at No. 6 West Russell Street, one stair up, and consists of two rooms and kitchen; that it had been conducted as a brothel for three weeks prior to the date libelled; that during that period and on the date libelled the accused, though not the occupier of the house, managed same as a brothel; that on the date libelled the accused went up the stairs from the street accompanied by the said Kate Dougan and a man Hugh M'Lean, dockyard worker, 142 Blackburn Street, Glasgow; that the accused opened the door and admitted the said Kate Dougan and the said Hugh M'Lean, but did not enter the house himself; that the accused then locked the door from the outside; that Constable George Ogilvie, No. 143 'E' Division, Glasgow, and Constable Robert Innes, No. 144 'E' Division, Glasgow, who had been watching the house, then came up the stairs and met the accused on the stair landing near to the door of the house and asked him to show them who was in the house; that at first the accused denied that there was anyone in the house and refused to open the door, but latterly he opened the door and admitted them into the house; that on entering the house the constables found the said Kate Dougan and the said Hugh M'Lean in one of the rooms; that they both admitted in presence of accused that they had come there for the purpose of having sexual intercourse, and that accused admitted them into the house."

The Case as set forth by the Magistrate further stated—"In view of the fact that accused was not *de facto* found in the house at the time libelled, I found the charge not proven."

The *questions* for the opinion of the Court were—"(1) Was the accused on the facts stated a person 'found' in a building, within