the ordinary rules of evidence as regards the application of the conviction to the accused, according to which the evidence of one witness by itself is not sufficient.

On those grounds I am of opinion that the conviction cannot stand. I do not think it is necessary to enter into consideration of the question whether there was sufficient identification or not. That does not arise in the view I take of the case.

LORD SKERRINGTON—The third objection to this conviction is so clear and unanswerable that I do not consider it necessary to express any definite opinion as to the merits of the first and second objections. As, however, both of your Lordships consider that the second objection is also well founded, I think it right to say that upon the argument which we have heard I am not prepared to concur in that opinion, or in the opinion of the Lord Justice-Clerk in the case of *Campbell*, 1912 S.C. (J.) 10, 49 S.L.R. 197, 6 Adam 550. None the less I welcome the decision which your Lordships are about to pronounce as one which will conduce to the sound administration of justice in summary prosecutions.

The Court sustained the second and third pleas-in-law for the complainer, and suspended the conviction.

Counsel for the Complainer — Mitchell, Agent—C. F. M. Maclachlan, W.S.

Counsel for the Respondents—A. M. Mackay. Agents—J. & J. Ross, W.S.

COURT OF SESSION.

Saturday, December 22.

SECOND DIVISION.

[Lord Cullen, Ordinary.

AYR *v.* ST ANDREW'S AMBULANCE ASSOCIATION.

Process — Limitation of Action — Public Authorities Protection Act 1893 (56 *and* 57 *Vict. cap.* 61), *sec.* 1—*Society Incorporated by Royal Charter doing Benevolent Work.*

An ambulance association, incorporated by royal charter, sued for damages in respect of injuries sustained through the alleged negligence of one of its servants, pleaded the time limit contained in section 1 of the Public Authorities Protection Act 1893. There was no averment that the Association was exercising an authority or discharging a public duty imposed upon it. *Held* (*aff.* judgment of Lord Cullen) that the Act did not apply.

The Public Authorities Protection Act 1893, section 1, enacts — "(1) Where after the commencement of this Act any action, prosecution, or other proceeding is commenced in the United Kingdom against any person for any act done in pursuance, or execution, or intended execution of any Act of Parliament, or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such act, duty, or authority, the following provisions shall have effect:—(*a*) The action, prosecution, or proceeding shall not lie or be instituted unless it is commenced within six months next after the act, neglect, or default complained of, or in case of a continuance of injury or damage, within six months next after the ceasing thereof."

On May 28, 1917, James Ayr, 30 Hayburn Street, Partick, Glasgow, *pursuer*, brought an action against The Saint Andrew's Ambulance Association, 176 West Regent Street, Glasgow, *defenders*, whereby he sought to recover the sum of £500 as damages in respect of injuries sustained in consequence of having been run over, on 22nd August 1916, by an ambulance waggon belonging to the defenders and driven by one of their servants, through whose negligence the accident was alleged to have been caused.

The defenders pleaded, *inter alia*—"1. The defenders being sued in the present action for an alleged act done in execution of a public duty and authority, or for alleged default or negligence in such execution, and the action not having been brought within six months of such act or default, the action will not lie."

On 9th November 1917 the Lord Ordinary (CULLEN) repelled the first plea-in-law for the defenders and allowed the parties a proof.

Opinion.—[*After narrating section* 1 *of the Public Authorities Protection Act* 1893 *above set forth*] — "In the present action the defender, the St Andrew's Ambulance Association, now incorporated by royal charter, is sued for damages in respect of personal injuries sustained by the pursuer, in consequence of his having been run over by an ambulance waggon belonging to the Association in one of the streets of Glasgow, the ground of action being alleged negligence on the part of the driver of the said waggon, a servant of the Association acting within the scope of his employment. The accident occurred on 22nd August 1916, and the present action was raised on 28th May 1917.

"The Association defends the action on its merits, but pleads, *in limine*, that it is excluded by the time limit contained in the provisions of the Act of 1893, above quoted. The plea of the Association is . . . [*quotes, v. sup.*] . . .

"The plea uses the words 'a public duty *and* authority.' I rather think, however, that the defenders mean to plead alternatively, 'public duty *or* authority.'

"The St Andrew's Ambulance Association was originally an unincorporated association, formed in 1882, and carried on, as it still is, for the laudable objects of providing instruction in ambulance work, and of rendering first aid to the wounded, and also of providing ambulance waggons and other ambulance assistance in case of need. It was and is a voluntary association, entirely dependent on voluntary subscriptions and donations given to enable it to carry on its

work, thereby resembling many other associations and bodies of individuals in the country formed and existing for philanthrophic purposes.

"In 1899 the Association obtained a royal charter, whereby it was created a corporate entity, with a stated constitution, and a definition of the objects and purposes characterising it as so incorporated.

"From the arguments advanced by the Association in support of its said plea it would seem that to the eyes of the Association there is a kind of glamour about this royal charter tending to throw around the Association the atmosphere of a more 'public' character than antecedently attended it.

"The charter, however, does not impose duties on the Association, nor does it confer on it any authority for the achievement of its purposes which it did not antecedently possess.

"Apart, however, from the possession of its royal charter, the Association maintains the proposition that it, judged by its objects and purposes, falls to be regarded, within the meaning of the Act, as a body acting in pursuance or execution (or intended execution) of a public duty or authority.

"I am unable to accept this proposition.

"The Act of 1893 does not define the word 'public,' or the words 'public duty or authority,' which it uses. The leading type of case, specially instanced, is that of an act done 'in pursuance or execution, or intended execution, of an Act of Parliament.'

"I do not propose to attempt any precise definition of what the Act means by 'public duty or authority.' But wherever the line may exactly fall to be drawn, I think the case of the defending Association falls outwith it.

"The Association has no 'duty' incumbent on it other than the moral duty of benevolence towards the sick and injured, which bears on all members of the community alike, although it moves them in varying degrees. Nor has it any 'authority,' apart from such degree of freedom of action as the communal sense willingly allows to individuals, or associations of individuals, who voluntarily undertake works of benevolence for the benefit of their fellow-men. If the defenders' view were admitted, it would follow that any voluntary association of individuals, or indeed any individual, pursuing general objects of benevolence among the members of the community would, *quoad hoc*, fall to be regarded as pursuing or executing (or intending to execute) a 'public duty' within the meaning of the Act. This appears to me too wide a view of the intended scope of the Act.

"I shall accordingly repel the first plea-in-law for the defenders."

The defenders reclaimed, and argued—This was an action brought against the defenders in consequence of their alleged negligent execution of duties imposed upon them by royal charter. The defenders performed these duties by virtue of public authority. There was a difference between an incorporated body invested with certain powers of acting and a body not so incorporated. The assumption fell to be made that there was an implied duty laid on the defenders to apply the powers. Accordingly, as the Association was performing a public duty, it was entitled to the safeguards provided by the Public Authorities Protection Act 1893 (56 and 57 Vict. cap. 61). It was not the public character of the person or corporation which fell to be considered under the Act, but the nature of the duty performed by that person. If that duty was of a public nature, then an act done in fulfilment thereof was entitled to protection unless an action in respect of any wrong inflicted thereby were raised within six months of its commission. The present case differed from that of the *Attorney-General* v. *Proprietors of Margate Pier and Harbour*, [1900] 1 Ch. 749; in that case the incorporated company was a commercial undertaking carried on for purposes of profit, whereas in this case the Association was without profit fulfilling the public duty of relieving the suffering of the sick and injured. Counsel also referred to the following authorities—"*The Johannisburg*," [1907] P. 65; *Bradford Corporation* v. *Myers*, [1916] 1 A.C. 242, *per* the Lord Chancellor at p. 247; Halsbury's Law of England, vol. 23, sections 690, 692.

The respondent argued—The Association was under no legal obligation to proceed with its undertaking. It might be acting from a sense of public duty, but no member of the public could compel the exercise of the powers under the royal charter, or obtain damages for failure to exercise these powers. The duty contemplated by the Act on the other hand implied a correlative right in the citizen. Here the charter imposed no duty on the Association and conferred no authority on it. Every person who performed duties of a public nature was not a public authority. Nor did the mere incorporation by royal charter make a charitable body a public authority in the sense of the Act. The following cases were referred to —*County Council of Lanarkshire* v. *Airdrie, Coatbridge, and District Water Trustees and Others*, (1906) 8 F. 777, *per* Lord M'Laren, at p. 781, 43 S.L.R. 632; *M'Phie* v. *Magistrates of Greenock*, (1904) 7 F. 246, 42 S.L.R. 190; *Baker* v. *Glasgow Corporation*, 1916 S.C. 199, 53 S.L.R. 183; *Bradford Corporation* v. *Myers* (*cit.*); *Fielding* v. *Morley Corporation*, [1899] 1 Ch. 1, *per* Lindley, M.R.

At advising—

LORD JUSTICE-CLERK—This is a reclaiming note in an action in which the pursuer claims damages for personal injury in consequence of a driving accident, and the point argued before us was whether the plea stated by the defenders to the effect that they were entitled to the benefit of the Public Authorities Protection Act was well founded or not.

The Lord Ordinary repelled that plea. He also repelled the second plea—that to the relevancy—as to which there is no question now, and allowed a proof. In my opinion the Lord Ordinary was right.

The defenders are an incorporated association by virtue of a royal charter granted in 1899, which sets out that the St Andrew's Ambulance Association was originally established in 1882, in the city of Glasgow, for the purposes set out in the charter.

The Public Authorities Protection Act, it seems to me, is not one which can be invoked by the Association. I think it must be taken as finally settled that in construing this Act both "the introductory words" and also the terms of the short title clause are to be taken into account in determining the scope of the statute. The judgments in the case of *Myers* v. *Bradford Corporation*, [1916] 1 A.C. 242, I think, show that the present Association does not come within the ambit of the statute.

It is quite true that in that case what was being dealt with was an Act of Parliament, but I do not think it makes any material difference that we are in this case dealing with a royal charter instead of an Act of Parliament.

In my opinion, having regard to what was said in the House of Lords in the *Bradford* case, this Association is not a public authority within the meaning of the Act. I am further of opinion that there is no relevant averment to the effect that when the accident occurred the Association was exercising a public authority or discharging a public duty imposed upon it so as to entitle it to the benefit of the statute.

I am therefore of opinion that the Lord Ordinary arrived at the right conclusion in repelling the plea founded upon the statute, and that we ought to refuse the reclaiming note and remit to the Lord Ordinary to proceed with the proof.

LORD DUNDAS—I agree with your lordship. If we were to sustain the defenders' first plea-in-law we should certainly be placing a much wider construction upon the Act than it has ever received hitherto. Mr Sandeman did not shrink from this view. He maintained that the protection of the Act would extend, for example, to a kindly member of the public who, having found a sick or injured man upon the street and taken him into his car, should, in his haste to reach a hospital, negligently run down a third party. I cannot agree with this line of argument. We are, I take it, entitled in construing section 1 to have regard not only to the long title of the Act (*Fielden*, [1899] 1 Ch. 1, [1900] A.C. 133), but also to its short title, section 5, as indicating the intention of the Legislature, so as "to make that short title a good general description of all that was done by that Act" (*Justices of Middlesex*, (1884) 9 A.C., *per* Lord Chancellor Selborne, at p. 772). The case before us is certainly not so extreme as that of the good Samaritan to which I have referred; but I do not think that the protection of the Act can be properly extended to it. It seems to me sufficient to point out that this excellent Association is not under any legal duty or obligation, by statute or otherwise, to carry on its good work as in a question with the general public, and I do not think that in doing so it is executing any public authority within the meaning of the Act. I recognise that it would be exceedingly difficult to draw a definite line between the class of cases that are within, and those that are without the statute. I venture to adopt as my own the language of the Lord Chancellor (Lord Buckmaster) in *Bradford Corporation*, [1916] 1 A.C. at p. 250)—"The statute itself is so framed that such distinction is not easy, and there may well be cases about which greater doubt may arise and more uncertainty be felt than about the present, which to my mind lies clearly outside the area of statutory protection." I am therefore for adhering to the Lord Ordinary's interlocutor. It was not disputed by the reclaimers' counsel that their second plea-in-law was properly repelled.

LORD GUTHRIE—I also think the Lord Ordinary has come to a right conclusion. The Lord Ordinary does not go on this ground, but I accept the view stated by the Lord Chancellor in the case of *Bradford Corporation* v. *Myers*, [1916] 1 A.C. 242, to the effect that the benefits of the Public Authorities Protection Act 1893 are limited to public authorities and individuals representing them. Lord Dunedin concurred in the Lord Chancellor's opinion. Lord Atkinson expressed no dissent from it, and Lord Shaw throughout his opinion assumed its accuracy and expressly concurred with the Lord Chancellor's whole opinion. Lord Haldane alone expressed a different view. In this case it is not maintained that the reclaimers are in any sense, technical or popular, a public authority.

Even suppose that the word "person" in section 1 of the statute should not be so limited, Lord Haldane in the case of *Bradford* said that the protected act must be "the immediate and necessary outcome of duty or authority." In this case the actings of the reclaimers complained of do not seem to me to answer that description. In a sense the act was done in pursuance of a public duty. But the duty, in obedience to which the act is done, must be a duty to some outsider who has created the duty, and to whom the person or persons must be responsible for the due fulfilment of what they have undertaken to do. In this case any duty which influenced the reclaimers was a duty to their own consciences and the consciences of their subscribers—what the Lord Ordinary calls a moral duty of benevolence—in short, the action of the Good Samaritan. If their ambulance work was done in execution of a public duty or authority any wounded member of the public could insist on conveyance, which it is admitted he could not do. It is quite true that the reclaimers are doing, voluntarily and gratuitously, work which might quite well be undertaken by the State, but so long as they do the work at their own hands and in their own way, and so long only as they choose to persevere in their excellent work, without conferring any right on all members of the public, they are not acting in the sense of the statute from a duty to the public or under a public authority. This is clearly laid down by Lord

Shaw in the fourth last paragraph of his opinion in the case of *Bradford*.

LORD SALVESEN was not present.

The Court adhered to the Lord Ordinary's interlocutor, and remitted to the Lord Ordinary to proceed with the proof.

Counsel for the Pursuer (Respondent) — M'Clure, K.C. — Scott. Agents — Ross & Ross S.S.C.

Counsel for the Defenders (Reclaimers)— Sandeman, K.C. — Mackay. Agents — J. & R. A. Robertson, W.S.

Wednesday, December 12.

FIRST DIVISION.

[Exchequer Cause.

INLAND REVENUE *v.* HAMILTON.

Revenue — Succession Duty — Succession Duty Act 1853 (16 *and* 17 *Vict. cap.* 51), *secs.* 1, 2, *and* 10—*Finance* (1909-10) *Act* 1910 (10 *Edw. VII, cap.* 8), *sec.* 58—"*First Succession under the Disposition.*"

The Finance (1909-10) Act 1910, sec. 58, increases succession duty in certain cases, and provides that that shall take effect "in the case of a succession arising under a disposition, only if the first succession under the disposition arises on or after" 30th April 1909. *Held* that "the first succession under the disposition" meant the first taking under the disposition which involved liability for payment of duty under the Succession Duty Act 1853.

The Succession Duty Act (16 and 17 Vict. cap. 51) enacts — Section 1 — "The term 'succession' shall denote any property chargeable with duty under this Act." Section 2—"Every past or future disposition of property, by reason whereof any person has or shall become beneficially entitled to any property or the income thereof upon the death of any person dying after the time appointed for the commencement of this Act, either immediately or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and every devolution by law of any beneficial interest in property, or the income thereof, upon the death of any person dying after the time appointed for the commencement of this Act, to any other person, in possession or expectancy, shall be deemed to have conferred or to confer on the person entitled by reason of any such disposition or devolution a 'succession'; and the term 'successor' shall denote the person so entitled; and the term 'predecessor' shall denote the settler, disponer, testator, obligor. ancestor, or other person from whom the interest of the successor is or shall be derived." Section 10—"There shall be levied and paid to Her Majesty in respect of every such succession as aforesaid, according to the value thereof, the following duties:—That is to say . . . where the successor shall be a brother or sister of the father or mother or a descendant of a brother or sister of the father or mother of the predecessor, a duty at the rate of five pounds per centum upon such value."

The Finance (1909-10) Act 1910 (10 Edw. VII, cap. 8), enacts—Section 58—"(1) Any legacy or succession duty which under the Stamp Act 1815, or the Succession Duty Act 1853, or any other Act, is payable at the rate of three per cent., shall be payable at the rate of five per cent., and any legacy or succession duty which under the said Acts is payable at the rate of five per cent. or six per cent. shall be payable at the rate of ten per cent. on the amount or value of the legacy or succession. . . . (3) In this section the expression 'deceased' means in the case of a legacy the testator (including a person making a donation *mortis causa*) or intestate, and in the case of a succession arising through devolution by law the person on whose death the succession arises, and in the case of a succession arising under a disposition the person on whose death the first succession thereunder arises; and the expression 'legacy' includes residue and share of residue. (4) This section shall take effect in the case of legacy duty only where the testator by whose will the legacy is given, or the intestate on whose death the legacy is payable, dies on or after the thirtieth day of April Nineteen hundred and nine, and in the case of a succession arising through devolution of law, only where the succession arises on or after that date, and in the case of a succession arising under a disposition only if the first succession under the disposition arises on or after that date."

The Lord Advocate, on behalf of the Commissioners of Inland Revenue, *pursuer*, brought an action against Miss Louisa Zaida Hamilton, *defender*, concluding for decree against the defender to produce an account of her succession to the lands and estates of Pinmore, Daljarroch, and others, in the County of Ayr, to the Commissioners of Inland Revenue so that the amount of succession duty payable by her upon the death of Hugh Hamilton of Pinmore on 15th August 1910 in respect of the lands and estates referred to might be ascertained, and for payment of £5000 of succession duty in respect of the lands and estates referred to.

The defender pleaded, *inter alia*—"1. In respect that the defender succeeded to her father in the entailed lands, duty is only payable at 1 per cent. 2. Alternatively, in respect that the defender's succession was not the first succession within the meaning of section 58 (4) of the Finance Act 1910, duty is only due at the rate of 5 per cent."

On 24th January 1917 the Lord Ordinary (CULLEN) decerned and ordained the defender to deliver the account sued for, and granted leave to reclaim. To that interlocutor was appended the following opinion, from which the *facts* of the case appear:—

Opinion.—"By disposition and deed of tailzie, dated 11th October 1823, Hugh Hamilton of Pinmore disponed his lands of Pinmore and others in strict entail to him-