Counsel for Respondents—Mr Gordon and Mr Fraser. Agents — Messrs Maclachlan, Ivory, & Rodger, W.S.

This petition prayed for the sequestration of certain property mortified in trust by four persons, named respectively Clark, Guild, Gibson, and Hallyburton, to the Town Council of Dundee, and the appointment of a judicial factor. The ground of the application was that the Town Council had been in the practice of lending the funds of the mortifications to themselves, and mixing them up with the town's general funds. The application was opposed on the ground that public trustees, such as a town council, were entitled to do what was complained of, and that this principle was acted on generally throughout Scotland. The case was heard in June last, when the judges were unanimously of opinion that a town council was not entitled any more than any other trustees to lend the trust funds to itself. In consequence of this opinion the funds have been during the vacation invested on a proper footing; and to-day the Court held that it was therefore not necessary to proceed farther in the application except to find the petitioners entitled to the expenses they had incurred—which was done.

MP.—LAIRD'S TRUSTEES *v.* LAIRD'S LEGATEES.

Counsel for Laird's Legatees—Mr Patton. Agents —Messrs J. A Campbell & Lamond, C.S.

Counsel for Laird's Trustees—Mr Millar. Agents —Messrs Adam & Sang, S.S.C.

This is a very complicated multiplepoinding, which has been in dependence since 1848, in regard to the funds of the late firm of John Laird & Sons, merchants in Port-Glasgow. A remit had been made to an accountant, who made a long report on which parties had been heard. In the discussion on that report a view of the case had been presented for the first time as to the liability of the trustees of Mathew Laird, one of the partners, to account for the profits of the firm. It was objected that it was too late to state this matter at so advanced a stage of the cause; but the Court held that the party stating it was not foreclosed from doing so, although the delay which had taken place might affect the question of expenses. It was considered, however, necessary to have a statement from the accountant as to the arithmetical result which the new view, if given effect to, would have on the accounting betwixt the parties, and a remit was accordingly made to him to prepare such a statement.

SECOND DIVISION.

BRONEVER *v.* BRONEVER.

Counsel for the Pursuer — Mr Fraser and Mr Christie. Agent—Mr Barton, S.S.C.

No appearance for the defender.

This is an action of divorce by a wife against her husband on the ground of desertion. The pursuer is a native of and resides in Scotland, and the defender is a native of and resides in Holland.

The pursuer alleges that she and the defender, then a seaman on board a Dutch vessel temporarily at Sandhaven, were on the 31st of August 1854 irregularly married by appearing before a justice of the peace at Fraserburgh, and acknowledging themselves to be married persons; that on the following day she sailed with the defender on board his vessel for Dantzic; and after a year's absence from Scotland, during which they lived together and cohabited as husband and wife, they both returned to Pitullie, in the county of Aberdeen. The pursuer further alleges that after a residence there of five months she and the defender contracted a regular marriage; that the defender took a house, which was occupied by him and her for two years, "during which the defender made several voyages as a seaman in ships sailing from Fraserburgh, always returning to his house there, which he regarded as his home." The pursuer finally alleges that in 1858 she was deserted by her husband, and that he has since then contracted a second marriage in the Netherlands. The summons was served edictally and also personally on the defender at his foreign domicile. The Lord Ordinary (Ormidale) holding the domicile of the defender to be abroad, held that the Court had no jurisdiction to entertain the action, on the general rule that a divorce *a vinculo matrimonii* can only be pronounced by the competent court within the jurisdiction where the parties have their domicile.

The case came up to-day on a reclaiming note for the pursuer. Before proceeding further the Court allowed the pursuer to put in a condescendence as to what she averred and offered to prove in regard to the domicile of the defender.

SUSPN.—PEARSON *v.* M'GREGOR.

Counsel for the Complainer—Mr Pattison. Agents —Messrs R. & R. H. Arthur, S.S.C.

Counsel for the Respondent—Mr W. M. Thomson. Agent—Mr John Ross, S.S.C.

This was a suspension of a charge on a promissory note for £42, granted by the complainer to the respondent, in remuneration of his services as trustee on the complainer's sequestrated estate. The complainer submitted that the promissory note was *ipso jure* null, except to the extent of £7, 6s. 1d, being the maximum rate of 5 per cent. of commission, to which the respondent was entitled as trustee. The respondent's defence was that the fee was in itself a reasonable one, and that no objections were made by the complainer himself until diligence was done on the promissory note.

The Court held that the complainer had not averred relevant reasons of suspension, and refused the note of suspension.

OUTER HOUSE.

(Before Lord Ormidale.)

THE LORD ADVOCATE ON BEHALF OF THE WAR DEPARTMENT *v.* LANG, PROCURATOR-FISCAL OF GLASGOW.

Counsel for War Department—Mr Henry J. Moncreiff. Agent—Mr W. Waddell, W.S.

Counsel for Procurator-Fiscal—Mr A. B. Shand. Agents—Messrs Campbell & Smith, S.S.C.

The Crown raised this action for the purpose of having suspended a charge threatened to be made against it for £37. 10s. 6d., being the cost of relaying the foot pavement in Gallowgate, Glasgow, opposite the infantry barracks. Various pleas were stated by the parties, but latterly a minute was lodged stating that as they were both desirous to have a decision in this process with respect to the liability of the Crown or the War Department, under the Glasgow Police Act 1862, to repair the pavement, they departed from all pleas which might interfere with such decision being pronounced.

LORD ORMIDALE intimated to-day that after giving consideration to the case he felt himself under the necessity of holding, in conformity with English precedents, that the Crown was not liable to pay the sum charged. The charge will therefore be suspended, but no expenses will be found due to the Crown.

(Before Lord Kinloch.)

MP.—LYON *v.* MARTIN.

This case was in the roll to-day for the purpose of closing the record. The parties were ready to renounce probation. The 11th clause of the recent Act of Sederunt provides that in such cases a minute to that effect shall be subscribed by the counsel for the parties and lodged in process. It was proposed

to write the minute on the interlocutor sheet, but Lord Kinloch intimated that the minute which was contemplated was a separate step of process, and he appointed such a minute to be lodged.

HIGH COURT OF JUSTICIARY.

Monday, Nov. 20.

Present—The Lord Justice-Clerk, Lord Cowan, and Lord Jerviswoode.

CRAIG *v.* THE GREAT NORTH OF SCOTLAND RAILWAY COMPANY.

Counsel for the Complainer—Mr Scott and Mr W. M. Thomson. Agent—Mr David Milne, S.S.C.

Counsel for the Respondent — The Solicitor-General and Mr Watson. Agents—Messrs Jollie, Strong, & Henry, W.S.

This is a suspension of a judgment of the Sheriff-Substitute of Aberdeenshire convicting the complainer, who is designed in the note of suspension as a labourer, sometime residing at the farm of Broadlands, in the county of Aberdeen, and presently residing at Whitehill, in the county of Banff, of a contravention of one of the by-laws of the Great Northern Railway. The conviction is in the following terms:—"The Sheriff, in respect of the evidence adduced, convicts the said William Craig of the contravention first charged, of having failed to deliver up his ticket; and therefore adjudges him to forfeit and pay the sum of 40s. of penalty, with the sum of £4, 3s. 10d. of expenses; and in default of immediate payment thereof, adjudges him to be imprisoned in the prison of Aberdeen for the period of ten days from the date of his imprisonment, unless the said sums shall be sooner paid; and grants warrant to officers of court to apprehend him and convey him to the said prison, and to the keeper thereof to receive him and detain him accordingly." The complaint upon which this sentence followed set forth that the complainer had been guilty of a contravention of the by-laws of the Great North of Scotland Railway, in respect that on the 20th of June he travelled on the railway between two stations on the line, "without having paid his fare and obtained a ticket; or at all events he failed to produce or deliver up his ticket to the station-master or ticket-collector at Huntly, or to pay the fare, although required by both these officers of the company to do so," &c. The complaint was raised under the provisions of the Summary Procedure Act, and the proceedings under the authority of one of the clauses of that Act were taken in absence of the complainer.

Mr SCOTT, who appeared for the complainer, objected to the sentence on the following grounds:—

(1.) That the complaint was not served on the complainer either personally or at his place of abode.

(2.) That the sentence did not convict the complainer of the offence charged, in respect the offence charged was failing to deliver up his ticket or refusing to make payment, whereas the sentence bore to be for having failed to deliver up the ticket.

(3.) That the sentence did not contain the warrant of poinding sanctioned by the statute, according to the provisions of the Summary Procedure Act, under which the complaint was brought.

After hearing Mr Watson for the respondent upon the second objection, the Court intimated that they desired no argument on the rest, and quashed the proceedings.

The LORD JUSTICE-CLERK said—This complaint contains two distinct charges—one of a contravention of a by-law of the railway company, and the other the contravention of the Act for regulating railways. There is nothing before us as to the second charge. But the first charge divides itself into two branches. The complainant says that the contravention was incurred in one or other of two ways—either by travelling without having paid a fare and obtained a ticket, or by failing to deliver the ticket or paying the fare when required; and then the complaint contains a conclusion for a penalty of forty shillings. The sentence which follows convicts the complainer of the contravention first charged—that is, of the bye-laws of the company. The question therefore is, Is that a good conviction under the complaint and under the bye-law? I am very clearly of opinion that it is not. The first alternative I do not see in the bye-law at all; but it is of no consequence. The second alternative is within the bye-law, which distinctly specifies the offence to consist in not delivering up the ticket or not paying the fare if required. These two things—the failure to deliver and the refusal to pay—must concur before the offence is constituted. Now, the Sheriff does not in his sentence say anything about refusal to pay. Perhaps the Sheriff used the preposition "of" before "having failed to deliver up his ticket," meaning to use "by" But then that is bad law. But suppose the preposition "of" to stand in its own proper sense, then the conviction is bad again because the sentence says he is convicted of a contravention, and which consists "of having failed to deliver the ticket," which is not an offence at all. This is not a question of form; it is a matter of substance, because it may be that the Sheriff really did think that failure to deliver a ticket was an offence under the bye-law.

The other Judges concurred.

The judgment of the Sheriff-Substitute was accordingly quashed with expenses.

The third bill of suspension on the roll was withdrawn.

BUIST *v.* LINTON.

Counsel for the Complainer—Mr Fraser and Mr Mair.

Counsel for the Respondent — The Solicitor-General and Mr Mackenzie.

This was a suspension at the instance of Robert Buist, cattle salesman, Lauriston, of a sentence of Bailie Alexander, one of the Magistrates of Edinburgh, pronounced on the 29th of August, whereby he was fined £2, failing payment of which to be imprisoned for twenty days. This sentence was pronounced upon a complaint preferred against him by Mr Linton, Superintendent of Police and Procurator-Fiscal of Court, in the following terms:—"That Robert Buist, a cattle salesman, residing in Lauriston Place, Edinburgh, did, upon the last day of August 1865, or about that time, in the premises at Lauriston Place, Edinburgh, occupied by him, annoy and interrupt Robert Wilson, an inspector, and Robert Reid, an assistant inspector, of markets for the city of Edinburgh, and did use opprobrious epithets towards them, whereby they were annoyed and disturbed." When the case was called in the inferior Court, the complainer objected that the charge was no offence either at common law or under the Police or other statute; and the same objection was urged to-day in the note of suspension of the magistrate's sentence. The Court unanimously quashed the proceedings. The facts of the case relied upon in argument will more fully appear from the opinion of the Lord Justice-Clerk. His Lordship said—I think this is the most remarkable complaint I ever saw. The amount of information it contains is, to say the least of it, exceedingly meagre. But we have to say whether it contains an allegation against the complainer of any offence at common law or under an Act of Parliament. The complainer says that it does not. The person against whom the charge is directed is Robert Buist, a cattle salesman in Edinburgh, the *locus* are the premises occupied by him at Lauriston, and the fact alleged against him is that he annoyed and interrupted and used opprobrious epithets towards certain persons; and these persons are said to be the inspector and assistant inspector of markets. Now, apart from the character of inspector of markets said to belong to these persons, and the character of a cattle salesman