said to belong to Buist, and apart from any relation that may thereby be established between them, and viewing this complaint as one by private individuals against a private individual, nobody has ventured to say that this is a good charge either at common law or under the Police Act, or that a person could be criminally prosecuted for what the suspenders are alleged within their own premises to have said and done in the complaint. But the sole contention which had any appearance of being seriously relied upon was that there is a provision for the protection of these persons in the discharge of their duties as inspectors, and reference was made to the 113th and 114th sections of the Edinburgh Police Act. Now the 113th section defines the duty of an inspector of markets, and also, I suppose, of an assistant inspector. (His Lordship read the section.) That is a most wholesome regulation. Then, further, in section 114 we have a provision intended to aid the inspector in the performance of his duties, because it lays on the persons mentioned in the 113th section — stall-keepers, cowfeeders, &c. — a duty and an obligation that at all hours they shall allow the superintendent of Police and other officials free access to their premises, in order to a due discharge of these officers' duty, under a penalty for each offence of 40s. I have the greatest difficulty in seeing what Mr Buist has to do with these sections of the statute. He is not the keeper of a market, or a stall, or a cowfeeder, or of any of the classes enumerated in the 113th section. The section is totally inapplicable to the case of a cattle salesman who deals with live cattle. But, to give the complaint the most liberal construction, and to suppose the premises of Mr Buist are within range of the statute, it is important to observe that the complaint does not bear that the inspectors were there in the *discharge of their duty.* His Lordship went on to notice the respondent's argument to the effect that that was an unimportant omission, observing in answer that the inspector and his assistant had no right to be in the premises in question in the discharge of their official duty, and concluded as follows: — To defend these proceedings under the Police Act, as involving the official discharge of duty, is impossible; at common law they are too ludicrous to be analysed.

FORBES *v.* DUNCAN.

Counsel for the Complainer—Mr Scott.

Counsel for the Respondent—Mr A. Moncrieff.

This was a suspension of a judgment of the Justices of the County of Forfar, finding the complainer guilty of a violation of the Day Poaching Act. A number of objections were stated by Mr Scott to the proceedings before the Justices, and a sentence which had been first written out on the complaint, but before issue was afterwards amended, was relied upon as a ground for quashing the proceedings. In the course of the argument the admission was made that no objection could he taken to the amended sentence, which, by statutory appointment is the only record which the Court can regard. The bill of suspension was accordingly refused. The Lord Justice-Clerk observed, in reference to the objections to the sentence as first expressed, that the alleged nullities or defects could not be pleaded by the complainer until issue of the sentence.

COURT OF SESSION.

Tuesday, Nov. 21.

FIRST DIVISION.

HENRY *v.* ANDERSON.

Counsel for Suspender—Mr J. G. Smith and Mr R. V. Campbell. Agent—Mr A. Fleming, S.S.C.

Counsel for Respondent—Mr Fraser. Agent—Mr J. Galletly, S.S.C.

William Henry, plumber, West Campbell Street, Glasgow, presented a suspension of a charge, to pay £48, 3s. 11d. of expenses awarded against him in a litigation with John Anderson, gasfitter, Waterloo Street, Glasgow. He presented his note without offering caution, but was allowed to amend it to the effect of offering caution, and on 15th July his note was passed "on caution." On 3d August caution had not been found, and the respondent's agent intimated, in terms of section 9 of the Act of Sederunt of 24th December 1838, that he would apply for a certificate of failure to find caution on the following day. An application was thereupon made for prorogation, and, after hearing parties, the Lord Ordinary prorogated the time till 8th August, at twelve o'clock. Caution was not then found, and on 14th August Lord Ormidale refused the suspension, with expenses.

The suspender reclaimed and urged that he had not received the intimation provided for in the Act of Sederunt previous to the application for refusal of the suspension on the 14th August. He also stated that his bond of caution had reached Edinburgh on the 9th, but the respondent's agent refused to consent to its being received. The respondent replied that intimation had been given on 3d August, and that no farther intimation was necessary. He consented, however, that the suspender should be reponed on payment of full expenses.

The Court held that no ground for reponing the suspender had been made out, and that but for the consent tendered they would have refused the reclaiming note. The case was continued that the condition on which the consent was tendered might be fulfilled.

R. AND J. JARVIE *v.* ROBERTSON.

Counsel for Petitioners—Mr Gordon and Mr Scott. Agent—Mr John Walls, S.S.C.

Counsel for Trustee—Mr Gifford and Mr Balfour. Agents—Messrs Webster & Sprott, S.S.C.

This was an application by Messrs R. & J. Jarvie, ropespinners in Glasgow, for the recall of the sequestration of the estates of John Ronald & Co., merchants in Glasgow, which was awarded on 15th August 1865. Messrs Jarvie had, on 3d August preceding, as creditors of Ronald & Co., presented an application for sequestration, on which the Lord Ordinary had pronounced an interlocutor, appointing Ronald & Co. to appear and show cause why sequestration should not be awarded. Ronald & Co. thereupon, with consent of a concurring creditor, presented a separate application for sequestration, which being applied for in that way was awarded on 15th August *de plano.* Messrs Jarvie now urged that the sequestration should be recalled (1.) because it was applied for and granted when there was a pending process of sequestration; and (2.) because the application was an attempt to alter the true date of the sequestration from 3d to 15th August—the 42d section of the Bankruptcy Act providing that a sequestration shall be held to commence on the date of the first deliverance upon any petition for sequestration.

The petition for recall was opposed by Mr R. H. Robertson, accountant, Glasgow, who had been appointed trustee; and Lord Mure refused it, but found no expenses due to either party. Both reclaimed, and after a full debate to-day the Court made avizandum.

Saturday, Nov. 25.

In this case, their Lordships to-day recalled the sequestration awarded on the 15th August in *hoc statu,* and remitted the petition of the bankrupts (Ronald & Co.) to the Lord Ordinary on the Bills, with a view to its being conjoined with the previous petition for the creditors, and appointed the Lord Ordinary in the conjoined petitions to grant sequestration of new.

LORD CURRIEHILL, in giving the judgment of the Court, remarked that the bankrupts (who had applied for sequestration on the 15th of August, after previous application for sequestration had been made by Messrs Jarvie as creditors) had no right to take any step which might endanger the rights which the creditors had already acquired. He did not think that, had the facts been fully known to the Lord Ordinary, he would have granted the bankrupts' petition, because matters were in that position that the estate had already been rendered litigious by the presentation of the original petition of the creditors. He only proposed that the recall of the interlocutor should be *hoc statu*, and he did not propose that the petition should be dismissed, seeing that it contained a most emphatic consent on the part of the bankrupts to the sequestration being awarded. The proper course was to conjoin the petitions, and to grant sequestration on a conjoint view of both.

The interlocutor of Lord Mure, who refused to recall the sequestration of 15th August, was therefore altered, with expenses since the date of the Lord Ordinary's interlocutor.

Wednesday, Nov. 22.

JACKSON *v.* SMELLIE.

Counsel for Suspender — Mr Fraser and Mr Orphoot. Agents — Messrs Jardine, Stodart, & Fraser, W.S.

Counsel for Petitioner and Respondent—Mr Shand and Mr W. A. Brown. Agent—Mr Alex. Morison, S.S.C.

This was a suspension and liberation presented by Arthur Jackson, Barnhill, in the parish of Blantyre, and at present a prisoner in the prison of Hamilton, under a warrant granted on the application of Elizabeth Smellie, High Blantyre. The ground of the application was that Jackson was the father of an illegitimate child of which Smellie was delivered in July 1862, and that he was *in meditatione fugæ* without paying the child's aliment. Lord Mure refused the note; and to-day, after a discussion on a reclaiming note, the Court adhered.

The LORD PRESIDENT, who delivered the judgment of the Court, said — There are two grounds on which it has been argued that the suspender should be liberated. In the first place, it is said that the original application did not contain a relevant statement that the suspender intended to leave Scotland for the purpose of evading payment of the respondent's claim against him. The object of his intending to leave is not expressly stated either in the application or in the applicant's oath of verity. It is now, however, settled in practice that it is not necessary to state this in express terms. I have no hesitation, therefore, in saying that this objection is not well founded. But, in the second place, it has been urged that, even assuming the relevancy of the application, the allegations made have not been sufficiently supported. In any view of this question it is as narrow as any case I have ever seen. The petitioner depones to the birth of the child in 1862, that Jackson left Blantyre shortly thereafter, that he has only recently returned, that she believes he intends immediately to proceed to sea, and that she has received that information from two persons, whom she names, one of whom, she says, told her that he had received his information from Jackson himself. Jackson, when examined, says he does not intend to leave Scotland, and that he never said so to anyone. A proof was thereupon allowed to both parties. The petitioner adduced the two persons on whose information she says she acted, Neither of them supports her statement. The first says he had not spoken to Jackson till the night before his examination, being a time subsequent to that alleged by the petitioner. He has some recollection of having been in the petitioner's house, but he was then in such a condition that he could not remember, and he does not remember anything about what he then said. It is difficult to deduce from his evidence whether he said anything or not, but certainly it does not prove that he told the petitioner what she says he told her. The other witness does not confirm the petitioner either. He says that Jackson told him that he had been away at the sea, but he said nothing about going back again. But although this is the state of the evidence, there are several matters clear enough. When the child was born in 1862, Jackson was alleged to be the father, and a demand was made on him for aliment. Soon afterwards he left that part of the country. This is admitted by Jackson himself. He says he went to Liverpool, and took employment in a steamer trading between Liverpool and America. After an absence of some years he reappears in Blantyre. He says he means to remain in Scotland. He gives no explanation as to his intended change in his mode of life. A proof was allowed to him as well as to the petitioner; and if it be the case that he had come back here *animo remanendi*, he could easily have proved that fact, and shown that he was not in Blantyre simply as a sailor visiting his friends. The question, then, is this—Do the whole facts impress one's mind with a belief that Jackson was here merely on a visit or *animo remanendi?* I don't think there is any presumption that he intended to change the mode of life which he had been leading for some years, and he has led no proof on the subject. As I have said, the case is a narrow one, and it has not been very thoroughly expiscated in proof; but on the whole we have come to the conclusion not to interfere with the judgments of the Sheriff-Substitute and of the Lord Ordinary.

SECOND DIVISION.

KIRK *v.* BROWNS.

Counsel for the Pursuer — The Lord Advocate and Mr W. A. Brown. Agents—Messrs Murray & Hunt, W.S.

Counsel for the Defenders—Mr Gordon and Mr Johnstone. Agent—Mr Galletly, S.S.C.

This is an action of declarator and removing at the instance of a landlord against certain parties who claim to be tenants of one of her farms. The question is one of pure fact. The main facts relied upon were these. In 1858 a lease was granted for ten years, with the proviso that the landlord should survive so long, to a party named and his heirs, with a clause excluding assignees and sub-tenants. Under this lease the tenant possessed for two years. He died in 1860; but previous to his death he made a trust-deed assigning the lease to his sisters, the defenders of the present action. Both the trust-deed and the lease were prepared by the same agent, who was the landlord's private agent. The defenders pleaded to the action of declarator that this assignation had been intimated to the landlord, and that she had consented to receive them as tenants in various ways, in express terms, by the receipt of rents and otherwise. The Lord Ordinary (Jerviswoode) held that the right in the lease was one personal to the landlord, which she might waive, and as matter of fact had done so. The Court to-day unanimously adhered. The Lord Justice-Clerk expressed a very strong opinion that the case should have been tried by a jury. After stating in a single sentence the question at issue, his Lordship said—We are all satisfied that this case should have been disposed of by a jury. But as the duty has been forced upon us of applying our minds to the evidence as jurymen, we shall avail ourselves of the privilege of jurymen and of the short method in which they deal with evidence, and simply say that we find for the defenders.