October 1862 and 31st January 1863, Rowan and Co.'s signature being on 19th November 1862. I cannot doubt that, until this discharge was subscribed, it was in the power of any one or all of the creditors, on hearing of the preference secured by the Bank through Rowan & Co., to have withdrawn their concurrence. The vital point, in my apprehension, is whether, prior to the execution of the discharge by the creditors, this promissory note was granted to and accepted by Rowan & Co. for the debt of the Bank. And of this there is no doubt whatever upon the evidence, parole and documentary. Rowan has not been examined, for what cause does not appear; but the Bank's manager, Mr Nelson, was, and he says that he received the bill from Mr Rowan in November 1862, that he got it about the middle of November, and that he was quite aware of the terms of the composition before that date: And in cross-examination he farther states that he received the letter of 5th August 1862 along with the bill, and that the letter and the bill were sent to him by Rowan in a letter dated 13th November 1862. Hence it is clear that, before the discharge was subscribed by Rowan & Co. on 19th November, the Bank's concurrence in that act of Rowan was secured by this obligation having been granted; and only then it was that Rowan finally assented to this arrangement by signing the deed. The conclusion at which I arrive is, that the assent of the creditors in this debt was secured by the preference thus conferred, and this, I apprehend, is sufficient to stamp the transaction as an illegal preference. And I do not think that the record, as it stands, opposes any obstacle to our now pronouncing decree of absolvitor.

The LORD JUSTICE-CLERK and LORD BENHOLME concurred.

LORD NEAVES agreed with the Lord Ordinary's view, but proceeded very much upon the structure of the record, and the absence of any averment of illegal preference.

The defender was only found entitled to expenses from the date of the Lord Ordinary's interlocutor.

Agents for the Pursuers — Tods, Murray, & Jamieson, W.S.
Agents for the Defender—J. & A. Peddie, W.S.

Saturday, July 9.

FIRST DIVISION.

HAMILTON *v.* HAMILTON AND OTHERS.

General Police (Scotland) Act 1862—*Burgh-Clerk. Held* that the clerk to the police commissioners of a burgh constituted under the General Police (Scotland) Act 1862 (25 and 26 Vict. c. 101), is not necessarily to be regarded as removeable at the pleasure of the commissioners, and proof allowed as to the terms of the appointment to the office, and the understanding of parties at its date.

The pursuer of this action, Mr Gavin Hamilton, writer in Glasgow, was appointed clerk to the Dunoon Police Commissioners in the year 1868 "at a salary of £40 for the first year." Dunoon is a burgh within the provisions of the General Police (Scotland) Act 1862, and the pursuer's appointment as clerk was made in terms of the 67th section of that statute. At a meeting of the Police Commissioners of the burgh on 17th January 1870, a motion was carried removing the pursuer from his office of clerk, and at a subsequent meeting Mr David Gray, writer in Glasgow, was appointed in his place. The pursuer thereupon raised this action against the Police Commissioners, in order to have it found and declared that he as clerk, duly appointed under the provisions of the Police Act of 1862, held his office *ad vitam aut culpam*, and that it was *ultra vires* of the Commissioners to supersede him without reasonable ground, and without proving *culpa* on his part. The summons further craved reduction of the minutes and resolutions under which his removal from office was effected, and also prayed to have the Commissioners interdicted from carrying out said minutes and resolutions. The first plea in law for the defenders was as follows:—"Under the 64th section of the Act 25 and 26 Vict., cap. 101, the pursuer was removeable from his office of clerk at the pleasure of the Police Commissioners." They also pleaded that the appointment, as proved by their minute-book, bore to be and was for one year only, and that in any event the pursuer's conduct while in office was such as to justify his removal. Two of the defenders, Bailies Stirling and Somerville, put in separate defences to the effect that, having disapproved of and opposed in every way the proceedings of the Commissioners complained of by the pursuer, they now offered no opposition to the conclusions of the summons, and disclaimed all liability for any expense that might be incurred.

A debate took place in the Outer House on the first plea in law for the defenders.

The Lord Ordinary (MURE) pronounced the following interlocutor:—"The Lord Ordinary having heard parties' procurators, and considered the closed record, repels, *hoc statu*, the first plea in law for the defenders, the Commissioners of Police, and, before further answer, allows both parties a proof of their averments, and to each a conjunct probation, and appoints the proof to be taken before the Lord Ordinary on a day to be afterwards fixed.

"*Note.*—After considering the provisions of the General Police Act, which are in many respects neither consistent nor explicit in regard to the conditions under which certain of the offices created by it were to be held, the Lord Ordinary, as at present advised, is not prepared to hold that clerks appointed to discharge the duties required of the clerk appointed under section 67 of the statute are removeable at the pleasure of the Commissioners in the summary way in which the pursuer appears to have been removed. If, however, the defenders can show, as alleged by them, that the pursuer's original appointment was only for one year, and thereafter renewed *ad interim* merely, of which there is at present no satisfactory evidence, that may place the defenders in a different position in the above respects. If, on the other hand, it should be decided that the pursuer's appointment as clerk was one *ad vitam aut culpam*, the Lord Ordinary does not think he would be warranted in holding, without inquiry, and assuming the facts set forth in the defence to be true, that the grounds upon which it is alleged that the defenders acted in removing the pursuer were insufficient to justify the removal. Before, therefore, disposing of the abstract question of law raised in the record, the Lord Ordinary has deemed it necessary to have the facts on which parties are at issue ascertained."

The defenders (with the exception of Bailies Stirling and Somerville) reclaimed.

SOLICITOR-GENERAL and HALL for them.

SCOTT for pursuer.

W. F. HUNTER for defenders Stirling and Somerville.

The Court adhered, finding the reclaimers liable in expenses.

Agents for Reclaimers—Maconochie & Hare, W.S.

Agent for Pursuer—Wm. Officer, S.S.C.

Agent for Defenders Stirling and Somerville—John Galletly, S.S.C.

Saturday, July 9.

SECOND DIVISION.

MORE, PETITIONER.

Process—Appeal—Service. Procedure under section 41 of the Titles to Land Consolidation Act 1868, where competing petitions for service have been appealed to the Court of Session.

Alexander, Agnes, and George More died infeft in the lands of Monkrigg and others, in Haddingtonshire, intestate and unmarried. Alexander, the last survivor, died on 19th June 1869. His nearest relation was the petitioner James More, of the custom house, Kirkcaldy. He accordingly came to Monkrigg, took possession of the house, and acted as chief mourner at the funeral. At the meeting of relations of the deceased thereafter, his agent claimed for him, without dispute, the characters of heir of line and of conquest to the deceased, and his brother and sister George and Agnes. Careful searches were made in the repositories of the deceased, and various family papers, certificates of births, &c., were found. The petitioner was decerned and confirmed executor of the deceased Alexander More in September following, and for several months continued in undisturbed possession of the property. On presenting petitions for service to the Sheriff of Chancery, it was found competing petitions to all the estates had been lodged by a claimant John More. Both claimants were agreed, and the family papers and birth registers proved, that William More, grandfather of Alexander, George, and Agnes More, had six sons and one daughter, viz., George, Isabel, James, William, David, John, and Thomas. George, the oldest son, came to Edinburgh, and became a baker in West Richmond Street. He amassed considerable property, which was increased by his children, and as they all died, as above stated, intestate and unmarried, the competition for their property arose.

James More senior, father of the petitioner, went to reside at Pathhead towards the end of last century; and the petitioner claimed the heritage and conquest of the Mores of Monkrigg, on the ground that they were the children of the oldest son of William More of Common Park, and that he was the only surviving son of the second son, viz. James More senior. John More was grandson of David the fourth son, and he opposed, asserting that James More senior was older than George More senior; that the petitioner was not a son of James More senior; and that the relatives of Alexander More nearer in blood than himself were all dead. On his application the estates were sequestrated. The Sheriff of Chancery conjoined the respective petitions, and granted both parties a proof, but before the proof began John More took the case, by appeal under the 41st section of the Titles to Land Consolidation Act of 1868, to the Second Division. The Court appointed a proof to be taken before one of themselves on June 27th, and appointed John More, as the earliest petitioner and as appellant, to lead in the proof. On June 22d John More lodged a minute, withdrawing from the competition.

The proof accordingly proceeded in absence, before Lord Neaves.

GLOAG and LEES for the petitioner.

The proof, after certification, appeared in the single bills on July 7th, and was sent to the Summar Roll, the case being already in it. Counsel having been heard, the Court unanimously held the petitioner's case fully made out, and in terms of the 41st section of Titles Act of 1868, remitted to the Sheriff of Chancery to serve the petitioner in the characters craved for.

Agents for Petitioner—Gillespie & Bell, W.S.

Tuesday, July 12.

FIRST DIVISION.

BOYLE *v.* HUGHES.

Agreement—Sale—Special Warranty. A agreed to supply kelp to B of the same kind and quality as he had supplied to him in a previous year. *Held* that this special warranty did not import that the kelp must contain an equal quantity of iodine, but merely that it was gathered on the same shore and treated in the same manner as the former cargo.

This was an action at the instance of Manus Boyle of Dungloe, Ireland, against F. H. Hughes, manufacturing chemist at Borrowstounness, to recover the sum of £329, 15s. 10d., being the balance due for kelp supplied to the defender.

The parties have had several previous dealings in kelp, and in 1868 Boyle supplied Hughes with a cargo of kelp per a vessel called the "Flora Kelso." By letters dated in March and July 1868, the pursuer agreed to furnish to the defender cargoes of "such kelp as you supplied per 'Flora Kelso' last year," at the price of £6, 14s. per ton of 21 cwts., to be delivered at Borrowstounness. Accordingly the kelp was delivered and certain sums paid to account of the price, and the present action is for the purpose of recovering the balance due.

The defence was that the kelp was disconform to order, and was of no value to the defender, in respect that it did not contain a sufficient percentage of iodine.

The defender alleged, "in point of fact, the kelp sent by the pursuer in August and September 1869 by the 'Albion,' 'Flora Kelso,' and 'Ada,' was entirely disconform to contract, and was not nearly equal in quality to that sent by the 'Flora Kelso' in 1868, as stipulated for. The value to the defender, as already explained, consists in the iodine yielded. The kelp per 'Flora Kelso' of 1868 yielded 20½ lbs. of iodine per ton of 20 cwts., whereas the kelp above mentioned sent in 1869 yielded only, as shewn by analysis, as follows:—

Kelp, per 'Albion,' . . .	10·67 lbs.
Do. per 'Flora Kelso,' of 1869	12·29 ,,
Do. per 'Ada,'	8·93 ,,

thus yielding on an average only one-half the amount of iodine yielded by the sample or pattern