contradiction in terms. That is not a liferent for his liferent use allenarly. It is a fee, and therefore it is a misuse of language altogether to call it by that name. The testator himself would in that case have given you the means of contradicting his own words. But without such contradictory expressions in the same deed I am quite unable to believe that a liferent for liferent use allenarly either has been or ever can be construed as a fee. Now, the reason which my brother Lord Deas assigns for arriving at the conclusion that this ought to be construed as a fee here is this, that after the children of Arthur Cumstie there is no *persona prædilecta* to take the fee. That may be so, but is it impossible to constitute a bare liferent and a fee to the heir of line either of the granter of the deed or of the liferenter? I do not see the legal difficulty there. The testator may choose to limit his son, or whoever the party is, to a bare liferent, from considerations which may very easily suggest themselves in many cases —the prodigality of the liferenter or some other consideration of that kind, his unfitness to be entrusted with the power of disposal of the estate—and yet he may have no predilection for any one beyond that son, and may have no desire to interfere with the operation of the law of succession, but be quite willing that the estate shall go to the son's heirs after his liferent comes to an end. That is surely not an irrational purpose. I cannot believe it to be so. And if it is not an irrational purpose, why may a man not carry it out by such form of expression as is here used; for the literal and obvious meaning of the expression here used is unquestionably what I have just represented. Can there be the least doubt that it was the intention of this gentleman to limit his son to bare liferent, and at the same time to provide that the fee should go to his heirs whatsoever? He has said so in so many words. I know no legal authority for giving his words any other construction than their obvious and literal meaning, and I know no legal difficulty which should prevent him from having that intention carried out. The notion on the part of my brother Lord Deas seems to be that this limitation of the right of Arthur Cumstie in the first instance was intended merely for the benefit of his issue. If it had been so I think it would have been so expressed, and that was what led me in the outset to say that I do not think the case is just the same as if this had been a liferent allenarly with the fee to the issue of the liferenter's body, and failing them to the heirs whatsoever, because in that case there might have been room for supposing that there was in the mind of the testator a difference between his feelings and desires as regarded the issue of the body of his son and the heirs whatsoever of his son. But it is the absence of any such words here that satisfies me that he intended to make no such distinction, and that he did not care, as regards the disposal of the fee, whether the heir of his son was the heir of his body or a heir of a more remote kind; and therefore it is that he expresses himself in the terms here used, and expresses himself in settling, not one estate only but two separate subjects, in precisely the same language.

For these reasons, I am of opinion with the majority of the Court and with the Lord Ordinary. I cannot participate in the legal difficulties of my brother Lord Deas, nor see that there is any reason whatever for refusing effect to what appears to me to be the very plainly expressed intention of Mr Cumstie.

We shall therefore adhere to the Lord Ordinary's interlocutor.

Mr KINNEAR having stated that there was no decerniture in the interlocutor—

LORD PRESIDENT—We had better perhaps recal the interlocutor, and find, decern, and declare in terms of the libel as amended.

Counsel for Pursuer—Dean of Faculty (Watson)—Kinnear. Agents—D. & W. Shiress, S.S.C.

Counsel for Defender—Thoms—J. A. Reid. Agents—Philip, Laing, & Monro, W.S.

HIGH COURT OF JUSTICIARY.

Friday, June 30.

[Before Lords Justice-Clerk, Young, Mure, and Craighill.]

APPEAL—NICOL *v.* M'CALLUM.

Harbours, Docks, and Piers Clauses Act 1847 (10 *and* 11 *Vict. c.* 27, *sec.* 82) *incorporated with Greenock Port and Harbours Act* 1866,—*Conviction—Licensed Weighers.*

A staff of licensed weighers having been appointed by harbour trustees in terms of the Harbours, Docks, and Piers Clauses Act 1847, for the purpose of weighing cargoes unshipped at a certain port—*held* that consignees of goods were not thereby prevented from having cargoes consigned to them weighed by their own servants for their own purposes.

This was an appeal, brought in terms of the Statute 38 and 39 Victoria, c. 62. for Duncan Nicol, clerk, residing in Eldon Street, Greenock, against Archibald M'Callum, procurator-fiscal, Greenock. Nicol was charged before the Police Court of Greenock with having been guilty of an offence within the meaning of the 82d clause of the Harbours, Docks, and Piers Clauses Act 1847, which clause is incorporated with the Greenock Port and Harbours Act 1866, in so far as "a sufficient number of weighers having been appointed by the Trustees of the Port and Harbours of Greenock, under the powers of the Greenock Port and Harbours Act 1866, and the Harbours, Docks, and Piers Clauses Act 1847, the said Duncan Nicol, not being licensed as a weigher by the Trustees of the Port and Harbours of Greenock, and not being appointed as such by the Commissioners of Her Majesty's Customs, did, on the 28th, 29th, 30th, and 31st days of March 1876, or on several or one or more of these days, upon the pier or quay situated on the west side of the West Harbour, within the port and harbour of Greenock, weigh a cargo, or part of a cargo, of sugar or of other goods, then being unshipped or delivered from the brigantine 'Annie,' of Swansea, upon the pier or quay situated on the west side of the West Harbour aforesaid." The Harbour Trustees had the appoint-

ment of meters as well as weighers under the said Greenock Harbours Act 1866, but had not appointed or licensed in terms of the general Act of 1847, any persons to act as meters, though cargoes of timber, grain, oil, and other articles, the contents of which are ascertained by measurement, are unshipped within the limits of the port of Greenock. The licensed weighers were appointed on the abolition of the customs duties on sugar in 1874, previous to which their duties were performed by an officer of customs called a landing waiter, who attended the discharge, and an officer of customs called a weigher or weighing porter likewise attending the discharge and performing the manual labour in connection with the beam and scales. The appellant was a clerk in the employment of Messrs Robert Fraser & Co., sugar importers, Greenock. The Messrs Fraser refused to employ a licensed weigher, and sent the appellant to weigh the portion of the cargo consigned to them. The appellant was accordingly charged with the offence before the Greenock Police Court, convicted, and ordered to pay a modified fine of £3, 3s. with the alternative of five days' imprisonment.

He appealed to the Court of Justiciary, and argued—(1) The magistrate, as one of the Harbour Trustees, could not competently try the case. (2) The Harbour Trustees, not having appointed meters as well as weighers, in terms of the Act, the offence could not be committed. (3) The appointment of licensed weighers was not intended by the Act to prevent a consignee of goods weighing for himself if he chose to do so.

At advising—

Lord Young—On the first objection our opinion is that as regards the jurisdiction of the magistrate there is no ground for complaint. On the second, I am of opinion that it is no objection that there were no licensed meters. The facts seem to be that certain goods were consigned to R. Fraser & Co., and they sent their clerk, who is the appellant, to weigh them. He obeyed his orders, and attended to the beams and scales which belonged to his masters. In doing so I do not think he was guilty of any offence under the statute. If it could be held that the Messrs Fraser were guilty of illegally employing an unlicensed person to weigh their goods they ought to have been prosecuted, but I think they were not guilty of a contravention of the Act. The meaning and object of these statutory provisions is to secure a trustworthy staff and to prevent interlopers. Interlopers are discouraged by being liable to fines, and also by their employers being subject to fines. But the statute does not strike at the case of a merchant sending his clerk to weigh. Illustrations of hackney coaches and porters apply. The fact that a certain number of cabs are licensed to ply within a certain district does not prevent any one from driving his own carriage, and because there are a staff of licensed porters is no reason why a person should not make his private servant carry his bag. I do not think it is incumbent on the merchant to have his goods weighed except for his own purposes, and the Harbour Trustees may weigh if they please for themselves. I am of opinion that the conviction should be quashed.

Lord Craighill—I am of the same opinion. I think the course followed here shews that the object of the weighing was for the merchant's purpose and not for the public purpose.

The Lord Justice-Clerk concurred.

Counsel for Appellant—Balfour—Robertson. Agents—Mason & Smith, S.S.C.

Counsel for Respondent—Dean of Faculty (Watson)—Asher. Agent—William Archibald, S.S.C.

Friday, June 30.

SUSPENSION—KAY *v.* LOCAL AUTHORITY OF KELSO.

Public Health (Scotland) Act 1867—*Summary Prosecutions Appeals (Scotland) Act,* 1875 *sec.* 9—*Conviction—Appeal.*

The 9th section of the Summary Prosecutions Appeals (Scotland) Act 1875, provides that "any person who shall appeal under the provisions of this Act from any determination of an inferior judge from which he is by law entitled to appeal in any other manner of way to any superior or other court, shall be taken to have abandoned such title to appeal in any such other manner of way as aforesaid."

A person convicted of an offence under the Public Health Act 1867, applied to the Sheriff to state a Case for appeal under the provisions of the Summary Prosecutions Act 1875, section 9, but before the case was signed withdrew from the prosecution of his appeal under that Act.—*Held* that the appeal was not taken till the Case was signed, and that in the circumstances appeal in another way was competent.

The suspender, who is a farmer, was convicted, along with his landlord, by the Sheriff of a contravention of the Public Health (Scotland) Act 1867. The appellant and the landlord both applied to the Sheriff to state a Case under the provisions of the Summary Prosecutions Appeals (Scotland) Act 1875. Caution was found, and the Case was prepared and submitted to the parties, but before it was adjusted and signed the tenant withdrew from the further prosecution of his appeal under that Act. The landlord insisted in his appeal, and the judgment of the Sheriff was reversed. The tenant then brought the present suspension.

Argued for the respondent—The suspension is incompetent. By section 9 of the Summary Prosecutions Appeals (Scotland) Act it is provided, that "any person who shall appeal under the provisions of this Act from any determination of an inferior judge from which he is by law entitled to appeal in any other manner of way to any superior or other court, shall be taken to have abandoned such title to appeal in any such other manner of way as aforesaid." Here the suspender took an appeal by applying to the Sheriff to state a Case, and he cannot by withdrawing his appeal by minute renew his right to