necessary to raise this action of multiplepoinding, calling as defenders Bushnan, Smallpage, Chalk, and Milton.

The defender Chalk pleaded, *inter alia*—"The action is incompetent, in respect that there is no double distress, and that in any view this is an incompetent process for the purpose of trying the question—Whether the only claimant of the fund in question has a valid title to grant a discharge?"

The Lord Ordinary dismissed the action, finding the pursuer liable in expenses.

The pursuer reclaimed, and argued—If there was no judicial discharge, Smallpage might repeat his claim—indeed, it might be doubted whether he was legally entitled to waive it. There was no actual double distress, but that was not absolutely necessary.

Authorities—*Taylor* v. *Robinson and Others*, May 24, 1836, 14 S. 817; *Dunbar* v. *Sinclair*, Nov. 14, 1850, 13 D. 54; *Mitchell* v. *Strachan*, Nov. 18, 1869, 8 Macph. 155 (Lord Benholme); *Park* v. *Watson*, Nov. 21, 1874, 2 R. 118.

Argued for Chalk—The discharge offered was a good and sufficient one; but even were it otherwise, a multiplepoinding was not a proper form of action for trying this question of title, as there was no double distress, and the authorities showed that where there was no double distress those bound to grant a discharge must have refused to do so in order to make a multiplepoinding competent.

Authority—*Moncrieff* v. *Thomson*, June 1, 1844, 6 D. 1100.

At advising—

Lord President—It is of course the object of the pursuers in this multiplepoinding to represent it as one of those cases in which trustees holding the *universitas* of an estate are permitted to throw the estate into Court for distribution by a multiplepoinding, not because there are competing and hostile claimants, but because the beneficiaries will not concur in granting a complete discharge. It is an established rule that trustees in these circumstances are entitled to come into Court by a multiplepoinding. But what is the position of the pursuer here? He has a definite sum of money—£500—which, under deduction of legacy-duty, makes a net sum of £484, 2s. 6d. He is debtor in that sum, and the fact that he is debtor as trustee does not affect the question at all. He is not entitled to bring a multiplepoinding unless he can show that there is double distress. Now, this he has totally failed to do. His only object is that it may be settled what discharge he is entitled to get. I have not the least hesitation in saying that a multiplepoinding is an incompetent form of action for this purpose. I think the case of *Moncrieff* is directly in point. If the debtor is not satisfied with the discharge which is offered he has an obvious remedy. If the debt is on a bond and disposition in security, as it was in *Moncrieff*, it is suspension. If it is an ordinary debt, the remedy is to let the creditor raise an action for payment, and in defence the debtor will have an opportunity of saying that the discharge offered is not enough. That is the proper form of action here.

Lord Deas, Lord Mure, and Lord Shand concurred.

Counsel for Pursuer and Reclaimer—Campbell Smith. Agent—Party.

Counsel for Defender and Objector (Chalk)—Kinnear.—Jameson. Agents—Mylne & Campbell, W.S.

Wednesday, March 6.

SECOND DIVISION.

[Lord Young, Ordinary.

GEORGE BEVERIDGE *v.* BEVERIDGE'S TRUSTEES.

JAMES BEVERIDGE *v* BEVERIDGE'S TRUSTEES.

MICHAEL BEVERIDGE *v.* BEVERIDGE'S TRUSTEES.

Fee and Liferent—Destination—To A in Liferent and his Children nascituri *in Fee—Where Restriction against Sale of the Liferent.*

A testator directed his trustees to convert his estate into cash, "and so soon as they may find it convenient they shall deliver and pay the following legacies to my nephew A B in liferent, and his children in fee, failing children to his own nearest heirs equally, £7000." In a codicil he provided that A B, who was unmarried, should not be entitled to sell the liferent of the sum provided for him, "and if he attempt to do so, believing he has power, said liferent shall be null and void." There was no provision in the settlement for the continuance of the trust. *Held*, in an action for payment at the instance of the nephew against the trustees—(rev. judgment of the Lord Ordinary, Young)—that the fee of the sum named must be held to have vested in the pursuer, but *observed* that in any discharge to be given by him to the trustees the conditions under which the legatee appeared to be subjected under the deed should be inserted.

Observations (per the Lord Justice-Clerk and Lord Ormidale) upon the construction of a bequest to a parent in liferent and his children *nascituri* in fee.

These were three actions, raised against the trustees of the late Mathew Beveridge, writer in Kirkcaldy, wherein the pursuers respectively concluded for payment of £3000, £2000, and £2000, alleged to be bequeathed to them by Mr Beveridge. The truster died on 16th November 1876, leaving a trust-disposition and settlement dated 19th August 1876, with relative codicils dated 25th August, 28th and 30th September, and 23d and 30th October, all in the same year. The material parts of these deeds, as affecting the pursuers, were as follows:—

Directions as to George Beveridge:—(1) Legacy in the original deed in these terms—"To my nephew George Beveridge, master mariner, in liferent, and his children in fee,

failing children to his own nearest heirs equally, the sum of £7000, free of duty, and all my household furniture and other effects, also in liferent and his children in fee, failing children to his own nearest heirs, it being my desire he should marry within twelve months after my death, and on the understanding that he shall not convert the furniture and other effects into cash upon any account, but keep it for his own use; and further, that he shall not go to sea, but employ himself in some other way, I knowing that he does not like such occupation." (2) Direction to trustees in codicil of 25th August 1876—"To convey and dispone over All and Whole my property at foot of Kirk Wynd, Kirkcaldy, and leading back to Hill Street," . . . to my nephew George Beveridge, also within designed, in liferent, and his children in fee, failing children to his own nearest heirs, at the price of £4000, said price to form a part of the legacy of £7000 bequeathed to him by said deed. (3) Declaration in codicil of 30th September 1876—"I hereby make it a binding condition that my nephew George Beveridge, to whom I have left my property in Kirk Wynd, Kirkcaldy, in liferent, shall not have the power to dispose of or sell the said liferent, even though he should be inclined; neither shall he have the power to sell the liferent of the £3000 provided for him over and above the liferent of said property, and if he attempt to do so, believing he has power, said liferent shall be null and void, and in the event of him incurring this forfeiture it will not have the effect of reviving his right to claim the liferent of the £7000 originally provided for him." (4) Powers to him under codicil of 30th October 1876—"To borrow on my property in Kirk Wynd, provided to him in liferent, the sum of £1800, to enable him to acquire the house in Wemyssfield Place, if so inclined: But declaring that this power to borrow on the Kirk Wynd property is given to him solely to enable him to pay the purchase-money of the Wemyss Place house, if purchased by him, and that he shall have no power to borrow on the Kirk Wynd property for any other purpose."

The trustees under the deed, after conveying the Kirk Wynd property and furniture to the beneficiary, refused to pay him the £3000 claimed by him, pleading in defence—"(2) On a sound construction of the trust-deed and codicils, the trustees are bound, or are entitled, for the purpose of giving effect to the truster's intention as expressed in the said testamentary writings, either to hold the said legacy of £3000 for the purpose of paying the liferent to the pursuer and the fee to his children, whom failing his nearest heirs, or to invest the same for behoof of the pursuer in liferent and of his children in fee, whom failing his nearest heirs. (3) On a sound construction of the trust-deed and codicils, the pursuer is not entitled to demand payment of the legacy of £3000."

As to James Beveridge, the deed contained a legacy in these terms—"To my nephew James Beveridge, of the National Bank, £2000, also in liferent, and his children in fee, failing children to his own nearest heirs." The legacy to Michael Beveridge was in the same terms.

There was also the following direction in a codicil of 28th September 1876:—"Pay in addition to the legacies left to my nephews Michael Beveridge and James Beveridge, £1000 each at my death, free of legacy-duty."

In these two actions the pleas of the defenders were, *mutatis mutandis*, the same as those quoted above.

The Lord Ordinary (Young), on 12th December 1877, pronounced the following interlocutor in each case:—"Finds that the pursuer is entitled to payment of the liferent only of the sum of £3000 (£2000 in the cases of James and Michael) under the trust-deed and codicils of the deceased Mathew Beveridge referred to on record, and, without prejudice to his right to such payment, dismisses the action, and decerns."

The pursuers severally reclaimed, and argued—The trustees were directed to realise the estate, and, so soon as convenient, to pay the legacies. There was no provision for continuing the trust. When paid, the legacies to the nephews and their children *nascituris* conferred a fee on the nephews. This had been frequently decided. The case of *Ferguson* was on all fours with the present, save only that there the legacy in favour of a father in liferent and the children *nascituri* in fee was directed to be paid six months after the testator's death, and here so soon as convenient. The legal construction of a legacy to a father in liferent and his children in fee had been settled, and could not be overcome by mere indications of another intention. Here, there being no continuing trust, the fee would be left *in pendente*.

Authorities—*Ferguson's Trustees* v. *Hamilton*, July 13, 1860, 22 D. 1442, 4 Macq. 397, 24 D. (H. of L.) 8; *Hutton's Trustees* v. *Hutton*, Feb. 11, 1847, 9 D. 639; Ross' Leading Cases, Land Rights, Fee and Liferent.

Argued for the trustees—A legacy to a father in liferent and his children in fee could not be read as conferring a fee on the parent, either where there was a continuing trust or where the testator's intention to restrict to a mere liferent was clearly shown by the tenor of the deed. Here both these elements existed. The whole deed read together showed that the testator intended the trust to continue till the expiry of the liferents to the nephews. How otherwise could the trustees pay the money to the "heirs of the nephews," as they were directed to do in event of default of issue? The direction to pay when convenient meant they were to begin to pay the liferents when convenient. The careful direction to George Beveridge not to sell the furniture which was to be delivered to him, and the absence of any such direction as to the £7000, showed that the testator contemplated this fund remaining in the hands of his trustees. That the testator used "liferent" as equivalent to "liferent allenarly," was clearly shown by the codicil, where, incidentally referring to the liferent conferred on George Beveridge, the latter was expressly debarred from selling the liferent under penalty of forfeiture. Even were there no continuing trust, the Court would direct such investments to be made as would secure due effect being given to the truster's deed, and would restrict to a liferent allenarly the nephew's interest.

Authorities—*Ross* v. *King*, June 22, 1847, 9 D. 1327; *Newlands* v. *Newlands' Creds.*, Feb. 7, 1794, aff. April 26, 1798; *Mein* v. *Taylor*, June 8, 1827, 5 S. 779, aff. 4 W. and S. 22; *Cumstie* v.

Cumstie's Trustees, June 30, 1876, 3 R. 921; *Maule*, June 14, 1876, 3 R. 831; *Donaldson's Trustees* v. *Cuthbertson*, Jan. 15, 1864, 2 Macph. 428; Bell's Folio Cases, 73; *Montignani*, Feb. 17, 1866, 4 Macph. 461; *Lady Massy* v. *Scott's Trustees*, Dec. 5, 1872, 11 Macph. 173.

At advising—

LORD JUSTICE-CLERK—It is of little consequence to revert to the origin of the rule that a conveyance or bequest to a parent in liferent and his children *nascituri* in fee imports a fee in the parent if not qualified by other restricting words. It is, no doubt, true that the origin of this canon of interpretation was the feudal fiction or principle that a fee cannot be *in pendente;* but it is now fixed—(1) That the doctrine applies to personal as well as to real property; (2) That it is not necessarily excluded by the interposition of a trust; and (3) That it applies even although some of the members of the class may be in life when the conveyance takes effect. The words are held to import only a *spes successionis* or a bare destination to the children. These principles were thoroughly canvassed and conclusively fixed in the case of *Ralston* (the Ferguson bequest) in the House of Lords in 1862 (4 Macq. 397), and are now beyond controversy.

On the other hand, it is also well settled that the intention of the granter of the conveyance to limit the parent to a liferent need not be expressed in any technical language. The word "allenarly" and "only" attached to the gift of liferent has always been held to be conclusive; but any expressions clearly indicating such an intention will suffice. It will also be a point of importance in such cases, when a trust intervenes, whether the granter contemplated a continuing trust or an immediate distribution of his estate. In the former case a limitation to a mere liferent will be more easily inferred; in the latter the presumption will be strongly the other way.

Applying these views to the present cases, I have found no difficulty attending those of James Beveridge and Michael Beveridge. They are pure examples of the rule. The trustees of the testator are instructed to pay to these persons "in liferent and their children equally in fee," and failing children to their own nearest heirs, the sums of £2000 each. Neither the first deed nor any of the codicils contain any qualifying words as far as they are concerned. There is no provision in the deed for the continuance of the trust. On the contrary, the duty of the trustees is to "deliver and pay" the several bequests contained in the settlement so soon as they may find it convenient, after converting the whole estate into cash. There is also a residue clause, which from its terms indicates to my mind very clearly that the testator contemplated an immediate winding-up of his trust.

These two cases would have been beyond argument but for certain provisions in one of the codicils in regard to George Beveridge, which are supposed to furnish an interpretation or glossary of the word liferent as used by the testator in the former deed. Now, whatever restrictive force these provisions may have as regards George, they have, in my opinion, no force in regard to the other pursuers. They do not refer to them in any way, and even if they disclosed any intention to restrict George to a liferent, I should rather gather, from these being confined in their expression to him, corroboration of the legal inference that the others were not to be so limited. At any rate, the words at the most can only affect the interest to which they apply, and in regard to which they are used.

As regards George, however, the case is undoubtedly much more difficult. The provisions as regards him are the following—[*reads as quoted supra*]. I own I have had great difficulty in coming to a conclusion on his claim. The right to the real property has been resolved by the trustees granting a conveyance in the terms of these conditions. They were directed to convey, and they have done so, and to that extent their trust is an end. That they were intended to convey at once, and not to hold, is made clear by the provisions about uplifting the rents which I have just read, which plainly contemplate that George should be in possession. The question now arises as to the interest in the sum of £3000, which in the codicil I have quoted he is prohibited from selling; and it is contended—I must own with much force—that this provision necessarily restricts the right to one of liferent. Admitting, however, the force of this view, I am not satisfied that this was what the testator intended; and in any view, as he has not provided any machinery for carrying out this object, I do not see that we can create it.

The interest which is the subject of these conditions is the right of liferent which he had previously given him. But the right so given, although called a liferent, was yet, *ex figura verborum*, in legal expression and in legal construction a right of fee, and these conditions in some respects more resemble a futile attempt to limit a right of fee which was yet to subsist than a restriction to a mere life interest. This country solicitor must have known the virtue of the words "allenarly" and "alimentary" perfectly well, and could easily and clearly have effected his purpose had such been his intention. I have been much struck and puzzled with the provision in the last codicil. I think it can mean nothing else than a power to borrow on the fee of the house property. The amount is nearly half the fee-simple of its value, and I should doubt greatly if any lender would advance £1800 on a conveyance to a life interest in house property worth £4000. But the consideration which has led me—not, I own, without hesitation—to come to the conclusion that there is no ground for restricting even George to a mere liferent of this sum, is the absence of any provision for the continuance of the trust, coupled with the fact that the supposed fiars being non-existent—for George was unmarried—could not be presumed to have been the main objects of the testator's solicitude. He might, no doubt, have provided that George should go through life a hampered man, and that the fee of this property should be held during all that time for possible children who might never appear, to go at last to the heirs of the fettered liferenter; but if he had intended this he would have provided for it. If he provided for George having children, he would also have provided for his having none, and would have established a trust administration in whom the fee in suspense should be vested. But he has done nothing of this. He has told his trustees to pay this money—

not to hold it—not even to invest it. Even if the trustees took a receipt in terms of the conditions of the codicil, this, while it might create something of an obligation between him and the contingent fiars, would not prevent his use of the money. But I think we have no authority to continue this trust, or to create an administration which it is clear the testator did not intend. In the case of *Hutton's Trustees*, 9 D. 639, great weight was attributed to such considerations. The Lord Justice-Clerk (Boyle) observed that the trust in that case contained a "proper direction to pay at that event. The funds are then to be divided and paid over. The trustees would not be entitled to continue the trust or to hold the funds. Neither is there even any direction that the trustees are to invest the shares in such a way as may be said to vest only a liferent in the claimants. On the contrary, the only direction is to pay over the funds." These remarks were quoted with approbation in the case of *Ferguson*, and are very applicable here.

Three cases were mentioned by the Dean of Faculty as authorities for the Court interposing to create an administration for a fund like this, but they belonged to a class entirely different. They were all cases in which the liferent was admittedly in one of the parties and the fee in another, and in which the administration provided by the trustees had broken down. *Montignani's* case (4 Macph. 461) was one where a trust had lapsed by the death of the trustees. *Moncrieff's* case (*Moncrieff* v. *Bethune*, Feb. 25, 1846, 8 D. 548) was that of a bond taken by trustees in favour of A in liferent and B in fee, being paid up after the trustees had been exonered and discharged. And in the third case, that of *Dalgleish or Gowans*, March 9, 1849 11 D. 1028; a debtor in an heritable bond in which a married woman had a liferent, wishing to pay it up, the Court appointed a judicial factor to grant a discharge and see the fund reinvested. These cases have no analogy to the present.

Lord Ormidale—The three actions at the instance respectively of James, Michael, and George Beveridge against the testamentary trustees of their deceased uncle, depending as they do very much upon the same considerations, may be taken up and disposed of together.

As, however, none of the specialties or peculiarities connected with the case of George Beveridge affect the case of James and Michael, it may be as well to consider the two latter in the first instance.

In regard, then, to the legacies left to James and Michael Beveridge—the one of £2000 to James "in liferent and his children in fee, failing children to his own nearest heirs," and the other of a like sum to Michael in precisely similar terms—I can entertain no doubt that they must be held to belong to the estates in fee, and fall to be immediately paid to them accordingly. It is quite true that although it is settled law that such must be the effect of legacies bequeathed in the terms I have now referred to, the result might be different if it had appeared from the settlement otherwise that it was the intention of the testator to limit the right of the legatees to a liferent, and he had given such authority or directions as would have enabled his trustees to enforce such limitation. If he had by any mode of expression clearly indicated that such was his meaning—for the governing rule is undoubtedly the will or intention of the testator—if, for example, he had added, in the present instance, to the expression "liferent" the word "only" or "allenarly"—or if he had directed his trustees, in place of at once or simply to pay the legacies, to hold them for behoof of his nephews in liferent and their children in fee, to the effect of payment being made of the income of the legacy as it arose to the nephews, and ultimately of the capital itself to their children, the right of the legatees James and Michael Beveridge would have been limited to a liferent. But there is nothing in the settlement in question to that effect. On the contrary, the trustees are directed to realise the estate, and as soon as convenient to pay the legacies to his nephews. And if there could be any doubt of this, looking merely at the principal settlement, it must be removed, I think, by the second codicil, of 28th September 1876, where the testator directs his trustees "to pay, in addition to the legacies left my nephews Michael Beveridge and James Beveridge, £1000 each at my death." This £1000, about which no dispute has been raised, seeing how it is connected by the words I have just quoted with the £2000 legacies, indicates to my mind very plainly that both were to be paid over together and at the same time to his nephews, and that neither was to be held in trust in order that they might get the interest or income merely as it arose.

I can have no doubt, therefore, that, for the reasons I have stated, James and Michael Beveridge are entitled to have their respective legacies paid to them as concluded for in the actions at their instance, and that any other or different result could not be come to consistently with the authorities bearing on the subject, and especially the cases of *Hutton's Trustees* v. *Hutton*, 9 D. 639, and *Ralston* v. *Hamilton*, as decided in the House of Lords, 4 Macq. 397, affirming a judgment of this Court.

In regard, again, to the legacy to the testator's nephew George, there are some specialties which require attention. In the original settlement there is left to him £7000, exactly in the same terms as their legacies are left to his brothers James and Michael, viz., in liferent and to his children in fee, and "failing children to his own nearest heirs equally." But in his first codicil, of date 25th August 1876, the testator directs his trustees "to convey and dispone over" his property at the foot of Kirk Wynd, Kirkcaldy, "to my nephew George Beveridge, also within designed, in liferent, and his children in fee, failing children to his own nearest heirs, at the price of £4000, said price to form part of the legacy of £7000 bequeathed to him by said deed." The effect of this was to convert the money legacy of £7000 originally left to George into the bequest of some real property at the foot of the Kirk Wynd, to be reckoned as equivalent to £4000, and the balance of £3000 to remain as a money legacy. But as yet the whole matter continued as it was, so far as the question now in controversy is concerned, which relates exclusively to the £3000 money legacy. In his third and last codicils however, dated respectively 30th September and 30th October 1876, the testator resumes the subject of George Beveridge's legacy, and in the former he says—[reads as quoted *supra*.] And

in his last codicil the testator says with reference to George Beveridge—[reads as quoted *supra.*]

These passages which I have quoted from the codicils were founded on by the defenders as indicative of the intention of the testator not to confer more than a liferent on his nephew George Beveridge, and certainly they are not quite consistent with his obtaining an immediate right of fee. But whatever may have been the intention of the testator in this respect, I am unable to understand upon what ground immediate payment of the £3000 can be withheld from him, in terms of the direction to that effect in the principal deed of settlement—a direction which was never recalled. And if payment is to be made to George Beveridge of the £3000, I fail to see how his right to it can be limited to a liferent merely. The testator does not direct that it should be tied up in any way so that the legatee should only have a liferent enjoyment of it. He does not even say that the liferent of the £3000, if the right of the legatee could in any way be limited to that, should be for his alimentary use only, and not assignable by him or attachable by his creditors. I do not see, therefore, how the right of George Beveridge to the £3000 can be restricted to a mere liferent, any more than the right of his brothers James and Michael to their legacies can be so restricted, for there are no directions or machinery to be found in his settlement to enable that to be done. The only expedient suggested by the defenders for accomplishing the object was that the £3000 should be invested in heritable security, taken expressly to him in liferent only and his children in fee, and that the security title so taken should be made over to him. But in answer to this suggestion it is enough to say that the settlement of the testator neither directs nor in any way authorises it. In short, it would require the Court to make a settlement for the testator which he has not made for himself to give effect to the contention of the defenders; but this the Court cannot do. There is no alternative therefore, so far as I can see, but to hold that the testator, if he intended that payment should not be made of the £3000 to his nephew George in the same way as their legacies must be paid to his other nephews James and Michael, has failed to enable his trustees or the Court to carry his intention into effect, and this being so, the Court must just adopt the principle which ruled the case of *Gibson's Trustees* v. *Ross and Others* (4 Rettie 1038), and other precedents which were cited at the debate. But in conformity with these precedents, the trustees ought, in the receipt or discharge taken from George Beveridge, to see that the obligations or conditions under which the testator appears to have desired to subject the legatee are briefly inserted or referred to.

The result is, that in my opinion the interlocutor of the Lord Ordinary in the three actions in question will fall to be recalled, and in place thereof decree pronounced in each of them as concluded for.

LORD GIFFORD concurred.

In the actions at the instance of James and Michael Beveridge the Court decerned for payment to the pursuers of £2000, in terms of the conclusions of their summonses.

In the action at the instance of George Beveridge this interlocutor was pronounced:—

"Alter the interlocutor of the Lord Ordinary: Find that the defenders are bound to pay over to the pursuer the sum of £3000 concluded for, upon a receipt or discharge bearing that the payment has been made and received subject to the conditions and provisions of the settlement, with such interest as the defenders have received down to the date of payment: Find the defenders entitled to their expenses out of the payment to be made by them, as the same may be taxed by the Auditor as between agent and client; and decern."

Counsel for the Pursuers (Reclaimers)—Kinnear—A. Gibson. Agents—Gibson-Craig, Dalziel, & Brodies, W.S.

Counsel for Defenders (Respondents)—Dean of Faculty (Fraser)—Rettie. Agents—H. & H. Tod, W.S.

HIGH COURT OF JUSTICIARY.

Wednesday, March 6.

MAUCHLINE *v.* STEVENSON.

(Before the Lord Justice-Clerk, Lord Young, and Lord Craighill.)

Justiciary Cases — Statutes 31 *and* 32 *Vict. c.* 123 (*Salmon Fisheries (Scotland) Act* 1868) *—Tweed Fisheries Acts* 1857 *and* 1859*—Summary Procedure Act* 1864*—Relevancy of Complaint where no Alternative Form of Punishment stated—Fishing with Salmon-Roe.*

A complaint under the Summary Procedure Act 1864 set forth a contravention of the "Salmon Fisheries (Scotland) Act 1868" and the Tweed Acts, in respect that the accused had used fish-roe for the purpose of fishing in the Tweed, by which it was stated he had "incurred a penalty not exceeding £2," and had further forfeited the roe. Objection to the form of the complaint, in respect that it did not state the alternative modes of enforcement provided by these Acts, *repelled.*

Held that a river-bailiff, alike under the Salmon Fisheries Statutes and at common law, was entitled to search for and take possession of salmon-roe which he had seen in the hands of a party illegally using it for the purposes of fishing.

This was an appeal under the Summary Prosecutions Appeals Act 1875 (38 and 39 Vict. c. 62) by James Mauchline, a soldier residing in Kelso, against a conviction obtained at the instance of the Procurator-Fiscal of Roxburghshire in the Sheriff Court at Jedburgh. The petition under which the conviction was obtained set forth that the appellant had contravened the 18th section of the Salmon Fisheries (Scotland) Act 1868, which it is provided is to be read and taken as if it formed part of the Tweed Fisheries Act 1857 and of the Tweed Fisheries Amendment Act 1859, as also the 39th section of the Tweed Fisheries