28, passed in the last session of Parliament, entitled "An Act to amend the Game Laws of Scotland," declared by section 3 that "the word game" (in that Act) "shall include all the animals enumerated in the Game Acts or any of them;" and by section 4 it is accordingly enacted that where the lessor of lands "shall reserve or retain the sole right of hunting, killing, or taking of rabbits, hares, or other game, or any of them, the lessee shall be entitled to compensation."

I have therefore to repeat that I cannot consider and deal with rabbits under the Gun Licence Act as vermin, although undoubtedly they are very destructive to crops, just as hares and pheasants are, although in a less degree.

But then it is said, taking the case as it is stated on record, that the accused must be treated as a person who on the occasion in question was carrying a gun "for the purpose only of scaring birds or killing vermin," notwithstanding that he did in point of fact kill one rabbit and fire at another, and therefore that the Justices were right in their deliverance. For myself I have found it impossible to adopt this conclusion, and when the case before the Court is closely examined I am unable to see how it can be supported. The Justices first state the facts, as they were bound to do, and then proceed to draw their conclusion from "these facts." Now, the only fact stated that can give any support to their conclusion is that the accused's father, who holds a licence under the Act, instructed his son, who holds no licence under the said Act, to carry his gun to scare birds and shoot vermin on the said farm, but how this, the mere instruction of the father, should exculpate the son, who disobeyed his father's instruction, and shot one rabbit and tried to shoot another, I fail to see. If it had been stated as matter of fact that in his endeavours to scare birds and kill vermin the accused had accidentally or unintentionally shot a rabbit, the case might have been different, but I am unable to hold, with the Justices, that because the accused had been instructed by his father "to carry his gun to scare birds and kill vermin" he is not liable in the penalty charged, for it must be kept in view that it is not the father, but the son, who is charged with having incurred the penalty. And it ought also to be borne in mind that the *onus* is by section 7 of the Act laid upon the accused to show that he did not commit the offence imputed to him.

In these circumstances, and for the reasons I have stated, I am of opinion that the deliverance of the Justices ought to be reversed, both in this and the other case against William Brown. At the same time, I should regret very much if such a judgment were to prejudice farmers in the protection of their crops, but I cannot think it would do so, as I believe that it is not by shooting, but by trapping and other means, that rabbits are usually kept down. But I am not without fear that to sustain the deliverance of the Justices might lead to a not unfrequent evasion of the Gun Licence Act, a Fiscal Act of some importance.

Lord Gifford—In this case I have experienced considerable difficulty, and I regard the point as one of some nicety, and of some width in its effect. After all I have come to the same conclusion on both points as your Lordship in the chair. [*His Lordship read the clause in the Gun Licence Act*]. The accused here say they were instructed by their father, who holds a licence, and that they were carrying the gun only for the purpose of scaring birds. Now, that is the question of fact for the Justices—Were William and Walter Brown on the occasion here specified carrying that gun for the statutory purpose or not? That was the question the Justices were called upon to answer, and they have answered it in the affirmative. The question of fact is answered, and it is one of fact pure and simple, though the case as presented to us may not be very artistically drawn. The purpose with which the accused went has to be sought, and has been found. I am inclined to read these special cases very strictly (indeed this is a quasi-criminal matter), and applying to this case the first principles of construction, I think that in the finding of the Justices we have sufficient for the purposes of decision.

But, in the next place, even supposing we hold that the Justices here meant that the accused were out for the purpose of killing rabbits, then in that case also I agree with my Lord Justice-Clerk, that rabbits are in the sense of this Act and of this clause of this Act vermin. Vermin are described as destructive and noxious wild animals, either to sportsmen or to farmers, as the case may be, for what is vermin to the one may be quite the reverse to the other. Thus, a weasel to a sportsman is certainly vermin, but to the farmer it scarcely would be so. Here the exception in the Act is, as I read it, an exception in favour of the farmer, who under it has conferred upon him the power to shoot what is regarded as vermin from his point of view.

The Court dismissed the appeal, and sustained the decision of the Justices in Quarter Sessions.

Counsel for Appellant—Rutherfurd. Agent—Solicitor of Inland Revenue.
For the Respondents—No appearance.

Tuesday, March 12.

SECOND DIVISION.

[Lord Adam, Ordinary.

M'LEAN AND OTHERS *v.* SCHOOL BOARD OF KILBRANDON AND KILCHATTAN.

School—Sufficient Accommodation—Education (Scotland) Act 1872, *secs.* 27 *and* 28—*Powers of Education Board—Review.*

The decision of a School Board as to the amount of school accommodation in a parish having caused dissatisfaction, on application by the Board the Education Department sent one of their members to inspect the locality and inquire. The result was that the Education Board approved the decision of the School Board, and subsequently refused to alter it or recall their sanction when petitioned to do so by some of the ratepayers. —*Held* that the Board of Education having complied with the statutory regulations, and applied their minds to the question, were the sole and exclusive judges, and that their resolution could not competently be reviewed.

Counsel for Pursuers (Reclaimers)—Guthrie Smith—M'Kechnie. Agents—Philip, Laing, & Monro, W.S.

Counsel for Defenders (Respondents)—J. A. Crichton. Agent—John Gill, S.S.C.

Wednesday, March 13.

FIRST DIVISION.

HOPE, PETITIONER.

Public Officers—Appointment of Interim Keeper of the Signet.

On March 12th the Keeper of Her Majesty's Signet in Scotland died. In consequence of this the deputation granted by him to the Deputy Keeper of the Signets, James Hope, Esq., W.S., fell, and it was necessary to petition the Court to grant a commission to an interim Keeper. This petition, following the precedents, was presented by Mr Hope, and prayed their Lordships to appoint him to act as interim Keeper. The concurrence of the Lord Advocate in the petition having been obtained, the Court made the appointment as craved.

The following interlocutor was pronounced:—

"The Lords having heard counsel for the petitioner, and for the Lord Advocate, who through his counsel expressed his consent thereto, Appoint the petitioner to act as interim Keeper of the Signet till Her Majesty shall be pleased to issue a commission appointing a new Keeper; and grant warrant and authority to the petitioner in terms of the prayer of the petition: And appoint the petition, with this deliverance, to be recorded in the Books of Sederunt.

Counsel for Petitioner—Maconochie. Agents—Hope, Mann, & Kirk, W.S.

Wednesday, March 13.

OUTER HOUSE.

[Lord Rutherfurd Clark.

BARBOUR'S TRUSTEES *v.* DAVIDSONS.

Process—Discharge of an Inhibition used on Dependence of Action.

Where an inhibition is used on the dependence of an action, it is not necessary to present a petition for the purpose of getting it discharged, as the Court will pronounce an order to that effect *in causa*, and grant a warrant to the Keeper of the Register to mark the discharge and recall upon the record.

In this action inhibitions were used by the pursuers upon the dependence of the summons, and on the case being taken out of Court by a joint minute for the parties, the defenders moved the Lord Ordinary to insert in his interlocutor dismissing the action an order for discharge of the inhibitions, and a warrant to the Keeper of the Register of Inhibitions to mark upon the record the discharge and recall thereof. The Lord Ordinary (RUTHERFURD CLARK) was doubtful whether he had power to do so without a petition being presented, having regard to the forms of section 148 of the Titles to Land Consolidation Act of 1868. On inquiry, however, into the practice, and on the authority of three unreported cases—*Ward's Trustees* v. *Tennent*, 5th Dec. 1871; *Williamson* v. *Rodger*, 24th June 1874; *Marschner* v. *Edinburgh and Leith Joiners Building Company*, 25th Feb. 1876—the Lord Ordinary granted the motion, and pronounced the following interlocutor:—

"The Lord Ordinary, in respect of the joint minute, discharges and recals the inhibition recorded 14th June 1877, used upon the dependence of the action; grants warrant to and authorises the Keeper of the Register of Inhibitions to mark upon the record thereof the discharge and recall of said inhibitions," &c.

Counsel for Barbour's Trustees — Moody Stuart. Agent—H. R. Macrae, W.S.

Counsel for Davidson—Wallace. Agents—Adam & Sang, W.S.

Thursday, March 14.

FIRST DIVISION.

[Sheriff of Caithness.

ROSS *v.* BRIMS.

Expenses—Process—Judicature Act, sec. 44, *and Court of Session Act* 1868, *sec.* 64.

Where an objection to the competency of an appeal is not taken till the case is put out for hearing, the Court, although they dismiss the appeal as incompetent, will not give the respondent his expenses.

This was an appeal against a judgment ordaining a tenant to remove. When the case came up for hearing, the respondent submitted that by 6 Geo. IV. c. 120, sec. 44, followed by 31 and 32 Vict. c. 100 (Court of Session Act 1868), sec. 64, an appeal in such an action is incompetent, suspension being the proper remedy, and referred to the case of *Fletcher* v. *Davidson*, 3d March, 1874, 2 R. 71.

At advising—

LORD PRESIDENT (in sustaining the objection to the competency of the appeal)—It is the duty of a respondent to state any objection he may have to the competency of an appeal when the case appears in the Single Bills. I do not say that if he fails to do so that that precludes him from stating it afterwards. On the contrary, the Court will *ex proprio motu* take up any such objection. But it is a consequence of such failure that parties are put to unnecessary expense, and, as in the present case, counsel may be instructed to discuss the case on the merits. That expense is due to the respondent's omission, and therefore we shall give him no expenses.