eight new feus under eight new charters, and one to the Messrs Forbes, putting them all under the same restrictions and conditions. On the one hand, the Messrs Forbes were bound as in a question with the feuars; on the other they had a right to object to contravention of the restrictions by any feuar, and similarly the disponees of the Messrs Forbes' disponees were bound as well as the disponees of the Messrs Forbes themselves.

But has the clause on which the Lord Ordinary has founded changed all this, and placed the feuars practically at the mercy of the superior. I should be slow to adopt any construction of that clause which could lead to so unreasonable a result, and I do not think that the Lord Ordinary's construction is the right one. We are familiar with clauses intended to effectuate restrictions and prohibitions of this kind—usually simply a clause irritant. But here we have the addition of an alternative option to the superior to insist on a double payment of the feu-duty during the contravention of the restriction. But I think that that alternative has been inserted for the purpose of securing more efficiently the enforcement of the restrictions—to give the superior a prompt remedy whenever there is a contravention—not to give him the power to allow the vassal to contract himself out of the mutual obligation he lies under not only to the superior but also to his co-feuars.

The LORD PRESIDENT concurred.

The Court pronounced the following interlocutor:—

"The Lords having heard counsel on the reclaiming note for the complainers against Lord Curriehill's interlocutor dated 18th July 1877, Recal the said interlocutor; continue the interdict formerly granted; and remit the cause to the Lord Ordinary to proceed further: Find the complainers entitled to expenses since the date of the interlocutor reclaimed against: Allow an account thereof to be given in, and remit the same when lodged to the Auditor to tax and to report to the Lord Ordinary, with power to his Lordship to decern for the taxed amount."

Counsel for Complainer (Reclaimer)—M'Laren—Keir. Agents, Lindsay, Howe, Tytler & Co., W.S.

Counsel for Defenders (Respondents)—Trayner—Robertson. Agents — Curror & Cowper, S.S.C.

Thursday, June 6.

SECOND DIVISION.

SDEUARD, LIQUIDATOR OF PROVINCIAL HERITABLE TRUST ASSOCIATION (LIMITED)—PETITIONER.

Public Company—"Companies Acts 1862 *and* 1867 *"—Power of a Liquidator in a Voluntary Liquidation to obtain Decree for Payment of Calls.*

The liquidator of a limited liability company, which was in course of being wound up voluntarily, applied to the Court, under the 138th and 121st sections of the "Companies Act 1862," to enforce certain calls which he had made upon the shareholders, and which they had failed to meet. The Court was asked "to find that the required exercise of power will be just and beneficial; and to pronounce forthwith a decree against "the several contributories named in the said list . . . . for payment to the petitioner of the sums therein certified . . . . in the same way and to the same effect as if they had severally consented to registration for execution on a charge of six days, of a legal obligation to pay such sums and interest, and to grant warrant for extracting said decree immediately, or otherwise to accede wholly or partially to this application, upon such terms and subject to such conditions as your Lordships think fit; or to make such other order, interlocutor or decree on this application as your Lordships think just."

The Court *granted* the application without intimation.

Counsel for Petitioner—Lang. Agents—Hagart & Burn Murdoch, W.S.

Thursday, June 6.

SECOND DIVISION.

[Exchequer Case.

SUMNER *v.* MIDDLETON.

Process—Appeal—Statute 33 *and* 34 *Vict. cap.* 57 *(Gun Licence Act)—Statute* 7 *and* 8 *Geo. IV. cap.* 53, *(General Management and Regulation Excise Act) secs.* 83 *and* 84.

By the Statute 7 and 8 Geo. IV. cap. 53, sec. 83, an appeal against a judgment by Justices of Peace is directed to be taken "at and immediately upon the giving of the judgment." *Held* that an appeal taken ten days after was incompetent.

Opinions (per curiam) that after judgment has been pronounced by the Justices at Quarter Sessions it is irregular to state a case for the opinion and direction of the Court.

Expenses.—Statute, 7 *and* 8 *Geo. IV. cap.* 53 *(General Management and Regulation Excise Act) secs.* 83 *and* 84.

Held, distinguishing the case from that of *R.* v. *Beattie* (December 18, 1866, 5 Macph.

191), that the Court of Exchequer has power to award expenses where a case has been irregularly or incompetently stated for their opinion, under the Act 7 and 8 Geo. IV. cap. 53, sec. 84.

This was a case from the Quarter Sessions of Aberdeenshire for the opinion and judgment of the Court of Exchequer.

William Middleton, farmer, Greystone, was prosecuted under the Gun Licence Act 1870 (33 and 34 Vict. cap. 57), sec. 7, for having carried and used a gun without a licence. On the 19th December 1877 the complaint was heard at Petty Sessions before the Justices of the county of Aberdeen, and dismissed not proven. On the 29th of December the supervisor of Excise served notice of appeal, and the case was heard before the Quarter Sessions on 22d January 1878.

The respondent objected to the competency of the appeal, in respect that notice of it had not been given in writing "at and immediately upon the giving of the judgment," as required by 7 and 8 Geo. IV. cap. 53, sec. 83, but ten days after. That section further provided that if the appeal was against a conviction in a penalty, the amount of the penalty inflicted should, within three days after the giving of the judgment, be deposited with the officers of Excise.

The Justices sustained the objection, and dismissed the appeal by a majority of four to three.

On the craving of the appellant James Sumner, one of Her Majesty's officers of Excise, this case was stated for the opinion of the Court of Exchequer in terms of section 84 of the above statute. That section, after stating what the powers of Quarter Sessions on appeal were, went on thus—"Provided always, that it shall be lawful for such Commissioners of Appeal, and Justices of the Peace at such General Quarter Sessions . . . at their discretion to state the facts of any case on which such appeal shall be made specially for the opinion and direction of the Court of Exchequer" &c.

Argued for the appellant—The words "immediately after" were not peremptory; they inferred a reasonable time after, which time must be judged by the circumstances of the case.

Authorities—*Christie* v. *Richardson*, 10 M. and W. 688; *Reg.* v. *Aston*, 19 L.J. 237, M.C.; Bell's Law of Excise, 62; Douglas' Excise Law, 86.

The respondent was not called upon, and it was not then stated that he had an objection to the competency of the appeal under the 84th section of the Act above quoted.

At advising—

Lord Justice-Clerk—I do not think the authorities which have been quoted have any bearing on the present case. The word "immediately" in such cases as these means without any undue delay. Here the words are different, and the subject-matter is also different. The words are "at and immediately upon the giving of the judgment." Now, "at and immediately" means *coram*, while the Court is still sitting; that, I think, is the meaning of it, and I think that that was the contemplation of the statute. I do not say that the notice would be too late if given on the same day as judgment was pronounced after an adjournment by the Court, but, in my opinion, what the statute requires is that the appeal shall be notified while the identical Justices are sitting. Therefore a delay of days cannot be given, and if anything could make that clear it is the provision in regard to appeal against a conviction, in which only three days is allowed. I think the statute does not bear out the argument for the appellant, and therefore I am of opinion that the appeal was not competent.

Lords Ormidale and Gifford concurred.

On a motion by the respondent for expenses—

Argued for the appellant—It was out of the power of the Court to award expenses against the Crown—*White* v. *Simpson*, Nov. 28, 1862, 1 Macph. 72; *R.* v. *Beattie*, Dec. 18, 1866, 5 Macph. 191; *R.* v. *Gilroys*, March 20, 1866, 4 Macph. 656, where the judgment of the Quarter Sessions was for the defendant, and a case stated at the request of the Crown; and *R.* v. *Caird*, Jan. 18, 1867, 5 Macph. 288, where, after conviction, a case was stated on the craving of the defendant. *Alison* v. *Watson*, Dec. 2, 1862, 1 Macph. 87, was a cause in the Court of Exchequer.

Argued for respondent—There was a distinction between the present case and that of *Beattie*. Here the Justices had decided, and the case was incompetently stated. In *Beattie's* case, the Justices being equally divided, stated a case for the advice of the Court, and decided upon that advice.

Authorities—*Quarter Sessions of Perth*, Nov. 30 and Dec. 18, 1861, 24 D. 221; *Alison* v. *Watson*, Dec. 2, 1862, 1 Macph. 87.

The Court took time to consider the question of expenses.

At advising—

Lord Ormidale—It was right that we should take some little time to consider our judgment upon this question of expenses, as it may be a precedent for other cases. For my own part, I have had no doubt whatever. The only obstacle that could be suggested to our giving expenses to the winning party was the case of the *Queen* v. *Beattie*. Now, it appears to me that that case is easily distinguishable. In that case the Quarter Sessions had come to no conclusion themselves; they were equally divided, and therefore they had power under the statute to state a case in order that they might receive the direction of the Supreme Court. The report does not bear that it was at the request of either party that this was done—indeed we know it was not, but *ex proprio motu* of the Justices themselves. The present case is not like that; here the Quarter Sessions had come to a conclusion by a majority dismissing the appeal. This was a final and conclusive judgment, and it seems to me altogether senseless and absurd that the Quarter Sessions after that decision should state a case for the direction of the Court of Exchequer. Accordingly the Quarter Sessions did not themselves state a case, but they granted it on the craving of the appellant. They did not want it themselves, for they had decided the whole matter, but as the Excise were not satisfied they granted them a case. The Excise have been found to be wrong as to the merits of the case, and it also appears to me that we might have dismissed the appeal as incompetent.

The Excise therefore have brought this case unsuccessfully, and in my opinion incompetently,

and therefore I think we are clearly entitled to give expenses against them. This is just an Exchequer cause, and we, sitting as the Court of Exchequer, are entitled to award expenses to or against the Exchequer in such causes. I think, therefore, that we ought to sustain the respondent's motion for expenses.

LORD GIFFORD—In this case, at the hearing we disposed of the whole merits of the case on the showing of the appellant's counsel, and without calling on the counsel for the respondent, and it was only after this had been done that the question of expenses arose.

But the question of expenses involved a point which the respondent's counsel would have taken earlier if there had been opportunity, namely, that the case itself had been incompetently stated, having been stated not before but after the judgment of the Quarter Sessions had been pronounced, and that therefore it could not be in terms of the statute a case for the direction and guidance of the Quarter Sessions, at least in the particular prosecution now in question.

I am inclined to think this objection well founded. The intention of the statute was to enable the Justices to obtain directions how they were to decide any particular question of law. When the Justices ask such directions they should suspend their decision until the directions are obtained. Here they have not done so. They have decided the case out and out by a judgment which is not subject to any review or appeal, but which is in itself final, and then, on the request of the unsuccessful party who has lost his case, they state this Special Case for the opinion of the Court of Exchequer, not to enable the Justices to decide, but simply asking whether the decision which they have given, and which cannot now be altered, is right or wrong. The accused stands assoilzied by a majority of his judges, and there is no power anywhere to change this acquittal into a decree of condemnation. Now if on the craving of an excise officer an incompetent case is obtained, I think the respondent is entitled to the expense of opposing it, and, on this ground alone, I am for giving expenses against the appellant.

It may be otherwise when a case is honestly stated by the Justices for their own guidance, and where they delay judgment. It may also be otherwise even when judgment is given conditionally and subject to a case stated to Exchequer, and in this view I do not think it is necessary to consider the effect of the decisions in the cases of *White* v. *Simpson* and *The Queen* v. *Beattie*, and other cases referred to at the Bar.

LORD JUSTICE-CLERK—I have come to the same conclusion. In regard to the question, whether Justices have the power to award expenses against the Crown, I should not have thought it right to decide it, after the various expressions of opinion in the cases quoted without consulting their Lordships of the other Division. For myself, I have no doubt that we have power to award expenses, although there are expressions of opinion to the contrary in various cases, such as those of *White* v. *Simpson and R.* v. *Gilroy*.

In the case of *Alison* v. *Watson* the Court had no difficulty in giving expenses to the Crown. In view of these contrary opinions, I am not going to lay down that it is out of our power to give expenses against the Crown. But here we have a case stated which is not in terms of the statute. The case there provided for is one for the guidance of the Quarter Sessions; it may be open to them to decide the case before coming here, but the stated case must bear that the question is still open. This is not the case here, and I agree with your Lordships that we are quite entitled to give the respondent his expenses.

The opinion of the Court was that the appeal from the Petty to the Quarter Sessions was incompetent, and expenses were given against the appellant.

Counsel for Appellant—Solicitor-General (Macdonald)—Rutherfurd. Agent—Solicitor of Inland Revenue.

Counsel for Respondent—Dean of Faculty (Fraser)—Rhind. Agent—W. G. Roy, S.S.C.

Friday, June 7.

FIRST DIVISION.

[Sheriff of Chancery.

NICOLSON (ARBUTHNOTT'S CURATOR BONIS) *v.* ARBUTHNOTT.

Entail—Destination—Construction—"Heirs whomsoever."

An entailer, proprietor of the estates of A and B, executed a deed of entail of B, in which he set out that "for the more effectually preserving" the estate of B "distinct from the lordship and estate of A, as a permanent property to the second son of my only son J, . . . whom failing, by death or otherwise as after mentioned, to his other sons and their heirs-male in their order, subject to the provision after mentioned," he destined the estate of B to the second son of his only son and the heirs-male of his body, whom failing to each of the other younger sons of the family in their order of seniority, calling each by name, and adjecting in the case of each this condition—"who shall not have succeeded or become next in succession to the lordship of A;" whom failing "to the other heirs-male of the body of the said J who shall not have succeeded or become next in succession to the lordship of A," . . . "whom failing to my own nearest heirs-male whomsoever." To this last branch of the destination no condition was specially attached, but there followed the usual clauses with reference to the mode of making up titles, &c., in the event of the prohibitive condition coming into operation, and these clauses were applied to the institute and "the other heirs and substitutes before named and appointed," and in another case to him "or any of the other heirs of tailzie before specified."

There was a further provision, applicable to all the heirs of entail, including "heirs whomsoever," with regard to bonds of provision to wives and children, to the effect that "if the