sold or agreed to sell the shares in his lifetime or if the petitioners had sold them or agreed to sell them after his death. There has been no undertaking for onerous causes by the petitioners to be registered, and consequently there is no one *in titulo* under the statute to ask that they should be registered."

Now, the present case, on the contrary, is the case of an *inter vivos* deed—an antenuptial contract of marriage—by which this lady became bound to convey those shares to trustees for behoof of the children of the marriage, and for the other purposes which are specified in that contract. She was onerously bound to fulfil her obligations in that contract. It was just as onerous as if there had been a sale by her in favour of any third party. Now, we are empowered under section 35 of the statute in a case of that kind—of onerous transaction—to rectify the register, supposing it to be not correct as it stands. And having the power to do that, it is our duty in such a case to interfere and exercise those powers conferred by that section as between onerous parties. Now here this lady had not merely become bound to convey those shares to the trustees named for behoof of the children of the marriage and other parties, but she had actually done it. She had executed a transfer in implement of the contract of marriage in favour of those trustees, and the deed bears that those trustees are in terms of the contract of copartnery of said bank subject to all the articles and regulations of the said company in the same way as if they had subscribed the said contract. And then the trustees are parties to it and sign that deed. It appears to me that that ground alone is quite sufficient entirely to distinguish this case from that of *Macdonald Hume*, and to make all the observations which I made in that case totally inapplicable to this; and the result is that I agree with the conclusion at which your Lordship has arrived.

The Court refused the prayer of the petition.

Counsel for Petitioners — M'Laren — R. V. Campbell. Agents—R. W. Wallace, W.S.

Counsel for Compearers (Mr and Mrs Richter)—Guthrie Smith—J. & A. Peddie & Ivory, W.S.

Counsel for Respondents—Kinnear—Balfour—Asher—Lorimer. Agents—Davidson & Syme, W.S.

Friday, October 31.*

OUTER HOUSE.

[Lord Rutherfurd Clark.

EDIE *v.* RIGG.

Agent and Client—Disqualification as Agent—Where he also held a Commission as Sheriff-Clerk Depute.

O, a Sheriff Court agent, held a gratuitous commission to act as Sheriff-Clerk Depute in the absence of the Sheriff-Clerk and his paid depute, qualified by the declaration that he should not take part in any case in which he himself was employed as agent. A suspension of a charge on two decrees pronounced in an action in which O had acted for the pursuer was brought, on the ground that he held the commission above mentioned, though it was not alleged that he had acted as clerk in the process in question. The Lord Ordinary (RUTHERFURD CLARK) *refused* to suspend, and his judgment was acquiesced in.

*Decided 18th February 1879.

This was a suspension of a charge upon two decrees pronounced in the Sheriff Court of Fife.

The facts of the case and the ground of judgment are sufficiently set forth in the following note to the interlocutor of the Lord Ordinary (RUTHERFURD CLARK) repelling the reasons of suspension:—

"*Note*—This is a suspension of a charge given on two decrees pronounced by the Sheriff of Fifeshire, the one dated 29th July and the other 15th November 1878. Several grounds of suspension are stated, but the minute lodged by the suspender has limited them to one.

"The respondent was the pursuer in the Sheriff Court. Mr Osborne, a writer in Cupar, acted as his agent; at the same time he held a commission as Sheriff-Clerk Depute; but it is qualified by the declaration that he shall not act as Clerk of Court in any case in which he is himself employed as agent. It is not alleged that in the process in which the decrees in question were pronounced Mr Osborne acted as clerk. But the suspender maintains that the fact that he held a commission as Clerk of Court is sufficient to nullify the decrees.

"It has been explained—and the fact was not disputed—that the commission issued in favour of Mr Osborne was purely gratuitous and honorary, and that it was merely intended to enable him to act in an emergency when the Sheriff-Clerk and his paid depute were, as they occasionally might be, necessarily absent.

"The sole question is, whether the decrees are null? The suspender founds both on the common law and the Act of Sederunt of 1783, and he has referred to several decisions in which a breach of the common law and of the Act resulted in the nullity of the whole proceedings. But it is to be observed that in all these cases there was not only the capacity of acting in incompatible offices, but such action itself. Here it was not so, nor indeed did the form of Mr Osborne's commission admit of it.

"The Act of Sederunt does not declare a nullity, and in those cases where a violation of it has resulted in the violation of the whole proceedings, this must be due to the operation of the common law, of which indeed the Act professes to be declaratory. But it seems to the Lord Ordinary that the common law would not annul a decree unless it had been obtained in a manner which was incompatible with the fair administration of justice, or which at least suggested a doubt that justice had not or might not have been done. There is nothing in this case to indicate that the suspender has suffered or could have suffered any injustice.

"The Lord Ordinary does not wish it to be understood that he approves of a practising agent holding an appointment as Clerk of Court, even though his commission contains the qualification above noticed. He thinks that the inconvenience to which Mr Osborne owes his appointment might be remedied in some less objectionable manner. But it seems to him that the respondent should

not lose the benefit of the decree on the only ground on which it is now impeached."

The interlocutor was acquiesced in.

Counsel for Complainers—Rhind. Agent—W. Officer, S.S.C.

Counsel for Respondent— . Agents —Boyd, Macdonald, & Co., S.S.C.

HIGH COURT OF JUSTICIARY.

Wednesday, October 29.

BLACKS *v.* LAING.

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

Justiciary Cases—Malicious Mischief—Breaking Fence— Right of Access.

Circumstances relating to the removal of an obstruction to the access to property, by breaking down a fence, which were *held* not to justify a charge of malicious mischief.

John and William Black were charged in the Police Court of the burgh of Alloa by Richard Laing, Procurator-Fiscal, with having on 21st July 1879 wickedly and feloniously and wantonly and maliciously broken down 4 feet or thereby of a paling enclosing that part of the Old Town Green of Alloa then occupied by Henry Gray as tenant under the commissioners of police of the burgh. It was proved that Gray had erected a fence round his plot of the green at the request of the commissioners, and at his own expense, leaving however a gap of about six feet open for an access to John Black's property. On 19th July, by instructions of the chief magistrate of the burgh, he closed up this gap; but on the 21st John and William Black deliberately pulled down about 5 feet of the fence at that place. For the defence it was proved that John Black had possessed from time immemorial his garden adjoining Gray's plot of ground, and had had access to it by crossing the said green, and that at date 19th July the only access to his garden was through the gap in Gray's fence. The magistrate convicted the accused and sentenced them to pay a fine, or alternatively to be imprisoned. Upon appeal the Court unanimously quashed the conviction, on the ground that the rights of parties were rather for the determination of a civil court, and that Black's conduct, though not strictly commendable, was on the whole justifiable, in respect that the only access to his garden lay through said gap in the fence.

Counsel for Appellants—A. J. Young. Agent —Duncan & Black, W.S.

Counsel for Respondent—M'Kechnie. Agent —Thomas Carmichael, S.S.C.

Wednesday, October 29.

HALL AND MARK *v.* LINTON.

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

Justiciary Cases—Tramways Act 1870 (33 *and* 34 *Vict. c.* 78), *sec.* 50—*Edinburgh Tramways Act* 1871 (34 *and* 35 *Vict. c.* 89)—"*Wilful Obstruction*" *in the sense of the Tramway Act.*

Facts and circumstances which were held not to warrant a conviction against the drivers of a cart for acting "so as to obstruct a carriage using a tramway," in terms of the 50th section of the Tramways Act 1870.

George Hall and William Mark were charged in the Edinburgh Police Court by Thomas Linton, Procurator-Fiscal, under the Summary Procedure Act 1864, "with having been guilty of an offence under the Tramways Act 1870 and the Edinburgh Tramways Act 1871, particularly sec. 50 of the first Act," in so far as they did, both and each or one or other of them, on 19th June 1879, at or near Leith Street, Edinburgh, without lawful excuse, wilfully drive a janker-cart or other carriage or vehicle under their charge, or under the charge of one or other of them, in such a manner as to obstruct a carriage using the tramways there, whereby they are each liable to a penalty not exceeding five pounds." When the case came on for hearing on the 26th June, no objection was stated to the relevancy of the complaint, and as the parties pleaded not guilty, the diet was continued till 1st July. On that day, after evidence, the panels were found guilty, and Hall was fined £2 of modified penalty, with the alternative of twenty days' imprisonment, and Mark £1, with the alternative of ten days' imprisonment. The convictions were as follows:—"The Judge, in respect of the evidence adduced, convicts the said George Hall of the offence charged, and therefore adjudges him to forfeit and pay the sum of two pounds sterling of modified penalty, the said fine to be applied for behoof of the poor of Edinburgh; and in respect it is inexpedient to issue a warrant of poinding and sale, ordains instant execution by imprisonment; and grants warrant to officers of Court to apprehend the said George Hall and convey him to the prison of Edinburgh, and to the keeper thereof to receive and detain him for the period of twenty days from the date of his imprisonment, unless the said penalty shall be sooner paid." Notice of appeal was given, and the Bailie (Colston) stated a Case for the opinion of the High Court of Justiciary.

The facts as stated in the Case were—"The appellants were driving two horses tandem, drawing an unloaded janker-cart, William Mark driving the leading horse and George Hall driving the shaft horse and having the charge of the whole conveyance. The janker-cart, which is about 19 feet long, nearly double the size and weight of an ordinary lorry, was proceeding up Leith Street on the tramway line, when the driver of a carriage using the tramway, and following the janker-cart, signalled by means of whistling to the drivers of the janker-cart to draw aside off the line. At this time the janker-cart was a little below No. 31 Leith Street, the shop of Mr Littlejohn, confectioner. The driver,