determination as erroneous in point of law, appeal thereagainst notwithstanding any provision contained in the Act under which such cause shall have been brought excluding appeals or review in any manner of way of any determination, judgment, or conviction, or complaint under such Act, by himself or his agent applying in writing within three days after such determination to the inferior judge to state and sign a Case setting forth the facts and the grounds of such determination, for the opinion thereon of a superior court of law, as hereinafter provided; and on any such application being made the following provisions shall have effect—1. The appellant shall not be entitled to have a Case stated and delivered to him unless within the said three days he shall (1) lodge in the hands of the clerk of court a bond with sufficient cautioner for answering and abiding by the judgment of the superior court in the appeal, and paying the costs should any be awarded by that court, or otherwise, in the discretion of the inferior judge, shall consign in the hands of clerk of court such sum as may be fixed by the inferior judge to meet the penalty awarded, if any, and the said costs of the superior court."

John Hutton was convicted of assault at the Leith Police Court on Saturday 19th May 1883. He was sentenced to pay a fine of 7s. 6d. He paid the fine, and on Tuesday 22d applied in writing, through his agent, to have a Case stated for appeal to the High Court of Justiciary. A reply was received by his agent from the Clerk of Court the same day, stating that before any Case could be stated the sum of £8 must be lodged in the Clerk's hands in terms of the Summary Prosecutions Appeals (Scotland) Act 1875, section 3, sub-section 1. On the morning of Wednesday the 23d May the money was sent to the Clerk, who refused to receive it, on the ground that the time for lodging it had expired.

In these circumstances Hutton lodged this application, to which the Magistrate and Clerk of Court were called as respondents, to have the former ordained to state a Case for the consideration of the Court.

Argued for the Complainer — The application for a Case had been lodged in time. Sunday must not be counted as a day in the meaning of the Act, which allowed three working days. The sum required was lodged. The Act was passed to admit of appeals, and should not be rigidly construed against admitting them.

Authorities—Moncreiff on Review, 202; *Jex Blake* v. *Craig*, March 16, 1871, 9 Macph. 715; *Russell* v. *Russell*, November 12, 1874, 2 R. 82; Court of Session Act 1868, sec. 28.

Lord Young—When this case was first presented to us, I understood it was a case in which a convicted person had stated to the Magistrate his desire to have a Case stated for the Appeal Court, and that the Magistrate had refused to grant a Case, at the same time refusing to give a certificate of refusal, as provided by statute. But it has been explained to us now that the case is not one of that kind, but that the Magistrate refused to state a Case on the ground that the statutory conditions had not been complied with, and if that is so the Magistrate was not only entitled to refuse to grant a Case, but even bound to do so. The question here depends upon the consideration, whether when one of the days within which a convicted person is entitled to appeal to this Court is a Sunday, that day is to be counted as a *dies non*. The trial took place upon the Saturday, and the appellant did not comply with the conditions, upon which alone he was entitled to have a Case stated, till the Wednesday following. If Wednesday is to be counted as the third day from Saturday, then he is entitled to have a Case stated. Three days is no doubt a short period, and to deduct one working day may no doubt be a serious matter, but I am afraid the law is quite settled. The short period of three days within which an appeal may be taken is fixed by the Legislature, and Sunday is counted one of them, and looking at the English authorities on the construction of an analogous statute, the point seems quite settled in that country. Of course, if the Sunday is the last day of the three, and it is impossible to lodge the papers at the office because it is shut, then it cannot be counted, and Monday must be taken as the last of the three days appointed.

I am relieved of a feeling of anything like practical hardship in not allowing a Case, because from the note I see that the objection to the decision is insufficient evidence, the party in the case in the Police Court being too drunk at the time the assault was committed on him to remember anything of the occurrence.

The Lord Justice-Clerk and Lord Craighill concurred.

The Court refused the application.

Counsel for Petitioner — Rhind. Agent — Andrew Clark, S.S.C.

Counsel for Respondent—Moncreiff. Agent—J. Campbell Irons, S.S.C.

Wednesday, June 13.

HENDRY *v.* FERGUSON (P.-F. OF BURGH OF STIRLING).

Justiciary Cases—Relevancy—Specification—Alternative.

A complaint charged a person with committing a breach of the peace in a hall occupied by, and during a meeting of, a religious body, by "shouting and screaming at the top of his voice, or otherwise creating a noise and disturbance." *Held* that there was sufficient specification to infer a relevant charge.

Breach of the Peace—Religious Meeting—Police Offence.

A person went to a religious meeting held by the "Salvation Army" in a hall hired by them for their services, and while there wilfully made such a disturbance as to interrupt the service and annoy those engaged in it for nearly an hour. *Held* that this conduct constituted a breach of the peace, and that a conviction for that offence obtained against him in the Police Court was *right*.

Thomas Hendry, a waiter in a hotel in Stirling, was brought before the Police Court of that burgh on a complaint by Thomas Ferguson, Procurator-Fiscal for the burgh, charging him with breach of the peace, "In so far as between the hours of

eleven and twelve of the clock, on the forenoon of Sunday the 1st day of April 1883 years, or about that time, the said Thomas Hendry did, within or near the Union Hall, situated in or near Thistle Street of Stirling, occupied or possessed by William Booth, General of the Salvation Army, and now or lately residing in or near Queen Victoria Street, in the city of London, during a meeting of the Stirling branch of the Salvation Army aforesaid then being held in said hall, conduct himself in a riotous, outrageous, and disorderly manner, by then and there shouting and screaming at the top of his voice, or otherwise creating a noise and disturbance, whereby said meeting was interrupted and disturbed, and a breach of the peace committed."

On the 9th of April Hendry compeared before the Magistrate, and his agent took exception to the relevancy of the indictment, "in respect that it contained no allegation either statutory or at common law against the said Thomas Hendry on which a conviction can follow." The objection was repelled. Evidence was thereafter led, and it was proved to the satisfaction of the Magistrate that on the occasion libelled the Salvation Army were holding a religious service chiefly conducted by a Miss Roberts, a captain in the Army. The service consisted of the singing of hymns, prayer, reading of the Bible, and an address. The accused was present from the beginning of the meeting, and during the singing of a hymn he sang at the close of each verse a mocking refrain so loudly as to be heard throughout the hall in which the meeting was held. During other parts of the service he created a disturbance by making a noise with his feet and by loudly imitating the crying of a cat. He also shouted abusive epithets to two of the speakers, and the result of his conduct, which he persisted in notwithstanding remonstrance, was at times to bring the meeting to a stop. He refused either to be quiet or leave, and a policeman was sent for. He left while the messenger was absent. The disturbance caused by him lasted nearly an hour, and the Magistrate found that it "had the effect of disturbing, interrupting the meeting, and molesting the persons engaged in it."

The Magistrate convicted the accused of the offence libelled, and fined him £3. He paid the fine, and took a Case for appeal. The questions of law were (1) Whether the complaint sets forth a relevant charge of breach of the peace? (2) Whether the facts proved warrant the conviction?

Argued for the appellant—There was no relevant or sufficiently specific charge. It contained an alternative, "or otherwise creating a noise and disturbance," without any specification of what was done—*Buist* v. *Linton*, 20th November 1865, 5 Irv. 210; *Ritchie* v. *M'Phee*, 25th October 1882, 20 Scot. Law Rep. 26. (2) There was no offence here either statutory or at common law. This was a public meeting to which all were invited, and the complainer here had done nothing but what was within his right, viz., expressed his dissent with the views which were being advocated at the meeting.

Argued for the respondent—The appellant here went to a religious meeting and disturbed it in the manner proved before the Magistrate. There was quite enough set forth in the libel to make it relevant. The words "or otherwise" did not really present an alternative conclusion; they were only inserted to allow sufficient evidence of all the different acts of annoyance the appellant had been guilty of to be produced. This was also an offence at common law. No person was entitled to make a disturbance in a public meeting, and this was a religious meeting as well—*Sleigh & Russell* v. *Moxey*, 12th June 1850, Sh. 369; *M'Dougal* v. *Dykes*, 18th Nov. 1861, 4 Irv. 101, and 34 S.J. 26.

At advising—

Lord Justice-Clerk—It is clear that the act charged here against the appellant is a highly indecorous and improper one; the root of the offence is that it is an interference with the liberty of the subject. In this case the disturbance took place while the members of this body were collected within their own walls, in a meeting called, whether wisely or not, for what they considered sacred and solemn services.

But while all may be agreed that it was a highly improper and indecorous act, the question is whether it is also a police offence, and I am of opinion that it is. The persons conducting this meeting are entitled within their own hall to have it conducted in as orderly and decorous a manner as in a private house, and must be protected in doing so.

With regard to the objection against the complaint, as to its want of specification, I do not think we can support it. Such police court complaints are not to be judged of with too great strictness. This complaint is no doubt drawn with an alternative raising doubt and ambiguity where none is necessary, but I do not think that there is a fatal ambiguity in it.

Lord Young—I am of the same opinion. Whatever may be thought of the proceedings of the Salvation Army, they were quite lawful. They were committing no disturbance, and were conducting their own proceedings lawfully in their own building, and for a tipsy waiter to give his opinion upon the proceedings in the manner in which the appellant did was to subject him rightly to the punishment he received. Although I was at first doubtful about the want of specification, I have considered the question, and feel I must decide the case on its substantial merits.

Lord Craighill—That which is set forth here is enough if true to sustain the conviction, and I am not willing to disturb the decision of the Magistrate, as that was really the only question which he was called upon to consider.

The Court refused the appeal.

Counsel for Appellant—Shaw. Agent—James M'Caul, S.S.C.
Counsel for Respondent—Low. Agent—Party.

Wednesday, June 13.

HILL V. FINLAYSON AND OTHERS.

Justiciary Cases — Procurator-Fiscal — Appointment — Conviction.

During a dispute between the magistrates of a police burgh as to the person to be appointed procurator-fiscal of the burgh court,