Helen Rutherford Whyte was charged before the Magistrates of Police of the burgh of Queensferry upon a complaint at the instance of George Robertson, Procurator-Fiscal of Court, which set forth that "in so far as on the 16th day of April 1891 years, or about that time, she did, in an unoccupied dwelling-house situated at East Terrace, burgh of Queensferry, said house being her property, wholly in her possession and under her control, wilfully or negligently permit a water-tap or cock attached to or forming part of the water-pipe in said house to remain open, whereby the water supplied by the Commissioners of Police of said burgh for domestic and ordinary purposes, or under their control, was wasted." After a trial the Magistrates convicted her of the contravention charged, in so far as "said Helen Rutherfurd or Whyte did negligently permit waste of the water supplied, and therefore adjudged her to forfeit and pay the sum of 5s. of modified penalty, and in default of immediate payment thereof, granted warrant for recovery of the same by poinding and sale, and failing recovery within eight days, under certification of imprisonment for a period of twenty-four hours, and *quoad ultra* found the contravention charged not proven."

Mrs Whyte brought a suspension, in which she averred, *inter alia*, that before the trial her agent objected to the relevancy of the complaint, in respect (1) that the section of the Police Act alleged to have been contravened was not specified, and (2) that the complaint did not contain a relevant charge under said Act.

She pleaded, *inter alia*—"The conviction in question ought to be suspended, in respect that the complaint was not sufficiently specific to be relevant under the statute libelled or at common law."

It was denied at the bar that the objection stated to the relevancy of the complaint in the suspension had been stated before the Magistrates.

Complainer's authorities—*Hastings* v. *Chalmers*, October 29, 1889, 2 White, 325.

Respondent's authorities—*Hamilton* v. *Inglis*, 6 R. (J.C.) 45; *Bolton* v. *Murdoch*, 17 R. (J.C.) 22.

At advising—

Lord Young—It is certainly a general though by no means a universal rule that an objection to a complaint which might have been stated before trial should not be allowed afterwards. There are many cases exemplifying that rule which have principle and considerations of justice to support them. Here we have to consider the objection that there is in the complaint only a general reference to a statute containing between four and five hundred clauses, which statute itself contains a reference to a statute consisting of a large number of clauses, and it is in this latter statute that counsel for the complainer says he has, after examination, found a clause which he supposes the prosecutor had in view. When we were referred to this clause we found that there was provision against violent and fraudulent interference with the company's works, and also against wilful and unwarrantable waste of water. Now, there is nothing in this complaint to lead the party accused to that particular clause, or to any particular part of that clause which contains a large variety of things. The particular part of the clause which she was intended to be accused under is that which imposes a penalty for the wilful or negligent waste of water. That ought to have been set out; I do not mean by quoting, but it ought to have been set out that she had violated that part of the section. There is thus nothing to show that the Magistrate proceeded upon a correct view of the law. He may have proceeded on an erroneous view. On what view he proceeded would have been brought out distinctly if the rule prescribed in *Hastings*' case had been followed. Upon these grounds I am of opinion that this conviction cannot stand.

Lord Rutherfurd Clark—I cannot distinguish this case from the case of *Hastings*, in which I took part. I think the complaint irrelevant in not specifying the section of the statute.

Lord Trayner—I concur in all that your Lordship has said. I should like to add, that I think the rule of *Hastings*' case not only a sound but a valuable rule. It ought to be in the knowledge of prosecutors in inferior courts that they must invariably libel the section of the statute.

The Court suspended the conviction.

Counsel for the Complainer—Salvesen. Agents—Hutton & Jack, Solicitors.

Counsel for the Respondent—Watt. Agent—William Officer, S.S.C.

COURT OF SESSION.

Friday, July 17.

SECOND DIVISION.

BAILLIE *v.* CAMERON.

Process—Extract of Decree on Merits, Reserving Right to Extract Decree for Expenses.

A pursuer and respondent who had obtained a decree in terms of the conclusions of his summons together with expenses, presented a note to the Court for leave to extract *ad interim* the decree in so far as it dealt with the merits of the cause, but under reservation of his right to extract the decree for expenses when the Auditor's report should have been approved of. The reasons he stated for craving leave were—(1) that the Auditor's report could not be presented to the Court by the end of the session, and (2) that before the beginning of the Winter Session

the defender and reclaimer, who was a farmer, would have reaped and disposed of his crops, and would have thereby deprived the pursuer of the means of making the diligence on his decree effectual.

It was objected that by the Court of Session Act (13 and 14 Vict. c. 36), sec. 28, parties could without leave extract decrees *ad interim* in all those cases in which the Court had been in use to grant leave, and that therefore this motion was either incompetent or unnecessary.

The Court, in respect of the reasons adduced, *granted* leave.

Counsel for the Pursuer and Respondent —Baillie. Agents—Horne & Lyell, W.S.

Counsel for the Defender and Reclaimer —W. Campbell. Agents—Murray, Beith, & Murray, W.S.

Friday, July 17.

FIRST DIVISION.

SCOTT *v.* THORBURN AND ANOTHER.

Succession — Residue — Vesting a morte testatoris.

A testator after making certain provisions for his wife, and leaving £3000 to each of his daughters, payable after their mother's death, declared that "in consideration of the foregoing arrangements my son is to succeed to whatever may remain of my estate and effects after these payments are made." Failing the son certain other persons were named as residuary legatees. The son predeceased his mother without issue.

Held that the words "after these payments are made" were not referable to a point of time, and that the residue vested in the son *a morte testatoris*.

David Scott, farmer, Meadowfield, Duddingston, died on 26th August 1882, leaving a holograph trust-disposition and settlement dated 24th June 1870, whereby he disponed to the trustees therein named "all the heritable and moveable property which may belong to me at my death, as well as the new lease of Lochend and the leases of the other farms; also, so far as not impossible, in trust for the following purposes: After my death the farms to be carried on for the benefit of the family till the Martinmas and separation of the crop of the year that my son David is twenty-three. He is then to get Northfield, Meadowfield, and Heriot, and the use of all the stock and stocking on these farms till his mother's death, upon payment of Three hundred pounds a-year as interest upon the stock and stocking. He will then (at his mother's death) get Lochend also, upon payment of fifty pounds a-year to each of his sisters so long as they remain unmarried during the currency of the lease. I leave to my two daughters and their heirs Three thousand pounds each, payable six months after the death of their mother. And in consideration of the foregoing arrangements, my son David is to succeed to whatever may remain of my estate and effects after these payments are made, whom failing to his wife in liferent, and her children in fee, whom failing to my two daughters in equal value between them, as to my trustees may appear the best division. I appoint and nominate my son David Francis Scott, as above, to be my executor. My wife to live either at Meadowfield or at Lochend as she may wish, and she is to have the liferent use of whatever furniture she may require; and if the profits of the farms and the interest on my other means will afford it, I desire that she may be allowed Five hundred pounds a-year; if not, as near that sum as my trustees may think prudent." By subsequent codicil the sum left to each of the daughters was reduced to £2000.

The net value of the testator's personal estate was £4044, 18s. 4d., and at the time of his death he was tenant of the following farms—Meadowfield, Northfield, Lochend, and Heriot. The testator was survived by his wife, his son David Francis Scott, and two daughters. The son died on 6th August 1888 unmarried and intestate, and aged about thirty-six.

After his death a question arose as to whether the residue of the trust estate had vested in him, and the present case was presented in order to obtain the opinion of the Court on the following question—"Did the residue of the trust estate vest in the testator's son, and did the second party become entitled to one-third thereof in respect of his death without issue and intestate?"

The parties to the case were (1) the trustees under David Scott's settlement, (2) the widow, and (3) the two daughters of David Scott.

The party of the second part argued that the right to the residue vested in her son *a morte testatoris*, and that she therefore became entitled to one-third thereof so far as moveable in respect of his death without issue and intestate. The parties of the third part argued that the right to the residue did not vest in their brother, and that they were entitled under the destination in the will to take the whole residue as conditional institutes.

At advising—

LORD PRESIDENT—We have clear evidence on the face of this will that the testator though not a lawyer was an intelligent man of business, and he has expressed himself with considerable felicity in regard to the way in which he desired his estate to be disposed of. He was engaged in farming to a large extent, having four farms in his hands.

Now, his will was made in 1870, and at that time his only son David had not then attained the age of twenty-three, which he did not do until 1875. The testator died in