tained. I am therefore in favour of recalling the interlocutor of the Sheriff-Substitute and giving to the pursuer an opportunity of proving her case.

LORD YOUNG concurred.

LORD TRAYNER—I understand it to be the view of the Sheriff-Substitute that if the pursuer's injuries, of which she complains, were the consequence of intemperate or improper conduct on the part of the crowd assembled on the defenders' platform, the defenders could not be held liable therefor. I concur in that view, and had nothing further than this been averred by the pursuer I should have agreed with the Sheriff-Substitute in holding the averment irrelevant. But I think the pursuer avers more than that. She says that her injury was immediately caused by the pressure of the crowd, but she says also that the defenders were in fault in allowing such a crowd to be there, and in not providing a sufficient staff of servants "to cope with the crowd," which I suppose to mean a sufficient staff of servants to afford adequate protection to persons like the pursuer (entitled to be on the platform) against the probable consequences from the presence of a crowd which the defenders knew or had reason to anticipate would be present on the occasion libelled. I think, under the pursuer's averments, she may be able to establish fault against the defenders involving liability, and I cannot say (especially looking to the state of the authorities on the subject) that the case as presented is one which cannot be made the subject of inquiry. I am therefore for recalling the interlocutor appealed against and allowing the pursuer's issue.

LORD MONCREIFF—I am of the same opinion. I will only say I think the pursuer has stated a case for inquiry.

The Court sustained the appeal and ordered issues.

Counsel for the Pursuer and Appellant—Gunn. Agents—Mackay & Young, W.S.

Counsel for the Defenders and Respondents—Dundas, K.C.—M'Clure. Agents—Hope, Todd, & Kirk, W.S.

Thursday, November 6.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

EARL OF CAMPERDOWN AND OTHERS *v.* PRESBYTERY OF AUCHTERARDER.

Process—Jurisdiction—Finality Clause—Reduction—Ecclesiastical Buildings and Glebes (Scotland) Act 1868 (31 *and* 32 *Vict. cap.* 96).

The Ecclesiastical Buildings and Glebes (Scotland) Act 1868 provides that the decision of the presbytery in matters falling under the Act shall be appealable to the Sheriff, and the judgment of the Sheriff appealable to the Lord Ordinary on Teinds. It also provides "that all orders, findings, interlocutors, judgments, or decrees pronounced by the Lord Ordinary shall be final and not subject to review." In a case where the Lord Ordinary on Teinds had affirmed a judgment of the Sheriff, by which he dismissed the appeal from the Presbytery as incompetent on the ground that the intimation thereof required by the statute had not been given timeously, *held* that the Court of Session had no jurisdiction to entertain an action of reduction of the interlocutors of the Lord Ordinary and the Sheriff.

The Ecclesiastical Buildings and Glebes (Scotland) Act 1868 enacts, *inter alia*:—

Section 3—"From and after the passing of this Act, if, in the course of any proceeding before any Presbytery of the Church of Scotland relating to the building, rebuilding, repairing, adding to, or other alteration of churches or manses . . . any heritor or the minister of the parish shall be dissatisfied with any order, finding, judgment, interlocutor, or decree pronounced by such presbytery, it shall be competent for such heritor or minister . . . to stay such proceedings by appealing the whole cause as hereinafter provided."

Section 4—"An appeal under this Act shall be taken by the appellant or his agent presenting a summary petition to the sheriff of the county in which the parish concerned is situated, praying him to stay the proceedings before the presbytery, and to dispose of the same himself."

Section 5—"All appeals under this Act shall within ten days of their presentation be intimated by circular transmitted by the appellant or his agent through the Post Office, addressed to each heritor or his known factor or agent . . . and to the clerk of the presbytery of the bounds."

Section 14—"All orders, findings, judgments, interlocutors, or decrees pronounced by any sheriff under the authority of this Act shall be final and conclusive, and not subject to review by any court whatsoever, unless an appeal shall be taken to the Lord Ordinary against the same in manner hereinafter mentioned."

Section 16 provides for an appeal to the Lord Ordinary on Teind Causes.

Section 20 . . . "Provided also that all orders, findings, interlocutors, judgments, or decrees pronounced by the Lord Ordinary shall be final and not subject to review."

In 1900 the Presbytery of Auchterarder pronounced an interlocutor by which they decerned and ordained that a new church should be built for the parish of Auchterarder, and ordained the heritors to submit to the next diet a note of a suitable site.

Against this interlocutor the Earl of Camperdown and others, heritors of the parish of Auchterarder, appealed to the Sheriff of the County of Perth.

On 12th April 1901 the Sheriff-Substitute (SYM) pronounced the following interlocutor:—"The Sheriff-Substitute having heard parties upon the objection taken for the Presbytery to the competency of the appeal for the heritors of Auchterarder: Finds that, upon a sound construction of the Ecclesiastical Buildings Act 1868, it is necessary that the appeal be taken and intimated to the Clerk of the Presbytery within twenty days from the finding and decree of the Presbytery appealed against: Finds that this finding and decree is dated 19th December 1900: Finds that the intimation of the appeal to the Clerk of Presbytery was not duly made, in respect it was not made till 11th January 1901: Therefore sustains the objection for the Presbytery to the competency of said appeal and dismisses the same."

Against this interlocutor the heritors appealed to the Lord Ordinary on Teind Causes (LOW).

On 11th July 1901 Lord Low pronounced an interlocutor by which he dismissed the appeal.

The heritors reclaimed, but the reclaiming-note was sisted,

Thereafter the Earl of Camperdown and others as heritors foresaid brought the present action against the Presbytery of Auchterarder, concluding for the reduction of the said interlocutors of the Sheriff-Substitute dated 12th April 1901, and of Lord Low dated 11th July 1901.

In the condescendence they narrated the history of the previous action, as stated above, and pleaded—"(1) The interlocutors sought to be reduced having been pronounced incompetently and in excess of the jurisdiction conferred on the Sheriff and the Lord Ordinary, decree of reduction should be pronounced as craved. (2) The appeal against the Presbytery's order having been competently taken to the Sheriff, and he and the Lord Ordinary having incompetently refused to entertain the same, the pursuers are entitled to decree of reduction as concluded for, with expenses."

The defenders pleaded, *inter alia*—"(1) The action is incompetent. (2) The pursuers' statements are irrelevant and insufficient to support the conclusions of the action. (3) In respect of the provisions of section 20 of the Ecclesiastical Buildings (Scotland) Act the present action is excluded and the defenders ought to be assoilzied. (4) *Res judicata.* (5) The appeal against the Presbytery's order not having been competently taken, in respect that the pursuers failed to give intimation of the appeal to the Clerk of the Presbytery within twenty days of the date of the finding appealed against, as required by the Ecclesiastical Buildings Act, and the interlocutors sought to be reduced having thus been competently and properly pronounced, the action ought to be dismissed, with expenses."

On 8th February 1902 the Lord Ordinary (KYLLACHY) pronounced an interlocutor whereby he sustained the first plea-in-law for the defenders and dismissed the action.

Opinion.—"This question arises under the Ecclesiastical Buildings (Scotland) Act of 1868—an Act which now regulates the review of determinations of presbyteries in matters connected with glebes and churchyards, churches, and manses. Prior to that Act those determinations were directly reviewable by the Court of Session, the intervention of that Court being usually invoked by action of suspension or reduction, and the litigation thus initiated being of course capable of being carried, first from the Outer House to the Inner House, and thence, it might be, to the House of Lords. To obviate the delay and expense thus caused the Act in question was passed, and it in effect provided—(1) that subject to certain conditions (particularly as to time and notice) the determination of presbyteries might be appealed by petition to the Sheriff of the county; (2) that all orders, findings, and judgments of the Sheriff should be final unless an appeal were taken in manner mentioned to the Lord Ordinary in Teind Causes; and (3) that all orders, findings, and judgments pronounced by the Lord Ordinary should be final and not subject to review.

"The present question relates to the obligation of the heritors of Auchterarder to provide a new church for the parish. The Presbytery having after a good deal of procedure made an order to that effect, the heritors appealed to the Sheriff. The Sheriff held that the appeal had not been intimated within the prescribed time, and that therefore in terms of the statute the deliverance of the Presbytery was final. He accordingly dismissed the appeal. The heritors thereupon appealed to the Lord Ordinary, but the Lord Ordinary, agreeing with the Sheriff, dismissed their appeal. The heritors then reclaimed to the Inner House, but their reclaiming-note has, I am told, been sisted. What they have now done is to bring the present action, in which they conclude for reduction (1) of the Sheriff's, and (2) of the Lord Ordinary's judgments. The ground of reduction is, as set forth in their pleas, that both judgments were incompetent as involving (1) an excess of jurisdiction, and (2) a refusal to exercise jurisdiction. And the incompetency is said to rest upon this, that both the Sheriff and the Lord Ordinary misconstrued the statute, and misconstrued it with respect to the conditions of appeal from the Presbytery.

"In support of the competency of this action I heard the other day a long and ingenious argument, which I took time to consider because of the importance of the question to the parties. The result, however, is that I am satisfied that the action must be dismissed.

"I do not, I confess, see how any question of excess of jurisdiction can be thought to arise. The pursuers' case was as presented really this—that there had been on the part of the Sheriff not an excess but a refusal or rather a failure to exercise jurisdiction, to which failure the Lord Ordinary had in some way become a party, in respect that, having to review the Sheriff's judgment, he did so with the result of confirming it.

"Now, I do not know that I require to decide whether, supposing the Sheriff to have been wrong in his construction of the statute, his judgment proceeding from that error involved a failure to exercise his jurisdiction—that is to say, a failure to do his duty. As at present advised I should be disposed to hold that the Sheriff (being under the statute bound to decide, *inter alia*, whether the appeal conformed to the statutory condition) did in deciding that question duly exercise his jurisdiction; in other words, that if his decision had by the statute been final there would have been an end to the matter. But it is not, I think, necessary either to affirm or deny that proposition. For an appeal, as it happens, is provided, and was in fact taken—an appeal covering beyond doubt the question of competency, and submitting it to a Superior Judge, by whom it was duly considered. I have, I confess, in these circumstances difficulty in appreciating the pursuers' complaint. They cannot, it is true, carry the case from the Lord Ordinary on Teinds to the Inner House, and thence to the House of Lords. But that is, I apprehend, just the thing which the statute was passed to prevent. The Lord Ordinary on Teinds is by the statute expressly declared to be final, and why that finality should be less absolute than if the appeal had been to two or more Lords Ordinary or to one of the Divisions of the Inner House or to a Bench of one or more Judges to be named by the Lord President I do not understand. It was anxiously argued that *quoad hoc* the Lord Ordinary on Teinds is just in the same position as if he had been, not a Judge of the Court of Session, but an outside Judge appointed for this particular purpose. I am far from saying that, even if that were true, it would make any difference, but I can find nothing in the statute to give countenance to such a view. The Lord Ordinary on Teinds is in fact a member of the Supreme Court, and by the statute the appeal lies to him in that character. It is thus in substance an appeal to a department of the Supreme Court, and it is, I think, a novel and startling proposition that, when by some statute dealing with some special subject-matter cognisable in the first instance by an Inferior Court, an appeal is provided to a department of the Supreme Court whose judgments it is declared shall be final and not subject to review, those judgments (although duly confined to the subject-matter of the statute) may yet be impugned, not perhaps by appeal but by reduction, if only they are alleged to involve some question of the construction of the statute, or some question of irregularity of procedure either in the Court itself or in the Court below. It is true that there are cases in which the Court of Session may reduce upon certain grounds judgments of Inferior Judges—judgments which are by statute or otherwise not open to review. But it has never so far as I know been suggested that that power extends to judgments not of Inferior Judges but of Judges of the Court itself—Judges who are vested by statute or otherwise with a privative and co-ordinate jurisdiction. The only case on the subject is *Stirling*, 11 Macph. 480, which is adverse to the pursuers.

"I propose therefore to sustain the first plea for the defenders and to dismiss the action, with expenses."

The pursuers reclaimed, and argued—It was well settled that a clause of finality did not protect a judgment from review on the ground that in pronouncing it the Judge had exceeded his jurisdiction—*Brown* v. *Heritors of Kilbery*, November 15, 1825, 4 S. 174, *aff.* 3 W. & S. 441. A statutory finality could only apply to the acts of the Judge in the exercise of his jurisdiction under the statute, not when he exceeded that jurisdiction. But jurisdiction might be exceeded in two ways—either by an interlocutor which went beyond the powers conferred by the particular statute or by an interlocutor refusing to exercise the jurisdiction which the statute conferred. In the latter case no less than in the former the judgment was open to review by an action of reduction, in spite of a finality clause—*Dick* v. *Great North of Scotland Railway Company*, October 3, 1860, 3 Irvine 616; *Penny* v. *Scott*, October 23, 1894, 22 R. 5, 32 S.L.R. 9. In *Magistrates of Arbroath* v. *Presbytery of Arbroath*, March 13, 1883, 10 R. 767, 20 S.L.R. 499—a case dealing with the same Act as the present—it was clear from the opinion of the Lord President (Inglis) that he contemplated that in circumstances like the present a reduction of the Lord Ordinary's judgment would be competent.

Counsel for the respondents were not called upon.

LORD PRESIDENT—Mr Chree has urged everything which could be said on behalf of the reclaimers, but he has not satisfied me that the view taken by the Lord Ordinary is erroneous.

The action relates to certain proceedings taken under the Ecclesiastical Buildings (Scotland) Act 1868, which was directed to provide a better mode of dealing with questions relating to ecclesiastical buildings and glebes in Scotland than the somewhat cumbrous procedure which formerly existed. The erection and repair of ecclesiastical buildings and the provision of glebes may no doubt involve questions of law, but

to a large extent they are matters rather of an administrative character. The effect of the Act was to provide a tribunal for dealing with such matters, partly judicial and partly administrative, and it took for convenience the services of certain existing public functionaries, the Sheriff and a Judge of this Court. It set up *vi statuti* a code of procedure, and, in my judgment, an exhaustive code of procedure, relative to ecclesiastical buildings and glebes. If that be a correct representation of the object of the Act one would not expect that there would be any access to this Court in regard to questions arising under it, unless the persons appointed to perform the duties mentioned in the Act either went beyond their powers or declined to exercise them.

The case began in the usual way in the Presbytery, and the Presbytery having made their order or finding the heritors appealed to the Sheriff, and the Sheriff, on the ground apparently that the appeal had not been intimated in proper time, held that the deliverance of the Presbytery was final, and dismissed the appeal. Then the heritors appealed to the Lord Ordinary on Teinds as the statutory Court of review, and the Lord Ordinary taking the same view as the Sheriff dismissed the appeal. The heritors then reclaimed to the Inner House, and their reclaiming-note is said to be sisted, and it would not be proper now to express any opinion in regard to it.

But in that condition of things the heritors raised an action of reduction directed to set aside the interlocutors or decrees of the Sheriff and the Lord Ordinary. Now there is no statutory provision for review beyond the Lord Ordinary, and accordingly it would be surprising if review in any other form was permitted. We know that sometimes reduction is a mode of review, but it appears to me that before we could set aside the decisions of the Sheriff and the Lord Ordinary it would require to be shown not only that these Judges had erred on the merits but that they had done something not warranted by their powers; in other words, something that was *ultra vires*, or, as I observe it is otherwise put, that they had refused to exercise their jurisdiction. Now, whether they exercised it rightly or wrongly, they clearly did exercise their jurisdiction, for the Sheriff first and then the Lord Ordinary pronounced judgment. It therefore seems to be that there was neither an excess of jurisdiction nor a refusal to exercise it. I am unable, following the proceedings as carefully as I can, to see that the Sheriff and the Lord Ordinary went outside their powers and did something that they were not entitled to do or refused to exercise a jurisdiction which they possessed. The complaint of the pursuers appears to resolve into this—that the Sheriff and the Lord Ordinary put a wrong construction on the statute. I do not see any evidence that they did so; but assuming that they had done so—the Lord Ordinary being made the final judge of the construction of the statute in performing his duties under it—this would not, in my judgment, warrant our entertaining the present action. For these reasons I consider that the interlocutor should be adhered to.

LORD ADAM—This question arises under the provisions of the Ecclesiastical Buildings and Glebes Act 1868. The question at issue between the parties is whether there should be a new church at Auchterarder or whether repair of the existing church would be more suitable. That has been decided, in the first instance, by the Presbytery. That has always been the province of the Presbytery in Scotland, though, as your Lordship has pointed out, new and simpler procedure has been established by the Act of 1868, and one of the provisions of that Act is that there shall be an appeal from the Presbytery to the Sheriff. Now in this case the Presbytery decided that it was not a case for repair but for a new church. That decision was appealed to the Sheriff, and it was appealed under the Ecclesiastical Buildings Act and under no other Act. Now the Sheriff, being then seised with the case under the Act, proceeds to consider it in the exercise of his jurisdiction under the Act. In the pleadings he finds a plea of incompetency because the appeal has not been duly intimated. The first question for him, then, was whether that plea was well or ill founded, and in disposing of it he was acting always under the authority of the Act. Now, it was not disputed by Mr Chree that if the decision of the Sheriff had been the other way, and he had held that this appeal was competent, that in that case he would have been acting in the exercise of his jurisdiction under the Act. But I think that, whatever his judgment, he was equally acting in the exercise of his jurisdiction under the Act.

Well then, there is an appeal to the Lord Ordinary, and the Lord Ordinary proceeded under the authority conferred upon him by the Act to deal with the appeal, and in the exercise of his jurisdiction under the Act he finds that the judgment of the Sheriff ought to be affirmed. If there had been nothing else said except that there should be a right of appeal from the Sheriff to the Lord Ordinary the judgment of the latter might have been open to review by a reclaiming-note. But the Act declares that the judgment of the Lord Ordinary shall be final. Now here everything has been done under the Act, and I cannot see any defect in the exercise of jurisdiction from first to last. The Sheriff exercised his jurisdiction under the Act, so precisely did the Lord Ordinary. They applied their minds to the question submitted to them under the Act, and their procedure was regular and formal, I cannot see how we can open up or review their judgment. I am surprised at the novelty of the proposition that this Court should exercise appellate functions in a case like this, which is just the normal case where another Court is declared to be final.

LORD M'LAREN—This is a process of reduction originating, as explained by your Lordship, in an application by the Presbytery for the rebuilding or repairing of the church at Auchterarder, and in such cases an appeal is given by the Ecclesiastical Buildings Act to the Sheriff, with a further appeal from the Sheriff to the Lord Ordinary on Teinds. But it is prescribed with reference to the original appeal—the appeal to the Sheriff—that it has to be intimated to the Clerk of Presbytery, and that that intimation shall have the effect of staying the Presbytery from taking any further steps in connection with such proceedings. Intimation to the Clerk of the Presbytery is a step of very considerable importance in the appeal, because it is designed to prevent expenditure being incurred under the resolution or interlocutor of the Presbytery which is under review. There are other provisions for the intimation of appeals prescribed by section 5, but these do not come into the present case at all. As we are here under the statute, it is desirable that we should consider the case with the terms of the statute before us.

"From and after the passing of this Act, if in the course of any proceedings before any Presbytery . . . . relating to the building, rebuilding . . . . of churches . . . . any heritor or the minister of the parish shall be dissatisfied with any order . . . . it shall be competent for such heritor or minister within twenty days of the date of such order . . . . to stay such proceedings by appealing . . . ." The clause provides further that "if no such appeal is taken and duly intimated within the period foresaid"—that is, the twenty days—"every such order, finding, interlocutor, or decree"—that is, of the Presbytery—"not appealed against shall be final and not subject to review." Now, the objection was taken before the Sheriff that intimation was not given to the Presbytery within twenty days. The Sheriff might have been wrong in holding as matter of fact that intimation had not been made. We do not know how that may be, but if it were the fact that intimation was not made within twenty days, then the statute says that the order of the Presbytery is to be final. Now, the Sheriff, on appeal—reading this enactment in the only way in which, so far as I am able to see, it can be read—held that the appeal had fallen, because an essential condition of the right of appeal had not been complied with. Now, it is said that because the Sheriff construed the statute in this way, and did not put what I must suppose to be a somewhat forced construction upon it, he has gone out of his jurisdiction. The proposition is not very intelligible. Then we need hardly consider whether or not the Sheriff has gone wrong, for there is an appeal to the Lord Ordinary, and it is not said that any condition of the appeal to the Lord Ordinary has not been complied with. It was a competent appeal to the Lord Ordinary, and as such was debated before Lord Low, and the result of his Lordship's consideration of the case was that he took the same view of the meaning of the statute which the Sheriff had done, and dismissed the appeal. And now it is sought to reduce the judgment of the Lord Ordinary because it is said he also exceeded his jurisdiction. But, as I read the statute, the Lord Ordinary on Teinds is just exercising the powers of the Court of Session under this Act of Parliament. It very seldom happens that the whole thirteen judges of the Court sit together to dispose of business. It is only in exceptional cases of importance and of difficulty that this is necessary, but in all ordinary business a limited number of the Court deal with a case — it may be four as in reclaiming-notes, it may be two as in certain statutory matters, and it may be one in cases where a statutory finality is given to a Lord Ordinary's judgment. In any case, whatever the number be, it is the Court of Session that pronounces the decree, and as there is no provision in the statute for any process of review or recall of the Lord Ordinary's judgments, I fail to see how—even on better grounds than we have here—this Court could entertain an appeal. But I am unable to see any substantial grounds for the appeal, and I concur with your Lordship that the judgment of Lord Kyllachy assoilzieing the defenders should be the judgment of the Court and should be affirmed.

LORD KINNEAR—I agree with your Lordships, and I must say that I think this is a very clear case. The pursuer proposes to reduce an interlocutor by the Sheriff and an interlocutor of Lord Low as Lord Ordinary on Teinds by which he dismissed an appeal from the Sheriff. The first step which is therefore necessary for the pursuer is to get rid of the interlocutor of Lord Low, for until that is set aside we cannot reach the interlocutor of the Sheriff which was thereby affirmed. I am very clearly of opinion that no grounds have been stated which would justify this Court in considering the merits of the interlocutor of the Lord Ordinary or in setting it aside. The ground of complaint against this interlocutor—I confine my observations to the interlocutor of the Lord Ordinary, because, as I have said, until it is set aside we cannot reach the judgment of the Sheriff—is that the Lord Ordinary has exceeded his jurisdiction by refusing to exercise it. For the purpose of considering that argument I have read the interlocutor, and I think it is as clear as it can well be that it shows no excess of jurisdiction and no refusal to exercise jurisdiction. An appeal was brought from the Sheriff under the Ecclesiastical Buildings and Glebes Act 1868, and the Lord Ordinary considered that appeal upon its merits, and shows clearly that he has done so by indicating that he has considerable difficulty in agreeing with the Sheriff, whose judgment he ultimately affirmed. It is as clear as possible that that interlocutor was pronounced in the exercise of his jurisdiction under the Act. To suggest that there is any refusal to exercise jurisdiction in a judgment by an

appellate Court which decides that the judgment of the inferior Court should be affirmed would be, I should have thought, an untenable position even for the ingenuity of the counsel who supported the grounds of reduction.

Now, if the Lord Ordinary here exercised his jurisdiction, the only remaining question is whether the Court has any power to review his judgment. If the judgment was not final it might be reclaimed. We are told that a reclaiming-note was lodged, but that it is sisted because it was thought incompetent. As its competency is not before us I express no opinion upon it. But we are asked to consider this question on the assumption that the reclaiming-note is incompetent. But on that assumption the present action of reduction is obviously just as incompetent, because what it asks us to do is to substitute our reading of the statutory provision for that adopted by the Lord Ordinary. That is just asking us to review the judgment of the Lord Ordinary on its merits. It is true that the merits of the judgment are not the merits of the whole process, because what the Sheriff and Lord Ordinary have decided is that they cannot enter into the merits of the appeal from the Presbytery, because intimation of that appeal was not given in time. But the merits of these judgments is just what we are asked to consider in this reduction. We are asked to substitute our reading of the statutory provisions as to intimations of appeals for that adopted by the Sheriff and the Lord Ordinary. Therefore I agree with your Lordship that what we are asked to do is to review what was done finally by the Lord Ordinary, and that we have no power to do so. I do not consider our position with regard to the judgment of the Sheriff, because, as I have said, we cannot reach it until the judgment of the Lord Ordinary has been got rid of.

I think, in addition, that the case of *Stirling & Sons* v. *Holm and Others*, 1873, 11 Macph. 480, to which the Lord Ordinary refers, is much nearer the present case than any of the authorities cited for the reclaimer. That was a case where the question was whether the decision of a statutory court of two judges, for the purpose of valuation appeals, was open to reduction in the Court of Session. The Lord President there says—"Whether I should have been disposed to take that course or not if I had been sitting as one of the judges under the statute I am not prepared to say, but I am quite clear of one thing—that we have nothing to do with the matter any more than if this were a complaint that the Court of Justiciary had pronounced a wrong judgment, or had gone out of their way and violated their own form of process or their act of adjournal. I think these two judges sitting under this statute are just as much a Supreme court as we are sitting here, that their jurisdiction is absolutely privative, and that no other judge or Court in the realm can interfere with questions arising under the Valuation Act." Applying these observations to the position of the Lord Ordinary under the present statute, his Lordship is just as much a Supreme Court in matters arising under the statute as this Court is in matters which come under our jurisdiction. The question which has been argued as to the power of the Supreme Court to restrain any special statutory tribunal within the limits of its statutory jurisdiction, even although no appeal lies against an erroneous judgment within the jurisdiction, does not appear to me to arise. The Sheriff has a special jurisdiction conferred upon him by the statute. But it is not a privative jurisdiction. An appeal lies to this Court. But the statute prescribes that this appellate jurisdiction shall be exercised by the Lord Ordinary, and that his judgment shall be final. It follows that we cannot review his Lordship's judgment without violating the statute.

The Court adhered.

Counsel for the Pursuers and Reclaimers —Campbell, K.C.—A. J. Young—Chree. Agents—W. & F. Haldane, W.S.

Counsel for the Defenders and Respondents — C. N. Johnston, K.C. — Cullen. Agent—Peter Macnaughton, S.S.C.

Saturday, November 1.

FIRST DIVISION.

[Sheriff Court of Forfarshire.

BARRIE *v.* CALEDONIAN RAILWAY COMPANY.

Expenses—Unsuccessful Party Found Entitled to Expenses—Action of Damages—Railway Company—Conduct of Successful Party Causing Action—Refusal to Allow Servants to be Precognosced.

B consigned cattle to a railway company under a contract whereby, in respect of their being carried at a reduced rate, the company was to be liable only for the wilful misconduct of their servants. The cattle were injured in an accident which was not due to such misconduct. No information of the accident was given to B by the company, but having heard of it he wrote on 19th February and claimed damages in respect of the injuries sustained by the cattle. No answer was given, and on 4th March B wrote again threatening to raise an action. The company replied on 9th April denying liability, in respect of the contract-note. A correspondence followed, in the course of which B asked and was refused permission to precognosce the company's servants. B raised an action of damages on 14th August, Before the record was closed he again asked for and was refused permission to precognosce the company's servants. The proof was fixed for 8th November, and on 21st October the defenders wrote asking for the names