in the present case to consider whether the solemnity will have been observed if the witnesses attest *ex intervallo*. I do not doubt that attestation after some *intervallum* will suffice. There must always be some *intervallum*, although if the witnesses sign immediately after the grantor has signed the *intervallum* will be very short. The question here is whether the solemnity has been observed when during the *intervallum* the death of the grantor supervenes. It is obvious that in such case the solemnity has not been observed during the grantor's lifetime. The deed therefore was not a deed when the grantor died. It is impossible that it can become for the first time her deed after she is dead.

In the course of the argument I asked the respondent's counsel whether he discriminated between probative and operative. He answered that he did not. It is obvious that to support his argument he must discriminate. This House will not hold him bound to that answer. His argument is, and must be, that this deed was operative during the lady's lifetime although it did not become probative until after her death. He cannot say that it was probative until both witnesses had signed; he must say that it was operative before the lady died.

The whole point of the case is to determine whether the attestation of the witnesses is merely evidential or is a necessary solemnity of execution. According to the law of Scotland it is the latter. It follows that this appeal succeeds.

Their Lordships reversed the interlocutor appealed from.

Counsel for the Appellant—Macquisten—Douglas Jamieson. Agents — Sharpe & Young, W.S., Edinburgh—Stevenson, Sons, & Plant, Darlington—Adam Burn & Son, London.

Counsel for the Respondents—Chree, K.C. — Graham Robertson — Tyrrell Paine. Agents—Johnstone, Simpson, & Thomson, Dundee — Elder & Aikman, W.S., Edinburgh — Linklater, Addison, & Brown, London.

COURT OF SESSION.

Tuesday, November 23.

SECOND DIVISION.

[Sheriff Court at Glasgow.

EADIE AND OTHERS *v.* CORPORATION OF GLASGOW.

Burgh — Burgh Accounts — Objections to Accounts—Common-Good—Glasgow Corporation Act 1909 (9 *Edw. VII, cap. cxxxvii*), *sec.* 14.

The Glasgow Corporation Act 1909 enacts, section 14—"Any elector who shall be dissatisfied with any of the accounts or any item therein may, not later than the 20th day of December, complain against the same by petition to the Sheriff specifying the grounds of objection, and the Sheriff shall hear and determine the matter of complaint, and his decision shall be subject to the same right of appeal as in ordinary actions in the Sheriff Court: Provided always that where the petition is dealt with in the first instance by the Sheriff-Substitute there shall be an appeal to the Sheriff."

Certain electors of the City of Glasgow presented a petition in the Sheriff Court at Glasgow under the above-recited section concluding for declarator that they were entitled to inspect and examine just and accurate accounts of the common-good of the city, showing the purposes to which the revenue thereof had been applied, for declarator that the defenders had not made up accounts of the common-good as required by the Act, and that an abstract of accounts produced by them did not constitute "the accounts" within the meaning of the Act, and for decree ordaining the defenders to produce such a detailed account of certain items in their abstract of accounts as would enable the pursuers to ascertain the purposes to which the revenue had been applied, and whether such application was legal or illegal, and if dissatisfied therewith to complain against the same as provided by section 14 of the Act. *Held* (*diss.* Lord Salvesen) that the action as laid was incompetent and irrelevant and should be dismissed.

Expenses—Public Authorities Protection Act 1893 (56 *and* 57 *Vict. cap*, 61), *sec.* 1 (*b*).

The Public Authorities Protection Act 1893, section 1 (*b*), enacts—"Where after the commencement of this Act any action, prosecution, or other proceeding is commenced in the United Kingdom against any person for any act done in pursuance or execution, or intended execution, of any Act of Parliament . . . or in respect of any alleged neglect or default in the execution of any such Act . . . the following provisions shall have effect—(*b*) Wherever in any such action a judgment is obtained by the defendant, it shall carry costs to be taxed as between agent and client."

A petition in the Sheriff Court by certain electors challenging the mode of publishing the accounts of the common-good of the City of Glasgow was, after appeal from the Sheriff to the Court of Session, dismissed as incompetent and irrelevant. *Held* that the Corporation were entitled to expenses taxed as between agent and client.

The Glasgow Corporation Act 1909 (9 Edw. VII, cap. cxxxvii) enacts, section 5—"The Corporation shall yearly cause to be made out just and accurate accounts of all revenue and expenditure . . . of (*a*) the common-good and revenue of the city." Section 13—"The Corporation shall forthwith, after the accounts have been deposited with the town-clerk, (*a*) cause the accounts or abstracts thereof, together with the auditor's

confirmation thereof and special report thereon, if any, to be printed; (*b*) permit any elector to inspect and examine the accounts, together with the auditor's confirmation thereof and special report thereon, if any, at all reasonable times, without payment of any fee; . . . (*c*) . . . on the demand of any elector, and on payment of [a certain fee] deliver to such elector a copy or abstract thereof, and the auditor's confirmation thereof and special report thereon, if any, as printed." Section 14 *is quoted supra in rubric.*

George Eadie, builder, Glasgow, and others, electors in the City of Glasgow, *pursuers*, presented a petition in the Sheriff Court at Glasgow against the Corporation of the City of Glasgow, *defenders*, under section 14 of the Glasgow Corporation Act 1909 (9 Edw. VII, cap. cxxxvii), in which they craved the Court to ordain the defenders to produce a detailed account with relative vouchers of certain items appearing in the abstract statement of the common-good accounts of the Corporation for the year ending 31st May 1913, and in the event of such accounts and vouchers being unsatisfactory, to disallow these items as a charge against the common-good or revenues of the city. John Lauder, the auditor of the Corporation, was on his own motion sisted as a defender.

The pursuers averred — "(Cond. 4) 'The accounts' of the common-good have not been submitted, approved, audited, signed, or lodged with the Town-Clerk in terms of sections 5, 11, 12, and 13 of the 1909 Act, but only an 'abstract' thereof. (Cond. 5) The pursuers have examined the abstract statement of the common-good accounts of the Corporation of the City of Glasgow for the year ending 31st May 1913, and are dissatisfied with the items appearing on page 13 thereof under the heading 'Extraordinary Expenditure'—'Parliamentary Expenses, session 1912'—'Glasgow Boundaries Act 1912—'Town-Clerk's fee fund, £6507, 2s. 7d.'; 'Fees for professional services, £6666, 14s. 10d.'; 'Printing, £2282, 5s. 1d.'; 'Sundry other outlays, £920, 14s. 10d.' The items in question appear among and in addition to the following items for legal and other expenses:—

London solicitors . . .	£2095	16	3
Fees to counsel . . .	5249	9	6
Witnesses' fees and travelling expenses . . .	2087	5	0
Deputation expenses . .	2823	3	0
Office of Public Works for services, plans, &c. . .	1892	11	0

The defenders are called upon to produce 'the accounts' of the common-good in terms of the Act of 1909 and not an abstract. On 13th and 17th December 1913, at 10·30 a.m., the petitioners' agents after written intimation waited on the Town-Clerk to examine the detailed accounts of the common-good with reference to the items now objected to and relative vouchers, but this was refused and dissatisfaction was expressed, and he was informed that this petition would be presented."

The defenders the Corporation of Glasgow pleaded, *inter alia*—"(1) The action is (*a*) incompetent and (*b*) irrelevant."

On 4th February 1914 the Sheriff-Substitute (THOMSON) ordained the defenders to lodge in Court detailed accounts of the items referred to in the crave of the petition. The defenders appealed to the Sheriff (MILLAR), who on 31st March 1914 adhered to the interlocutor of the Sheriff-Substitute. The defenders thereafter lodged certain accounts. The pursuers having objected to the sufficiency of these, the Sheriff-Substitute of new ordained the defenders to obtemper the order contained in his previous interlocutor. The defenders appealed to the Sheriff, who on 26th January 1915 pronounced the following interlocutor:—"Finds in fact that the defenders the Corporation have produced accounts and permitted the pursuers to inspect the Corporation books with regard to the items objected to in the petition; and in law that they have made full exhibition of the accounts, together with the auditor's confirmation thereof, in terms of section 10 of the Glasgow Corporation Act 1909: Therefore recals the interlocutor of 22nd June 1914, and dismisses the petition."

The pursuers appealed to the Court of Session.

At the hearing the pursuers, by leave of the Court, amended their petition by substituting for the original crave the following:—"(1) To find and declare that the pursuers are entitled to inspect and examine just and accurate accounts of the common-good of the City of Glasgow for the year ending 31st May 1913, prepared in conformity with sections 5 and 6 of the Glasgow Corporation Act 1909 (9 Edw. VII, cap. cxxxvii), and showing, *inter alia*, the purposes to which the revenue thereof has been laid out and applied, and exhibiting a complete state showing the amount of all sums paid out of the said common-good with such particularity as will enable the pursuers (*a*) to ascertain precisely the purposes to which said revenue has been applied and whether such application is legal or illegal, and in particular the legality or illegality of the expenditure composing the following items appearing on page 13 of the defenders' printed abstract statement of the common-good accounts for the year ending 31st May 1913, entered under the headings 'Extraordinary Expenditure'; 'Parliamentary Expenses, session 1912'; 'Glasgow Boundaries Act 1912'; 'Town-Clerk's fee fund, £6507, 2s. 7d.'; 'Fees for professional services, £6666, 14s. 10d.'; 'Printing, £2282, 5s. 1d.'; 'Sundry other outlays, £920, 14s. 10d.'; and (*b*) if dissatisfied therewith, or with any item therein, on the ground of illegality to complain against the same as provided by section 14 of the said Act. (2) To find and declare that the defenders have not made up 'the accounts' of the said common-good for the year ending 31st May 1913, in terms of sections 5 and 6 of the said Act. (3) To find and declare that the said 'abstract' statement of the said common-good accounts exhibited to the pursuers does not constitute 'the accounts' within the meaning of section 5 of said Act. (4) To ordain the defenders to produce a detailed account of the said items appearing on page 13 of their said

abstract statement of said common-good accounts referred to in the first conclusion hereof with such particularity as will enable the pursuers (*a*) to ascertain precisely the purposes to which said revenue has been applied, and whether such application is legal or illegal, and in particular the legality or illegality of the expenditure composing the said particular items of expenditure, and (*b*) if dissatisfied therewith, or with any item therein, on the ground of illegality to complain against the same as provided by section 14 of said Act, or to do further or otherwise in the premises as to your Lordship shall seem just."

Argued for the pursuers—Under the Glasgow Corporation Act 1909 (9 Edw. VII, cap. cxxxvii), sec. 14, which was in identical terms with the Town Councils (Scotland) Act 1900 (63 and 64 Vict. cap. 49), sec. 96, and which must be construed in the same manner, any elector had the right to complain to the Sheriff if dissatisfied with the accounts of the Corporation or any item therein. The Sheriff was made the judge as to an elector's right to demand inspection of the accounts. In the present case the accounts produced were not in sufficient detail, and were not in conformity with statutory requirements. They did not amount to more than an abstract. Counsel referred to the following authorities:—*Conn* v. *Magistrates of Renfrew*, 1906, 8 F. 905, 43 S.L.R. 664; *Eadie* v. *Glasgow Corporation*, 1908 S.C. 207, 45 S.L.R. 171; *Stirling County Council* v. *Magistrates of Falkirk*, 1912 S.C. 1281, 49 S.L.R. 968; *Farquhar & Gill* v. *Magistrates of Aberdeen*, 1912 S.C. 1294, 49 S.L.R. 975; *Nicol* v. *Dundee Harbour Trustees*, [1915] A.C. 550, 52 S.L.R. 138.

Argued for the defenders—The petition as now amended was not a proceeding under section 14 of the Glasgow Corporation Act. The pursuers did not aver that they were dissatisfied with any of the items of the accounts published, but claimed merely that the defenders should be ordained to produce accounts. In other words, they maintained that the "abstract" published by the Corporation was not an "account" in the sense of the statute. That, however, was a question that could not be raised in the present process. The pursuers were seeking to misapply the statutory application to the Sheriff and to make it equivalent to the English *mandamus*.

At advising—

LORD JUSTICE-CLERK—This appeal has been taken by the pursuers in an action brought by certain electors or ratepayers of the city of Glasgow against the Corporation of the City of Glasgow, founded on the Glasgow Corporation Act 1909 (9 Edw. VII. cap. cxxxvii).

This case was originated as a summary process in the Sheriff Court at Glasgow, but after certain procedure was transferred to the ordinary Court.

The original prayer was to ordain the defenders to produce a detailed account with relative vouchers of four items specified in the prayer of the petition, and in the event of such account and vouchers being unsatisfactory, for the Court to disallow the said items as a charge against the common-good.

The condescendence was directed to support this prayer, which dealt only with said four items, though there are averments to which I shall afterwards refer, such as that no accounts of the common-good have been lodged, but only an abstract thereof, and criticising the auditor's docquet as disconform to the statute.

The pursuers' pleas, with the exceptions perhaps of part of plea 1, were all directed to support the challenge of said four items.

The Sheriff-Substitute considered that the pursuers were entitled to further information than was contained in the account printed by the defenders, and accordingly by interlocutor of 4th February 1914 he ordained the defenders to lodge detailed accounts of said four items, and on appeal the Sheriff on 31st March 1914 adhered to this interlocutor.

In accordance with these orders the defenders lodged a statement in which certain details were given. Thereafter the pursuer, by minute lodged on 25th May 1914, objected that the details given were still insufficient, and after hearing parties the Sheriff-Substitute on 22nd June 1914 ordained the defenders of new to obtemper the order of 31st March 1914. The defenders appealed.

In the proceedings before the Sheriff under the appeal the defenders on 9th November 1914 offered at the bar to permit the pursuers to inspect the defenders' books showing the accounts referred to in the objections, and the pursuers did so, with the result, as alleged by them in the minute lodged on 6th January 1915, that the details were still unsatisfactory. Parties were then further heard on the appeal by the Sheriff, who on 26th January 1915 pronounced the following interlocutor:—[*His Lordship read the interlocutor*].

Against that interlocutor the pursuers took the present appeal.

At the beginning of the second day's hearing of the appeal before your Lordships the pursuers moved for leave to amend the record by deleting the original prayer of the petition, and substituting a new prayer, in terms of the minute of amendment then tendered, and after hearing parties this amendment was allowed.

In the course of the debate following thereon the pursuers stated that condescendences 7 and 9 and pleas 3 and 4 were no longer insisted on by them, and were abandoned. No motion for a proof was made by either of the parties, the whole discussion being taken on the pleadings, documents, and statute.

The defenders maintain that their first plea-in-law that the petition is (1) incompetent, and (2) irrelevant, should be sustained.

The rights of the pursuers and the duties of the defenders are regulated by the provisions of the Statute of 1909. Under that statute the duties of the defenders, so far as the present controversy is concerned, are (section 4) to keep books of account showing all revenue and expenditure and all out-

standing balances; (section 5) to make out from the said books just and accurate accounts of said revenue and expenditure, and balance-sheets showing the sources of rates, assessments, or moneys received, and to what purposes the same have been applied; (section 6) the accounts are to be made out so as to exhibit, *inter alia*, the amount of all sums paid, distinguishing capital from revenue expenditure; (section 7) an auditor is to be appointed who is to be approved of by the Secretary for Scotland.

The auditor's instructions are set out in Schedule 3. By section 11 of the Act the defenders are required to submit their books, accounts, and vouchers to him for audit.

By section 12 each account as audited, together with the auditor's confirmation, is to be submitted to the committee of the Corporation in charge of the department concerned, and if approved is to be signed by the convener, and then to be laid before a meeting of the Corporation, and if approved to be signed by the Lord Provost or chairman of such meeting and the town-clerk, and to be deposited with the town-clerk. Thereafter (section 13) the accounts or abstracts thereof, with the auditor's confirmation, are to be printed, and the electors are to be entitled to inspect and examine the accounts with the auditor's confirmation; and (section 14) if dissatisfied with any of the accounts or any item therein, to complain before the 20th of December against the same by petition to the Sheriff specifying the grounds of objection, and the Sheriff is to hear and determine the matter of complaint.

I do not think it necessary to consider how far the original prayer was competent, or, if competent, was supported by relevant averments, for that prayer has now disappeared, and we are concerned only with the new prayer.

I make three preliminary observations. In the first place, whereas formerly the objecting ratepayer was expressly entitled to call for vouchers, that is not so now, whatever his rights may be to recover the same by diligence *in modum probationis*. In the second place, the accounts must be audited by an independent auditor acting under very detailed statutory instructions, and must thereafter be approved not only by the departmental committee but also by the Corporation before they come to be considered by the electors. In the third place, I do not think this action could have been maintained at common law either with the original or with the new prayer.

In my opinion this is not an application under the Statute of 1909 at all. The elector who is entitled to complain under that statute is an elector who is dissatisfied. The pursuers do not know whether they are dissatisfied or not, at least as far as regards the first declaratory and the petitory conclusion. Moreover, they desire in these conclusions to have accounts stated with such particularity as will enable them (1) to ascertain precisely the purposes to which the revenue has been applied and whether such application is legal or illegal, and (2) if dissatisfied, to complain against the same in terms of section 14, and to have the defenders ordained to produce such particularised accounts. I do not know how such accounts could be framed. I do not think the statute confers any such power of *mandamus* on the Sheriff, and in my opinion accounts in ordinary form made up from properly kept books for submission to an auditor would never be so particularised as the pursuers require.

The second and third declaratory conclusions seem to me to depend on mere terminology. No. 6/1 of process is no doubt entitled "Abstract Statement of the Revenue and Expenditure of the Common Good," and it contains a report by the committee of finance—a summary of the revenue and expenditure—an account which begins by being called an "Abstract Account of the Revenue and Expenditure of the Common Good," but which through the seventeen following folios to its close is headed "Revenue and Expenditure Account." Then follows a balance-sheet with the auditor's certificate appended, which is signed by him, and two docquets—one signed by the City Treasurer as chairman of the appropriate committee, and the other by the chairman of the statutory meeting of the Corporation and the Town Clerk. It may be that the language of the auditor's certificate is somewhat loose, but I have no doubt that that account, No. 6/1, was intended to be, and was, the statutory account, and not an abstract thereof, and that the certificate was meant to be the statutory certificate, and was treated as such. The pursuers' whole contentions as to his second and third conclusions seem to me to be based on a somewhat careless and inaccurate use by the defenders and the auditor of the word "abstract."

In the result I am of opinion that the Sheriff's interlocutor appealed against was substantially well founded, and that the appeal should be refused.

The action as originally framed was intended, I think, to be a proceeding under section 14, and professed to specify certain objections. I do not require to consider whether in the original form it was competent or relevant. We heard no argument from the respondents and defenders on that matter, because the amendment was made before their argument began.

The pursuers after having examined not only the accounts but also the defenders' books now seek for an order to give them certain further information which will enable them to decide whether they should take proceedings under section 14, and they no longer, in my opinion, sufficiently specify objections in terms of the section. In my opinion we should sustain the defenders' first plea and dismiss the action.

LORD DUNDAS—I am of the same opinion.

This petition was originally brought in the Sheriff Court by certain municipal electors in Glasgow against the Corporation. It was (or bore to be) an application under section 14 of the Glasgow Corporation Act 1909, which provides that "any elector who

shall be dissatisfied with any of the accounts or any item therein, may . . . complain against the same by petition to the Sheriff specifying the grounds of objection, and the Sheriff shall hear and determine the matter of complaint. . . ." But the pleadings have been materially altered from their original condition. At an early stage of the discussion at our bar the pursuers' counsel asked and obtained leave to delete the prayer of the petition and substitute an entirely new one. The original prayer contained craves that certain items should be disallowed as charges against the common-good, and for rectification of the accounts accordingly; these have now disappeared. No motion was made to delete or alter any part of the condescendence or pleas-in-law; but we were definitely informed by the pursuers' counsel that he abandoned (at least) arts. 7 and 9 of the condescendence and pleas 3 and 4. The pleadings as they now stand, with which alone we can deal, seem to me to be in a strange condition. I think that the defenders' first plea-in-law, viz., "the action is (1) incompetent and (2) irrelevant," is well founded, and must be sustained. The plea is not a merely technical one, but strikes at the substance of the application.

The avowed object of the new petition is to obtain declarator that the Corporation's accounts are not kept or made out according to the requirements of the statute, particularly of sections 5 and 6; and that the "Abstract" (No. 6/1 of pro.) does not constitute "the accounts," within the meaning of section 5. This is frankly expressed in heads (2) and (3) of the prayer, and in the condescendence. The affirmative side of these negative propositions is emphasised in head (1) of the prayer, which demands, *inter alia*, that the accounts must exhibit "a complete state, showing the amount of all sums paid out of the said common-good with such particularity as will enable the pursuers (*a*) to ascertain precisely the purposes to which said revenue has been applied, and whether such application is legal or illegal, and in particular the legality or illegality of the expenditure composing" certain specified items; and (*b*) "if dissatisfied therewith, or with any item therein, on the ground of illegality, to complain against the same as provided by section 14 of the Act." Head (4) craves the Court—*i.e.*, the Sheriff—"to ordain the defenders to produce a detailed account of the said items" with "such particularity" as aforesaid.

The scope and object of this petition seem to me to be far wider than, and quite different from, the summary petition contemplated by section 14. Heads (2) and (3) of the prayer amount in terms to nothing short of a general challenge of the defenders' mode of keeping their accounts—an indictment of failure to discharge a public duty laid on them by statute of making out their accounts in manner therein prescribed. Section 14 affords, in my judgment, no warrant for making such a challenge. It might, in circumstances which justified it, be made by some competent mode of procedure, probably by way of petition in the Court of Session under section 91 of the Act 31 and 32 Vict. cap. 100, but not, as I think, by way of a summary application under section 14 of the Glasgow Act of 1909. Heads (2) and (3) of the petition are therefore, in my judgment, wholly incompetent. Heads (1) and (4) may at first sight seem less open to objection, but when investigated they are, I think, incompetent and irrelevant. These heads import a demand that the defenders "produce a detailed account," with "such particularity" as is postulated, of certain items of expenditure. I find no warrant in section 14 or elsewhere in the statute for this mode of procedure. "The accounts" which the defenders are directed to make out are defined by section 5. They are to be just and accurate accounts of revenue and expenditure, "made out from the books," showing to what purposes the expenditure has been laid out and applied, with balance-sheets applicable thereto. Section 6 prescribes that the accounts shall be so "made out" as to exhibit a complete state, showing, *inter alia*, "the amount" of all sums paid, distinguishing capital expenditure from expenditure out of revenue. The pursuers' challenge thus goes back to the books of the Corporation, from which the accounts are to be "made out." I confess I do not understand how the books could on any feasible system be so kept as to exhibit the particularity of detail desired by the pursuers; nor are the defenders enjoined by the statute to attempt any such mode of bookkeeping. Section 14 does not provide for the production of a "detailed account" of any sort. It postulates a complaint by an elector who is dissatisfied with an account or an item, "specifying the grounds of objection." The original pleadings made at least some attempt to comply with these conditions; articles 7 and 9 of the condescendence indicated, if they did not specify, some "grounds of objection," and the prayer asked that the items in question should be disallowed and the accounts rectified accordingly. The new prayer makes no such crave—the pursuers' counsel expressly stated that they do not desire to have the accounts for 1912-13 rectified, even if they were still in time to have this done; and on the abandonment of articles 7 and 9 the condescendence is entirely devoid of any statement of "specified grounds of objection." It seems to me, therefore, that both on competency and relevancy heads (1) and (4) must fail.

If the views I have stated are correct the action must be thrown out, and it is only out of respect to the able arguments at our bar that I add anything more. But it is perhaps right that I should say that, so far as I have yet been able to see, the so-called "abstract" (No. 6/1 of pro.), which in point of fact constitutes the accounts made out by the defenders for that year from their books, does not appear to me to fail in point of form (unless indeed its title does so), in compliance with the statutory requirements of sections 5 and 6. But assuming this to be so, it does not, of course,

preclude any elector dissatisfied with any of the accounts or any item thereof from complaining in proper form against the same by petition to the Sheriff. One must not, however, forget that, apart altogether from section 14, two important checks or safeguards are provided by the statute in regard to the accuracy and propriety of the Corporation accounts. By section 12 they must be approved not only by the committee in charge of the appropriate department, but also by the Corporation itself. And an even more important safeguard is provided by the sections (7 to 11 inclusive) in regard to the appointment and powers of the auditor, who is an independent person, appointed by the Secretary for Scotland, and holds his office subject to the terms, conditions, and instructions set out in the third schedule to the Act. In virtue of these he is specially taken bound to satisfy himself as to the legality of all items of expenditure; and is enjoined, whenever he thinks necessary, in addition to his certificate, to make a special report to the Corporation as to, *inter alia*, any items of expenditure which he may consider illegal; and such special report, if any, is (section 13 (*b*)) open to inspection and examination by any elector along with the accounts and the auditor's confirmation thereof. Section 14 was, no doubt, intended to provide, and I think does provide, the electors with an additional and useful means of inquiry and of safeguard. I should be sorry to say or do anything to curtail or impinge upon a proper exercise of this public right of scrutiny and complaint, but its exercise must be confined within the proper limits prescribed by the Act. Section 14 empowers any elector who has reasonable ground for dissatisfaction with some account, or item of account, to complain to the Sheriff, "specifying the grounds of objection." If such elector satisfied the Sheriff that he ought to be put in possession of detailed information which the Corporation could but declined to afford him, he would doubtless obtain it by way of a recovery of documents by diligence. That is, I think, the proper way to raise and test the elector's right to insist for details of information; and the granting or refusing of his motion would depend upon the circumstances of the case and the state of the pleadings. But I do not consider that an elector has any right to have the Corporation ordained to produce detailed accounts as such; still less to ask, under cover of section 14, for a general and sweeping declarator that the Corporation's methods of keeping their books or their accounts is not in conformity with the provisions of the statute.

We ought, in my judgment, to recal the whole interlocutors pronounced since the closing of the record, except in so far as they deal with the sisting of Mr Lauder as a party to the process; find that the action as laid is incompetent and irrelevant; sustain the first plea-in-law for the Corporation; and of new dismiss the action.

LORD SALVESEN—This case is one of some importance, because the sections of the Glasgow Corporation Act 1909 (9 Edw. VII, cap. cxxxvii) which we are asked to construe are substantially the same as the corresponding sections in the Town Councils Act 1900 (63 and 64 Vict. cap. 49), and our decision in this case will more or less regulate the rights of electors not merely in the city of Glasgow but in all the towns of Scotland to which the latter Act applies. The prayer of the petition has been to some extent altered by the amendments which the pursuers have been allowed to make. They do not now seek to have it found that the accounts of the common-good should be rectified, but they desire in substance to have it ascertained, in the first place, what are the duties of the Corporation in making up their accounts of the income and expenditure of the common-good of Glasgow, and also what are their rights as electors under sections 13 and 14 of the Glasgow Corporation Act of 1909.

The first question which arises is whether the printed document, which is called "An Abstract Statement of the Revenue and Expenditure of the Common-Good," is such an account as the defenders are bound to make up yearly in terms of section 5, subsection (1). It is a bulky enough document, extending to some 46 pages of print, but that is not surprising considering the magnitude of the fund which the defenders administer. In my opinion, agreeing as I do with both Sheriffs on this head, I think it is an abstract merely of the accounts, and is not the statutory account which the defenders are required to keep. In printing it the defenders have complied with section 13, sub-section (*a*), which enjoins them to print "the accounts or abstracts thereof, together with the auditor's confirmation thereof," and no doubt when dealing with such a large fund as the common-good of Glasgow the defenders have exercised a wise discretion in printing only abstracts and not the accounts themselves, but it is plain that the Act contemplated that the accounts which the defenders are required to keep are something different from the abstracts which they may elect to print, and which they must furnish to electors on payment of the fee fixed by the statute. The document in question contains many large items, such as the item under the heading "Glasgow Boundaries Act 1912—Fees for Professional Services, £6666, 14s. 10d.," to which special objection has been taken in the present case, and which I cite merely as an illustration. If, as the defenders said in the Sheriff Court, they have made up no other accounts, then they have not fulfilled their statutory duty. I agree with the Sheriff in the note which he appended to the interlocutor of 31st March 1914, where he says—"One must look to the purpose of the Act, and the obvious purpose is that the electors may know the income and expenditure of the Corporation, so that they may object in any competent process to any expenditure which is illegal. If, then, the items of expenditure are so slumped together as to prevent them having a fair opportunity of inspecting and criticising the accounts, to discover whether any of the

items of expenditure are illegal, then it seems to me the accounts are defective in that respect."

I further agree with both Sheriffs that the abstract of accounts fails—and again I quote from the Sheriff's note—"to give such detail of the items of expenditure as the elector is entitled to have under the statute." They cannot learn from such an item as that which I have already referred to how the revenue of the common-good has been expended. "Fees for Professional Services" does not give any indication as to the nature of the services, or the profession of the persons to whom the fees were paid. It is, in truth, a typical case of an abstract which slumps together under one head a large number of different items of expenditure. It does not satisfy the provision in section 5, sub-section (1), that the accounts shall show "from what sources such receipts, assessments, or moneys have been received, and to what purposes the same have been laid out and applied."

Section 13, sub-section (*b*), permits "any elector to inspect and examine the accounts, together with the auditor's confirmation thereof and special report thereon, if any, at all reasonable times without payment of any fee." The defenders at first sought to palm off the abstract of the accounts on the pursuers, and declined to give them any further information than it contained. Having been found wrong by both Sheriffs in this contention, they then gave the pursuers access to the books of accounts which it is their statutory duty to keep, and the pursuers obtained the details, which show generally to whom the sums making up the £6666 were paid. It is chiefly made up of accounts said to have been paid to eight writers and one firm of chartered accountants in Glasgow. The sums so paid vary between £121 and £1365. The recipients' names and addresses are given, but there is nothing to show what sort of services were rendered by these professional gentlemen, nor how much of their accounts consists of charges for work done and how much in disbursements in cash made on behalf of the Corporation. One would assume that services rendered by legal gentlemen would be such as solicitors generally render to clients, either in the nature of preparing for or conducting legal proceedings, or in preparing deeds, contracts, and the like. This assumption, however, is difficult to reconcile with the fact that the defenders have a town clerk, whose ordinary duty it is to conduct the Corporation legal work, and who is himself a lawyer and has a staff of procurators and clerks assigned to him for the purpose. That eight outside lawyers were employed in these circumstances, to whom the Corporation incurred accounts to an amount of some thousands of pounds, was quite sufficient to make the pursuers desirous of obtaining further details, so that they could have an opportunity of judging whether the items of expenditure were such as might properly be incurred by the defenders as administrators of the common-good.

The books of account actually kept by the defenders do not show any further detail than what is printed. In his note to the interlocutor of 22nd June 1914 the Sheriff-Substitute says—"It was stated, I understood, by Mr Mackenzie that the Corporation originally obtained detailed accounts from the solicitors who were paid these large sums, but that, on payment being made, bare receipts for the amounts paid were taken, and the detailed accounts were handed back to the solicitors." At our bar it was stated that the Sheriff-Substitute was under some misapprehension, for the defenders had in their possession six of the eight solicitors' accounts, on the back of which were receipts by the payees. As regards the other two it was said that draft accounts only were in each case exhibited by the solicitors, and that, a payment in full having been adjusted, a bare receipt was taken for the amount paid and the draft accounts handed back to the solicitors. No explanation was given as to why this unusual course was taken, and counsel for the auditor could not say whether his client had ever seen these draft accounts, or merely the receipts showing that the amounts entered in the book had been paid. How he could perform his statutory duty without having an opportunity of checking the accounts themselves I do not at present see, but if they were available to him, they are also presumably available to the defenders whenever they choose to ask for them.

As regards the six accounts which are in their possession the defenders decline to produce or exhibit them, as they say that they are the vouchers of their account, and that the Act of 1909 does not entitle electors to call for vouchers. In this connection they point to the contrast between the Act which now regulates their duty in the matter of accounts and the preceding Act (3 Geo. IV, cap. 91), the relevant section of which is quoted in the condescendence. It is difficult to understand why, unless the defenders have something to conceal, they should take up this attitude. In the previous case between the same parties Lord M'Laren said (*Eadie* v. *Glasgow Corporation*, 1907 S.C. 207, p. 216, 45 S.L.R. 141)—"I should have thought that a great corporation like the municipality of Glasgow, when any part of their administration is challenged, would be anxious that the fullest light should be thrown upon the management of funds entrusted to them." This is apparently not the attitude of the defenders in the present case, any more than it was in the case from which I have cited part of Lord M'Laren's opinion. I am not surprised, therefore, that the information that some thousands of pounds of the common-good have been paid to nine professional gentlemen for services of which no record is kept in the Corporation books should not satisfy the pursuers, but rather tend to make them more insistent in their demand for proper details.

On the question as to whether the pursuers have now got all the information that they can legally demand I agree with the Sheriff-Substitute. I think with him that the information supplied is "manifestly insuffi-

cient in any fair sense for the purposes of the applicants." I do not think (again quoting from the learned Sheriff's note) that the pursuers have yet got "a fair opportunity of inspecting and criticising the accounts to discover whether any of the items of expenditure are illegal." The accounts may represent perfectly legal expenditure, or may consist of payments made by or to the writers employed with which the defenders are not entitled to saddle the common-good, or they may consist partly of the one and partly of the other. The pursuers are not a bit further forward by being told that a thousand pounds has been paid to a certain writer, in determining whether they should demand a rectification of the accounts, than they were when the accounts disclosed simply that a slump sum of £6666 had been disbursed for professional services. The Sheriff, however, seems to have taken the view that the pursuers have now got all that they are entitled to under the statute, and that as the Corporation has chosen not to enter in its books of account any of the details of the accounts rendered, and the pursuers have no statutory right to call for vouchers, the pursuers are not entitled to any further information. I confess that I cannot reconcile this view with his previous pronouncements and I entirely dissent from it. If it were sound it would be easy for the defenders to evade their statutory obligation. Wherever they had payments of doubtful legality to make all that they would require to do would be to appoint some outsider to pay them and then enter under one heading all the payments he made, and either retain his account as their voucher or take a simple receipt and hand the account back again so that it might the more effectually escape criticism. If the defenders do not choose to keep detailed accounts of their expenditure, and to enter the payments in such a way as to enable the electors to see how they have expended the common-good, but keep the details in vouched accounts for their own information, they must in my opinion furnish the electors with these details when called on to do so. There is no statutory right to call for vouchers, but if the only record of the items on which the expenditure has been made is contained in the vouchers, then it appears to me that the electors are entitled to get the detailed account which alone shows how the money of the ratepayers has been expended. The statute certainly does not preclude the recovery of vouchers where this may be necessary in order to ascertain whether a particular item of expenditure has been legal or not. I am therefore of opinion that the Sheriff-Substitute took the right view in his interlocutor of 22nd June 1914, and that the defenders ought to be ordained to exhibit the accounts which contain the details of the expenditure in question or to furnish a copy of the details to the pursuers; and I think such an order is well within the scope of the amended prayer.

It was strenuously maintained by the defenders that now that the pursuers have disclaimed any intention of making use of the details when obtained to have the accounts rectified, the petition should be dismissed as incompetent or irrelevant. I do not think that follows. The pursuers are entitled to have it settled, for the future guidance of the defenders, what accounts the latter are bound to keep in terms of the Act of 1909, and what facilities they are bound to afford the electors who avail themselves of the privilege conferred upon them by section 14, sub-section (*b*). It was suggested that section 14 only applies to the case where an elector has found out from extrinsic sources that some payment made by the Corporation was not one which was legally chargeable against the common-good, and that as no complaint of this kind was any longer insisted in there was nothing upon which to adjudicate. I cannot assent. I think an elector may well be dissatisfied with an item contained in the accounts on the ground that it does not disclose the purpose for which the expenditure was made, and that he is entitled to have this information and to present his petition to the Sheriff on the sole ground that the accounts kept by the Corporation are defective in detail. If on receiving the details he is satisfied the petition has served its purpose, and it makes no difference that the pursuers here as public-spirited citizens have declared that whether satisfied or not they will take no further action once they obtain the information which they demand as their right. I am therefore unable to agree with the judgment which your Lordships propose to pronounce.

LORD GUTHRIE—This case is in an unfortunate position in two respects.

First, the pursuers have substituted in this Court a new prayer for the one contained in their petition without making any corresponding alterations in their condescendence and pleas, with the result that these both exceed and fall short of the case now made by the pursuers.

Second, the interlocutors appealed against are inapplicable to the record as it now stands. Had the record stood on the original prayer, I should not have differed in substance from the course taken by the Sheriff. The pursuers by their so-called amendment seem to me to have rendered their averments irrelevant.

No explanation was given why, when the pursuers substituted an entirely new prayer for the original one, they contented themselves with an incomplete oral statement at the bar, and did not in their minute of amendment bring their condescendence and pleas into line with their new case. If it was from fear of being found liable in expenses, it is an extreme instance of the unfortunate working of a rule, which, while of great value in securing careful preparation of records, often prevents sufficient amendments on badly prepared pleadings. It may be worthy of consideration whether the Court should allow a drastic amendment of a prayer, such as has been made in this case, without insisting on such complete and deliberate revision of the condescendence and pleas as may be necessary to make a consistent case.

Dealing with the pursuers' demands as contained in their new prayer, I cannot find in the statute any warrant for section (*a*), the leading part, of the first crave. The accounts are not to contain all that is in the defenders' books, because they are to be made out from them. Yet the pursuers' demand — to have such details in the accounts as would enable them to ascertain precisely the purposes to which all parts of the common-good revenue have been applied, and whether such application has been legal or illegal—would imply that the accounts should contain more details than it is reasonably possible, or the custom, for corporations to insert even in their books. I therefore think this part of the petition is irrelevant and incompetent.

The second crave in the petition is in any case too wide. It covers the whole of the items in the defenders' accounts of the common-good. To many of these there seems no possible ground of objection, so far as fulness of statement is concerned, and that is all that is now left in the case. Take, for instance, "Donations and Annual Subscriptions." In respect of these at least the so-called "Abstract Statement" is clearly an "account" in terms of sections 5 and 6, and not a mere abstract in terms of 13 (*a*). But one part of the defenders' so-called abstract statement of the common-good accounts may constitute a full statutory account, while another part can only be treated as a statutory abstract. I think none of the four items condescended on by the pursuers (particularly "Fees for professional services, £6666, 14s. 10d."), while sufficiently stated for an abstract, are stated so as to satisfy the requirements of the accounts which the respondents are ordered to make up under sections 5 and 6. Had the pursuers limited their prayer to these items, and framed their prayer otherwise in conformity with the statute, I should have held them entitled to complain of that part of the defenders' so-called "Accounts," and to have had their complaint heard and determined by the Sheriff.

The pursuers' third crave is irrelevant and incompetent for the same reasons. Merely that one part of a long account is lacking in detail cannot entitle the Court to hold that the whole account is disconform to the statute.

As to the fourth and last crave, it is vitiated as a whole, for the reasons stated in reference to the first crave. Had the first part occurred in a properly framed prayer, I should have held that the pursuers were entitled, under section 14, to have the defenders ordained to produce the very items which have been produced under the orders of the Sheriff-Substitute and Sheriff, or, at the very least, those relating to the fees for professional services. Therefore even if I am wrong in the views I have expressed on the irrelevancy of the pursuers' petition, it would not advantage the pursuers, for I think they have got from the Sheriffs everything they are entitled to in connection with the only items in regard to which they have expressed dissatisfaction with the defenders' accounts. The information which they still insist on obtaining, without now seeking to have any items disallowed, involves the production of vouchers, to which no more than to the defenders' books are they entitled, under the Act of 1909, as contrasted with the previous Act of 3 George IV, chapter 91, in a mere application, as this now is, for production of accounts.

The result which I have reached will in no way interfere with the rights of an elector under a properly framed petition, either if dissatisfied with the accounts or if dissatisfied with any items in them, to complain to the Sheriff and have his complaint dealt with and determined. Nor do I determine whether in connection with a complaint making such production necessary it may not be open to an elector to obtain from the Sheriff access, defined and limited under a diligence, to the defenders' books and vouchers.

The Court recalled the interlocutors of the Sheriff and Sheriff-Substitute, found that the action as laid was incompetent and irrelevant, sustained the first plea-in-law for the defenders, the Corporation of the City of Glasgow, and dismissed the action.

Counsel for the defenders, the Corporation of the City of Glasgow, moved for expenses, taxed as between agent and client, and cited the Public Authorities Protection Act 1893 (56 and 57 Vict. cap. 61) section 1 (*b*), and *Christie* v. *Glasgow Corporation*, 1899, 36 S.L.R. 694.

Argued for the pursuers — The present action did not fall within the Act, as it was purely administrative, and did not seek an operative decree. In any event the Act did not abrogate the ordinary discretion of the Court as to expenses — *Aird* v. *Tarbert School Board*, 1907 S.C. 305, 44 S.L.R. 223; *Bostock* v. *Ramsay Urban Council*, [1900] 2 Q.B. 616.

LORD JUSTICE-CLERK—I have very great difficulty in being able to reconcile *Christie*, 36 S.L.R. 694, with the more recent judgment in *Aird*, 1907 S.C. 305, which followed the English case of *Bostock*, [1900] 2 Q.B. 616; and for myself I confess I have difficulty in arriving at the view that the latter case can be reconciled with the terms of the statute itself. However *Aird* is the most recent judgment on the matter, and it seems to me we must follow it, with the result that I think the Corporation are entitled to get the expenses of the appeal, and that these should be taxed as between agent and client. So far as Mr Lauder is concerned, I do not think there should be any expenses, and *quoad* the expenses in the Sheriff Court I think the judgment of the Sheriff in the interlocutor appealed against should be affirmed.

LORD DUNDAS—I agree.

LORD SALVESEN—I am constrained to agree with your Lordship, because I think the case falls within the Act — Public Authorities Protection Act 1893 (56 and 57 Vict. cap. 61)—which Mr Fraser has cited. I agree with your Lordship reluc-

tantly, because I have taken occasion to say whenever this Act has come under my notice that I think it creates a monstrous injustice—that a wealthy Corporation shall be entitled to hold *in terrorem* over any person that litigates with them the risk that he may be subjected not merely to expenses as between party and party, but whatever expenses the Corporation may choose to incur as between agent and client, and that, I suppose, irrespective of the fact that the Corporation has the services of a town clerk who undertakes this work for a salary, with the result that the award of expenses goes not to pay for the litigation but to reduce the other expenses of the Corporation by being credited to the general fee fund. I have never been able to understand the policy of the statute. The ordinary expenses of litigation are quite sufficient to deter responsible people from engaging in litigation against a wealthy corporation, and actions by persons who are of no substance will not be diminished in number by the risk of the litigants being subjected to expenses between agent and client, because they litigate with an absolute sense of freedom from responsibility. Accordingly while I agree in the judgment which your Lordships propose, I think it is right that I should state my views as to the policy of the statute.

LORD GUTHRIE—I agree with your Lordship in the chair.

The Court found the defenders, the Corporation of the City of Glasgow, entitled to expenses against the pursuers in connection with the appeal, to be taxed as between agent and client.

Counsel for Pursuers and Appellants—Hon. W. Watson, K.C.—Paton. Agents—Inglis, Orr, & Bruce, W.S.

Counsel for Defenders and Respondents the Corporation of Glasgow — Dean of Faculty (Clyde, K.C.) — M. P. Fraser. Agents—Campbell & Smith, S.S.C.

Counsel for Defender John Lauder—Duncan Millar, K.C.—W. Wilson. Agents—Carmichael & Miller, W.S.

Friday, November 12.

SECOND DIVISION.

[Lord Cullen, Ordinary.

FRASERBURGH HARBOUR COMMISSIONERS *v.* WILL.

Harbour—Statute—Construction—Exemption from Rates—Fraserburgh Harbour Order 1891, *Schedule B.*

The Fraserburgh Harbour Order 1891, Schedule B, gives the rates which may be charged by the Harbour Commissioners. It gives this exemption — "Empty boxes, casks, bags, and pack sheets returned to the original shipper after importation or exportation with goods. Empty casks or other stores shipped for or on being returned from the seal and whale fishing, as also all ships' provisions necessary for the voyage."

Held (*aff.* Lord Ordinary Cullen) that "ships' provisions" did not include bunker coal.

Opinion that the exemption of ships' provisions applied only to the seal and whale fishing.

Harbour — Rates — Undue Preference — Exemption from Liability for Rates.

A coal merchant who supplied for bunker purposes rail-borne coal to ships in a harbour refused to pay harbour rates thereon, on the ground that other coal merchants had not paid such rates. It appeared that the harbour commissioners, relying on an exemption in their schedule of rates—"Where rates shall have been paid for goods on importation, and such goods shall be re-shipped in the original packages, and shall not have changed ownership, but shall continue to belong to the same owner as when imported, such goods shall be exempt from the payment of rates on exportation"—had not charged rates on sea-borne coal, and had so far, the trade therein being of recent date, been unable to recover on rail-borne coal, but had made no agreements with regard to, and had granted no discharges for, such rates.

Held (*aff.* Lord Ordinary Cullen) that the harbour commissioners had given no undue preference, and decree for the rates claimed *granted.*

Opinion (*necessary for a declarator granted*) that the exemption in the schedule of rates did not apply to coal, as it was not in "packages."

The Harbours, Docks, and Piers Clauses Act 1847 (10 Vict. cap. 27), enacts—Section 3—". . . The word 'goods' shall include wares and merchandise of every description, and all articles in respect of which rates or duties are payable under the Special Act." Section 30—"The undertakers may from time to time vary the rates or any of them respectively in such manner as they think expedient by reducing or raising the same, provided that the rates do not in any case exceed the amount authorised by the Special Act to be taken, and provided also that the rates be at all times charged equally to all persons in respect of the same description of vessel and the same description of goods."

The Fraserburgh Harbour Act 1878 (41 and 42 Vict. cap. cii) enacts—Section 78—"From and after the commencement of this Act the Commissioners may levy, demand, and take for all goods shipped or unshipped, loaded into or unloaded out of any vessel in any part of the harbour, any sums not exceeding the rates specified in the Schedule B (*now Schedule B of the Fraserburgh Harbour Order* 1891) to this Act annexed." Section 83—"The rates specified in such schedules as raised or reduced under the authority of this Act shall at all times be charged equally to all per-