place before he became alive to the fact that there was a car in front of him; or again, if she had averred that when she caught sight of the approaching car she was lawfully changing her seat, and that she feared that if the two cars should collide the jerk might throw her down on to the street. I do not say that such averments would have made the case relevant, but at any rate they would not have left it a complete mystery how this poor lady came to be thrown into a state of terror. Whilst it is impossible not to sympathise with her, it would I think be unfair to the defenders to hold them responsible for an accident of an abnormal and unexplained character.

LORD CULLEN—I concur. I think that in cases of this kind, when the causal connection between the occurrence complained of and the degree of fright alleged is not plain, the pursuer should present such averments as to make the matter intelligible and to show that the degree of fright alleged was the natural and probable effect of the occurrence. This I think the pursuer here has failed to do.

The Court recalled the interlocutor of the Lord Ordinary and dismissed the action.

Counsel for the Pursuer (Respondent)—Morton, K.C.—R. M. Mitchell. Agents—Ross & Ross, S.S.C.

Counsel for the Defenders (Reclaimers)—Macmillan, K.C.—Gentles. Agents—Simpson & Marwick, W.S.

Friday, December 20.

SECOND DIVISION.

[Scottish Land Court.

CLARK *v.* FRASER.

MACKENZIE *v.* WALLACE'S TRUSTEES.

Landlord and Tenant—Small Holding—Burgh — Municipal Boundary — Small Landholders (Scotland) Act 1911 (1 *and* 2 *Geo. V, cap.* 49), *sec.* 26 (3) (*c*).

The Small Landholders (Scotland) Act 1911 enacts—Section 26 (3)—"A person shall not be held an existing yearly tenant or a qualified leaseholder under this Act in respect of . . . (*c*) any land within the parliamentary, police, or municipal boundary of any burgh or police burgh."

Held that subjects which were within the royalty of a royal burgh, but outwith the parliamentary and police boundaries thereof, were, in consequence of being within the royalty, within the municipal boundary, so as by virtue of the Small Landholders (Scotland) Act 1911, section 26 (3) (*c*), to be excluded from the operation of that Act.

The Small Landholders (Scotland) Act 1911 (1 and 2 Geo. V, cap. 49) section 26 (3) (*c*) is quoted *supra* in rubric.

Donald Fraser, M.D., J.P., physician in Paisley and Glasgow, and Miss Kate Fraser, B.Sc., M.D., Deputy Commissioner, General Board of Control for Scotland, *appellants*, being dissatisfied with an order of the Scottish Land Court, pronounced in an application presented on 22nd November 1915 by Hugh Clark, Fortrose, *respondent*, to have it found and declared that he was a landholder or a statutory small tenant of the farm of Broomhill belonging to the appellants, appealed by Stated Case. In another Stated Case, in which the trustees of the late Colonel Charles Tennant Wallace, Nairn, sisted in his room and place, *appellants*, appealed against an order of the Scottish Land Court, pronounced in an application presented on 21st May 1914 by Miss Jane Mackenzie, Nairn, *respondent*, to have it declared that she was a landholder in and of a holding at Tradespark, Nairn, a similar question was raised. The question at issue was whether the subjects in each case, being admittedly within the royalty of a royal burgh but outwith the parliamentary and police boundary, could be also held to be within the municipal boundary so as by virtue of the Small Landholders (Scotland) Act 1911 to disentitle the applicants to the findings craved. In the case of *Mackenzie* v. *Wallace's Trustees* there was the additional element that the subjects in question formed part of the Common Good of the burgh.

Fraser's Case stated, *inter alia*—"3. The application was heard before Lord Kennedy and Mr Reid at Dingwall on 3rd May 1916, when proof was led. . . . 4. The facts held proved or admitted were as follows:—The deceased Hugh Clark senior originally entered on the tenancy of the farm of Broomhill, which is on the estate of Raddery, about forty-five years ago, under a lease for nineteen years. The lease expired prior to the commencement of the Act, and he thereafter held the farm from year to year down to the date of his death in March 1916, when he was succeeded by his son Hugh Clark junior, the present tenant. Broomhill extends to 35 acres arable with 44 acres of outrun, and the rent payable was £42. . . . The burgh of Fortrose is a royal burgh. It was admitted by the parties that the subjects in respect of which the application was made were situated within the royalty of the royal burgh of Fortrose. They are, however, situated outside the parliamentary boundary of the burgh, and also outside the municipal boundary, unless the expression 'municipal boundary' is to be construed as including the limits and boundaries of the royalty of a royal burgh. The said subjects are not within the burgh for rating and voting purposes, but are within the county area for such purposes. 5. Subsequent to the hearing the holding was inspected, and on 16th May 1916 the following final order was pronounced: -Find it not proved that any part of the holding described in the application is situated within the parliamentary or the municipal boundary of the burgh of Fortrose: . . . Repel the respondents' objections to the competency of the application: Find and declare that the

deceased Hugh Clark senior, the original applicant, became statutory small tenant of and in the said holding at the commencement of the Small Landholders (Scotland) Act 1911, and died intestate on or about 1st March 1916, and that the present applicant Hugh Clark junior, as his eldest son and heir-at-law, succeeded him in the statutory tenancy of the said holding. . . . 6. Thereafter the appellants, under section 25 (5) of the Small Landholders (Scotland) Act 1911, appealed to the full Court, who refused the appeal."

On 11th August 1917 the Land Court issued the following final order:—"Repel the respondents' objection to the competency of the application: Find and declare that the applicant is a landholder within the meaning of the Small Landholders (Scotland) Acts 1886 to 1911 in and of the holding specified in the application. . . ."

The *questions of law* included—"2. On the facts stated, were the subjects known as Broomhill Farm excluded from the operation of the Small Landholders (Scotland) Act 1911 by section 26 (3) (*c*) thereof?"

Mackenzie's Case stated—"3. The *facts* proved or admitted are as follows:—The subjects in question consist of a house and garden, and one acre one rood of arable land. They were occupied by the applicant's father as a yearly tenant from 1882 till his death in 1908, at a rent of £5 per annum. Since her father's death the subjects have been occupied by the applicant as a yearly tenant at the said rent of £5 per annum. . . . The said subjects are situated within the limits of the royalty of the royal burgh of Nairn, and form part of the common good of the burgh. They are situated in a rural district outside the parliamentary or the police boundary of the burgh of Nairn, and also outside the municipal boundary of the burgh unless 'municipal boundary' can be construed to mean or include 'within the limits of the royalty.'"

The following *question of law* was stated:—"On the facts stated, are the subjects occupied by the applicant excluded from the operation of the Small Landholders (Scotland) Act 1911 by section 26 (3) (*c*) of the said Act."

Argued for the appellants in both cases—The subjects in question were within the municipal boundary and were therefore excluded from the operation of the Small Landholders (Scotland) Act 1911 (1 and 2 Geo. V, cap. 49) by section 26 (3) (*c*) thereof. It was admitted that the subjects were within the royalty but outwith the parliamentary and police boundaries of the burgh. There was, however, no statutory warrant for limiting municipal boundary to the police or parliamentary boundary, and in the case of a royal burgh it included the whole of the royalty. The royalty was the creation of the charter constituting the municipality, the population within which participated in the common good—Ersk. i, 4, 20; Muirhead, Municipal and Police Government, p. 7, note. The Representation of the People (Scotland) Act 1832 (2 and 3 Will. IV, cap. 65) first introduced for certain purposes a statutory boundary different from the royalty, but did not abrogate the boundary of the royalty as the boundary of the municipality. The term "municipal boundary" was first used in the Municipal Elections Amendment (Scotland) Act 1868 (31 and 32 Vict. cap. 108). Prior to that Act there were, however, several statutes applying to Scotland where the word "municipal" was used but in no way inconsistent with appellant's contention—Boundaries of Burghs Extension (Scotland) Act 1857 (20 and 21 Vict. cap. 70), section 3; Police and Improvement (Scotland) Act 1862 (25 and 26 Vict. cap. 101), section 13. There were further a number of cases in which Parliament had used the term "municipal boundary" in such a way as to indicate that it included the whole of the royalty—Local Government (Scotland) Act 1889 (52 and 53 Vict. cap. 50), sections 28 (1) (*c*), (2) (*j*) and 44 (*b*); Burgh Police (Scotland) Act 1892 (55 and 56 Vict. cap. 55), section 12; Local Government (Scotland) Act 1894 (57 and 58 Vict. cap. 58), sections 10, 12 (3); Town Councils (Scotland) Act 1900 (63 and 64 Vict. cap. 49), section 4; Town Councils (Scotland) Act 1903 (3 Edw. VII, cap. 34), section 2. There was no case where Parliament had used the term to include less than the royalty. The only definition of "municipal boundary" was to be found in the Town Councils (Scotland) Act 1900, where it was defined, section 4 (11), in the case of a royal burgh as "the existing boundary for the purpose of voting for town councillors," and this in turn fell to be construed by reference to the Municipal Elections Amendment (Scotland) Act 1868, section 3, whereby the right of electing the town council was given to such persons as were qualified in respect of any premises within the royalty of a royal burgh. By the Royal Burghs (Scotland) Act 1833 (3 and 4 Will. IV, cap. 76), section 1, this right had previously been restricted to persons qualified within the royalty to vote in the election of a member of parliament for the burgh. If applicant was not on the municipal roll he had a right to be—Marwick, Law of Municipal Elections, p. 11.

Argued for the respondent Clark—The applicant was entitled to the benefits of the Small Landholders (Scotland) Act 1911. His holding was not within the municipal boundary of the burgh. There was no statutory authority for holding that the term "municipal boundary" included the whole of the royalty, and the area of the royalty of a royal burgh was not the same as its boundaries for municipal purposes—*Graham* v. *Magistrates of Perth*, 1896, 23 R. 602, 33 S.L.R. 467; *Lower Ward of Lanarkshire District Committee* v. *Magistrates of Rutherglen*, 1902, 4 F. (H.L.) 35, 39 S.L.R. 857. In 1833 and 1868 the boundary of the burgh for municipal voting purposes was not coincident with the royalty but with the parliamentary boundary, which was often within the royalty. The Municipal Elections (Scotland) Act 1868 (*cit. sup.*), though it made alteration, could not, if regard was had to the proviso at the end of section 3, be construed as other than preserving a municipal boundary district from the royalty. The Local Government (Scotland) Act 1889, sec-

tion 44 (*b*), also contemplated a municipal boundary distinct from the royalty. For the use of the word "municipal" counsel referred to Ersk. i, 4, 20, 21, 30; Military Forces Localisation Act 1872 (35 and 36 Vict. cap. 68), section 15 (6); Corrupt and Illegal Practices Prevention Act 1883 (46 and 47 Vict. cap. 51), section 68; Interpretation Act 1889 (52 and 53 Vict. cap. 63), section 15 (2); Burgh Police (Scotland) Act 1892, section 12, *cit. sup.*

Counsel for the respondent (Mackenzie) adopted the argument for the respondent (Clark).

At advising—

Clark's Case.

LORD GUTHRIE—The applicant Hugh Clark claims to be a landholder or statutory small tenant in terms of the Small Landholders (Scotland) Act 1911. On 3rd May 1916 he was sisted as the eldest son and heir-at-law of the late Hugh Clark senior, his father, the original applicant. The claim is made in respect of the applicant's tenancy of the farm of Broomhill, in the county of Ross, belonging to the appellants, which was originally part of the estate of Raddery. Broomhill extends to 35 acres arable, with 44 acres of outrun, and the rent is £42. Taken by itself it is thus within the definition in section 26 (3) (*a*) of the Act.

The claim, which has been sustained by the Land Court, is opposed on two grounds —[*His Lordship then dealt with the first ground of objection*].

The second ground of objection to the claim is that Broomhill, being admittedly within the boundaries of the royal burgh of Fortrose, is therefore, on a sound construction of section 26 (3) (*c*), excluded from the operation of the Statute of 1911.

The relevant words of section 26, sub-section (3), are as follows—"(3) A person shall not be held . . . a qualified leaseholder under this Act in respect of . . . (*c*) any land within the parliamentary, police, or municipal boundary of any burgh or police burgh."

On the construction of these words, taken as a whole, it seems to me that although the word "boundary" occurs in the singular, the land excluded falls under three categories—*first*, land within the parliamentary boundary of any burgh or police burgh; *second*, land within the police boundary of any burgh or police burgh; and *third*, land within the municipal boundary of any burgh or police burgh. Now it is admitted that Broomhill does not fall within either the parliamentary or police boundaries of any burgh or police burgh, and, in particular, that it does not fall within the parliamentary or police boundaries of the burgh of Fortrose. As one of the Inverness burghs Fortrose has the parliamentary boundary specified in Schedule M of the Representation of the People (Scotland) Act of 1832, and as a police burgh it has the boundaries fixed under the Burgh Police Act of 1892 by the Sheriff of the county; and Broomhill is situated on a part of the royalty of Fortrose which is outside both these boundaries.

Therefore the short question in the case is—On a sound construction of the words "municipal boundary" of any burgh or police burgh in section 26 (3) (*c*) of the Act of 1911, is Broomhill excluded, as the appellants say, from the operation of the statute because although outside the parliamentary and police boundaries of the burgh it is within the boundaries of the royalty of the burgh? The Land Court has found that it is not. Their finding is as follows—"Find it not proved that any part of the holding described in the application is situated within the parliamentary or the municipal boundary of the burgh of Fortrose." The appellants do not allege that any part of Broomhill is within the parliamentary any more than the police boundary of the burgh. The sole question on this part of the case is whether, being within the royalty, Broomhill does not fall within the municipal boundary of the burgh on a sound construction of the statute. This question is disposed of in the note appended to the Land Court's first order in one line, but in the note appended to the final order its discussion occupies twenty-one pages of the printed appendix.

In the final note four principles applicable to the construction of statutes are founded upon. But no mention is made of the rule that no part of a statutory enactment can be disregarded as superfluous, or as merely synonymous with or exegetical of some other part of the statute, if any separate meaning which is intelligible and reasonable can be assigned to it. It does not follow, however, that the Land Court has not followed this rule, because the main ground of their judgment on this part of the case seems to be the supposed impossibility of giving the words "municipal boundary" any separate meaning which would be intelligible and reasonable. On this assumption the Land Court appears to hold "municipal boundary" as synonymous with "police boundary." Apparently because in the case of many of the sixty-six royal burghs in Scotland the police boundary extends beyond the limits of the ancient royalty it is assumed that in the case of royal burghs, such as Fortrose, where the royalty is more extensive than the boundary of the police burgh, the municipal boundary must in that case also in the construction of all statutes be the boundary of the police burgh. At the foot of p. 21 the expression "municipal boundary" is, on the footing of this *non sequitur* as it appears to me, used as synonymous with "police boundary"; and the same idea is repeated on the subsequent page, as well as on p. 30, where reference is made to boundaries for "municipal or police purposes." On p. 14 it is stated that "the holding is situated in the county of Ross and Cromarty, not in the burgh of Fortrose." This begs the question. Broomhill is admittedly within the burgh of Fortrose in the sense of being within the royalty, but it is equally certain that it is not within the burgh of Fortrose in the sense of not being within the police burgh. The question is whether it is within the burgh of Fortrose in the sense of the expression

"within the municipal boundary of any burgh" in section 26 (3) (*c*) of the 1911 Act.

I am of opinion that the reasoning on this matter in the final note of the Land Court is unsound, and that in dealing with a royal burgh like Fortose a separate meaning, intelligible and reasonable, can and ought to be attached to the words "municipal boundary" as they occur in section 26 (3) (*c*) of the 1911 Act, namely, that it signifies or at least includes the boundary of the royalty.

Before dealing further with this question it is necessary to point out that the Land Court, as appears from their notes, have given weight to two considerations which are in my opinion irrelevant to the question at issue—considerations which are besides dependent on historical, archæological, and economic assertions, highly contentious, outside judicial knowledge, and neither admitted nor approved.

I refer, first, to the alleged hardship inflicted on the applicant by the supposed unreasonableness and want of patriotism on the part of the appellants in refusing to renew the applicant's lease in 1916, and second, to the alleged impossibility, or at least high improbability, of parliamentary exclusion of land within the royalty but outside the parliamentary and police boundaries of a royal burgh.

On the merits the appellants maintained that the words "municipal boundary of any burgh or police burgh" occurring in the Statute of 1911 in collocation with the reference to the parliamentary and police boundaries meant the royalty boundary in the case of Fortrose, or of any other royal burgh where the royalty boundary was more extensive than the police or parliamentary boundary.

Both parties admitted that in all cases since the passing of the Burgh Police Act of 1892 (and prior to the passing of that Act in the case of certain burghs which had local Police Acts or had adopted the Police and Improvement Act of 1862) the words "municipal boundary" have been capable of construction and must be construed in relation to the subject-matter. Prior to the Act of 1892 in the case of a royal burgh like Fortrose, which was without any local Police Act and was not under the 1862 Act, the words were incapable of construction, because there was only one boundary of the municipality for all purposes, namely, the royalty.

The first Scots statute which contains the expression "municipal boundary" is the Representation of the People (Scotland) Act 1868, and we were told that the first statute applicable to Scotland in which the word "municipal" occurs is the Reform Act of 1832. But the case must be considered as at the date of the 1911 Act, when Fortrose had become a police burgh under the 1892 Act. In the case of a burgh which is a police burgh and nothing more the municipal boundary is the boundary of the police burgh. In the case of royal burghs (which under the Burgh Police Act of 1892 are now all police burghs for the whole or for a part of their area) the expression "municipal boundary" may be used as applicable either to the royalty boundary or to the police burgh boundary. If police purposes are in question the expression will be construed as applicable to the police burgh boundary. But if the question relate to such a municipal purpose as the election of town councillors under the Town Councils (Scotland) Act 1900 the expression will be construed as applicable to the royalty boundary. This clearly appears from section 4 (11) of the 1900 Act (63 and 64 Vict. cap. 49), which runs as follows:—"(11) 'Municipal boundary,' (*a*) in the case of a royal burgh, parliamentary burgh, or burgh incorporated by Act of Parliament, shall mean the existing boundary for the purpose of voting for town councillors; (*b*) in the case of any other burgh shall mean the boundary of the burgh as fixed under the provisions of the Burgh Police (Scotland) Act 1892 or of any Act thereby repealed; and (*c*) in all cases shall include any extension of such boundary, and be subject to any contraction thereof effected under any Act." The boundary for the purpose of voting for town councillors referred to in this section of the 1900 Act is the royalty in the case of a royal burgh as will be shown immediately. Reference may also be made to the Local Government (Scotland) Act 1894 (57 and 58 Vict. cap. 58), section 12 (3)—"Where the boundary of a burgh for municipal purposes extends beyond its boundary as ascertained, fixed, or determined for police purposes under the provisions contained in any general or local Act of Parliament, the assessor shall, in preparing the municipal register, prefix a distinctive mark to the numbers or names of any municipal electors for the area which is without the police but within the municipal boundary. . . ." It seems to be the case that in all statutory references to the boundaries of burghs, except in those expressly limited to the boundaries of police burghs, the expression "municipal boundaries," while it may comprehend an area beyond the limits of the royal burgh, always includes the whole royalty.

Equally it seems to me if in section 26 (3) (*c*) of the 1911 Act the element of police purposes has been already disposed of, and "municipal boundary" is mentioned as something additional to police boundary, then the natural and reasonable construction of the words is to apply them to the boundary of the royalty.

It was argued, in conformity with the view expressed in the final note by the Land Court, that as at 1911 the "proper and usual meaning" of the expression "municipal boundary" was synonymous with police boundary. As already pointed out, this view ignores the peculiar position of a burgh like Fortrose, which by becoming for part of its area a police burgh has not ceased to be a royal burgh over the whole area within the ancient royalty, and is also inconsistent with the provisions of the 1894 and 1900 Acts above quoted.

It was further maintained that as at 1911 the royalty boundary of Fortrose, supposing it had once been the municipal boundary, had ceased to be so because it no longer had any of the attributes or characteristics of a municipal boundary. It is, no doubt, true

that probably most, possibly all, the old rights of taxation and jurisdiction competent to the magistrates of a royal burgh over all the inhabitants within the royalty beyond the boundaries of the police burgh have ceased from desuetude or have been superseded by statute along with the exclusive rights of trading of the residents within the royalty. But in addition to the right of the whole residents in the royalty area of a royal burgh to participate in the benefits of the common good of the burgh, it is clear that under the Town Councils Act of 1900, section 4 (11), read along with section 3 of the Municipal Elections Amendment (Scotland) Act 1868, the important municipal right connected with the election of town councillors in royal burghs like Fortrose still remains in all inhabitants of the royalty, including those resident outside the boundary of the police burgh. This does not seem to have been doubted by the Land Court, although they have not given to it what seems to me its legitimate effect. It is, no doubt, stated in the case that the subjects in question "are not within the burgh for rating and voting purposes, but are within the county area for such purposes." But this is explained by the statement in the final note that "neither the late nor the present tenant (together covering the period 1840-1916) appeared on any municipal roll or register for any purposes." It is obvious that the legal right of the tenant of Broomhill, if he had such a right, cannot be affected by his or his predecessor's failure to take the necessary steps for its exercise.

But Mr Roberton Christie, founding on the proviso at the end of section 3 of the Act of 1868, maintained that the right of voting for town councillors in a royal burgh is not co-extensive with the area of the royalty. Read short the section runs as follows—"3. In every royal burgh in Scotland now returning or contributing to return a member or members to Parliament . . . the right of electing the town council shall be in and belong to . . . all persons who are possessed of the qualifications described in the said Acts 2nd and 3rd William the Fourth, chapter 65, or 31st and 32 Victoria, chapter 48, in respect of the premises therein described within the royalty of any such royal burgh where the limits thereof at any point or points extend beyond the parliamentary boundaries of such burgh, or within the municipal boundaries of any such royal burgh where the same have been extended under any general or local act beyond the limits of the royalty, original or extended, or the parliamentary boundaries of such burgh. . . ."

Mr Christie did not dispute that the words above quoted, preceding the proviso, in terms appear to confer the right of voting for town councillors on all duly qualified persons within the area of the whole royalty. But he maintained that the apparent effect of these words was taken away by the proviso, because according to his contention the words "the municipal boundaries of any royal burgh" in the proviso cannot be the royalty boundaries, although he was unable to define what these boundaries precisely were. This is a result at which a court would be slow to arrive, and although the meaning of the proviso may be obscure it does not lead, in my opinion, to any such result. In my opinion the proviso which deals with conferring a right of voting in no way affects the right of all residents in the royalty to vote for town councillors. It merely provides that in the event of the boundaries of a royal burgh having been limited or defined by Act of Parliament, it shall not be competent to claim on the more extended limits of the royalty contained in any ancient charter or founded upon usage.

I am therefore of opinion that the second question should be answered in the affirmative.

LORD DUNDAS concurred.

LORD JUSTICE-CLERK—[*After dealing with the first question*]—The second question depends entirely on the construction of section 26 (3) (*c*) of the Statute of 1911, and arises under these circumstances. The land in question is outside both the parliamentary and police boundaries of the royal burgh of Fortrose, but is within the royalty of that burgh. Is it therefore excluded by that section?

In my opinion the section contemplates three boundaries — (1) A parliamentary boundary, (2) a police boundary, and (3) a municipal boundary. These boundaries might all coincide, or each of them might be different from the other two. In the present case the boundaries of the royalty differ both from the parliamentary and the police boundaries. I think the section meant to exclude all subjects which were within any one of these three boundaries, it being apparently considered that the existence of small holdings and the restrictions on the use of and dealing with lands which are concomitants of small holdings were not desirable in the case of land within burgh.

In a royal burgh the corporation is the vassal, and the land within the boundaries of the charter, *i.e.*, the royalty, is the subject of the grant, and the vassal holds the subjects directly of and under the Crown. The whole royalty constitutes the subjects —it was territorially speaking the burgh.

I cannot find in any of the Acts any provision limiting the boundaries of the royalty or excluding any part of the royalty from the burgh. There are no local Acts affecting the question, which accordingly falls to be determined on a construction of general statutes.

Ultimately the argument was I think reduced to this—Were the inhabitants of the whole royalty entitled to vote for members of the town council? and in that intent the question came to rest on the proper construction of section 3 of the Municipal Elections Amendment (Scotland) Act 1868. In this connection reference was made to the definition of "municipal boundary" in the Town Councils (Scotland) Act 1900, viz. —"The existing boundary for the purpose of voting for town councillors." In the note of the Land Court, p. 25, it is said—"It may be that the tenant of a holding

because it is situated within the royalty has a right to vote if otherwise qualified in the election of town councillors." Then reference is made to the Statute of 1868, and in the first place to section 3 thereof.

That section 3 falls into three parts. The first of these parts deals with persons whose premises within the royalty entitles them to vote in a parliamentary election, and in my opinion has no application in the present case. The second part deals, *inter alios*, with those persons who have a sufficient qualification in terms of the Reform Act of 1832, where the qualifying premises are within the royalty but beyond the parliamentary boundaries of the burgh. In my opinion the subject in question falls within this provision. This was not really seriously disputed by the respondent apart from the effect to be given to the third part of said section, viz., the proviso. That proviso is in these terms—"Provided always that nothing herein contained shall be construed to confer the right of voting for town councillors on any persons in respect of premises situated beyond the municipal boundaries of any royal burgh, as such boundaries may be limited and defined by any Act of Parliament."

I do not think the argument founded on this proviso is sound. In the first place the municipal boundaries are not in my opinion limited and defined by any Act of Parliament. I do not find in any of the statutes to which we were referred any provision to the effect that any part of the royalty was to be excluded from the burgh or to be deemed outside the municipal boundaries. I think the royalty remains still as it was when the original charters were granted, included within the burgh. The respondent's contention would practically repeal a large part of the preceding provisions of the sections, which in reality do not "confer" any new right of voting but only continue the right which had previously existed. It is, I think, not without significance that Lord Advocate Young gave an opinion in 1870 to the effect that persons having the qualification we are now dealing with were entitled to vote.

On the whole matter I am of opinion that the first question should be answered in the negative and that the second question should be answered in the affirmative.

LORD SALVESEN was absent.

The Court answered the second question of law in the affirmative.

Mackenzie's Case.

LORD GUTHRIE—This Stated Case raises the same question as that already dealt with in connection with the application of Hugh Clark, Broomhill, Fortrose. Counsel for the applicant adopted the argument for the tenant submitted to us in Hugh Clark's case. Mr Hunter presented a forcible argument for the appellants, in which he usefully focussed the relevant clauses in statutes from 1832 onwards bearing on the use of the word "municipal" and the meaning and effect of the expression "municipal boundaries" in these statutes. The additional element in this case pointed out by him that the subjects in question form part of the Common Good of the burgh does not seem to me to affect the decision of the question submitted to us. I am of opinion that the question should be answered in the affirmative.

LORD DUNDAS and the LORD JUSTICE-CLERK concurred.

LORD SALVESEN was absent.

The Court answered the question of law in the affirmative.

Counsel for the Appellant (Fraser)—Constable, K.C.—M. P. Fraser—J. A. Christie. Agents—Carment, Wedderburn, & Watson, W.S.

Counsel for the Respondent (Clark)—Christie, K.C.—Macgregor Mitchell. Agents—Ross Smith & Dykes, S.S.C.

Counsel for the Appellants (Wallace's Trustees)—C. H. Brown—J. M. Hunter. Agents—M'Leod & Rose, S.S.C.

Counsel for the Respondent (Mackenzie)—Morton, K.C.—Scott. Agent—James M. Langlands, S.S.C.

Saturday, December 21.

SECOND DIVISION.

[Sheriff Court at Forfar.

FORBES *v.* MATTHEW.

Parent and Child—Aliment — Bastard — Inlying Expenses — Amount — Cost of Living in War-time.

The mother of an illegitimate child craved the Court to increase the amount of inlying expenses and aliment payable by the child's putative father because of the increased cost of living due to the war. The Court left unaltered the amount of inlying expenses, but granted decree for 4s. 6d. per week or £11, 14s. per annum, in name of aliment, permission being granted to the defender to apply to the Court at any time should a change of circumstances arise.

Ida Helen Forbes, *pursuer*, raised an action in the Sheriff Court of Forfarshire at Forfar against George Matthew, *defender*, whereby she craved the Court to find that the defender was the father of the pursuer's illegitimate female child, and to decern for payment to the pursuer of the sum of £3, 3s. in name of inlying expenses, and also of the yearly sum of £15, 12s. in name of aliment. The sums usually awarded in Forfarshire were hitherto £2, 2s. for inlying expenses, and 3s. per week or £7, 16s. per annum for aliment.

On 10th January 1918 the Sheriff-Substitute (C. T. GORDON) found as craved of consent, and thereafter granted decree for £2, 2s. for inlying expenses and aliment at the rate of £7, 16s. per annum.

The pursuer appealed to the Sheriff (LEES), who on 16th February 1918 adhered, but increased the amount of aliment to £8 per annum.

The pursuer appealed, and argued—The Court was entitled to consider what sum