Saturday, July 9.

FIRST DIVISION.

(SINGLE BILLS.)

SPEIRS *v.* CALEDONIAN RAILWAY COMPANY.

Expenses—Taxation—Commission to Examine Witness—Expense of Commission.

On 1st March the evidence of a marine engineer, whose ship was due to sail "about the middle" of the month, but the date of whose actual departure was indefinite, was taken on commission for pursuer. At the trial on 22nd March the pursuer produced and examined the witness in question. *Held* that the expenses of the commission were not chargeable against the unsuccessful defenders.

In an action of damages for personal injuries at the instance of Mrs Margaret Speirs, Abbotsford Place, Glasgow, *pursuer*, against the Caledonian Railway Company, *defenders*, in which the jury had returned a verdict for the pursuer, a question arose upon the Auditor's report on the pursuer's account of expenses.

The trial took place on the 21st and 22nd of March 1921. An important witness for the pursuer whose evidence had been taken on commission on 1st March was able to attend at the trial and give evidence. The witness, a marine engineer, stated at the trial that his ship had been due to sail "about the middle" of March.

The Auditor having lodged his report the defenders objected to it in so far as he had allowed the expense of the commission and also the charge for the attendance of the same witness at the trial, and argued—The commission had been executed *ob majorem cautelam*. That was not sufficient to make the other party liable for the expense—*Couper* v. *Cullen*, 1874, 1 R. 1101, 11 S.L.R. 641, *per* Lord President Inglis. It had been executed when there was no real necessity. The witness was important but not essential. The rule had been to refuse such expenses—*Napier* v. *Campbell*, 1843, 5 D. 858; *Maclaine* v. *Cooper*, 1846, 8 D. 429; *Napier* v. *Leith*, 1860, 22 D. 1262. A relaxation of the rule had been permitted during the war but should not be continued.

Argued for the pursuer—There was no general rule. It was always a question of circumstances, and the Court would not interfere with the Auditor's discretion unless he were clearly wrong—*Maclaine* v. *Cooper*, *supra*; *Couper* v. *Cullen*, *supra*. The practice for at least the past six years had been to allow these expenses. The witness was necessary, being the only one independent of the parties who could speak to the facts. The ship was "billed" to sail a week after the commission was executed, and in these circumstances the pursuer was acting reasonably in having the evidence taken.

LORD PRESIDENT—There is no general rule applicable to a question like the present except this—that no party is entitled to throw costs incurred by him in connection with litigation upon his opponent unless he can show that they were incurred under reasonable necessity for the conduct of the case.

In the present instance the commission was applied for one month before the date of the trial, and was executed very shortly after it was applied for, at a time when, according to the information obtainable from the witness himself, there was not only no immediate prospect of his leaving the country for an absence which would outlast the date of the trial, but on the contrary the date of his actual departure was indefinite and might possibly not arrive (as indeed turned out to be the case) until after the date of the trial. In these circumstances it seems to me that while it may have been a proper precaution for the pursuer to apply for the commission when he did, so as to be able to put it in force without delay if circumstances should render that course necessary, he was not justified in executing it at a time when the necessity for that step was (to say the least of it) very doubtful, and then, notwithstanding that he produced and examined the witness at the trial, in seeking to charge the other side with the expense.

It may be that some laxity in this matter has recently prevailed owing to war conditions, but in sustaining the present objection, as I propose we should do, I am not departing in any way from the practice which prevailed in this matter before the war.

LORDS MACKENZIE, SKERRINGTON, and CULLEN concurred.

The Court sustained the objection.

Counsel for Pursuer—Mackay, K.C.—Gibson. Agents—Manson & Turner Macfarlane, W.S.

Counsel for Defenders—Graham Robertson. Agents—Hope, Todd, & Kirk, W.S.

Saturday, July 9.

FIRST DIVISION.

[Sheriff Court at Glasgow.

SCOTTISH SUPPLY ASSOCIATION, LIMITED *v.* MACKIE.

Process—Summary Ejection—Competency—Title to Sue—Sale of Business—Agreement by Purchaser to Employ Vendor and Allow him to Remain in Occupation of House during Employment—No Assignation to Purchasers of Current Year's Tenancy by Vendor—Renewal of Lease by Vendor in his Own Name after Sale of Business without Informing Purchasers—Refusal by Vendor to Vacate House on Termination of Employment.

An employer brought an action of summary ejection against a dismissed employee, part of whose remuneration consisted in the right during the employment to occupy a house as long as the employer remained tenant of it. Prior to the employment the defender had

carried on a business as carting contractor, and since 1910 had occupied (on a missive renewable from year to year) premises which included the house in question. In December 1919 he sold the business to the pursuers with immediate possession, and accepted employment under them with the right to occupy the house during the employment, the pursuers undertaking to relieve him of the rent due at Whitsunday 1920. No express assignment of the then current year's tenancy was made in favour of the purchasers. In January 1920 the defender, unknown to the pursuers, re-took the house for a year from Whitsunday 1920. Thereafter the pursuers having notified him that his employment would end on 31st December 1920, and that on said date he was to remove from the house, defender refused to remove, and claimed that he was still tenant of the premises. *Held* that as defender's possession was supported by a *prima facie* valid title, the remedy by summary ejection was not competent against him, and action *dismissed.*

The Scottish Supply Association, Limited, Glasgow, *pursuers*, brought an action of summary ejection against John Mackie, 16 Gloucester Street, Glasgow, *defender*, in which they craved the Court to grant warrant for the summary ejection of the defender from the house occupied by him at 16 Gloucester Street, Glasgow.

The pursuers made the following averments—"(Cond. 1) By agreement between the pursuers and the defender, dated 1st December 1919, the pursuers engaged the defender in the capacity of foreman carter for their business, and the defender accepted said position. (Cond. 2) By said agreement the pursuers purchased the business of cartage contractor then carried on by the defender at 14 Gloucester Street, Glasgow, including the firm name of John Mackie, but they allowed defender so long as he should remain in their employment, and so long as the pursuers should remain the tenants of the premises, the use of the house No. 16 Gloucester Street, Glasgow, with coal supply, free of rent and taxes. (Cond. 3) By said agreement it is further provided that it shall be in the option of either party to terminate the agreement of service on giving to the other party two months' notice in writing of his or their intention so to do. (Cond. 4) On or about 28th October 1920 the pursuers through their law agents intimated by letter to the defender that they would dispense with his services on 31st December 1920, and also that he was to remove from said house on the same date. (Cond. 5) Notwithstanding the expiry of said notice of removal the defender continues to occupy said house, although he is no longer in pursuers' employment, and he maintains that he is tenant thereof. (*Ans.* 5) . . . Admitted that the defender continues to occupy the house at 16 Gloucester Street, Glasgow, and that he is not now in pursuers' employment. Explained that defender is tenant of said house. The missive of let between the defender and Messrs John Laing & Son, house factors, Glasgow, dated 2nd February 1910, which has been renewed on similar terms except as regards the amount of rent to be paid by defender from year to year since said date, is produced. (Cond. 6) The pursuers have ascertained that the defender (who was the tenant of the whole premises at 14 and 16 Gloucester Street, consisting of stables, &c., and said house prior to the date of said agreement) had on 21st January 1920 re-taken same for the year from Whitsunday 1920 in breach of his duty as a servant of the pursuers and without informing them. The defender's said action was unknown to the pursuers until after the said intimation of 28th October 1920. Denied that defender is the tenant of said house, and averred that pursuers are the tenants, and have paid the rents thereof falling due since the date of said agreement except the rents for the quarters ending Martinmas 1920 and Candlemas 1921, which were duly tendered. (*Ans.* 6) Admitted that defender on or about 21st January 1920 re-took the said house and also the stables at 14 Gloucester Street aforesaid for the year from Whitsunday 1920 to Whitsunday 1921 on the terms contained in the said missive of let, except as regards the amount of rent to be paid by defender, and that at the present date he is tenant of said house. . . . Denied that the pursuers paid the rent of said house at Martinmas term 1920 and at Candlemas term 1921, and averred that said rent was paid by defender."

The agreement referred to contained, *inter alia*, the following provisions:—"It is contracted and agreed to between the parties hereto as follows:—(*First*) The vendor agrees to sell and the purchaser to purchase, free of all or any liabilities pertaining thereto, at the price of £2000, the business of cartage contractor presently carried on by the vendor under the name of 'John Mackie' at 14 Gloucester Street aforesaid, in which purchase price is included the firm name and goodwill of said business, together with the ten horses and ten lorries employed in connection therewith, as also all plant, fittings, harness, and moveable effects of whatever nature or description appertaining thereto. (*Second*) The price will be paid and possession given on 1st December 1919. . . . (*Fourth*) The purchaser undertakes to relieve the vendor of the half-year's rent due at Whitsunday 1920. (*Fifth*) The purchaser agrees to engage the vendor in the capacity of foreman carter for said business at a wage of £4 per week. . . . (*Sixth*) The purchaser further agrees to allow the vendor, so long as he remains in the purchaser's employment, and so long as the purchaser remains tenant of the premises, the use of the house No. 16 Gloucester Street, with coal supply, free of rent and taxes. (*Seventh*) It shall be in the option of either party to terminate the agreement of service on giving to the other party two months' notice in writing of his or their intention so to do."

The pursuers pleaded, *inter alia*—"1. The defence is irrelevant. 2. The pursuers having allowed the defender to occupy said house as a consequence of his employment

with them, which has now ceased, warrant to eject should be granted. 3. The pursuers having by written intimation in terms of the said agreement warned defender to remove from said house, and said warning having expired, he is bound to remove accordingly. 5. The defender having sold his business, including the goodwill and the right to the name of John Mackie, and entered the service of the pursuers, was barred from re-taking the said premises in his own name and must be held to have done so on behalf of the pursuers. 6. The defender is barred *personali exceptione* from founding on his actings committed in breach of his agreement with pursuers."

The defender pleaded, *inter alia*—"1. No title to sue. 2. The action is incompetent and irrelevant. 3. The defender being tenant of the house at 16 Gloucester Street aforesaid, and the pursuers being neither proprietors nor tenants thereof, the action should be dismissed, with expenses."

On 28th February 1921 the Sheriff-Substitute (BOYD) granted warrant of ejection.

On appeal the Sheriff (MACKENZIE) on 11th April 1921 sustained the first plea-in-law for the defender and dismissed the action.

"*Note.*—In equity there is much to be said for the Sheriff-Substitute's decision, but I have failed to find legal grounds on which it can be supported.

"The action is one of ejection, and the ground of action is that the pursuers are tenants of the house referred to in the petition, and that the defender occupied it as their servant. If the defender does not occupy as their servant but has another title to possess, the action in my opinion fails. Now although the pursuers claim to be tenants of the subjects, their own averments in my opinion show that they have no right of tenancy. Their claim to be tenants is founded on the agreement, and it is material to note that that agreement is dated 1st December 1919. Under this agreement the defender agreed to sell, and the pursuers to purchase, at the price of £2000, the business of cartage contractor then being carried on by the defender under the name of 'John Mackie,' at 14 Gloucester Street, Glasgow, together with the firm name and goodwill of the business, and the horses, lorries, and plant employed in connection therewith. The pursuers undertook to relieve the defender of the half-year's rent due at Whitsunday 1920. They also agreed to engage the defender as their foreman carter at a specified wage and to allow him, so long as he remained in their employment and so long as they remained tenants of the premises, the use of the house which he was then occupying at No. 16 Gloucester Street, free of rent and taxes. This house, it may be explained, was included in the lease of the premises held by the defender at the date of the agreement. The agreement finally provided that either party should have the option of terminating the defender's agreement of service on two months' notice. The contention of the pursuers is that the above agreement imported an assignation to them of the defender's right of tenancy of the subjects at Nos. 14 and 16 Gloucester Street, that in virtue of that assignation they became tenants of the subjects, and that the defender thereafter occupied the dwelling-house at No. 16 Gloucester Street as their servant. I am inclined to agree with the pursuers' argument so far as to think that the agreement imported an assignation of the defender's right of tenancy of the subjects under the lease which he then held from the proprietor, and that as assignees were not expressly excluded by the terms of that lease, delivery of the agreement placed the pursuers *quoad* the defender in the position of tenants. But the lease which the defender had from the landlord at the date of the agreement was a yearly one—that is to say, it ran from Whitsunday 1919 to Whitsunday 1920—and assuming that the agreement imported an assignation of the defender's rights under that lease, the subject impliedly assigned was, I think, only that lease, for I cannot hold that the agreement imported an assignation of any lease of the subjects which the defender might subsequently acquire from the landlord. The effect of the agreement, therefore, in my opinion, was to enable the pursuers, by intimating their assignation, to substitute themselves in place of the defender as tenants under the existing lease, but I cannot hold that it gave them any rights as regards the future when that lease should be expired. It was for them to take steps to secure from the landlord a lease of the premises after Whitsunday 1920. Now the pursuers do not aver, either in the condescendence as it stands or in the minute of proposed amendment, that they ever intimated the assignation contained in the agreement to the landlord or his factor until November 1920, that is, long after the expiry of the existing lease which was assigned to them, or that the factor was ever made aware prior to November 1920 of the assignation in their favour. They do say that after the date of the agreement (1st December 1919) they paid the rent of the subjects to the factor, but they do not aver that the factor knew that they were paying the rent or in any way acknowledged them as tenants, and as they had bought the firm name of the defender, and presumably carried on business under it, it may well be that the factor never knew of the transfer of the business or that the pursuers were paying the rent. In a question with the landlord, accordingly, they never became tenants under the lease which existed at the date of the agreement. Nor do the pursuers aver that they ever applied for or obtained a lease of the subjects from the landlord after Whitsunday 1920. On the contrary, they make the following averment to article 6 of the condescendence—'The pursuers have ascertained that the defender (who was the tenant of the whole premises at 14 and 16 Gloucester Street, consisting of stables, &c., and said house, prior to the date of said agreement) had on 21st January 1920 re-taken same for the year from Whitsunday 1920 in breach of his duty as a servant of the pursuers and without informing them.' The result is, in my opinion,

that their own averments contradict their statement that they are now tenants of the subjects, and show that the defender is the tenant. It follows, in my opinion, that their contention that the defender's right to occupy the dwelling-house was, at the date when his contract of service was terminated, derived from them under that contract, and ceased when that contract terminated, fails. It may well be, at the same time, that the act of the defender in re-taking the premises from the factor was against the faith of the agreement between him and the pursuers, but that consideration cannot, in my opinion, turn the pursuers into tenants, if they hold no lease of the subjects, or deprive the defender of his rights under the lease granted to him by the landlord's factor. It is pleaded by the pursuers that — '(5) The defender having sold his business, including the goodwill and the right to the name of "John Mackie," and entered the service of the pursuers, was barred from re-taking the premises in his own name, and must be held to have done so on behalf of the pursuers.' I have failed to find in the facts averred any sufficient ground for the support of this plea. I am unable, as I have already said, to hold that the lease granted to the defender in January 1920 was impliedly assigned by him to the pursuers by the agreement of December 1919, nor can I hold that in taking that lease in his own name the defender must be held to have taken it for the pursuers, for they do not aver that the factor intended to let the subjects to anyone else than the defender himself. It may be that in re-taking the premises the defender committed a breach of his contract with the pursuers for which they may have a remedy, but that is a matter in regard to which it is unnecessary for me to pronounce an opinion at present. Again, I cannot find in the pursuers' averments ground for holding that the defender is barred from founding in this action on the lease granted to him in January 1920, and from representing that he is now the tenant of the subjects. He might be so barred if he had by words or conduct represented to the pursuers that he was not tenant, or had not taken a lease of the premises for the year following Whitsunday 1920, and had by such words or conduct induced the pursuers to alter their position to their prejudice, but there is no averment of any such representation by the defender.

"For these reasons I am of opinion that the defender's plea of no title to sue must be sustained."

The pursuers appealed, and argued—The action of ejection was competent. The pursuers were tenants of the house under the agreement between them and the defender. By it there was a universal transfer of the assets of the business. The tenants' rights passed as one of the assets. The words "so long as the purchaser remains tenant" were significant. Thereafter the defender occupied the house merely as pursuers' servant. The cases cited by the defender, *Scottish Property Investment Company Building Society* v. *Horne*, 8 R. 737, 18 S.L.R. 525; *Robb* v. *Brearton*, 22 R. 888, 32 S.L.R. 671, and *Walker* v. *Kerr*, 1917 S.C. 102, 54 S.L.R. 103, were to be distinguished in respect that in each of these cases there were competing titles which could not be solved in a process of ejection. Here there was only one possible title which had been assigned to the pursuers, and in view of the terms of the missive the landlord could not refuse to recognise the assignation. The following cases were also referred to:—*Traill* v. *Trail*, 1 R. 61, 11 S.L.R. 8; *Sinclair* v. *Tod*, 1907 S.C. 1038, 44 S.L.R. 771.

Argued for the defender—An action of ejection was not competent unless pursuers' title as owners or tenants was instantly verifiable. That was not so here. On the contrary the defender had an *ex facie* absolute title as tenant and the pursuers had, at best, only a right to demand an assignation. The question was whether an existing title in the defender could stand against the title which the pursuer was seeking to set up. Such a question could not be decided in this process. The following cases were referred to:—*Scottish Property Investment Company Building Society* v. *Horne*; *Robb* v. *Brearton*; *Walker* v. *Kerr*.

At advising—

LORD PRESIDENT—This is an action of ejection brought against a dismissed employee, part of whose remuneration consisted in the right to occupy a house so long as the employer continued to be tenant of it. The termination of the contract of service on 31st December 1920, in accordance with due notice to that effect made on 28th October 1920, terminated as at the former date the right to occupy the house which the servant derived from his employers. The case is thus at first sight one to which the remedy of ejection properly applies, the servant never having had a title of his own to possession, but only a right of occupancy while he continued in his employers' service.

But the pursuer's averments disclose that the house, part of a property consisting of a house, shop, and stables, is in fact held on a yearly lease for the slump rent of £40, not by the pursuers, but by the employee. It appears that for a number of years prior to 1st December 1919 the employee had carried on a carting business in the premises in question and lived in the house. At the last mentioned date he sold the business by formal agreement of sale (including stock, name, and goodwill) to a limited company with immediate possession, and accepted employment as foreman under them. Part of his wage was to be that "so long as (the vendor) remains in the purchaser's employment, and so long as the purchaser remains tenant of the premises" the vendor (*qua* employee) was to have "the use of the house." At this time the property was held by the vendor on an informal missive. No express assignment of the then current year's tenancy was made in favour of the purchaser, but I agree with the Sheriff in thinking that the agreement of sale amounted to an obligation on the part of the vendor

to assign it, and the purchaser expressly undertook to relieve the vendor of the quarterly rents up to the end of the current year—that is, up to Whitsunday 1920—and paid them accordingly. On the principle illustrated in *Carter* v. *M'Intosh*, 1862, 24 D. 925, and in *Wallace* v. *Gibson*, [1895] A.C. 354, the effect was just the same as if an actual assignation had been granted by the vendor to the purchasers. Meanwhile on 21st January 1920 the vendor, without communicating with his employers, went to the landlord's factors and took a year's lease from Whitsunday 1920 of the whole premises in his own name. It may be that the fact that the purchaser (having acquired both name and goodwill) was carrying on the business under its old name (that of the vendor) facilitated this proceeding. The purchasers on their part did not formally intimate to the landlord the assignation of the year's lease to Whitsunday 1920, and in the absence of any warning to remove at that term they apparently assumed that the landlord accepted them under the old name as tenants for another year, for they paid the quarter's rent at Lammas 1920, and the landlord's acceptance of their money lulled them into security. It was between Lammas and Martinmas 1920 that the notice terminating his employment was intimated to the vendor, and when at the latter term his employers sent the quarter's rent to the landlord they were informed that it had been paid a day or two earlier by the vendor, who thereupon propounded the lease he had taken in the previous January and asserted himself to be the tenant of the whole property.

The purchasers do not contend that the vendor must in the circumstances be taken to hold this lease as trustee for them, and if they did it would only be to exhibit the vendor as having been in possession on a title which supported it. It might be easy to terminate such possession, especially in the circumstances in which it was acquired, but that could not be done as the law stands by ejection but only by removing. Nor can it be said that the lease was taken for the purchasers (under the acquired trade name) by the vendor with their authority. On the contrary, it was taken behind their backs, and, as they aver, in breach of his duty as their servant. But however little the vendor's actings may commend themselves to sympathy, they seem to have resulted in supporting his possession since Whitsunday 1920 with a title. The crucial part of the case is reached by the Sheriff in the passage in his opinion where he says with reference to the contract of sale—"The subject impliedly assigned was, I think, only that lease (the lease to Whitsunday 1920), for I cannot hold that the agreement imported an assignation of any lease of the subjects which the defender might subsequently acquire from the landlord." I am of the same opinion.

A remarkable feature of the position thus brought about is that the vendor only persists in his endeavour to retain possession under the lease (from Whitsunday 1920) as regards the house, and is content not to dispute the purchasers' right to possess the shop and stables. This accentuates the unfavourable aspect of his course of action, but it does not affect the question in this appeal, which is limited to the competency of the process of ejection as against that of removing.

In the recent case of *Gardiner* v. *Lowe* I drew attention to the urgency of an amendment of the law with regard to actions of ejection and removing, the distinctions between which are the frequent cause of undeserved mishap to litigants. "Possession," says Erskine (Inst. ii, 1, 23) "is got *clam* when one, conscious that his right in the subject is disputable, and apprehending that he will not be suffered to take open possession, catches an occasion of getting into it surreptitiously or in a clandestine manner without the knowledge of the owner." A person who so acquires possession is liable to ejection. Yet if a defender, actuated by the same motives and proceeding by the like surreptitious and clandestine methods, has succeeded in obtaining something in the form of a title which purports to support his possession, he can only be deprived of the temporary advantage he has thus procured through the process of a removing. So long as the unnecessary and confusing distinction between ejection and removing remains, it must be respected, and in the present case it leaves me no alternative but to move that the appeal should be refused.

LORD MACKENZIE—I concur.

LORD SKERRINGTON—I also concur.

LORD CULLEN—The agreement between the parties is not happily conceived *quoad* the premises in question. It assumes that the pursuers are becoming tenants, but it expresses no assignation of the then current lease held by the defender. Probably the Sheriff was right in the view he took that there was an implied assignation of that lease. But *esto* this was so, the said lease so assigned expired at Whitsunday 1920, and when the present action was raised in January 1921 the pursuers held no title of possession whatever. The only title of possession derived from the owner of the premises was a new lease for the year from Whitsunday 1920 held by the defender. Junior counsel for the pursuers argued that this new lease fell to be regarded as having been obtained by the defender as agent for and on behalf of the pursuers. This is, however, inconsistent with the pursuers' averments, which represent the defender as having obtained the lease in his own interest in breach of his duty towards them. The view that the lease was the subject of a constructive trust in the defender was, for the purposes of the case, disclaimed by the pursuers' counsel, who probably saw difficulty in maintaining that an action of summary ejection forms a proper process for establishing the rights of an alleged beneficiary against an alleged trustee holding a valid and *ex facie* unqualified title. Mr Moncrieff, for the pursuers, accordingly rested their case on the contention that the

agreement contained an implied assignation to them not only of the lease current at its date but of all future leases which the defender might obtain while he continued to be in their employment. I do not think, however, that the agreement will bear the strain of such an implication. I am unable to find in it any reasonable ground for concluding that the parties actually took account of future possible leases and made a bargain about them which they left unexpressed.

It remains therefore that when this process of summary ejection was instituted the pursuers neither owned the premises nor held any title of possession thereof, and that the only title of possession derived from the owner was a lease obtained and held by the defender for his own interest. In these circumstances, whatever claims and remedies the pursuers may otherwise have against the defender arising out of their contract with him, it appears to me clear that the present action is not well founded.

The Court refused the appeal.

Counsel for the Appellants — Moncrieff, K.C.—J. A. Christie. Agents — Murray Lawson & Macdonald, W.S.

Counsel for Respondent — Mackenzie Stuart, K.C.—W. J. Robertson. Agent—J. Ferguson Reekie, S.S.C.

Tuesday, July 5.

FIRST DIVISION.

[Lord Sands, Ordinary.

SEATON *v.* PARISH COUNCIL OF ARBROATH AND ST VIGEANS.

Poor—Inspector of Poor—Union of Parishes — Transfer of Existing Officers—Distribution of Business — Local Government (Scotland) Act 1889 (52 *and* 53 *Vict. cap.* 50), *sec.* 51 (*d*) *and* (*f*)—*Local Government (Scotland) Act* 1894 (57 *and* 58 *Vict. cap.* 58), *secs.* 46 *and* 51 (1) *and* (2).

Two parishes, of which A and B were respectively inspectors of poor, having been united by an Order of the Secretary for Scotland under the Local Government (Scotland) Act of 1889, the council of the united parish allotted to A the duties of collector of rates and to B the duties of inspector of poor. B having resigned, the council successively appointed two inspectors of poor, A meantime performing the duties of collector of rates. ***Held*** (1) that at the union of the parishes A became along with B inspector of poor for the united parish, (2) that on B's resignation A became sole inspector of poor for the united parish, and (3) that the two successive appointments of inspectors of poor made after B's resignation were illegal, invalid, and *ultra vires.*

The Local Government (Scotland) Act 1889 (52 and 53 Vict. cap. 50) enacts—Section 51—"On the representation of a county council or of a town council the Secretary for Scotland may at any time after the expiry of the powers of the Boundary Commissioners by order provide for all or any of the following things:—. . . (*d*) For uniting several parishes or parts of parishes into one parish . . ., and any parish so formed by a union of parishes or parts of parishes . . . shall for all purpose be deemed to be one parish . . . (*f*) For the proper adjustment and distribution of the powers, property, liabilities, debts, officers, and servants of any local authority consequential on any consolidation, alteration of boundaries, or other act done in pursuance of this section."

The Local Government (Scotland) Act 1894 (57 and 58 Vict. cap. 58) enacts—Section 51—"(1) The officers and servants of any authority who hold office at the passing of this Act, and who by or in pursuance of this Act become officers and servants of a parish council (in this Act referred to as existing officers), shall hold their offices by the same tenure and upon the same terms and conditions as if this Act had not passed, and while performing the same duties shall receive not less salaries or remuneration, and be entitled to not less pensions (if any), than they would have received or been entitled to if this Act had not passed. . . . (2) Subject to any general regulations of the Board, a parish council may distribute the business to be performed by existing officers, and may combine their duties in such manner as the council may think expedient, and every existing officer shall perform such duties in relation to such business as may be directed by the council: Provided that if any existing inspector of poor is aggrieved by such distribution of business or by the imposition or withdrawal of any duties, he may, within one month after the date of any resolution of the council distributing such business or imposing or withdrawing such duties, appeal to the Board, whose decision shall be final."

Henry George Seaton, inspector of poor and collector for the parish of Arbroath, *pursuer*, raised an action against the Parish Council of the Parish of Arbroath and St Vigeans, *defenders*, and William Bennett Gardner, Arbroath, in which he, *inter alia*, concluded for declarator—"(***First***) That the pursuer on the amalgamation of the parish of Arbroath and the parish of St Vigeans . . . became jointly with Robert Stuart (previously inspector of poor for the parish of St Vigeans) inspector of poor for the parish of Arbroath and St Vigeans; (***second***) that on the resignation of the said Robert Stuart from the office of inspector of poor for said parish of Arbroath and St Vigeans on 10th December 1918 the pursuer became sole inspector of poor for the said parish of Arbroath and St Vigeans . . .; (*third*) that the pretended appointment of Henry Myles as acting inspector of poor of the said parish of Arbroath and St Vigeans made by the defenders . . . on 10th December 1918 was illegal, invalid, and *ultra vires*; (*fourth*) that the pretended appointment of William Bennet Gardner as inspector of poor for the said parish of Arbroath and St Vigeans, made by the defenders on 4th May 1920, was