is specially applicable to the case of absent or infirm witnesses, parties unable to attend the trial or not within the jurisdiction of the Court, so that a party may have the compulsitor of law to enforce attendance. I take it that where depositions were taken before issues were settled they were generally taken to lie *in retentis.* The existing practice referred to in the material portion of the clause in applications as to parties resident beyond the jurisdiction, or incapable of attending to give evidence, is certainly the practice as fixed by the A. S. 1841. I think that we are referred to the case of certain exceptional grants of commission, having, as the special object in view, the dispensation with personal attendance of witnesses at a trial, and when we find a precise course prescribed under an A. S. *in viridi observantia,* we cannot, I think, ignore it. If the application, according to existing practice in such a case, requires a previous affidavit, and the preparation of interrogatories, it seems to me impossible to depart from that practice, where a strict adherence to the rule of practice is insisted on by one of the parties, without violating the Act of Parliament. Considerations as to the expediency or inexpediency of the rule prescribed cannot affect the question. If the Act of Parliament requires an adherence to a special practice, it is immaterial whether the practice is a wise one or not. But I am by no means persuaded that the observance of the practice in the particular case of witnesses resident beyond the jurisdiction of the Court is disadvantageous. In cases where parties, owing to sudden illness or to great age, but resident in Scotland, are unable to come here to attend a trial, the preparation of interrogatories may cause delay, and lead to a form of examination more cramped and fettered both in chief and in cross, and perhaps more readily admitting of the witness being prepared for his answers, than if no interrogatories were adjusted; but in that case there is a *copia peritorum* at hand—counsel or agents who are conversant with the case may attend. But it is otherwise in reference to the examination of parties resident in distant countries, and it may be in various ports or towns scattered along a considerable extent of coast. The cost of conducting an examination without interrogatories would be very great, or the examination very unsatisfactory. The preparation of questions in chief and in cross, by insuring that the case on both sides shall be brought out, may save the journey of agents or counsel or reliance upon such instructions as can be given to parties on the spot not very able to receive or make available this instruction. In such a case as the present, I have known one instance in my own practice where the citation of the witnesses and their examination, and the return of the commission with the depositions taken, were left entirely to the official party named as commissioner. One or other of the parties, or both, may, in cases of this nature, be saved a very large amount of expense by interrogatories. I should hesitate, were it open, to dispense with them, one party requiring the form to be observed, but I hold it incompetent to do so. As to the affidavit, it is obviously here a matter of no consequence; it might have been otherwise, however, if the application had been made under one of the classes coming within the same category.

The other Judges concurred.

The Lord Ordinary was instructed in terms of the above judgment.

Agents for Pursuers—White-Millar & Robson, S.S.C.

Agent for Defender—J. Henry, S.S.C.

COURT OF JUSTICIARY.

Monday, March 11.

(Before the Lord Justice-General and Lords Cowan and Neaves.)

MORTON *v.* GORDON, JOHNSTON, AND DAVIDSON.

Day Poaching Act—Conviction—Enforcement. Held that a conviction obtained upon a complaint at the instance of the Procurator-Fiscal could be enforced after he had vacated office.

The suspender was convicted in November 1865, at the instance of Mr Johnston, the Procurator Fiscal of the Justice of Peace Court of the Stewartry of Kirkcudbright under the Day Poaching Act, 2 and 3 Will. IV., c. 68. The warrant of imprisonment in the conviction (failing payment of the penalty and costs) was put in force in January 1867. Morton presented a note of suspension and liberation on the grounds (1) that Mr Johnston had never authorised the apprehension and imprisonment; and (2) that the parish minister, to whom the penalty in the conviction was ordered to be paid, being now dead, there was no one in existence to whom the penalty could be paid so as to satisfy the conviction. Mr Johnston ceased to act as Fiscal in 1866. The parties called in addition to Mr Johnston as respondents were Gordon, on whose grounds the trespass was committed, and Davidson, as Chief Constable of the Stewartry, who, as was alleged, had instructed the enforcing of the sentence.

The Court refused the suspension, holding that it was to be presumed that the delay in enforcing the warrant arose from Morton not having been found until now; that the sentence here being a criminal sentence, the prosecutor had no option, when once it was pronounced, of enforcing or not enforcing it; and that the superintendent of police had a right to enforce the warrant against the suspender.

Counsel for Suspender—Mr Pattison. Agent—James Somerville, S.S.C.

Counsel for Respondent Gordon—The Solicitor-General (Millar) and Mr A. Blair. Agents—Hunter, Blair, & Cowan, W.S.

Counsel for Johnston—Mr Charles Scott. Agent—W. S. Stuart, S.S.C.

SEATON *v.* BROWN AND GRAHAM.

Embezzlement Act—Oath of Credible Witness—Alteration of Date. Held *ex parte* that a conviction was bad in respect the original warrant for apprehension which required to be preceeded by an oath of a credible witness had been altered in its date, so as to make it subsequent to date of oath.

This was a suspension of a conviction under the Embezzlement Act, 17 George III., c. 56, obtained before the Justices of the Peace at Girvan, whereby the suspender was convicted of neglecting or refusing to work up certain yarn entrusted to him for the purpose of being worked up into cloth. There were various grounds of suspension, including one to the effect that the original warrant for apprehension was dated "9th February," and signed "James Crawford," whereas the oath of the credible witness, which required to precede warrant of apprehension, was dated 11th February, and emitted before John M'Cracken, and the warrant was afterwards altered so as to be of subsequent date to