I do not see that there is any substantial difference in this matter between the consent in the case of *Macintosh* and the *non-objection* of the respondent in this case; as regards a claim for expenses, I think the expression of a waiver of any objection to the pursuer's craving necessarily implied a waiver of the objection that the expenses had not been paid—in other words, a waiver of the claim for expenses as a condition of revival. It is difficult to figure what a party could mean, who stated that he did not object to a motion for revival of the cause *simpliciter*, if he did not mean that his claim for payment of expenses which was his statutory right was not to stand in the way. I view this case as ruled by the case of *Macintosh*. If another view were taken, and the Sheriff were to hold that no waiver was implied; then, as the motion certainly implied a tender of the expenses, the Sheriff might have found the defender entitled to them, and directed an account to be given in and taxed. In either view, there was no case for a dismissal of the process. I propose, therefore, that we sustain the appeal, and remit to the Sheriff to revive the process, and to proceed further therein as may be just.

The other Judges concurred.

Agent for Appellant—A. Morrison, S.S.C.

Agents for Respondent—Gibson-Craig, Dalziel, & Brodies, W.S.

Saturday, May 29.

FIRST DIVISION.

SCOTT AND GILMOUR *v.* WINK.

Bankrupt—Discharge—Timeous Objection. A creditor who, although aware of his debtor's sequestration, lodged no claim, *held* precluded from reclaiming against a deliverance of the Sheriff approving of an offer of composition, he having stated no objection to the proceedings until the time for reclaiming against the deliverance had almost expired, and the proceedings in the sequestration being regular.

Buchanan's estates were sequestrated on 21st August 1866. Wink was appointed trustee at a meeting of creditors on 15th February 1869, called by the trustee, with consent of the commissioner, to consider an offer of composition with security. The bankrupt offered a composition of ninepence per pound. The minute bore that the "creditors unanimously resolved that the above offer be entertained for consideration, and instructed the trustee to call another meeting of the creditors, for the purpose of finally deciding on the bankrupt's offer, and the security proposed." A circular letter, dated 1st March 1869, was sent to all the creditors who had lodged claims, or who were given up in the bankrupt's state of affairs, intimating the offer, and calling a meeting to decide on the same. To this letter was appended this note:—"The bankrupt states that he has certain claims against Mr Merry, which have emerged since the sequestration, out of his dealings with the Caol Ila Distillery, and otherwise; the trustee, with advice of the commissioners, has refused to take up and pursue said claim."

At the meeting on 11th March, the offer and security made at last meeting having been considered, it was unanimously agreed to accept thereof, and the trustee was instructed to get the same carried through without delay.

On 22d March the trustee reported to the Sheriff, in terms of the 38th section of the Bankruptcy (Scotland) Act 1856. On 30th March the Sheriff-substitute (MURRAY) pronounced this interlocutor:—"Having considered the foregoing report, with the minutes of meeting of creditors and bond of caution therein referred to, and no appearance being made by any creditor to object, finds that the offer of composition, with the security therein mentioned, has been duly made, and is reasonable, and has been accepted unanimously by the creditors, or mandatories of creditors, present at said meeting; therefore approves of the said offer, with the security; but before granting the discharge, appoints the bankrupt, Norman Buchanan, to appear and make a declaration in terms of the statute."

Scott & Gilmour, coalmasters, Glasgow, creditors to the extent of £7, who, although they were aware of the sequestration, had not lodged any claim, appealed.

The Lord Ordinary (BENHOLME) dismissed the appeal.

SHAND and GLOAG for reclaimers.

FRASER and H. J. MONCREIFF for respondent.

At advising—

LORD PRESIDENT—We have heard a great deal about general principle in this case, but I have failed to extract any general principle from what we have heard. This offer has been carried through regularly under the statute. It is unobjectionable in point of form. The meeting at which it was entertained was a regular meeting of creditors, and the meeting at which it was accepted was also a regular meeting. The circular letter sent in the interval complied with all the requirements of the statute. Mr Gloag says that it does not give sufficient information. That is a question of circumstances, and it is difficult for us to judge of that now, owing to the fault of the appellant, but on the face of the letter it does give information, assuming the trustee to be honest and to be stating the truth. I think it gives proper information for the creditors, to enable them to say whether the offer is reasonable, and ought to be accepted. It also states that, while some other claims have emerged since the sequestration, the trustee, with advice of the commissioners, has refused to take them up. Mr Gloag says that that is another thing for consideration, and it is desirable to know something as to these claims which emerged, and the reason of the sum being reduced to ninepence per pound. That is a good observation, but when ought it to have been stated? Ought it not to have been made at this meeting for consideration of the offer? But these gentlemen, for a claim of £7 for coals, make no appearance in this sequestration, and lodge no claim down to the present date. They might have appeared at the meeting for consideration of the offer, and might have stated this objection and asked information, which I think they would have got on the spot, and such as would have satisfied them. They allow things to go on, and then the trustee makes this representation to the Sheriff, and he, in his absence of any objection from any quarter, pronounces the deliverance of 30th March. All this time, and for seven days more, this account was never heard of, but on the last day for reclaiming against this deliverance this application is presented, and what is said in support of it? Nothing but the vaguest surmises of something being wrong. It is said the composition is not reasonable, or rather that we cannot see

whether it is reasonable or not. I admit that, but it is the fault of the appellants themselves. I can hardly conceive any state of circumstances calling for less consideration from this Court; and, without saying anything as to the competency, I am of opinion, on the merits, that the application is utterly unfounded.

The other Judges concurred.

Agent for Appellants—W. Ellis, W.S.

Agents for Respondent — Murray, Beith & Murray, W.S.

COURT OF JUSTICIARY.

Saturday, May 29.

HIGH COURT.

CROALL *v.* LINTON.

Burgh—Edinburgh Provisional Order, 30 & 31 *Vict. c.* 58—*Regulation of Coach Traffic—Jurisdiction.* By section 109 of the Edinburgh Provisional Order, the magistrates *held* entitled to regulate the time of starting and the stance of a public conveyance which, starting from a point within the jurisdiction, plied beyond the same.

This was a suspension brought by Mr John Croall, coach-proprietor, Edinburgh, for the purpose of setting aside a conviction obtained against him in the Police-court of Edinburgh for causing the Dunfermline coach to stand at and start from a place different from that appointed by the magistrates under by-laws said to be passed in virtue of a certain section of the Edinburgh Provisional Order.

The by-law said to be contravened was in these terms—"The Dalkeith, Lasswade, and Dunfermline omnibuses shall start from the west end of Kennedy's Hotel;" and the section of the Provisional Order (sec. 109) said to authorise this by-law was as follows:—"The Magistrates shall be empowered, and they are hereby authorised, to prevent within the limits of their jurisdiction the plying or running of omnibuses or other carriages for the conveyance of passengers which shall be in a state of disrepair or insecurity, or not adapted in all other respects for the conveyance of passengers with safety and comfort, or drawn by horses not sufficiently strong or in good condition, or not sufficiently trained or broken in, and that by imposing penalties not exceeding for each offence five pounds on the owners or contractors or drivers of such omnibuses or other carriages which shall be found by the Magistrate or Judge of police before whom the same may be brought to be in an unsafe or unfit state for the conveyance of passengers, or not drawn as aforesaid: and the Magistrates are further empowered to make by-laws for regulating the number of passengers to be carried by and times of running of such omnibuses or other carriages, the places at which the same shall stand, the times at which the same shall start, and all other matters tending to promote regularity and public convenience; and may vary and alter the same from time to time, and may enforce the same against the proprietors or conductors or drivers of such omnibuses and other carriages in like manner and under a like penalty." The suspender maintained that the magistrates had no power under the above section to interfere with the arrangements of the Dunfermline coach, which was a stage-coach carrying Her Majesty's mails, and otherwise acting as a public carrier, and which had for forty years started from the door of the suspender's office, whence alone it was convenient that it should start, He argued that, looking to the intent and scope of the Provisional Order, it was impossible to hold that the section founded on applied to any carriages other than those which were used for urban or suburban traffic.

CLARK and MACKINTOSH for suspender.

Solicitor-General (YOUNG, Q.C.) and GIFFORD for respondent.

At advising—

The Court held that the section of the Provisional Order applied to the Dunfermline coach and to all other carriages for the conveyance of passengers traversing the magistrates' jurisdiction, whether they plied exclusively within the jurisdiction, or merely started from it, or merely passed through it. The magistrates had therefore power to make the by-laws in question, and the reasons of suspension, so far as founded on defect of jurisdiction, fell to be repelled.

Agents for Suspender—Hope & Mackay, W.S.

Agent for Respondent—John Richardson, W.S.

COURT OF SESSION.

Thursday, June 3.

FIRST DIVISION.

BUCHANAN *v.* GLASGOW CORPORATION WATER WORKS COMMISSIONERS.

Acquiescence—Statutory Commissioners—Interdict—Competency. A landowner having for ten years made no complaint of pipes which had been laid through his lands at an unauthorised level by statutory commissioners, *held* barred from objecting, in a suspension and interdict, to the laying of a new pipe alongside of the old, the commissioners having power to alter or add to their pipes.

In 1855 the respondents were authorised by statute to construct water works for the conveyance of water from Loch Katrine to Glasgow, and for that purpose they acquired land and wayleave through other land from Mr Buchanan of Carbeth. By the Act the commissioners were entitled to execute all necessary works in lines and on levels delineated on deposited plans, it being provided that they should not be entitled to make any vertical deviation exceeding five feet. By the 68th section of their Act power was given them to alter, enlarge, and increase the number of pipes. Subsequently, by an Act passed in 1865, the commissioners were empowered to construct a bridge over the Endrick for conveyance of the water thereby instead of by a syphon in the bed of the river, as was previously the case, and to perform all necessary works in connection therewith. Mr Buchanan presented this note of suspension and interdict, alleging that the commissioners were now laying additional pipes through his lands at levels not permitted by the Act of 1855, and craving interdict. The respondents pleaded that the works were being done under the Act of 1865; and further, that the complainer was barred by consent and acquiescence from now objecting to the level of the pipes. The Lord Ordinary refused interim interdict, and thereafter found that the work in progress when the interdict was applied