At advising—

The Lord Justice-Clerk said he had no hesitation in adhering to the judgment of the Sheriff-Principal, and finding that the defenders were not responsible for the unfortunate accident which had happened to this girl. The door of the elevator passage which she had opened was not the proper means of egress from that flat, and that was a fact which she knew quite well, as she had gone down by the proper staircase before. He could not conceive it as an account of this accident that was at all probable that the girl believed she was going out by the usual door; and there were one or two things in her evidence which impressed him with the belief that it was not altogether reliable. For instance, she had said that the mill was stopped; but there was clear evidence that when the mill was stopped there was an instant rush to the staircase door, and if at that time she had gone to this door she could not have done so without knowing that it was not the proper way for going out. His Lordship noticed several other contradictions in the evidence, and said these things led him to think that they could not rely implicitly on the statements which the pursuer had made in her examination. The real story he believed to be this —that the day before Brady had been near the other elevator at the other end of the flat, when a boy named Macnamara was there, and that something had taken place which led one of the workers to give her a warning, and to tell her that if she went near that place she would meet with some injury. He did not think it was a strained inference to suppose that Macnamara and Brady had been talking about going down the ropes; and it was that, probably, which led to the observation that if she did not take care she would meet with an accident. Then the next day she saw the boy Macnamara going down the ropes, and she thought she would follow him. She went to the door. Very probably when she flung it open she did not know very well what she was to meet with, and in the excitement she tumbled instead of catching hold of the rope. He did not think there was anything improbable in that explanation of the matter. A spirited girl sees a boy doing this daring thing, and she is seized with a sudden impulse to do the same thing which the boy had done. On the whole matter, he thought it was unquestionable that the pursuer had failed to prove that it was the carelessness or negligence of the employers that had led to this accident, but that it had resulted entirely from the fault of the girl herself.

Lord Cowan, while concurring entirely in the result at which his Lordship had arrived, did not think that he was going against the principle that there was an obligation, and in the case of the employers of young children a peculiar obligation, to take the most efficient means for protection against accident. But while admitting that to be the obligation of the employers of this little girl, he was quite satisfied that there was no charge against them of either fault or negligence in duly protecting their premises against such accidents. He believed that it occurred from the thoughtlessness of the girl herself, who having seen the boy go in at that door, had felt a desire to follow his example, and that was a reckless and a wrong thing for her to do.

Lord Benholme also took the same view. His opinion was that when the girl opened the door, which she could not do without some exertion, and without for the time stepping back, she must have seen the hole that was before her, and that she would certainly have sprung back if she had not thought she would catch the ropes. His idea was that she had intended to catch the ropes, but did not do it, and that she would not have fallen down if she had not intended that.

Lord Neaves said he was of the same opinion. He did not wish in the least degree to diminish the responsibility and duty which was imposed upon those managing such works to take care that children should not be unduly exposed to risks by reckless and careless arrangements; but, on the other hand, he could not overlook the fact that in such cases they must pre-suppose that there was a certain decree of intelligence and docility in the children who were there employed. It was a pity that such an accident as this should have happened, and one could not help feeling sorry for it; but whatever sympathy they might feel for the poor girl who had been injured, they could not blame the employers for saying that they must encourage some degree of care on the part of their work-people.

Appeal dismissed.

Agent for Pursuer—D. Milne, S.S.C.
Agent for Defenders—L. Macara, W.S.

Tuesday, December 5.

WICK ELECTION PETITION — RETURNING OFFICER *v.* LOCH AND LOCKYER.

Corrupt Practices Act 1868, *sect.* 41—*Petition to Unseat — Expenses. Held* that the Returning Officer of a burgh, where there had been an unsuccessful petition to unseat the member returned, could recover the expenses which he had incurred from the unsuccessful party alone.

This was an application to the Court by the returning officer for the Wick district of burghs against the sitting member (Mr Loch, M.P.) and Mr E. B. Lockyer. It was to the following effect:—

"In terms of the 7th section of the Parliamentary Elections Act 1868, 31 and 32 Vict. c. 125, and of the 15th General Rule of Procedure in reference to election petitions in Scotland, made by your Lordships, dated 27th November 1868, the said George Dingwall Fordyce, as returning officer foresaid, gave notice in said Northern District of Burghs that the said Edmund Beatty Lockyer had presented to your Lordships, and had lodged on the 19th December 1868, in the office in Edinburgh of Harry Maxwell Inglis, Principal Clerk of Session, No. 16 New Register House, Edinburgh, the foresaid petition. He also gave notice, in terms of the 15th of said General Rules, of the agents appointed by the said Edmund Beatty Lockyer and George Loch respectively. The said notice was so published in the various burghs in terms of the Act.

"The said George Dingwall Fordyce, as returning officer foresaid, in terms of the 17th of said General Rules of Procedure, duly published in said burghs a list of election petitions presented to the Second Division of the Court of Session, and lodged in the office of the said Harry Maxwell Inglis, the prescribed officer pursuant to section 10 of the statute and General Rules of Procedure No. 16.

"Afterwards on 11th February 1869 the said George Dingwall Fordyce gave notice throughout the said burghs, in terms of the Parliamentary Elections Act 1868 and said relative General Rules of Procedure, of an application by the said Edmund Beatty Lockyer for leave to withdraw the said petition, and the deliverance of my Lord Jerviswoode thereon.

"In making said publications expenses were incurred by the returning officer to the extent of £23, 1s. 11d.

"Application for payment of said expenses has been duly made to the parties to the said petition, but they have declined to make payment, and deny liability for the same; and the returning officer now respectfully craves your Lordship to move the Court for a remit to the Auditor to tax the same, and after the same is taxed, or without taxation should taxation be deemed unnecessary, he respectfully craves your Lordship to move the Court to grant an order on the said Edmund Beatty Lockyer and George Loch, conjunctly and severally, to pay the said expenses to the returning officer, together with the expenses of this application, under such pains and penalties as to your Lordship shall seem proper."

The application was made under the 41st section of the Corrupt Practices Act of 1868, which provides that all costs and charges not otherwise provided for in the Act shall be borne by "the parties to the petition," and the contention was that under this claim both petitioner and sitting member were primarily liable, although the successful party had relief against the unsuccessful party, in the same way as in the case of the former's ordinary expenses. It was explained that the delay in making the application arose from attempts having been made to obtain the money from the Treasury, which attempts had ultimately failed. In February 1869 Mr Loch's expenses had been taxed, and decree given therefor against Mr Lockyer; but Mr Lockyer's cautioner's bond still remained in the clerk's hands.

The Court, after hearing parties in the course of the week before last, ordered intimation to Mr Lockyer's cautioner, and he having to-day appeared, pleaded that no decree could go out against him, because, *inter alia*, the Act provided that parties entitled to go against him should proceed by registering his bond and charging upon it. Mr Loch, on the other hand, pleaded that no liability attached to him for procedure which was connected with the bringing into Court of the petition against him, and that by "the parties to the petition," the statute meant the parties according to their several liabilities. Mr Lockyer, while admitting that if anybody was liable he was, contended that the expenses sued were not provided for by the statute at all, and fell to be defrayed by the returning officer, with recourse against the Treasury for reimbursement.

Their Lordships unanimously held that no liability attached to Mr Loch, and that no decree could be pronounced by them against Mr Lockyer's cautioner; but they decerned against Mr Lockyer himself, leaving it to the returning officer, if so advised, to proceed against the cautioner under his bond, as to the competency of which proceeding their Lordships offered no opinion.

Agents for Returning Officer—Philip & Laing, S.S.C.

Agent for Mr Lockyer and Cautioner—Mr Spink, S.S.C.

Agents for Mr Loch—Mackenzie & Black, W.S.

Wednesday, December 6.

SHOTTS IRON CO. *v.* GEORGE KERR.

Appeal—Competency—Value of Subject-matter. A petition to the Sheriff craved delivery of four lambs, failing which, decree for £10 as the price or value of the lambs, "or such other sum as shall be ascertained to be the price or value." *Held* that the appeal was competent.

This was an appeal from the Sheriff-Court of Lanarkshire. The appellants, the Shotts Iron Co., on 28th March 1871 presented a petition to the Sheriff, setting forth that, on or about 2d January preceding, four one-year-old lambs or hoggs belonging to them strayed or were taken away by some unknown person from their farm, which marches with the respondent's; that the petitioners' grieve recently discovered the lambs in the possession of the respondent on his farm, and applied for delivery thereof, which was refused. The petition prayed the Sheriff "to decern and ordain the respondent instantly to deliver up to the petitioners, or to the said Andrew Robb for their behoof, the said four one-year-old lambs or hoggs, the property of the said Shotts Iron Co.; and failing the respondent doing so within such period as your Lordship shall appoint, to decern and ordain the respondent to pay to the petitioners the sum of £10 sterling as the price or value of the said four one-year-old lambs or hoggs, or such other sum as shall be ascertained to be the price or value thereof in the event of appearance being entered." After proof, the Sheriff-Substitute (LOGIE) assoilzied the defender, and the Sheriff (BELL) adhered; whereupon this appeal was brought by the petitioners.

No objection was taken to the competency when the appeal appeared in the Single Bills. When the case was called on the short roll, GUTHRIE SMITH and R. V. CAMPBELL, for the respondent, without pleading the incompetency of the appeal, called the attention of the Court to the amount involved in the case, leaving it for the Court to decide whether there was jurisdiction. The following cases were referred to—*Cooper* v. *Bone*, 2 Sh. 5; *Cameron* v. *Smith*, 9 D. 507; *Purves* v. *Brock*, 5 Macph. 1003.

MILLAR, Q.C., and SCOTT, for the appellants, maintained that the appeal was competent. The first part of the prayer of the petition was for delivery; that was the primary conclusion; and the conclusion for payment of money could not be reached till the decree for delivery had been granted, and the respondent had failed to make delivery. Further, as to the sum of £10 specified in the second part of the prayer, that was followed by the words, or such other sum as should be ascertained to be the price or value of the lambs, which might therefore be a much larger