tion of the Summary Procedure Act no award of costs, in the case of an acquittal, could be given against a public prosecutor unless an express provision to that effect were contained in the Act libelled on. There was no such provision in the Salmon Fisheries Act of 1868, or any of the Tweed Fisheries Acts.

At advising—

LORD JUSTICE-CLERK—I have certified this case from the Circuit Court of Justiciary, not so much because I have any doubt on the argument as then presented to me, but because I think it of importance that the point at issue should be decided as authoritatively as possible, in order to rule similar cases. In the question as to whether the Act under which the Sheriff's judgment was pronounced did or did not authorise the Sheriff to deal with the matter of expenses under a complaint of this nature, in the way of awarding them to the accused, I am unable to understand on what ground this somewhat unjust and anomalous effect was supported. It appears to me that if the statute indicated that a Court was to deal with the matter of expenses at all, then, unless there is the clearest possible exclusion of it, the presumption in law and in ordinary justice is, both parties are to be treated in an even-handed manner; and I am now quite confirmed in my opinion that the 22d clause of the Summary Procedure Act simply brought in this matter of expenses for the purpose of clearly setting forth that the judge might impose expenses over and above the ordinary penalty The fact that the Act of 1857 gives power to award expenses to the complainer necessarily implies the same power in the case of the respondent. In this view the 22d section of the Summary Procedure Act does not apply to the case before us; and, that being so, I do not feel it necessary to go into the question of common-law presumption as to what would be the position of matters if nothing were said in the Act of 1857 about expenses to either party. Neither do I think it requisite to decide the question as to whether in this case the Procurator-Fiscal, Mr Bathgate, was acting as a public prosecutor or not, though I am of opinion that he was acting in that capacity.

LORDS COWAN and NEAVES concurred.

The Court sustained the appeal, with expenses, and remitted to the Sheriff to dispose of the question of expenses in the Inferior Court.

Counsel for the Appellant—Watson and Brown.

Counsel for the Respondents—Asher and A. J. Young. Agents—Mackenzie, Innes, & Logan, W.S.

COURT OF SESSION.

Wednesday, June 4.

FIRST DIVISION.

SOLWAY JUNCTION RAILWAY CO. *v.* GLASGOW & SOUTH-WESTERN RAILWAY CO.

Expenses.

In a case where a proof was rendered necessary by the incorrect averments of one of the parties to an action,—*held*, that though successful on the whole case, they were not entitled to the expenses of the proof.

In this case, which arose out of certain traffic arrangements between these two companies, the Glasgow and South-Western denied various averments made on the other side, and thereby rendered a proof necessary. The Lord Ordinary found for the defenders, and the pursuers reclaimed. The Court adhered to the Lord Ordinary's interlocutor, but refused to allow the defenders the expenses of the proof, which had been rendered necessary solely by their fault.

Counsel for Solway Junction Co.—Watson and Mackay. Agents—T. & R. B. Ranken, W.S.

Counsel for Glasgow & South-Western Co.—Solicitor-General (Clark) and Balfour. Agents—Gibson-Craig, Dalziel & Brodies, W.S.

Friday, June 6.

FIRST DIVISION.

[Lord Gifford, Ordinary.

COOPER *v.* BARR & SHEARER.

Right of Retention—Ship.

In a case where a firm, after executing certain repairs upon a ship on their own private slip, then launched her into the public dock, —*held* that they had thereby relinquished the actual possession which was necessary to constitute their right of retention.

In this case Mr W. E. Cooper, as mortgagee of the ship Joan Cunllo of Aberystwith, raised an action against Barr & Shearer, ship builders, Ardrossan, for delivery of the vessel, which had been put into their hands for repairs. These repairs had been partly executed in the defenders' private dock, but before they were complete the vessel had been taken into the public dock, and the pursuer contended that the defenders had thereby lost their lien, which they pleaded as a defence against the action.

The Lord Ordinary pronounced the following interlocutor:—

"*Edinburgh, 11th March* 1873.—The Lord Ordinary having heard parties' procurators, and having considered the closed record, proof adduced, and whole process—Finds it sufficiently instructed in point of fact: *First*, That the defenders, Messrs Barr & Shearer, were employed by Thomas Lewis of Walcott, Bath, the owner of the ship or barque 'Joan Cunllo' of Aberystwith, and who was in possession and management of the said ship, to execute certain repairs upon the said ship; *Second*, That under and in virtue of this employment the defenders, Messrs Barr & Shearer, obtained possession of the said ship or barque, and placed her upon their slip at Ardrossan, for the purpose of executing the said repairs, or part thereof: *Third*, That under the said employment the defenders, Messrs Barr & Shearer, executed extensive repairs upon the said ship, in respect of which a large account is now due to them; *Fourth*, That the defenders, Messrs Barr & Shearer, never gave up, surrendered, or lost possession of the said ship or barque, but that they still retain possession thereof in security of the payment of their said account for repairs and work executed thereon: Finds, in point of law, that the defenders, Messrs Barr & Shearer, have a valid and effectual lien over the said ship or barque, or a right to retain the same in security of their said account, and