authorised the Queen in Council to order additional Circuit Courts at such time as to her might seem meet, contains no such limitation. It enacted that the King in Council should be at liberty to direct the Court of Justiciary to appoint that additional Circuit Courts should be held in any towns at which Circuit Courts were in use to be held. What is to be the jurisdiction of these Courts? It depends on the law of the land as it changes from time to time. Now, without special statute the Court here can only try criminal cases, but for the public convenience extended jurisdiction has been conferred by the Small Debts Act. Why, then, should not the additional Circuit Courts have the same benefits from the statute? I have no hesitation in agreeing with Lord Craighill, and I should be very sorry if there were any ground for legal argument stronger than common sense and the public convenience.

LORD JUSTICE-CLERK—I concur, and have nothing to add. The question is, What are the powers given by the Act of Geo. IV., sec. 3? They are clear, and there is no limitation on them. Therefore I am of opinion that the appeal here is perfectly competent.

The Court therefore repelled the objection to the competency of the appeal.

Counsel for Appellant—Ure. Agent—Thomas Graham, Writer.
Counsel for Respondent—G. Burnet. Agent—R. W. Wallace, W.S.

Wednesday, November 9.

(Before the Lord Justice-Clerk, Lord Young, and Lord Craighill.)

NATHAN *v.* AULD.

Justiciary Cases—Absence of Suspender—Personal Presence.

Where a person convicted of an offence in an Inferior Court, and sentenced in absence alternatively to pay a fine or undergo a term of imprisonment, brought a bill of suspension thereof, having neither paid the fine nor undergone any imprisonment, the Court required his personal presence as the condition of hearing the case.

This was a bill of suspension at the instance of Hermann Nathan, Liverpool, and recently clothier, Greenock, against a conviction obtained against him in the Renfrew Justice of Peace Court, under which he was fined in absence £20, with the alternative of six months' imprisonment. The complaint under which he had been convicted charged him with an offence within the meaning of the Merchant Shipping Acts 1854-80, and particularly of the 5th section of the Merchant Seamen (Payment of Wages and Rating) Act 1880, by having on the 29th July last (although not in Her Majesty's service, and not being duly authorised by law for the purpose) gone on board a vessel at the Tail of the Bank without permission of the master.

He had never been apprehended, and now brought a suspension of the sentence, one of the grounds of suspension being that he was an Englishman, and was residing in Liverpool at the date on which the alleged citation had been made on him at his former residence in Greenock.

At advising—

LORD JUSTICE-CLERK—If this statement is not materially contradicted, I am of opinion that we ought not to proceed without requiring the personal presence here of the suspender. He is not in the position of a prisoner who has been liberated. If that were the case, he would, for the purposes of this suspension, be bound to be personally present here. I am of opinion, however, that we ought to continue the cause till the suspender appears.

LORD YOUNG—I agree with your Lordship in thinking that the personal presence here of the suspender is a reasonable condition of going on with the appeal. In the general case, the prisoner is in jail, and if he obtain *interim* liberation before the appeal is heard, it is provided by statute that he must be personally present, so that there shall be an assurance of his being sent back to prison in the event of the appeal being dismissed. Another case is that of a person who may be quite properly sentenced to imprisonment in his absence. He makes his appearance on appeal by counsel and agent, but if he himself remains absent, then I think that it is a reasonable provision that it should be a condition of hearing the appeal that he be in jurisdiction to undergo his sentence if we affirm it.

LORD CRAIGHILL—I entirely concur. We must have the personal presence of the appellant here.

The Court therefore continued the cause for a month to enable the suspender to appear personally before the Court as a condition of the hearing of his case.

Counsel for Suspender—Nevay. Agent—W. Officer, S.S.C.
Counsel for Respondent—H. Johnston. Agent—D. Turnbull, W.S.

Wednesday, November 9.

(Before the Lord Justice-Clerk, Lord Young, and Lord Craighill.)

M'GUIRE *v.* FAIRBAIRN.

Justiciary Cases—29 and 30 Vict., cap. 117, sec. 14 (Reformatory Act 1866)—Police Offence—Shouting and Bawling in the Streets.

The 14th section of the Reformatory Act 1866 does not authorise burgh police magistrates to send to a reformatory school boys convicted of ordinary police offences which are not of a kind punishable with penal servitude or imprisonment.

In this case the suspender Thomas M'Guire, aged 15, had on 27th August 1881 been apprehended for breach of the peace by shouting and bawling in the streets of Galashiels. He was brought before the Burgh Police Court, and hav-

ing pleaded guilty was sentenced to be imprisoned for ten days. In addition, the magistrates, acting under the 14th section of the Reformatory Schools Act (29 and 30 Vict., c. 117), ordered him to be sent to a reformatory for a term of five years.

The above enactment is as follows:—"Whenever any offender who, in the judgment of the Court, justices, or magistrate before whom he is charged, is under the age of sixteen years, is convicted, on indictment or in a summary manner, of an offence punishable with penal servitude or imprisonment, and is sentenced to be imprisoned for the term of ten days or a longer term, the Court, justices, or magistrate may also sentence him to be sent at the expiration of his period of imprisonment to a certified reformatory school, and to be there detained for a period of not less than two years and not more than five years."

Against this order of the magistrates M'Guire presented this bill of suspension and liberation, and argued — The enactment under which the magistrates made the order was never intended to apply to a case like the present, where the offence was only one of a police nature, and not one punishable by penal servitude.

At advising—

Lord Justice-Clerk—I do not think that the clause of the statute was ever intended to apply to anything but the minor grades of great crimes. I think that we ought to affirm the conviction of ten days' imprisonment and quash the order of the magistrates.

Lord Young—The conviction of the boy upon his own confession of shouting and bawling in the street, followed by a sentence of imprisonment for ten days, is unimpeachable, but it seems that by a subsequent order the magistrates ordered him to be sent to a reformatory, to be there detained for five years. Now, I am of opinion that this order cannot be sustained, and is not warranted by the conviction for the offence on which it is founded. I am of opinion that the statute never intended to give magistrates discretion to send children under fifteen years of age or beyond that age to a reformatory school for years who were convicted of an offence of another character than was suggested by the words of the statute, "penal servitude or imprisonment."

Lord Craighill—I am of the same opinion. The term of imprisonment here is one thing, and the order of the magistrates is another. While the first is unimpeachable, I agree with your Lordships that the second cannot be listened to.

The Court therefore sustained the appeal in regard to that part of the sentence which ordered the suspender to be detained in a reformatory.

Counsel for Appellant—Campbell Smith. Agent—Daniel Turner, Solicitor-at-law.

Counsel for Respondent — W. C. Smith. Agent—F. S. Fairbairn, Solicitor-at-law.

REGISTRATION APPEAL COURT.

(Before Lords Mure, Craighill, and Fraser.)

Monday, November 14.

[Sheriff of Peebles.

BLACKWOOD *v.* HOWDEN AND OTHERS.

County Franchise—Proprietor—Feu-Contract—Backletter.

Four persons being desirous of feuing an area of ground for building, in consideration of loans made to them by a building society thereon, arranged that one feu-charter for all the subjects should be granted to the trustees of the society, who were taken bound to grant to each party respectively on repayment of his loan a disposition of their particular feus. Subsequently a backletter was granted by the society declaring that the feu-charter was only held in security till repayment of the loan. The loans were not repaid. The Court *held* that the parties were not entitled to found on the backletter as instructing a title to vote as proprietors of the subjects.

Robert Howden, James Bruce, Robert Somerville, and Alexander Ferguson stood on the register of voters for the county of Peebles as "proprietors of dwelling-house and garden." Objections were taken by William Blackwood. The following facts were admitted:—The above parties agreed to feu certain portions of land in the neighbourhood of Peebles belonging to John Buchan, writer, Peebles. No writing passed to constitute the agreement, but possession was given and enjoyed by them from at least six months previous to the 31st July 1877, the taxes and all public and parochial burdens exigible in respect of the said subjects being duly paid since 31st January of that year. Being anxious to build each on his portion of the ground so feued, they applied to the Peebles Savings Investment Society for a loan for the purpose, which the latter agreed to make under the provisions of rule 14 of their body, which enacted that "a main object of the society shall be to make advances to its members for the purpose of building or purchasing houses, lands, or other heritable subjects, such advances to be paid by the fortnightly instalments, with interest at the rate of five per cent. per annum, and which interest shall be paid along with the instalments."

To save expense Mr Buchan agreed to grant one feu-disposition for these five feus directly to the trustees of the society, who were taken bound to grant to each party on repayment of his loan a disposition of his particular feu. The disposition to the trustees was granted in 1877. Things remained in this situation until 19th September 1881, when the trustees of the society gave a backletter to each of the persons interested, in which it was declared that the said feu-charter with reference to the building area and buildings thereon, though in the form of an absolute conveyance, was truly intended in security of the advances made; that they became bound to give a conveyance upon payment of the money advanced, declaring, however, that until payment they held