

to be communicated. I therefore reserve my opinion upon that question.

LORD RUTHERFURD CLARK—In regard to the question of competency raised in this interlocutor, I agree with your Lordships that the interlocutor should be affirmed. On the question of the relevancy of the pursuer's averments I reserve my opinion.

The Court adhered, and remitted to the Lord Ordinary to proceed with the cause.

Counsel for Pursuer—Ure. Agent—Robert Emslie, S.S.C.

Counsel for Defenders—J. P. B. Robertson—Dickson. Agents—Webster, Will, & Ritchie, S.S.C.

Saturday, July 8, 1882.

SECOND DIVISION.

DAILY v. BEATTIE & SONS.

GARDEN v. BEATTIE & SONS.

Process—Issue—Reparation—Employers Liability Act 1880 (43 and 44 Vict. cap. 42).

These were two actions brought by persons who when in the employment of the defenders on 4th May 1882 were injured by the fall of a pile of old building material belonging to the defenders at Advocate's Close, Edinburgh. The pursuers alleged that the fall of this pile was caused by the fault of the defenders or those for whom they were responsible. The case averred by them was one of fault against the defenders for which previous to the Employers Liability Act 1880 they would have been responsible at common law, and also a case of fault against them as being responsible for the negligence of fellow-servants of the pursuers (certain foremen builders of the defenders) for whom the defenders were alleged to be responsible under that Act.

The pursuers did not remove the actions to the Court of Session under section 6 of the statute, but allowed the cases to remain in the Sheriff Court until an order for proof was pronounced. They then appealed to the Second Division for jury trial under the 40th section of the Judicature Act. They proposed this issue for the trial of each action:—"Whether on or about the 4th day of May 1882, and in or near Advocate's Close, Edinburgh, the pursuer while in the employment of the defenders was injured in his person through the fault of the defenders, to the loss, injury, and damage of the pursuer?"

The defenders objected to the cases being tried under a single issue in each case, and maintained that as the actions were laid both at common law and under the Employers Liability Act there ought to be in each case, in addition to the issue proposed, another issue so framed as to raise the question whether there was a cause of action of the kind for which the statute gave a remedy.

The Court, without calling on pursuers' counsel, approved of the issue proposed by the pursuers, on the ground that a single issue was quite fitted for the trial of the case, which depended upon the application to the facts of the case of the common law as amended by statute.

Counsel for Pursuers—Rhind—Sym. Agent—Thomas M'Naught, S.S.C.
Counsel for Defenders—Trayner—Salvesen. Agents—Drummond & Reid, W.S.

Friday, November 10.

SECOND DIVISION.

SPECIAL CASE—MAGISTRATES OF PORTOBELLO v. MAGISTRATES OF EDINBURGH.

Process—Sheriff—Competency of Appeal from Sheriff-Substitute to Sheriff—Rivers Pollution Prevention Act 1876 (39 and 40 Vict. c. 75), secs. 3, 11, 20, 21.

Held that there is under this statute an appeal from Sheriff-Substitute to Sheriff-Principal.

Where a statute confers a new jurisdiction, such jurisdiction is, in the first instance, to be regulated by the terms of the statute conferring it. Where a statute directs proceedings under it to be taken in a Court already existing, without specifying any limitations, the presumption is that the proceedings are to be conducted according to the ordinary forms of that Court.

Rivers Pollution Prevention Act 1876, sec. 20—“Water-course mainly Used as a Sewer.”

A stream into which sewage had been conducted to such an extent that it had ceased to be anything but a common sewer, flowed into a larger stream the water of which above the junction was comparatively pure. As the result of the junction the proportion of the water of the larger stream to the lesser stream, including the sewage therein, was about 3 to 1, except in very dry weather, when it was much less. The stream formed by the junction of the two streams was regularly used for watering cattle. *Held* that it was not "a stream or water-course mainly used as a sewer."

Question—Whether the Rivers Pollution Act of 1876 entirely prohibits the discharge of solid or liquid sewage matter into a stream, subject only to the exception contained in the Act?

The Rivers Pollution Prevention Act 1876 (39 and 40 Vict. c. 75) enacts by sec. 3 that "every person who causes to fall or flow, or knowingly permits to fall or flow, or to be carried into any stream any solid or liquid sewage matter shall [subject as in this Act mentioned] be deemed to have committed an offence against this Act."

This was an appeal at the instance of the Magistrates of Edinburgh, by Special Case stated by agreement of parties, under the provisions of the Rivers Pollution Prevention Act 1876, against interlocutors pronounced by the Sheriff of Midlothian on 29th June and 22d July 1880 in a complaint at the instance of the Magistrates of Portobello as the sanitary authority under the said Act, in which complaint they charged the defenders (appellants), as sanitary authority of the city of Edinburgh, with having caused or knowingly permitted the sewage of certain districts of Edinburgh to be discharged into the Jordan or Pow Burn, which, being a tributary of the Braid or Figgate Burn, discharged