Tuesday, March 9.

FIRST DIVISION.

[Exchequer Cause—Lord Fraser, Ordinary.

LORD ADVOCATE *v.* JAMIESON (LORD BELHAVEN'S TRUSTEE).

Revenue—Succession—Succession-Duty Act 1853 (16 *and* 17 *Vict. cap.* 51).

A trust for creditors was executed, and the trustee died while it was still in operation. A private Act was subsequently obtained, whereby the trustee under the trust was authorised to pay, out of the estate put in trust, to certain persons, who had apart from the private Act no right at all till the debt was paid off under the trust, certain advances and certain annual sums. *Held* that the benefit so obtained was not a succession nor the truster a "predecessor" within the meaning of the Succession-Duty Act 1853, and a claim by the Crown for succession-duty under the statute *disallowed.*

The Succession-Duty Act 1853 by section 2 provides—"Every past or future disposition of property, by reason whereof any person has or shall become beneficially entitled to any property or the income thereof upon the death of any person dying after the time appointed for the commencement of this Act, either immediately or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and every devolution by law of any beneficial interest in property or the income thereof, upon the death of any person dying after the time appointed for the commencement of this Act, to any other person in possession or expectancy, shall be deemed to have conferred or to confer on the person entitled by reason of any such disposition or devolution, a 'succession,' and the term 'successor' shall denote the person so entitled, and the term 'predecessor' shall denote the settler, disponer, testator, obligor, ancestor, or other person from whom the interest of the successor is or shall be derived."

This was an action by the Lord Advocate on behalf of the Board of Inland Revenue against George Auldjo Jamieson, C.A., Edinburgh, the sole trustee acting under a trust-disposition for behoof of creditors by the late Lord Belhaven and Stenton. A sum of £2000 in name of succession-duty was claimed by the Crown in respect of the sums and annuities referred to immediately hereafter which were paid to the present Lord Belhaven and Peter Belhaven Hamilton Ramsay under the provisions of "The Belhaven Trust Estate Act 1884."

The Lord Ordinary assoilzied the defender.

The facts and the contentions of the parties are fully narrated in the following opinion of the Lord Ordinary:—

"The late Lord Belhaven and Stenton executed a trust-deed, dated 19th April 1859, for behoof of creditors, under which deed the defender Mr George Auldjo Jamieson is at present the sole trustee. By this deed Lord Belhaven conveyed over to the trustees named in it his whole estates in trust. The principal trust purpose was the payment of debts. The trustees were to have power to allow Lord Belhaven, or, in the event of his death, his widow, to have possession of the mansion-house of Wishaw, and furniture and moveable effects therein, and also to pay to him any surplus income that might arise in any year during the subsistence of the trust. Lastly, it was provided that after the trustees have paid up all the debts due by Lord Belhaven they should pay over any surplus moneys in their hands to him, or to his heirs and executors, and denude themselves of any lands that remained unsold. The truster then made provision as to what should be done in the event—which happened—of his dying while the trust subsisted, and the debts remained unpaid. This clause of the deed is in the following terms:—'And it is hereby further specially provided and declared that in the event of my death during the subsistence of the trust hereby created, it shall be in the power of the acting trustee or trustees, at any time or times thereafter during the subsistence of the trust, to make such advances out of the income of the trust-estate as the said trustee or trustees shall think proper to or for behoof of my widow, or any other person or persons who may then be entitled to, or interested in, or have any claim upon, the residue of the trust-estate, but shall not be in the position of creditors entitled to the benefit of the trust hereby created, and that whether such right or interest or claim may be founded on any deed or transaction *inter vivos* to which I may have been a party in my lifetime, or in any deed or writing *mortis causa*, or of a testamentary nature, already executed, or to be hereafter executed by me, and which shall be in force or capable of taking effect at the time of my death; but provided always that the advances hereby authorised to be made out of the income of the trust-estate to the parties interested in, or claimants upon the residue after my death, shall never exceed the amount of the advances which the trustee or trustees would have been entitled to make to me out of the income of the trust-estate if I had been alive; and provided also that the amount of such advances to any party interested in, or having any claim upon the residue, shall never exceed the amount of such party's interest or claim, as the same shall be ascertained or estimated by the acting trustee or trustees, who shall be entitled to act upon his or their own judgment in that matter without prejudice to any after accounting among the parties interested in the residue.'

"Besides this trust-deed for behoof of creditors, which contained ample powers of sale of his estates, Lord Belhaven, on the 14th of November 1867, executed a *mortis causa* general disposition by which he conveyed over to Lady Belhaven 'my whole estate, property, and effects, heritable and moveable, real and personal, of every kind and wherever situated, now belonging to me, or which shall belong to me, or be subject to my disposal at the time of my death.'

"Lord Belhaven died on 22d December 1868, and thus Lady Belhaven became absolute proprietor of the whole estate left by him, subject to the burden of the trust for payment of debts.

"Lady Belhaven, on the 19th of July 1869, executed a trust-disposition and settlement, whereby, on the narrative of the trust-deed for creditors, and of the general disposition by her husband in her favour, and of certain other *mortis causa* deeds executed by Lord Belhaven

(which have no bearing upon the question to be disposed of in the present case), she disponed to certain persons in trust her whole estate, heritable and moveable, and particularly the two estates of Wishaw and Garion, in the county of Lanark, and the estate of Woodmuir, in the county of Edinburgh; but this conveyance was made under burden of the trust for creditors by the deed of 1859. She directed the trustees under the deed of 1859, on the purposes of that deed being fulfilled by payment of the whole debt, to convey the property then in their possession to the trustees appointed by her own trust-disposition and settlement, to whom she assigned all her reversionary rights under the trust of 1859. Her own trust-disposition and settlement contained the following declaration:—'And further, with reference to the powers given to the trustee or trustees acting in the trust of 1859, in the event of the death of my said husband during the subsistence of that trust, to make advances out of the income of the trust-estate to his widow, or others who may be entitled to, or interested in, or have any claim upon the residue of the trust-estate, but shall not be in the position of creditors entitled to the benefit of the trust of 1859, all as hereinbefore more particularly mentioned, I hereby declare my desire and request that the trustees or trustee acting for the time in the trust of 1859 will exercise the powers and discretion given to them in the said trust-disposition, so as to make good and fulfil, or to enable my trustees under these presents to make good and fulfil as far as possible the purposes of the trust hereby created, for the payment of any debts due by the said Lord Belhaven and Stenton at his death, which may not be entitled to the benefit of the trust of 1859, and for payment of the legacies, annuities, and provisions granted by the said Lord Belhaven and Stenton, so far as the same may be payable or prestable during the subsistence of the said trust of 1859.' The last provision of this settlement was, that on the trust of 1859 being brought to an end by payment of Lord Belhaven's debts and legacies, other than annuities granted by him, the trustees were directed to convey the estates of Garion and Woodmuir to William Ramsay, Lord Belhaven's nephew, and the heirs of his body.

"With regard to the remaining estate of Wishaw, Lady Belhaven directed her trustees, 'after the extinction of the said trust of 1859, and the discharge or extinction of all the debts of the said Lord Belhaven and Stenton, and the discharge of all his provisions, legacies, and bequests (other than annuities),' to convey, under strict entail, that estate, with the plate and pictures in the mansion-house at Wishaw, in favour of the person who might be found entitled to the peerage and dignity of Lord Belhaven and Stenton.

"Lady Belhaven died on 8th September 1873; and on 2nd August 1875 James Hamilton was declared, by the Committee of Privileges of the House of Lords, to have made out his claim to the title, honour, and dignity of Lord Belhaven and Stenton. William Ramsay, to whom the estates of Garion and Woodmuir were bequeathed, died on 28th April 1877, but he has left a son, Peter Belhaven Hamilton Ramsay, who comes into his place in reference to the bequest.

"Under none of the deeds executed by Lord Belhaven and Lady Belhaven was there any vested interest conferred upon Lord Belhaven or William Ramsay to anything else than the right to the estate of Wishaw in favour of the first party, and to Garion and Woodmuir in favour of the latter. No immediate enjoyment or possession of these estates could be had by either of the legatees. The right of such enjoyment and possession depends entirely upon the extinction of the trust of 1859, by the payment of all the debts of Lord Belhaven, of which payment the prospect is somewhat remote, as appears from the next document now to be referred to.

"This was an Act of Parliament, called 'The Belhaven Trust Estate Act." It was passed in the year 1884. This Act of Parliament narrates the deeds, which have just been referred to, and states that the debt, as at 20th April 1883, amounted to £125,301, 13s. 10d., and that the rental of the estates under the management of the defender Mr Jamieson was £14,503, 8s. 3d.; that the process of paying off debt must be prolonged, on account of the diminution of rental arising from depression in the iron trade, and to depression in agriculture; that the present Lord Belhaven is without means to support his title and to maintain and educate his family; and that Peter Belhaven Hamilton Ramsay was in the same position,—as were also his sisters. 'And whereas doubts have arisen whether the said James Lord Belhaven and Stenton and Peter Belhaven Hamilton Ramsay respectively, as the persons now in existence respectively entitled in reversion or other expectancy to the residue of the trust-estate, and to the said estates of Garion and Woodmuir, are persons entitled to, or interested in, or who have any claim upon the residue of the said trust-estate, to whom the acting trustee or trustees are empowered by the said trust-disposition of 1859 to make advances out of the income of the trust estate, and the said George Auldjo Jamieson therefore declines to make such advances.' 'And whereas it is expedient' to make certain provisions for Lord Belhaven and Peter Belhaven Hamilton Ramsay, then follows the enactment that—'3. The trustee is hereby authorised and empowered to pay to the said James Lord Belhaven and Stenton, at the first term of Martinmas or Whitsunday happening after the passing of this Act, a sum of £2000, and that out of the first and readiest of the surplus income which shall be in his hands after the passing of this Act. 4. The trustee shall be, and is hereby empowered and authorised, should he think proper, during the subsistence of the trust of 1859, to make payment out of the surplus income to the said James Lord Belhaven and Stenton during his life, and after his death to the person entitled for the time being to the peerage and dignity of Lord Belhaven and Stenton, of an annuity of £1000, free of all burdens and deductions whatsoever (excepting income tax), which annuity shall be payable,' &c. Further, the trustee was authorised, on requisition by Lord Belhaven, or of the guardians of an heir-apparent to the title, with the approval of the Court of Session, on an application made by the trustee for that purpose, and subject to such conditions as the Court may impose, to advance money for the education of any son of Lord Belhaven, or of any person who may hereafter during the subsistence of the trust of 1859 be heir-apparent to the title,

not exceeding £300 in any one year. Peter Belhaven Hamilton Ramsay was dealt with in the same way. The trustee was authorised to pay him a sum of £800 to assist in defraying the expense of his professional education, and to promote his establishment in life; and the trustee, should he think proper, was authorised to make payment to him of an annuity of £200.

"It is in these circumstances that the Crown now claims succession-duty from the trustee under the trust-deed of 1859, in respect of the sums and annuities payable to Lord Belhaven and Peter Belhaven Hamilton Ramsay under the Act of Parliament,—the Crown's case being that these two persons took a succession by disposition within the meaning of the Succession-Duty Act. This demand is resisted by the defender (who is cited as defender under the 44th section of the statute), upon the ground that the two persons named did not take under disposition from any one but by enactment of the Legislature. There is a distinction in the language employed in reference to the immediate advance authorised to be made to Lord Belhaven of £2000, and of £800 to Peter Belhaven Hamilton Ramsay, in so far as the defender is 'authorised and empowered' (language which is obligatory in such an Act) to pay these sums, whereas with regard to the annuities of £1000 and £200 he is only to pay these if he thinks proper.

"Now, so far as regards the deeds executed by Lord Belhaven, all that we find there is, that the trustee is authorised to make an advance out of the income of the trust-estate, as the trustee shall think proper, to his widow, or other 'persons who may then be entitled to, or interested in, or have any claim upon the residue of the trust-estate, but shall not be in the position of creditors entitled to the benefit of the trust hereby created.' Neither the present Lord Belhaven nor Peter Belhaven Hamilton Ramsay could take anything under this direction, for they are not mentioned either specially or generally as parties interested in his estate.

"Next, with regard to Lady Belhaven, who was made proprietor of the whole estate by her deceased husband by his general disposition, the direction is to the trustees, under the trust of 1859, to make good and fulfil, or to enable her own trustees to make good and fulfil, as far as possible, the purposes of her trust. To what effect? For the 'payment of any debts due by the said Lord Belhaven and Stenton at his death, which may not be entitled to the benefit of the trust of 1859, and for payment of the legacies, annuities, and provisions granted by the said Lord Belhaven and Stenton, so far as the same may be payable or prestable during the subsistence of the said trust of 1859.' There is not one word there, authorising payments of money to either the present Lord Belhaven or to Peter Belhaven Hamilton Ramsay. There is no doubt a subsequent direction to convey the estates, as already mentioned, to these two persons, but undoubtedly the two sums of £2000 and £800, and the two annuities of £1000 and £200, were not given by Lady Belhaven as they were not by her husband.

"These provisions were entirely the creation of the Act of Parliament. The Legislature thought fit to supplement the testamentary provisions made by Lord and Lady Belhaven, but these supplementary provisions derive their authority, not from anything said or done by these two persons, but solely from the authority of Parliament.

"In the circumstances the Lord Ordinary cannot hold that the sums and annuities provided to the present Lord Belhaven and Peter Belhaven Hamilton Ramsay were granted under any 'past or future disposition of property, by reason whereof any person has or shall become beneficially entitled to any property, or the income thereof, upon the death of any person dying after the time appointed for the commencement of this Act, either immediately or after any interval, either certainly or contingently, and either originally or by way of substitute limitation' (sec. 2 of 16 and 17 Vict. cap. 51). What was granted here was not under a disposition of property, and it was not granted upon the death of any person dying after the commencement of the Act. The provisions were made by Act of Parliament, and they came into effect long after the death of Lord and Lady Belhaven, and not in consequence of the death of either.

"It has been suggested by the Crown that the 10th section of the Act of Parliament, called the 'saving clause,' has a material bearing upon this question. This clause saves to Her Majesty, and to all bodies politic or corporate and their successors, other than certain persons named, 'all such estate, right, title, interest, claim and demand whatsoever of, in, or out of the said estates of Wishaw and Garion and Woodmuir, or any part thereof, as they every or any of them had before the passing of this Act, or could, would, or might have had in case this Act had not been passed.' The exceptions are, among others, the present Lord Belhaven and his heirs, and Peter Belhaven Hamilton Ramsay and his heirs. A saving clause in an Act of Parliament does not differ from a proviso. It gives no right to the persons in whose favour it is enacted beyond what that person had already. Vice-Chancellor Page Wood stated the effect of it thus—'A saving clause cannot be taken to give any right which did not exist already. "Saving" means that it saves all the rights the party previously had, not that it gives him any new rights.'—*Arnold* v. *Mayor of Gravesend*, 2 K. & J. 574. With regard to those excepted from the saving clause in the present case it is not very clear what is the meaning of the exception, and it is not necessary for the purposes of the present case to decide this point. It may, however, be suggested that the meaning is that neither the present Lord Belhaven nor Peter Belhaven Hamilton Ramsay shall be entitled hereafter to insist upon a full accounting with the defender, as their trustee, without giving credit for the sums which shall be advanced to them under the Act of Parliament. The result of the whole matter is that judgment must be pronounced in favour of the defender and against the Crown."

The pursuer reclaimed, and argued—This was in substance a succession to Lord Belhaven. The effect of the Act was to help out the testator's meaning as expressed in his trust-deed. The effect of the private Act was not to create a new fund, but to confer an immediate benefit on the beneficiaries. The purpose was a purely testamentary one, for what the parties here obtained was the estate, and also a present benefit.

The effect of the defenders prevailing would be, that a large portion of this estate would go untaxed.

Replied for the defender — Lord Belhaven and Mr Ramsay took in virtue of the Act of Parliament, and of it alone. The trustee was by it authorised to make payments outwith the powers of the deed, and such payments could in no way be called "succession" as far as the beneficiaries were concerned. As there was no "succession" within the meaning of the Act of 1853, no duties were exigible.

At advising—

Lord President—I think it cannot be disputed that the only right of succession which the present Lord Belhaven or Mr Peter Belhaven Hamilton Ramsay had under the deeds left by the late Lord Belhaven and his widow was a right of succession to heritable estate. Mr Ramsay gets the estates of Garion and Woodmuir in fee-simple, and Lord Belhaven gets the estate of Wishaw as institute of tailzie, and these they get, each of them, under Lady Belhaven's deed of 1869. But the succession-duty which is claimed here is not a succession-duty in respect of the conveyance of these estates to the one or the other, but upon a sum of money which the trustee under Lord Belhaven's first deed of 1859 has been authorised to pay by Act of Parliament to the present Lord Belhaven and Mr Peter Ramsay. The contention upon the other side is, that under the late Lord Belhaven's deed of 1859 it was a matter of doubt whether these two persons, the present Lord Belhaven and Mr Peter Ramsay, were or were not entitled to any payments under a certain special power given to the trustees in that deed, but after giving every possible attention to the terms of that deed and the possible construction of it, I cannot help coming to the conclusion that it is beyond all dispute that neither the one nor the other of these persons had any claim or right whatever in any event under the deed of 1859, and just as little had they any claim under the deed of Lady Belhaven to a payment such as the trustee under the deed of 1859 is empowered to make, because she does not enlarge the power of the trustees under the deed of 1859, and does not express any desire or request that they should do anything in favour of the present Lord Belhaven or Mr Peter Ramsay. The only thing that she does desire and request is, that these trustees should exercise the power given to them by the trust-disposition of 1859, "so as to make good and fulfil the purposes of the trust hereby created"—her own trust—"for the payment of any debts due by Lord Belhaven at his death, which may not be entitled to the benefit of the trust of 1859, and for payment of the legacies, annuities, and provisions granted by Lord Belhaven, so far as the same may be payable or prestable during the subsistence of the said trust of 1859." Now, that specification of the objects which she desires to attain is in words exclusive of any possible benefit to either the present Lord Belhaven or Mr Peter Ramsay. Therefore it appears to me that the money which these two persons have received from the sole surviving trustee under the deed of 1859 is a payment made on the authority of the Act of Parliament, and of nothing else. Now, that Act of Parliament, like almost every other Act of the same kind—every estate Act—is really the embodiment of a contract or arrangement between the parties interested in the estate. And in this case the arrangement is made between the creditors of Lord Belhaven and the two persons who are to succeed to the heritable estates when they become free of debt, and the substance of it is simply this—the creditors taking into consideration that Lord Belhaven has no income to support his title, to enable him to get a house for his wife and family, offer him a sum of £2000 and an annuity of £1000 a-year, and in like manner they offer a sum of £800 and an annuity of £200 a-year to Mr Peter Ramsay. On the other hand, the two gentlemen who receive these sums of money of course submit to the trust being kept up for a period so much longer as will be necessary to make up for the loss of the money paid to them, by the creditors continuing to receive the surplus rents of the estates for a longer period until their debts are fully discharged. Now, can anybody say that these sums of money paid upon that contract and arrangement between the creditors and these two gentlemen is anything but a statutory authorisation of the trustee under the deed of 1859 to divert the funds in his hands to a certain extent to a purpose not authorised by that trust-deed. That is the simple effect of the Act of Parliament, and how that can be called a succession it is very difficult to see. It is a payment made in respect of a statutory enactment to that effect, and a payment that never could have been made upon any other authority whatever, because there is nothing in the deeds that could justify that payment upon any construction of it. It seems to me therefore that neither the late Lord Belhaven nor Lady Belhaven are in any sense, with reference to these sums of money, the predecessors of the parties who are now sought to be charged, nor can the parties sought to be charged be called their successors. They have not taken one shilling of that money by the will of either the late Lord Belhaven or Lady Belhaven, and the late Lord Belhaven and Lady Belhaven never intended them to take any such sums under their settlement. So that the terms "predecessor" and "successor" are entirely inapplicable to what may be called, if indeed it can be aptly called at all, the relation between the parties taking this money and the late Lord and Lady Belhaven. On the other hand, it does not appear to me possible to say that this money has come to the parties now sought to be charged either by disposition or by devolution. By devolution, of course, it cannot be, and that is not contended, and if there be a disposition at all, or anything that comes in place of a disposition, it is simply an Act of Parliament, for there is no disposition before us that could in any way have authorised such payments. And to take the Act of Parliament as equivalent to a disposition in a question under the Succession-Duties Act is certainly a very great novelty, and I think is not an admissible extension of the words of the clause of the statute. I am therefore for adhering to the Lord Ordinary's interlocutor.

Lord Shand—I am of the same opinion. The short and conclusive answer to the Crown's claim for succession-duty here I think is this, that the sums which have been received by Lord Belhaven

and by Mr Peter Hamilton Ramsay have not been taken under testamentary deeds as succession, but have been taken under and by virtue of the provisions of an Act of Parliament which has created the right to these sums. The deed of Lord Belhaven of 1859 certainly gave neither of these gentlemen right to the sums which they have obtained from the trustee. Lord Belhaven left his estate substantially entirely to his widow. She was the residuary legatee, and unless she had thought fit to give a benefit to these two gentlemen they would have had none. That disposes therefore of the deed of 1859. They are not taking a succession under that deed. Again, if we turn to the deed of 1869, under which undoubtedly they do take a succession, provided they survive the point of time when the estate comes to be handed over, and when the truster's debts are paid, Lady Belhaven did not give them right to those sums which have been paid—the capital sum and the allowance which have been paid for some years back. The only right which Lady Belhaven conferred by her deed on these gentlemen was that if they survived the point of time at which Lord Belhaven's debts were entirely cleared away from the estates, then they should obtain a conveyance to these heritable estates. So again I say that the sums which are sought to be charged with succession-duty are not taken under the succession of Lady Belhaven because she did not provide that these sums should be paid. Under what right then are they taken? They are taken entirely by virtue of that Act of Parliament which created the right in these sums. That Act of Parliament did not confirm anything that had been done by Lady Belhaven. It no doubt proceeds upon a narrative that some doubts had arisen as to the construction of the deeds. But when we look at the deeds themselves, and have to construe them judicially, there can be no doubt about this point at least, that Lady Belhaven had given no right whatever by way of succession to these two gentlemen so far as regards the sums which they have actually received. Well then, that being so, there seems to me to be an end of the question. It is quite true that Parliament may have been moved, and undoubtedly was moved, to give these annual payments—a small capital sum and annual payments thereafter—because the gentlemen who got the benefit were the persons who would ultimately take the succession under Lady Belhaven's deed. That was the motive apparently which moved Parliament to sanction the arrangement between the creditors and the ultimate beneficiaries under that deed. But the mere circumstance that they were named in Lady Belhaven's deed as the persons ultimately to get the estates, though it may have induced Parliament to give them those benefits which Parliament thought it right to confer on them, cannot, I think, in any possible view, rear up the enactment which Parliament has passed into anything having the character of making a testamentary provision under Lady Belhaven's deed. And so holding as I do a clear opinion that this was not succession under either of the testamentary deeds founded upon, but was a right created and given by the Act of Parliament, I do not think the money can possibly be made subject to succession-duty.

Lord Adam—I think this is quite a clear case. It appears to me that the present Lord Belhaven and Mr Ramsay became beneficially entitled to the two sums of capital and income in virtue of the Act of Parliament, and in no other way. The only succession to which they were entitled under the disposition, either of Lord Belhaven or Lady Belhaven, was a right to succeed respectively to the two estates of Garion and Wishaw. That was their succession under the dispositions of Lord and Lady Belhaven. Not only so, but their right to succeed to these estates did not vest in them till the whole of the debts were paid off, and till the existing trust came to an end. Of course the only result of that is that neither of these gentlemen had any right, or has now any right under the deeds, to one sixpence from the trust-estate; and how in these circumstances they can be said to take these sums of capital which have been paid to them, and the sums of income which are being paid to them, by succession, I have never been able to see. I think the case is perfectly clear, and I agree with your Lordship.

Lord Mure was absent.

The Court adhered.

Counsel for Lord Advocate—Moncreiff—Lorimer. Agent—D. Crole, Solicitor, Inland Revenue.

Counsel for Belhaven Trustee—D.-F. Mackintosh, Q.C.—Murray. Agents—Dundas & Wilson, C.S.

HIGH COURT OF JUSTICIARY.

Tuesday, March 9.

(Before Lord Young, Lord Craighill, and Lord M'Laren.)

TOUGH AND ROSS *v.* MITCHELL.

Justiciary Cases—Day Poaching—Conviction—Expenses—Summary Jurisdiction (Scotland) Act 1881 (44 *and* 45 *Vict. cap.* 33), sec. 4.

Under the Summary Jurisdiction Act of 1881 the expenses allowable where the fine does not exceed £12, are not to exceed £3. *Held* that it was no objection to the conviction of two persons who were tried under one complaint that the separate sums of expenses allowed against each would, if added together, amount to more than £3, while the fines if added together would not amount to £12.

Francis Tough and William Ross were tried together and were convicted under the Summary Jurisdiction Act 1881 on 20th January 1886 of a contravention of the Day Poaching Act, in having together trespassed in pursuit of game upon the lands of Mr Mitchell of Glassel. The Sheriff-Substitute (Dove Wilson) fined Tough in the modified penalty of £1 with £2, 8s. 7d. of expenses, and fined Ross 10s. with £1, 4s. 4d. of expenses.

The Summary Jurisdiction (Scotland) Act 1881 provides, sec. 4—"The costs and expenses of all complaints and proceedings instituted under the