alia, the following question of law, viz., "Is the complaint relevant?"

The appellants cited *Marr* v. *M'Arthur*, March 29, 1878, 4 Coup. 53; *Ritchie* v. *M'Phee*, October 25, 1882, 5 Coup. 147; *Deakin and Others* v. *Milne*, October 27, 1882, 5 Coup. 174; *Beatty* v. *Gillbanks*, June 13, 1882, L.R., 9 Q.B.D. 308.

The respondent cited *Hendry* v. *Ferguson*, June 13, 1883, 5 Coup. 278; *Bewglass* v. *Blair*, February 10, 1888, 1 White 574.

At advising—

LORD JUSTICE-CLERK—There cannot be the slightest doubt that people with the best intention to do good may create a breach of the peace in the public streets by going in procession, or by singing, praying, or preaching, in certain circumstances. That is very plainly brought out in the *Arbroath* case, where the members of the Salvation Army, in defiance of a proclamation of the magistrates, who in their discretion had come to the conclusion that the continuance of the Salvation Army procession on Sunday tended towards breach of the public peace and must be prevented, insisted on holding their procession, in which they shouted, gesticulated, used grotesque gestures, and did numerous things which were in themselves not discreet or wise and which did tend to promote a breach of the peace. On the other hand, it is equally plain that street preaching in itself does not in ordinary circumstances tend to a breach of the peace at all. It happens constantly that respectable people gather a small crowd by their praying and preaching without the slightest tendency to a breach of the peace. It is therefore plainly a delicate matter to charge persons who simply gather people round them to hear preaching, with a breach of the peace, and it is one of those cases in which it is so plain that a mere bald statement is inadequate to infer breach of the peace, that something more must be stated to justify the allegation. It is easy to do so, and in this case I am not the least surprised that the prosecutor did not add to his charge that they did thereby create a breach of the public peace, because I am satisfied that even if he had added that it would not have made a relevant charge. After all that expression is merely a summing up of the effect of what took place, which to be relevant must in itself plainly indicate breach of the peace. Now what does he say? He says that they "did loudly read, sing, pray, and preach, and did continue to do so for half-an-hour." If that was intended to mean anything more than that they did these things "aloud" it ought to have been so expressed. Then it is said that "a large crowd was collected." There is no suggestion that the crowd was disorderly or destructive. As I read this charge it does not indicate to me in any way that the assembling of the crowd was to the annoyance or disturbance of the lieges at all. It is said to have been to the annoyance or disturbance of some persons in the neighbourhood. In my opinion that is not enough to infer breach of the peace, and I think the conviction must be set aside.

LORD RUTHERFURD CLARK — The only question which I think we require to consider is, whether the complaint under which the appellants were tried was a relevant complaint at common law? It is not laid upon statute. I am clearly of opinion that it is not relevant.

LORD TRAYNER—I am also of opinion that there is no relevant charge.

The Court quashed the conviction.

Counsel for the Appellant — Salvesen. Agents—Beveridge, Sutherland, & Smith, S.S.C.

Counsel for the Respondent—Dickson. Agent—Party.

COURT OF SESSION.

Saturday, November 7.

SECOND DIVISION.

[Burgh Court of Ayr.

GAFFNEY *v.* ROWAN.

Process—Appeal—Whether Appeal Barred by Implement of Decree.

A magistrate of a royal burgh, on a complaint by the procurator-fiscal, ordered the respondent to find caution that he would have his dog securely fastened up, and failing caution within twenty-four hours, granted warrant to officers of court to take possession of and destroy, or otherwise secure and safely dispose of the dog. The respondent found caution, and appealed against the judgment to the Court of Session. *Held* that he had not so implemented the decree as to bar his right of appeal.

Upon 9th July 1891 the Procurator-Fiscal for the burgh of Ayr, Carruth Boyle Rowan, complained to the Magistrates of Ayr that Richard Gaffney, canteen steward at the military barracks at Ayr, permitted a large St Bernard dog or mastiff to go at large unmuzzled and unsecured against biting and injuring the lieges, and which dog was vicious and dangerous to the lieges; and that on various specified occasions the dog had chased, attacked, seized, and bitten various persons named, and prayed that Gaffney should be ordained forthwith to destroy the dog, or to find caution that he should securely chain it up, and failing obedience in twenty-four hours, that warrant should be granted to officers of court to destroy or otherwise secure the dog.

Upon 27th July the Magistrate, Hugh Douglas Willock, after proof, found that the dog had chased and attacked several children, that the dog was large and powerful, and dangerous to the lieges. He therefore ordained the respondent to find caution

that he would chain up the dog so long as the dog was in that jurisdiction under a penalty of £10 sterling, and failing his lodging caution within twenty-four hours after the order was intimated to him, granted warrant to officers of court to destroy or otherwise secure the dog.

Upon 1st August 1891 J. A. MacCallum, solicitor at Ayr, bound himself as cautioner for the accused under this conviction.

Gaffney appealed, and argued—The appeal was competent, as it had been decided that such a complaint as this was a civil process—*Duncan* v. *Greig*, February 7, 1848, Ashley, 421; *Marr & Sons* v. *Lindsay*, June 7, 1881, 8 R. 784. No doubt the respondent had found caution as ordained, but that was not implementing the decree; it was the only means he could take to prevent the dog being destroyed.

The respondent at first argued that the appeal was in its nature a criminal proceeding, and therefore not appealable to the Court of Session, but afterwards withdrew the objection—*Bruce* v. *Duncan & M'Lean*, October 13, 1848, S. Jus. Reps. 12. Gaffney had implemented the decree by finding caution as ordered, and he could not now reclaim—*M'Dougall* v. *Galt*, June 30, 1863, 1 Macph. 1012; *M'Lelland* v. *Garson*, January 10, 1883, 10 R. 445.

At advising—

LORD JUSTICE-CLERK—I understand that it is not now seriously contended that this appeal is incompetent because this proceeding was of a criminal nature. It is contended, however, that the appeal is excluded from review by the fact that there is in the prayer of the complaint a petition that the appellant Gaffney should find caution to securely fasten up his dog, and that as he has found caution, as ordered by the Magistrate, and has thereby implemented the decree, he is barred from carrying the question any further. I think it is sufficient to say, in answer to this contention, that the implement of the decree upon which the respondent relies is not at all what is meant by implement of a decree in the ordinary sense of the words. In the first place, the appellant is ordered to find caution that he will chain up his dog; and failing the said Richard Gaffney's due obedience within twenty-four hours, the judgment grants warrant to officers of court with assistants to pass, and immediately thereafter take possession of and destroy, or otherwise secure and safely dispose of said dog. Now, I think in the circumstances the only course open to Gaffney, in order to prevent his dog being destroyed, was to find caution as ordered by the Magistrate, but I do not think that that was implementing the decree in such a way as to bar him from taking an appeal against the decision.

LORD YOUNG—It falls to us to decide this case upon its merits, that is to say, we have to judge whether the proof adduced is sufficient to warrant the judgment which has been pronounced. I think that is the unavoidable result of the authorities cited to us, but I think it unfortunate that it should be unavoidable, because in this Court we are not in the habit—and I think the course is a right one—of interfering with the powers of the police and the local authorities in putting down what is a nuisance to the inhabitants of any particular place. It seems, however, to be the law that a judgment of a magistrate upon a matter of this kind may be brought for review upon its merits to the Court of Session, with, of course, the possibility of an appeal to the House of Lords. I should have thought that all considerations of expediency and good sense were so much against a procedure of this kind, that if the question had been open I should have been inclined to hold that this appeal was incompetent. During the discussion there was a case cited to us in which an appeal of this kind was brought up at the Circuit Court along with small-debt appeals and other cases much more of this character than we are accustomed to deal with in the Court of Session. I should have thought that that was the more fitting tribunal for this case, but the authorities seem to say that this appeal is competent.

LORD RUTHERFURD CLARK—I am of the same opinion.

The Court pronounced this interlocutor:—

"Find that the pursuer has failed to prove the allegation of the complaint that the defender has permitted the dog libelled to go at large, and that said dog is vicious and dangerous to the lieges: Therefore sustain the appeal, recal the interlocutor appealed against, dismiss the complaint: Find the complainer liable to the defender in expenses in the Inferior Court and in this Court," &c.

Counsel for the Appellant—M'Kechnie—C. Watt. Agents—Wylie, Robertson, & Rankin, W.S.

Counsel for the Respondent—Young—Watt. Agent—John Macmillan, S.S.C.

Wednesday, March 16, 1887.

OUTER HOUSE.

[Lord Trayner.

HOLMAN & SONS *v.* HARRISON & COMPANY.

Ship — Charter-Party — Demurrage — Discharging "as customary" at Terminus Quay, Glasgow.

A charter-party provided that a vessel should proceed with a cargo of iron ore to the Terminus Quay, Glasgow, and be discharged as fast as steamer could deliver, after berthed, "as customary." According to the custom of the port of Glasgow, iron ore must at the Terminus Quay be discharged into the trucks of the Cale-