or justice can insist that the sheriff's fiscal or justice of peace fiscal, as the case might be, and none other, shall prosecute his thief, and that the policeman can sue an action in the Court of Session to prevent the case going to any other court. It is difficult to imagine a more complete *reductio ad absurdum*.

I have already indicated that, in the matter of reporting criminal offences to a competent prosecutor, the Chief-Constable is engaged in the execution of his duty as constable, and is therefore subject to the orders of the Sheriff and the Justices. In seeking a declarator that his disobedience is to be legalised, the Chief-Constable makes a demand which is not to be listened to.

Nor, in my opinion, is the situation at all improved by the Chief-Constable sheltering himself behind the Standing Joint-Committee and the County Council. Neither of those bodies would be within its province in giving any orders whatever to the Chief-Constable as to which of the two prosecutors he shall report cases to. Accordingly I have heard nothing to satisfy one of the title of the County Council to sue this action. I should be sorry to say anything to discourage a County Council in its legitimate desire to promote the convenience of the county, and a saving in the rates. Convenience and economy are the points at which the interests confided to the County Council are affected by the arrangements of the criminal authorities; and I can quite understand the County Council representing to or conferring with the criminal authorities on such matters. But to sue an action in a Court of law is a very different matter, and requires a much more direct concern and responsibility. Now, the County Council has no responsibility for the distribution of criminal business by the criminal authorities, of whom they are not one; and they do not seem to be proper pursuers in an action at law to determine that distribution, were any such action competent.

I am happy to say that this is not to deny to the County Council any valuable privilege, for the action seems to me untenable at the instance of anyone. I greatly doubt whether any action on this subject could be entertained without the Lord Advocate and the Justices of the Peace being parties to the action, because the summons directly invades the rights of both. But, even as things stand, I find in the unquestioned rights and duties of the Lord Advocate a conclusive reason against this Court pronouncing any decree such as is sought.

We are here in the region of administration; shall this official or shall that official do that which it is perfectly certain will be done by one or other of them? To put the question in concrete form—is the Sheriff's Procurator-Fiscal himself to prosecute certain offenders, or shall he transmit the papers to the Justice of Peace Fiscal, with a view to a prosecution before the Justices? Now, I am not aware that the Sheriff has any power to transfer to the Justices cases already initiated in his own Court by complaint. Nor do I know that it can be said, as matter of legal dogma, that the Sheriff can direct the Justice of Peace Fiscal to proceed in any particular case or class of cases, although the dutiful comity and good sense of the two sets of officials prevents this point from ever arising. But the question whether the Sheriff's Fiscal shall or shall not prosecute in any given case or class of cases, and shall or shall not transmit the papers to the Justice of the Peace Fiscal, with a view to a prosecution in that Court, is one upon which the Lord Advocate is master of the situation. If the Lord Advocate thought good to direct the defender Mr Phyn to prosecute the cases in dispute, Mr Phyn must obey. If the Lord Advocate thought good to direct Mr Phyn not himself to prosecute, but to transmit the papers to the Justice of the Peace Fiscal, with a view to proceedings before the Justices, again Mr Phyn must obey. If, as appears to be the case, the Lord Advocate has not thought good as yet to intervene, then Mr Phyn must obey the Sheriff, until the Lord Advocate shall further direct him. There being thus, within the department in which the Procurator-Fiscal is an officer, a supreme authority competent to solve the present question, it seems to me that this action cannot be entertained by this Court. That being so, it does not appear to me to be within my province to express in this place any opinion on the merits of the disputed question, which is one of administration and not of law.

I am for adhering to the interlocutor of the Lord Ordinary, by which the action stands dismissed.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court adhered.

Counsel for the Pursuers—W. Campbell — Fleming. Agents — Tods, Murray, & Jamieson, W.S.

Counsel for the Defender, Phyn—Comrie Thomson—Clyde. Agents—Drummond & Reid, W.S.

Wednesday, March 20.

FIRST DIVISION.

[Sheriff Court at Aberdeen.

LAING *v.* LAING'S TRUSTEES.

Succession — Legacy — Election—Discharge of Legitim.

A testator directed the trustees under his trust-disposition and settlement to pay a legacy of £100 "to my reputed son J." He further provided that the provisions in favour of his children were to be in satisfaction of all claims for legitim. J survived his father, but died before receiving the legacy. J's widow and executrix claimed the legacy, at the same time intimating that she

reserved her claim for legitim, in case her husband should be proved to have been legitimate. The trustees refused to hand over the legacy unless she gave them a discharge of all claims in respect of legitim.

Held that the trustees were not entitled to demand such a discharge, and were bound to hand over the legacy.

The trust-disposition and settlement dated 21st March 1889 of John Laing, Granton Lodge, Aberdeen, contained, *inter alia*, the following directions to his trustees—"I leave to my reputed son John Laing the sum of one hundred pounds, to be paid to or laid out for his benefit by my trustees at their discretion." "(Tenth) I appoint that the provisions herein contained in favour of my children, or any of them, or of the issue of my children or any of them, are and are to be accepted by them severally in full satisfaction of all claims of legitim, bairns' part of gear, and all and every claim against me and my estate at the instance severally of my said children or issue, or of the parents of such issue."

John Laing, the truster, was survived by his son, the beneficiary John Laing, who however died before the legacy bequeathed to him by his father had been paid. Mrs Elizabeth Melvin or Laing, the widow of John Laing junior, was confirmed as his executrix-dative, on 20th July 1894.

An action was raised by her in the Sheriff Court of Aberdeen against the trustees of John Laing senior, for payment of the legacy of £100 bequeathed by the truster to her late husband.

The pursuer averred that she had repeatedly demanded payment of the legacy, but that the defenders had refused to pay it.

The defenders averred that they were willing to pay the legacy if the pursuer would grant them a proper discharge; that the pursuer had intimated to them shortly after her husband's death that she declined to homologate the terms of the settlement, on the ground that she claimed that her husband was a legitimate son of John Laing senior, and that as his executrix she was entitled to a claim for legitim. They produced a letter from the pursuer's agents dated 23rd January 1894 to the above effect, and warning them that if they divided the estate it would be at their own risk.

They pleaded—"(1) The pursuer having declined to homologate the settlement of the deceased, and having set up claims antagonistic thereto, she is only entitled to payment of the legacy bequeathed to her husband in exchange for a duly executed discharge, discharging the defenders and the estate of deceased of all claims at her instance thereon."

On 9th February 1895 the Sheriff-Substitute (ROBERTSON) repelled the defences, and decerned against the defenders for payment of the legacy.

The defenders appealed to the First Division of the Court of Session, and argued—The question of legitimacy having been raised by the pursuer, they were not in safety to pay her the legacy. They only asked her to make election, for she could only take the legacy on the footing that her husband was illegitimate.

Argued for the pursuer—The trustees were not entitled to demand anything but a simple receipt, which she was willing to give, this not being the case of a residuary legatee—*Fleming* v. *Brown*, February 6, 1861, 23 D. 443. She had no power in any case to discharge the children's claim. The Court could not qualify the interlocutor of the Sheriff so as to make it meet the appellants' views.

At advising—

LORD ADAM—I am of opinion that the interlocutor of the Sheriff is right, and that the trustees are bound to make payment of the legacy. It apparently is not quite clear whether the legatee was the illegitimate or legitimate son of the truster, and in the latter case his representatives would have a claim for legitim. The trustees say that his executrix is bound to make up her mind as to the course she is to pursue, and that if she will not renounce any possible claim she and her children may have for legitim, they will not pay her the legacy. I do not think that they are entitled to take up this position. They might very well take steps to have the question of the possibility of any claim arising settled, but they are not entitled to refuse to pay one debt because it may possibly turn out that another is due.

LORD KINNEAR and the LORD PRESIDENT concurred.

LORD M'LAREN was absent.

The Court refused the appeal.

Counsel for the Pursuer — Guthrie — Anderson. Agent—R. C. Gray, S.S.C.

Counsel for the Defenders—H. Johnston —Abel. Agents—Wishart & Sanderson, W.S.

Wednesday, March 20.

FIRST DIVISION.

[Lord Wellwood, Ordinary.

LORD ADVOCATE *v.* ROBERTSON.

Revenue—Succession—Account-Duty—Succession-Duty—Life Insurance—Policy "Kept up for the Benefit of a Donee"—Premiums Paid partly by Insurer and partly by Donee—Customs and Inland Revenue Act 1889 (52 *Vict. c.* 7), *sec.* 11; *Succession-Duty Act* 1853 (16 *and* 17 *Vict. c.* 51), *secs.* 2 *and* 17.

The Customs and Inland Revenue Act 1889 by section 11 enacts that account-duty shall be chargeable upon money received under a policy of assurance effected by any person dying on or after the 1st June 1889 on his life, where the policy is wholly kept up by him, for the benefit of a donee, whether