another action if that could have been done. But the important question which is raised, as I say, on his statement, is not the question which he asks us to determine in the prayer of the appeal. The prayer of his appeal contains several clauses. The first part of it—and upon the success of which all the other parts of the prayer depend—runs thus—It asks us "to recal the judgment, decision, or deliverance aforesaid *simpliciter*." Now, the only judgment, decision, or deliverance referred to in the appeal is the judgment of the Magistrates and Council themselves upon an appeal which Mr Heddle took against an assessment which has been made and imposed upon him individually. That was an appeal which he took under section 340 of the Burgh Police Act—an appeal which is there specially provided for. He does not ask us to review that decision, and I doubt very much whether we would have any competency to review that decision. But he asks us to recal it as a means of enabling him to get into the general question, which, as I have already indicated, plainly could not give him the remedies and relief that he prays for in this prayer. I rather think that the section on which he bases his right of appeal—the 339th—although it is exceedingly broad in its terms, has no reference to the case we are dealing with, and certainly is not a section under which the question that Mr Heddle wants to have determined can be brought up. Therefore if the first part of this prayer is refused, necessarily the whole of it follows, and upon that ground I agree in the judgment which Lord Young has proposed, that this appeal ought to be dismissed. There is a remedy open to Mr Heddle as he well knows—a form of process—in which the question he wants to have settled can be raised and determined, and if Mr Heddle persists in trying the question, he must do it in the form which the Court has provided. This is not such a form, and therefore I am of opinion that this appeal ought to be dismissed.

LORD MONCREIFF—I agree with both your Lordships that the appeal is incompetent. I think there is no warrant for the appeal either at common law or under either of the statutes mentioned in the petition.

LORD JUSTICE-CLERK—I am of the same opinion.

The Court dismissed the appeal as incompetent.

Counsel for Appellant—Party.

Counsel for Respondents—Balfour, Q.C. —Clyde. Agents—Irons, Roberts, & Co., S.S.C.

Friday, March 5.

FIRST DIVISION.

COUNTY COUNCIL OF ROXBURGH *v.* MELROSE DISTRICT COMMITTEE.

Process—Special Case—Competency—Title to Appear.

In a special case raised by a county council and a district committee for the purpose of determining whether a certain assessment fell to be levied upon the ratepayers of the whole county or on those only of the district represented by the committee, the Court *dismissed* the special case as incompetent on the ground that the district committee had no title to appear.

A special case was presented to the Court by (1) the County Council of Roxburgh and (2) the Melrose District Committee of the County Council for the purpose of determining whether certain operations requiring to be executed upon Melrose Bridge amounted to a "rebuilding" of the bridge or were only of the nature of "maintenance" or repairs. The importance of the distinction lay in the fact that in the former case the expense of the operations would be defrayed by assessments levied over the whole county, while in the latter it would fall only upon the ratepayers in the Melrose district.

The second parties maintained that they had a right to appear as representing a separate body of ratepayers, who would be seriously affected if the contention of the first parties were affirmed.

LORD PRESIDENT—I do not think that the special case will do.

The District Committee has administrative duties, but it is not a contributory to the rate which it maintains ought not to be levied, and accordingly it has no concern with or interest in the question from what rateable area the money has to be found to pay for the bridge.

It is no part of our duty to suggest other people who might competently raise the question, but the statements of the case would point to the ratepayers.

LORD KINNEAR—I agree that there may be persons with a good title and interest to raise this question, but it has not been shown that the District Committee have any. Accordingly, we can no more entertain a special case between that committee and the other party than we could hear an action raised at the instance of a party who has no title to sue.

LORD ADAM and LORD M'LAREN concurred.

The Court dismissed the special case as incompetent.

Counsel for the First Parties—J. Wilson. Agent—William Boyd, W.S.

Counsel for the Second Parties—A. J. Young. Agent—Alex. O. Curle, W.S.

Friday, March 5.

FIRST DIVISION.

ARIZONA COPPER COMPANY *v.* LONDON SCOTTISH AMERICAN TRUST.

Company — Security for Debentures — Sinking Fund to be Accumulated in Hands of Trustees—Interest on Accumulations.

A company, for security of the payment of three classes of debentures which it was issuing, agreed to "accumulate as a sinking fund in the hands" of another company, in trust, "25 per cent. of its free annual profits remaining after satisfaction" of certain other interests. The trustees were to apply the moneys thus placed in their hands "for securing and paying to the holders thereof the whole of the debentures" issued by the trustees according to their priority, at the dates when they became due. It was further provided that "the trustees may lend out or invest the trust funds in their hands from time to time, or any part thereof" . . . in certain specified securities. No direction was given as to what was to be done with the interest arising from such investments.

Held that the interest did not form part of "the free annual profits" of the trusters, but must be retained and accumulated by the trustees, and added to the sinking fund, and applied to the purposes of the trust.

By assignation, agreement, and declaration of trust entered into on 1st October 1894, between the Arizona Copper Company, Limited, 74 George Street, Edinburgh, and the London Scottish American Trust, Limited, 75 Lombard Street, London, on the narrative that the first party contemplated borrowing certain sums by means of terminable debentures to be secured as a first charge on property conveyed to the second party, and further sums by the creation of A and B debenture stock to be constituted as postponed charges on the property so to be handed over, it was provided as follows:—"*Fourth.* For the better securing of the debts and obligations hereinafter set out, the first party hereby undertakes, each year after the year ending on 30th September 1894, to accumulate as a sinking fund in the hands of the second party 25 per cent. of its free annual profits remaining, after satisfaction of the interests called for in terms of the several obligations set out in article fifth hereof, but the first party undertakes that the sum to be annually accumulated in terms of this article shall not in any year be less than £5000, unless the total free annual profit of the first party shall for that year be less than that sum, in which case the sum falling to be paid to the second party for that year shall be the amount of such total free profit. The first party further undertakes that it will redeem the whole of its terminable debentures secured in terms hereof within ten years from Whitsunday 1894. And it is hereby provided and declared that the first party may either pay the said accumulations in cash or by delivery to the second party of its terminable debentures of the class hereby secured, which, having been issued by the first party for cash, have been duly paid to and discharged by the holders thereof, accompanied by a certificate and affidavit by the first party's secretary that the same have been *bona fide* met and paid by the company, and that no others have been issued in lieu and place thereof. The second party shall be bound to apply any sums of cash coming into its hands in terms of this article, in redeeming any terminable debentures of the first party which may for the time being be past due (it being in contemplation to issue debentures payable at different dates), but it shall not be competent to the second party to apply the funds coming into its hands in terms of this section in payment of interest on debentures, but only in payment of the principal sum thereof. And after the said £100,000 have been accumulated, as hereinbefore provided, the first party shall thereupon only be bound to accumulate in the hands of the second party, in terms of this article as above, at the rate of £5000 per annum, or such lesser sum as its whole free annual profit shall in any year amount to, as aforesaid, to be held by the second party for the better securing of the several other obligations hereby secured. The amount payable to the second party in terms of this article for any one year shall be sufficiently ascertained by a requisition addressed in writing by the second party to the first party, and failing such requisition being complied with within one month after the same is addressed to the first party, the second party shall then be entitled but not bound to sue the first party, and also to exercise the rights of enforcement hereinafter set out . . . *Fifth*, It is hereby declared that the second party holds the said securities and sinking fund, subject to the trusts at present affecting the same, until such trusts are validly discharged, in trust for the following purposes: *Primo loco*, for securing and paying all debts, claims, and expenses which may be incurred by it in executing the office of trustee, including its own remuneration and all legal expenses incurred by it; *secundo loco*, and after full satisfaction of the said debts, claims, expenses, and remuneration, for securing and paying to the holders thereof the whole of the terminable debentures of the first party, duly executed by it in terms of the form set out in Schedule No. II. hereto appended, with the interest from time to time due thereon at dates when the same becomes due, provided always that the said terminable debentures hereby secured, including those delivered to the second party as paid-up and discharged in terms of the immediately preceding article shall not at any one time exceed the sum of £100,000, and the rate of interest payable