principle underlying the direction asked is, that although there was a duty on the defender towards a certain class of persons, and a failure to perform it, yet there was no duty towards persons of another class, namely persons who were in the dangerous locality "unnecessarily." I agree that such a direction, stated as an abstract proposition of law, could not be given by the presiding judge. There are many persons in many places where they have a perfect right to be, and yet where their presence is entirely unnecessary—that is to say, neither duty nor obligation compels them to be there. But that persons who have a right to be in a certain place, although they have no necessity to be there, are not to be protected because it happened that they were under no such necessity, is a direction which, in my opinion, the Judge was perfectly right in refusing to give.

LORD MONCREIFF.—I agree. I think that the Judge who presided at the trial was right in refusing to give this abstract direction as it is expressed. The fact that a person is "unnecessarily passing over" a place is quite consistent with his being there lawfully; and if the pursuer's son was at the spot in question legitimately, the pursuer is not deprived of any right to sue which he would have otherwise had merely because there was no necessity for this boy being there at that time.

The LORD JUSTICE-CLERK concurred.

The Court pronounced the following interlocutor:—

"The Lords having heard counsel for the defenders on their bill of exceptions, . . . Disallow the exceptions, . . . and of consent apply the verdict of the jury, and in terms thereof decern against the defenders for the sum of £110 stg.: Find the pursuer entitled to expenses, including the expenses caused by the bill of exceptions, and remit," &c.

Counsel for Pursuer — A. J. Young— Kemp. Agent—George Cowan, S.S.C.

Counsel for Defenders—Jameson, Q.C.— Glegg. Agents — Macpherson & Mackay, S.S.C.

Friday, October 29.

SECOND DIVISION.

[Sheriff of Lothians and Peebles.

HEDDLE *v.* MAGISTRATES AND COUNCIL OF LEITH.

Process—Appeal from Sheriff—Competency —Finality of Sheriff's Decision — Complaint to Sheriff under Burgh Police (Scotland) Act 1892 (55 *and* 56 *Vict. cap.* 55), *sec.* 67.

A tenant and occupier and ratepayer in a burgh presented a complaint to the Sheriff under the Burgh Police (Scotland) Act 1892, section 67, which provides that the sheriff is to hear and determine the complaint, and that his decision is to be final.

The Court, on appeal from an interlocutor of the Sheriff dismissing the complaint, on the ground that the petitioner had not set forth any title to sue, *recalled* the interlocutor appealed against, and, without deciding the question of title, remitted the case to the Sheriff to be disposed of on the merits.

The Sheriff, in pursuance of this remit, having considered the case with the record, productions, and whole process, and having heard parties (probation being renounced), found that the pursuer had failed to show that the accounts of the defenders had not been kept or made up in conformity with the provisions of the statute, or that he had any well-founded objection to said accounts, and dismissed the petition with expenses. The pursuer having appealed against this interlocutor, the Court *dismissed* the appeal as incompetent.

Title to Sue — Complaint under Burgh Police (Scotland) Act 1892 (55 *and* 56 *Vict. cap.* 55), *sec.* 67.

Question, whether a ratepayer has a title to bring a complaint under the Burgh Police (Scotland) Act 1892, section 67, when he does not aver any hardship which he personally suffers through the irregularities in the accounts of which he complains, or any benefit which he would derive from their being corrected.

The Burgh Police (Scotland) Act 1892 (55 and 56 Vict. cap. 55), section 67, enacts as follows:—"Accounts of all property, heritable and moveable, vested in the commissioners, showing the nature of such property, and of all money received and disbursed, shall be kept in books by the treasurer or collector in such form as the Auditor of the Court of Session shall prescribe, and all such books of accounts may at all reasonable times, and on payment of a reasonable fee, be inspected and perused by any person assessed, and also by any person entitled to any money due and owing on the credit of the assessments, and such persons may take copies of or extracts from any such books and accounts on payment of a reasonable fee, the amount of such fee to be fixed by the Auditor of the Court of Session, and any person in whose custody or power any such books and accounts are, who shall refuse inspection thereof, or to permit copies or extracts to be taken as aforesaid, shall be liable in a penalty not exceeding ten pounds; and in case any person who shall be assessed shall be dissatisfied with any accounts which shall have been made up as herein provided, or with any of the items or articles contained in such accounts, such person may, at any time within three months after the accounts are approved by the commissioners, complain against the same by petition to the sheriff, in which

complaint shall be specified the grounds of objection to such accounts, items, or articles, and the sheriff shall proceed to hear and determine the matter of such complaint, and his decision shall be final."

James Heddle, tenant and occupier, and ratepayer, under the Burgh Police (Scotland) Act 1892, presented a petition to the Sheriff of the Lothians and Peebles at Edinburgh, under the section quoted above, in which he called as defenders the Magistrates and Council of Leith, as coming in room of the commissioners of that burgh under the Burgh Police (Scotland) Act 1892, and prayed the Court to find that there were certain irregularities in the commissioners' accounts, and to ordain that these irregularities should be rectified.

The petitioner craved (1) a general finding to the effect that the accounts of the commissioners had not been kept distinct from those of the municipal burgh, as required by law; (2) a finding with regard to the omission, in the accounts of the Sinking Fund Police Loan No. 7, of any sum as interest on a certain sum of £1000, and decree ordaining that such sum as might be found proper should be added to that account'; (3) a finding that the said Sinking Fund was not invested and set apart, and decree ordaining that this should be done; (4) a finding that a sum of £3043, 11s. 2½d. shown in the accounts as uninvested, and part of the capital sum of the Police Pension Fund, was uninvested on 15th May 1896, and still remained uninvested on 22nd October 1896, that said sum had been pledged to the town's bank for miscellaneous advances, all outwith the purposes of the Police Pension Fund, and that this was illegal, and decree ordaining the instant investment of this sum; (5) a finding "that the obligations and liabilities of the burgh, *quoad* police properties and rates, and the amounts of loans chargeable thereagainst," were imperfectly stated in the accounts, and that "an obligation, lien, or liability amounting to £25,000" had "been granted by the Magistrates and Council to the town's bank over the police burgh, and its present and future assessments, contrary to the provisions of the Burgh Police (Scotland) Act 1892;" (6) a finding that certain items charged to the Burgh General assessment, payable only by the tenant or occupier, were not within the purposes of the Burgh Police Act 1892, and should be disallowed as charges against that rate; (7) a finding that the drafts on the bank account in connection with the Burgh General Assessment police rate had not been made in accordance with law. The petitioner also prayed the Court (8) to find him entitled to expenses.

The petitioner did not aver, in the condescendence annexed to his petition, any particular hardship under which he suffered by reason of the irregularities in the accounts of which he complained, or any special benefit which he would derive from these irregularities being rectified.

The Sheriff (RUTHERFURD), by interlocutor dated 23rd November 1896, having heard parties, appointed the Magistrates and Council of Leith to lodge answers, which was accordingly done, and a record made up.

The Magistrates and Council of Leith pleaded, *inter alia*—"(1) No title or interest to sue. (2) The action is incompetent. (3) The action is irrelevant."

Thereafter by minute dated 17th March 1897 the parties renounced probation, subject to the Sheriff's judgment as to the petitioner's right to insist on production of certain vouchers.

On 1st April the Sheriff issued the following interlocutor:—"Finds that the pursuer has not set forth a sufficient right, title, or interest to insist in the present action: Therefore sustains the defenders' first plea-in-law, dismisses the action, and decerns," &c.

Note.—"The pursuer of this action is a ratepayer in Leith, and his object is to have it found by decree of the Court that the defenders, who are the commissioners of the burgh acting under the Burgh Police (Scotland) Act 1892, have in several particulars failed to keep their accounts in the manner prescribed by the statute.

"The pursuer has apparently been unable to obtain the co-operation or support of any of the other ratepayers, who might naturally be supposed to have as great an interest in the matter as he has, and what is still more material to observe is, that he has not alleged that he has suffered or is even likely to suffer any prejudice in consequence of the way in which the defenders' accounts have been kept.

"It seems plain that an action like the present would not be sustained at common law, for according to our law and the practice of our courts, no one is entitled to insist in an action in which he has not a direct personal or patrimonial interest, and which, in so far as he is concerned, can have no practical result—(See the judgments of the Court of Session and House of Lords in *Ewing and Others* v. *The Glasgow Police Commissioners*, and *Morrison and Others* v. *Eosdem* (1837), 15 S. 389 and 1128, affirmed (1839), M'L. and R. 847 and 868.

"The present action, however, is said to be sanctioned by section 67 of the Burgh Police Act 1892, which provides, *inter alia*, that 'In case any person who shall be assessed shall be dissatified with any accounts which shall have been made up as herein provided, or with any of the items or articles contained in such accounts, such person may at any time, within three months after the accounts are approved by the commissioners, complain against the same by petition to the sheriff, in which complaint shall be specified the grounds of objection to such accounts, items, or articles, and the sheriff shall proceed to hear and determine the matter of such complaint, and his decision shall be final.'

"Now, it is true that the pursuer was assessed under the Act for the year ending 15th May 1896, and is liable to be assessed for the current year. It may also be taken for granted, from the fact of his having raised this action, that for some reason or

other he professes to be dissatisfied with the accounts made up by the defenders. but for all that I do not think that he has a sufficient title or interest to insist in the conclusions of the libel. I do not suppose that it was ever contemplated by the Legislature that any individual ratepayer, without a tangible grievance to redress, should have it in his power to maintain an action such as this, involving possibly a protracted and costly litigation, from which he personally could derive no benefit. But that is the case here. The pursuer does not pretend that he has been illegally or erroneously assessed, and for all that appears to the contrary, even if he were to succeed in having the defenders' accounts remodelled in accordance with his views of the statutory requirements, neither he nor anyone else would be one whit the better.

"In a case recently depending in the Court of Session between the same parties (*Heddle* v. *The Magistrates of Leith*), the pursuer, by an appeal under the 339th section of the Act, which provides that any person 'who thinks himself aggrieved by any order or resolution or deliverance or act of the commissioners made or done under any of the provisions herein contained, may, unless otherwise in this Act specially provided, appeal either to the sheriff or to the Court of Session.' . . . endeavoured to raise the question whether the defenders were entitled to obtain by assessment a fund in order to meet certain charges, or to defray these out of money in their hands, the proceeds of a previous assessment, and Lord Young observed—'I think the proper case for appeal is where any individual under the jurisdiction of the police authority suffers in his person or property by any proceeding of theirs under the Act. He may appeal against them with respect to any assessment imposed upon him, and say—That is more than my share; I complain against the assessment so far as I am concerned; you have over-rated my premises, or I am not the party that is liable in respect of the premises for which you have assessed me. All these are individual things, which he may bring forward individually by appeal to the sheriff or by appeal to this Court, but a general question, such as the right of a public authority to apply funds raised by assessment, either under the Burgh Act or under the Public Health Act, to the purposes in question, or to take funds out of the proceeds of an assessment previously imposed, is, I think, not conveniently, and certainly, in my opinion, not competently brought before us by appeal.' Of course, this is a complaint under a different section of the statute, but in so far as regards the pursuer's title to sue and insist, it seems to me that the same test must be applied, viz., whether the pursuer has suffered in his person or property by the proceedings of which he complains.

"I may add that the defenders' accounts have all been audited and certified as correct by an accountant of great experience and ability appointed by this Court in terms of the 69th section of the statute, and after hearing the pursuer at great length in support of his objections, and having carefully perused the record with the productions, it appears to me that the objections, in so far as they can be said to have any relevancy, are unfounded.

"I do not consider it necessary, however, to enter into this matter in detail, as I think the ground previously indicated is sufficient for the decision of the case."

The pursuer appealed to the Second Division of the Court of Session.

The defenders objected to the competency of the appeal on the ground that in terms of the Burgh Police (Scotland) Act 1892, section 97, the Sheriff's interlocutor was final.

After hearing parties the opinion of the Court was delivered by

LORD YOUNG—I think it would be desirable in this case to avoid the question of title. I think I indicated in the course of the discussion the doubts and difficulties which occurred to me on that subject. But they need not be determined or settled if the Sheriff is prepared, as I understand he is from his judgment, expressed not in the interlocutor, but in the note appended to the interlocutor, which is really the judgment. It is the judgment upon which he has pronounced the decree which is in the interlocutor, and it is to the effect that "after hearing the pursuer at great length in support of his objections, and having carefully perused the record with the productions, it appears to me that the objections, in so far as they can be said to have any relevancy, are unfounded." Now, that is his opinion after hearing the case fully and considering it fully to the best of his ability, and if he puts that into the form of a judgment, which he would do by putting a finding to that effect into the interlocutor, it would dispose of the case and dispose of it in a manner so far as I can judge altogether unobjectionable, and further, in a manner which is declared by the statute to be final.

I would therefore suggest to your Lordships that the most convenient and expedient course in the interests of the parties concerned here is to recal the interlocutor which the Sheriff has pronounced, and without deciding the question of title, which I think it is better not to decide, to remit to him to deal with the objections stated in the clause of the statute referred to by the appellant. The Sheriff, as I have pointed out by reading this passage in his judgment, had heard the petitioner fully upon them, and is prepared to dispose of the objections upon their merits, and if he does so, the judgment which he pronounces will, under clause 67 of the statute, be final. I propose to your Lordships that we should take that course, not giving any expenses of the present appeal, but leaving the expenses to be disposed of by the Sheriff when he pronounces the judgment which I have indicated."

The Court, by interlocutor dated 8th July 1897, recalled the interlocutor appealed

against, and remitted the cause to the Sheriff to dispose of the matter of the appellant's complaint.

On 30th July the Sheriff issued the following interlocutor:—"The Sheriff having, in accordance with the remit contained in the interlocutor of the 8th instant by the Judges of the Second Division of the Court of Session, resumed consideration of the case, with the record, productions, and whole process, and having heard the pursuer and the defenders' agent, Finds that the pursuer has failed to show that the accounts of the defenders, as Commissioners for the Burgh of Leith under the Burgh Police (Scotland) Act, 1892, have not been kept or made up in conformity with the provisions of the statute, or that he has any well-founded objection to said accounts, or to any of the items or articles therein contained: Therefore dismisses the petition, and decerns: Finds the pursuer liable to the defenders in the expenses of process incurred in this Court," &c.

Note.—"The pursuer asked to be allowed a proof, but this was objected to on the part of the defenders, and the Sheriff refused the motion, as the parties renounced probation by minute of 17th March last.

"The Sheriff has carefully reconsidered the matter of the complaint in the light of the additional statement made by the petitioner at the bar, but he sees no reason to alter the opinion which he expressed in the note to his interlocutor of 1st April last. He may add that the pursuer's objections are similar to, and in some cases identical with, those which were repelled by Sheriff Blair in an interlocutor of 20th February 1896."

The pursuer appealed to the Second Division of the Court of Session.

The defenders and respondents objected to the competency of the appeal on the ground that in terms of the Burgh Police (Scotland) Act 1892, section 67, the Sheriff's interlocutor was not appealable.

The pursuer and appellant's argument sufficiently appears from Lord Trayner's opinion *infra*.

LORD TRAYNER.—The only question we have to consider at present is the competency of this appeal. When the case was previously before us we recalled the Sheriff's interlocutor (which dismissed the petition on the ground that the appellant had no title to sue), and remitted to him to dispose of the matter of the petitioner's complaint. The Sheriff has accordingly again heard the parties and issued the interlocutor of 30th July, which the appellant now seeks to bring under review. That interlocutor, in my opinion, fully exhausts our remit. The present appeal is said by the respondent to be incompetent in respect of the finality of the Sheriff's judgment under the section of the statute on which the petitioner's complaint is founded. But the petitioner maintains that the statutory finality does not apply, because the interlocutor appealed against is irregular, and, as he says, illegal or contrary to law. He objects, first, that the Sheriff has not complied with the Act of Sederunt in respect that he has not pronounced separate findings in fact and in law. But the provision in the Act of Sederunt only applies where a proof has been allowed and taken. In this case there has been no proof allowed or taken, and parties have renounced probation. The provision, therefore, of the Act of Sederunt cannot apply to the present case. The second objection which the appellant urged was that the Sheriff's interlocutor did not comply with the requirements of section 13 of the Sheriff Court Act of 1853 in respect that he had not set forth, either in his interlocutor or note, the grounds on which he had proceeded. Now, I am of opinion that the Sheriff has given his reasons for his judgment, and has set forth the grounds on which he proceeded. He finds "that the pursuer has failed to show that the accounts of the defenders, as commissioners for the burgh of Leith under the Burgh Police (Scotland) Act 1892, have not been kept or made up in conformity with the provisions of the statute, or that he has any well-founded objection to said accounts, or to any of the items or articles therein contained." These are the grounds of his decision. The soundness of the views so stated by him is not a matter for our consideration. The Sheriff having heard and determined the matter of the petitioner's complaint, his judgment is by statute declared final; and as, in my opinion, the interlocutor issued by the Sheriff is not open to any of the objections which the appellant has stated, I think the present appeal should be dismissed as incompetent.

The LORD JUSTICE-CLERK and LORD MONCREIFF concurred.

LORD YOUNG was absent.

The Court pronounced the following interlocutor:—

"Dismiss the appeal as incompetent, and decern: Find the defenders entitled to expenses in this Court, and remit the same and the expenses found due in the Inferior Court to the Auditor to tax and report."

Counsel for Pursuer and Appellant—Party.

Counsel for Defenders and Respondents—Shaw, Q.C.—Salvesen. Agents—Irons Roberts, & Co., W.S.