right as a citizen of this realm to any remedy which we can give him, he will not ask in vain. But I agree that it is impossible to give the pursuer decree under any of the conclusions of this summons.

LORD MONCREIFF—I agree. I think that we have no power to give the pursuer any of the decrees for which he asks.

LORD YOUNG—I omitted to refer to the conclusion for damages. What I have to say upon that is, that while any servant in the public service may have an action for damages against any individual who has done him a wrong, even in connection with military service, I know of no authority for a claim of damages against Her Majesty's Government, or any public Department of Her Majesty's Government. Any individual in the public service may so treat another as to subject himself personally in damages, and the damages may be recovered in a court of law, but there is no authority for an action against the Government or a public Department of the Government, which is the same thing, for all the Departments in the Government just constitute the Government as representing Her Majesty.

The Court adhered.

Counsel for the Pursuer—Party. Agent—Robert D. Ker, W.S.

Counsel for the Defender — Sol.-Gen. Dickson, Q.C.—A. J. Young. Agent—Jas. Campbell Irons, S.S.C.

Thursday, November 25.

FIRST DIVISION.

[Sheriff Court of Lanarkshire.

HENDRY & COMPANY *v.* THE LITTLE ORME'S HEAD LIMESTONE COMPANY.

Expenses—Appeal—Where Appeal Withdrawn before it is Put out for Hearing.

An appeal was abandoned after it had been sent to the short roll, but before it had been put out for hearing.

Observations as to the rule to be applied in allowing the respondent the expenses incurred by him in preparation for the discussion.

In October 1896 an action was raised in the Sheriff Court of Lanarkshire by the Little Orme's Head Limestone Company, Limited, against Messrs Hendry & Company, coal and limestone merchants, Great Clyde Street, Glasgow, concluding for payment of £388; and in November a supplementary action was raised against the individual members of the firm. On 8th June 1897 the Sheriff, adhering with a variation to an interlocutor of the Sheriff-Substitute, found the defenders liable to make payment of the sum of £338. The defenders on 20th July 1897 boxed an appeal against this interlocutor to the First Division. On 15th October the appeal was sent to the short roll. On 25th November, before it had been put out for hearing, the appellants put in a note stating that they did not insist in the appeal, and craving the Court to dismiss it. The respondents had in the meantime printed an appendix containing correspondence.

Counsel for the appellants moved that the expenses to be allowed to the respondents should be modified at the sum of £3, 3s. They argued that the rule to follow was that in *Gentles* v. *Beattie*, October 15, 1880, 8 R. 13, where expenses were modified. The respondents had been premature in printing the documents, since the appeal could not be out for hearing for two or three months.

Argued for respondents—They were entitled to full expenses according to the ordinary rule—*Smith Sligo* v. *Knox*, Nov. 2, 1880, 8 R. 41. In *Gentles* v. *Beattie* the appeal had been withdrawn when first appearing in the Single Bills, while here it had been sent to the roll.

LORD PRESIDENT—We must, on the one hand, take care not to discourage the industrious and early preparation of cases for hearing, and again it is perhaps worthy of consideration that there are appeals taken which it is not ultimately contemplated by the appellant should come on for hearing. That is not a class of appeals to be encouraged. Accordingly, without laying down any general rule applicable to all cases, litigants should understand that when once a case has been sent to the roll the Court will not be careful to inquire whether undue alacrity is shown in preparations for hearing, since it may be that, when sent to the roll, the case may be put out for hearing earlier than is expected.

Accordingly, though in this not very complicated case time has certainly been taken by the forelock, I think we should allow expenses.

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

The Court dismissed the appeal with full expenses.

Counsel for the Appellants—Sym. Agent—W. J. Lewis, S.S.C.

Counsel for the Respondents—Ramsay. Agents—J. & J. Ross, W.S.

HIGH COURT OF JUSTICIARY.

Friday, November 26.

(Before the Lord Justice-Clerk, Lord Adam, Lord M'Laren, Lord Kinnear, Lord Trayner, and Lord Moncreiff.)

WILDRIDGE *v.* ANDERSON.

Justiciary Cases — Process—Declinature — Interest as Trustee ex officio.

A public library was vested by trust-deed in certain individuals and the provost, magistrates, and town council of a burgh and their successors in office as trustees and managers. *Held* that the trusteeship did not disqualify a magistrate from acting as judge in a charge, at the instance of the burgh prosecutor, of wilful and malicious destruction of property belonging to the library.

Thomas Wildridge, joiner, Port-Glasgow, was charged, at the instance of John Anderson, burgh prosecutor, with having wickedly, wilfully, maliciously, and mischievously torn, damaged, and destroyed a cushion of one of the forms in the billiard-room of the Moffat Library, Port-Glasgow, the property, or in the lawful possession of, the trustees of the said library.

The library in question was vested by trust-deed in certain private individuals, and the Provost, Magistrates, and Town Council of the Burgh of Port-Glasgow, and their successors in office as trustees and managers.

Wildridge was tried on 24th June 1897 before John Niven, one of the magistrates of the burgh of Port-Glasgow. He made no objection to the qualification of the magistrate. Evidence was led, and Wildridge was convicted of the offence charged, and sentenced to a fine of seven shillings and sixpence.

He brought a suspension, and made the following averment:—"At the time of said trial the complainer was not aware, but he has since learned, that the said John Niven was long before and at the time of said trial, and is still, one of the trustees of the said Moffat Library, the alleged damage to whose property is the subject of the complaint, and that the said John Niven was thus personally interested in the matter of the complaint. At all events, the said John Niven being one of the said trustees, it was incompetent for him to preside at said trial and pronounce judgment therein.

He pleaded, *inter alia*—"The conviction and sentence complained of should be suspended, in respect they were pronounced by a magistrate who was personally interested in the property said to have been damaged, and who was one of the said trustees, and the complainer should be found entitled to repetition of the sum paid by way of fine and expenses."

On July 16, 1897, the case was called, and in respect of its importance remitted to a Full Bench.

Argued for the complainer—The magistrate here was disqualified by interest in the subject of the charge, because he was one of the persons to whom the property alleged to have been damaged belonged. It was well established that a judge could not try a case in which he had a direct pecuniary interest—1 Ersk. i. 2, 25; Bell's Prin. 1441; Mackay's Manual, pp. 17, 18; Broom's Legal Maxims, 6th ed., p. 110; *Borthwick* v. *Scottish Widows' Fund*, February 4, 1864. 2 Macph. 595; *Caledonian Railway Company* v. *Ramsay*, March 12, 1897, 24 R. 48; *The Queen* v. *Hammond*, December 5, 1863, 9 L.T., N.S., 423; *The Queen* v. *Millidge*, May 15, 1879, 4 Q.B.D. 382; *The Queen* v. *Myer*, December 17, 1875, 1 Q.B.D. 173; *The Queen* v. *Handsley*, December 20, 1881, 8 Q.B.D. 383. If the judge did try such a case his decision was null—*Dimes* v. *Proprietors of Grand Junction Canal Co.*, June 29, 1852, 3 H.L.C. 759. Here the magistrate had a direct pecuniary interest, because if the property of the library was destroyed the trustees would be bound to replace it. The rule applied to criminal cases as well as civil—*Leitch* v. *Fairy*, July 27, 1711, M. 13,946; *The King* v. *Hoseason*, November 27, 1811, 14 East. 605; *Caledonian Railway Company* v. *Ramsay*, *cit. supra.* Although in certain cases—*e.g.*, *Gray* v. *Fowlie*, March 5, 1847. 9 D. 811—a ground of declination may be repelled because to sustain it would render the administration of law impossible, this was not a case of that kind, as the Sheriff could have tried the case. Except in such extreme cases the rule was absolute that a judge could not try a case in which he had an interest, even although there was no reasonable possibility that the interest would bias his judgment—*London and North-Western Railway Company* v. *Lindsay*, February 23, 1858, 3 Macq. 99. Here the judge was really a party to the prosecution, because, although the instance was nominally that of the fiscal, it was in reality at the instance of the library trustees. Could it be contended that if the trustees had actually prosecuted, one of their number could have tried the case?

Argued for the respondent—It might be admitted that a direct pecuniary interest would disqualify a judge, even although it was not of a character to bias his mind. But in this case the magistrate had no direct pecuniary interest. By the Act 1594 c. 216, a judge who is related to the parties is disqualified, but nothing is enacted regarding interest, which is a question of degree. An indirect interest would not disqualify unless it was of a kind to bias the mind of the judge. Otherwise it would often be impossible to try offences consisting of the destruction of burgh property, because in such a case all the inhabitants of the burgh had an interest. Such grounds of objection had frequently been dismissed. —*Blair* v. *Samson*, January 26, 1814, F.C.; *Gray* v. *Fowlie*, March 5, 1847, 9 D. 811; *Lord Advocate* v. *Edinburgh Commissioners of Supply*, June 5, 1861, 23 D. 933; *Sibbald's Trustees* v. *Greig*, June 13, 1871, 9 Macph. 399; *Mackenzie* v. *Langham*, November 9, 1874, 3 Coup. 29; *Nichol* v