LORD JUSTICE-CLERK—The defender was competently brought before the court of his society — the District Court of the society's Arbitration Committee — to answer as to irregularities as an office-bearer and member of the society. I say competently brought before it, for it is not now disputed that these proceedings were competent. The defender admits that that court had right to do certain things, and indeed if it had not he could competently have appealed to a higher jurisdiction within the society. He was removed from his office and was expelled from the society, and was also ordered to deliver up books and documents which he had in his possession as an office-bearer. Now, I cannot see his answer to that order. Any question which may exist as between the District Court and the Larkhall Branch of the society can in no way be affected by obedience to the order. If we decide in the pursuers' favour we only decide that the defender, when he had received notice from the competent court that he was removed from office and was called upon to deliver up the books, had no right to part with them to some-one else than the official to whom he was directed to deliver them, and is bound to deliver them up.

I think that the pursuers are entitled to decree-conform so as to enable them to enforce the judgment of that competent court.

It is said for the defender that he cannot now give up these books because he has already given them to another person, the official of the Larkhall branch. This is a question which does not arise at present. But I think we should order him to do what he should have done before if he had not, whether in collusion with the branch or at his own hand, chosen to deliver them to that body.

LORD YOUNG—In this case an application was made by the Glasgow District of the Ancient Order of Foresters to the Sheriff for a decree to enforce the decision of the District Arbitration Committee expelling the defender from the Order, calling upon him to hand over the books of the branch to the district secretary, and finding him liable in the costs of the arbitration meeting. It was not contended that the decision of the Arbitration Committee was bad so far as it dismissed him from his office or ordained him to pay the costs of the arbitration, but it was objected to in so far as it called upon him to hand over all the books and papers belonging to the Order to the district secretary. The Sheriffs refused to confirm the decision, on the ground that the books and papers were not the property of the district but the property of branch court. Now, I do not think that the Sheriffs were entitled to consider whether the books were the property of the one body or the other, and I do not intend to offer any opinion as to whether the Arbitration Committee had jurisdiction to determine any such question. But I am of opinion that their jurisdiction to inquire into his conduct and to dismiss him from his office being admitted, they were entitled and in duty bound to call upon him to hand over the books which were in his custody in virtue of his office.

I am therefore of opinion that the pursuers are entitled to have a judgment in terms of the prayer of their petition, and that the judgment of the Sheriffs ought to be altered. Our decision will determine nothing as to the persons ultimately entitled to the property of the books.

LORD TRAYNER — I am of the same opinion. The fallacy of the respondent's position seems to consist in his contention that there is here raised a question of right of property in these books. The pursuers are not getting a judgment and are not asking for a judgment to the effect that they are owners of the books in question. The District Court had jurisdiction to inquire into the defender's conduct, and to expel him from the society if they thought right, and as a consequence to direct him to deliver up the books which had come into his possession as an office-bearer and member of the society. All that we are asked to do is to grant a decree which will enable the petitioners to enforce the order of the District Court.

LORD MONCREIFF—I am of the same opinion. I agree with all that has been said, and I doubt whether the Sheriff had any power, the jurisdiction of the District Committee being admitted, to inquire into the matter of property.

The Court sustained the appeal, recalled the interlocutors appealed against, and granted the prayer of the petition.

Counsel for the Pursuers—Cook. Agents —Traquair, Dickson, & MacLaren, W.S.

Counsel for the Defender—David Anderson. Agents — Lister Shand & Lindsay, S.S.C.

Thursday, October 26.

FIRST DIVISION.

TOWN COUNCIL OF PETERHEAD AND OTHERS *v.* ABERDEENSHIRE COUNTY COUNCIL AND OTHERS.

Police—Burgh Police Act 1892 (55 *and* 56 *Vict. c.* 55), *sec.* 81—*Local Government* (*Scotland*) *Act* 1889 (52 *and* 53 *Vict. c.* 50), *sec.* 60.

Held that section 81 of the Burgh Police Act 1892 extends the provisions of the Local Government Act 1889, with reference to the policing of burghs with a population under 7000, to burghs with a population over 7000 and under 20,000 and not maintaining a separate police force of their own; and consequently that a county council is not entitled to meet the cost of policing such a burgh by levying a direct assessment upon lands and heritages within that burgh.

This was a special case brought by the Town Council and Commissioners of Peterhead and certain occupiers of lands within the burgh, first and fourth parties, and the County Council of Aberdeenshire and certain owners of lands within the burgh, second and third parties, to determine, *inter alia*, the following questions:—"(1) Are the second parties entitled to meet the cost of maintaining a police service for the police district, which consists of the parliamentary burgh of Peterhead, by levying a direct assessment upon the ratepayers within the said burgh under and in virtue of the powers conferred upon their predecessors, the Commissioners of Supply, by the Police (Scotland) Act 1857? (2) In the event of the first question being answered in the negative, are they entitled to call upon the first parties to meet the cost of the constabulary service within the said burgh by putting in force the provisions of section 81 of the Burgh Police (Scotland) Act 1892?"

The facts out of which those questions arose were as follows:—Peterhead was a parliamentary burgh with a population of about 12,000. In 1858 it had been formed into a police district by the Commissioners of Supply in terms of section 58 of the Police (Scotland) Act 1857 (20 and 21 Vict. cap. 72), and the cost of policing it was met until 1889 by an assessment levied by the Commissioners of Supply upon owners of lands and heritages within the burgh, in terms of section 59 of the same Act.

By section 11 of the Local Government Act 1889 (52 and 53 Vict. cap. 50) the powers and duties of the Commissioners of Supply were transferred to the County Council, and thereafter the County Council continued to police the burgh, and to defray the cost of so doing by levying a direct assessment upon owners within the burgh.

In consequence, however, of the decision of the Court in *M'Arthur* v. *County Council of Argyll*, March 18, 1898, 25 R. 829, the County Council came to be of opinion that it was not competent for them to assess directly within the burgh in terms of the Police Act of 1857. They therefore resolved in 1898 not to levy the assessment as heretofore, but to call upon the Town Council of Peterhead in terms of section 81 of the Burgh Police Act of 1892 to pay for the policing of the burgh out of the burgh general assessment, which the Town Council agreed to do for the current year. The result of this was that under section 340 of the last-named Act the burden of the maintenance of the police was transferred from the owners to the occupiers within the burgh.

The Local Government (Scotland) Act 1889 (52 and 53 Vict. cap. 50), sec. 60, sub-sec. (3), enacts, with reference to burghs the population of which is under 7000, that "every such burgh shall contribute to the county fund in aid of the expenditure thereout for the administration of the police." Sub-sec. (4) provides for the ascertainment of the proportion payable by each burgh, and proceeds—"but the amount of the contribution apportioned to the burgh shall not be assessed by the county council on the several lands and heritages in such burgh, but shall be paid by the town council out of the police assessment."

The Burgh Police (Scotland) Act 1892 (55 and 56 Vict. cap. 55), sec. 81, enacts that "all other burghs [*i.e.*, burghs other than (1) those which at last census had a population of not less than 7000, and at the date of the passing of the Act maintained a separate police force, and (2) burghs which at last census had a poulation of not less than 20,000], shall be supplied with constables by the counties in which they are situated, under the provisions of the Local Government (Scotland) Act 1889, or in the option of the commissioners of the burgh under the provisions hereinafter contained." The provisions referred to are as follows:—"It shall also be lawful for the commissioners of such burghs, and they are hereby required," to agree with the county council as to the amount of the burgh's contribution, or to have it determined by the Sheriff, "and so long as the sums either fixed by agreement or determined as aforesaid, are duly paid by the commissioners of such burghs, all the powers to assess for the purposes of the said Police Act 1857, within the burgh for which the same are paid, shall be suspended."

No such agreement had been entered into by the Commissioners of Peterhead and the County Council, nor had the amount of the town's contribution been determined by the Sheriff.

The County Council rested their contention and argument chiefly upon the latter part of sec. 81, quoted above, founding particularly upon the suspension of the powers to assess under the Police Act of 1857.

The Peterhead Commissioners argued, on the other hand, that the County Council had still power to assess within burgh, that the case of *Macarthur* applied only to the County General Assessment, and that the suspension of the powers to assess under the Act of 1857 only became operative when town councils exercised the option conferred on them by sec. 81 of the Act of 1892

At advising—

LORD PRESIDENT.—In my opinion the County Council are entitled to prevail; but they have created the only difficulty in the case by resting their claim on a wrong ground. (But for this, I may add, they would have had a decision last session.)

Peterhead being a burgh with a population not less than 7000, and not having a separate police force, falls under section 81 of the Burgh Police (Scotland) Act 1892. The County Council quite erroneously maintain that it falls under the latter portion of the section—a contention which is refuted by the consideration that what they call the latter portion of the section forms part of the alternative system stated in the section; that Peterhead has not elected the alternative system; and that it is only by the option of the burgh that this alternative system can come into play.

The result is that the first alternative stated in the opening words of the section has effect, and accordingly Peterhead is at present supplied with constables under the provisions of the Local Government (Scotland) Act 1889. I say "at present" because this is so only unless and until the burgh choose to go under the second alternative. Now the provisions thus referred to are plainly the provisions which, as the Act of 1889 itself stood, applied only to burghs having a population under 7000. In short, the Burgh Police Act of 1892 extends to burghs like Peterhead the system originally applicable to burghs under 7000. It might have said so in so many words, but then this would not be in the style of the Act. Now, the provision about assessment in the Act of 1889 is in section 60, and the system is in its nature perfectly applicable to any burgh whether under or over 7000. The County Council fixes the amount of contribution due for police by the burgh, but the amount so fixed, says the section, shall not be assessed by the County Council on the several lands and heritages in the burgh, but shall be paid by the Town Council out of the police assessment, or if there is no police assessment out of any other assessment imposed and levied therein. For the amount thus required the Town Council of course assess as part of their own assessment. In short, the County Council requisitions the Town Council for the sum they require, and the Town Council raises the amount by exercising their own powers of assessment.

I am for answering the first query in the negative, and therefore the third and fourth queries do not arise. The second question I would answer by declaring that the second parties are entitled to call upon the first parties to pay to them the cost of the constabulary service within the burgh in manner prescribed in section 60 of the Local Government (Scotland) Act 1889 as affected by section 59 of the Police (Scotland) Act 1857. I may add that I am glad that as Peterhead has not elected it, we have not to construe the second alternative part of section 81, for it is involved and obscure. Accordingly, to any burgh thinking of electing that alternative I should suggest the expediency of being first well advised as to what exactly are the consequences. The only thing tolerably clear is that the mode of assessment will be just the same as under the first alternative.

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

The Court answered the first question in the negative, and answered the second question by declaring that the second parties were entitled to call upon the first parties to pay to them the cost of the constabulary service within the burgh in manner prescribed by section 60 of the Local Government (Scotland) Act 1889 as affected by section 59 of the Police (Scotland) Act 1857.

Counsel for the Second and Third Parties —Balfour, Q.C. — W. Brown. Agents — Macpherson & Mackay, S.S.C.

Counsel for the First and Fourth Parties — Sol.-Gen. Dickson, Q.C. — Chisholm. Agent — R. C. Gray, S.S.C.

HIGH COURT OF JUSTICIARY.

Monday, October 23.

(Before the Lord Justice-Clerk, Lord Stormonth Darling, and Lord Pearson.)

GLEN *v.* NEILSON.

Justiciary Cases—Relevancy—Specification —Disorderly Conduct.

A complaint set forth that the accused was, on a particular day, and within a shop specified, "disorderly in his behaviour to the annoyance of the lieges, by shouting and persistently refusing to leave said shop, contrary to the Glasgow Police Act." *Held* that the complaint was not irrelevant for want of specification.

Peter Glen, 66 Alexandra Parade, Glasgow, was charged at the instance of the Procurator-Fiscal on a complaint in the following terms:—"That Peter Glen, of 66 Alexandra Parade, Glasgow, was on the 23rd day of June 1899, in the shop of John Findlay Stevenson, at 176 Castle Street, Glasgow, disorderly in his behaviour, to the annoyance of the lieges, by shouting and persistently refusing to leave said shop, contrary to the Glasgow Police Acts, particularly the Glasgow Police Act 1866, section 135, article 5, whereby the accused is liable to a penalty not exceeding £10, and in default of payment, or alternatively, without penalty, to imprisonment for a period not exceeding sixty days."

At the first diet objection was taken on Glen's behalf to the relevancy of the complaint. The objection was repelled, and he was tried and convicted. He brought a suspension, and pleaded—"(1) The warrant, conviction, and sentence complained of ought to be suspended, and the complainer found entitled to expenses, in respect that the complaint is irrelevant and wanting in specification."

Argued for the complainer—The complaint was defective in specification, in respect that it did not preclude the possibility that the acts done were quite lawful. It was no offence to shout—*Ritchie* v. *M'Phee*, October 25, 1882, 5 Coup. 147, nor was it disorderly to refuse to leave a shop unless the order to leave came from a party entitled to give it. That was not stated in the complaint. Where, as here, the acts alleged were not necessarily or *prima facie* criminal, the prosecutor must set forth in the complaint facts inferring their criminality—*Barr* v. *Macarthur*, May 29, 1878, 4 Coup. 53; *Hutton* v. *Main*, November 4, 1891, 3 Wh. 41.

Argued for the respondent—Behaving in a disorderly manner in private premises was *prima facie* a criminal act, and here it was set forth in what the disorderly