either they or their authors ever paid any price for the ground in question, and further, that the whole of the said ground has been since 1852 included in the estate plan of the estate of Manuel—I do not, I confess, see how it is possible for any person reading carefully the print of documents to conclude otherwise than that the idea of the defenders' proprietorship or possession *quâ* proprietors of the ground in question is a comparatively recent afterthought for which there is no good foundation either in fact or law.

LORD STORMONTH DARLING—I concur.

LORD LOW—I have had the advantage of reading the opinion prepared by Lord Kyllachy, and I concur so entirely with what he has said that I do not think I can usefully add anything.

The Court refused the reclaiming note and adhered to the interlocutor of 27th May 1905, with expenses to the pursuer since its date.

Counsel for Pursuer (Respondent)—Cooper, K.C.—Welsh. Agent—Party (R. Ainslie Brown, S.S.C.).

Counsel for Defenders (Reclaimers)—Dickson, K.C.—Guthrie, K.C.—Grierson. Agent—James Watson, S.S.C.

Friday, February 2.

FIRST DIVISION.

[Lord Salvesen, Ordinary.

ADDISON *v.* BROWN.

Process—Citation—Registered Letter—Enrolled Law-Agent—Service by Registered Letter by Party Himself being Enrolled Law-Agent—Citation Amendment (Scotland) Act 1882 (45 *and* 46 *Vict. c.* 77), *sec.* 3.

A party to an action who is an enrolled law-agent may himself execute service by registered letter.

Process—Citation—Service by Registered Letter—Statement of Inducíæ—Citation Amendment (Scotland) Act 1882 (45 *and* 46 *Vict. c.* 77), *sec.* 4, *sub-secs.* (1) *and* (2).

The Citation Amendment (Scotland) Act 1882, section 4, enacts—"The following provisions shall apply to service by registered letter:—(1) The citation or notice subjoined to the copy or other citation or notice required in the circumstances shall specify the date of posting, and in cases where the party is not cited to a fixed diet but to appear or lodge answers or other pleadings within a certain period, shall also state that the *inducíæ* or period for appearance or lodging answers or other pleadings is reckoned from that date; (2) the *inducíæ* or period of notice shall be reckoned from twenty-four hours after the time of posting." . . .

An interlocutor granting decree was served upon the defender by registered letter. The notice continued, after stating the date of posting, "from which the *inducíæ* or period for appearance is reckoned."

A suspension and interdict having been brought on the ground that the notice was wrong inasmuch as the *inducíæ* ran from twenty-four hours after the date of posting, *held* that the notice, following as it did explicitly the words of section 4, sub-section 1, was right, and the suspension and interdict *refused*.

The Citation Amendment (Scotland) Act 1882, section 3, enacts—"In any civil action or proceeding in any court or before any person or body of persons having by law power to cite parties or witnesses, any summons or warrant of citation of any person, whether as a party or witness, or warrant of service or judicial intimation, may be executed in Scotland . . . by an enrolled law-agent, by sending to the known residence or place of business of the person upon whom such summons, warrant, or judicial intimation is to be served . . . a registered letter by post, containing the copy of the summons or petition, or other document required by law in the particular case to be served, with the proper citation or notice subjoined thereto, or containing such other citation or notice as may be required in the circumstances, and such posting shall constitute a legal and valid citation, unless the person cited shall prove that such letter was not left or tendered at his known residence or place of business." . . .

Robert Ainslie Brown of Manuel, Stirlingshire, Solicitor before the Supreme Courts, Edinburgh, having raised a note of suspension and interdict against Abram Addison, tenant of the mill and farm of Manuel Mill, Stirlingshire, to have him interdicted, *inter alia*, from entering upon a certain field, on presentation obtained interim interdict from the Lord Ordinary (JOHNSTON), and served the note and interdict upon Addison by posting to him in a registered letter a copy of the note, to which was annexed the following citation:—"I, Robert Ainslie Brown, law-agent, by virtue of an interlocutor dated the ninth day of June Nineteen hundred and five years, pronounced by Lord Johnston, Ordinary, officiating on the Bills, upon the note of suspension and interdict given in and presented for and in name of *Robert Ainslie Brown, of Manuel, Stirlingshire, Solicitor before the Supreme Courts of Scotland, Edinburgh*, complainer, do hereby, in His Majesty's name and authority, and in name and authority of the said Lord Ordinary, lawfully intimate the said note and interlocutor thereon to you *the therein designed Abram Addison*, respondent, by serving you with the foregoing copy thereof, that you may not pretend ignorance of the same, and desire and require you to conform yourself to said interlocutor, *within eight days*, with certification as effeirs. This I do upon the *ninth* day of *June* Nineteen hundred and five years, being the date of the posting of this intimation, and from

which the *inducicæ* or period for appearance is reckoned. R. AINSLIE BROWN, *Law-Agent.*"

Addison did not enter appearance and, decree in absence having been pronounced, he was charged upon the said decree to pay the taxed expenses and dues of extract, and on 18th October 1905 his goods were poinded. He now brought a note of suspension against Brown in which he stated—"The respondent purported to serve said note and interdict by posting said pretended copy, with intimation that the *inducicæ* or period for appearance should run from the date of posting. The said pretended copy bears to have a citation annexed signed by the respondent himself;" and pleaded—"(1) The note referred to not having been served legally upon the complainer, he is entitled to suspension and interdict, as craved. (2) The decree referred to cannot found a charge, in respect that . . . . the complainer was not duly cited."

On 1st November 1905 the Lord Ordinary on the Bills (SALVESEN) pronounced the following interlocutor:—"The Lord Ordinary having heard counsel on the note and answers, passes the note and continues the sist and interim interdict."

The respondent reclaimed, and argued—(1) The citation was regular since it was signed by a regularly enrolled law-agent in terms of the Citation Amendment (Scotland) Act 1882, sec. 3. The sole question was, had citation taken place, the personality of him who effected it was immaterial, and it remained good till a reduction was brought. A law-agent was not a public official, such as a sheriff clerk or messenger-at-arms or notary-public acting as such, who was prohibited from performing his official function in a cause to which he was a party, and if the statute had intended to limit a law-agent's rights it would have done so expressly. (2) The statement that the *inducicæ* ran from the date of posting was made as expressly provided by the terms of the statute. The date of posting was the date of execution from which the *inducicæ*, although extended by the subsequent sub-section, ran—*Alston* v. *Macdougall*, November 18, 1887, 15 R. 78, 25 S.L.R. 74.

Argued for the complainer and respondent—(1) The purity of public administration must be maintained. A law-agent in executing service was, *pro hac vice*, an officer of the Court, and could not act in his own cause, therefore a citation signed by him was null, and the decree and poinding following thereon were of no effect. That neither a sheriff clerk, nor a messenger-at-arms, nor a notary-public could exercise his function in a cause to which he was a party was settled—*Manson* v. *Smith*, February 8, 1871, 9 Macph. 492, 8 S.L.R. 346; *Dalgliesh* v. *Scott and Others*, June 18, 1822, 1 S. 506; *Russell* v. *Kirk*, November 27, 1827, 6 S. (Pt. I) 133; *Farries* v. *Smith*, June 9, 1813, 17 F.C. 360; and the case of *Ferrie* v. *Ferrie's Trustees*, January 23, 1863, 1 Macph. 291, laid down that rule in a case which was not concerned with diligence. In the Sheriff Courts this principle had been affirmed—*M'Dowall* v. *Smith*, November 23, 1896, 13 S.L.Rev. 13; and *Meldrum* v. *Macgregor*, March 14, 1902, 19 S.L.Rev. 246, Dove Wilson's Sheriff Court Practice, 122. (2) The citation was irregular since the statement of *inducicæ* bore to run from the date of posting and the Citation Amendment (Scotland) Act 1882 provided otherwise. The note had not been properly served and was null, and in consequence the Lord Ordinary was right.

At advising—

LORD PRESIDENT—There are two questions raised in this case, both of them of a technical nature. The action is one of suspension and interdict in which the complainer seeks to suspend a decree in absence obtained against him by the respondent and to interdict the respondent from acting on said decree. The grounds on which suspension is asked for are that the citation was defective in two particulars. The first objection is that the respondent in citing the complainer did not comply with the provisions of section 4 of the Citation Amendment Act of 1882. Section 4 (1) of that Act is as follows:— . . . [*His Lordship quoted section* 4, *sub-sections* 1 *and* 2, *quoted sup. in rubric*]. . . .

The notice in this case was in the following terms:— . . . [*His Lordship read the notice supra*]. . . .

It is said that this notice is wrong because the Act says that the *inducicæ* are to run from twenty-four hours after the time of posting. This is really no objection at all. I think the Act is, with regard to these matters, a little blundered. But the server of the notice has done the safe thing in following the words of the Act explicitly. Your Lordships will observe that the Act says that the notice shall state that the *inducicæ* shall run from the date of posting, and that is exactly what this notice does. The provision of sub-section (2) that the *inducicæ* shall be reckoned from twenty-four hours after posting is a provision in favour of the receiver of the notice and not a behest on the sender. Its effect is merely to give the receiver twenty-four hours more time than he would otherwise have had. If the respondent had done what the complainer says that he ought to have done the receiver of the notice could have said that it was incompetent because it was not in terms of the Act. I am therefore of opinion that there is no substance in this objection.

The other objection which is taken to the validity of the citation is that the respondent being himself a law-agent sent the citation in a registered letter signed by himself *qua* law-agent. It is said that this renders the whole citation bad on the authority of certain old cases in which various acts done by persons having a double character were held to be bad. In the case of *Manson* v. *Smith*, 9 Macph. 492, a sheriff-clerk-depute signed in that character a summons at his own instance as an individual, and the whole proceedings in the case were held null *ab initio*. There

are also the cases of *Farries* v. *Smith*, June 9, 1813 (F.C.), and *Russell* v. *Kirk*, 6 S. 133, deciding similar points in the case of notaries public. Now, I do not wish to throw any doubt on the decisions in these cases, but I do not think they have any application to the question here, and further, without saying that they are wrong, I cannot help seeing that the view which the Court took at that time of such questions was largely coloured by considerations long ago swept away, as, for example, that no party could be a witness in his own cause. In this case the question is one of citation. The only object of citation is to give the receiver of the notice warning, and in this case it is not said that he did not get warning. If he had refused to take in the letter nothing would have happened, as section 4 (5) of the Act provides that in such a case further steps must be taken in Court before anything can be done. As a fact the complainer in this case did receive the notice and chose to disregard it, and in thus acting he did so at his own risk. I am therefore of opinion that there is nothing in the second objection, and that the note of suspension should be refused.

LORD M'LAREN—I am of the same opinion. The statute provides that the notice sent to the addressee of the registered letter should inform him that the induciæ are to be reckoned from the date of the notice, but further provides that the induciæ are not really to begin until the following day. Now, the gentleman who served this citation had the virtue of not thinking for himself; he just followed the words of the Act and thus kept himself safe. The object of the ambiguity in the Act is not clear, but its effect is to give the receiver of the notice an extra day of grace.

The second objection taken to the validity of the citation is that it was signed by the respondent, who was himself a law-agent. It is proper to consider the motive of this change in the law of citation. Instead of having to employ a messenger-at-arms it was thought convenient that the pursuer's agent should himself be entitled to give the notice by registered letter. It must be done by a law-agent, because only a lawyer can be entrusted with the execution of the directions of the Act. Now I see no advantage to the defender that the law-agent who serves the notice should be an independent person. The fact that a law-agent is himself a pursuer is no reason for putting him under a disability, because under the new regulation you do not trust to the individual employed to have the citation duly served, but to the post office which gives a receipt for the letter and undertakes to deliver it. If it is not delivered the post office official is bound to return it to the sheriff-clerk, thus giving complete assurance as to the fate of the letter. It follows that the present method of citation is independent altogether of the person who signs the notice; and there is no substance, as I think, in the objection.

LORD KINNEAR concurred.

LORD PEARSON was not present.

The Court recalled the Lord Ordinary's interlocutor and remitted to his Lordship to refuse the note.

Counsel for the Reclaimer and Respondent—Hon. W. Watson. Agent—R. Ainslie Brown, S.S.C.

Counsel for the Respondent and Complainer—M'Clure, K.C.—Burt. Agents—Cunningham & Lawson, Solicitors.

REGISTRATION APPEAL COURT.

Monday, December 18.

(Before Lord Kinnear, Lord Stormonth Darling, and Lord Johnston.)

SOMERVILLE v. KINNAIRD.

Election Law — Occupation Franchise — Claim—Failure to State Houses Successively Occupied—Amendment—Registration of Voters (Scotland) Act 1856 (19 *and* 20 *Vict. c.* 58), *sec.* 46.

The claimant to a vote in respect of occupancy set forth as his qualification the occupancy of a house which it appeared that he had only occupied for a period of three months. Leave to amend the claim by the insertion of a statement setting forth successive occupation of other houses for the qualifying period was refused by the Sheriff. *Held* that, in the absence of a finding in fact to that effect, the omission in the claim was not a casual error within the meaning of section 46 of the Registration of Voters (Scotland) Act 1856, and that consequently the Sheriff had rightly refused to allow the amendment.

Osborne v. *Melville*, December 7, 1899, 2 F. 266, 37 S.L.R. 186, *approved*. *Ross* v. *Carberry*, November 18, 1897, 25 R. 98, 35 S.L.R. 109, *distinguished*.

Opinion (*per* Lord Johnston) that where the omission or error was a casual error within the meaning of the section, the Sheriff was bound to allow amendment.

The Registration of Voters (Scotland) Act 1856 (19 and 20 Vict. cap. 58), sec. 46, enacts —"No misnomer or inaccurate or defective description of any person, place, or thing named or described in any schedule to this Act annexed, or in any list or register of voters, or in any notice required by this Act, shall in any way prevent or abridge the operation of this Act with respect to such person, place, or thing, provided that such person, place, or thing shall be so denominated in such schedule, list, register, or notice, as to be commonly understood; and it shall be lawful to any sheriff in his registration court, or to any court of appeal, if it shall appear to him or to such court that there has been no wilful purpose to mislead or deceive, or that such misnomer or inaccurate or defective descrip-