Court, and that they are part-owners of this vessel. To what extent they are part-owners it is not said, but unquestionably it is not anywhere alleged that they own this ship. On the contrary, it would appear from an entry in Lloyds' Register, which is *prima facie* evidence at all events of the ownership of the vessel, that at the date when the Order was pronounced she was in the hands of the Shipping Controller and was a British ship. We are told that in point of fact she belonged to a Dutch corporation, and we have before us an extract from the Dutch Registry of Shipping which shows that that is so. But I do not proceed upon the extract from the Dutch Registry of Shipping, for it is not produced, although it has been exhibited to us. I proceed here on the footing that the applicant has failed relevantly to aver that the property which he seeks to have placed in the hands of the Custodian is enemy property, and that that defect in his averments is absolutely fatal to his success. I am of opinion that the Order ought to be recalled.

LORD SKERRINGTON—I agree with your Lordship that the averments of the applicant are irrelevant, but I do not regard it as at all conclusive that the applicant admits that the ship was under requisition and that for the time being she was registered in Britain in name of the Shipping Controller. I think that the applicant would have presented a relevant case if he had explained that though she has been dealt with as a British ship, in point of fact she was owned by alien enemies. Unfortunately for himself the applicant alleges that two gentlemen called van t'Hoff, trading under the name of Gebroeder van Uden, are the owners, or at least part-owners, of the steamship in question. It is familiar law that relevancy must be tested by its weaker limb, and the question comes to be whether it is relevant in an application of this kind to say that alien enemies are part-owners of a steamship. In my judgment that would be a relevant averment if what was asked was that the shares owned by those part-owners should be vested in the Custodian, but that is not what the applicant asks for. He craves that the ship as a whole, and her earnings as a whole, should be vested in the Custodian. That is a *non sequitur*. In other words the averments are irrelevant. That seems to me to be a sufficient ground of judgment.

LORD CULLEN—I think the applicant's averment that "the said Gebroeder van Uden and the two partners thereof, viz., J. van t'Hoff and C. van t'Hoff, are the owners, or at least part-owners, of the s.s. 'Maashaven'" is not relevant to bring the case within section 4 of the Act of 1914, and accordingly that the order made by the Lord Ordinary should be recalled and the application dismissed.

LORD BLACKBURN—I concur.

LORD MACKENZIE was absent.

The Court recalled the interlocutor of the Lord Ordinary and dismissed the application.

For the Applicant—Party.

Counsel for the Respondents—Moncrieff, K.C.—T. G. Robertson. Agents—Gordon, Falconer, & Fairweather, W.S.

Counsel for the Custodian — The Lord Advocate (Clyde, K.C.)—Pitman. Agent—Thomas Carmichael, S.S.C.

COURT OF TEINDS.

Friday, March 7.

SIR ARTHUR NICHOLSON AND OTHERS, PETITIONERS.

Church—Disjunction and Erection—Process—Narration of Statutes.

In a petition for the disjunction and erection of a church and parish *quoad sacra* it is unnecessary to narrate the statutes from which the Court of Teinds derives its constitution and its power to disjoin and erect churches and parishes *quoad sacra*.

Sir Arthur Nicholson and others, *petitioners*, brought a petition for disjunction and erection of Arisaig and Moidart church and parish *quoad sacra*.

The petition was in the usual form (see Juridical Styles, 3rd. ed., vol. iii, p. 867), the Acts anent the constitution of the Court of Teinds and its powers to erect parishes *quoad sacra* being referred to at considerable length.

Upon the motion for a first order for intimation the following opinions were delivered:—

LORD SANDS—The first paragraph of this petition narrates the provision of the Act of 1707, by which the Lords of Council and Session were entrusted with the powers and duties of Commissioners of Teinds. The second paragraph narrates the provisions of the Act of 1844, by which the Court of Teinds was empowered to erect parishes *quoad sacra*. I think that I may venture to assure petitioners that the Court is familiar with the origin of its jurisdiction, and with the powers conferred by the Act of 1844, and that it is therefore unnecessary in every petition to remind the Court of these matters. I do not desire to reflect in any way upon the framers of this and other similar petitions for setting forth these particulars. They have simply followed an ancient tradition of the fathers. The several matters were novel to the Court in 1707, and again in 1844, so it was thought proper to set them forth in the first petitions or applications, and having thus found their way in, there they have remained. But I think that petitioners might very well now take their courage in their hands and drop this practice. It adds a little to the cost of every application, and in the matter of the erection of new parishes alone it must probably have cost at least £750 since 1844, without any profit to petitioners or any assistance to the Court. Similar considerations

probably apply to other writs in this Court. The learned Clerk is, however, much better qualified than I am to determine as to whether in any particular class of application there may be technical need for those operose narratives. I refer specifically only to applications of the class now before the Court, and I am quite clear that in petitions of this kind such narratives are unnecessary and ought to be discontinued.

LORD PRESIDENT—I think, and I am sure your Lordships all concur with me, that the observations of Lord Sands are well worthy of the attention of applicants to this Court.

LORD MACKENZIE, LORD CULLEN, and LORD BLACKBURN concurred.

The Court ordered intimation.

Counsel for the Petitioners — Addison Smith. Agents—Menzies & Thomson, W.S.

HIGH COURT OF JUSTICIARY.

Friday, May 23.

(Before the Lord Justice-General, Lord Mackenzie, and Lord Hunter.)

VAUGHAN AND ANOTHER *v.* SMITH.

Justiciary Cases—Statutory Offence—Alternative Charges—General Conviction—"Managing or Assisting in the Management of a Brothel"—Criminal Law Amendment Act 1885 (48 *and* 49 *Vict. cap.* 69), *sec.* 13 (1).

The Criminal Law Amendment Act 1885 enacts, section 13—"Any person who (1) keeps or manages or acts or assists in the management of a brothel . . . shall . . . be liable (1) to a penalty not exceeding twenty pounds, or . . . to imprisonment for any term not exceeding three months . . . (2) on a second or subsequent conviction [to a heavier sentence]."

In a summary complaint two persons were charged that they did between certain dates "manage or assist in the management of a brothel," and that "such offence" was a first offence. The magistrate found them "guilty as libelled" and sentenced each of them to three months' imprisonment. *Held*, in a bill of suspension and liberation, that the acts libelled not being mutually exclusive of each other, the complaint did not libel alternative charges, and the general conviction upon the complaint *sustained*.

The Criminal Law Amendment Act 1885 (48 and 49 Vict. cap. 69), section 13 (1), is quoted *supra* in rubric.

Alfred Joseph Vaughan and Ivy Summerhayes or Vaughan, *complainers*, were charged in the Police Court at Glasgow at the instance of George Smith, Procurator-Fiscal, *respondent*, upon a summary complaint in the following terms—"You are charged at the instance of the respondent that you did, between the 22nd day of January and 27th February 1919, both dates inclusive, manage or assist in the management of a brothel in a house occupied by you Alfred Joseph Vaughan, and situated two and a-half stairs up, left door, at 68 Saint George's Road, Glasgow, contrary to the Criminal Law Amendment Act 1885, section 13, sub-section 1, as amended by the Criminal Law Amendment Act 1912, and such offence is a first offence: whereby you are each liable to a penalty not exceeding twenty pounds, and in default of payment to imprisonment for a period not exceeding sixty days, or, in the discretion of the Court, to imprisonment for a term not exceeding three months, with or without hard labour."

The complainers pleaded not guilty, and after evidence had been led the Judge of Police (T. M. Bogle) found them guilty as libelled and sentenced each of them to three months' imprisonment. Against that sentence they brought a bill of suspension and liberation.

Argued for the complainers — The charges against the complainers were alternative charges for the acts penalised by the Criminal Law Amendment Act 1885 (48 and 49 Vict. cap. 69), section 13 (1), were in their nature exclusive of each other; thus one could not manage a brothel and also assist in managing it. That view of the section was confirmed by the repeated use of the disjunction "or." The acts referred to were not different modes of committing the same crime, for nothing was penalised except those acts themselves, nor were the words exegetical of each other, as in *King* v. *Kidd*, 1903, 4 Adam 275, *per* Lord Trayner at p. 278, 6 F.(J.) 1, 41 S.L.R. 187. In *Teesdale* v. *Lord Advocate*, 1896, 2 Adam 137, *per* Lord Justice-Clerk Macdonald at p. 143, 23 R. (J.) 73, 33 S.L.R. 489, the acts libelled were alternative modes of committing the same offence. This view of section 13 (1) of the Act of 1885 was strengthened by the amendment of that section by the Criminal Law Amendment Act 1912 (2 and 3 Geo. V, cap. 20), section 4 (1). To charge a man with driving a motor car recklessly or negligently was to libel alternative charges—*Connell* v. *Mitchell*, 1912, 7 Adam 23, *per* Lord Justice-Clerk Macdonald at p. 26, 1913 S.C. (J.) 13, 50 S.L.R. 117—so was to charge one with harbouring or entertaining constables—*Greig* v. *Stewart*, 1877, 3 Couper 382, 4 R. (J.) 13, 14 S.L.R. 375. The sentence being a general conviction upon alternative charges was invalid and should be suspended.

Counsel for the respondent was not called upon, but referred the Court to *M'Cullochs* v. *Rae*, 1915, 7 Adam 602, 1915 S.C. (J.) 43, 52 S.L.R. 469.

LORD JUSTICE-GENERAL—This conviction is sought to be set aside on the ground that it is a general conviction following upon an alternative charge, and if that were so of course we should suspend it. It appears to me to be quite clear that we have not here a proper alternative charge. Managing a brothel is not exclusive of assisting in the management of a brothel. One who assists in the management of a brothel manages a