I think this is a case that may perfectly well be tried under the recognised issues that have been allowed here.

LORD DUNDAS and LORD JOHNSTON concurred.

LORD KINNEAR and LORD MACKENZIE were absent.

The Court adhered.

Counsel for Pursuer and Respondent—Watt, K.C.—MacRobert—W. L. Mitchell. Agents—Cowan & Stewart, W.S.

Counsel for Defenders and Reclaimers, except Mrs Campbell — M'Clure, K.C. — C. H. Brown. Agents—Buchan & Buchan, S.S.C.

Counsel for Defender, Mrs Campbell—Macquisten. Agents — Alex. Morison & Company, W.S.

Thursday, December 21.

FIRST DIVISION.

[Sheriff Court at Kirkcudbright.

KIRKPATRICK *v.* LOCAL AUTHORITY OF MAXWELLTOWN.

Process—Appeal—Note to Ordain Sheriff to State a Case for Opinion of Court—Competency—Housing, Town Planning, &c., Act 1909 (9 *Edw. VII, c.* 44), *sec.* 39 (1).

The Housing, Town Planning, &c., Act 1909, sec. 39 (1), as applied to Scotland by sec. 53 (14), enacts—"The procedure on any appeal under this part of this Act . . . to the Sheriff shall be such as the Court of Session may by Act of Sederunt determine, and on any such appeal the Sheriff may make such order in the matter as he thinks equitable, and any order so made shall be binding and conclusive on all parties . . . Provided that (*a*) the Sheriff may at any stage of the proceedings on appeal, and shall, if so directed by the Court of Session, state in the form of a special case for the opinion of the Court any question of law arising in the course of the appeal . . ."

In an appeal to the Sheriff against a closing order pronounced by a local authority under the Housing, Town Planning, &c., Act 1909, the appellant lodged a minute craving the Sheriff-Substitute to state a case on certain questions of law. The Sheriff-Substitute having refused the motion, the appellant presented a note to the Court for an order on the Sheriff-Substitute to state a case.

Circumstances in which the Court *sustained* the competency of the note, but, of consent of parties, disposed of the case on the merits.

Sheriff — Appeal to Sheriff against Closing Order—Power of Sheriff to Disallow Condescendence and Answers—Housing, Town Planning, &c., Act 1909 (9 *Edw. VII, c.* 44), *secs.* 17 (3) *and* 39—*Sheriff Courts (Scotland) Act* 1907 (7 *Edw. VII, c.* 51)—*A.S. 4th November* 1910.

The Act of Sederunt 4th November 1910, for regulating appeals to the Sheriff under Part I. of the Housing and Town Planning, &c., Act 1909, enacts, sec. 1—"Appeals to the Sheriff under Part I. of the Housing and Town Planning, &c., Act 1909 shall be by initial writ under the Sheriff Court (Scotland) Act 1907 (7 Edw. VII, c. 51), Form A (*m*); and the proceedings thereon shall be as laid down in that statute."

A local authority pronounced a closing order under the Housing, Town Planning, &c., Act 1909, closing a dwelling-house as unfit for human habitation. The owner appealed to the Sheriff, who disposed of the appeal without allowing a condescendence and answers. The report by the medical officer was, however, produced in process, and the appellant was fully aware of the grounds on which the order was pronounced.

In an application at the owner's instance for an order on the Sheriff to state a case, *held* that the appeal was a summary application in the sense of the Sheriff Courts (Scotland) Act 1907, and that accordingly it was in the discretion of the Sheriff to refuse to allow a condescendence and answers.

Local Government—Closing Order—Validity — Owner Not Heard or Called on to Repair before Order Made — Housing, Town Planning, &c., Act 1909 (9 *Edw. VII, c.* 44), *secs.* 15 *and* 17 (2).

The Housing, Town Planning, &c., Act 1909, sec. 15, empowers a local authority to call upon the owner of a dwelling-house which appears to them to be unfit for human habitation, to execute the necessary repairs, and failing his doing so to repair it themselves. Section 17 (2) enacts—"If, on the representation of the medical officer of health, or of any other officer of the authority, or other information given, any dwelling-house appears to them to be in such a state, it shall be their duty to make an order prohibiting the use of the dwelling-house for human habitation (in this Act referred to as a closing order) until in the judgment of the local authority the dwelling-house is rendered fit for that purpose."

Held that the local authority was entitled to proceed under sec. 17 (2) without first exercising their powers under sec. 15.

Held further that the fact that the owner had not been heard before the order was made did not render it inept, his remedy being to appeal to the Sheriff before it became operative.

Local Government—Closing Order—Validity — Form of Order — Specification of Grounds—"Dwelling-House"—Tenement of Houses — Housing, Town Planning, &c., Act 1909 (9 *Edw. VII, c.* 44), *sec* 41.

The Housing, Town Planning, &c., Act 1909, sec. 41, enacts—"(1) The Local Government Board may by order prescribe the form of any notice, advertisement, or other document, to be used in connection with the powers and duties of a local authority or of the Board under the Housing Acts, and the forms so prescribed, or forms as near thereto as circumstances admit, shall be used in all cases to which those forms are applicable."

A local authority pronounced a closing order closing a tenement consisting of several dwelling-houses. The order was in the form prescribed by the Local Government Board, and was duly served on the owner of the different dwelling-houses of which the tenement was composed.

Held that the order was not rendered inept by the fact (*a*) that it failed to set forth more specifically than in the form prescribed the grounds for making it, or (*b*) that it closed the tenement *en bloc*, and not the individual dwelling-houses of which it was composed.

Observations (*per curiam*) as to the amount of specification required in closing orders.

Local Government—Closing Order—Dwelling-House—"Dangerous or Injurious to Health"—Housing, Town Planning, &c., Act 1909 (9 *Edw. VII, c.* 44), *sec.* 17.

The Housing, Town Planning, &c., Act 1909, sec. 17, empowers a local authority to close any dwelling-house within their district provided it is represented to them to be "in a state so dangerous or injurious to health as to be unfit for human habitation."

Held that the words "dangerous" or "injurious to health" were not alternatives, and that accordingly these were not separate grounds on which a closing order could be pronounced, the second being merely exegetical of the first.

The sections of the Housing, Town Planning, &c., Act 1909 (9 Edw. VII, c. 44), so far as necessary for this report, are quoted *supra in rubrics.*

On 5th July 1911 Archibald Kirkpatrick, coal agent, 5 Terregles Street, Maxwelltown, presented a note to the First Division for an order on the Sheriff-Substitute at Kirkcudbright to state, in the form of a Special Case for the opinion of the Court, certain questions of law which he alleged arose in an appeal at his instance against the Local Authority of the Burgh of Maxwelltown.

The note stated—"The said Archibald Kirkpatrick is the owner of the heritable property situated at 40 and 41 Glasgow Street, Maxwelltown. This property is a tenement consisting of two one-room and kitchen houses on the ground floor, one one-room and kitchen and one two-room and kitchen houses on the upper floor, and in the roof there are two attic rooms.

"Of this date (24th May 1911) the Local Authority of the Burgh of Maxwelltown, purporting to proceed in pursuance of subsection 2 of section 17 of the Housing, Town Planning, &c., Act 1909, made an order prohibiting the use of the dwelling-houses, numbers 40 and 41 Glasgow Street aforesaid, for human habitation until in their judgment they are rendered fit for that purpose.

"Notice of this closing order was duly served upon the said Archibald Kirkpatrick. . . .

"The said Archibald Kirkpatrick, being aggrieved by said closing order, appealed to the Sheriff in the prescribed manner. Of this date (5th June 1911) he presented in the Sheriff Court of Dumfries and Galloway at Kirkcudbright an initial writ craving the Court to recal the order complained of. Of the same date the Sheriff-Substitute at Kirkcudbright ordered service of the said initial writ upon the said Local Authority, which was duly effected, and appointed the parties to be heard upon the 9th of June. . . .

"Thereafter the said Sheriff-Substitute pronounced the following interlocutor—'*Kirkcudbright, 13th June* 1911.—The Sheriff-Substitute having heard parties on the initial writ, in respect that the closing order was made by the defenders in virtue of the powers conferred upon them by the Housing, Town Planning, &c., Act 1909, after duly complying with the procedure directed to be followed in section 17 thereof, and that the pursuer is aggrieved thereby, Allows him a proof of the following statement, namely, that the dwelling-houses, numbers 40 and 41 Glasgow Street, Maxwelltown, are not in a state so dangerous or injurious to health as to be unfit for human habitation, and the defenders a conjunct probation, on a date to be afterwards fixed.'

Note.—"The Housing and Town Planning Act confers very great powers on local authorities, but if they are exercised in the manner that the statute directs the party affected by them has no redress. In the present case the defenders have made a closing order under section 17 (2), which provides that a local authority can do so provided it is represented to them by the medical officer of health or any other officer of the authority, or on other information given, that any dwelling-house appears to them to be in a state so 'dangerous or injurious to health as to be unfit for human habitation.' Various objections were stated by the pursuer which I consider can be disposed of now.. (1) He contends that the defenders are not the local authority under the Act. But as section 53 (5) states that the local authority under the Public Health Act 1897, who are the defenders (*vide* 12), is to be the local authority, that objection is bad, and in my opinion it is immaterial whether they design themselves as 'local authority' or as 'Town Council of the Burgh of Maxwelltown.' (2) It was contended that proceedings ought to have been taken under section 15. Perhaps they might have been. But that section only applies when the rent does not exceed £16, and the rent

may be more in this case. Again, it seems to me that a local authority can in all cases proceed under section 17, and need not in any case repair the house themselves, in the first instance, as provided for by section 15. (3) The closing order, it is said, was not really pronounced by the defenders but by a committee, and that they had no power to delegate their powers to a committee. This point need not, I think, be considered in this case, as it is clear from the excerpts produced that the order was pronounced at a meeting of the Town Council. (4) The pursuer objects that he did not have an opportunity of being heard before the order was made. This is a bad objection, simply because the statute does not state that an objector shall have a right to be heard before an order is made. His remedy is the one he has adopted, namely, to appeal, and until the appeal is disposed of the operation of the order is suspended. (5) The pursuer complained that he did not get a copy of the representation of the officer of health. But (*a*) it has been produced now and I see that it is in order; (*b*) the representation need not be in writing at all; it may be made verbally; and (*c*) the order may be made after considering 'other information,' which I suppose would include the private knowledge of the members of the town council. Very prudently, however, the defenders have proceeded on the written representation of their medical officer. (6) The pursuer says that 40 and 41 Glasgow Street are tenements, and that 'dwelling-house' as used in the statute does not include a tenement, but means each dwelling or house which an individual or a family occupies. Accordingly he says that each individual habitation in the tenements ought to have been closed by a separate order. I cannot accede to this view. 'Dwelling-house' by the Interpretation Act means also 'dwelling-houses.' By the definition clause (Housing Act 1890, sec. 29, as amended by the Act of 1909, sec. 49) 'dwelling-house' includes any yard, &c., attached to it as well as the site on which it stands. It does not seem to me in these circumstances that the meaning of the words 'dwelling-house' is strained by holding that they include a tenement. It seems to me, further, that the words 'inhabited building' have been struck out of the definition clause by the Legislature not to narrow the meaning of the term 'dwelling-house' but to widen it. Dwelling-house as defined by the Act of 1909 I hold now includes any inhabited building or any part of any building that is separately inhabited. Sections 17 (4) and 18 (2) appear to me to confirm this view. But even if this construction be not correct the closing order is unimpeachable in form. Under section 17 (3) the order has to be served on 'every owner of a dwelling-house,' which by the Interpretation Act includes 'dwelling-houses.' This has been done. Notice of the closing order was duly served on the pursuer, who is admittedly the owner of the dwelling-houses 40 and 41 Glasgow Street, and of course every part of them which is separately occupied by any of his tenants. It may quite well happen that only some of these houses are unfit for human habitation. If this be so the order can be varied and made to apply only to such houses. It was also said that either number 40 or number 41 is not a dwelling-house but merely an entry. This may be so, but it cannot affect the present proceedings—and, at any rate, if it be necessary the order can be varied. For these reasons I hold that a proper closing order applicable to all and every part of the pursuer's dwelling-houses was duly served on him. (7) Finally the pursuer contends that the closing order is bad, because section 17 provides that the order can only be made if a house is in a state 'so dangerous or injurious to health' as to be unfit for human habitation, that the defenders must say whether it is the one or the other, and that they have not done so. This objection, however, in my opinion is bad. The section was enacted for the sake of the health of the poor. Under it houses unfit for human habitation are to be closed whether the unfitness arises either because their state renders them dangerous or injurious to health. These words are not really alternative, but practically mean the same thing. They only occur in sub-section one. Sub-section two, which is the operative part of the section, does not use them, but provides for the order being made if any dwelling-house is 'in such a state,' that is, 'in a state so dangerous or injurious to health' as to be 'unfit for human habitation,' and the order continues in force until the house is 'fit for that purpose,' that is, fit for human habitation. The real question in fact is whether the house is fit for human habitation, and on that point the order is unambiguous. It states in terms that the dwelling-houses are to remain closed 'until in our judgment they are rendered fit for that purpose.' But at the most the phrasing used in the order is merely the case of an alternative charge. Accordingly at the hearing if the defenders succeed I can strike out one or other of the words, if such a course is necessary or proper."

The Case further stated—"Of this date (June 20, 1911) the said Archibald Kirkpatrick lodged in process a minute requesting the said Sheriff-Substitute to state in the form of a stated case for the opinion of the First Division of the Court of Session certain questions of law arising in the course of his appeal."

The questions were as follows—"(1) Was it competent for the Sheriff-Substitute to refuse the motion of the appellant for an order to be made for condescendence and answers to be lodged, and treat the appeal as a summary cause under rule 41 of the first schedule of the Sheriff Court (Scotland) Act 1907 regulating procedure, instead of allowing the cause to be proceeded with according to rule 42 of said schedule? (2) In an appeal taken against a closing order, made in virtue of the Housing, &c. Act of 1909, is it competent and relevant to refer to previous notices or discussion between

the owner and the local authority in regard to executing work upon the property to make it habitable? (3) Was it competent for the respondents to issue a closing order under section 17 (2) of the Housing, &c. Act 1909, on the representation of their medical officer, as produced in process, and without exercising or exhausting their powers under section 15 of that Act? (4) Was the closing order inept in respect that it failed to disclose with sufficient specification the grounds for making it? (5) Were the respondents entitled to issue a closing order without giving the appellant an opportunity of being heard? (6) Are the statutory grounds (*a*) that a building is in a dangerous condition, and (*b*) that a building is in such a condition as to be injurious to health, separate grounds upon which a closing order may be granted under section 17 (2)? (7) Is it competent to grant a closing order upon these grounds, stated alternatively, especially when the representation of the medical officer is, as in the present case, that the dwelling-houses 'are in a state so dangerous to health as to be unfit for human habitation'? (8) Does the expression 'dwelling-house' in section 17 of the 1909 Act mean and include a whole tenement comprising four dwelling-houses. And (9) Was the closing order inept in respect that it applied to a whole tenement?"

To this minute answers were lodged by the Local Authority, and after hearing parties on the minute and answers the Sheriff-Substitute, on 30th June 1911, refused the motion.

Note.—"In my opinion section 39 (1) (*a*) of the Town Planning Act does not confer on any party the right to demand that a case shall be stated whenever a party is dissatisfied with a decision on a question of law. It seems to me that the statute intended that cases should only be stated if the Local Government Board in England or a Sheriff in Scotland considered that injustice might be done by refusing to state one. This view, I consider, is strengthened by contrasting section 39 with the sections (60, 61, 62) of the Summary Jurisdiction Act. Under this latter Act a case must be stated at the request of either party, while under section 39 the duty to state a case is clearly not imperative. If this be so, a somewhat delicate duty is imposed upon me, and, with hesitation, I consider that a case ought not to be stated. The statute gives local authorities power to close dwelling-houses which are unfit for human habitation, in a very summary manner. It could not, therefore, be intended that that object should be defeated by inviting the Court to consider every critical objection that might be taken to the procedure adopted by a local authority, or to the construction put upon the sections by a Sheriff-Substitute, provided, of course, that he considers that the provisions of the Act are substantially complied with, and no injustice is done by refusing to state a case. In the present case I consider that the closing order was duly made. Accordingly I think that the only question is the question of fact whether the dwelling-houses in question are unfit for human habitation. But these views may be wrong, and the case may go further. Accordingly, taking the questions in the appellant's minute in order, my reasons why none of them need be stated for the opinion of the Court of Session are as follows—(Ans. 1) The appellant's appeal is, I hold, a summary application under 'an Act of Parliament which does not more particularly define in what form the same shall be heard, &c.' (Sheriff Court Act 3 (*p.*). Accordingly a record was not required unless I thought one ought to be ordered. My reasons for not ordering one are given in my previous note. Further, I doubt whether this question is a question arising under the Town Planning Act at all. It seems to me to be merely a question of Sheriff Court procedure. (Ans. 2) It cannot now be decided whether it is competent or relevant to refer to previous notices or discussions between the parties. If such evidence tended to show that the respondents previously thought that the buildings were fit for human habitation it might be competent. (Ans. 3) In my opinion it was competent for the respondents to make the closing order under section 17, and that they do not require to exhaust their powers under section 15 before doing so. This, of course, is a pure question of law. But for the reasons already given I consider I must decide it and proceed with the case. (Ans. 4) The order states that the houses are to be closed because they are in a state so dangerous or injurious to health as to be unfit for human habitation.' These are the words used in the section. In my previous note I have stated my reasons why I consider that the form of order is unobjectionable, or at least that I can vary it by stating whether the houses are to be closed because they are dangerous or because they are injurious to health, and strike out one or other of these words. The appellant therefore, I hold, can suffer no injustice by my refusing to state this question for the opinion of the Court. (Ans. 5) My opinion is that the respondents were not bound to give the appellant an opportunity of being heard before making the closing order. (*Vide* my previous note.) (Ans. 6) This question is question 4 stated differently. Houses unfit for human habitation are to be closed whether they are in that state because they are dangerous or injurious to health. These words are therefore not really alternative, but, as I have already said, the order can, if necessary, be varied by striking out one or the other of these words. (Ans. 7) The respondents' medical officer reported that the appellant's houses are 'so dangerous to health as to be unfit for human habitation.' The closing order misquoted his report by saying that he reported that the houses were so dangerous 'or injurious' to health, &c., and closed them until they are fit for human habitation. The appellant contends that this variation between the medical report and the order renders the

order bad. I do not think so, and respectfully decline to state this question for the opinion of the Court. (Ans. 8 and 9) The closing order applies to a tenement comprising four dwelling-houses. The appellant contends that a closing order can only apply to a single dwelling-house, and that the closing order is inept in respect that it bears to apply to a whole tenement. In my former note I have stated why I cannot accept this construction of the term 'dwelling-house.' But it undoubtedly is a question of law. I think, however, I need not state it for the opinion of the Court. I consider that one order can close any number of dwelling-houses belonging to one owner if it names them all and is served on him. If this be so, the closing order in question is unobjectionable, because although it does not name the four individual dwelling-houses, yet it clearly identifies them. The appellant knows quite well that he is asked to close all the dwelling-houses in 40 and 41 Glasgow Street, Maxwelltown. For these reasons it seems to me that a proof in this case ought now to be fixed."

Argued for appellant—The appellant was entitled to have a case stated for the opinion of the Court—Housing, Town Planing, &c., Act 1909 (9 Edw. VII, c. 44), secs. 17 and 39. The order pronounced was irrelevant, in respect that it failed to distinguish between two alternative charges, viz., "dangerous" or "injurious to health." It was also inept in respect (*a*) that the appellant was not heard before it was pronounced, and (*b*) that the tenement in question was not a dwelling-house in the sense of the Act.

Argued for respondents—The appellant was not entitled to a stated case, for that lay in the discretion of the Sheriff. The order pronounced was neither irrelevant nor inept. It was not irrelevant for it did not contain an alternative charge. The word "dangerous" meant dangerous to health. That was clear from the terms of sec. 16 (7) of the Public Health (Scotland) Act 1897 (60 and 61 Vict. c. 38), where the same phrase was used in connection with the sanitary provisions of that Act. Moreover, dangerous structures were specially dealt with by other legislation. The order was in the form prescribed by the rules issued by the Local Government Board, and contained only the one charge, viz., "dangerous or injurious to health." The order was not inept, for (*a*) the appellant was not entitled to be heard before it was pronounced; his remedy was to appeal to the Sheriff before it became operative, sec. 17 (3). Such appeals were to be disposed of by the Sheriff as if they were summary applications. The Sheriff therefore was master of the situation. The tenement in question was a dwelling-house in the sense of the Act, for dwelling-house might mean all or any of the houses in a tenement, according to the circumstances of the case. What was a dwelling-house was a question of fact. What had been closed by the order in question were Nos. 40 and 41 Glasgow Street, and that applied to each and all of the inhabited houses therein.

At advising—

LORD PRESIDENT—This is a note from the Sheriff Court at the instance of Archibald Kirkpatrick, coal agent, Maxwelltown, against the Local Authority of the Burgh of Maxwelltown, and asks us to ordain the Sheriff-Substitute to state a case for the opinion of the Court.

The matter arises under the provisions of the Housing and Town Planning Act 1909, section 17, which deals with the duty of the local authority to close any dwelling-house which is unfit for habitation. I need not read the section to your Lordships, except to call attention to this, that that section puts a duty of initiative upon the local authority to inspect their district with a view to ascertaining whether any dwelling-house therein is "in a state so dangerous or injurious to health as to be unfit for human habitation." Then it tells them, if they so find it, that it is their duty to make a closing order, and the closing order is then made. Then an appeal to the Sheriff is given by section 39, as altered by the section which applies the Act to Scotland.

The closing order was made in this case, and an appeal was taken to the Sheriff. Now, the Act of Parliament provides—"Provided that the Sheriff may at any stage of the proceedings on appeal, and shall if so directed by the Court of Session, state in the form of a special case for the opinion of the Court any question of law arising in the course of the appeal." The Sheriff here was asked to state a case for the opinion of the Court, and he refused to state it for a reason which he gave. The present application has therefore been made to the Court to direct the Sheriff to state a case.

No doubt, strictly speaking, the only order we are entitled to make is an order upon the Sheriff to state a case, but as in cases familiar to your Lordships arising under the Workmen's Compensation Act, we have always been in use, if the whole matters are really before us, with the consent of parties, ourselves to determine the question at issue. We were asked to do that here, and I therefore propose that your Lordships should deal with the merits of the case.

Now the various points that are raised are brought out in a minute for the appellant which he lodged in the process below, and in which he asked the Sheriff-Substitute to state a case. The learned Sheriff-Substitute held that that was not necessary, and appended a note to his interlocutor in which he gave his views as to the points on which he was asked to state a case. It is convenient to take the various questions of law as they are put in the minute for the appellant, which your Lordships will find on page 10 of the note. The first question that was asked is this—"Was it competent for the Sheriff-Substitute to refuse the motion of the appel-

lant for an order to be made for condescendence and answers to be lodged, and treat the appeal as a summary cause under rule 41 of the First Schedule of the Sheriff Courts (Scotland) Act 1907, regulating procedure, instead of allowing the cause to be proceeded with according to rule 42 of said schedule?" As your Lordships know, there was a provision in the statute authorising this Court to frame rules for the carrying out of the procedure under this Act, and accordingly an Act of Sederunt was passed. The only part of it which deals with this matter is a simple provision that, in proceedings under these appeals, initiation of the proceedings shall be by initial writ, and that thereafter they shall be conducted as laid down by the Sheriff Courts Act. Now there is no question that the initiation of the matter having been by initial writ, it became not a summary cause, but a summary application, and I think the result of that is that the Sheriff was entirely judge of his own procedure. It would have been perfectly competent for him to order condescendence and answers, but I think of that he was the best judge; and I have no doubt in this case he acted perfectly wisely, because we are told that the Local Authority produced and referred to a detailed report by their medical officer which showed the grounds upon which the houses were condemned. Now that detailed report, in the view of the Sheriff—and I think it was a right view—really gave the respondent all that he could have got if a condescendence had been lodged; and accordingly I think, as the case was being conducted as a summary application, the respondent had sufficient notice to enable him, if he still wished to do so, to maintain that the house was not in an insanitary condition. Of course one quite sees that in a case of this sort it would always be fair that a person whose house was to be closed should be told in what respect it was insanitary, but here, I think, he was told quite clearly by the production of this report. In answer to the first question, therefore, I am of opinion that it was competent for the Sheriff-Substitute to refuse the motion for condescendence and answers to be lodged.

The second question is not really a question at all, and I do not need to take any notice of it.

The third question is—"Was it competent for the respondents to issue a closing order under section 17 (2) of the Housing, &c., Act 1909, on the representation of their medical officer, as produced in process, and without exercising or exhausting their powers under section 15 of that Act?" I think it clearly was competent. The powers under section 15 are quite separate from the powers under section 17, and the local authority not only may go under section 17, but, as I have already pointed out, they have a duty under section 17 if they find that is the state of affairs.

The fourth question is—"Was the closing order inept in respect that it failed to disclose with sufficient specification the grounds for making it?" Now the closing order is precisely in the form that is issued in Form No. 5 by the Local Government Board for Scotland. By section 41 of the Act it is provided—"The Local Government Board may by order prescribe the form of any notice, advertisement, or other document, to be used in connection with the powers and duties of a local authority, or of the Board under the Housing Acts, and the forms so prescribed, or forms as near thereto as circumstances admit, shall be used in all cases to which these forms are applicable." Now the Local Government Board issued a form of which this No. 5 is one, and that is the form that the Local Authority used. In these circumstances it seems to me impossible to hold that the closing order is inept in respect that it did not disclose so-and-so and so-and-so; but upon this matter I think your Lordships are rather of opinion that it would be well if the Local Government Board considered whether they might not to a certain extent amend the form with that in view. The form that they use is this—"And whereas it appears to the [description of the local authority] on the ['representation of the medical officer of health' or 'representation of the' (*specify the officer*) or 'on information given' (*specify the nature and effect*)]."

Now that really is an echo of sub-section (2) of section 17, which is dealing with these closing orders, and which says this—"If, on the representation of the medical officer of health or of any other officer of the authority, or other information given, any dwelling-house appears to them to be in such a state, it shall be their duty to make an order prohibiting the use of the dwelling-house for human habitation;" and therefore I do not at all wonder that the form is in the words I have read. But your Lordships will notice that whereas the addition "specify the nature and effect" is added to the alternative "information given," there is no addition made when the representation is the representation of the medical officer of health, or some other officer of the local authority. One can understand why there should be a certain distinction made there, because the medical officer of health or other officer of the local authority is a recognised official, whereas "information given" may be information given by *quivis ex populo*. If you are going to tell a person that his house is going to be shut up, and that the person who condemns it is a local officer, he can ask him for particulars and say "Is there anything I can do?" and so on. On the other hand, if you say it is on the information of John Smith and say no more, that really leaves him in doubt as to whether it is a piece of pure spite on the part of a neighbour not worthy of attention, and therefore it is necessary to demand more specification in the nature of the complaint when it is made by an outsider than when it is made by an officer. But we think it is as well that

in serving the order there should be some reference added as to what the grounds of defect of the houses consist in.

If the order is made in purely bald terms and nothing else is said, the moment an owner objects in an appeal, he is entitled to force from the Local Authority a specification of the grounds on which his house has been closed. It seems rather unnecessary that a man should have to go through the form of appealing in order to elicit the grounds on which his house has been condemned. I have no doubt that the Local Government Board will make such slight alterations in their Form No. 5 as will remove this difficulty for the future.

In this present case we think there was absolutely no injustice done, because, as I have already mentioned, the detailed report of the medical officer was communicated to the owner, and therefore we do not think this case calls for any interference.

The next question is—"Were the respondents entitled to issue a closing order without giving the appellant an opportunity of being heard?" As a matter of law I think it is quite clear that they were, because the Act of Parliament says nothing about the appellants being heard. It puts the responsibility upon the local authority and upon the local authority alone. I am quite clear upon this, that local authorities may be trusted before making a closing order to go to the owner and through one of their officers to speak to him, but strictly on a question of law I think there is no reason why they should not issue a closing order without any such preliminary warning.

The sixth question is—"Are the statutory grounds (*a*) that a building is in a dangerous condition, and (*b*) that a building is in such a condition as to be injurious to health, separate grounds upon which a closing order may be granted?" I am clearly of opinion that they are not separate grounds. I think the second ground is merely exegetical of the first. This Act is not dealing with what you may call structural dangers at all. That is dealt with under the Burgh Police Act, and there is not a trace in this Act of the local authority having anything to do with structural danger. I think that is quite clear from the Act itself, because if you take sub-section (7) it says this—"A room habitually used as a sleeping-place, the surface of the floor of which is more than three feet below the surface of the part of the street adjoining or nearest to the room, shall for the purposes of this section be deemed to be a dwelling-house so dangerous or injurious to health as to be unfit for human habitation." That shows, therefore, that the expression is held as applying to sanitary conditions, and sanitary conditions alone.

That really disposes of the next question, because if these two grounds of objection are the same there is no necessity, of course, to state under which alternative a closing order is to be issued, because there is no alternative.

The eighth question is—"Does the expression 'dwelling-house' in section 17 of the 1909 Act mean and include a whole tenement comprising four dwelling-houses?" Upon this matter we were referred to a judgment of Sheriff-Substitute Fyfe in a case which is coming next in your Lordship's advisings, but which case is in such a position that we shall not be able to give an opinion on the subject. I only mention this because I wish it to be understood that the matter has been carefully considered. I am of opinion that the expression "dwelling-house" may include the whole tenement, even although that tenement comprises four dwelling-houses. The whole question is one simply of identification. If a closing order names Nos. 58 and 59 of such and such a street, that means the whole block of dwelling-houses that are known as Nos. 58 and 59. There is no question that, if Nos. 58 and 59 are broken up into a set of flats, in such a closing order you take it upon yourselves to say that each and every dwelling in that tenement is unfit for human habitation and ought to be closed, and if it were the fact that one of them was in a good state, that closing order on appeal would be held to be a bad closing order, because it would close something that ought not to be closed. But to say that a closing order is on the face of it bad because it closes Nos. 58 and 59 *en bloc*, is to say something for which there is no warrant in the statute at all. In the Glasgow case there were over forty houses in the tenement which was closed, but that did not necessitate a separate closing order for each.

I agree with what was said in one of the English cases that, first of all, decisions under one statute are not to be used in helping you with another, and secondly, that unless there is something in the statute, you are to take "dwelling-house" in the ordinary acceptation of the word. Of course you may have a dwelling-house within a dwelling-house, and I do not doubt that a closing order can competently close one dwelling-house within a tenement if it says so, and I think the whole matter is one of identification. I think that is quite clear from the section I have read about a room three feet below the surface of the street. I do not know how you would particularly describe a dwelling-house in a tenement in Glasgow; are you to say "No. 39 Gallowgate, three stairs up, second room to the back?" But it is not necessary for us to give any opinion on that. That is after all a detail of administration with which we are not here concerned. But if the authority is of opinion that the whole tenement is bad I do not see why it should not say so by using the ordinary words by which a tenement is designated—"Nos. 58 and 59 so-and-so." Even if you look at a directory that is the way a tenement is described. I am therefore of opinion on this matter also that the closing order was not inept on any such view.

I think I have now gone through the whole matters. I do not think it is necessary to do anything more than simply to

send back the case to the Sheriff with this expression of opinion, because I have no doubt he will be guided by the opinion we have expressed, and therefore I do not think it is necessary to order him to go through the idle form of stating a case. The application for a case here is obviously in time, because the Sheriff has only pronounced an order for proof, and not finally disposed of the case.

LORD KINNEAR—I concur.

LORD JOHNSTON—I also agree, but as I hold a strong view upon the sufficiency of the specification of the grounds in this closing order, I would like to say a few words on that subject. The closing order states simply that whereas it has appeared to the Local Authority that certain dwelling houses are in a state so dangerous or injurious to health as to be unfit for human habitation—"now therefore we, the said Local Authority of the Burgh of Maxwelltown, in pursuance of sub-section (2) of section 17 of the Housing, Town Planning, &c., Act 1909, do, by this our order, prohibit the use of the said dwelling-houses for human habitation until in our judgment they are rendered fit for that purpose." It appears to me to be most unfair to the owner of property that he should have a bald notice of that description thrown at his head without any indication of what fault the local authority are finding, leaving him to ascertain for himself and to make improvements or modifications which, it may be quite possible, are not those that the local authority want. Of course any reasonable authority would give along with the closing order an indication of what they want, and no better indication could be given than the report of the sanitary inspector on which they are here proceeding. Why I take the opportunity of referring to this matter is that in another case that has been before us, not only was that report not communicated along with the closing order, but when applied for it was refused. Accordingly it does seem to me that something is wanted to require the local authority to communicate to the owner information as to what they really find fault with. This may possibly involve an alteration in the form, but even without such alteration I think it is a reasonable thing that the local authority should give the owner complete specification of the defects complained of, because otherwise the owner is compelled, in order to force from the local authority what in some cases they have apparently not chosen to give, to go through the unnecessarily expensive proceeding of applying to the Court, as has been done here. This ought to be avoided.

On the next point which your Lordship referred to, namely, whether the expressions "dangerous and injurious to health" are truly alternative, I was of opinion at the time the case was discussed that they were alternative. But on examining the Housing of the Working Classes Act 1890, to which the Act of 1909 is intimately related, I find that the same expression is used in the class of sections beginning with section 30, and in that Act there is no possible question that the expressions are not alternative but merely cumulative, and I am therefore satisfied that the same intention was in the minds of the Legislature in dealing with the matter under this Act of 1909. I have nothing further to add.

LORD MACKENZIE—I concur. The question upon which I had difficulty was under the fourth head, whether the closing order was inept in respect of failure to disclose with sufficient specification the grounds for making it. That difficulty, however, has been resolved, so far as the decision of this case rests, by the reference to section 41 of the Act, which shows that the responsibility for the form of the order is with the Local Government Board; and the Local Government Board have prescribed a particular form which was followed in the present case. I entirely concur with the observations which have been made as to the desirability of the Local Government Board considering whether it would not be fair to give such notice to the person against whom the closing order may be made as would inform him of the specific grounds on which it was made, in cases where the order is made on the representation of the medical officer as well as in cases where it is made on other information.

If a man who is indicted for trial is charged with having committed a statutory offence, it is not sufficient merely to echo the words of the statute; he is entitled to specification as to the way in which he has broken the law. I think in the case of the drastic remedies under these sections the owner of property is entitled to similar consideration. What has just been said with regard to the proper construction to be put upon the word "dwelling-house" under the eighth head of the minute for the appellant makes specification all the more necessary, because the order may deal not with one dwelling-house but with a great number. I think that emphasises the necessity of specific notice being given as to the way in which the statute has been contravened.

The Court pronounced this interlocutor—

"Sustain the competency of the note: Of consent of parties, answer the questions of law set forth in the minute for appellant . . . as follows:—Questions Nos. 1, 3, 5, & 7 in the affirmative, Nos. 4 & 6, also Nos. 8 & 9. read together as one question, in the negative; Find it unnecessary to answer question No. 2: With these answers remit to the Sheriff-Substitute to proceed as accords, and find it unnecessary to deal further with the crave of the note: Find the respondents entitled to expenses, and remit, &c.

Counsel for Pursuer—Sol.-Gen. Hunter, K.C.—J. A. T. Robertson. Agents—Scott & Glover, W.S.

Counsel for Defenders — MacMillan. Agents—Beveridge, Sutherland, & Smith, W.S.