action of damages, and therefore equivalent to enforcing implement of. This is the view of the section taken by Lord Macnaghten in *Howden's* case, at p. 264—"Now the first question that arises on this part of the enactment is, What is the meaning of the expression 'directly enforcing'? I cannot think that the Legislature intended to strike at proceedings for directly enforcing certain agreements, leaving untouched and unaffected all proceedings (other than actions for damages) designed to enforce those particular agreements indirectly. To forbid direct action in language that suggests that the object of the action so forbidden may be attained by a side-wind seems to me somewhat of a novelty in legislation. I venture to think that the word 'directly' is only put in to give point to the antithesis between proceedings to enforce agreements directly and proceedings to recover damages for breach of contract, which tend, though indirectly, to give force and strength to the agreement for breach of which an action may be brought." It humbly appears to me that this is the only workable meaning to attach to the words.

The above are the general grounds upon which, in my opinion, this action is excluded. There is further the special ground which distinguishes this from the case of *Osborne*, on which the pursuer founds, and that is this—the pursuer has been reinstated, and has his vote. The only interest he can qualify to insist is the patrimonial one of loss of benefit, and this brings the case within section 4 (3) (*a*).

In the view I take the pursuer would not be entitled to a bare declarator even if there had been no conclusion for interdict.

LORD SKERRINGTON—The learned Sheriff has decided this case in favour of the defenders upon two grounds which are perfectly distinct. For some reason which I do not understand, the argument of counsel on both sides was directed almost exclusively to the second ground of judgment, and it was not until the speech of the senior counsel for the defenders that our attention was pointedly directed to the validity of the first ground of judgment. I speak with hesitation on a question which was not fully argued, bnt after giving the matter the best attention in my power I have been unable to discover any flaw in the reasoning of the Sheriff in support of his first ground of judgment

Accordingly I agree with your Lordships that the action must be dismissed as incompetent on the first ground. But I reserve my opinion upon the question which was principally discussed before us, viz., whether this action is or is not objectionable upon the ground that it can be correctly described as an action which is brought for the purpose of directly enforcing the pursuer's right to a benefit.

LORD CULLEN—The resolution of which the pursuer complains and against which he seeks to be restored by judicial decree proceeded on rule 29, which he was said to have broken, and another rule which authorised his expulsion in respect of such a breach.

Rule 29 is, admittedly, a rule within the scope of section 4, sub-section 1, of the Act of 1871. The parties differ as to the due operation of it in relation to the employment which the pursuer had and his conduct in connection therewith out of which his expulsion arose. The defenders' view was and is that the due enforcement of the rule called for his expulsion. The pursuer maintains the contrary, and asks the Court to enforce his view of the rule by the decree of declarator and interdict craved. Thus, if the Court were to entertain the action, it would be put to it to decide the due meaning and effect of the rule in its bearing on the case of the pursuer, and to enforce it either by upholding the defenders' course of action on the one hand, or by compelling them to restore the pursuer thereagainst on the other hand. I am of opinion that the Court cannot under the Act entertain such an action.

The present case appears to me to be similar in character to that of *Chamberlain's Wharf, Limited*, v. *Smith*, [1900] 2 Ch. 605, the decision in which I see no reason to doubt. Its authority does not seem to me to be in any way impaired either by the decision in *Yorkshire Miners' Association* v. *Howden*, [1905] A.C. 256, or by that in the second *Osborne* case, [1911] 1 Ch. 540. I accordingly concur in the judgment proposed.

The Court dismissed the appeal.

Counsel for the Pursuer (Appellant)—Constable, K.C.—Scott. Agent—Alexander Ross, S.S.C.

Counsel for the Defenders (Respondents)—Sandeman, K.C.—Gentles. Agents—Dove, Lockhart, & Smart, S.S.C.

Saturday, November 16.

FIRST DIVISION.

[Sheriff Court at Glasgow.

KEMP *v.* GLASGOW CORPORATION.

Burgh—Burgh Accounts—Common Good—Elector Objecting to Accounts as Containing Illegal Payments from Common Good—Glasgow Corporation Act 1909 (9 *Edw. VII, cap. cxxxvii*), *sec.* 14—*Glasgow Boundaries Act* 1912 (2 *and* 3 *Geo. V, cap. xcv*), *sec.* 80.

The City and Royal Burgh of Glasgow, in promoting a private bill for the extension of its boundaries so as to incorporate adjoining burghs, made payments out of the Common Good in respect of the election expenses of candidates for the councils of the adjoining burghs who were in favour of the annexation proposed. The Act which was subsequently passed incorporated the adjoining burghs, and authorised the payment of the expenses of and incidental to the passing of that

Act by the Corporation of Glasgow. The Common Good accounts were duly passed by the auditor. An elector of Glasgow, who had by section 14 of the Glasgow Corporation Act 1909 a right, if he was dissatisfied with any of the accounts or any item therein, to complain against the same by petition to the Sheriff specifying the grounds of objection, brought an action in the Sheriff Court objecting to the payments referred to as being illegal and insufficiently vouched, in respect that the only vouchers were receipts for lump sums and bore to be for services, whereas part of the payments was for outlays. He did not aver that the burgh had acted corruptly in paying the election expenses in question. *Held* that those averments were irrelevant, in respect that they did not disclose any specific objection to the accounts or any item of them in the sense of section 14 of the Act of 1909.

Opinion reserved per Lord Mackenzie, concurred in by Lord Skerrington, as to the power of the Sheriff under section 14 of the Glasgow Corporation Act 1909, on an averment that the accounts were totally unintelligible, to order any necessary explanation.

Process — Expenses — Expenses as between Agent and Client — Public Authorities Protection Act 1893 (56 *and* 57 *Vict. cap.* 61), *secs.* 1 (*b*) *and* 3—*Glasgow Corporation Act* 1909 (9 *Edw. VII, cap. cxxxvii*), *sec.* 14.

Held (after consultation with the Judges of the Second Division) that the Public Authorities Protection Act 1893, section 1 (*b*), did not in virtue of section 3 thereof apply to the expenses of an unsuccessful appeal in an action under section 14 of the Glasgow Corporation Act 1909 so as to warrant an award of expenses as between agent and client against the unsuccessful appellant, in respect that the Act of 1909 applied only to Scotland, and contained a limitation of time for the action in question.

Eadie v. *Glasgow Corporation*, 1916 S.C. 163, 53 S.L.R. 139, *disapproved. Montgomery* v. *Magistrates of Haddington*, 1908 S.C. 207, 45 S.L.R. 73, *followed.*

The Glasgow Corporation Act 1909 (9 Edw. VII, cap. cxxxvii) enacts—Section 14—"Any elector who shall be dissatisfied with any of the accounts or any item therein may, not later than the twentieth day of December, complain against the same by petition to the sheriff specifying the grounds of objection, and the sheriff shall hear and determine the matter of complaint," subject to appeal.

The Glasgow Boundaries Act 1912 (2 and 3 Geo. V, cap. xcv), section 80, enacts—"The costs, charges, and expenses of and incident to the preparing for, obtaining, and passing of this Act shall be paid by the Corporation. . . ."

The Public Authorities Protection Act 1893 (56 and 57 Vict. cap. 61) enacts—Section 1—"Where . . . any action, prosecution, or other proceeding is commenced in the United Kingdom against any person for any act done in pursuance or execution or intended execution of any Act of Parliament . . ., or in respect of any alleged neglect or default in the execution of any such Act . . ., the following provisions shall have effect:—(*b*) Wherever in any such action a judgment is obtained by the defendant it shall carry costs to be taxed as between solicitor and client. . . ." Section 3—"This Act shall not apply to any action, prosecution, or other proceeding for any act done in pursuance or execution or intended execution of any Act of Parliament, or in respect of any alleged neglect or default in the execution of any Act of Parliament, or on account of any act done in any case instituted under an Act of Parliament, when that Act of Parliament applies to Scotland only, and contains a limitation of the time and other conditions for the action, prosecution, or proceeding."

John Kemp junior, an elector in the city of Glasgow, *pursuer*, brought an action against the Corporation of the City and Royal Burgh of Glasgow, *defenders*, concluding for decree sustaining "the pursuer's objection to the item of £6666, 14s. 10d. contained in the Common Good accounts for the City and Royal Burgh of Glasgow for the year ending 31st May 1913, under the heading 'Parliamentary Expenses, Session 1912,' and sub-heading 'Glasgow Boundaries Act 1912,' being 'fees for professional services,' [disallowing] the said item as a charge against the Common Good of the City and Royal Burgh of Glasgow, and [ordaining] the defenders to rectify the said Common Good accounts accordingly."

The pursuer *averred*—"(Cond. 3) The pursuer is dissatisfied with the item of £6666, 14s. 10d. for professional services under the heading 'Parliamentary Expenses, Session 1912, Glasgow Boundaries Act 1912,' contained in the Common Good accounts of the defenders for the year 1912-1913, or so much of it as shall appear to contain illegal payments on production of proper and adequate vouchers for the various details of said item. (Cond. 4) In particular, the pursuer avers that payment of £1157 and of £795, 9s. 5d. were made to Mr Robert Kyle, writer, Glasgow, and Mr David Crawford, writer, Glasgow, respectively, which are not properly vouched in said accounts, and that there are numerous other items in the said payment of £6666, 14s. 10d. which are in the same position. It is to these and similar items in the said payment of £6666, 14s. 10d. that the pursuer objects. The vouchers for said payments are admittedly false in respect that not only are they for 'professional services rendered,' but they also include, as explained in condescendence 5, outlays for £507 and £250 expended by the said Robert Kyle and David Crawford without any details being rendered in connection therewith. (Cond. 5) The vouchers for the payments above referred to do not contain as they should contain details of the accounts for which the payments were made. The Town Clerk, in answer to a letter, wrote to Mr Alex. M'Clure, 132 West Regent Street, Glasgow, as follows:—'I duly received your letter of the 25th ultimo as to the sums paid to Mr Robert Kyle, writer, and Mr David

Crawford, writer, for professional services in connection with the promotion of the Bill for the above Act. The sums paid include £507 and £250 respectively for outlays, but I am not in a position to give you any further details, as the Sub-Committee who had powers met with these gentlemen and the other law agents who gave similar services and adjusted with them a fee for the same.' (Cond. 6) The pursuer avers that the defenders are bound to produce to the Court details of the services rendered by the law agents referred to and also of the said two sums of £507 and £250 of alleged outlays. It is further averred that the law agents referred to did, as a matter of fact, render to the Town Clerk detailed accounts both of their services and of their outlays; that these accounts were not submitted to the Committee in charge of the Parliamentary Bill referred to; nor were they submitted to and passed by the Corporation. It is also averred that these detailed accounts disclosed illegal payments, in consequence of which some of them were returned to the law agents referred to and a simple receipt 'for professional services' taken in lieu of a discharge of the accounts. Moreover, said receipts do not comply with articles 35 and 36 of the defenders' standing orders. (Cond. 7) The pursuer avers that the form of receipt taken and the absence of proper details is a device by the defenders and those acting with them to conceal illegal payments made by the defenders in connection with the promotion of the Glasgow Boundaries Act 1912. (Cond. 8) It is averred that said payments are illegal, in respect that they contain, *inter alia*, payments in respect of election expenses of annexationist candidates for membership in the Municipal Councils in the burghs of Govan, Partick, and Pollokshaws, and in various portions of the counties sought to be annexed. A number of these payments were made and expenses incurred through alleged Ratepayers' Committees in Govan, Partick, and other districts annexed, said Committees having been formed by the said Robert Kyle and David Crawford as agents for the defenders and acting solely for them."

The pursuer pleaded, *inter alia*—"1. The pursuer being dissatisfied with the said Common Good Accounts of the City of Glasgow, and having specified grounds of his objection to the items therein, is entitled to have his complaint heard and determined upon by the Court. 2. There being illegal payments in the items complained of, the pursuer is entitled to have the findings of the Court upon these items, and, if so advised, to have the defenders ordained to rectify the said Common Good accounts accordingly."

The defenders pleaded, *inter alia*—"1. The averments of the pursuer, so far as material, being irrelevant and insufficient to support the crave of the petition, the action should be dismissed. 7. The pursuer should be found liable in expenses as between agent and client, in terms of the Public Authorities Protection Act 1893."

On 8th March 1917 the Sheriff-Substitute (A. S. D. THOMSON) repelled the first and second pleas-in-law for the defenders and allowed a proof.

The defenders appealed to the Sheriff (A. O. M. MACKENZIE), who on 25th February 1918 recalled the interlocutor of the Sheriff-Substitute, sustained the first plea-in-law for the defender, and dismissed the action.

To his interlocutor was appended the following *note*:— "The question raised, shortly stated, is whether it was illegal for the defenders to apply moneys from the Common Good in paying the election expenses referred to, and in my opinion this question falls to be answered in the negative. At the time when liability for these expenses was incurred the defenders were promoting a Bill for the extension of the boundaries of the City of Glasgow. This Bill afterwards received the approval of Parliament, becoming the Glasgow Boundaries Act 1912. Section 80 of the Act provides 'that the costs, charges, and expenses of and incidental to the preparing for, obtaining, and passing of this Act, or otherwise in relation thereto, shall be paid by the Corporation . . .' The effect of this section is to make it quite clear that the Corporation are entitled to apply money forming part of the Common Good of the city to meet expenses incurred 'in preparing for, obtaining, and passing' the Act, 'or otherwise in relation thereto,' provided the purposes for which the moneys were expended were not illegal, for I concede to the pursuer that section 80 cannot be read as authorising expenditure of an illegal nature, *e.g.*, on bribery. If, accordingly, the expenses objected to come within the classes of expenditure described in the section, and are not illegal, the funds of the Common Good might properly be applied in paying them. Now I do not think that it could reasonably be maintained that the expenses objected to were not expenses incidental to 'the preparing for, obtaining, and passing the Act.' The defenders, as promoters of the Bill, were entitled to lay their scheme before the inhabitants of the districts which would be affected by the changes they proposed, and to endeavour to form and develop opinion among these inhabitants in its favour, and any legitimate expense which they might incur in so doing was, in my opinion, in the sense of section 80, an expense incidental to the obtaining of the Act. This was practically conceded by counsel for the pursuer, who admitted that no exception could be taken to the expense of propaganda of various kinds, as, for example, by meetings and canvassing. The question thus comes to be whether there is any valid ground of distinction between expenditure on such objects and the expenditure objected to? For myself I can find none. I concede that in ordinary circumstances, that is, when no such proposal as the Boundaries Bill was being agitated, it would be illegal for the Corporation, as administrators of the Common Good, to apply its funds to payment of the expenses of candidates at elections in neighbouring municipalities or county districts, but it would be equally illegal for the Corporation to apply money from the

Common Good to propaganda work in the adjoining burghs and county districts, and the reason would in both cases be the same, namely, that such expenditure could not be regarded as in any reasonable sense expenditure for the benefit of the citizens of Glasgow for whom the Common Good is held and falls to be administered. But when it has to be admitted that expenses incurred on propaganda work in the adjoining localities might properly be met out of the Common Good Fund, I fail to see why the payment of the election expenses of candidates should be regarded as illegal, such expenditure being well adapted to achieve the object in view—the formation of opinion in favour of the Bill, and the obtaining of the Act, and not being in itself expenditure of an illegal character, for it cannot be maintained that there is any illegality in one person paying the election expenses of another. . . ."

The pursuer appealed, and argued—The pursuer's averments were relevant and a proof should be allowed. The pursuer was entitled to complain of the accounts—Glasgow Corporation Act 1909 (9 Edw. VII, cap. cxxxvii), section 14, and he must state specific objections—*Eadie* v. *Corporation of Glasgow*, 1916 S.C. 163, 53 S.L.R. 139. The pursuer's objection was as specific as it was possible to make it. The sole information given him was that certain sums had been paid "for professional services." It was now admitted that that sum was in part for outlays. The vouchers for that sum did not accurately disclose how it had been expended, and that voucher had been laid before the auditor and was proceeded upon by him. The voucher had been tampered with or fabricated so as to keep the auditor in the dark and to get him to pass the accounts. There had been no statutory audit in those circumstances. The defenders as trustees of the Common Good had no mandate to pay away large sums without taking proper vouchers. Alternatively the defenders were acting illegally, for they clandestinely approached and bought the opinions of those whom they afterwards put forward as honest and independent candidates. *Eadie's* case (*cit.*) was distinguishable, for there the objection was general. *Eadie* v. *Glasgow Corporation*, 1908 S.C. 207, *per* Lord President (Dunedin) at p. 217, 45 S.L.R. 171, was referred to. A proof should be allowed, or at least the production of detailed vouchers for the items complained of should be ordered.

Argued for the defenders (respondents)—The averments of the pursuer were irrelevant. A burgess of a royal burgh had at one time a right to call for the production of any particular voucher—The Royal Burghs (Scotland) Act 1822 (3 Geo. IV, cap. 91), section 3. That right was taken away and a new and self-contained system of auditing those accounts was introduced by the Glasgow Corporation Act 1909, sections 5, 6, 11, 12, 13, 16 (3), and Schedule 3. Under that new code an elector could object to the accounts before the Sheriff, but the objection must be pointed and precise—*Eadie* v. *Corporation of Glasgow* (*cit.*). Here the pursuer did not specify an illegality, but merely objected to an illegality which he stated he would discover on exhibition of the vouchers. Section 14 of the Act of 1909 did not entitle an elector to re-audit the accounts, and the sort of inquiry here desiderated was excluded by section 16 (3) (*a*). It would have been different if the pursuer had stated a particular item did not disclose the nature of the expenditure. As regards the particular items challenged, the pursuer wished minute details so that he could consider each detail and decide whether it was justified. He was not entitled to do so. There could be no objection to those accounts being stated in the lump. They were not ordinary law agents' accounts for items covered by the table of fees. Such accounts were regularly rendered in a lump sum in parliamentary promotions, *e.g.*, architects' and doctors' accounts. There was no illegality in spending money to create a public opinion in favour of annexation. Further, the record did not disclose that there had been any misrepresentation, *i.e.*, that the candidates whose expenses had been paid held themselves out as disinterested parties.

At advising—

LORD PRESIDENT—In my opinion this action fails on relevancy. The pursuer, who is an elector in the burgh of Glasgow, challenges as illegal certain payments to be found in the Common Good account of the burgh for the year 1912-13. That account has been duly audited and found to be correctly stated and sufficiently vouched by the official auditor appointed under the Glasgow Corporation Act 1909. But the pursuer alleges that the payments to which he takes exception are illegal in respect that they contain, *inter alia*, payments "in respect of election expenses of annexationist candidates for membership in the municipal councils in the burghs of Govan, Partick, and Pollokshaws, and in various portions of the counties sought to be annexed." It appears that the Corporation of Glasgow was engaged in the promotion of a measure designed to secure economical and efficient administration in the areas mentioned as well as in Glasgow by annexing them to the burgh of Glasgow. The object was mutual advantage in the matter of local government, and this object commending itself to Parliament was attained by the passing of the Glasgow Boundaries Act 1912. The active friends of the movement in the areas sought to be annexed were, it is alleged, assisted in their efforts in its favour by payment being made of their election expenses. Now it certainly was not contended to us that expenditure such as I have described was *ultra vires*. Having been made in order to form, develop, and support public opinion in favour of the measure which *ex hypothesi* it was in the interest of the burgh of Glasgow to promote such expenditure was unexceptionable. This was not contested. But it was argued that if the pursuer was allowed an inquiry he might possibly in the course of ransacking the accounts and vouchers be

able to find material on which to base a charge of something like bribery on the part of the Corporation. No such case, however, is averred or even hinted at by the pursuer on record. In the absence of such an averment it would be quite out of the question to allow an inquiry in order to enable the pursuer to prove allegations which he deliberately declines to make. The reasoning of the learned Sheriff on this head seems to me to be sound. I accordingly move that his judgment be affirmed.

LORD MACKENZIE — The motion made before this Court on behalf of the pursuer was that a proof should be allowed. Whether this motion should be granted or not depends upon the relevancy of the averments made on record, the material passages being in articles 6 and 8 of the condescendence. The only case on record is that the payments from the Common Good which are therein described were illegal *per se*. I am unable so to hold, and agree with the conclusion reached by the learned Sheriff. A case was adumbrated by counsel for the pursuer in argument suggesting what the effect might be of the payment of election expenses by a wealthy corporation like Glasgow upon local politics in adjacent burghs. It was pointed out that the acceptance of money from such a quarter might involve the surrender of liberty of action on the part of the local representative. But there is no case made on record that this was in point of fact what happened, and there is an absence of any sufficiently specific averment which would entitle the pursuer to proof.

I desire, however, to point out what it is in my opinion that the pursuer does not ask in this case. He does not come into Court saying, "The Corporation, who are the custodiers of the Common Good, are acting in an unreasonable manner in respect they present to me, an elector, accounts which are totally unintelligible. As an elector I am entitled to exercise my right under section 14 of the 1909 Act and complain to the Sheriff, and the ground of objection I specify is that there are no materials given to explain the expenditure so that an elector of ordinary intelligence can understand how the money has been spent." If this had been the pursuer's case a different issue would have been raised, and it might have been necessary to consider whether there is anything in the case of *Eadie* which would prevent the Sheriff, if he thought fit, from ordering any necessary explanation to be given. The demand in such a case would not be of the nature of a demand for vouchers. A receipt for money paid may be unimpeachable, and yet convey no information as to the purpose to which the money has been applied. The necessity for this power being vested in the Sheriff under section 14 is in my judgment emphasised by the nature of the provisions contained in the Act as regards audit.

In the present case the pursuer bases his claim for further details simply and solely upon an averment which I hold to be not relevant. It is for this reason that I agree that the action must be dismissed.

LORD SKERRINGTON—I agree with Lord Mackenzie.

LORD CULLEN—The pursuer's case, which he seeks to have remitted to probation, is contained essentially in his averment in the 8th article of the condescendence that the defenders made "payments in respect of election expenses of annexationist candidates for membership in the municipal councils in the burghs of Govan, Partick, and Pollokshaws, and in various portions of the counties sought to be annexed." This is a very indefinite averment. I am unable to hold that a payment would necessarily be illegal because it answered to so vague a description. The pursuer has apparently not felt justified in making a more definite charge, for while it was open to him in response to the criticism offered to amend his pleadings, and his counsel spoke as if he had this step in contemplation, no amendment has been tendered. As it stands the averment appears to me to be irrelevant. I accordingly concur in the judgment proposed.

Counsel for the defenders then moved for the expenses of the appeal taxed as between agent and client, and argued—The defenders were entitled to the expenses of the appeal as taxed between agent and client—Public Authorities Protection Act 1893 (56 and 57 Vict. cap. 61), section 1 (*b*); *Eadie* v. *Glasgow Corporation*, 1916 S.C. 163, 53 S.L.R. 139.

Argued for the pursuer — The Glasgow Corporation Act 1909 (9 Edw. VII, cap. cxxxvii) was an Act applying to Scotland only, and section 14 contained a time limit within which objection must be taken. Further, the present proceedings were not an action in the sense of the Act of 1893.

At advising—

LORD PRESIDENT—The defenders have been successful in this action and are entitled, I think, to have their expenses, but not taxed as between agent and client. It was urged on their behalf that the expenses should be so taxed in consequence of the Public Authorities Protection Act of 1893. I am of opinion that that statute has no application to this case and accordingly that the expenses ought to be taxed in the usual way as between party and party. The action as brought rested on the 14th section of the Glasgow Corporation Act of 1909, which runs as follows, viz.—"Any elector who shall be dissatisfied with any of the accounts or any item therein may, not later than the twentieth day of December, complain against the same by petition to the Sheriff, specifying the grounds of objection, and the Sheriff shall hear and determine the matter of complaint, and his decision shall be subject to the same right of appeal as in ordinary actions in the Sheriff Court: Provided always that where the petition is dealt with in the first instance by the Sheriff-Substitute there shall be an appeal to the Sheriff." *Prima facie* it would appear that section 1 (*b*) of the Public Authorities Protection Act 1893 did apply to the case, but then our attention

was drawn to the third section of the same Act of Parliament, which runs as follows—"This Act shall not apply to any action, prosecution, or other proceeding for any act done in pursuance or execution or intended execution of any Act of Parliament, or in respect of any alleged neglect or default in the execution of any Act of Parliament, or on account of any act done in any case instituted under an Act of Parliament, when that Act of Parliament applies to Scotland only, and contains a limitation of the time and other conditions for the action, prosecution, or proceeding." This section seems to me to apply in terms to the present case and precludes the applicability of the Statute of 1893.

The case of *Eadie* v. *Glasgow Corporation*, 1916 S.C. 163, 53 S.L.R. 139, was cited as an authority to the contrary effect, but in that case, as appears from the report, the third section of the statute was not quoted; and we have the assurance of the Judges of the Second Division that their attention was not drawn to that section, and that if it had been the result would have been different—although I may say in passing that the case of *Eadie* was not, as finally presented to the Court, rested upon the 14th section of the Glasgow Corporation Act of 1909.

Our attention ought to have been, but was not, directed by counsel to the case of *Montgomery* v. *Magistrates of Haddington*, 1908 S.C. 207, 45 S.L.R. 73. That case seems to be an authority directly in point in this case.

I should add that we have consulted with the Judges of the Second Division on the question raised in regard to the expenses in this case, and that they agree with the view I have just expressed.

LORD MACKENZIE—I concur.

LORD SKERRINGTON—I concur.

LORD CULLEN—I concur.

The Court refused the appeal and found the defenders entitled to expenses.

Counsel for the Pursuer (Appellant)—Moncrieff, K.C.—Macquisten. Agents—Inglis, Orr, & Bruce, W.S.

Counsel for the Defenders—Lord Advocate (Clyde, K.C.)—M. P. Fraser. Agents—Campbell & Smith, S.S.C.

Tuesday, November 19.

FIRST DIVISION.

[Lord Sands, Ordinary.

FERGUSON *v.* LONDON MISSIONARY SOCIETY AND OTHERS.

Succession—Testament—Revocation—Competency of Extrinsic Evidence.

A testator executed a will in 1878 and a codicil thereto in 1883. In 1885 he executed a will in which he expressly revoked all former settlements made and executed by him. At his death the will of 1885 could not be found, and it was admitted that he had destroyed it *animo revocandi*. After the testator's death the will of 1878 was found in the possession of his law agents. An action was brought for declarator that the will and codicil of 1878 and 1883 respectively were not operative testamentary writings and for reduction of those deeds, and declarator that the testator died intestate. The pursuer averred that the testator died intestate, and that he had stated in writing, and that it was his intention, to revoke the will of 1878. Proof before answer *allowed* of those averments.

Mrs Mary Anne Russell or Ferguson, widow, sister and sole next-of-kin of the late James Muirhead Russell, *pursuer*, brought an action against (1) James Lyon Guild and another, the trustees acting under a pretended trust-disposition and settlement and codicil dated respectively 10th April 1878 and 14th March 1883 of James Muirhead Russell, (2) the London Missionary Society and others, beneficiaries under the trust-disposition and settlement, and (3) Henry Hay and another, the sole representatives of the universallegatee and executor appointed by a disposition and settlement executed by James Muirhead Russell on 2nd June 1885, *defenders*, concluding for decree "(*first*) that the trust-disposition and settlement and codicil of James Muirhead Russell, dated respectively 10th April 1878 and 14th March 1883, are not operative as testamentary writings of James Muirhead Russell, and are not effectual to convey or dispose of the estate belonging to the said James Muirhead Russell at the date of his death or any part thereof, or to regulate the succession thereto on the death of the said James Muirhead Russell; (*second*) that a disposition and settlement executed by the said James Muirhead Russell, dated 2nd June 1885, is not operative as a testamentary writing of the said James Muirhead Russell, and is not effectual to convey or dispose of the estate or any part thereof belonging to him at the date of his death, or to regulate the succession thereto on his death; (*third*) that the said James Muirhead Russell died intestate on 18th December 1916, and that the whole of the means and estate which belonged to him at the date of his death devolved upon and now belongs to the pursuer as his sole heir in heritage and moveables. And the