Effect of destination to heirs whomsoever.

13. Where any tailzie under which any estate is held shall not be valid and effectual in virtue of the recited Act of the Parliament of Scotland passed in the year one thousand six hundred and eighty-five, in respect the destination contained in such tailzie is in favour of the institute or heir in possession and his heirs whomsoever, or his heirs general, such estate shall be deemed and taken to be a fee simple estate, without any declarator or other judicial procedure; and where any money or other property, real or personal, has been, or shall be, invested in trust for the purpose of purchasing lands to be entailed under the same or like destinations, or where any lands are or shall be directed to be entailed under the same or like destinations, but the direction has not been carried into effect, such trust money or other property, and such lands, though still unentailed, may be dealt with under this section in all respects as such lands might have been dealt with if entailed in terms of such trust or direction.

Saving of power to improve estates under "The Improvement of Land Act, 1864."

14. Nothing herein contained shall operate to prevent any heir of entail in possession of an entailed estate from taking proceedings under "The Improvement of Land Act, 1864," or any other Act authorising the loan of money for the improvement of land, or any Act amending the same respectively, to charge the estate with the amount of sums expended for improvements thereon or affect the validity of any proceedings or charge under these Acts.

CHAPTER 62.

An Act to alter and amend the Law relating to Appeals in Summary Prosecutions before Inferior Judges in Scotland. [11th August 1875.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited for all purposes as "The Summary Prosecutions Appeals (Scotland) Act, 1875."

Interpretation of terms.

2. In this Act the following terms have the meanings herein assigned to them; that is to say,

"Inferior judge" means and includes any sheriff or sheriff substitute, justice or justices of the peace, or magistrate or magistrates:

"Magistrate" means a magistrate of any royal burgh, or of any burgh returning or contributing to return a member to Parliament, or of any burgh of regality or barony, and includes any commissioner of police authorised to act as a judge under any general or local Police Act:

"Cause" means and includes every proceeding which may be brought under the Summary Procedure Act, 1864, and every other summary proceeding for the prosecution of an offence or recovery of a penalty competent to be taken before an inferior judge:

"Clerk of court" means the clerk of the court of an inferior judge, and includes any depute clerk of court or other person authorised to act, and acting for the time as such clerk of court:

"The respondent" means and includes any party to a cause other than the party appealing under this Act against the determination thereof by an inferior judge.

Inferior judge on application of party aggrieved to state a case for opinion of superior court.

3. On an inferior judge hearing and determining any cause, either party to the cause may, if dissatisfied with the judge's determination as erroneous in point of law, appeal thereagainst, notwithstanding any provision contained in the Act under which such cause shall have been brought excluding appeals against or review in any manner of way of any determination, judgment, or conviction or complaint under such Act, by himself

or his agent applying in writing within three days after such determination to the inferior judge to state and sign a case, setting forth the facts and the grounds of such determination, for the opinion thereon of a superior court of law as herein-after provided; and on any such application being made, the following provisions shall have effect:

1. The appellant shall not be entitled to have a case stated and delivered to him unless within the said three days he shall—

   (1.) Lodge in the hands of the clerk of court a bond with sufficient cautioner for answering and abiding by the judgment of the superior court in the appeal and paying the costs should any be awarded by that court, or otherwise, in the discretion of the inferior judge, shall consign in the hands of the clerk of court such sum as may be fixed by the inferior judge to meet the penalty awarded, if any, and the said costs of the superior court;

   (2.) Pay the clerk of court his fees for preparing the case:

   These fees shall, till the same be otherwise fixed by act of sederunt which the Court of Session is hereby empowered to pass and from time to time thereafter to vary, be those set forth in Schedule D. annexed to this Act:
2. The clerk of court shall, within five days after caution or consignation, and payment being found or made as aforesaid, prepare the case, and submit the same in draft to the parties or their agents:
3. Should the parties or their agents fail to agree as to the terms of the case, the inferior judge shall settle the same:
4. The case shall be as nearly as may be in the form set forth in Schedule A. annexed to this Act, and shall bear to be stated by the inferior judge and shall be signed by the inferior judge:
5. The appellant shall within three days after receiving the case give notice of appeal in writing, together with a copy of the case, to the respondent, and shall within the same time transmit the case by post to, or cause it to be lodged with one of the clerks of the superior court, together with a certificate under the hand of himself or of his law-agent, of intimation, as herein required, having been made to the respondent:
6. The clerk of the superior court shall on receiving the case forthwith lay the same before a judge of the superior court, and such judge may thereupon, if the appellant is in custody, grant interim liberation upon such conditions as are usual in cases of suspension and liberation, and may also grant a sist of execution upon or without caution, or make such other interim order as the justice of the case may require:
7. The clerk of the superior court shall as soon as may be after receiving the case require the clerk of court to transmit the process to him, together with the notes of evidence, if any, taken in the cause, where the procedure therein is under an Act requiring such notes to be taken and preserved, and the clerk of court shall transmit the process accordingly:
8. Any question of law arising upon the facts stated in the case shall thereafter be heard and determined by the superior court to which the case is transmitted at any sitting for which the case shall be enrolled by the direction of the said court, upon the case, without any note of appeal or written pleadings being required:
9. The superior court shall have power to affirm, reverse, or amend the determination in respect of which the case has been stated, or to remit the matter to the inferior judge with the opinion of the court thereon; or to make such other order in relation to the matter and the costs of the appeal as they shall see fit; or to cause the case to be sent back to the inferior judge to be amended in such manner as they shall direct, and thereafter, on the case being amended and returned, to deliver judgment on the case as amended:
10. All orders made by a superior court in determining a case under this Act shall be final and conclusive:
11. No inferior judge who shall state and sign a case under this Act shall be liable in any costs in respect or by reason of an appeal against his determination.

Case may be refused.

4. It shall be lawful for an inferior judge to refuse any application made to him under this Act to state and sign a case, should he consider such application to be frivolous; provided that he shall forthwith give to the applicant a certificate of such refusal, should the same be asked for; provided also, that no such application shall on any ground be refused when made by or on behalf of Her Majesty's Advocate for Scotland or by a procurator fiscal prosecuting for the public interest, and such prosecutors shall not be required to find caution as herein-before provided.

Provisions to have effect on a case being refused.

5. When an inferior judge shall refuse to state and sign a case the appellant may within three days of such refusal apply by a written note to the superior court to which the case would, if stated and signed, have to be transmitted under this Act, for an order on such judge and on the other party to show cause why a case should not be stated.

Such written note shall be in the form set forth in Schedule C. annexed to this Act, and shall be accompanied by the certificate of refusal of the inferior judge to state and sign a case, and by a statement of the nature of the cause and the facts therein, and of the appellant's reasons in support of his application.

Any judge of the superior court before whom such written note shall be laid by a clerk of such superior court may, if he sees fit, order intimation thereof to be made to the inferior judge and the other party, and thereafter dispose of such note in a summary way, and order the inferior judge to state and sign a case, which may be in the form set forth in Schedule B. annexed to this Act, or do otherwise as he shall think just, and his judgment shall be final; provided, that he shall not in any case award any costs against the inferior judge.

The provisions of this Act applicable to the stating and delivery to an appellant of a case on his application, (including the provisions as to caution or consignation, and payment of the fees of the clerk of court,) and to the subsequent proceedings on such case, shall apply to the stating and delivery to an appellant of a case ordered to be stated and signed under this section, and to the subsequent proceedings on such case.

Party may require note of objections to evidence to be taken.

6. In order to an appeal under this Act it shall be competent for any party to a cause to require the sheriff, or sheriff substitute where the cause depends before him, or the clerk of the court where the cause depends before any other inferior judge, to take and preserve a note of any objections to the admissibility of evidence sustained or repelled by such sheriff, sheriff substitute, or other inferior judge.

Any such note made by a clerk of court shall be authenticated as correct by the inferior judge.

To what superior court cases may be sent.

7. The superior court to which a case stated and signed by an inferior judge as herein-before provided shall be sent for opinion shall be the High Court of Justiciary at Edinburgh when the jurisdiction in the cause is of a criminal nature according to the provisions contained in the twenty-eighth section of the Summary Procedure Act, 1864, and either division of the Court of Session when the jurisdiction in the cause is of a civil nature according to the said provisions.

Superior courts may make rules.

8. The superior courts may from time to time, and as often as they see occasion, make rules and orders to regulate the practice and proceedings and the fees of court to be paid in reference to cases sent to them for opinion respectively, and stated and signed under the provisions of this Act.

Until altered by such rules and orders the fees of court shall be the same as those now exigible in processes of review at present competent.

Appeal on the case to exclude all other modes of appeal competent.

9. Any person who shall appeal under the provisions of this Act from any determination of an inferior judge from which he is by law entitled to appeal in any other manner of way to any superior or other court, shall be taken to have abandoned such title to appeal in any such other manner of way as aforesaid.

Superior court may order person liberated to serve unexpired period

10. Where a person sentenced to a term of imprisonment by an inferior judge shall bring an appeal, suspension, or other process of review of the sentence under which he is imprisoned, and thereupon have interim liberation granted to him, such person shall appear personally in the court before which such appeal, suspension, or other process as

aforesaid shall be brought on the day or days fixed for the hearing and disposal of the same, failing which he shall be held to have abandoned the same, and the said court shall thereon, and shall also in all other cases in disposing of any appeal, suspension, or other process as aforesaid, have power to grant warrants to apprehend and imprison such person for any term, to run from the date of his apprehension, not longer than the period which at the date of his liberation remained unexpired of the term of imprisonment specified in the sentence brought under review. of imprisonment.

11. Where it is competent to appeal against a sentence of imprisonment to the Court of Justiciary, or any circuit court thereof, under the Act passed in the twentieth year of the reign of His Majesty King George the Second, chapter forty-three, or under any Act amending that Act or applying or incorporating the provisions or any of the provisions of that Act with regard to appeals, such appeal shall, if otherwise well taken, be held to be timeously made if lodged with the clerk of the court in which the sentence appealed against was pronounced and intimated to the respondent at any time during the appellant's imprisonment under the sentence appealed against, or within ten days from the date of the appellant's liberation from imprisonment under said sentence; provided that this section shall not apply to any appeal against a sentence of imprisonment, unless the imprisonment under such sentence commenced within ten days after the same was pronounced. Extension of time for lodging appeals under 20 Geo. 2. c. 43.

SCHEDULES.

SCHEDULE A.

In the Court of held at .

On appeal to the [High Court of Justiciary, *or* the first [*or* second] division of the Court of Session].

Between *A.B.*, Appellant.
C.D., Respondent.

This is a cause [*here state concisely and without argument the nature of the cause and the facts as admitted or proved in evidence; any objections to the admission or rejection of evidence taken in the proof, and any other ground of appeal against the determination of the inferior judge*].

The question of law for the opinion of the Court of is:—

[*Here state the question, or questions seriatim, for the opinion of the Court.*]

This case is stated by me [*or* us].

(*Signature of the Inferior Judge.*)

SCHEDULE B.

In the Court of held at .

Case for the opinion of the [High Court of Justiciary, *or* the first [*or* second] division of the Court of Session].

In causa *A.B. v. C.D.*

This is a cause [*here state concisely and without argument the nature of the cause and the facts as admitted or proved in evidence, any objections to the admission or rejection of evidence taken in the proof, and any other matters necessary to be stated for the information of the superior court*].

The question of law submitted for the opinion of the Court of is:—

[*Here state the question, or questions seriatim, for the opinion of the Court.*]

This case is stated by me [*or* us].

(*Signature of the Inferior Judge.*)

SCHEDULE C.

In the Court of held at .

On appeal *A.B.* to the [High Court of Justiciary, *or* the first [*or* second] division of the Court of Session].

In causa *A.B. v. C.D.*

In this cause the inferior judge [*name the judge or judges*] has refused to state and sign a case for which the appellant duly applied in writing by himself [*or* law-agent] under the provisions of

"The Summary Prosecutions Appeals (Scotland) Act, 1875," as will appear from the certificate of refusal herewith produced.

This is a cause [*here state as succinctly as may be the nature of the cause and the facts as admitted and proved in evidence*].

The appellant prays for an order on the inferior judge and the said *C.D.* to show cause why a case should not be stated in terms of the said statute, which order ought to be granted for the following reasons:

[*Here state seriatim the reasons why the order should be granted.*]

[*To be signed by the Appellant or his law-agent.*]

SCHEDULE D.

	£	s.	d.
For drawing case, not exceeding five sheets of 250 words each -	1	0	0
For drawing case, exceeding five sheets of 250 words each -	1	10	0

CHAPTER 63.

An Act to repeal the Adulteration of Food Acts, and to make better provision for the Sale of Food and Drugs in a pure state. [11th August 1875.]

WHEREAS it is desirable that the Acts now in force relating to the adulteration of food should be repealed, and that the law regarding the sale of food and drugs in a pure and genuine condition should be amended:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Repeal of statutes.

1. From the commencement of this Act the statutes of the twenty-third and twenty-fourth of Victoria, chapter eighty-four, of the thirty-first and thirty-second of Victoria, chapter one hundred and twenty-one, section twenty-four, of the thirty-third and thirty-fourth of Victoria, chapter twenty-six, section three, and of the thirty-fifth and thirty-sixth of Victoria, chapter seventy-four, shall be repealed, except in regard to any appointment made under them and not then determined, and in regard to any offence committed against them or any prosecution or other act commenced and not concluded or completed, and any payment of money then due in respect of any provision thereof.

Interpretation of words.

2. The term "food" shall include every article used for food or drink by man, other than drugs or water:

The term "drug" shall include medicine for internal or external use:

The term "county" shall include every county, riding, and division, as well as every county of a city or town not being a borough:

The term "justices" shall include any police and stipendiary magistrate invested with the powers of a justice of the peace in England, and any divisional justices in Ireland.

Description of Offences.

Prohibition of the mixing of injurious ingredients, and of selling the same.

3. No person shall mix, colour, stain, or powder, or order or permit any other person to mix, colour, stain, or powder, any article of food with any ingredient or material so as to render the article injurious to health, with intent that the same may be sold in that state, and no person shall sell any such article so mixed, coloured, stained, or powdered, under a penalty in each case not exceeding fifty pounds for the first offence; every offence, after a conviction for a first offence, shall be a misdemeanor, for which the person, on conviction, shall be imprisoned for a period not exceeding six months with hard labour.