quent unpleasant consequences rests with him. Such being my view of the meaning of the Act, the determination of the local authority is not subject, in my opinion, to the objection I have mentioned.

Then counsel for the pursuer put forward the further objection that the pursuer has not given sufficient information with regard to the offences alleged against him, and wishes on that ground to get behind the determination. In the Act itself there is no provision for any information of that kind being given by the local authority to the party accused of offences, and so far as the Act is concerned the local authority might come to a determination without giving any information to the party accused. Apparently, however, that rule was found to work rather harshly in practice, and the Privy Council issued an order to the effect that a local authority before determining to withhold compensation for animals slaughtered by their order should give to the owner of the animals an opportunity of making representations in reference to the facts of the case, and that they should consider the same. It is, however, on the owner that the *onus* of making representations is laid.

In the present case the defenders informed the pursuer of the offence alleged against him, but if we look at his answers we see that what he wanted was not information, but to go to law, for in place of asking for further information he says — "It is not attempted to be shown that the cows or any of them, referred to in the statement, are the cows with reference to which the local authority are refusing to pay compensation, and the present answers are made without prejudice to Mr Calder's plea that the statements are entirely irrelevant."

Having considered the case to the best of my judgment, I think that the local authority have pronounced their determination, and that there is no getting behind it.

LORD M'LAREN—I have already had an opportunity of expressing my view of the policy and construction of the Contagious Diseases (Animals) Act and of the relative Orders of Council, and the proceedings under these enactments in the present case. I have also given my best attention to the arguments of counsel, and they have certainly shown in my judgment that strict justice has not been done in the way of apportioning the penalties to the offences committed. But I think the answer is that the award of compensation is not a judicial proceeding at all, but that the policy of the Act is to leave the distribution of compensation to a popularly constituted body consisting of persons in the locality, and if they have arrived at a judgment on the matter to hold it conclusive, and I agree that they have arrived at a judgment in this case. If the matter was to be considered judicially the Legislature would not have left its consideration to a body consisting of people out of whose pockets the compensation had to be paid.

It appears to me the local authority have not deviated from the statute, and I am of opinion that the determination of the local authority is not subject to review.

LORD KINNEAR concurred.

The Court adhered to the Lord Ordinary's interlocutor.

Counsel for the Pursuer—Asher, Q.C.—Ure. Agent—Alex. Morison, S.S.C.

Counsel for the Defenders—Low—Gillespie. Agents—Tods, Murray, & Jamieson, W.S.

Friday, October 31.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

LUNDIE *v.* PROVOST AND MAGISTRATES OF FALKIRK.

Jurisdiction — Review of Deliverance of Licensing Court — Public Houses Acts Amendment Act 1862 (25 *and* 26 *Vict. c.* 35), *sec.* 34.

A publican whose certificate the magistrates of a burgh had refused to renew, brought a reduction of their deliverance, averring that certain evidence had been improperly admitted against his application, and he had been refused an opportunity of leading evidence in reply. *Held* that there was no relevant averment that the magistrates had exceeded their jurisdiction, and that any review of their decision by this Court was therefore incompetent under section 34 of the Public Houses Acts Amendment Act of 1862.

Public House—Licensing Court—Disqualification of Magistrate or Justice—Home-Drummond Act (9 *Geo. IV. c.* 58), *sec.* 13.

Section 13 of the Home-Drummond Act enacts that no justice of the peace or magistrate shall act as such in the execution of that Act who is a brewer, maltster, distiller, dealer in, or retailer of any exciseable liquors. *Held* that a magistrate who was the trustee under a private trust for behoof of creditors on an estate consisting in part of a public-house business was not disqualified under that section from sitting in a Licensing Court.

Denis Lundie, tenant and occupant of a public-house in Falkirk, was refused a renewal of his certificate at a Licensing Court held in Falkirk in April 1890. He appealed to Quarter Sessions, but his appeal was dismissed.

He then raised the present action against Borthwick Watson, Archibald Rennie, Gavin Hamilton, and John Weir—being the Provost and Magistrates of Falkirk—and against James Wilson, the Town-Clerk of the burgh, (1) for reduction of their deliverance refusing him a renewal of his certificate; (2) for declarator that it was the

duty of the defenders to have heard and determined his case judicially, but that they had failed to perform this duty, and that he was entitled to a decree enforcing performance thereof; (3) for decree ordaining the defenders to hold a Court and determine judicially the cause raised by his application, or otherwise to make out a certificate in his favour; and (4) for damages.

The pursuer averred (Conds. 1-4)—"The premises occupied by him had long been occupied as licensed premises. He had obtained a transfer of the current lease in 1881, and his certificate had thereafter been renewed till 1890. He had at all times conducted his business respectably as required by his certificate. He only lodged his application for renewal in 1890, and had no notice of any objection whatever prior to the Court on 8th April, which he was requested to attend by the sergeant of police, who called upon him on the morning of that day." (Cond. 6)—"At the Court the Procurator-Fiscal stated generally that persons had been seen coming out of the pursuer's premises in a state of intoxication, and the Provost stated that about two months previously he had seen a man forcibly ejected from the pursuer's premises. These allegations were consistent with what was the fact that the pursuer had carefully observed the obligation in his certificate not to supply liquor to drunk men. In obedience to his certificate he had turned away men who had entered his premises in an intoxicated state, and had on the occasion referred to by the Provost been obliged to expel by force a person who would not go when refused liquor. The pursuer was refused a hearing at the Court on the 8th, and his application was continued till an adjourned Court on 17th April." (Cond. 7)—"On the 15th the pursuer applied to the Provost, as a Magistrate of the burgh competent, under section 27 of the Public-Houses Acts Amendment Act 1862, to grant warrant to summon witnesses, to know whether he was to bring witnesses to the adjourned Court to prove that in ejecting persons entering his premises he was only doing his duty under his certificate. He was informed by the Provost that such evidence was not necessary, and was accordingly led to think that the statements above mentioned were not regarded as objections to the renewal of his licence." (Cond. 8)—"On 16th April the Provost convened a secret meeting of the other three Magistrates, at which it was agreed, without evidence or knowledge of the pursuer's defence, that the pursuer's application should be refused, Bailie Weir dissenting." (Cond. 9)—"At the adjourned Court on the 17th the pursuer's defence was stated, and a case was thereby raised requiring evidence in order to the due and proper hearing and determination of his application. The decision having (as had since been discovered) been arranged beforehand, the hearing was a mere pretence. In the absence of evidence and of any conviction of breach of certificate the Magistrates had no materials for judgment, and they were not entitled to assume that intoxicated persons had been supplied with drink by the pursuer. No proof was offered in support of the contention mentioned, nor was there any trial of the cause. The pursuer was ready, as he had intimated to the Provost, to lead evidence, but the Provost refused all opportunity for inquiry, in pursuance of the secret agreement of the preceding day, and announced the decision of the Court to be in respect of the unproved objections above mentioned that the pursuer's application was refused. The defender Bailie Weir dissented from that deliverance which was sought to be reduced as having been pronounced contrary to law and the provisions of the Licensing Statutes.

In answer to the 6th article of the statement of facts for the defenders the pursuer admitted that on several occasions since 1882 he had received notice of reports having been lodged with the Procurator-Fiscal as to persons having been seen to issue from his premises in an intoxicated state. Only one report—dated March 7th 1890—was referred to at the Court. It dealt with alleged cases of drunk men having been seen to issue from his premises between June 1889 and March 1890. No weekly notices, as required by the Act, had been sent to the pursuer. He had only received one notice, which was not in terms of the statute.

The pursuer also set forth as a ground of reduction that the Provost was disqualified under section 13 of the Home-Drummond Act from sitting on the Court, as being the trustee on an estate part of which consisted of a public-house business.

From documents produced it appeared that a publican of the name of Walls had executed a trust-deed for behoof of his creditor in favour of the Provost, who was an accountant, in February 1890. On 19th March John Band offered £240 for the goodwill of Walls' public-house business, subject to a transfer of the licence being obtained. This offer was accepted by the agent of the trust on 22nd March, and a transfer was granted on March 25th by Bailies Rennie and Hamilton.

The pursuer averred that this transfer was merely a temporary grant requiring to be renewed at the April Court in order to be of any value. The renewed certificate was granted at that Court by the Provost and Bailies Rennie and Hamilton. The purchased business was a rival of the pursuer's business, and was benefitted by refusal of the pursuer's licence.

The pursuer pleaded—"(1) The refusal of the pursuer's application should be reduced or declared of no effect, in respect the proceedings complained of were outwith the statutes and unlawful, and the Provost was disqualified. (2) The pursuer having duly made his statutory application for renewal, and the same not having been duly and properly disposed of within the statutory period for holding licensing courts, the same should now be held as granted, and the clerk be ordained to issue a renewed certificate. (3) The pursuer is otherwise

entitled to redress by having the defenders ordained to hold a court, and to perform towards him the public duty of duly and properly hearing and determining his cause."

The defender pleaded—"(1) The action is incompetent. (2) In respect of the appeal taken by the pursuer to the Quarter Sessions, and of the unchallenged judgment of that Court, the present action is excluded."

Section 12 of the Public-Houses Acts Amendment Act 1862 (25 and 26 Vict. cap. 34) provides—"It shall be lawful for the justices of the peace of any county or district, or for the magistrates of any burgh, at any general meeting for the granting and renewal of certificates held within their respective jurisdictions, to hear and determine as at present, and without the notice required by section 11, any objections to be made verbally or in writing by any justice of the peace or magistrate, or by the procurator-fiscal, chief constable, or superintendent of police, against the granting or renewing of any certificate."

Section 14 enacts—"The chief officer of police of every county, district, place, and burgh in Scotland shall, on the first lawful day of every week, transmit or cause to be transmitted to the procurator-fiscal appointed by the justices of the peace of such county or district, or procurator-fiscal appointed by the magistrates of such burgh respectively, a written report containing the names of all persons licensed to sell exciseable liquors by retail, from whose premises persons in a state of intoxication have been frequently seen to issue, and of the manner in which any special permission granted in virtue of this Act has been exercised, and such reports shall be brought under the consideration of the justices of the peace and magistrates of every such county and burgh respectively when assembled to grant and renew certificates; provided always that within two days after such reports shall have been lodged with such procurator-fiscal notice in writing, by post, with postage prepaid, shall be sent by him, addressed to each licensed person at his licensed premises, of his having been so reported on." . . .

Section 27 provides—"It shall be lawful for any justice of the peace or magistrate in any application for the granting or renewing of a certificate, under the provisions of the recited Acts or of this Act, or in dealing with any objection to such application, or in any other matter arising under the provisions of the recited Acts and this Act, or any of them, to grant warrant to summon witnesses or havers on behalf of any party interested; and it shall be lawful for the justice or justices of the peace, magistrate or magistrates, before whom respectively any such application, objection, or matter shall be depending, to examine all such witnesses or havers on oath or solemn affirmation, and to do and perform all things necessary for the due and proper hearing and determination of the cause or matter."

The 34th section provides—"No warrant, sentence, order, decree, judgment, or decision made or given by any quarter sessions, sheriff, justice or justices of the peace, or magistrates, in any cause, prosecution, or complaint, or in any other matter under the authority of the said recited Act (Forbes Mackenzie Act 1853) or of this Act, shall be subject to reduction, advocation, suspension, or appeal, or any other form of review or stay of execution on any ground or for any reason whatever other than by this Act provided"—*i.e.*, by the 33rd section, under which (1) an appeal is allowed to the Court of Justiciary on the part of any person who feels aggrieved by any warrant, order, decree, judgment, or decision given by any sheriff, justice, or magistrate in any cause, prosecution, or complaint under the Act, for breach of certificate, or for trafficking in exciseable liquors without a licence, on the ground of "corruption or malice and oppression," or "such deviations in point of form from statutory enactments as the Court shall think have prevented substantial justice from having been done;" and (2) it is provided that the existing right of appeal to Quarter Sessions granted (under the Home Drummond Act) shall not be taken away.

Section 13 of the Home Drummond Act (9 Geo. IV. cap. 58), enacts—"That no justice of the peace or magistrate in any county or royal burgh who is a brewer, maltster, distiller, or dealer in or retailer of ale, beer, spirits, wine, or other exciseable liquors, or who shall be in partnership with any person as a brewer, maltster, distiller, or dealer in or retailer of ale, beer, spirits, wine, or other exciseable liquors, shall act as such justice of the peace or magistrate respectively in the execution of this Act; nor shall any justice of the peace or magistrate act in the granting of any certificate when he shall be the proprietor or tenant of the house or premises for which such certificate shall be applied for; and everything done by a justice of the peace or magistrate respectively in any case in which he is so disqualified to act shall be null and void." . . .

On 19th July 1890 the Lord Ordinary (KYLLACHY) allowed "the parties a proof of their respective averments with respect to the objections stated in the Licensing Court against the renewal of the pursuer's certificate, founded on the alleged fact that the pursuer had been reported on during the year, in terms of the 14th section of the Act 25 and 26 Vict. cap. 35, in consequence of drunken persons having been seen to issue from the public-house, and with respect to the manner in which the said objections were dealt with by the magistrates."

"*Opinion.*—The record in this case is in a very unsatisfactory condition as regards the only matter on which—as it appears to the Lord Ordinary—the pursuer has a serious case, viz., the entertaining by the magistrates of objections stated by the Procurator-Fiscal under section 14 of the Act, without the notices required by that section having been given to the pursuer. Both parties have acted somewhat irregularly in making alterations on their minutes of amendment after the discussion had

closed, and the Lord Ordinary had made avizandum. And the Lord Ordinary is not sure that he fully appreciates the exact effect of their alterations upon the record as a whole, and particularly upon the admissions by the defenders in Answer 6 of the record as originally closed, but he thinks it better in the interest of both parties that with respect to the matter in question the facts should be ascertained by proof before he pronounces any decision. He is not prepared to allow a general proof. Apart from the point in question, his judgment would have been against the pursuer."

The defenders reclaimed, and argued—(1) The pursuer had made no relevant averment that the defenders had exceeded their statutory jurisdiction. The procurator-fiscal or a magistrate had the right to state objections to the renewal of an applicant's licence without notice, and the fact that the applicant had no notice was one of the elements in the case to be considered by the magistrates, who had an absolute discretion, and were entitled to proceed on matters not made the subject of judicial inquiry —25 and 26 Vict. caps. 35, sections 11 and 12. The statutes allowed an appeal to the Quarter Sessions and no reduction of their judgment had been brought—9 Geo. IV. cap. 58, section 13. Unless the magistrates had exceeded their jurisdiction the Court of Session had no jurisdiction to review their decision—25 and 26 Vict. cap. 35, section 34; *Ashley* v. *Magistrates of Rothesay*, June 20, 1873, 11 Macph. 708; *Crosbie* v. *M'Minn*, June 8, 1866, 4 Macph. 803; *Robertson* v. *Pringle*, Feb. 5, 1887, 14 R. 474; *Sharpe* v. *Justices of Westmoreland*, 1888, 21 L.R., Q.B.D. 66.

Argued for the pursuer and respondent—The defenders had not acted judicially, but had determined the case without hearing the evidence which the pursuer had to bring forward, and had therefore failed in their duty under the statute—25 and 26 Vict. cap. 35, section 27. The report referred to at the Licensing Court dealt with a number of cases spread over many months in which it was alleged that persons had been seen to issue from the pursuer's premises in a state of intoxication. No weekly notices had been sent to the pursuer under section 14 of 25 and 26 Vict. cap. 35, and the reference to such a general report as that mentioned was therefore contrary to the statute, while it was most unfair to the pursuer as it rendered it practically impossible for him to make a good defence—*Ashley* v. *Magistrates of Rothesay, supra; Mackersie* v. *M'Dougall*, Dec. 11, 1874, 13 Coup. 54; *Rig* v. *Justices of Walsall*, Nov. 23, 1854, 24 L.T.R. 111; *Queen* v. *Justices of Merthyr Tydvil*, March 2, 1885, 14 L.R., Q.B.D. 584.

At advising—

LORD PRESIDENT—I have listened with great attention to the argument for the pursuer, and feel the force of that argument as regards the justice of the case, but he has not satisfied me that there is anything on record which is a competent subject of inquiry in this Court, and therein I differ from the Lord Ordinary.

The subject-matter of the jurisdiction committed to the Justices sitting in a Licensing Court under the Public House Acts has never been a proper part of the civil jurisdiction of this country, or a proper part of the jurisdiction of the Civil Courts of this country, and from the beginning was committed to a special tribunal which the Legislature thought better fitted to deal with such questions as would arise than an ordinary Civil Court, and therein I think the Legislature acted wisely because the question arising in each case is not a question of law or a pure question of fact, but whether it is expedient in the interests of the burgh that a licence should be granted, and therefore I am not surprised that an appeal from the division of a Licensing Court to any Court of ordinary civil jurisdiction should be altogether prohibited. The Court of Quarter Sessions is in a different position, because that Court in a sense is much the same kind of tribunal as the Justices of the Court below—is, in fact, a more extensive body of the same class, and therefore to allow an appeal to Quarter Sessions was very natural in the circumstances. But the Statute of 1862 makes it perfectly plain that that is the only appeal allowed. When a statute grants an appeal to a particular tribunal I think that in the ordinary case excludes any other appeal. But the statute does not leave the matter there, for it enacts not only that there shall be an appeal to Quarter Sessions but provides also by 25 and 26 Vict. cap. 35, section 34, that no other proceedings by way of "reduction, advocation, suspension, or appeal, or any other form of review, shall be competent."

I cannot exactly comprehend on what grounds we are asked to entertain this reduction. The action does not disguise its true nature, it calls for the reduction of the proceedings on their merits—not it may be in the sense that the pursuer contends for reduction on the ground that the Licensing Court came to a wrong conclusion on the evidence before them, the objection may be that the defenders did not take the proper evidence to enable them to decide the question before them, or that they excluded evidence which should have been admitted, or admitted what they should have excluded, but all these are things subject to the jurisdiction of the Court, and we are not entitled to interfere with the way the Court conducts its proceedings, or the evidence on which it proceeds any more than the merits of the cause. In short, we are not entitled to touch a judgment of the Licensing Court unless that Court has exceeded its statutory jurisdiction, and I cannot find any relevant averment of their having exceeded their jurisdiction.

The present case is quite different from the case of *Ashley* v. *Magistrates of Rothesay*. In that case the magistrates put their powers to a use most inexpedient and undesirable, and which was never contemplated by the Legislature. The statute allowed them to provide that all the public-houses in any particular district within the burgh requiring other hours for opening and clos-

ing should be closed at nine o'clock instead of eleven. What the magistrates did was to provide that the whole of the public-houses under their jurisdiction should close at ten o'clock. Not that they provided that in so many words. They acted with more ingenuity, and provided that their order should apply to a certain district, but they included in that district the whole of the town of Rothesay, which was plainly in excess of their powers, and a perversion of the statutory powers committed to them to a purpose to which they were not meant to apply, and therefore the Court granted decree of reduction.

The present case raises the question whether it is proper or expedient that the pursuer should have his licence renewed. On that question the Magistrates pronounced their judgment, an appeal was taken to Quarter Sessions, and the judgment was affirmed, and unless we go outside the statute excluding our jurisdiction altogether, I do not see how we can get the better of it.

There is one question which at first sight appears to give a ground of challenge, which would in certain circumstances be competent. It is said that the Provost was disqualified from acting as Judge in the matter under section 13 of the Home Drummond Act, which enacts "that no justice of the peace or magistrate in any county or royal burgh, who is a brewer, maltster, distiller, or dealer in or retailer of ale, beer, spirits, wine, or other exciseable liquors, or who shall be in partnership with any person as a brewer, maltster, distiller, or dealer in or retailer of ale, beer, spirits, wine, or other exciseable liquors, shall act as such justices of peace or magistrate respectively in the execution of this Act; nor shall any justice of the peace or magistrate act in the granting of any certificate when he shall be the proprietor or tenant of the house or premises for which such certificate shall be applied for;" and whatever is done in contravention of these provisions is declared null. But the only allegation made on record against the Provost is that he was a trustee on a sequestrated estate, part of which consisted of a public-house business. He did not hold the licence himself, and he was not a retailer, nor was he a dealer in exciseable liquors, therefore that part of the section does not apply. He was also neither a proprietor nor a tenant of the house in regard to which the application for a licence was made, therefore the section has no application.

Putting that objection out of the question I cannot see any ground upon which the Lord Ordinary should have allowed an inquiry, and I therefore think that the interlocutor should be recalled, and the action dismissed as irrelevant.

LORDS ADAM, M'LAREN, and KINNEAR concurred.

The Court recalled the interlocutor of the Lord Ordinary and dismissed the action as irrelevant.

Counsel for the Pursuer and Respondent —V. Campbell — Hay. Agents — Wylie, Robertson, & Rankine, W.S.

Counsel for the Defenders and Reclaimers —Asher, Q.C.—Wilson. Agents—J. & A. Peddie & Ivory, W.S.

Saturday, November 1.

FIRST DIVISION.

[Lord Kinnear, Ordinary.

WILSON *v.* PURVIS.

Reparation—Slander—Issue—Innuendo—Law-Agent—Privilege.

The trustee on a bankrupt estate instructed his agent to insist on the delivery of a cutting machine which had been removed from the bankrupt's premises by A, who claimed a right to it, unless proof of such right were given. The agent then wrote to A saying that he had been instructed to apply to him for the evidence of his right to remove the machine, and that unless he received such evidence or the machine by a certain day he would put the matter in the hands of the fiscal without further notice.

In an action of damages for slander at the instance of A against the agent—*held* (1)—following *Mackay* v. *M'Cankie*, 10 R. 537—that the letter was capable of being read as bearing the innuendo that the pursuer had been guilty of theft; and (2)—*dub.* Lord Kinnear—that as on the face of the letter the defender had exceeded his instructions, he was *prima facie* not in a privileged position, and that malice need not be put in issue, but that it would be for the Judge who presided at the trial, if the evidence disclosed a case of privilege, to direct the jury that they could not find for the pursuer unless they were satisfied that the defender acted maliciously in writing the letter complained of,

In January 1890 William Wright having become insolvent granted a trust-deed for behoof of his creditors in favour of W. S. Steel, accountant in Glasgow. On 19th February Steel wrote to J. R. Wilson, who had removed a cutting machine from Wright's premises, in these terms—"I understand that you removed from Mr Wright's premises in Stranraer a cutting machine which you had sold to him on time payment. Kindly let me have copy of your agreement, as I can find no trace of the transaction amongst Mr Wright's papers." No reply to this letter was sent by Wilson. After writing again without effect, Steel wrote to J. W. Purvis, solicitor, Glasgow, in these terms—"At foot you will find copy of two letters which I have written to a Mr Wilson, 38 Lady Lawson St. in Edinbro', but to which I have received no reply. Kindly take the matter in hand, and insist upon delivery of the machine in question