innuendo. The issue which I propose to allow is in the following terms:—"Whether . . . [*quotes v. sup.*]. . . ."

The defenders reclaimed, and argued—The article was not slanderous, for when fairly read it did not bear either the innuendo in cond. 5 or that in cond. 7. The words the "Roman Catholic Authorities in Queenstown" did not necessarily mean the pursuers, and even if they did the pursuers were not referred to as individuals but merely in their collective capacity. That being so the action was irrelevant—*M'Fadyen* v. *Spencer & Company*, January 7, 1892, 19 R. 350, 29 S.L.R. 295. [The LORD PRESIDENT referred to *Hulton & Company* v. *Jones*, [1910] A.C. 20.] *Esto* that slanderous statements regarding a set of persons in their collective capacity might ground an action at the instance of one of their number, that was only so where the party suing had been personally injured thereby—*Hustler* v. *Watson*, January 16, 1841, 3 D. 366. That was not so here, and the issue therefore should be disallowed.

Counsel for the respondents were not called on.

LORD PRESIDENT—As the pursuers are content with the issue as adjusted by the Lord Ordinary, I do not think it is necessary to call upon them for a reply. I think it is perfectly clear on principle, and certainly on authority—I refer to the case of *E. Hulton & Co.* v. *Jones*, [1910] A.C. 20—that it is for a jury to say whether the pursuers are the persons who would be understood to be referred to as the "Roman Catholic Religious authorities." As to the question of libel, I think the innuendo proposed is a possible one. It is in the interest of the defenders themselves that I should not say more, and it would be prejudging the case to make up one's mind whether the innuendo can properly be extracted from the language used before the whole circumstances are known. I think the Lord Ordinary has quite fairly put the matter in the form of the issue which he has approved, and has quite fairly put upon the pursuers a considerable burden. If they discharge that burden I think they will be entitled to a verdict.

The only other matter that was dealt with by Mr Murray was the question of individual and collective action. There might be difficult questions about such a matter, but I do not think any arise here. We are not dealing with any corporation or body known to the law, but merely with a certain congeries of individuals. I quite see that if the defence had been that the statement complained of was true, then there might have been a powerful argument that, inasmuch as the statement was only made as to the joint action of a body of persons, no individual person could have a ground of action, even though able to show that he himself had no part in the initiation of the joint action. But there is no case of that sort here. I think it is quite evident that if a certain set of people are accused of having done something, and if such accusation is libellous, it is possible for the individuals in that set of people to show that they have been damnified, and it is right that they should have an opportunity of recovering damages as individuals. On the whole matter I think the reclaiming note should be refused.

LORD KINNEAR—I agree with your Lordship, and I express no opinion with reference to the greater part of the argument which we have heard from Mr Murray. Much of it will be available to him before a jury and, at all events, it raises a question which it is not for us to decide. The question for the Court is whether the words complained of will bear the innuendo which it is sought to put upon them. If they will, then it is for the jury to say whether they do in fact bear that meaning—whether they would be understood by persons reading the article to convey a slanderous imputation. It is also a question of fact for the jury whether, holding the article to be libellous, it applies to the persons now complaining of it. That is a question of fact, and each of the pursuers must satisfy the jury that he is hit by the language of which they all complain. It might very well be that one might succeed and another might fail, but the question is one of fact, and the case must go to a jury.

LORD MACKENZIE—I concur.

LORD JOHNSTON was absent.

The Court adhered.

Counsel for Pursuers (Respondents)—Lord Advocate (Ure, K.C.)—Morison, K.C.—Gillon. Agents—P. Gardiner Gillespie & Gillespie, S.S.C.

Counsel for Defenders (Reclaimers)—Murray, K.C.—Macmillan—W. L. Mitchell. Agents—Menzies, Bruce-Low, & Thomson, W.S.

Friday, January 26.

SECOND DIVISION.

[Lord Ormidale, Ordinary.

GLASGOW CORPORATION *v.* SMITHFIELD AND ARGENTINE MEAT COMPANY, LIMITED.

Reparation—Public Health—Public Official—Public Health (Scotland) Act 1897 (60 *and* 61 *Vict. cap.* 38), *secs.* 43, 164, 166—*"Compensation" for "Damage Sustained by Exercise of Powers"—Damages for "Irregularity" in Exercise—Seizure of Meat Appearing to be Unsound but really Sound.*

The Public Health (Scotland) Act 1897 enacts:—Section 164—"Full compensation shall be made . . . to all persons sustaining any damage by reason of the exercise of any of the powers of this Act . . . and in case of dispute . . . when the sum claimed exceeds £50, such compensation shall

be ascertained and disposed of by a sole arbiter, appointed" failing agreement, by the Local Government Board for Scotland, on the application of either of the parties. Section 166—"The local authority . . . shall not be liable in damages for any irregularity committed by their officers in the execution of this Act . . .; and every action or prosecution against any person acting under this Act on account of any wrong done in or by any action, proceeding, or operation under this Act shall be commenced within two months after the cause of action shall have arisen. . . ."

A veterinary surgeon appointed by a local authority seized, in terms of section 43 of the Public Health (Scotland) Act 1897, a quantity of meat exposed for sale which appeared to him to be unsound. In a summary prosecution of the owners it was found not proved that the meat was unsound. More than two months after the seizure the owners applied to the Local Government Board for Scotland for the appointment of a sole arbiter to ascertain the compensation claimed from the local authority, under section 164 of the Act, in respect of the damage caused to the meat by the seizure and subsequent proceedings. The local authority brought an interdict against the application.

Held that the claim of the owners of the meat was a claim for "compensation" for "damage sustained by the exercise of the powers of the Act" in the sense of section 164, and not a claim of "damages" for an "irregularity" in the sense of section 166, and that the application for the appointment of an arbiter was not an "action or prosecution" on account of "wrong done by action, proceeding, or operation under the Act" in the sense of the last-mentioned section, and *interdict refused.*

Reparation—Statutory Limitation of Action—Public Authorities Protection Act 1893 (56 *and* 57 *Vict. cap.* 61), *secs.* 1 *and* 3—"*Action, Prosecution, or Other Proceeding*"—*Application for Appointment of Arbiter to Ascertain Claims for Compensation under Public Health (Scotland) Act* 1897 (60 *and* 61 *Vict. cap.* 38).

By section 1 of the Public Authorities Protection Act 1893 it is enacted that an "action, prosecution, or other proceeding" against any person "for any act done in pursuance, or execution, or intended execution of any Act of Parliament" shall not lie or be instituted unless commenced within six months after the act complained of. Section 3 enacts—"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 . . . 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."

The Public Health (Scotland) Act 1897 contains in section 166 a limitation of time for an "action or prosecution on account of any wrong done in or by any action, proceeding, or operation under this Act."

Held that an application to the Local Government Board for Scotland, in terms of the Public Health (Scotland) Act 1897, for the appointment of an arbiter to ascertain the compensation claimed under section 164 in respect of damage sustained by the exercise of the powers of the Act, was not excluded by the Public Authorities Protection Act 1893, though the application was not made within six months after the act causing the damage.

The Public Health (Scotland) Act 1897 (60 and 61 Vict. cap. 38), enacts:—Section 43—"Any . . . veterinary surgeon approved for the purposes of this section by the local authority may . . . inspect and examine (*a*) any animal alive or dead intended for the food of man which is exposed for sale . . .; and if any such animal . . . appears to such . . . veterinary surgeon to be diseased, or unsound, or unfit for the food of man, he may seize and carry away the same . . . in order to have the same dealt with summarily by a Sheriff." Sections 164 and 166 are quoted *supra in first rubric.*

The Public Authorities Protection Act 1893 (56 and 57 Vict. cap. 61), sections 1 and 3, are quoted in the second rubric *supra.*

The Corporation of the City of Glasgow as the Local Authority acting under the Public Health (Scotland) Act 1897, *complainers*, brought a suspension and interdict against the Smithfield and Argentine Meat Company, Limited, *respondents.*

The following *narrative* is taken from the opinion of Lord Salvesen—"This action is brought to restrain the respondents from following forth an application for the appointment of a sole arbiter to ascertain the claim of compensation to be paid to them by the complainers under section 164 of the Public Health (Scotland) Act 1897. The main pleas on which the action is founded are that the proposed proceedings are excluded by section 166 of the Public Health Act, or alternatively by the provisions of the Public Authorities Protection Act of 1893.

"The facts out of which the claim arises are very simple. On 24th and 25th December, Mr William Trotter, the veterinary surgeon appointed by the complainers and approved by them for the purpose of section 43 of the Public Health Act, seized a quantity of beef in the Meat Market of Glasgow under the powers of that section as being unsound and unfit for the food of man. The meat remained in a detention chamber until 30th December, when it was placed in a cold store. On 31st December a complaint was served at the complainers' instance on Duncan Perritt & Son, in whose premises it had been

exposed for sale and who are the agents of the respondents, the owners of the beef. This complaint was tried on 1st February and subsequent days before the Sheriff-Substitute, who on 4th March 1909 found the charge "not proven," and awarded Duncan Perritt & Son fifty guineas of expenses. On 5th March Messrs Perritt's law agents wrote claiming compensation in terms of section 164 of the Public Health Act, and calling on the Corporation to concur in appointing a sole arbiter. On behalf of the respondents an intimation was made in similar terms to the Town Clerk. The complainers refused to recognise the claim, and thereafter on 10th June 1910 Messrs Russell & Duncan, on behalf of the respondents, wrote to the secretary of the Local Government Board for Scotland asking the Board to appoint a sole arbiter to ascertain the compensation to be paid to the respondents. The present action was then brought to stop these proceedings."

The complainers pleaded, *inter alia*—"(1) The proceedings complained of being incompetent and excluded by section 166 of the said Public Health Act, suspension and interdict should be granted as craved. (2) In any event, the proceedings complained of are barred by the provisions of the Act 56 and 57 Vict. cap. 61. (3) The alleged claim of the respondents the Smithfield and Argentine Meat Company, Limited, not being a claim for compensation within the meaning of section 164 of the said Public Health Act, under which it bears to be made, suspension and interdict should be granted as craved."

The respondents, whose claim was for the value of the beef, averred that the beef was quite sound when exposed for sale, but was rendered worthless by the seizure and detention and the treatment it received, and pleaded, *inter alia*—"(3) The respondents the Smithfield and Argentine Meat Company, Limited, as the owners of said beef, being entitled to claim compensation in terms of the 164th section of the said Public Health Act, and to make the application complained of, the note should be refused. (5) The provisions of (*a*) section 166 of the said Public Health Act, and (*b*) the Act 56 and 57 Vict. cap. 61, not being applicable to the said claim for compensation under the 164th section of said Public Health Act, the respondents are not barred from proceeding with the said application."

On 26th January 1911 the Lord Ordinary (ORMIDALE) refused the prayer of the note.

Opinion.—"I was asked to determine this case on the assumption that the meat in question has been destroyed or at least damaged, and that the sole question between the parties is whether the claim made by the respondents is truly a claim for compensation under section 164 or a claim for damages under section 166 of the Public Health Act 1897. If the claim is just the equivalent of an action of damages, then I understand it is not disputed that it is barred in respect that more than two months had elapsed after the cause of action had arisen before proceedings against the Corporation were taken.

"After careful consideration of the arguments *hinc inde* I have come to the conclusion that the respondents have tabled a competent and relevant claim for compensation under section 164 for the damage sustained by them in respect of the loss of the meat in question, and as the amount claimed is over £50, and the complainers have refused to concur in the appointment of an arbiter, that they were within their right in applying to the Local Government Board to appoint an arbiter to ascertain and dispose of the compensation.

"Section 164 enacts—'Full compensation shall be made . . . to all persons sustaining any damage by reason of the exercise of any of the powers of this Act except where otherwise specially provided.'

"The present claim does not fall under any of the sections of the Act containing specific provisions as to compensation.

"The words of section 164 are very wide, and all that the respondents have to show in order to satisfy its requirements is that they have sustained damage, and that by reason of the exercise by the complainers of any of the powers conferred upon them by the Public Health Act 1897.

"Section 43 confers a power upon any veterinary surgeon approved by the local authority for the purposes of this section to examine any article intended for the food of man, and if the article appears to him to be unsound or unfit for the food of man he may seize the same in order to have the same dealt with summarily by the Sheriff.

"The averments of the complainers are that Mr Trotter, a veterinary surgeon appointed by them and approved by them for the purposes of section 43, in virtue of the powers conferred on him by that section, seized the meat in question and carried it away to be dealt with summarily, and that following upon the seizure a complaint was served upon the respondents' authors. The meat was kept in a detention chamber for a week and then deposited in a cold store. There apparently the greater part of it still remains. It has suffered some diminution because of the removal of various portions to be used in the proceedings before the Sheriff as evidence of the condition of the meat at the time of its seizure. On 4th March 1909 the charge was found not proven.

"The averment of the respondents in their application for the appointment of an arbiter by the Local Government Board is that in consequence of the seizure and detention of the beef and of the handling it received in connection with the legal proceedings the meat was rendered worthless, and that they have lost the value thereof, viz., £69, 3s. 1½d., which is the amount of compensation claimed by them from the local authority. It is to be noted that nothing but the value of the meat is included in the claim for compensation. The costs incurred by the respondents in the prosecution proceedings are not

included, nor is any other item of expense incurred by the respondents in connection with the seizure of the meat.

"It was argued for the complainers that on the respondents' own statement the damage sustained by them was, at the worst for them, the result of the combined action of the veterinary surgeon in seizing the meat and of the local authority in taking proceedings, that the veterinary surgeon is not the local authority, and that the local authority is not responsible for what injury he may do. They further maintained that the claim is truly one in respect of the blunder made by Mr Trotter in wrongly seizing meat which was in fact fit for the food of man, that in doing so he was not acting under the statute, and that therefore the proceeding was outwith the provisions of section 164 altogether—the assumption of that section being the right, and not a mistaken or blundering, exercise of the statutory power. For the wrong so done, it was said, the respondents' relief, if any, against Mr Trotter—if taken within two months—was to be found under section 166. The only complaint, it was further said, properly made against the local authority was the handling of the meat in the course of the proceedings before the Sheriff, and any liability for damages in respect thereof was covered and barred both by the initial clause of section 166 and also by the time limitation contained in that section.

"It seems to me that the seizure of the meat is the predominant factor, the *fons et origo mali*, and that the legal proceedings, viz., the complaint, and the proof following upon it, cannot be so dissociated from the seizure as to constitute a separate and distinct act or exercise of power by the local authority. They were the natural and necessary consequences of the seizure, and if the meat was lost to the respondents in the course of them, it was none the less lost by reason of the exercise of the powers conferred by the Public Health Act, in respect of which the meat had been seized. The whole *res gestæ*, from the seizure of the meat to the dismissal of the complaint, constituted one continuing exercise of power under the Act. I cannot hold that the local authority only came on to the scene, and that its liability only commenced, with the prosecution. It may be that the veterinary surgeon was entitled to act on his own initiative, but he was the approved official of the local authority, and their hand in carrying into effect the powers conferred by section 43.

"Nor can I discover anything of the nature of an irregularity in the action of the complainers from start to finish, and yet irregularity is the key-note to the application of section 166. The complainers, no doubt, were in the event found to be in error in the opinion they formed as to the condition of the meat. But a failure to prove themselves infallible does not constitute an irregularity. The Act clearly assumes that in exercising the powers conferred by section 43 they may be mistaken. It was a sufficient warrant for the action of Mr Trotter that the meat appeared to him to be unfit for the food of man, and the regularity of his action is not made dependent on his being able to justify it, by showing that the meat was in fact unsound meat. He made no blunder in the procedure he followed, and showed no negligence in what he did. It is not suggested that he showed any want of proper skill and care, or that the meat did not really appear to him to be unsound when he ordered its seizure. The decision in *Duncan* v. *Magistrates of Hamilton*, 5 F. 160, appears to me to have no application to the present circumstances. That action was properly brought under section 166, for it was founded on a relevant averment of negligence on the part of the local authority in the performance of a statutory duty. For the reasons I have stated, no such negligence can be predicated of the local authority's action in this case. The cases of *Bater*, L.R., [1893] 1 Q.B. 679, 2 Q.B. 77, and *Walshaw*, L.R., [1899] 2 Q.B. 286, appear to me directly in point. Section 308 of the Public Health Act 1875, which was the subject of construction in them, is in very similar terms to section 164, and I do not see that the absence from the English statute of any section equivalent to section 166 makes any difference.

"It was suggested, rather than strenuously maintained, that the present claim for the appointment of an arbiter was excluded by the Public Authorities Protection Act 1903, in respect that more than six months have elapsed since the cause of action arose, but in my judgment that Act does not apply to a proceeding like the present, which is taken merely to have an arbiter appointed to ascertain the *quantum* of compensation payable by the complainers to the respondents — *Delany*, (1867) L.R., 2 C.P. 532, 3 C.P. 111; *Glasgow Corporation* v. *Miller*, (1905) 13 S.L.T. 167; *Gilliland* v. *County Council of Ayr*, (1907) 15 S.L.T. 21."

The complainers reclaimed, and argued—Section 164 of the Public Health (Scotland) Act 1897 (60 and 61 Vict. cap. 38) contemplated compensation similar to that payable under the Lands Clauses Consolidation (Scotland) Act 1845 (8 Vict. cap. 19), *i.e.*, for damage or loss necessarily incident to a right and proper exercise of the powers conferred by the Act, *e.g.*, such loss as might be caused by making sewers (section 103), entering lands (section 109), removing nuisances (section 18, 20 (3) (*b*))—Macdougall and Murray, Handbook of Public Health, p. 153. The respondents' claim was not a claim of that nature at all, and therefore did not fall within section 164. Otherwise by a parity of reasoning the respondents would be entitled to compensation even if the meat were unsound, which was absurd. The cases of *in re Bater and Mayor, &c., of Birkenhead*, 1893, 1 Q.B. 679, 2 Q.B. 77; and *Walshaw* v. *Brighouse Corporation*, 1899, 2 Q.B. 286, relied on by the Lord Ordinary, were distinguishable, because they proceeded on a different statute which did not give such complete protection to the local authority. Further, the last-mentioned case had been doubted in *Hobbs*

v. *Winchester Corporation*, 1910, 2 K.B. 471, at p. 485. The respondents' claim was really covered by one or other of the clauses of section 166. The expression "irregularity in the execution of the Act" was no doubt difficult to construe, but it certainly did not mean a departure from the statutory procedure, nor an action not authorised by the Act — *Edwards* v. *Parochial Board of Kinloss*, June 2, 1891, 18 R. 867, 28 S.L.R. 669; *Mitchell* v. *Magistrates of Aberdeen*, January 17, 1893, 20 R. 253, 30 S.L.R. 351; *Sutherland* v. *Magistrates of Aberdeen*, November 24, 1894, 22 R. 95, 32 S.L.R. 81. The expression must therefore mean a mistake or an error of judgment in doing something authorised by the Act, and these words exactly described the action of the veterinary surgeon here in seizing meat which appeared to him to be unsound but was really sound. The pursuer's claim, which was a claim of damages, was therefore excluded by the first clause of section 166. But it also seemed to be a claim for a "wrong" done by an "operation under the Act," for that expression meant apparently something very similar to a mistake or error of judgment in doing what the Act authorised — *Duncan* v. *Magistrates of Hamilton*, November 29, 1902, 5 F. 160, 40 S.L.R. 140. The latter clause of section 166 also would therefore seem to apply to the pursuers' claim. If that clause did not in respect of the time limit bar the present proceedings, then the Public Authorities Protection Act 1893 (57 and 58 Vict. cap. 61) did, for section 3 of the last-mentioned Act excluded its application only in the event of section 166 of the Public Health Act barring the proceedings. It was quite true that the present proceedings consisted merely in an application for appointment of an arbiter, but either the arbiter was merely to assess damages reserving the question of liability, in which case the action necessary to enforce his award would be barred by one or other of the above enactments, or the arbiter was to dispose of the question of liability also, in which case the present proceedings would be comprehended by the words of either of the above enactments. The cases relied on by the Lord Ordinary were distinguishable. *Delany* v. *Metropolitan Board of Works*, 1867, 2 C.P. 532, 3 C.P. 111, proceeded on a different statute, while in *Corporation of Glasgow* v. *Miller*, June 15, 1905, 13 S.L.T. 167, the plea founded on the statute was not timeously taken.

Argued for the respondents—When an Act of Parliament authorised interference with rights of property as, *e.g.*, section 43 of the Public Health (Scotland) Act 1897 did, then one expected to find provision in it for compensation in cases where there was no fault justifying the interference—*New River Company* v. *Johnson*, 1860, 2 E. and E. 435, *per* Cockburn, C.J., at p. 442. Accordingly the Public Health (Scotland) Act 1897 contained specific provisions as to compensation for damage caused by the rightful exercise of particular powers in sections 47 (5), 48 (2), 96, 102, and also a general provision in section 164 for compensation for damage caused by the exercise of other powers, and the respondents' claim was an illustration of what that section comprehended — *Macdougall* and *Murray*, *cit. sup.* "Compensation" and "damages" were two perfectly distinguishable things—*Dixon* v. *Calcraft*, 1892, 1 Q.B. 458, *per* Esher, M.R., at p. 463. It was clear on application of that distinctio that the present claim was a claim for compensation and not for damages—*Brierley Hill Local Board* v. *Pearsall*, 1884, 9 A.C. 595; *Peterhead Granite Polishing Company* v. *Parochial Board of Peterhead*, January 24, 1880, 7 R. 536, 17 S.L.R. 344; *District Committee of the Middle Ward of Lanarkshire* v. *Marshall*, November 10, 1896, 24 R. 139, *per* Lord Pearson (Ordinary) at p. 144, 34 S.L.R. 130; *Blyth* v. *Magistrates of Edinburgh*, October 23, 1905, 13 S.L.T. 459; *Thomson* v. *Local Authority of Edinburgh*, July 29, 1908, 25 S.L.Rev. 73; *Cessford* v. *Commissioners of Millport*, October 26, 1899, 15 S.L.Rev. 362; *Thomson* v. *Broughty Ferry Commissioners*, October 26, 1898, 14 S.L.Rev. 365; *Christie* v. *Broughty Ferry Commissioners*, July 29, 1898, 14 S.L.Rev. 368. Neither of the clauses of section 166 of the Act could have any application to the respondents' claim, for it was not founded on any "irregularity in the execution of the Act" or on any wrong done in or by an operation under the Act. On the contrary, it was admitted that section 43 completely justified the veterinary surgeon in seizing the meat because it appeared to him to be unsound, nor was there anything in the subsequent procedure to which exception was or could be taken. Further, the present proceedings were not an "action or prosecution" to which alone a two months' limit was applied by section 166. Similarly the Public Authorities Protection Act 1893, section 1, did not include such proceedings as were here sought to be interdicted—*Delany* v. *Metropolitan Board of Works*, *cit.*; *Corporation of Glasgow* v. *Miller*, *cit.*; *Gilliland* v. *County Council of Ayr*, May 23, 1907, 15 S.L.T. 21; Muirhead, Municipal and Police Government, 2nd ed. p. 1009; Glen, Law of Public Health, 13th ed. p. 921; Lumley, Public Health, 7th ed. p. 1030, citing *Moreton* v. *Alfreton*, unreported. Further, as the Public Health (Scotland) Act 1897 applied to Scotland only, and contained in section 166 a limitation of actions, the Public Authorities Protection Act 1893 was excluded by section 3 thereof.

At advising—

LORD SALVESEN—[*After the narrative above quoted*]—Section 164 of the Public Health (Scotland) Act 1897 provides that "full compensation shall be made . . . to all persons sustaining any damage by reason of the exercise of any of the powers of this Act." The respondents say that the beef which was seized was in fact sound when seized, but that it became unsound and valueless by the subsequent detention and handling to which it was

exposed. They make no charge of negligence against Mr Trotter. Their claim, which is only for the value of the beef, assumes that he acted *bona fide* in the execution of the Act, but that he made a mistake in seizing as unsound meat which was in reality perfectly wholesome, and that they have thus suffered loss "by reason of the exercise" of one of the powers contained in the Act. The complainers say that under the guise of a claim of compensation the respondents are really making a claim of damages, and that such a claim is excluded by section 166. They rely upon two clauses in that section. The first provides that the local authority shall not be liable in damages for any irregularity committed by their officers in the execution of the Act, and the second, that every action or prosecution against any person acting under this Act on account of any wrong done in or by any action, proceeding, or operation under this Act, shall be commenced within two months after the cause of action shall have arisen.

It is not easy to interpret the word "irregularity" occurring in this section. At first sight it might have been supposed to refer to an irregularity of procedure, but this construction appears to be conclusively negatived by three judgments of the First Division (*Edwards*, 18 R. 867; *Mitchell*, 20 R. 253; and *Sutherland*, 22 R. 95). All these decisions deal with the construction of an identical clause in the previous Public Health Act of 1867, and it was held that the section did not apply where the procedure prescribed by the Act had not been followed. In *Mitchell's* case the pursuer averred that a person had been removed to hospital without a warrant from the Sheriff and against his consent; and it was held that the local authority, assuming this to be established, were entirely outwith the Act, and therefore not protected by the section relied on. The decision in the case of *Sutherland*, which was an action of damages based on the averment that a sick child had been removed to hospital without a warrant from a magistrate, and that the child had died in consequence of the negligent manner in which its removal had been conducted, was to the same effect. It must therefore be taken to be settled that "irregularity" within the meaning of the section does not mean a failure to comply with the prescribed procedure; for the officer who is guilty of such irregularity cannot be held to be acting in the execution of the Act but outwith its provisions. It may be noted that there is no clause such as occurs in the other Act founded on, "or the intended execution of the Act."

The reclaimers accordingly contended with much force that the phrase "irregularity" must include a mistake *bona fide* made by an officer in the course of performing his duties under the Act, and that this is the nature of the respondents' claim. If the mistake is one which infers negligence against the officer in question I should agree with this contention; and indeed it was given effect to in the case of *Duncan* (5 F. 160). There a child had been removed to a fever hospital in virtue of a warrant granted by a magistrate under the provisions of the 1897 Act. While in hospital it was injured by upsetting over itself a bottle of nitric acid which had been negligently placed within its reach by the servants of the corporation. It was held that the limitation contained in the clause of section 166 applied, and that the action ought to have been brought within the period of two months from the date of the injury. The decision is therefore not helpful on the other question whether such an act of negligence constitutes "irregularity" within the meaning of the first clause. Indeed, it seems to imply that "irregularity" does not include negligence, otherwise it would have been unnecessary to appeal to the two months' limitation of action. For such "irregularity," whatever the word may mean (and counsel could not help us to a construction), the official alone is liable, although under the same section he falls to be indemnified by the local authority if he has been acting in the *bona fide* execution of the Act. If so, it would appear to be of small practical importance whether the local authority or the officer is the person against whom the claim falls to be made. Still if it can be affirmed that the claim is based upon an irregularity by the officer, it must be made against him and not against the local authority, which is expressly declared not to be liable for his "irregularity."

On the facts as averred by the complainers I feel unable to affirm that Mr Trotter committed any "irregularity" in the execution of his duty. Under section 43 he was authorised to seize and carry away any animal intended for the food of man which was exposed for sale, provided only it appeared to him to be unsound or unfit for the food of man. He is so authorised, no doubt, in order that the animal seized may be dealt with summarily by a sheriff, magistrate, or justice, and if it appears to the latter that the animal seized is unsound, his duty is to condemn it and order it to be destroyed or so disposed of as to prevent it from being exposed for sale or used for the food of man. There is, however, no express provision as to what is to be done with the animal in the meantime, nor as to the period within which a complaint against the owner is to be served. It cannot therefore be affirmed that Mr Trotter acted irregularly or wrongfully in keeping the meat in a detention chamber for about a week, although it may well be that this detention was sufficient to make the meat valueless for food. The complainers' own averments seem to exclude the idea that Mr Trotter acted otherwise than in accordance with his duty, for they found upon the Sheriff's expression of opinion to the contrary. Nor does it follow that the fact that he was mistaken in seizing the meat inferred any negligence on his part. In the public interest it may occasionally be the duty of an officer to seize meat which is exposed for sale if he has probable

grounds for doing so, or, to use the language of the Act, if it appears to him to be unsound. For so acting he cannot be charged with negligence or with "irregularity," but it may nevertheless be just that the owner of the meat should not suffer loss by his action when he turns out to be mistaken, but should be indemnified by the general body of ratepayers in whose interests the proceedings are taken.

If I am right so far, it seems to me perfectly clear that the second clause of section 166 does not apply. That clause provides that every action or prosecution against any person acting under this Act on account of any wrong done in or by any action, &c., under this Act shall be commenced within two months after the cause of action shall have arisen. It is plain, therefore, that the clause only deals with actions for delict and not with claims for compensation. Apart from this, no lawyer would describe a claim for compensation which falls to be determined by an arbiter as an action or prosecution. The characteristic feature of an action is that it asks the Court to pronounce a decree against the person cited as defender, whereas an arbiter's award cannot itself be enforced except by an action on the award. The latter kind of action cannot have been contemplated, for the period is so short that however promptly the claim were made it would be almost impossible to obtain an award within the time specified. In any case such an action would not be "on account of any wrong done." A claim for compensation, to use Lord Gifford's words in the *Peterhead Granite Polishing Co.* case (7 R. 546), is for injury legally and rightfully caused by the exercise of statutory powers

It remains to consider whether the Public Authorities Protection Act 1893 applies. The language is very wide, for it applies to "any action, prosecution, or other proceeding . . . against any person for any act done in pursuance or execution or intended execution of any Act of Parliament or of any public duty or authority." If the word "proceeding" stood by itself it might conceivably cover a claim in an arbitration, but I think it falls to be construed by reference to the words with which it is associated, and must be read as meaning any proceedings of the nature of an action or prosecution. In the case of *Delany* (L.R., 2 C.P. p. 532) similar words were held not to exclude a claim and demand of arbitration for damage done to buildings by a public body acting under their statutory powers. The decision in the case was affirmed on appeal (L.R., 3 C.P. 111), the Chief-Baron saying that the matter was too clear for argument. It would indeed be startling if it were otherwise, for there would then be a statutory limitation of claims for compensation under the Lands Clauses Act. This question was expressly raised in a case that was decided by Lord Ardwall in the Outer House, in which he held that the Public Authorities Protection Act had no application to claims for compensation under the Lands Clauses Act. Now the claim for compensation under section 164 of the Public Health Act 1897 falls to be ascertained in exactly the same way as claims for compensation under the Lands Clauses Act, and is truly a claim of the same nature. There is a further ground on which the same decision may be reached, for by section 3 of the 1893 Act its application is excluded where the action, prosecution, or other proceeding is on account of any act done under an Act of Parliament, and that Act of Parliament applies to Scotland only, and contains a limitation of the time and other conditions for the action, prosecution, or proceeding. The Public Health Act 1897 exactly answers this description, and it seems to me vain to contend that because there is no limitation of time within which a claim for compensation must be made, that a six months' limitation is to be read in from the Public Authorities Protection Act. I have therefore in the end come to be of opinion that the Lord Ordinary has arrived at the right conclusion and that his interlocutor ought to be affirmed.

LORD GUTHRIE—I agree. The appellants do not dispute that under the Public Health (Scotland) Act 1897 a claim for compensation accrued to the respondents out of the proceedings detailed on record. But they say that by section 166 of the Act the respondents are excluded from enforcing the claim, because they failed, within two months of the cause of action having arisen, to commence against the appellants what the section calls "action or prosecution." By section 164 the respondents' claim for compensation must be disposed of by an arbiter, on whose award an action may be raised. If the appellants are right in their contention, the statutory remedy could only be made effectual in the rare cases in which it might be possible to obtain an award and commence an action thereon within two months after the cause of action arose. In most cases the remedy could be avoided by the skilful use of the law's delays.

I agree with your Lordships that section 166 does not apply to the respondents' claim. The section only applies in the case of an "irregularity" committed by the officers of a local authority, and where there has been a "wrong done." The proceedings of the appellants' officers, on which the claim is based, did not involve any "irregularity" on their part, nor was there any "wrong done" by them. Whatever the scope of section 166 may be, it cannot apply to a case where it is admitted that the officials in question were acting at every step in the *bona fide* intended execution of their statutory duty.

The case is of general importance. Section 43 of the Act, under which the appellants' proceedings were taken, applies not only to animals but to "any article, whether solid or liquid, intended for the food of man." It therefore covers articles inspection of which by outside appearance may be even more likely to lead to honest

mistakes, whether of soundness or unsoundness, than in the case of flesh. And it would appear as if claims for compensation under such sections of the Act as 18, 43, 103, and 109, would be equally subject to the limitations contained in section 166, if the appellants' construction of that section is correct.

I agree with your Lordships that the arbitration in question is not "an action, prosecution, or other proceeding" in the sense of the Public Authorities Protection Act 1893.

The LORD JUSTICE-CLERK concurred.

LORD DUNDAS was sitting in the First Division.

The Court adhered.

Counsel for Complainers (Reclaimers)—Clyde, K.C. — Fraser — Russell. Agents—Campbell & Smith, S.S.C.

Counsel for Respondents—Wilson, K.C. —D. M. Wilson. Agents — Patrick & James, S.S.C.

Wednesday, January 31.

FIRST DIVISION.

[Lord Cullen, Ordinary.

BURGESS'S TRUSTEES *v.* CRAWFORD AND OTHERS.

Charitable Trust—Bequest for Industrial School—Conditions Incapable of Fulfilment—Lapse—Cy près.

A testator directed his trustees, on the expiry of a liferent, to apply the residue of his estate "in founding, erecting, and endowing in Paisley an Industrial School for Females." At the date of the will the bequest could have been carried out, but by the time the liferentrix died it had, owing to supervening legislation, become impracticable. In a multiplepoinding raised after her death the trustees proposed to retain the residue and to administer it *cy près*.

Held that the bequest was one to take effect upon the happening of a condition which had failed, but the will evinced no intention to dedicate the money to charity independently of the particular *modus* indicated by the testator, and that accordingly the bequest had failed and could not be administered *cy près*.

On 4th July 1910 John Elliot Murray, bank agent, Paisley, and another, the trustees acting under the trust-disposition and settlement of the late Charles Burgess, manufacturer, Paisley, *pursuers and real raisers*, brought an action of multiplepoinding and exoneration against (1) W. G. Crawford and others, the beneficiaries under the settlement; (2) James Leonard and others, the testator's next-of-kin; and (3) themselves as trustees, *defenders and claimants*. They, *inter alia*, craved the Court to determine whether the bequest by Mr Burgess of the residue of his estate for the purpose of founding in Paisley an industrial school for females had lapsed or fell to be administered *cy près*.

The following *narrative* is taken from the opinion (*infra*) of the Lord Ordinary—"The question arising now for decision in this case relates to a charitable bequest contained in the trust settlement of the deceased Charles Burgess, manufacturer in Paisley. Mr Burgess died in 1860. He left his wife the liferent of the residue of his estate, providing that if it yielded less than £500 per annum it should be made up to that amount out of capital. He bequeathed a variety of legacies, including several to religious or charitable institutions. He further provided that after the death of his wife her niece Helen Gilchrist should enjoy the liferent of the residue, the fee to go at her death to her children. In the event of her leaving no lawful issue he made the charitable bequest of the residue now in question. It is in these terms—'In the event of her (the said Helen Gilchrist) dying without leaving lawful issue, I direct the said residue at her death to be applied by my said trustees in founding, erecting, and endowing in Paisley an Industrial School for Females, under such rules and regulations as my trustees may see fit to make, with power to them to name their successors, and to take the writs and title-deeds to themselves and such successors in such form, and with such powers and conditions, as they shall judge expedient, and to do every act and deed for the permanency and management of the institution which they may see cause to adopt as fully and freely as I could do myself: Declaring that if the said residue on a final apportionment and scheme of division of my estate shall not amount to the sum of £2000, then the principal sums of the legacies bequeathed as aforesaid to the said John Crawford, William Crawford, Elizabeth Crawford or Orr, William Gilchrist, Robert Gilchrist, John Gilchrist, James Burgess, Peter Macarthur, John Macarthur, Jean Macarthur, John Burgess, and Archibald Burgess, and their several foresaids, shall suffer a proportional diminution of their respective amounts, which shall be added to the said residue so as to bring up the same to the sum of £2000.'

"The estate left by Mr Burgess amounted to £7900. Encroachments on capital were necessary to provide his wife during her survivance with £500 per annum, which reduced the amount of the estate as at her death to £4900. The legacies amounted to £5600, and thus all the legacies had to suffer abatement, while those to the persons named in the clause already quoted were in order to provide the stated residue of £2000 further abated, so that these legatees received only 7s. 4½d. per £1. Helen Gilchrist died in 1903 without issue. The said residue, with accumulations of interest since her death, now amounts to £2125 or thereby.