redeem their promise of informing the pursuer how they proposed to deal with the case in view of the medical examination.

I should have been disposed to construe the correspondence as showing that the defenders were playing with the pursuer, and that they did dispute liability; but as your Lordships take a different view as to the meaning and effect of these particular letters it would serve no good purpose for me to dissent.

The LORD PRESIDENT, who had not heard the case, delivered no opinion.

The Court answered both questions of law in the affirmative, and allowed the respondents the expenses of the appeal.

Counsel for the Appellant — Constable, K.C. — MacRobert. Agents — Gardiner & Macfie, S.S.C.

Counsel for the Respondents—Moncrieff, K.C.—Dykes. Agents—Boyd, Jameson, & Young, W.S.

Saturday, June 3.

FIRST DIVISION.

[Lord Anderson, Ordinary.

KENNEDY *v.* NORTH BRITISH WIRELESS SCHOOLS, LIMITED, AND ANOTHER.

Company—Transfer of Shares—Registration of Transfer — Right of Directors to Refuse to Register.

The directors of a company having by the articles of association power to refuse to register a transferee of shares without assigning reasons, refused to register a transferee of shares, who thereafter brought an action against the company concluding for decree that the company should be ordained to register him, or alternatively for declarator that the former owner of the shares (who was registered) held the shares in trust for him. He alleged that the directors had acted corruptly in refusing to register. Circumstances in which the Court *held* that the company was not bound to register the transferee, but *granted* decree in terms of the alternative conclusion of the summons.

Alexander Kennedy, laundryman, Castlebank, Anniesland, Glasgow, *pursuer and reclaimer*, brought an action against the North British Wireless Schools, Limited, Glasgow, and Edward Alfred Mayne, wireless telegraphy expert, c/o Cowan & Stewart, W.S., 10 Castle Street, Edinburgh, *defenders and respondents*.

In it he sought decree to have the defenders, the North British Wireless Schools, Limited, ordained "to register in their books a transfer dated 15th January 1914 by James S. Saunders, Deputy-Clerk of Session, Edinburgh, in favour of the pursuer of 1250 ordinary shares, Nos. 1251 to 2500 inclusive, of and in the undertaking called the North British Wireless Schools, Limited, presently standing in name of the said Edward Alfred Mayne in the books of the said company, and to deliver to the said pursuer a new certificate for said shares upon his paying the proper fee of 2s. 6d. therefor, or alternatively" to have it found and declared "that the defender, the said Edward Alfred Mayne, holds the said 1250 shares of and in the undertaking of the North British Wireless Schools, Limited, in trust for the pursuer, and to enable the pursuer to uplift the dividends declared and to be declared in respect of said shares" to have the said E. A. Mayne "ordained at the pursuer's expense to sign and deliver to the pursuer an irrevocable mandate or letter of authority authorising the pursuer to uplift the said dividends in respect of said shares, and that the pursuer's acknowledgment thereof shall be sufficient discharge to the said company for said dividends. . . ."

Article 19 of the *articles of association* of the North British Wireless Schools Limited provided—"Before a member shall be entitled to transfer any of his shares, he shall intimate to the secretary in writing the name and address of the proposed transferee; and in the case of a proposed sale the price *bona fide* at which he has agreed to sell. The directors may, without assigning a reason therefor, refuse to register any transfer of a share (1) where they shall be of opinion that the transfer would not be conducive to the interests of the company, (2) where the company has a lien on the share, (3) where any call on the share has not been fully paid up, or (4) where the directors shall consider the proposed transferee to be one whom it is not desirable to admit to membership."

The *facts* of the case and the *procedure* appear from the opinion of the Lord Ordinary (ANDERSON), who on 6th February 1916 assoilzied the North British Wireless Schools, Limited, from the first conclusion of the summons and granted decree in terms of the second conclusion of the summons.

Opinion.—"In September 1913 the defender Edward Alfred Mayne was on the register of the defending company, the North British Wireless Schools, Limited, as the owner of 2500 or thereby fully paid £1 shares of said company. On 24th September 1913 an action against Mayne was raised at the instance of W. Milne Guthrie, accountant, Glasgow, concluding, *inter alia*, for payment of £400, with interest and expenses. Arrestments on the dependence of said action were used in the hands of the said company and 1750 of said shares were thereby attached. Decree in absence was pronounced in said action on 23rd October 1913.

"On 20th November 1913 an action of furthcoming was raised by the said W. Milne Guthrie against the said company as arrestees, and against Mayne as common debtor, to have the said shares realised for behoof of the said W. Milne Guthrie, and on 26th November 1913 Lord Cullen in that action pronounced an interlocutor remitting to

Mr W. Stuart Hamilton, stockbroker, Glasgow, to sell the said shares or so many thereof as might be necessary, and granting warrant to Mr Saunders, Depute Clerk of Session, after such sale, to grant a transfer in favour of the purchaser. In consequence of Mr Hamilton being unable to carry out said remit, Lord Cullen on 12th December 1913 remitted of new to Mr Thomas M'Lintock, C.A., Glasgow, to effect a sale of the necessary number of shares.

"Mr M'Lintock received six offers for said 1750 shares. The offer of Mr Kennedy, the pursuer in the present action, of 6s. 8d. per share was the highest offer received, and on 24th December 1913 Mr M'Lintock accepted said offer subject to the condition that 'the Court may only grant a transfer of such number of shares as may be necessary to satisfy and pay the expenses of and incident to the sale of the said shares, as also the sums owing by' Mayne to Guthrie. In his report to Lord Cullen Mr M'Lintock states that 'in terms of the company's articles of association the directors have the right to refuse to register any transferee as a shareholder if they think fit to do so. This was made known to the purchaser in the course of the negotiations, and he has undertaken to take himself the steps necessary to have his name placed on the register of members.' Mr Kennedy accordingly when he purchased said shares did so on the footing that there might be trouble in connection with the registration of the transfer in his favour, and he took the risk of the board of directors refusing to authorise registration.

"It was found that a sale of 1250 of Mayne's shares would be sufficient to meet his liability under the decree which W. Milne Guthrie had obtained against him, and Mr M'Lintock accordingly sold to Mr Kennedy this number of the shares. The price was duly paid to Mr M'Lintock by Mr Kennedy, and I am informed that it has been utilised in discharging Mayne's obligations to Guthrie and the expenses incurred in connection with the foresaid proceedings. Mr Kennedy obtained from the Clerk of Court a transfer of said 1250 shares, but when he applied to the directors of the company to have his name registered in the books of the company as owner of said shares the directors intimated to him that they refused to register his name.

"Mr Kennedy has in these circumstances brought the present action, which is directed against the said company and also against Mayne. The first conclusion of the summons is that the company should be ordained to register in their books the foresaid transfer of shares in the name of the pursuer. The alternative conclusion is that it should be declared that Mayne holds the said shares in trust for the pursuer, and that to enable the pursuer to uplift dividends on said shares Mayne should be decerned and ordained to sign and deliver to the pursuer an irrevocable mandate or letter of authority authorising the pursuer to uplift said dividends. This alternative conclusion seems to be based upon the judgment of the Court in the case of *Stevenson* v. *Wilson*, 1907 S.C. 445, 44 S.L.R. 339. The company and Mayne lodged separate defences to the action, but on 14th May 1914 a minute was lodged in process on behalf of Mayne consenting to decree in terms of the second conclusion of the summons, provided decree in terms of the first conclusion is refused.

"The action which had been called before me was transferred to Lord Cullen, who on 26th May 1914 allowed a proof before answer. The company reclaimed against this interlocutor to the First Division, and on 20th October 1914 the interlocutor of Lord Cullen was adhered to.

"It is important at the outset to ascertain the issue of fact which has been remitted to probation. The defending company founds strongly on article 19 of the articles of association of the company. That article begins by providing for written intimation being made by a member proposing to transfer his shares of the name and address of the proposed transferee, and in the case of a proposed sale the price *bona fide* agreed upon. The company in their defences found upon this part of the article, but at the hearing on evidence counsel for the company intimated that he did not propose to rely on that part of the article. I do not see how that portion of the article could be invoked by the company, because the proposed transfer was to be carried out, not by a member of the company, but by the Clerk of Court, who was not obliged to make any communication to the company in carrying out the order of the Lord Ordinary.

"The company, however, relied upon the remaining portion of the article which gives the directors a right of veto of a transfer without assigning reasons, in four specified sets of circumstances. It is not alleged by the pursuer that the directors exercised their veto in circumstances which are not covered by the terms of the article; and the company in their defences maintain that their veto was determined by considerations specified in the article — to wit, that the transfer would not be conducive to the interest of the company, and that it was not desirable to admit the proposed transferee to membership of the company. As the article absolves the directors from assigning reasons for their decision they are practically masters of the situation, and it is incompetent to show that the personality of the proposed transferee is unexceptionable, or that it would really be beneficial and not detrimental to the interests of the company to have his name on the register. The directors' action in a matter of this sort is not, however, absolutely beyond challenge. In the case of *Stewart* v. *James Keillor & Sons, Limited*, 1902, 4 F. 657, Lord Trayner, at p. 678, 39 S.L.R. 353, dealing with an article of association whose terms resemble that under consideration in the present case, says—'There is nothing illegal in this provision, and in many aspects of it it is reasonable. The pursuer can take no exception to it, for it is on that condition she is at present a shareholder—it is part of her contract with the company. But the directors must exercise the power so conferred on them fairly and reasonably; they must not

act in the exercise of that power capriciously or corruptly.' The Court negatived the issue of fact raised in that case, that the directors had acted corruptly or capriciously.

"A pursuer accordingly may make a relevant case against the directors of a company in a question of this nature by alleging that they were actuated by corrupt motives in passing the resolution complained of. That is the case which the pursuer makes in the present action. His averment against the directors is that in passing the resolution which is challenged they abused their powers solely for the purpose of enabling one of their own members to acquire the said shares at less than their true value. That, then, is the issue to which the proof was directed, and what I have to determine is whether that averment of the pursuer has been proved. In considering that matter it is proposed to keep in view (1) that the *onus* of proof is on the pursuer, and the gravity of that *onus* is emphasised by the fact that the Lord Ordinary in the interlocutor allowing a proof has ordained the pursuer to lead; (2) there is a presumption that the directors in the matter in question have acted in *bona fide* and reasonably — *in re Coalport China Company* [1895], 2 Ch. 404; *in re Gresham Life Assurance Society*, 1872, 8 Ch. Ap. 446; (3) the pursuer is attacking the conduct of the whole body of directors.

"The facts established by the pursuer's proof—the defenders led no evidence—were these. On 6th November 1913 Mr W. Murdoch, solicitor, Glasgow, who was then agent for W. Milne Guthrie, for the company, and for Mr Kerr, chairman of the directors, wrote Mr E. Rolland M'Nab, S.S.C., Edinburgh, that in the opinion of the chairman of the directors the full value of the shares was 1s. per share. On 21st November 1913 Mr Murdoch, on behalf of Mr Kerr, offered to purchase the 1750 shares for £85, which is at a rate of less than a 1s. per share. On 9th December Mr M'Nab received an offer from a Leith firm of solicitors of £200 for 1750 shares. Later in December Mr Kerr made to Mr M'Lintock an offer of £450 for the 1750 shares. I hold it proved that on 3rd March 1914 Mr Kerr offered to pursuer's agent 7s. 6d. per share for the 1250 shares which the pursuer had acquired, and on the following day that offer was increased to 9s. a share. It is thus apparent that Mr Kerr was extremely anxious to acquire these shares for his own personal benefit. It is to be kept in view that the two last-mentioned offers were made after the directors had resolved to refuse to register the pursuer's name as transferee, and, indeed, sometime after the present summons had been served. The resolution of the directors to the above effect was passed at the board meeting of 26th January 1914. The eagerness of Mr Kerr to obtain the shares undoubtedly raises a suspicion as to his good faith in the matter of the resolution complained of, but where a charge of so serious a character has been made it would be out of place to proceed upon suspicion alone. The pursuer has two serious difficulties to overcome—(1) he has to establish that because Mr Kerr was anxious to acquire the shares he acted corruptly in connection with the resolution complained of, and (2) he has to make out that the other four directors who supported the resolution were also actuated by the corrupt motive suggested. I have reached the conclusion that the pursuer has failed to prove the case he sets out to establish against the chairman, and that he has led no evidence whatever to implicate the other directors.

"The pursuer endeavoured to get over his difficulty as regards the other directors by urging that if the chairman had acted from corrupt motives that fact vitiated the resolution of the board, and he appealed to the decisions which have established that, in regard to the action of justices dealing with licensing questions, bias in the case of one member may nullify the determination of the whole body. It seems to me, however, that these cases are not applicable. A licensing court is a judicial tribunal—*Sharp* v. *Wakefield* [1891] A.C. 173; *Blaik* v. *Anderson*, 1900, 7 S.L.T. 299. A board of directors is the executive of a commercial undertaking, and I do not think that the principles which underlie the decisions relied on can appropriately be applied to the resolution of such a body.

"I shall accordingly assoilzie the company from the first conclusion of the summons. I do so with some regret, because I have been unable to discover any reason for the directors' refusal to place the pursuer's name on the register. He is a very respectable and successful Glasgow man of business, and there seems therefore nothing that can be urged against him on personal grounds. Again, I cannot conceive in what respect his registration would be detrimental to the interests of the company. These matters, however, are not for me but for the directors, and it may be they have reasons for what they did although I am unable to surmise them, and none of the directors has chosen to go into the witness-box to disclose what they are.

"Counsel for the company stated that he was interested only in the first conclusion of the summons, and had no opposition to offer to the pursuer obtaining decree in terms of the alternative conclusion. I shall therefore give the pursuer decree in terms of that conclusion."

The pursuer reclaimed and argued—The *onus* was on the reclaimer to show that the defenders had acted corruptly in refusing to register the transfer in his favour, but that *onus* had been discharged, for there was a strong personal interest in one of the directors to see that the transferee was refused. From the offers he had made for the shares this director obviously desired them for himself. The transferee being unexceptionable, and the directors' duty being merely to consider the interests of the company in dealing with questions of registration—*in re The Bede Steam Shipping Company*, 1916, 32 T.L.R. 474—a presumption of corruption arose, and the respondents had led no rebutting

evidence—*in re Gresham Life Assurance Society*, 1872, 8 Ch. App. 446.

Counsel for the respondents were not called upon.

LORD PRESIDENT—In this case the Lord Ordinary has reached the conclusion that the pursuer has failed to prove the case he set out to establish against the chairman and that he has led no evidence whatever to implicate the other directors. In that conclusion I entirely agree, and having read the very full and clear exposition of the case which is to be found in the opinion of the Lord Ordinary I desire to say that I concur and have nothing to add. I move your Lordships to adhere to the interlocutor reclaimed against.

LORD MACKENZIE—The averment which constitutes the gravamen of the attack on what the board did is contained in condescendence 4—"In passing the resolution mentioned in the answer the directors abused their powers solely for the purpose of enabling one of their own members to acquire the said shares at less than their true value."

Now I do not find any averment that the four directors other than the chairman had knowledge that an offer had been made by the chairman to acquire the shares in question. In the absence of any averment of that kind and, consequently, in the total absence of any proof that such was the case, I do not think that the evidence led by the pursuer is sufficient in character to compel the directors to go into the box to justify the action taken by the board at the meeting on 26th January 1916, the minute of which has been printed in the papers before us.

Further, it appears to me that it was in the power of the pursuer in this case to cite the directors to attend, and to put any competent questions to them. In the absence of any attempt to do so I am unable to take the view that upon the facts before us the pursur can raise any of the difficulties which were put in the argument that has been addressed to us.

Accordingly I am of opinion that the conclusions of the Lord Ordinary are correct.

LORD SKERRINGTON—I agree with your Lordships and the Lord Ordinary. I do not think it necessary to express any opinion as to what questions might have been legitimately put to the directors if the pursuer had thought fit to adduce them as witnesses.

LORD JOHNSTON was absent.

The Court adhered.

Counsel for the Reclaimer—Macmillan, K.C.—Christie. Agent—E. Rolland M'Nab, S.S.C.

Counsel for the Respondents—D. Anderson, K.C. — Lillie. Agents — Dalgleish, Dobbie, & Company, S.S.C.

HIGH COURT OF JUSTICIARY.

Monday, May 22.

(Before the Lord Justice-General, Lord Mackenzie, and Lord Anderson.)

LOUDON *v.* TORRANCE.

Justiciary Cases—Procedure—Expenses—Summary Jurisdiction (Scotland) Act 1908 (8 Edw. VII, cap. 69), sec. 73—Respondent in Suspension Consenting to Conviction being Set Aside.

The Summary Jurisdiction Act 1908 enacts, section 73—"Where an appeal has been taken in terms of this Act or by suspension or otherwise, and the prosecutor, on said appeal being intimated to him, is not prepared to maintain the judgment appealed against, he may by a minute . . . consent to the conviction and sentence being set aside . . . and shall send a copy of said minute to the appellant, and the clerk of court shall thereupon ascertain from the appellant . . . whether he desires to be heard in the High Court before the appeal is disposed of, and shall note on the record whether or not the appellant desires to be heard, and shall thereafter transmit the complaint and relative proceedings to the Clerk of Justiciary, who shall lay them before any judge of said court, and such judge . . . may set aside the conviction . . . and may award expenses to the appellant, not exceeding three pounds three shillings. . . . Where proceedings are taken under this section the preparation of the draft stated case shall be delayed pending the decision of the High Court."

The respondent in a suspension consented to the conviction and sentence being set aside. Thereafter the suspender intimated that he did not desire to be heard before the High Court, provided £3, 3s. were paid to him as expenses. The suspender printed the bill of suspension, &c., and the case came out in the Justiciary Roll. *Held* that the Summary Jurisdiction (Scotland) Act 1908, section 73, did not apply to suspensions, and the suspender *found* entitled to five guineas expenses.

Hugh Loudon, *complainer*, brought a bill of suspension against Thomas David Torrance, burgh prosecutor, Kirkintilloch, *respondent*, praying for suspension of a conviction and sentence obtained under the Summary Jurisdiction (Scotland) Act 1908 (8 Edw. VII, cap. 69) against him in the Burgh Court at Kirkintilloch, on 19th April 1916, for a contravention of the Street Betting Act 1906 (6 Edw. VII, cap. 43), section (1) 1.

At the trial the Magistrate refused to allow competent and relevant questions to be put in cross-examination to the witnesses of the respondent. This ruling was objected to, and the objection was duly noted. Thereafter the Magistrate convicted, and pro-