was said by one of the learned Judges in deciding a case, that where a decree for expenses has become a sort of historic fact, then the same rule will not apply. But in the case before us, which though novel in the facts is not novel in the principle to be applied, I do not think any such expression could be fairly said to apply. The whole expense of the litigation arose out of the same accident. The present respondent was quite wrong in the proceedings he first took, and I think it would be a matter of great hardship and injustice for the present appellant if the respondent, having been wrong in his first action and right in his second, could escape all liability for expenses by the device of getting decree in name of his agent. After all the agent's claim is never more in its essence than a rider on his client's claim; and although in the circumstances I have explained decree in his name is allowed in order to remunerate him for his trouble in almost, so to speak, creating the fund in question, I do not think that would be a safe course where, as here, the whole expenses on both sides really arise out of what is one and the same transaction.

I am therefore for refusing to allow decree to go out in name of the agent-disburser. It will go out in name of the client in ordinary form.

LORD KINNEAR—I am of the same opinion.

LORD PEARSON—I concur.

LORD M'LAREN was absent.

The Court, refusing the motion that the decree should go out in name of the agent-disburser, gave decree in ordinary form.

Counsel for Appellants—Horne. Agents—W. & J. Burness, W.S.

Counsel for Respondent—A. M. Anderson. Agents—Clark & Macdonald, W.S.

HOUSE OF LORDS.

Monday, March 11.

(Before the Lord Chancellor (Loreburn), Lord Ashbourne, Lord Macnaghten, Lord James of Hereford, Lord Robertson, Lord Atkinson, and Lord Collins.)

DA PRATO AND OTHERS *v.* PARTICK MAGISTRATES.

(*Ante* February 27, 1906, 43 S.L.R. 406, and 8 F. 564.)

Police — Burgh—Bye-Law — Ultra Vires — Power to Regulate Hours of Opening and Closing Shops — Ice-Cream and Aerated Water Shops — Burgh Police (Scotland) Act 1892 (55 *and* 56 *Vict. cap.* 55), *secs.* 316, 317, 318—*Burgh Police (Scotland) Act* 1903 (3 *Edw. VII, cap.* 33), *sec.* 82.

Where magistrates of a burgh were by statute authorised to make bye-laws in regard to the opening and closing of a certain class of shop, to wit, ice-cream and aerated water shops, "the hours for business not being more restricted than fifteen hours daily," *held* that a duly confirmed bye-law whereby keeping open save between 7 a.m. and 10 p.m. was prohibited was not *ultra vires* or unreasonable, and that an action brought to reduce the bye-law on averments to the effect that little or no business being in practice possible in such shops before 9 a.m., by fixing the opening hour at 7 a.m. fifteen hours "for business" were not given, was irrelevant.

The case is reported *ante ut supra.*

Da Prato and others, the pursuers and reclaimers, appealed to the House of Lords.

At the conclusion of the argument for the appellants, the respondents not being called upon:—

LORD CHANCELLOR—In this case an Act of Parliament was passed which authorised town councils in Scotland "to make bye-laws in regard to the hours of opening and closing of premises registered under the section" of the Act, "the hours for business not being more restricted than 15 hours daily." Pursuant to that power the authorities of the Burgh of Partick made a bye-law by which they prescribed that no person so registered in regard to such premises should keep open except during the hours between 7 o'clock in the morning and 10 o'clock at night on any day.

Now it is said first that this was *ultra vires.* For my part I think that this was the very thing which was intended to be within the powers bestowed upon the town council.

It is next said that it is unreasonable. All I can say is, here is a specific discretion with regard to a matter of power conferred upon this authority named in the section, and when they have exercised their discretion in good faith in regard to it it seems to me that the Court has no power to interfere.

I agree with the opinion of the Lord Justice-Clerk which has been read to us. For these reasons, in my opinion this appeal ought to be dismissed, with costs.

LORD ASHBOURNE—I entirely concur with the opinion which has been expressed by my noble and learned friend the Lord Chancellor.

The Legislature distinctly and deliberately intended to give some increased power, and to give the increased power in regard to the selection of the period and the hours during which certain houses might be open. They did that. Of course they might have acted in such a way as to expose themselves to the charge of acting *ultra vires* and unreasonably, and it might be competent for that to be inquired into if they did so, but I am not satisfied that any case has been at all substantiated to that effect in the least, and I am of opinion that it must be assumed, on the judgments and on the facts, that they were proceeding within the discretion which has been deli-

berately conferred on them. I see no reason at all to question the soundness of the conclusion arrived at by the Courts in Scotland.

LORD MACNAGHTEN—I am of the same opinion.

LORD JAMES OF HEREFORD—I only wish to add one word to what has been said by my noble and learned friends. In concurring in this judgment I think there are some expressions used by the Lord Ordinary to which assent ought probably not to be given in the exact terms used in his judgment. He seems really to shut out the power of review to an extent which I think would be dangerous if it were accepted. There is a power of review in one sense, I will not say of the exercise of their discretion, but where, as Lord Stormonth Darling says, it is clear the bye-law does exceed the powers given, then of course such power to review does exist. For instance, in the case referred to by the learned counsel which Lord Coleridge decided—*Heap* v. *The Rural Sanitary Authority of the Burnley Union*, 12 Q.B.D. 617—where a bye-law laid it down that no pig should be kept within fifty feet of a dwelling-house, of course that would prevent any cottager practically from keeping pigs at all, and there the power of review was exercised and the bye-law was set aside. In the same way here, I think we should be careful to say that we do not shut out the power of review where the power of review had been and ought to be properly exercised. That being so, I assent to the judgment as delivered by Lord Stormonth Darling in the terms in which he has given it.

LORD ROBERTSON—Questions of this kind have frequently arisen in the Scotch Courts, and the principles upon which they proceed are identical with those upon which the Courts in this part of the country have proceeded. They are perfectly well ascertained, and I do not think they require declaration.

The question in the present case seems to me not to admit of argument, and I am bound to say after the long speech we have heard from the learned counsel I do not think it has been argued in any proper sense of the term.

LORD ATKINSON—I concur. I think it is perfectly clear upon the construction of the sections and the bye-law that the bye-law is not *ultra vires*, and I see nothing to show that it is unreasonable.

LORD COLLINS—I concur.

Appeal dismissed with costs.

Counsel for the Pursuers, Reclaimers and Appellants — Crabb Watt, K.C. — T. B. Morrison, K.C. Agents — Borland, King, Shaw, & Company, Writers, Glasgow—Dove, Lockhart, & Smart, S.S.C., Edinburgh—Balfour, Allan, & North, London.

Counsel for the Defenders and Respondents—The Lord Advocate (Shaw, K.C.)—Talbot, K.C. Agents—Donaldson & Alexander, Writers, Glasgow—Simpson & Marwick, W.S., Edinburgh—Grahams, Currey, & Spens, Westminster.

COURT OF SESSION.

Saturday, February 2.

SECOND DIVISION.

[Sheriff Court at Edinburgh.

AKTIESELSKABET "LINA" *v.* GEORGE V. TURNBULL & COMPANY.

Harbour—Ship—Harbour and Dock Rates — "Convenience" — Ship Coming into Harbour to be Handed over to Charterer —Leith Harbour and Docks Act 1892 (55 *and* 56 *Vict. cap. clxxvii*), *Schedule B, Branch I, and Schedule C* (4).

The statutory regulations of a harbour provided that all vessels entering the harbour "only for safety, convenience, or repairs, shall be charged half rates, but if they shall land or take on board goods or remain in the harbour or docks above one month they shall be charged full rates."

Held that a vessel bound under charter-party "to be placed at the disposal of the charterers" there, entering the harbour for that purpose, was not entitled to the reduced charge.

Ship — Charter-Party — Time Charter — Quarantine—Liability of Charterers to Pay Hire while Vessel in Quarantine.

A vessel which had been hired under a time-charter for employment between ports in the United Kingdom and on the Continent was detained in one of such ports for some days under quarantine. The charter-party made provision for the hire ceasing in certain events, but did not mention "quarantine." It contained, however, a clause "mutually excepting" "restraints of princes and rulers," &c.

Held that the charterers were liable for hire for the period during which the vessel was so detained.

The Leith Harbour and Docks Act 1892 (55 and 56 Vict. c. clxxvii), sec. 58, *inter alia*, enacts—". . . It shall be lawful for the Commissioners, and they are hereby authorised, to demand, levy, collect, and receive from the owners, proprietors, or consignees of all goods, merchandise, wares, or commodities whatsoever, which shall be imported into or exported from the harbour and docks . . . of Leith . . . in any ship, vessel, bark, boat, lighter, or otherwise, the rates specified in Schedule (A) to this Act; from the owners of every ship, vessel, bark, boat, or lighter coming into or going out of the harbour and docks or precincts of the port aforesaid, or the agents or managers of such owners, the rates on vessels specified in Schedule (B) to this Act, both sub-