

claim, No. 7 of Process; and decerns and finds the claimants Miss Isabella Neilson and others, claiming in terms of the claim No. 6 of process, liable to the pursuer and claimant, the said Mrs Elizabeth Williamson or Davidson, in the expenses of the action of reduction, from the date of the appearance of the said Miss Neilson and others, and also in the expenses of the competition; allows an account of the said expenses to be given in; and remits the same when lodged to the Auditor to tax and to report; Further, on the motion of the claimants Miss Neilson and others, grants leave to them to reclaim against this interlocutor."

The claimants Isabella Neilson and others reclaimed, but the Court unanimously adhered.

Counsel for Reclaimers—Fraser and Marshall. Agents—J. & J. Gardiner, W.S.

Counsel for Mrs Williamson—W. A. Brown. Agents—Morton, Neilson, & Smart, W.S.

Friday, June 13.

SECOND DIVISION.

DUKE OF BUCCLEUCH AND OTHERS v. COWAN AND OTHERS.

(Ante, p. 494.)

In this case, after the Lord Justice-Clerk had prepared a draft-interlocutor granting interdict in terms of the issue against the defender, Counsel for the pursuers appeared at the Bar and insisted that they were entitled to have interdict, not in the words of the issue, but in terms of the conclusion of the summons—(see p. 499, ante).

After argument, the Court granted interdict in the following terms:—

"Prohibit and interdict the defenders from discharging into the said water of the North Esk from their respective paperworks any impure stuff or matter of any kind, whereby the said water in its progress through or along the property of the pursuers or any of them may be polluted or rendered unfit for domestic use, or for the use of cattle."

Counsel for Pursuer—Watson and Johnstone. Agents—Gibson & Strathearn, W.S.

Counsel for Defender—Solicitor-General (Clark), Q.C. and Asher. Agents—White, Allardice & Dobson, W.S.

Friday, June 20.

FIRST DIVISION.

[Lord Gifford, Ordinary.]

ASHLEY AND OTHERS v. THE MAGISTRATES OF ROTHESAY.

Licensing Magistrates—Statutory Powers—Limitation—9 Geo. IV, cap. 58 (Home Drummond Act)—16 and 17 Vict. cap. 67 (Forbes Mackenzie Act) § 11—25 and 26 Vict. cap. 35 (Public Houses Amendment Act § 2.

Held—(1) that, under section 2 of 25 and 26 Vict. cap. 35, the licensing Magistrates are not entitled to alter the hours of opening and closing licensed hotels and public houses throughout an entire county or burgh; (2) that, under
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the licensing acts, the time during which hotels and public houses are to be kept open is, as a general rule, fifteen hours each day.

Question—Whether the Magistrates have any power, under the exception introduced by the above section, to diminish the number of hours during which public houses and hotels are to be kept open?

Process—Review—25 and 26 Vict. cap. 35, § 34.

Held that a proceeding in the Supreme Court for the purpose of setting aside as incompetent and illegal the proceedings of an inferior court, is not a process of review, and therefore is not incompetent under the above section.

Process—Exclusion of Action through lapse of time—25 and 26 Vict. cap. 35, § 35.

Held that the limitation contained in the above section does not apply to a proceeding for the purpose of setting aside an incompetent and illegal proceeding of the licensing Magistrates.

The pursuers in this action were the four principal licensed hotel keepers in Rothesay. The defenders were the Magistrates and Town-Clerk of the burgh of Rothesay. At an adjourned statutory meeting for the purpose of granting and renewing certificates for the sale of excisable liquors, the defenders, on 15th April 1872, passed a resolution in the following terms, viz.—"The Magistrates considering that in the particular locality within the burgh situated within the following limits, viz., Mackinlay Street, from the south end thereof to the sea, thence the sea and harbours of Rothesay, from Mackinlay Street to Bishop Terrace Brae, thence along Bishop Terrace Brae, Bishop Terrace, Mountpleasant Road, to Ministers' Brae, thence in a straight line from the west end thereof at High Street to the south end of Columhill Street, and thence in a straight line to the south end of Mackinlay Street aforesaid—other hours are required for closing inns and hotels and public-houses than those specified in the forms of certificates in schedule A, annexed to the Act 25 and 26 Vict. cap. 35, applicable thereto,—resolve to insert eight of the clock in the morning as the hour for opening, and ten of the clock at night as the hour for closing the same, in such certificates."

The Public Houses Acts Amendment (Scotland) Act 1862 contains in the 2d section the following provision, viz.—"The forms of certificates contained in schedule A to this Act annexed shall come in place of the forms of certificates provided by the recited Acts, or either of them; and it shall be lawful for the Justices of the Peace for any county or district, or the Magistrates of any burgh, where they shall deem it inexpedient to grant to any person a certificate in the form applied for, to grant him a certificate in any other of the forms contained in the said schedule; provided always that in any particular locality within any county or district or burgh requiring other hours for opening and closing inns and hotels and public-houses than those specified in the forms of certificates in said schedule applicable thereto, it shall be lawful for such Justices or Magistrates respectively to insert in such certificates such other hours, not being earlier than six of the clock or later than eight of the clock in the morning for opening, or earlier than nine of the clock or later