

debt now sued for, that the said bill was endorsed by the said Charles Durie, and was by him delivered and given to the said Margaret Fielding to be used by her as her own absolute property: Find that a bill has been produced by the defender purporting to be for £205 drawn by Charles Durie upon and accepted by the defender and his sisters Margaret Fielding and Mary Ann Fielding, and to be endorsed by Charles Durie: Find in law that the said bill is not duly stamped in accordance with the law in force at the time when it was first executed, and cannot be regarded by the Court in support of the pleas of the defender: Find in fact that apart from the said bill the defender has failed to prove donation of the said sum of £200 to Margaret Fielding: Find in law that the defender is liable to pay said sum to the pursuer, and decern accordingly against the defender for said sum of £200, with interest as concluded for: Find the appellant entitled to expenses both in this Court and the Inferior Court," &c.

Counsel for the Pursuer—Hope—Rhind.
Agent—William Officer, S.S.C.

Counsel for the Defender—Dundas—
Craigie. Agents—Mackenzie & Black, W.S.

Tuesday, January 26.

SECOND DIVISION.

THE CHARTERED INSTITUTE OF PATENT AGENTS v. LOCKWOOD.

Patents, Designs, and Trade-Marks Acts of 1883 (46 and 47 Vict. cap. 57), sec. 101, and of 1888 (51 and 52 Vict. cap. 50), sec. 1—Board of Trade—Power to Make Rules—Rules Laid before Parliament and not Objected to, Held ultra vires.

By section 1 of the Patents, Designs, and Trade-Marks Act 1888, amending the Patents, Designs, and Trade-Marks Act 1883, it was enacted (1) that after 1st July 1889 no person should describe himself as a patent agent unless registered as such in pursuance of the Act; (2) that the Board of Trade should from time to time "make such general rules as are in the opinion of the Board required for giving effect to this section," and the provisions of section 101 of the principal Act should apply to all rules so made; (3) "provided that every person who proves, to the satisfaction of the Board of Trade, that prior to the passing of this Act he had been *bona fide* practising as a patent agent, shall be entitled to be registered as a patent agent in pursuance of this Act."

Section 101 of the Act of 1883, *inter alia*, provides that any rules made in pursuance of it shall be laid before both Houses of Parliament, and that if either House of Parliament should, within

40 days after the rules had been laid before them, resolve that the rules ought to be annulled, the same should be of no effect after the date of such resolution.

The Board of Trade, in virtue of the powers thus conferred, issued certain rules providing *inter alia* that an annual fee of £3, 3s. should be paid by every registered patent agent, and that the name of any patent agent not paying such fee should be removed from the register. These rules were laid before Parliament and not objected to.

Thereafter a person who had proved, to the satisfaction of the Board of Trade that he had practised *bona fide* as a patent agent prior to the passing of the Act of 1888, and who had been registered as a patent agent, refused to pay the annual registration fee.

The keepers of the register thereupon removed his name from the register, and as he continued to describe himself as a patent agent they brought an action of interdict to stop him from doing so.

Held that the rules were *ultra vires* of the Board of Trade, and that as the defender had been improperly struck off the register, the application for interdict should be dismissed.

By section 101 of the Patents, Designs, and Trade Marks Act 1883 (46 and 47 Vict. cap. 57) it is enacted—(1) The Board of Trade may from time to time make such general rules and do such things as they think expedient, subject to the provisions of this Act, (a) For regulating the practice of registration under this Act . . . "(4) Any rules made in pursuance of this section shall be laid before both Houses of Parliament, if Parliament be in session at the time of making thereof, or if not, then as soon as practicable after the beginning of the then next session of Parliament, and they shall also be advertised twice in the official journal to be issued by the Comptroller. (5) If either House of Parliament, within the next forty days after any rules have been laid before such House, resolve that such rules, or any of them, ought to be annulled, the same shall, after the date of such resolution, be of no effect, without prejudice to the validity of anything done in the meantime under such rules or rule, or to the making of any new rules or rule."

The Patents, Designs, and Trade-Marks Act 1888 (51 and 52 Vict. c. 50), which was passed to amend the Patents, Designs, and Trade Marks Act 1883 (46 and 47 Vict. c. 57), contains in section 1, sub-sections 1 to 5, the following provisions with regard to the registration of agents for obtaining patents in the United Kingdom:—"(1) After the 1st day of July 1889 a person shall not be entitled to describe himself as a patent agent, whether by advertisement, by description on his place of business, by any document issued by him, or otherwise, unless he is registered as a patent agent in pursuance of this Act. (2) The Board of Trade shall, as soon as may be after the passing of this Act, and may from time to

time, make such general rules as are, in the opinion of the Board, required for giving effect to this section; and the provisions of section 101 of the principal Act shall apply to all rules so made, as if they were made in pursuance of that section. (3) Provided that every person who proves, to the satisfaction of the Board of Trade, that prior to the passing of this Act he had been *bona fide* practising as a patent agent, shall be entitled to be registered as a patent agent in pursuance of this Act. (4) If any person knowingly describes himself as a patent agent in contravention of this section, he shall be liable, on summary conviction, to a fine not exceeding £20. (5) In this section 'patent agent' means exclusively an agent for obtaining patents in the United Kingdom."

On 11th June 1889 the Board of Trade made and published certain regulations known as "The Register of Patent Agents' Rules 1889." The said rules *inter alia* provide as follows—"1. A register shall be kept by the Institute of Patent Agents, subject to the provisions of these rules and to the orders of the Board of Trade, for the registration of patent agents in pursuance of Act. 2. The register shall contain in one list all patent agents who are registered under the Act and these rules. . . . 3. The Institute shall cause a correct copy of the register to be once every year printed under their direction, and published and placed on sale. . . . A copy of the register for the time being purporting to be so printed and published shall be admissible as evidence of all matters stated therein, and the absence of the name of any person from the register shall be evidence, until the contrary is made to appear, that such person is not registered in pursuance of the Act. 4. The Institute shall appoint a registrar who shall keep the register in accordance with the provisions of the Act and these rules, and subject thereto shall act under the directions of the Institute and the Board of Trade. 5. A person who is desirous of being registered in pursuance of the Act on the ground that prior to the passing of the Act he had been *bona fide* practising as a patent agent, shall produce or transmit to the Board of Trade a statutory declaration in the form 2 in Appendix A; provided that the Board of Trade may, in any case in which they shall think fit, require further or other proof that the person had prior to the passing of the Act been *bona fide* practising as a patent agent. Upon the receipt of such statutory declaration, or of such further or other proof to their satisfaction as the case may be, the Board of Trade shall transmit to the registrar a certificate that the person therein named is entitled to be registered in pursuance of the Act, and the registrar shall on the receipt of such certificate cause the name of such person to be entered in the register. 13. If any registered person shall not within one month from the day on which his annual registration fee becomes payable, pay such fee, the registrar may send to such registered person, to his registered address, a notice requiring him,

on or before a day to be named in the notice, to pay his annual registration fee; and if such registered patent agent shall not within one month from the day named in such notice pay the registration fee so due from him, the registrar may erase his name from the register; provided that the name of a person erased from the register under this rule may be restored to the register by direction of the Institute or the Board of Trade on payment by such person of the fee or fees due from him, together with such further sum of money, not exceeding in amount the annual registration fee, as the Institute or the Board of Trade (as the case may be) may in each particular case direct. 17. (2) The Board of Trade may in any case in which they think fit restore to the register any name or entry erased therefrom, either without fee, or on payment of such fee, not exceeding the registration fee, as the Board of Trade may from time to time fix, and the registrar shall restore the name accordingly. 26. The fees set forth in the Appendix C to these rules shall be paid in respect of the several matters, and at the times and in the manner therein mentioned.

Appendix C referred to in the said rules is in the following terms:—

Nature of Fee.	When to be paid.	To whom to be paid.	Amount.
For registration of name of patent agent who had been <i>bona fide</i> in practice prior to the passing of the Act	On application and before registration	To the Registrar at the Institute	£5 5 0
For registration of name of any person other than as above	Do.	Do.	5 5 0
Annual fee to be paid by every registered patent agent	On or before November 30 of each year, in respect of the year commencing January 1st following	Do.	3 3 0
On entry of a candidate for the final qualifying examination	At time of entering name	Do.	2 2 0

Rules 19 to 25, both inclusive, contain provisions as to appeals to the Board of Trade at the instance of any person aggrieved by any order, direction, or refusal of the Institute or registrar.

For some time prior to 1888 Joseph Lockwood, engraver and artist, 263 Argyle Street, Glasgow, had been *bona fide* practising as a patent agent. A statutory declaration in the form prescribed by rule 5 was transmitted by him to the Board of Trade, and they transmitted to the registrar a certificate that Mr Lockwood was entitled to be registered in pursuance of the Act. The registrar accordingly caused Mr Lockwood's name to be entered in the register.

On 5th January 1891 the registrar wrote Mr Lockwood that his annual registration fee of £3, 3s. for the year 1891, "due according to 'The Register of Patent Agents Rules 1889' on or before November 30 of each year, in respect of the year commencing January 1 following," had not yet been paid, and that if it was not paid within a month from 18th January his name would be erased

from the register. No fee was paid by Mr Lockwood, and on 23rd February 1891 his name was erased from the register.

Mr Lockwood notwithstanding continued to carry on business in his office at 263 Argyle Street, Glasgow, as an agent for obtaining patents in the United Kingdom, and repeatedly acted as such, and continued to describe himself as such on his signboard, in advertisements, and in provisional and complete specifications, and in other documents sent by him to the Patent Office as agent for the different inventors for whom he was obtaining patents.

In 1891 the Institute of Patent Agents referred to in the "The Register of Patent Agents Rules 1889" was dissolved and ceased to exist, and in place thereof the Chartered Institute of Patent Agents was constituted and incorporated by royal charter dated 11th August 1891, for the purpose *inter alia* of promoting the education, status, and training of patent agents, and of maintaining a high standard of rectitude and professional conduct and knowledge. The Board of Trade thereafter made and published further rules dated 18th November 1891, and coming into operation on 19th November 1891, whereby *inter alia* all the duties and powers of the Institute of Patent Agents under "The Register of Patent Agents Rules 1889" were transferred to and vested in the Chartered Institute of Patent Agents, and the latter body were directed in the month of February in each year, and at such other times as they might think desirable, to cause a correct copy of the register to be printed under their direction and placed on sale.

On 27th April 1892 The Chartered Institute of Patent Agents, and James Yate Vernon Johnson, George Macaulay Cruickshank, and Wallace Fairweather, registered patent agents, carrying on business as patent agents in Glasgow, raised an action against Mr Lockwood to have it declared "that the defender is not registered as a patent agent in pursuance of the Patents Designs, and Trade-Marks Act 1888, and that the defender is not entitled to describe himself as a patent agent, whether by advertisement, by description of his place of business, by any document issued by him, or otherwise, so long as he is not registered as a patent agent in pursuance of said Act," and to have him interdicted from "describing himself as a patent agent, or agent for obtaining patents in the United Kingdom."

In the condescendence the pursuers averred that the defender "described himself, and intended to describe himself and hold himself out to the public, as an agent for obtaining patents in the United Kingdom, although he was not registered as a patent agent in terms of the statute, and knew that he was not entitled to describe himself in the manner referred to. The pursuers are aggrieved and prejudiced by this unwarrantable conduct on the part of the defender, and as complaints which have been made to him by the Chartered Institute of Patent Agents have been without effect, the pursuers have found it necessary to bring the present proceedings in their own

interest and in the interest of the profession and the public, for the purpose of having the defender's disqualification declared, and the statutory prohibition judicially enforced against him."

The pursuers pleaded, *inter alia*—" (1) the pursuers are entitled to obtain decree of declarator and interdict as concluded for, in respect—(a) that the defender is not registered as a patent agent in terms of the Patents, Designs, and Trade-Marks Act 1888, and relative rules; (b) the defender unwarrantably persists in describing himself as a patent agent, contrary to the provisions of the said statute and relative rules. (3) The defender's name was properly and validly erased from the register in terms of the said rules. *Separatim*, the defender not having taken the remedies provided by the rules regarding the removal of his name, is not entitled to challenge the same in this action."

The defender pleaded, *inter alia*—" (1) No title to sue. (2) The action is incompetent, in respect that if any breach of the Statute 51 and 52 Victoria, chapter 50, has been committed, the sole remedy is by summary prosecution under section 1, sub-section 4 thereof. (4) In respect that the defender has been duly registered as a patent agent in pursuance of the Act 51 and 52 Victoria, chapter 50, he is entitled to absolvitor, with expenses. (5) The rules founded on are *ultra vires* of the Board of Trade, as acting under said statute, and cannot be enforced at the instance of the pursuers."

On 4th August 1892 the Lord Ordinary (Low) repelled the defences and declared and interdicted in terms of the conclusions of the summons.

"*Opinion.*—By section 1, sub-section 1, of the Patents, Designs, and Trade-Marks Act of 1888 it is provided—" After the 1st day of July 1889 a person shall not be entitled to describe himself as a patent agent, whether by advertisement, by description on his place of business, by any document issued by him, or otherwise, unless he is registered as a patent agent in pursuance of this Act."

"It is admitted that the defender's name is not on the register of patent agents, and he does not dispute that he describes himself as a patent agent, within the meaning of the section which I have quoted, although he does not admit the accuracy of the description given by the pursuers of his signboard and door-plate.

"The defender therefore falls under the prohibition in the statute. He is not entitled to describe himself as a patent agent, and in doing so he acts contrary to law.

"The defender however pleads, 1st, that the pursuers have no title to raise the question; 2nd, that the action is incompetent; 3d, that he was duly registered as a patent agent, but that his name was improperly struck off the register.

"I. The pursuers are the Chartered Institute of Patent Agents, incorporated by royal charter, and three registered patent agents carrying on business in Glasgow, where the defender also practises.

"I am of opinion that both sets of pursuers have a sufficient title to sue.

“The objects of the Institute as stated in their charter are, *inter alia*—(1) To form a representative body of the patent agents of the United Kingdom for the purpose of promoting improvements in the Patent Laws and in the regulations under which they are administered; (2) to frame and establish rules for the observance of patent agents in all matters appertaining to their professional practice; and (3) to maintain a high standard of rectitude and professional conduct and knowledge, and generally to do all things incidental or conducive to the above objects, or any of them.

“Now, I think that the prohibition in the Act that a person shall not describe himself as a patent agent unless he is registered is an enactment intended for the protection of the public; and that being the case, I am of opinion that the Institute, being incorporated by royal charter for the objects which I have described, has a good title, acting both in the interests of the profession and of the public, to enforce the prohibition, unless the statute has provided exclusive means whereby it is to be enforced—a point which I shall consider under the plea of incompetency.

“The interest of the individual pursuers appears to me to be clear. They are patent agents practising in Glasgow, and have an interest to prevent illegal competition with them.

“II. The plea of incompetency is founded upon sub-section 4 of section 1 of the Act of 1888, which provides—‘If any person knowingly describes himself to be a patent agent in contravention of this section, he shall be liable on summary conviction to a fine not exceeding £20.’

“The defender’s contention is that the Act having provided the remedy of fine upon summary conviction, all other proceedings founded upon sub-section 1 are excluded. I cannot accept that view. I am of opinion that as sub-section 1 imposes an absolute disability, and renders it illegal for a person to describe himself as a patent agent unless he is on the register, the fact that a breach of the sub-section is made an offence punishable by fine does not prevent anyone having a sufficient interest founding upon the sub-section and enforcing the disability.

“III. The third point raises a question of greater difficulty. Sub-section 2 of section 1 of the Act provides that the Board of Trade shall make such general rules as are, in the opinion of the Board, required for giving effect to the section. Sub-section 3 provides ‘that every person who proves to the satisfaction of the Board of Trade that prior to the passing of the Act he had been *bona fide* practising as a patent agent, shall be entitled to be registered as a patent agent in pursuance of this Act.’

“Under the powers conferred upon them by the Act, the Board of Trade made rules in regard to the register of patent agents. They provided that the register should be kept by the pursuers, the Institute of Patent Agents, and that no person who was not at the passing of the Act *bona fide* practising as a patent agent should

be registered unless he passed certain examinations. In regard to a person practising as an agent at the passing of the Act, it was provided that he should transmit to the board a declaration in a form appended to the rules, and give such other or further proof as the Board of Trade might think fit, that he had been, prior to the passing of the Act *bona fide* practising as a patent agent.

“The rules also provided for the payment of certain fees. A registration fee of five guineas was provided in every case, and also an annual fee of three guineas for every registered patent agent. There was also a fee of two guineas payable on the entry of a candidate for the final qualifying examination.

“It was also provided in the rules that if a registered person failed within a certain time to pay his ‘annual registration fee,’ the registrar should erase his name from the register. It was further provided that the Board of Trade might restore to the register any name erased from it, and an appeal was given to the Board against ‘any order, direction, or refusal of the institute or the register.’

“The defender was a person *bona fide* practising as a patent agent at the passing of the Act, and his name was duly entered in the register. He appears to have paid the registration fee without demur. He, however, subsequently refused to pay the annual registration fee, and accordingly his name was erased from the register.

“The defender’s case is that under the Act (section 1, sub-section 3) he had an absolute right to be on the register, and that the Board of Trade had no power to make it a condition of his having the benefit of that right that he should pay an annual fee. The defender admits that the Board of Trade had power to establish a register, and to make rules as to the evidence to be supplied by a person practising at the passing of the Act as a patent agent, or as to the qualifications of persons who were not then in practice, and matters of that description, but he maintained that the Board of Trade had no power to impose a tax, in the shape of an annual fee, without express statutory authority.

“It seems to me that for the purposes of this case no distinction can be drawn between the fee to be paid on registration and the annual registration fee to be paid subsequently.

“A good deal was said about the annual fee being unreasonable, but if the Board of Trade had power to impose fees at all, I do not think that I can go into nice distinctions as to the relative reasonableness of the one fee and of the other. It does not appear to me that there is necessarily anything unreasonable in the annual fee, and I have not before me the various considerations upon the one side and upon the other which would require to be weighed in order to judge of the reasonableness of the fees. I must assume, on the other hand, that the Board of Trade had full information, and gave full weight to the considerations upon either side. The only question

in my opinion is, had the Board of Trade power to make provision in regard to fees?

"The defender contended that when the Legislature intends that fees shall be exigible it invariably fixes the fees, or gives express power to those who are authorised to make rules or bye-laws to do so. I think that the general rule at all events is in accordance with the defender's contention. It would not be difficult to refer to a number of statutes in which fees are fixed or power given to fix fees, and I do not know of a single case in which it has been held that those to whom the making of bye-laws was delegated had power to impose fees without special authority.

"The defender also founded upon provisions as to fees contained in the Patents, Designs, and Trade-Marks Acts. The Act of 1888 is an Act amending the principal Act of 1883, and it is provided that all the Patent Acts may be cited collectively as the Patents, Designs, and Trade-Marks Acts, 1883 to 1888.

"In the Act of 1883 express provision is made for fees—in section 24 as regards part II. of the Act, which refers to patents; in section 56 as regards part III. of the Act, which refers to designs; and in section 80 as regards part IV. of the Act, which refers to trade-marks. Further, in part V. of the Act, which contains 'general' provisions, it is provided by the 83rd section (1) that the Board of Trade may appoint certain officers and clerks; and (2) that 'the salaries of these officers and clerks shall be appointed by the Board of Trade, with the concurrence of the Treasury, and the same and the other expenses of the execution of this Act shall be paid out of money provided by Parliament.'

"The defender's argument was, that seeing that the principal Act expressly provided for fees when the Legislature intended that they should be exigible, it must be assumed that as the amending Act said nothing about fees, it was not intended to give power to levy them. Further, the general provision in the 83rd section of the principal Act, that 'the other expenses of the execution of this Act shall be paid out of money provided by Parliament,' showed the source from which money required for any purpose of the Act not otherwise provided for was to come.

"These arguments are not without force, and it is necessary to see what are the considerations in favour of the opposite view.

"I think that it must be conceded that from the nature of the case the natural thing would have been for the Legislature to give the Board of Trade power to provide for fees. The Board had to establish a register, and where there is a register there is, as a rule, registration fees. Again, the Board required to make rules for the ascertainment of the qualifications of persons (other than those practising at the passing of the Act) desiring to be enrolled as patent agents, and the natural way of doing that, and the way actually adopted by the Board, was to make provision for

examinations. Examinations, however, invariably, or almost invariably, involve fees. Indeed, I have great difficulty in seeing how the Board of Trade could make a complete scheme upon the lines usually followed in such cases for the institution, regulation, and maintenance of a register without making provisions as to fees.

"Further, in order to frame a complete scheme, it seems to me that the Board had inevitably to deal with matters in regard to which it might be urged that special powers were required just as much as in the case of fees. For example, I find that the Board made provision for the erasure from the register of the name of a person found to their satisfaction to have been guilty of disgraceful professional conduct. I do not think that it can be doubted that that is a very proper and reasonable rule, but a patent agent practising at the passing of the Act might say, 'The Act gave me an absolute right to have my name entered in the register, and it did not give to the Board of Trade authority to determine that under certain circumstances I should be deprived of the right.'

"The Act of 1888 provides that the provision of section 101 of the principal Act (1883) shall apply to the rules to be made by the Board of Trade, as if they were made in pursuance of that section. Now, the 101st section of the 1883 Act, *inter alia*, provides—[*His Lordship read sub-sections 4 and 5*].

"There was therefore the most ample opportunity given for anyone to object to any of the rules made by the Board, and for the revision of these rules by either House of Parliament. I therefore think that it must be assumed that the remit made in the Act to the Board of Trade to frame rules was designedly conceived in the widest and most general terms in order that the Board—whom the Legislature had selected as the body most competent to frame the rules—might in the first instance have an absolutely free hand to frame such a scheme as might be best fitted to carry out the intention of the Legislature.

"In such circumstances I am of opinion that before the Court would be justified in disregarding and holding as null a rule made by the Board and laid before Parliament, it would require to be shown either that the rule was actually repugnant to the Act, or that it was outwith what upon any reasonable interpretation of the Act could be included in the remit to the Board. In my opinion none of these can be shown here.

"In regard to the defender's argument upon the provisions of the Act of 1883, I may say, in the first place, that I greatly doubt if the general provision in the 83rd section as to the expenses of the execution of the Act can be held to cover such matters as the incidental expenses of the register to be instituted by the Board of Trade and the examination of candidates for registration. In the second place, the fact that registration fees and the like are specially provided for in the principal Act appears to me to be rather against than in favour

of the defender's view, because it shows that the Legislature contemplated that registers should, wholly or partially, be maintained by fees. In imposing registration fees, therefore, the Board of Trade were just adopting the principle which had been recognised in the Act of 1883.

"The defenders further argued that even if the Board of Trade had power to impose fees, they had no power to make erasure from the register the penalty for non-payment of fees. I do not think that the argument is well founded. If the Board were entitled to impose a fee, I think that they were also entitled to impose some penalty for non-payment of the fee. If the Board had power to impose a fee upon the entry being first made in the register, it seems to me to be clear that they were entitled to enact that if the fee was not paid the name should not be entered in the register. In the same way, I think that if they had power to impose the annual fee, they had also power to erase the name from the register for non-payment of that fee, because that was the natural and appropriate remedy for failure to pay.

"I do not know of any decided case which can be said to rule the present, but I may refer to the case of *Hall v. Nixon* 10 Q.B. 152, which seems applicable at all events to the last two points to which I have referred.

"In that case the local board in a burgh was authorised by Act of Parliament to make bye-laws with respect, *inter alia*, to the construction of buildings. By one of the bye-laws it was provided that certain notices should be given to the board by any person intending to erect a new building; and it was further provided that anyone who erected a building without giving the required notices should be liable to a penalty of 40s. The local board brought proceedings before the Justices against a person who, they alleged, had built in contravention of the rule as to notices. The Justices expressed the opinion that the local board had no power to make a bye-law constituting the failure to give notices an offence. A case was then taken to the Court of Queen's Bench, and it was there held that it was within the power of the local board to impose the penalty, although no express power was given to them to do so by the Act. The Court proceeded upon the ground that the rule as to notices was plainly within the power of the local board, and that the power to make that rule necessarily involved the power of providing an appropriate penalty for its enforcement. Mr Justice Lush also founded upon the fact that a previous Act of Parliament (which had been repealed by the Act under which the rules in question were made) had authorised a pecuniary penalty for failure to give similar notices.

"Upon the whole matter I am of opinion (1) that the pursuers have a title to prevent a person not upon the register holding himself out as a patent agent; (2) that the defender's name not being upon the register of patent agents, it is illegal for him to describe himself as a patent agent; and (3)

that the defender has not stated any relevant defence to the action.

"I shall therefore give decree in terms of the conclusions of the summons, with expenses."

The defender reclaimed, and argued—(1) *No Title to Sue*—The pursuers were in no different position from members of the general public. No right of the society was encroached, and no power was conferred on the society either by the statute or by their charter to bring a civil action for this alleged wrong—*The District Fishery Board v. Robertson*, November 16, 1887, 15 R. 40. (2) *The Action was Incompetent*—The statute had provided a punishment for contravention of section 4. That was the only remedy that could be enforced. If the defender was doing what the statute declared he should not do, he could only be prevented by the procedure provided by the Act—*Wolverhampton New Waterworks Company v. Hawkesford*, April 1859, 28 L.J., C.P., opinion of Justice Willis, 246; *Rex v. Robinson*, June 22, 1759, 2 Burrow, opinion of Lord Mansfield, 803. (3) *The Rules were ultra vires of the Board of Trade*—The rules must be made in pursuance of the Act. Under the present rules the statute was contradicted in express terms, for the statute said that old patent agents were entitled to be put on the register without qualification, and therefore the imposition of an entrance fee and an annual subscription was repugnant to the construction of the statute, and not in pursuance of the Act. Besides, this was not a register kept in terms of the Patent Act of 1883, sec. 23. Section 83 makes provision for payment of the expense incurred in the execution of the Act out of money provided by Parliament. This register was not kept in conformity with sections 88, 89, 90, and 102 of the Act. It was *ultra vires* of anyone to impose a tax or impost without direct statutory authority, and there was none in this case. No tax could be imposed by implication. Parliament could not delegate its legislative powers, and it was always open to the Court to say whether rules made under the authority of statute were designed to give effect to the Act or were repugnant thereto—*Eastburn v. Wood*, July 14, 1892, 19 R. (J.C.) 100; *ex parte Davies*, June 10, 1872, L.R., 7 Ch. App. 526; *Bailey v. Williamson*, January 22, 1873, L.R., 8 Q.B., opinion of Justice Blackburn 128; *The Queen v. Sankey*, March 7, 1878, L.R., 3 Q.B.D. 379; *Reid v. Harvey*, March 3, 1880, L.R., 5 Q.B.D. 184; *Dale's case*, January 27, 1881, L.R., 6 Q.B.D. 376; *ex parte Walker*, February 22, 1883, L.R. 22 Ch. D. 813; *ex parte Willey*, March 15, 1883, L.R. 23 Ch. D. 118; *ex parte Foreman*, January 17, 1887, L.R., 18 Q.B.D. 393; *in re Stainton ex parte The Board of Trade*, June 13, 1887, L.R., 19 Q.B.D. 182; *Slattery v. Naylor*, March 24, 1883, L.R., 13 App. Cas. 446.

Argued for pursuers and respondents—(1) *They had a Good Title to Sue*—Such an incorporation as this had a good title to sue—*Incorporation of Law Agents v. Clark*, December 3, 1886, 14 R. 161. The action

was brought at the instance of three persons who were patent agents, as well as of the society who kept the roll, and any person injured by the action of the defender had a good title to sue—*Mitchell v. Gregg*, December 7, 1815, F.C.; *Davidson v. Macleod*, December 14, 1877, 5 R. (J.C.), opinion of Lord Young, 11. (2) *The Action was Competent*—Section 1, sub-section 1, of the Patents, Designs, and Trades-Marks Act 1888 contains an absolute prohibition against a person not registered describing himself as a patent agent, therefore it was illegal, and the imposition of a penalty does not exclude the common law remedy of interdict. (3) *The Rules were not ultra vires*—In accordance with section 101 of the Act of 1883 they were made part of the statute. They had therefore the same effect as if they had been contained in the statute—*Crichton v. Forfar County Road Trustees*, July 20, 1886, 13 R. (J.C.), opinion of Lord M'Laren, 101; *Bailey v. Williamson (supra)*, L.R., 8 Q.B., opinion of Chief-Justice Cockburn, 124; *Dale's case, supra*, L.R., 6 Q.B.D., opinion of Lord Coleridge, 397 and 398, and of Lord-Justice Brett, 456. There was not here an imposition of taxes, but merely a regulation of the terms on which persons were to be admitted to the register. Even assuming that they were wrong in holding that the bye-laws had now the force of statute, they were not repugnant to the Act. If the bye-laws were within the general scope of the Act, the proviso in section 1, sub-section 3, of the Act of 1883 could not take away from their effect.

At advising—

LORD JUSTICE-CLERK—This case arises under the Act of 1888, which was passed in supplement to the Act of 1883, and was for the purpose mainly of requiring that in future there should be a register kept of the persons who are entitled to call themselves patent agents. Formerly any person could call himself a patent agent, and it was thought expedient that there should be a registration so that the public might know who were to be held qualified persons to act as patent agents. And accordingly by that Act registration is now essential. Every person who desires to practise as a agent, in order that he may be legally entitled to do so must get his name put on that register. The Act contains a proviso or sub-section by which those who have been *bona fide* practising as patent agents before the passing of the Act get on to the register by a certain procedure which is there described, and which I shall afterwards refer to. The Act gave them the right to register. The Act also, by another sub-section to which I shall presently refer, gave power to make rules for the purpose of carrying out the section. These rules were to be laid before Parliament, and if not altered by Parliament within forty days they became effectual; and it is said by the pursuers of this case that these rules have in consequence the same force as the statute itself. Now, under these rules there have been fixed certain fees of larger

amount, in the first place, for the obtaining of the first entry of the name upon the register, and, in the second place, annually for the purpose of maintaining the name upon the register, for the rules fix that if this second and annual fee is not paid from time to time as it becomes due, the person failing to pay is to be struck off the register. Admittedly these fees are not for any purpose connected with registration itself. The fee, if I remember right, for the first entry on the register is five guineas, while the annual fee thereafter is three guineas. On the face of it it is quite plain that such fees could not be for meeting any necessary expense of being put on the register or of keeping it up; and we had it admitted from the bar that the main purpose of these fees is in order that patent agents, who are now formed into a corporate body and have formed an institute, may keep up that institute and form a useful library for the use of patent agents at the institute.

Now, the question is, whether it can be said that a rule for establishing a tax of that kind, nominally called a registration fee, but truly to meet the expense of an institute and a library, is a rule for giving effect to sub-section 1 of the Act. It certainly seems at first sight to be outside the giving effect to section 1 altogether. But of course if a power existed under the statute to make such a rule, and if the rule by lying before Parliament for the statutory period has got the effect of statute, then there may be a difficulty in the way of any patent agent getting rid of it, because the rule is made by the Board of Trade, which is the body empowered by the Act to make the rules, and the Board of Trade being a public department, it may be that a rule made by the Board of Trade, if properly made—I mean to say if technically properly made—could not be interfered with, however extravagant or however absurd it was, and however oppressive it was, except upon application to Parliament to get it set aside by a new enactment. And therefore I think it is necessary to turn to the clauses and sub-sections of this Act in order to see whether that power existed under the Act.

The first sub-section of the first section of the Act is the sub-section which authorises the making of a register, and forbids anyone to describe himself as a patent agent who is not upon that register; and the 2nd sub-section is the sub-section which gives the power as regards these rules. It provides that “the Board of Trade shall, as soon as may be after the passing of this Act, and may from time to time, make such general rules as are in the opinion of the Board required for giving effect to this section; and the provisions of section 101 of the principal Act” (that is, the Act of 1883) “shall apply to all rules so made, as if they were made in pursuance of that section,” namely, section 101. Now, there are two things plain upon the face of that sub-section. The first is that there is no power to make rules except for the purpose of giving effect to this section, and the section relates to the registration of patent

agents and to nothing else. And then there is a reference to section 101 of the principal Act, which is to apply to all rules so made as if they were made in pursuance of that section. Now, in the first place, as regards the giving effect to this section, there is nothing here of the nature of an enactment giving a power to appoint any fees at all; and in the second place, section 101 of the Act of 1883 is also a section which has no relation whatever to fees of any kind, or to payments of money. The Lord Ordinary in referring to this matter points out that the Act of 1883 did give authority to impose fees, and power to the Board of Trade with consent of the Treasury to fix what these fees were to be; and the clauses by which under the Act of 1883 power was given to fix fees are clauses 24, 56, and 80. Now, every one of these sections is a section empowering the Board of Trade with the consent of the Treasury to fix fees which are to be paid into Exchequer; and section 101, which relates to the powers of the Board of Trade to make rules and so on, does not relate to fees at all. Now, the first question that arises there is—Is it competent under a power to make rules, to make rules by which there shall be an imposition of what is practically taxation—is it competent for the Board of Trade to say there shall be a register kept, and that persons with certain qualifications shall have the right to be placed upon that register, but that they shall not be entitled to be placed on the register till they pay a certain tax? The very provisions of the section I have referred to in the Act of 1883 are an illustration of what is the usual course in such matters, viz., that where there is to be an imposition of payments of money under the provisions of an Act of Parliament, the power to impose these sums of money is a power given by the Act itself; and I do not agree with the Lord Ordinary when he says that “in imposing registration fees therefore” (I quote his words) “the Board of Trade were just adopting the principle which had been recognised in the Act of 1883.” I think the principle which was recognised by the Act of 1883 was plainly this principle, that if there was to be under the operation of the Act of Parliament any payment of fees, the power to impose these fees was to be found in the Act itself. I think it may be very well illustrated in this way, that if under the Act of 1883 the Board of Trade had proceeded to appoint other fees than those authorised by the Act, any person against whom these fees might operate would have a very strong argument to say—“This Act, when it was intended to impose fees, has given express authority by separate clauses as regards this department of it to impose these fees, and it is quite plain, therefore, that it was not intended, and that no power was given to the Board of Trade to impose other fees than those contained in the Act.” As these two Acts go together now, I think the argument equally well holds in considering the Act of 1888.

The next question is, even supposing that

by this Act of Parliament power was given to impose fees upon patent agents as a condition of their being allowed to be placed upon the register, whether in the exercise of that power they could keep an old patent agent who proved that he was such in terms of the Act off the register if he did not pay these fees? Now, on examining both the Act under the rules, I find that the conditions are very clearly prescribed on which a person who has been *bona fide* practising as a patent agent, is entitled to be put upon the register. The proviso clause is this, “Every person who proves to the satisfaction of the Board of Trade that prior to the passing of this Act he had been *bona fide* practising as a patent agent, shall be entitled to be registered as a patent agent in pursuance of this Act.” Now, without going to the rules for a moment, just take that clause as it stands. He satisfies the Board of Trade that he is a patent agent, and has been practising as such before the passing of this Act, and having satisfied the Board of Trade, he says—“I am entitled to be placed on the register.” But they say, “Oh no, you are not entitled to be placed upon the register; certain rules have been made by which, although the Act says that you are entitled to be placed on the register, having that qualification, you are not entitled to be placed upon the register, but you must pay down five guineas or you will not get on the register at all.” Now, it seems rather a strong proposition that a gentleman whom the Act declares is entitled to be placed upon the register is to be kept off the register because he will not pay down a sum of money. And curiously enough, when we come to the rules, it does not seem to have entered into the mind of anybody when framing these rules that the patent agent had anything more to do than to carry out that proviso, and accordingly No. 5 of the rules is in these terms—“A person who is desirous of being registered in pursuance of the Act, on the ground that prior to the passing of the Act he had been *bona fide* practising as a patent agent, shall produce or transmit to the Board of Trade a statutory declaration” in a certain form; and the Board of Trade is authorised to require such proofs as they think proper, besides the statutory declaration, and “upon the receipt of such statutory declaration, or of such further or other proof to their satisfaction, as the case may be, the Board of Trade shall transmit to the registrar a certificate that the person named therein is entitled to be registered in pursuance of the Act, and the registrar shall, on the receipt of such certificate cause the name of such person to be entered in the register.” The procedure, therefore, is this, that the patent agent goes to the Board of Trade, and satisfies them that he has the qualification; the Board of Trade then acts, not the man himself; he makes no application, he has nothing further to do than to satisfy the Board of Trade, and having satisfied the Board of Trade, the Board of Trade then intimate to the registrar that he is a patent agent entitled to be put on under sub-

section 3; and on that intimation the rule says the registrar shall, on receipt of such certificate from the Board of Trade, cause the name of such person to be entered on the register. So that he does not need to make any application at all to get upon the register. And strangely enough, in the appendix, which gives a note of the fees, the five guineas which he is to pay in according to that note is "on application and before registration." But the patent agent never makes any application to the registrar to be put upon the register. The Board of Trade transmit their authority in respect of his having proved that he is a patent agent at the time of the passing of the Act, and has been practising as such for three years, and then the registrar is to put his name on. Next comes the question whether his name having been put on, if he does not at the end of a year pay another tax of three guineas, the registrar is to strike him off, and he is thereby to lose the privilege which he is entitled to under sub-section 3. Now, if he is entitled to be upon the register in respect of his having been practising as a patent agent for three years before the passing of the Act, where is the right to impose a tax on him and to say, if you do not pay that tax you shall be struck off the register? It seems to me that in this case the true answer to the question put to us by the pursuers here is that the power did not exist to make rules by which this exaction should take place, and that the defender in the action is entitled to be placed upon the register in terms of sub-section 3 and of rule 5, and that the pursuers of the action are not entitled to succeed in respect that he is not now upon the register, because he has been improperly struck off from the register for refusing to pay an imposition which they had no right to demand. And therefore I think the interlocutor of the Lord Ordinary should be altered, and that we should assilzie the defender.

LORD YOUNG—In my opinion this case depends upon two well-settled rules of the common law. The first of these is that when rules are made by any authority—such as the Board of Trade—professing to be in pursuance of the powers conferred on them by statute, these rules are valid or not according as they are or are not truly in pursuance of the statute—that is, within the powers under which they profess to have been made. I think that is a rule of the common law without any exception whatever—that rules made by an authority in pursuance—that is, professing to be in pursuance—of a statute are valid or not according as they are really in pursuance of it or not—that is, within the powers conferred by it. That is a well-settled rule of common law, and I repeat, so far as I know, it is without any exception whatever in applying statutes and rules made under them. The second is—and it is also a rule of the common law—that Her Majesty's courts of justice have jurisdiction to construe and interpret all statutes. Of course Parliament may in any parti-

cular case deprive them of that jurisdiction, and confer the jurisdiction in a particular case upon some other authority. I think such a thing never was done. I think the Legislature never ousted the jurisdiction of the established tribunals of the country in regard to the interpretation of a statute or conferred that jurisdiction upon any other authority. Now, applying these two principles here, the case presents itself thus—The complainers, founding upon certain rules which they say on their record were made by the Board of Trade in virtue of powers conferred on them by the Act of 1888, and in accordance with the provisions of section 101 of the Act of 1883, made and published certain regulations, one of these regulations being that patent agents who before the passing of the Act were *bona fide* acting as patent agents, should as a condition of being registered pay a fee of five guineas, and as a condition of continuing on the register should pay an annual fee of three guineas, and that failing the payment of the first of these fees, no such patent agent should be registered at all, and failing the payment of the annual fee, the name of the party failing should be struck off the register. Under these rules the complainers say that the respondent has failed to pay his annual subscription of three guineas, and that he ought therefore to be struck off the register. And that conclusion is inevitable if the rules referred to and founded on, and without which the complainers have no case at all, are in accordance with the powers under which they profess to have been made. But if, as the respondent maintains, they are in excess of these powers—if they are not authorised by the statutes legally interpreted and construed—then the respondent must prevail upon the first of the common law rules which I have referred to, that rules and regulations made in pursuance of the statute or professing to be so are valid or not according as they are within the powers conferred by the statute or not. But it is maintained by the complainers that the rules are within the powers contained in the Act bestowed upon the Board of Trade. They say so on record, and that is their contention. The respondent, on the other hand, says that within those powers they are not. Here, therefore, there is a dispute between the parties before us as to the true intent and meaning of an Act of Parliament. Now, on the second of the common law rules which I have referred to, this Court alone in the present case has jurisdiction to determine that question. I know of no other jurisdiction to determine a dispute between two parties as to the true meaning and construction of an Act of Parliament, and I repeat what I said at the outset, that I know of no case, and do not believe any ever existed, in which the Legislature has ousted the jurisdiction of the Courts upon any such question. But it is maintained here that that has been done. If it has, then it was never done before, and the authority to determine whether the rules were really made in pursuance of the

powers conferred by the Act when the Act is properly construed, if it is taken from us must be given to some other, and that other must either be the Board of Trade or Parliament itself, or the Board of Trade subject to review by Parliament. Now, the idea of bestowing jurisdiction upon the Board of Trade to determine a dispute which might arise at any time, and nobody could tell when the party is affected by the matter, as to the true intent and meaning of a clause in the Act of Parliament—that the Board of Trade should have jurisdiction to do that I think is extravagant upon the face of it. They would require to hear the parties, and to determine on a disputed matter what was the meaning of the statute. Then it was suggested that the jurisdiction was given to either House of Parliament, but with a proviso that either House must exercise its jurisdiction within forty days—that within forty days of the making of any rules, either House of Parliament might determine the legal question whether these rules were in accordance with the powers conferred by the statute; and that if these forty days passed, they must be taken to be in accordance with the powers given by the statute, whether they were or not, and that it must be assumed that the tribunal to which the jurisdiction was given in the matter, namely, the House of Commons or the House of Lords, had not seen fit to interpose within the forty days. Now, I must say that that is not a likely proposition. The Legislature never assumed the power to interpret statutes, and constitutionally it has not the power. Of course the Legislature may do anything it pleases, but it would be considered very unconstitutional, upon the statement of it, to say that when any question arises as to the true meaning of an Act of Parliament, and whether rules were made in accordance with the Act according to its true intent and meaning, the House of Commons should have jurisdiction to determine it or that the House of Lords should have jurisdiction to determine it, but that the period for exercising that jurisdiction should be limited to forty days, and that a party was thereafter excluded from raising the question at all, whether they were in accordance with the provisions of the statute. I must say that I think that is extravagant. With respect to the provision that the rules made by the Board of Trade, if not set aside by vote of either House of Parliament within forty days, upon quite other than a legal question of construction of an Act of Parliament, shall have the same force as if enacted by the statute itself, I think the plain meaning of that is, that if they are within the powers conferred by the statute they shall have the same operation and effect as if expressed in the statute; that is, subject to the proviso which is the condition of the rule of the common law, and which we find expressed by Scots Judges, and most frequently by English Judges—subject to the condition and limitation that the rules shall have effect exactly as if they were in the statute, provided always they

are within the powers conferred by the statute under which they were made. If so, they shall have the effect of an Act; if not, they shall have no effect at all; for rules in pursuance of a power, being in excess of the power, beyond the power, outwith the power, are rules made without authority. Cases have been figured, and have actually occurred, in which judges have been put in a position of some perplexity in dealing with the question whether certain rules were within the powers conferred by the statute under which they professed to have been made, or not. The most striking of these, perhaps, is where the power to make rules for governing the proceedings of the Courts of Justice was conferred by the Legislature on the Lord Chancellor and certain judges named. They made rules, and a question arose as to whether a particular rule was within the power conferred or not. A single judge, or even the judges of a divisional court, or of an appeal court, must be in a state of great perplexity if he or they thought that the Lord Chancellor and the judges acting along with him, to whom the power had been committed, had come to a wrong conclusion regarding the meaning of the statute. But I rather think the solution must be as Lord Esher puts it—"We should certainly be very slow to come to the conclusion that the Lord Chancellor and the judges acting along with him have made a mistake as to the meaning of the statute, but if we did conscientiously and judicially come to that conclusion, it would be our duty to say it and to act upon it." But that is just in accordance with the principle that such rules are valid or not according as they are within the powers under which they were made or not. I think these views are simply an application of the two principles of the common law which I set out by announcing. Now, addressing myself to the meaning of the clause of the statute under which the rules profess to have been made, and in accordance with which the pursuers allege that they were made, I am of opinion that so far as they are complained of here—and I do not deal with them any further—they are not made. I think no authority was conferred on the Board of Trade to impose these taxes. They are called fees, but they are imposts professing to be made in pursuance of the statute, an impost of five guineas upon admission, and an impost of three guineas a year as the condition of continuing in a certain profession. The word "tax" is very applicable. It is a tax—it is an impost which cannot be resisted. It is made the condition of your carrying on your business that you must pay it. Now, I think no authority whatever was conferred on the Board of Trade to make any rule of that kind, and that the rule therefore to that effect is in excess of the power, and cannot be acted upon. The result is that I agree with your Lordship in thinking that this application to interdict the respondent from exercising his trade and profession because he has failed to pay this impost is ill-founded and ought to be dismissed.

LORD RUTHERFURD CLARK—I am also of opinion that the defender is entitled to our judgment. To my mind it is quite clear that we are the only judges of the question whether the rules have been made within the authority or not. Upon that question I do not think it necessary to say more. I am further of opinion that the rules have not been made in accordance with the Act. It is quite possible that fees may be exacted for the maintenance of the register, but the fees which are fixed by the rules are plainly in excess of what is required for that purpose, and it is equally plain they were not imposed in order to carry that purpose into effect.

LORD TRAYNER—There are three grounds maintained before us in this case. To two of these none of your Lordships have referred, and I assume that your Lordships agree, as I do, with the Lord Ordinary on both these points, namely, that the pursuers have a title to sue and that the action is relevant, because until we sustain the title to sue and the relevancy of the action we cannot enter upon the decision of the other question.

On the question whether the rules now before us are within the authority of the Board of Trade under the statutory power given to them to frame rules, I agree with your Lordships. I think the rules are *ultra vires* of the Board of Trade. The rules which the Board of Trade were authorised to issue were rules to give effect to the first section of the Act of 1888, and that first section, at least in its primary provision, is one for the purpose of establishing a register of patent agents. The Act, however, goes on to say that the rules which are issued by the Board of Trade under the authority so conferred upon them shall have the same effect as if they had been rules issued and made under the 101st section of the Act of 1883, of which the Act of 1888 is an amending statute. Under section 101 of the Act of 1883 it is provided that rules made under that statute and under that section of it shall have the same effect as if they were contained in the Act itself. Now, if these rules were within the powers of the Board of Trade, I think they would have, in respect of that provision, the force of statute, in the sense not merely that they were issued under statutory authority, but that they were themselves parts of the statute. If that were so, I should not hold myself entitled to review or consider whether the rules that we have before us were proper or expedient, or indeed to take any notice of them further than this, that they were to be enforced by us as parts of an Act of Parliament, but being of opinion with your Lordships that we are quite entitled to look at the rules issued, and consider and determine whether these rules are within the statutory power under which they profess to be issued or not, I come to be of opinion with your Lordships that they are outwith the powers of the statute. The power conferred upon the Board of Trade by the Act of 1888 is simply to issue rules for the purpose of carrying out the

first sub-section of section 1, and that is to provide for the institution of a register of patent agents. I think the rules before us go far beyond that. They have established not only rules to be observed for the admission of persons to the register, but they have instituted rules which regard the condition on which names there mentioned shall be retained on the register, and have introduced provisions such as the deletion of the name from the register in respect of the non-compliance by any person there registered with the particular rules which the Board of Trade have issued. But the important and serious point in the rules is this, that they have imposed an impost or tax upon all persons not merely in reference to the registration of their names, but also with reference to the continuance of the names upon the register, and that, I think, is equally beyond the power of the Board of Trade; it is, as one of your Lordships has described it, an impost—a tax—a payment for a licence to enable a certain person to carry on a certain profession. Now, I am not aware of any case in which a power to fix an impost or tax of this kind has ever been recognised as conferred by implication of an Act of Parliament, and unless the statute imposes the tax itself, or gave direct and unqualified and explicit authority to some other power to fix that tax, I think no such tax can be validly imposed. If the tax had been validly imposed—I mean if it had been held that the tax of an entrance fee or a continuance fee had been within the view of the Board of Trade—I should not have felt myself entitled, from the considerations to which I have already adverted, to consider whether the tax was too big or too little, nor indeed to consider the application of the tax—how it was to be distributed or to what it was to be given. But I think these considerations are excluded altogether when one reaches the conclusion which I have already reached, namely, that the imposing of any tax of this kind is beyond the power of the Board of Trade, and therefore I quite agree with your Lordships that that is sufficient to enable us to decide this case contrary to the views which the Lord Ordinary has adopted. But I think it is not without importance to notice that under the section which gives the Board of Trade authority to issue rules there is a proviso or qualification in the third sub-section of the first section of the Act of 1888 which directly applies in this case, for it provides that every person who shall have been for three years prior to the passing of this Act *bona fide* practising as a patent agent shall be entitled to registration under this Act. The Board of Trade have come forward and said that shall not be so; he shall only be entitled to registration provided he pays a certain sum of money. Now, I think that is introducing a clause and a qualification of the clause which the Board of Trade in pursuance of their right to issue rules have no power whatever to impose; and upon the ground therefore that the rules are *ultra vires* of the Board of Trade's power, and fur-

ther, upon the second ground that the Act itself specially limits or defines the right of a person in the defender's position to go upon the register, I am of opinion with your Lordships that the Lord Ordinary's judgment ought to be recalled.

LORD YOUNG—With reference to what my brother Lord Trayner has said regarding the first and second pleas in law for the defender—title to sue, and the competency of the action—I take leave to say for myself that I give no opinion upon them, and should have great difficulty indeed in concurring with the views of the Lord Ordinary. I ventured to point out, however, in the course of the argument, that it was manifestly in the legitimate interest of both parties that the question of the validity of these rules by the Board of Trade should be tried, and as they had been fully argued, it would be a pity to avoid deciding the question for which the action had been brought, and which both parties were interested in having settled, upon any technical ground, I also ventured to point out that there might be very great difficulty in maintaining the proposition that if an act was prohibited by statute and a penalty imposed in respect of it, that that would afford in all cases, or even generally speaking, a legitimate ground for an application to this Court for an interdict against it; and I rather think I ventured upon suggesting the illustration of the rules applicable to publicans. There are rules regarding the hours of opening and closing, the conditions of their certificates being violated, and penalties imposed by statute, and which are constantly being inflicted on them in the inferior courts on account of them doing these prohibited acts. But I should think it was extremely doubtful if other publicans, or an association of publicans, could present an application to this Court for interdict as to any of these things prohibited by the statute under a penalty, or whether we should not leave them to the statutory remedy of a prosecution for the penalty. There might be a thousand instances of things which are prohibited, with regard to which it would be absolutely ludicrous to allow anybody to increase the penalty from a few shillings or pounds, to the punishment inflicted for contempt of court; could you interdict a citizen of Edinburgh from having an accumulation of snow in front of his door, because that is prohibited under a penalty, and thus add to the penalty the further punishment that he shall be sent to jail the next time that such an accumulation is allowed to exist, as being in contempt of Court. I do not think that would follow at all. I content myself, however, with saying that I do not assent (I rather abstain from expressing any opinion) to the views of the Lord Ordinary on either the first or second pleas; but having the opinion which we all have on the question which both parties have a legitimate interest to have settled, I have thought it better to have that decided without expressing any opinion on those other points.

THE LORD JUSTICE CLERK—We did not consider these questions.

The Court recalled the interlocutor reclaimed against, and assoilzied the defender from the conclusions of the action.

Counsel for Pursuers—Graham Murray, Q.C. — Salvesen. Agents — Davidson & Syme, W.S.

Counsel for Defenders—Ure—Younger. Agents—Dove & Lockhart, S.S.C.

Friday, January 13.

OUTER HOUSE.

[Lord Stormonth Darling.

M'INTYRE (LIQUIDATOR OF VICTORIA PUBLIC BUILDINGS COMPANY, LIMITED), PETITIONER.

Company—Liquidation—Power to Carry on Business—Companies Act 1862 (25 and 26 Vict. cap. 89), sec. 95.

When the property of a company consisted of a hall let for public entertainment, and it was expedient to delay its sale until the time of the year when such property could be sold to best advantage, authority granted to the liquidator to carry on the business in the meantime.

This was an application by Daniel M'Intyre, C.A., Dundee, liquidator, acting under the supervision of the Court, of the Victoria Public Buildings Company, Limited, presented under the Companies Acts 1862 to 1890, and particularly sections 95, 131, and 151 of the Companies Act 1886, craving the authority of the Court to sell the property of the company, and in the meantime to carry on the business of the company. The prayer with reference to the business was as follows—"And also to sell the furniture and fittings therein, either at a valuation or by public roup or private bargain, as the liquidator may deem most expedient; and to sanction the liquidator carrying on the business of the company for such time as he may think proper, but not beyond Whitsunday 1893, and to pay out of the money from time to time in his hands, the wages and remuneration of the persons employed in the said business, and also all such outgoings, including cost of upkeeping buildings, feu-duty, rates, and taxes, as may from time to time become due and payable, in respect of the said subjects and their occupation by the company, and to execute such deeds and documents, and do such acts as may be necessary for, or incidental to the exercise of such powers."

The petition set forth—"The property of the company consists of—(1) A public hall in Arbroath, which with additions and improvements, has cost the company £1683, 17s.; (2) the furniture and fittings in the hall, which have cost the company £79, 14s. 11d.; and (3) miscellaneous articles in