fore the acquisition of a settlement was thereby broken. But the doctrine laid down by the Inner House that the view of the Lord Ordinary (who held that a person could not acquire a settlement if she was in reality a proper object of parochial relief, though she did not ask for and did not get it) was wrong, has been confirmed by the subsequent cases. It was held by the Inner House that even aid by private benevolence did not intercept the acquisition of a settlement, and certainly the aid of relatives did not do so. But it is clear that the line must be drawn at common begging, in consequence of the words of the statute."

The defenders appealed to the Second Division of the Court of Session, and argued—The facts proved here did not amount to "common begging" in the sense of the statute. That expression, as there used, referred to the old system of licensed begging, and was therefore inapplicable to any kind of begging now in practice. Apart from that, the words only applied to the case of a person who lived continuously and habitually by begging, who had no other resource than begging, and who but for begging would have been a charge upon the rates. This pauper during the period in question only lived by begging occasionally. Her longest tramp only lasted three months. She did not beg publicly in the streets, but merely asked persons more or less known to her to help a "puir body." She went tramping and begging because from weakmindedness she had a desire for change and holidays rather than for steady work and continuous residence with her relatives. She did not require to beg, because her relatives were always willing to support her, and actually did support her during at least three quarters of the year. The criterion was not actual resort on particular occasions to begging, especially when explained by weakness of mind, but destitution due to inability to earn a livelihood, and want of friends willing to give support. Here there was no such destitution, for her sister's house was always open to her. They referred to *Hay* v. *Cumming* and *Forbes* v. *Marshall & Haswell*, both reported under date June 6, 1851, 13 D. 1057.

Counsel for the pursuers and respondents were not called upon.

LORD JUSTICE-CLERK—I see no ground for differing from the Sheriff-Substitute. As Mr Salvesen has said, the evidence is all on one side. It is to the effect that during the period in question, for weeks and sometimes even months, this woman was living by what is nothing else than begging. It is said that a definition of the term "common begging" in the Poor Law Act 1845, section 76, is required. All I am inclined to say is that it is proved in this case that this woman was living by common begging. If that be so, then she comes within the exception provided for by the section to which I have referred, and consequently she could not acquire a settlement in the parish of Blantyre although she resided there for the requisite period under the statute.

LORD YOUNG concurred.

LORD TRAYNER—I agree. It is proved that the pauper had recourse to common begging during the period of residence which is relied on as giving her a residential settlement. But the statute is quite explicit, that the residence necessary for the acquisition of a settlement must be residence for a period without recourse to common begging. I think, therefore, no residential settlement was acquired.

We are asked to define "common begging." But the language is not technical. It is plain English, about the meaning of which I cannot suppose there is room for any doubt.

LORD MONCREIFF—I am of the same opinion. I think this woman was a common beggar in the plainest sense of the term.

The Court pronounced the following interlocutor:—

"Sustain the appeal: Recal the findings in fact in the interlocutor appealed against, and in lieu thereof find that the pauper Marion Hunter was born in the parish of Rutherglen, that she never acquired a residential settlement in the parish of Blantyre, and never lost her settlement in the parish of Rutherglen: *Quoad ultra* adhere to the interlocutor appealed against: Of new decern against the parish of Rutherglen for the sum of £11, 10s. 8d. as craved, with interest: Find the respondents entitled to expenses in this Court," &c.

Counsel for Pursuers and Respondents—C. K. Mackenzie—Cullen. Agents—Bruce, Kerr, & Burns, W.S.

Counsel for Defenders and Appellants—Salvesen—Deas. Agents—H. B. & F. J. Dewar, W.S.

Friday, March 12.

FIRST DIVISION.

HERITORS OF PARISH OF KINGHORN *v.* PROVOST, MAGISTRATES, AND TOWN COUNCIL OF KINGHORN.

Church—Repairs—Rule of Assessment—Custom of Parish Defined by Decree—Valued or Real Rent.

By a decree of the Court in 1761 dealing with a parish partly landward and partly burghal, it was found that repairs of the kirk and manse were in use to be paid half by the burgh, (the other half being paid by the landward heritors), and that "therefore they (*i.e.* the burgh) are lyable in the half of all the repairs on said kirk, manse, and office-houses in all time coming."

This rule was never departed from till 1854, when on several occasions the burgh only paid one-fifth, always, however, "without prejudice to the legal rights of the parties in future similar cases."

Extensive repairs and alterations having been carried out on the church in terms of a remit from the Sheriff, who found that "the church was capable of being repaired," the Court, in respect that the church thus repaired was the same church as existed in the year 1761, *held* that the rule of assessment was that laid down by the decree of 1761, viz., one-half on the burgh and one-half on the valued rent heritors.

Opinion (*per* Lord Adam and Lord Kinnear) that had the question been open the assessment would (following the case of *The Highland Railway Company* v. *The Heritors of Kinclaven*, 8 Macph. 858) have been laid upon all the heritors according to their real rents as appearing in the valuation roll.

In October 1892 the Rev. William Jardine Dobie, minister of the parish of Kinghorn, presented a petition to the Presbytery of Kirkcaldy calling their attention to the state of the parish church, and the Presbytery in December 1892 found that the church was incapable of being repaired, and ordained the church to be taken down and a new one to be built. The heritors being dissatisfied with this order appealed to the Sheriff of Fife under the provisions of the Ecclesiastical and Glebes (Scotland) Act (31 and 32 Vict. c. 96). The Provost, Magistrates, and Town Council of the burgh of Kinghorn sisted themselves as parties to the appeal along with the heritors. The Sheriff remitted to Mr Sydney Mitchell, architect, Edinburgh, to report. He reported that the church could be repaired, and on 2nd May 1894 the Sheriff found—"(1) That the repairs proposed by the heritors would not make the church sufficient and suitable for public worship; (2) that the church was capable of being repaired so as to be suitable and sufficient for public worship, and that, in accordance with the law as at present existing, it should be so repaired, and that the repairs and alteration described by Mr Mitchell on pages 11 to 15 of his report would make the church sufficient and suitable for public worship with accommodation for 684 sitters" (the old accommodation being for 698 sitters), "and remitted to Mr Mitchell to prepare plans and specifications of said repairs and alteration, take in and accept estimates, and see to the carrying out of the work."

The repairs were executed under the direction of Mr Mitchell, and it became necessary to levy an assessment to meet the expenses.

A Special Case was presented by (1) the heritors of the parish of Kinghorn assessable according to old Scots valuation, (2) the heritors of the parish assessable on their real rents in the valuation roll, and (3) the Provost, Magistrates, and Town Council of the burgh, for the purpose of determining the question upon whom the assessment was to be levied.

The following facts, *inter alia*, were stated in the case. After describing the very extensive repairs which had been executed on the structure of the church, clause 6 proceeded—Further, parties are agreed that when all accounts incident to the work of carrying out the plans of Mr Mitchell are rendered and paid, a sum of not less than £2889 will have been expended on the church; that a completely new church could have been erected at a cost of £3500 or thereby; and that the greater portion of the area of the church has been so affected by the repairs and alterations that the sittings will require to be re-divided among parties who held allocated sittings immediately before the said work was commenced, assuming that such parties only will continue to have right to the area as now altered. (6A) The whole area of the said church has never been allocated among the heritors according to their respective valued rents. Prior to the year 1859, and from a period at all events antecedent to 1759, the area of the church was occupied by the landward heritors, and by or on behalf of the burgh respectively, in proportions substantially equal. In or about the year 1859 certain alterations and repairs having been executed in 1853 and 1854, including a reseating of the church, a petition was presented by the managers of the royal burgh of Kinghorn, as representing the community thereof, against the valued rent heritors of the landward portion of the parish, praying the Sheriff to divide and allocate the sittings in the church, to make due provision for the minister of the parish and the poor thereof, and to divide the remainder of said sittings into two equal parts, one whereof to be set aside for behoof of the community of the burgh of Kinghorn, to be allocated amongst the members thereof by said managers, and the other to be divided and allocated by the Sheriff amongst the landward heritors in proportion to their valued rents. The Sheriff-Substitute, after providing for the minister, the session, and the poor, allocated the sittings of substantially one-half of the remainder of the area of the church among the said landward heritors in proportion to the valued rents, and of the other half to the managers of the royal burgh of Kinghorn for behoof of the community of the burgh. In the facts narrated in the petition it was stated that the expenses of executing the repairs 'were, according to use and wont, paid as follows, viz., one-half by the petitioners . . . out of the common funds of the burgh.' (7) The parish of Kinghorn is partly landward and partly burghal, including as it does the royal burgh of Kinghorn. The houses, &c., in the town of Kinghorn have in recent years extended beyond the ancient royalty to such an extent that the real rental of the town outside the ancient royalty now exceeds the rental within the ancient royalty, and the district at the eastern end

of the parish, known as Bridgetown of Invertiel is a populous place and now forms part of the parliamentary burgh of Kirkcaldy. The district of Bridgetown further forms part of the *quoad sacra* parish of Invertiel, which was erected in the year 1869, and includes also part of the adjoining parish of Abbotshall. Bridgetown is about 2 miles from Kinghorn. (8) The parish church of Kinghorn is a very old one, and the inhabitants of the burgh had prior to 1759 been in use to occupy a considerable part of the area of the church, and the Magistrates and Town Council of the burgh paid one-half of the expense of repairing the church and manse. In that year, however, the burgh refused to continue to pay one-half of some repairs then ordered, and raised an action of suspension of a charge of payment given by the heritors. An action of declarator, on the other hand, was raised by the heritors against the burgh that the Town Council were only entitled to the area of the Parish Church that should correspond to the cess paid by them. These two actions, after procedure before the Lord Ordinary, were argued to the Court on a reclaiming-bill, with the result that decree was pronounced on 6th February 1761. The extract of said decree, *inter alia*, bears—"The Lords of Councill and Session aforesaid found, decerned and declared, and hereby find, decern and declare, that the community of the burgh of Kinghorn are intitled to retain possession of that proportion of the area of the kirk of Kinghorn presently possesst by them; and that the heretors of the landward parish are also intitled to retain possession of that proportion of the area of the said kirk presently possesset by them; without prejudice to the heretors of the landward parish dividing the said proportion of the kirk ascertained to belong to them in common, and to the community of the burgh dividing the proportion of the said area ascertained to continue with the community; and, of consent, found, and hereby find, that the community of the burgh of Kinghorn has been in use to pay one-half of the repairs of the kirk, manse, and office-houses: Therefore that they are lyable in the one-half of the present repairs, and also in the half of all the repairs on said kirk, manse, and office-houses in time coming." With reference to said decree it was explained that the finding of consent therein appears to have been the result of a compromise arrived at after argument had been submitted to the Court. After this decree the burgh paid till 1854 one-half of whatever repairs were made on the church and manse.

In 1855 a new manse was built, and the heritors proceeded to assess the burgh for one-half of the cost thereof as they had done before, but the burgh refused to pay the assessment. At a meeting of the parties on 19th July a compromise was come to and embodied in a minute from which the following is an excerpt:—"It was then stated that the present meeting had been called in consequence of the managers of the burgh of Kinghorn having declined to pay the one-half of the sum assessed at last meeting for the new manse, upon the ground that, in their opinion, although liable for the one-half of the repairs upon church and manse, they were not liable in the one-half of the expense of new buildings. After considerable discussion it was proposed on the part of the burgh that instead of one-half, it should be agreed that the burgh be assessed in one-fifth part of the total expense of the manse, site walls, and other expenses connected therewith, which proposal the heritors hereby agree to accept, without prejudice to the legal rights of the parties in future similar cases."

The next assessment, which was for defraying the balance of the cost of the manse, was laid on on 27th June 1856, and was assessed "one-fifth from the town;" and the scheme of assessment made up by the collector stated that this was payable "without prejudice to the right of parties in future similar cases."

The next assessment was laid on 23rd September 1869, the larger part being for expenses incurred for the manse, and was made "on the heritors of the parish to be levied in the same way as last assessment." The assessment roll contained a similar statement to the effect that the payment of one-fifth by the burgh was without prejudice.

The last assessment, which was for repairs of the church, was levied on 20th April 1878, and the assessment roll contained a similar reservation as to the fifth payable by the burgh.

Section 33 of the Valuation Act 1854 (17 and 18 Vict. c. 91) contains the following proviso:—"Provided always that when the area of any parish church heretofore erected has been allocated among the heritors according to their respective valued rents as appearing from the present valuation rolls, all assessments for the repairs thereof shall be imposed according to such valued rent."

The questions submitted to the Court were:—"(1) Whether the said assessment falls to be levied to the extent of one-half on the burgh of Kinghorn, and to the extent of the other half on the old valued rent heritors, according to their valued rents? (2) Whether the assessment for said repairs and alterations on said church falls to be imposed on the individual owners of lands and heritages in the parish of Kinghorn, according to their real rents as shown in the valuation roll? (3) Whether the said assessment falls to be levied to the whole extent on the old valued rent heritors according to the valued rents?"

The contentions of the parties to the case were as follows:—"In the circumstances before set forth the first and second parties maintain that the assessment for said alterations and repairs, falls to be levied to the extent of one-half on the burgh of Kinghorn, and to the extent of the other half on the old valued rent heritors, according to their valued rents; and the third parties maintain that the said assessment falls to be imposed on the

individual owners of lands and heritages in the parish of Kinghorn, according to their real rents as shown in the valuation roll; but, as alternative contentions to the foregoing, in the event of the first question falling to be answered in the negative, the second parties maintain that the said assessment falls to be levied to the whole extent on the valued rent heritors according to their valued rents, and the first parties also in the same event adopt the contention above set forth for the third parties."

Argued for the first parties—The rule of liability had been fixed by the decree of 1761, which defined the custom existing in the parish. That rule had never been unconditionally departed from, and the custom had never been abandoned. It was true that in certain instances after 1854 the assessment had only been laid upon the burgh to the extent of one-fifth, but in every case this was the result of a compromise, and the rights of parties in the future were specially reserved. Custom such as this could only be destroyed by indications of consent, which showed that the matter had been thoroughly considered, and the custom definitely and unreservedly departed from with the consent of both parties. Accordingly, as long as the church existing in 1761 still existed, that custom must be observed. The decision of the Sheriff, who was final on this point, was that the alterations and repairs, extensive though they might be, did not amount to building a new church, and it must therefore be assumed that this was the same church. There was nothing against the proposition that the custom of a particular parish would prevent the application of a rule of law which might otherwise apply—*Duke of Abercorn* v. *Presbytery of Edinburgh*, March 17, 1870, 8 Macph. 733; *Heritors of Kinghorn* v. *Magistrates of Kinghorn*, February 6, 1761, M. 7918; *Feuars of Peterhead* v. *Heritors of Peterhead*, June 24, 1802, 4 Paton 356. *Stiven* v. *Heritors of Kirriemuir*, November 14, 1878, 6 R. 174, showed that the third parties, to support their contention, must prove that there was a new church. (2) Assuming the legal effect of custom to have been destroyed, then the repairs should be assessed on the real rent heritors—*Downie* v. *M'Lean*, October 26, 1883, 11 R. 47; *Highland Railway Company* v. *Heritors of Kinclaven*, June 15, 1870, 8 Macph. 858, at 860.

Argued for second parties—On the first alternative the second parties adopted the argument of the first parties. (2) Alternatively, the burden must fall upon the valued rent heritors, for the second parties had no right to sittings in the church. The seats had been allocated in 1859, half to the burgh and half to the valued rent heritors. But in the cases where the real rent heritors had been held liable there had been a question of rebuilding the church to accommodate the whole heritors.

Argued for the third parties — (1) The parties to the decree of 1761, which was of consent, had no power to bind their successors. Moreover, the facts showed that this was only a regulation for the time being, and when circumstances changed the parties had no hesitation in departing from it, as was shown in a number of instances from 1855 onwards. Nor was the church the same as the one existing in 1761. The Sheriff's report was not conclusive; he really decided nothing more than that Mr Mitchell's proposition was better than that of the presbytery. It was impossible on the facts to call these extensive works anything but the building of a new church. But assuming the church to be the same, there was really no case where custom was held to overrule what would otherwise be the law. The case of the *Duke of Abercorn* came nearest to it, but that was a peculiar case where there were only four valued rent heritors, who had controlled the whole church from time immemorial, and had let the seats and applied the proceeds in repairs, &c. (2) The assessment should be laid on the real rent heritors. That principle had been applied in a number of cases, of which the *Kinclaven* case was a leading one. Indeed, since the *Peterhead* case there had been none except that of the *Duke of Abercorn* where it had not been applied. The proviso in sec. 33 of the Valuation Act had no application, because there had really been no allocation.

At advising—

LORD PRESIDENT — In my opinion the decree of 1761 is the rule of liability for the repairs of the church in question. That decree determined in express terms two matters which were directly related to one another. On the one hand, it gave to the burgh of Kinghorn one-half of the area of the church, and, on the other hand, it imposed on the burgh one-half of the expense of repairing in all time coming the church the area of which had been so divided. So long, then, as this church lasts, this and none other is the law of the matter. The decree necessarily applies solely to that fabric which was the subject of the actions, and the area of which was divided. It has and could have no application to a new church, which might be built of a totally different size, and might be divided in entirely different proportions.

The facts set out in the case of certain repairs having been paid in different shares do not constitute a dereliction of the rights determined by the decree. All was done without prejudice to existing rights.

Again, the proceedings before the Sheriff in 1859 did not disturb the right secured to the burgh of having one-half of the area, and have no effect in altering its liabilities.

In this view of the law the only question remaining is, whether the existing church is the same building as that to which the decree of 1761 applied. Now, the presbytery had ordered that a new church be built. According to well-settled law, heritors are not bound to build a new church to meet the requirements of an increased population, or for any other reason than that the existing church is

incapable of repair. In this case a heritor appealed against the order of the presbytery; their judgment was recalled by the Sheriff, and he ordered the existing church to be repaired. The work which has been done is certainly very extensive; much of the existing structure has been taken down and replaced, and the expense has been about four-fifths of the estimated cost of a new church. Not the less, however, does it seem to me that what stands is not a new church, but the church to which the decree of 1761 applied.

I am for answering the first query in the affirmative.

LORD ADAM—It was maintained to us on the facts of this case, that looking to the extent of the repairs and alterations on the fabric of the church, the case should be treated not as one of repairing an existing church, but of building a new one. As your Lordship has pointed out, the case came before the Sheriff, whose decision on this point is by statute final, and he held that it was a case of repairs upon an old church. Accordingly, whatever opinion we may have formed at the beginning of the argument, as to whether so extensive repairs and alterations on the fabric of the church could be described as being simply "repairs," we must treat the decision of the Sheriff as final, and we must consider the case on that assumption.

Now the considerations applying to the two cases are quite different, for with regard to repairing an old church it is questions of architecture which have to be considered, while with regard to building a new church the considerations are different, *e.g.*, the extent of the parish, and the number of persons requiring to be accommodated. But in view of the Sheriff's decision there is nothing falling under this second category to be considered in the present case.

I think, in the second place, that the 33rd section of the Valuation Act has no application here, for it only applies where the whole area of a church is allocated among the heritors assessed on their valued rental. That is not the case here, for we see from the facts stated that one-half has been allocated to the burgh of Kinghorn, and only the other half to the valued heritors, and accordingly the section does not apply.

I confess that, in my opinion, had there been nothing here to prevent the application of the principle in cases such as *The Heritors of Kinclaven*, we should have thought it right to lay the burden on the real rent heritors, but I agree that we cannot do so in face of the judgment of 1761. That judgment determined, in a competent action raised between competent parties, that the division of the area of the church should be one-half to the burgh of Kinghorn, and one-half to the heritors of the landward parish, leaving it to them to divide their respective parts as might seem right; and it determined further that each should be liable for one-half of assessments for repairs of the church in all time coming. I agree that so long as the then existing church remains we must follow that rule, but in the event of the erection of a new church there may be occasion for rearrangement not only of the area, but of the corresponding burden of assessment. I see no reason why that judgment should not constitute *res judicata*, unless because it was departed from by the parties by subsequent proceedings. I do not think that is so. We see from the statements in the case that the old rule of the judgment of 1761 was adhered to down to 1854, the assessment being in every instance one-half on the burgh and one-half on the valued rent heritors.

But then it is said that in 1855 the rule was departed from; that was in connection with the building of a new manse; and the burgh, it appears, while admitting their liability to pay for one-half of the repairs of church or manse, maintained that they were not liable in one-half of the expense of new buildings. However that might be, the matter was settled by a compromise, "without prejudice to the legal rights of parties." Nothing therefore can be founded on that incident as constituting a departure from the old-established rule.

Further assessments were laid on in 1856, 1869, and 1878; but in all these case also, as appears from the scheme of assessment and the assessment rolls, there was a reservation of the rights of parties. These assessments cannot therefore be founded on at all as instructing a departure from the old rule.

The only other thing founded on is the application in 1859 to the Sheriff. It appears that certain alterations and repairs were made in the church, including reseating in 1853; and it seems that the landward heritors could not agree as to how these seats should be allocated among themselves, and accordingly the petition was presented in which the Sheriff was asked to divide the sittings "into two equal portions, one whereof to be set aside for behoof of the community of the burgh of Kinghorn to be allocated amongst the members thereof by said managers, and the other to be divided and allocated by his Lordship under this application amongst the said landward heritors of said parish in proportion to their valued rent." It may be questioned what authority the Sheriff had to entertain the application, but however that may be we find that the Sheriff did exactly what he was asked to do. He set aside one-half of the sittings for the burgh, and one-half for the heritors, which he then proceeded to apportion to them. The Sheriff thus gave effect to the old rule of the judgment of 1761.

I agree with your Lordship that we cannot alter this rule. I think the judgment of 1761 has never been departed from.

LORD KINNEAR—I concur. I agree with Lord Adam that if the rights and liabilities of the parties in this church had not been determined by a final judgment, we should most probably have divided the liability in accordance with the principles laid down

in a series of well-known cases, among all the heritors in proportion to their real rents as appearing in the valuation roll. But I think that the law in this parish has been fixed by two judgments. By the decree of 1761 it was decided that so long as the church of Kinghorn then in question existed, its area must be divided between the community of the burgh of Kinghorn on the one hand and the valued landward heritors on the other hand, and that the assessments for the repairs of the church must be divided in the same way. I think further, that as a result of the judgment of the Sheriff in 1894 the building now in question must be treated as the same church to which the decree of 1761 related, and not as a new and different church.

I accordingly agree with your Lordships that the first question should be answered in the affirmative.

LORD M'LAREN concurred.

The Court answered the first question in the affirmative.

Counsel for First Parties—H. Johnston—Boswell. Agents—Mitchell & Baxter, W.S.

Counsel for Second Parties—J. B. Young. Agents—Mitchell & Baxter, W.S.

Counsel for Third Parties — Dundas — Craigie. Agents—Dundas & Wilson, C.S.

HIGH COURT OF JUSTICIARY.

Friday, March 12.

(Before the Lord Justice-Clerk, Lord Trayner, and Lord Moncreiff).

WEIR AND PATRICK *v.* BRYCE.

Justiciary Cases — Public-House — New Certificate — Publicans' Certificate (Scotland) Act 1876 (39 *and* 40 *Vict. cap.* 26), *secs.* 4 *and* 6.

By section 6 of the Publicans' Certificate (Scotland) Act 1876 it is provided that "a grant of a new certificate . . . shall not be valid unless it shall be confirmed by a standing committee of Justices of the Peace for the County."

By section 4 of the same Act the words "new certificate" are defined as meaning "a certificate granted by the competent authority for a licence for the sale of exciseable liquors to any person in respect of any premises which are not certified at the time of the application for such grant."

Held that a hotel-keeper's certificate granted to a person who already held a public-house certificate in respect of the same premises was a "new certificate" within the meaning of the above definition, and required confirmation.

This was an appeal on a case stated by the Magistrates of the Middle Ward of Lanarkshire, at the instance of the public prosecutor, in a case where James Bryce, spirit dealer, Larkhall, Lanarkshire, was acquitted of a charge of contravening his certificate by selling exciseable liquor on Sunday.

The following facts were proved—"That at the half-yearly Licensing Court, held on 21st April 1896, the Justices, as formerly, renewed the respondent's public-house certificate for the year from 15th May 1896 till 15th May 1897. *Fifth*, That at the half-yearly Licensing Court, held on 27th October 1896, the respondent applied for a hotel licence, and the Justices, without formally recalling his existing public-house certificate granted a hotel certificate in his favour for the same premises. *Sixth*, That in applying for said last-mentioned hotel certificate, the respondent had made application for a certificate for 'a new house (presently licensed as a public-house),' and that the application had been published in the newspaper in the list of applications 'for new premises.' *Seventh*, That the respondent, after obtaining the last-mentioned hotel certificate, proceeded to act on it, without having applied for or obtained confirmation; and *Eighth*, That on Sunday, 15th November 1896, James Shaw, designed in the complaint, who was then a *bona fide* traveller, and as such entitled to be supplied with exciseable liquor by the holder of a hotel certificate in Larkhall, entered the premises in question, and having satisfied the respondent that he was a *bona fide* traveller, was supplied with a quart of beer."

The sections of the Publicans' Certificate (Scotland) Act 1876, relating to the confirmation of new certificates are quoted in the rubric.

The following question of law was submitted — "Whether the respondent was entitled to act upon the hotel certificate obtained by him in October 1896, the same not having been confirmed by the Licensing Committee of the district, in terms of section 4 of the Publicans' Certificate (Scotland) Act 1876."

Argued for the appellants—The question was one of the interpretation of sections 4 and 6 of the Publican's Certificate (Scotland) Act 1876 (quoted in rubric). Here the Magistrates were wrong, because premises licensed for a public-house are not the same thing as premises licensed for an hotel, and therefore the hotel-keeper's certificate here was really a certificate "in respect of premises not certificated at the time of the application" in the meaning of section 4, and was consequently a new certificate which required confirmation. In England it had been held that where a beer-house obtained a public-house licence, confirmation was required—*Marwick* v. *Codlin*, July 6, 1874, L.R., 9 Q.B. 509.

Argued for the respondent—The case of *Marwick* was decided on an English Licensing Act (35 and 36 Vict. cap. 94), which contained a definition of the phrase "new licence" quite different from the definition of "new certificate" in the 1876 Act. It was also a case where a power to sell a different class of liquor was granted. Here the point on which the Act fixes to deter-