Mr Richard Brown, C.A., Edinburgh, interim factor on the estate of the deceased George Whyte, presented a petition for exoneration and discharge. Objections were lodged by Mr George Whyte, 25 Cazenove Road, London.

The Lord Ordinary (PEARSON) on 6th June 1900 pronounced an interlocutor whereby he repelled these objections and found that on certain things being done the petitioner's appointment would fall to be recalled and the petitioner exonered and discharged.

The respondent presented a reclaiming-note signed by himself and not by counsel.

The petitioner objected to the competency of the reclaiming-note, in respect that it had not been signed by counsel but by the party himself, and founded upon the cases of *Hawks* v. *Donaldson*, Nov. 16, 1899, 2 F. 95; *Smith* v. *Lord Advocate*, June 16, 1897, 5 S.L.T. 76; *Jaffray* v. *Jaffray*, Dec. 19, 1863, 2 Macph. 355; *Watt* v. *Johnston*, 1863, 1 Macph. 269 (note).

The reclaimer stated that he had done his best to obtain the signature of counsel, but that he had been unable to do so, and that he had already presented three reclaiming-notes signed by himself, the competency of which had not been disputed. He maintained that it was unnecessary to obtain the signature of counsel.

It appeared that in the course of these proceedings several reclaiming-notes had been presented by the respondent which were signed by himself and not by counsel, to which no objection had been taken, and, in particular, that he had presented a reclaiming-note signed only by himself against an interlocutor pronounced by the Lord Ordinary on 27th October 1898, which had not been objected to, and upon which the Court, upon 17th December 1898, pronounced an interlocutor which bore that the Lords, having considered the reclaiming-note, . . . recalled the said interlocutor.

LORD PRESIDENT—There is no doubt that as a rule of practice this Court requires that reclaiming-notes shall be signed by counsel, but, as I understand and as I think it was admitted at the bar, the rule was not established by any Act of Parliament or Act of Sederunt or positive decision. This being so it would be unfortunate if it was not in the power of the Court to dispense with a rule founded only on practice, upon special cause for doing so being shown on any fitting occasion. Now, a striking peculiarity of the present case is that the reclaimer has in the course of these proceedings presented several reclaiming-notes not signed by counsel but only by himself, all of which have been entertained, the case on each occasion having been sent to the roll and afterwards considered. In particular, the last of these reclaiming-notes presented on 29th October 1898 was signed only by the reclaimer, not by counsel, and this Division of the Court by interlocutor of 5th November 1898 sent the case to the summar roll. The case was afterwards heard, and an interlocutor was pronounced on 17th December 1898, which refers to the reclaiming-note in these terms—[*His Lordship quoted the material part of the interlocutor, ut supra*]. Lord Pearson afterwards heard parties in the Outer House, and pronounced the interlocutor which it is now proposed to submit to review. It would be anomalous that a reclaiming-note should be entertained by the Court though signed only by the party at an earlier stage of the proceedings, and the same Court should be obliged to refuse to entertain a later reclaiming-note so signed when the reclaimer comes again with the object of following out the same proceeding to its completion after an interlocutor had been pronounced by the Lord Ordinary. If it is within the power of the Court on special cause shown to dispense with its own rule of practice, this seems to me to be a case in which we should do so. Accordingly, without giving any countenance to a general practice of entertaining reclaiming-notes which are not signed by counsel, and having regard to the very special circumstances of the case, including the statement made by the reclaimer at the bar that after doing his best he has been unable to obtain the signature of counsel, I think we may dispense with the necessity of having the reclaiming-note signed by counsel on this occasion.

LORD M'LAREN and LORD KINNEAR concurred.

LORD ADAM was absent.

The Court pronounced this interlocutor:—

"The Lords in the circumstances dispense with the signature of counsel to the reclaiming-note, and appoint the case to be put to the summar roll."

Counsel for the Petitioner—C. K. Mackenzie. Agents—Welsh & Forbes, S.S.C.

Counsel for the Respondent — Party. Agent—Party.

Tuesday, June 12.

SECOND DIVISION.

[Lord Kyllachy, Ordinary.

BOOTLAND *v.* M'FARLANE.

Public-House — Certificate — Reduction of Certificate—Application—Untrue Answer to Question in Application—Application not Fulfilling Statutory Requirements—Public Houses Acts Amendment (Scotland) Act 1862 (25 *and* 26 *Vict. c.* 35), *sec.* 8.

By section 8 of the Public-Houses Acts Amendment (Scotland) Act 1862 an applicant for a licence is required "truly to fill up an application" for a certificate, and it is directed that he "shall truly answer the several queries" contained in the schedule form, among these queries being the following:—

"Whether applicant has attained the age of twenty-one years."

An applicant who was only nineteen and a-half years of age at the date of the application answered the above question by inserting the word "Yes." The Licensing Court granted the application, and issued a certificate to the applicant, and the certificate was confirmed by the Confirmation Court.

In an action for reduction of the certificate, *held* (*aff.* judgment of Lord Kyllachy—*diss.* Lord Young) that the certificate having been granted on an application which did not fulfil the statutory requirements was liable to reduction.

Title to Sue—Reduction of Public-House Certificate — Person Owning or Occupying Property in Neighbourhood of Licensed Premises — Public-Houses Acts Amendment (Scotland) Act 1862 (25 *and* 26 *Vict. c.* 35), *sec.* 11—*Public-House.*

By section 11 of the Public-Houses Acts Amendment (Scotland) Act 1862, it is enacted that any person owning or occupying property in the neighbourhood of the house or premises in respect of which any certificate shall be applied for may object to the granting of such certificate by lodging at any time, not less than five days before the meeting of the Licensing Court, a notice in writing specifying the grounds of his objection.

Held (*aff.* judgment of Lord Kyllachy —*diss.* Lord Young) that such persons had a title to sue an action of reduction of a certificate on the ground that it had been granted upon an application which did not comply with the statutory requirements.

Public-House — Certificate — Applicant for Certificate—Minority.

Opinion (*per* Lord Kyllachy (Ordinary) and the Lord Justice-Clerk, that minority is not *per se* a disqualification for holding a certificate.

By section 8 of the Public-Houses Acts Amendment (Scotland) Act 1862 (25 and 26 Vict. c. 35), it is provided, *inter alia*—"If any person shall be desirous of keeping . . . a public-house . . . for the sale therein of spirits, wine, beer, or other exciseable liquors, whether to be consumed on the premises or not, he shall previous to the granting to him of a certificate for that purpose, or the renewal of any such certificate already granted, truly fill up an application for such certificate in the form contained in the first part of Schedule B to this Act annexed, and shall truly answer the several queries therein contained. . . . And every such application shall be filled up in a fair and legible hand, and shall be signed by the applicant or his agent thereunto authorised, and shall be lodged by the applicant with such clerk of the peace or town-clerk, as the case may be, fourteen days at least before the general meeting of the justices of the peace or the magistrates for granting and renewing certificates."

By section 11 of the same Act it is enacted that any person owning or occupying property in the neighbourhood of the house or premises, in respect of which any certificate or renewal of any certificate shall be applied for, may object to the granting or renewal of such certificate by lodging at any time not later than five days before the meeting of the licensing court a notice in writing specifying the grounds of his objection.

On 22nd March 1899 Francis M'Farlane presented an application to the Magistrates of Leith, in which he stated that he was desirous to obtain a certificate for licence for a public-house at 17 Charlotte Street, Leith, for the ensuing year, in terms of the Public-Houses Acts Amendment (Scotland) Act 1862, and Acts therein cited. This application had subjoined to it the queries contained in Schedule B annexed to the Public-Houses Acts Amendment (Scotland) Act 1862, and made reference to the answers to these queries which, it was stated, were truly made. One of these queries was as follows:—"Whether applicant has attained twenty-one years of age." M'Farlane's answer to this query was "Yes." The application was for a new certificate.

The application came before the Magistrates on 11th April 1899, and they pronounced a deliverance granting it. A certificate thereafter was issued to M'Farlane. On 4th May the certificate came up for confirmation before the Joint Licensing Committee for Leith district, who confirmed the certificate. At the meeting of the Confirmation Court an agent for certain objectors to the granting of the licence stated that he had reason to believe that M'Farlane was not twenty-one years of age.

On 10th July 1899 Joseph Bootland, auctioneer, Leith, and a number of other ratepayers in the burgh of Leith, who were owners or occupiers of property in the neighbourhood of 17 Charlotte Street, and who had appeared as objectors to the granting of the certificate in the Licensing Courts, raised an action against (1) Francis M'Farlane, (2) the Magistrates of Leith, (3) the Clerk to the Licensing Court of Leith burgh, (4) the Joint Licensing Committee for Leith District, and (5) the Clerk to the said Joint Licensing Committee. The action concluded (1) for reduction (*a*) of the deliverance of the Magistrates granting the application, (*b*) of the deliverance of the Confirmation Court confirming the certificate, and (*c*) of the certificate; and (2) for interdict against M'Farlane trafficking in exciseable liquors in the premises referred to.

The pursuers averred—"(Cond. 6) Since the Confirmation Court the pursuers have ascertained and now aver that the defender M'Farlane was born at Shotts on 10th September 1879, and has thus not completed his twentieth year. An extract of the said defender's birth is herewith produced and referred to." They also averred that the defender's statement as to his age was *in essentialibus* of his application, and was made falsely and fraudulently with the

purpose and effect of deceiving the magistrates, or at least that it was false.

The pursuers pleaded, *inter alia*—"(1) The said deliverances or judgments having been pronounced, and the said certificate obtained, by means of the false and fraudulent misrepresentation condescended on, decree of reduction should be granted as concluded for. (2) The said deliverances or judgments having been pronounced and the said certificate granted and confirmed under essential error on the part of the Magistrates and Joint Licensing Committee, induced by the defender M'Farlane's material misrepresentations, they fall to be reduced. (3) On a sound construction of the licensing statutes, and at common law, no person under twenty-one years of age can competently hold a public-house licence, and the defender M'Farlane being under that age the licence in his favour is illegal, and should be set aside."

Francis M'Farlane lodged defences, in which he admitted that he was under twenty-one years of age, but alleged that he had good ground for believing and did believe that he was twenty-one at the date of his application.

He pleaded, *inter alia*—"(1) No title to sue. *Jus tertii.* (2) The action is incompetent, and ought therefore to be dismissed with expenses. (3) The pursuer's statements are irrelevant, and the action ought therefore to be dismissed with expenses. (5) The Magistrates' deliverance and the certificate following thereon being both legal and valid, and having been legally and validly granted to, and the certificate being now legally and validly held by, the defender, decree of absolvitor with expenses ought to be pronounced."

On 20th January 1900 the Lord Ordinary (KYLLACHY) granted decree of reduction, declarator, and interdict in terms of the conclusions of the summons.

Opinion.—"This action concludes for reduction of a certificate granted to the defender for a public-house in Leith, at a Licensing Court held in April last (1899). The pursuers are certain persons who, as being proprietors or occupants of neighbouring premises, had right, under the licensing statutes, to appear and object, and in fact did so, but unsuccessfully.

"There are several grounds of reduction but they all depend on this: that the defender was at the date of his application, and also of the certificate, between 19 and 20 years of age. In view of this fact, which is not disputed, it is contended by the pursuers (1) that minority is *per se* a disqualification for holding a licence, and that, accordingly, the licence is void; (2) that the applicant having represented himself as of full age, and thus obtained the licence by fraud, the certificate is, on that ground, reducible; and (3) that it being an express statutory condition that an applicant for a licence shall lodge a written application, answering 'truly' certain questions, of which one is whether he is over 21 years of age, and the applicant here having answered this last question falsely, such false answer vitiated the whole proceedings, making the certificate void, as granted in non-compliance with a statutory condition.

"I am not prepared to hold that minority is itself a disqualification. It is certainly not so at common law. A minor may unquestionably carry on any business; and with respect to the statute no such disqualification is there expressed, or in my opinion implied. It is no doubt required that the magistrates shall have before them information on the subject of the applicant's age. I shall advert to that presently. But there is, so far as I can discover, nothing to prevent them, if they choose, granting a certificate to a minor.

"Neither do I propose to hold that a certificate can be reduced (at all events at the instance of third parties) on the ground simply that the applicant made a false statement before the magistrates, or even a false statement which was *prima facie* important. In such a case it would, at the least, be necessary to aver and prove that the magistrates were in fact deceived, and that but for the deception the certificate would not have been granted. But apart from that difficulty, I desire to reserve my opinion as to how far, in what circumstances, and at whose instance, a reduction of a judgment, certificate, or other proceeding, judicial or administrative, can be brought successfully on such a ground.

"But having given the matter somewhat anxious consideration, I am of opinion that the third ground urged by the pursuers is a good ground of reduction. There is no doubt that an application in the prescribed form is a statutory requisite. It is required in its present form by the 8th section of the Act of 1862 and the relative Schedule B. And I do not suppose it would be argued that without an application a certificate could be lawfully granted. But an application being requisite, it must, I apprehend, be an application in terms of the statute; and amongst other things which the statute prescribes is this, that the applicant shall 'truly' fill up a certain form, and shall 'truly' answer the several queries which the form propounds. An application therefore which omitted to answer the prescribed queries, or some of them, could hardly I think be considered an application under the statute; and that being so, it seems to be none the less essential that the queries if answered shall be 'truly' answered. In short, an application which either omits to answer the statutory queries, or which answers them not 'truly' but falsely, is not, in my judgment, for the purposes of the statute, an application at all. Assuming the omission to be observed, or the falsehood to be manifest, the magistrates would not, I apprehend, be bound or indeed entitled to consider the application. Nor would the clerk be bound to include it in the prescribed advertisement under section 9.

"I do not overlook that some of the statutory queries relate to matters as to which truth or falsehood can perhaps hardly be predicated. Nor do I forget that it may perhaps be a question whether the word 'truly' as used in the statute means

more than truly to the best of the applicant's knowledge. I fail, however, to see how even if that construction were admitted, it could avail the defender here. The defender's age is a *factum proprium*. He gives no explanation of his error. If he did not know his age, he had the means of knowing it; and if he did not use those means, he was not justified in making a statement as to which he did not know whether it was true or false.

"As to the pursuers' title to sue, it does not seem to be necessary to consider whether the ground of action here being that the certificate is outside the statute, and therefore a nullity, an action such as the present would or would not be competent at the instance of any member of the public. That point has been argued, but it is enough—as it seems to me—to sustain the title of the present pursuers, that they are, as I said at the outset, persons who under the statute have a recognised interest and status as owners or occupants of neighbouring premises, and who in that character appeared as objectors to the granting of the certificate under challenge.

"Nor, if I am right otherwise, do I require to say anything as to the exclusion of review and the finality clauses contained in the statute. In setting aside the certificate the Court does not in any sense review the Magistrates' decision; nor if that decision is outside the statute, can the finality clauses be appealed to.

"On the whole matter I am of opinion that the pursuers are entitled to decree in terms of the conclusions of their summons."

The defender Francis M'Farlane reclaimed, and argued—The mere fact that one of the questions in the application was answered wrongly did not thereby make the proceedings and certificate null. The pursuer when he answered the question honestly believed that he was 21 years of age; he therefore answered "truly" according to his belief. The ground of the Lord Ordinary's judgment appeared to be that there was no application before the Court, because of this error as to age. This reading of the statute was too strained and strict. The application was null only when there had been no report as to the premises or no certificate as to the applicant's character in accordance with the latter part of section 8 of the Act of 1862. Statements of the kind made by the pursuer were not a relevant ground for reduction—*Begg* v. *Begg*, February 27, 1889, 16 R. 550. At any rate, in order to make the action relevant, it should have been stated in the condescendence that the Magistrates would not have given the applicant a certificate if they had known that the statement as to age was erroneous. This was not stated, and it was for the Magistrates themselves to take proceedings in order to deprive the defender of his licence if they had granted their certificate in error. But the Magistrates did not appear in this action although called as defenders, and it must therefore be assumed that they were willing that the defender should hold the licence even if he were under age. There was nothing in the mere fact that the licensee was under age against the licence being granted if the Magistrates were willing to grant it. The pursuers being members of the general public, had no title to sue an action of this kind.

Argued for the pursuers—The truth of the answers was one of the conditions on which the certificate was granted. The statute required the questions to be answered "truly." "Truly" was twice used in the section, and the applicant was thus put on his guard and warned that he must answer with strict accuracy. The defender had been guilty of non-compliance with a statutory requirement and must take the consequences. If the truth of these answers was one of the conditions on which the licence was granted, it did not matter whether or not there was intention to deceive. The licence in this respect was in the same position as an insurance policy, as to which see *Standard Life Assurance Company* v. *Weems*, August 1, 1884, 11 R. (H.L.) 48. The pursuers had a good title to sue. They were not outsiders. Under section 11 of the Act of 1862 they had a statutory title to be parties to the cause.

At advising—

LORD JUSTICE-CLERK—By section 8 of the Public-Houses Acts Amendment Act of 1862 an applicant for a licence is required to "truly fill up an application" for a certificate, and it is directed that he "shall truly answer" the several queries contained in the scheduled form. The defender in this case was in the spring of 1898 an applicant for a licence in Leith, and in filling up the form he answered the question "Whether applicant has attained the age of twenty-one years?" by inserting the word "Yes." It is now admitted that at the time at which he did so he had not completed his twentieth year.

I am of opinion that the Act having required that the applicant should answer the queries "truly," a false answer on a material question such as this renders the licence granted upon it liable to reduction. In doing so I do not hold that it is *ultra vires* of the licensing authority to grant a licence to a person under age if they see fit to do so. But I think it is plain that the Legislature held that the question whether the applicant had reached twenty-one years of age was one of importance for the consideration of the licensing authority. I hold that if the applicant gives them as statements of fact, statements which are not true, on a matter prescribed for inquiry by the Act of Parliament, a licence granted on an application containing such statements is liable to challenge by reduction as not having been obtained in terms of the statute. It may be a question whether, up to the time of granting the licence, an application to amend the answers where an error had occurred in them, might not be granted. That was not done here. On the contrary, it appears that at the Confirmation Court the question was raised whether the applicant was 21 years of age, and the defender allowed the case to be

adjudicated upon on the footing that his answer on that question was true, and was adhered to.

As regards the title of the pursuers to sue the action I have no doubt. They are persons who, if the query had been truly answered, would have been entitled to come forward and object on the ground of the applicant's youth to the granting of the licence.

I am of opinion that the Lord Ordinary's interlocutor should be affirmed.

LORD YOUNG—The Lord Ordinary has interdicted the defender "from trafficking in exciseable liquors in the said premises No. 17 Charlotte Street, Leith, unless and until a valid certificate of licence is issued to him." In doing so his Lordship has, I think, failed to notice that such trafficking is not illegal at the common law, or by contract with the pursuers, but only a statutory offence punishable with statutory penalties, recoverable as the statute prescribes. At the date of the interlocutor (20th Jan. 1900) the licence challenged was within four months of expiry. It expired on the 15th of last month. Whether the Lord Ordinary's decree of reduction is sustained or not, the defender has, by the certificate complained of, no licence for any subsequent time, and so is liable to prosecution for statutory penalties at the instance of anyone entitled and undertaking to show that he has incurred them. With respect to the period from 15th May 1899 to 15th May 1900, the defender, had he not applied for a licence, would certainly not have been interdicted at the instance of the pursuers from trafficking in exciseable liquors in No. 17 Charlotte Street, Leith. Does it make a difference, and if so why, that he made a faulty application?

As a reduction the action is, in my opinion, nimious and idle to the extent of being purposeless. The only object of the Public-Houses Acts Amendment (Scotland) Act 1862 is to prevent trafficking in exciseable liquors by unlicensed persons or in unlicensed premises. To this end specified magisterial authorities are authorised, on complaint at the instance of specified prosecutors, to impose penalties (within specified limits of amount) on persons convicted by them of so trafficking without licence for themselves and premises. It was necessary of course that licensing authorities should be specified, and also the services required of them or duties imposed on them in giving or refusing certificates of licence to applicants therefor. I shall have a few words to say by-and-bye about these duties. At present I desire to observe that in such a complaint as I have alluded to it is within the jurisdiction and according to the duty of the magistrates before whom it is properly brought to determine every matter of controversy the decision of which is necessary to the conviction or acquittal of the party complained of. Is this doubtful? Or is it doubtful that a dispute as to the validity of the certificate of licence produced as answer to the complaint is such a matter? A judgment, whether of conviction or acquittal, is no doubt subject to review, but only within prescribed statutory limits, and in no case whatever by this Court. The notion of magistrates delaying to pronounce judgment of conviction or acquittal in order that an action of declarator or reduction (which is declarator by cassation) regarding the validity of an *ex facie* good licence does not seem to me plausible enough to be worthy of consideration.

The certificate of licence which the Lord Ordinary has reduced is *ex facie* regular in all respects, and is genuine in the sense that it was in fact granted, as it bears to be, by the statutory licensing tribunal of the district. It is admitted by the pursuers that the application as produced to us, with the appended questions and answers, was timeously and regularly presented and published so as to call for objections from any persons interested to object. It is admitted that no objection on the ground of age, or false answer as to age, was stated on 11th April when the certificate was granted. I think the grant then made without objection by the proper authority was thereafter unassailable. The pursuers aver (Cond. 5) that on 4th May, at the sitting of the Confirmation Court, an agent for some of them opposed the confirmation, because "*he* had reason to believe that the defender M'Farlane was not 21 years of age." I am of opinion that the Committee rightly disregarded this statement. Is it suggested that they ought to have ordered a proof even without being asked?

The Lord Ordinary is of opinion that a certificate may lawfully be granted to a minor. I assume this is right, as it was distinctly assented to by the pursuers' counsel. He is also of opinion that a false statement by an applicant before the Magistrates, even if *prima facie* important, would not afford ground of reduction, at least without evidence that the Magistrates were in fact deceived. Nor does his Lordship "forget that it may perhaps be a question whether the word 'truly,' as used in the statute means more than truly to the best of the applicant's knowledge." The passage of his Lordship's note immediately following I cannot assent to.

I should not, any more than the Lord Ordinary, have ordered a proof but that on the ground that the pursuers' averments are irrelevant to support the conclusions of the summons. The Lord Ordinary, however, has proceeded without proof to decide the case against the defender on grounds of supposed fact denied by him, and at variance with the truth as he avers it. He does indeed admit (answer 8) that he "is under 21 years of age," but this if taken against him must in fairness and in law be taken with the qualification expressed in the preceding answer (7), "This defender had good ground for believing, as he did believe, that he was 21 years of age at the date of his application." If we are to decide the case without evidence (as the Lord Ordinary did), we must, in my opinion, do so on the footing that this is true or may be—which the Lord Ordinary cer-

tainly did not. Assuming that it is true or may be, can we judicially affirm that the answer "Yes" to the second query was given untruly in the view that the word "truly," as used in the statute, means "truly to the best of the applicant's knowledge." I must say for my part that the occurrence of the word "truly" in the direction that the applicant "shall *truly* answer the several queries" is superfluous, and quite immaterial, and that the question now before us would have been the same had it not occurred.

I think the whole case is comprehended in and disposed of by these propositions, viz., 1st, the defender's application for a certificate is *ex facie* in all respects regular and complete; 2nd, it was duly published and presented to the licensing Magistrates, who at their proper statutory meeting for granting and renewing such certificates, after duly considering it and also all objections to it which were regularly and properly stated to it, granted the "certificate of licence"; and lastly, this Court has not jurisdiction by reduction or otherwise to review or disturb the judgment of the licensing Magistrates.

I do not think it doubtful that the licensing Magistrates in dealing with an application for a licence certificate may take account of anything in the conduct of the applicant, whether in an answer to a query or in statements made by him in support of his application, and whether brought under their notice by an objector or noticed by any of themselves, as indicating untruthfulness or want of candour or sincerity on the part of the applicant. But it is for them to do as they see fit after that due consideration which it is proper to assume they give to the matter before disposing of it. We were informed by the learned counsel for the defender that the same body of licensing Magistrates at their statutory meeting last April granted him a renewal of his certificate. This shows, what indeed I should have assumed without it, that the Magistrates saw no reason to doubt his truthfulness and candour when they granted his application in the preceding year.

The whole case for the pursuers is thus reduced to this—that the answer "Yes" to the second query, though given honestly and in good faith, is fatal to all that followed, in respect it is now admitted by the defender that "he is under twenty-one years of age."

LORD TRAYNER—According to the provisions of the Act of 1862 no licence can be granted except upon application in the form and terms there provided. The statute enacts that the applicant shall answer certain questions, and shall answer them truly. The obvious purpose of this enactment was to ensure that the Magistrates or other licensing authority to whom the application was presented should have before them accurate information on the matter to which the questions refer when they came to deliberate whether the application should be granted. This purpose would be frustrated if any application was allowed to pass in which either the required information was altogether withheld or was incorrectly given. I think the licensing authority have no power to dispense with what the statute has required, and have no power to grant any application which does not fulfil the statutory requirements. Now, I agree with the Lord Ordinary that the defender's application was not conform to the provisions of the statute. It gave a false answer to one of the questions—false, at least, in the sense that it was inconsistent with the fact. I cannot excuse the defender's proceeding on the ground that he made a mistake or that he was in error as to his age. It was a matter on which, if he was in any ignorance or doubt, the exact truth could easily have been ascertained by him. But if he either wilfully stated what was untrue, or made a statement of the truth of which he did not inform himself, as he might and should have done, but took the risk of its being inaccurate, the consequences, in my opinion, are the same; and these consequences are, that the application not being conform to statute is one on which no licence could be granted.

It was said for the defender that the Magistrates who granted him the licence were not deceived by the false statement, and would have granted the licence even if they had known the truth. I do not know that. On the contrary, I think the Magistrates might very reasonably have considered that no licence should be granted to any applicant under twenty-one years of age, and have refused the licence if they had known that the defender had not attained that age. It may be true that there is no illegality in granting a licence to a minor, but it is also true that no licensing authority would grant a licence to certain minors—for example, to a lad of fifteen or sixteen years of age. The Act of 1862 does not require that the applicant should be major, but the mere fact that it directs the applicant to say, not what his age is, but whether he has attained twenty-one years of age, indicates to my mind somewhat markedly that the Legislature regarded that age as the one before which no licence should be given. This view is strengthened when it is considered that the whole restrictions imposed by the Legislature on the traffic in exciseable liquor are imposed for the benefit of the public, and it is not for the benefit of the public that such traffic should be carried on under the charge or administration of a person of immature age.

I think the Lord Ordinary's judgment in terms of the reductive conclusions of the summons should be affirmed. What the effect of this judgment may be on renewals of the licence now reduced is not a question here, and I offer no opinion on that subject until the question comes before us.

LORD MONCREIFF—I think the Lord Ordinary's judgment is right. I entertain no doubt that reduction of a certificate is competent on the ground of statutory

nullity, or wilful failure to observe an imperative statutory requirement. There are recent cases in which such actions of reduction have been entertained—*Black* v. *Tennant*, 1 F. 423; *Boag* v. *Teacher*, 37 S.L.R. 578.

It is essential to the validity of a certificate not only that the applicant shall have timeously lodged, filled up, and signed the application in the schedule, but that he shall have done so *truly*. This word is emphasised; it occurs twice in section 8 of the Public Houses Act 1862, and is repeated in the schedule. The original application, there enjoined, is really an affirmation. In this case the reclaimer did not answer truly as to his age—a fact within his knowledge. This failure appears to have been wilful as no intelligible explanation is given; at least it was made recklessly and without any steps being taken to ascertain whether it was correct. He was only 19½ years of age, while he affirmed that he was 21. Therefore it was not a trifling inaccuracy which might not have had the effect of annulling the certificate.

The Magistrates and their reporter were entitled to rely on the truth of the answer, and the false affirmation having been made by the applicant himself the certificate granted on the face of it cannot stand.

The Court adhered.

Counsel for Pursuers—Salvesen, Q.C.—Cook. Agents—T. F. Weir & Robertson, S.S.C.

Counsel for Defender M'Farlane—Baxter—Guy. Agents—Snody & Asher, S.S.C.

Tuesday, June 19.

SECOND DIVISION.

[Lord Stormonth Darling, Ordinary.

WILSON'S TRUSTEES *v.* LANDALE.

(*Ante*, March 14, 1900, p. 545.)

Process—Multiplepoinding—Claim—Competency—Claim put forward after Decree of Ranking and Preference by Parties Called as Defenders.

In an action of multiplepoinding a decree of ranking and preference, which disposed of the whole fund *in medio*, was pronounced in the Inner House, and the cause was remitted to the Lord Ordinary to proceed therein as accords. Thereafter certain parties, called as defenders in the action, moved the Lord Ordinary to receive claims, founded upon the ground of judgment which had been sustained in the Inner House. One party had claimed in the original competition upon other grounds and had acquiesced in the interlocutor of the Lord Ordinary repelling his claim. The other parties had not hitherto appeared in the process.

The Court *refused* to receive these claims.

Dymond v. *Scott*, November 23, 1877, 5 R. 196, *distinguished* and *commented on*.

This case was a sequel to the case of *Wilson's Trustees* v. *James Watson & Company*, reported *ante*, *ut supra*.

After the interlocutor of the Second Division of March 14, 1900 (there quoted) had been pronounced, David Guild Landale and others, who had been called as defenders, but had not appeared or claimed, moved the Lord Ordinary to receive claims, founded on the principle sustained by the judgment of the Inner House in the case of the claimants James Watson & Company. The Bank of Scotland, whose claim, founded on another ground, had been repelled by the Lord Ordinary, and who had acquiesced in his judgment, also moved to be allowed to lodge a claim founded on the same principle. On 22nd May 1900 the Lord Ordinary (STORMONTH DARLING) refused the motion.

Opinion. — "The competition in this multiplepoinding has hitherto been tripartite, the claimant Wilson claiming the whole fund *in medio*, and the Bank of Scotland and James Watson & Company claiming specific sums out of it. On 1st July 1899 I repelled the claims of the Bank of Scotland and James Watson & Company, and ranked and preferred Wilson to the whole fund. James Watson & Company reclaimed; the bank did not. The result of the reclaiming-note was that their Lordships of the Second Division recalled my interlocutor so far as James Watson & Company were concerned. They ranked and preferred these claimants *primo loco* to the fund *in medio* in terms of their claim and gave them decree for payment of the sum of £1420, 17s. 3d. with interest. They then, in express terms, ranked and preferred the claimant Wilson 'to the whole balance of the fund *in medio*;' they made corresponding changes in the findings about expenses; *quoad ultra* they affirmed the interlocutor reclaimed against, and they remitted the cause to me to 'proceed therein as accords.'

"I am now asked by certain parties who were called as defenders, but did not at first appear, to allow them to lodge claims founded on the principle given effect to in the case of James Watson & Company; and I am also asked by the Bank of Scotland to receive a claim by it, founded on the same principle, which differs from that on which their original claim was based. Now, of course it would be useless for me to receive claims if I could not afterwards give effect to them, and I do not see how I could consistently with the forms of process.

There can be no doubt that the process of multiplepoinding admits, and conveniently admits, of very great latitude in the lodging of claims, both by those who have been called as defenders and by those who have not. Claims are constantly received long after the prescribed time for lodging them has expired. There have also been