The ground upon which I think this appeal should be dismissed is that tbe complaint is wanting in specification.

The article which is alleged to have been adulterated is marmalade. The complaint sets forth that in response to a request for a pot of marmalade the respondent sold, to the prejudice of the purchaser, an article "which was not of the nature, substance, and quality of marmalade, in respect that it contained 14 per cent. or thereby starch glucose, which is extraneous to marmalade."

Now marmalade is not a simple substance, nor is it an article for which a known and recognised standard exists, such as drugs, the standards of which are found in the British Pharmacopœia. It is a compounded article for which so far as appears there is no fixed standard. On the other hand, the adulteration is said to have consisted in the introduction of a certain amount of starch glucose, an entirely innoxious substance of the nature of sugar.

In these circumstances it seems to me that it was essential that the complainer should specify precisely what he meant by marmalade, and should explain how the use of the 14 per cent. of starch glucose in the compounding of what would otherwise have been marmalade resulted in an article which differed in nature, substance, and quality, or one or other of them, from marmalade.

It seems to me that in all cases of prosecutions under the 6th section of the Sale of Food and Drugs Act 1875, where the article said to have been adulterated is a compounded article for which there is no fixed standard, and where the adulteration is said to have consisted in the introduction of a substance *prima facie* innocuous, it is incumbent upon the prosecutor to insert in the complaint such specification of the nature of the article said to have been adulterated, and of the effect of the introduction of the alleged extraneous substance, as will make it clear that, if what is alleged is true, the accused did sell to a purchaser an article which was not of the nature, substance, and quality of the article demanded by him.

In that respect I am of opinion that the complaint now under consideration entirely fails. Assuming the statements in the complaint to be true, it seems to me impossible to say that the article supplied to the purchaser was not the article demanded by him. I think it right, however, to add that I desire to express no opinion whatever upon the merits of the case. For anything I know to the contrary, it may be that marmalade in which there is 14 per cent. of starch glucose is not of the nature, substance, and quality of marmalade. All that I say is that the complaint does not relevantly set forth that that is the case.

The LORD JUSTICE-CLERK and LORD KYLLACHY concurred.

The Court dismissed the appeal.

Counsel for the Appellant—Wilson, K.C. —Blackburn. Agent—James Ross Smith, S.S.C.

Counsel for the Respondent—Aitken—Morton. Agents—Erskine, Dods, & Rhind, S.S.C.

COURT OF SESSION.

Friday, October 31.

SECOND DIVISION.

[Lord Kyllachy, Ordinary.

HAWICK HERITABLE INVESTMENT BANK, LIMITED *v.* HUGGAN.

Public-House—Certificate—Transfer—Endorsation of Certificate — Endorsation Ineffectual and Unnecessary—Contract—Breach of Contract—Damage—Failure to Show Damage—Licensing (Scotland) Act 1828 (*Home Drummond Act*) (9 *Geo. IV. cap.* 58), *secs.* 19 *and* 20.

The proprietors of certain licensed premises raised an action of damages for breach of contract against a person in whose name the licence certificate had been granted, but who was not in occupation of the premises, the ground of action being that the defender had failed to implement an alleged obligation to endorse the licence certificate in order to facilitate a transference of the licence to a new tenant. *Held* that the action was irrelevant, in respect that the pursuers could sustain no damage by the defender's failure to endorse the certificate, endorsation being ineffectual and unnecessary for the purpose of obtaining a transfer.

Proof—Admissibility of Proof prout de jure — Nudum pactum—Promise to Endorse Licence Certificate—Promise Part of Transaction in which Claims Waived.

Held by Lord Kyllachy (Ordinary) that a promise to endorse a licence certificate, alleged to have been given by the person in whose name the certificate had been issued, as part of a transaction under which certain claims against him were to be waived or discharged, was not a *nudum pactum* or gratuitous promise, and might consequently be proved by parole.

The Hawick Heritable Investment Bank, as heritable proprietors of subjects No. 9 High Street, Hawick, in February 1901 raised an action against Andrew Swan Huggan, Grocery Manager with the Hawick Co-operative Society, in whose name a grocery licence certificate had been granted for the said property. The pursuers concluded (1) to have the defender ordained forthwith to endorse and deliver to the pursuers the grocer's licence certificate granted for the year ending 28th May 1901 in the defender's name for the premises belonging to the pursuers situated at No. 9 High Street, Hawick," and (2) for payment of damages for his having failed to do so in terms, as they alleged, of an undertaking given by him to them.

The pursuers pleaded—"(1) The pursuers having sustained loss, injury, and damage by reason of the defender's breach of contract and wrongful actings condescended on, are entitled to damages." . . .

The pursuers did not insist in their first conclusion.

The defender pleaded—"1. The present action should be dismissed, with expenses, because — . . . (2) The pursuers' averments are irrelevant. (3) The certificate was incompetently granted and issued (1) in respect that it related to premises non-existent, and (2) because it bore to be in favour of a person who had no interest in or concern with the premises or business. 2. In any event the pursuers' averments can only be proved by writ or oath."

There was also a plea to the pursuer's title to sue, but it need not be further referred to for the purposes of this report.

The Licensing (Scotland) Act 1828 (Home Drummond Act) (9 Geo. IV. c. 58), sec. 19, enacts as follows:— . . . "Provided also . . . that if any person so authorised (*i.e.*, authorised to keep a common inn, alehouse, &c.) . . . shall remove from or yield up the possession of the house or premises for which such certificate shall have been granted it shall be lawful for two or more justices of the peace or magistrates respectively as aforesaid, sitting publicly in the ordinary place of meeting, to grant to any new tenant or occupier of such house and premises, upon such removal, a transfer of the certificate. . . ."

After hearing counsel in the Procedure Roll the Lord Ordinary (KYLLACHY), before answer, allowed a proof *habili modo*.

The facts of the case sufficiently appear from the opinions of the Lord Ordinary and the Judges.

After proof had been led the Lord Ordinary pronounced an interlocutor in the following terms:—"Finds it unnecessary to deal with the first conclusion of the summons, and dismisses the same, and decerns: Decerns against the defender for payment to the pursuers of the sum of £20 in full of the second conclusion," &c.

Opinion.—"The question in this case is whether the defender was in February 1901 under an obligation to transfer to the pursuers, who are owners of a certain grocer's shop in Hawick, a licence certificate which had been obtained for the shop in the defender's name. The pursuers say that he was so bound, and that he wrongfully refused to perform his obligation. The defender admits that he refused, but denies that he was under any obligation in the matter.

"The facts, speaking broadly (and apart from some questions of competency of evidence to which I shall advert presently), are shortly these. The pursuers or their authors the Messrs Carter (the exact position of the title is unimportant) were in the spring of 1900 in the possession as owners of the shop in question, which had become vacant by the removal of the previous tenant. The defender was at the time on the outlook for a grocery business, and after some negotiations it was arranged that he should become the pursuers' tenant on terms which were supposed to be arranged, but which as it turned out were not arranged quite finally. The shop held a licence, and had done so for some time, and both parties were of course anxious to secure the continuance of the licence under the defender's tenancy. Accordingly an application for renewal was made by the pursuers' agents with the defender's consent to the Licensing Court held in April 1900, the application being made in the defender's name and signed by him as tenant of the shop.

"The licence was refused by the Magistrates, but on appeal was granted by the Quarter Sessions. The expenses, which were considerable, were disbursed by the pursuers' agents. It was made a condition by the Quarter Sessions that the certificate should not be issued until certain improvements on the shop were made by the landlords; and those improvements were in fact not completed for some months afterwards. Meanwhile, the lease to the defender having been prepared and gone over and engrossed for signature, the defender raised certain questions upon its terms; and while these questions were still unsettled and the lease still unsigned he (the defender) was offered a situation with his present employers which he desired to accept. He accordingly intimated that he did not desire to proceed with the lease. The pursuers' agents remonstrated, pointing out the stage which had been reached and the expense which had been incurred, but in the end they offered to waive all questions, and to release the defender of all claims, including that for expenses, if he undertook to endorse the licence certificate when issued, and to do all that he could do to facilitate the transfer of the licence to a new tenant. The defender not unnaturally accepted these terms, and the matter was so settled. Thereupon the pursuers advertised for a new tenant, stating among other things—in the particulars issued to offerers—that the premises were licensed, and that the existing licence would be endorsed by the existing tenant. In the end a new tenant was found; and early in February—the improvements on the shop being by this time completed—the certificate obtained in April was issued to the pursuers' agents. They thereupon applied to the defender to endorse it as arranged. The defender, for some reason which does not appear, first asked time to consider, and in the end refused. The present action was then brought demanding implement, or failing implement damages, and the damages are said to arise in this way—that the new tenant not obtaining the endorsement of the certificate was thereby disabled from obtaining a licence until Whitsunday 1901, up to which date he therefore refuses to pay rent, and has besides claimed damages against the pursuers for loss of profit.

"It may perhaps be doubtful—perhaps it may be more than doubtful—whether the defender (apart altogether from special agreement) was not bound, when he resiled from the provisionally arranged lease, to

renounce in whatever way was requisite his interest in the licence which had been obtained at the joint instance of himself and the landlords and in contemplation of his proposed tenancy. That, however, is a point not necessary to be decided, because I am of opinion that it is sufficiently proved —and proved by competent evidence—that there was a special agreement expressly made to the effect alleged by the pursuers.

"Supposing parole evidence to be competent, I think that such is the clear result of the proof. I believed, and saw no reason to doubt, the evidence of Mr Haddon and Mr Hume, corroborated as it was by the real evidence of what followed; and I did not at the time, and do not now, attach importance to the defender's denial. But the competency of parole evidence has been disputed on the ground that the defender's undertaking was, if given at all, wholly gratuitous, and was thus a *nudum pactum* which can be proved only by writ or oath.

"Now I shall endeavour to state shortly what I understand to be the doctrine of *nudum pactum* according to our law. In the first place it is quite certain that if well proved a gratuitous promise is just as binding as if it were onerous. In this respect our law differs from the law of England. In the next place, it is equally certain that a gratuitous promise can only be proved by writ or oath; and I should be disposed to concede—although Mr Bell seems to assume the contrary—that the existence or non-existence of *rei interventus* can make no difference in that matter. But in the third place it is not less certain that a promise or undertaking is not in the eye of the law gratuitous—that is to say is not a mere *nudum pactum*—if it be part of a transaction which includes *hinc inde* onerous elements such for example as a waiver or discharge of claims or objections to claims—claims or objections which, whether good or bad, it is desired to extinguish. In such a case the whole transaction, unless heritable rights are affected—may, I think it is clear, be the subject of parole proof.

"Now if this be so, it can hardly, I think, be doubted that we have here all the elements necessary for the admission of parole proof. To begin with, the defender in undertaking to endorse this licence was probably undertaking only to do what he was bound to do. That that was so is at least a very arguable proposition. On the other hand, the pursuers had probably no right in law to hold the defender to his tenancy of the shop. At least I am prepared so to hold. But they had certainly, as it seems to me, a claim more than arguable for the reimbursement of the expenses to which they had been put in procuring the licence. I do not indeed see at this moment what good answer the defender could have had to that claim if pressed. Accordingly I come to the conclusion that the promise in question was in no proper sense a gratuitous promise.

"It remains to consider to what extent, if any, the pursuers have proved damage, and I must say that I rather wish that this matter had received more attention at the proof. The assumption of the pursuers' case is that without the endorsement of the certificate their new tenant could not obtain a transfer of the licence, and that *with* such endorsement a transfer would have been got as matter of course. I cannot, however, see my way to accept both or either of these assumptions. The only statutory enactment on the subject of transfers between Courts is, so far as I can discover, contained in the 19th section of the Home Drummond Act (9 Geo. IV. c. 58); and that enactment prescribes nothing as to endorsement, or even as to the consent of the out-going licence-holder. All that it seems to require is that the existing licence-holder shall have removed from the licensed premises, and shall have been succeeded in these premises by the proposed transferee. Similarly, the statute says nothing as to a transfer being granted as matter of course. On the contrary, the matter is left, so far as I can see, entirely to the discretion of the magistrates. And although it may be quite probable that transfers are seldom refused when the existing certificate is endorsed by the existing licence-holder, and are apt to be refused unless it is so endorsed, I am afraid that was matter for proof, and there is no evidence on the subject. All the length therefore I can, as it seems to me, go is to hold it reasonably presumable that the endorsement of the licence or some equivalent aids the chances of the transfer, and that the want of it may be a substantial disadvantage. In this view it is not I think possible to hold that the pursuers have established a case for damages on the scale claimed by them. On the other hand, they are at least entitled to some damages—damages more than nominal, which I must assess upon a jury view of the circumstances. In that view I have come to the conclusion that the defender, having by breach of his contract wrongfully deprived the pursuers and their new tenant of a facility to which they were entitled, is liable in damages to the extent of £20, and for that sum I propose to decern."

The defender reclaimed, and argued—What was contended for by the pursuers was an innominate contract of an unusual character, and such a contract could not be proved by parole evidence—*Edmonston* v. *Edmonston*, June 7, 1861, 23 D. 995, Lord Benholme, at p. 1001; *Reid* v. *Reid Brothers*, June 8, 1887, 14 R. 789, 24 S.L.R. 560; *Garden* v. *Earl of Aberdeen*, June 24, 1893, 20 R. 896, 30 S.L.R. 780. The proof should have been limited to writ or oath. An obligation to assign a licence could not be enforced—*Clift* v. *Portobello Pier Company*, February 10, 1877, 4 R. 462; and a contract which could not be enforced by specific implement could not form the ground of an action of damages—*M'Arthur* v. *Lawson*, July 19, 1877, 4 R. 1134, 14 S.L.R. 668.

Argued for the respondents—The defender had come under an onerous obligation

which had been competently proved. According to recognised custom it was necessary in order to obtain a transfer of a licence to produce the certificate endorsed by the holder, the Magistrates requiring to be satisfied by that means that the holder did not desire to continue his business. By the defender's breach of contract the pursuers' tenant had been deprived of the only recognised means of obtaining a transfer of the licence, and to the extent of his claims against them on that account the pursuers had sustained damage.

LORD JUSTICE-CLERK—The circumstances of this case are certainly peculiar. We have had a very clear statement by Mr Steedman of the grounds on which he contended that the judgment of the Lord Ordinary should be sustained. It appears that there was in the year 1900 the intention that the defender in this case should take certain premises in which the pursuers were interested, the premises being a heritable security of the bank. But after a certain time he came to the conclusion that he would be doing better for himself by taking an appointment as manager to a co-operative store. Now, that being the case, it is quite plain that no licence to him could be taken out when he was not intending to be the occupant of the premises. But it was thought advisable, as the premises were ruinous and had to be rebuilt, that the application should be carried through, and it was carried through at the Quarter-Sessions on the condition that the premises should be rebuilt to the satisfaction of the Magistrates before the licence was issued. For many months it was quite well known to the pursuers that the defender did not intend to occupy these premises at all, and when the premises were being rebuilt they advertised for a tenant. When the premises were rebuilt they applied to the Magistrates to issue the certificate in favour of the defender, which had not been issued but which had been held back, and they, through Messrs Haddon & Turnbull, got that certificate, and it has remained outwith the defender's possession ever since. I must say I do not think it was quite a right thing for them to apply for and take out that certificate in the circumstances, because they knew quite well that a new tenant was going to enter the premises and that the certificate in favour of Huggan was a document not representing the truth at the time it was taken out. But then it is said that in consequence of some negotiations and conversations which took place between Mr Haddon and his partner Mr Hume and the defender, the defender undertook by contract to endorse this certificate over in order that the new tenant might get the benefit of it when going before the Magistrates for a transfer of the licence. To begin with, I must say that endorsation is an expression entirely inapplicable to such a document. I daresay it is a very convenient way if there is to be a change of tenancy for the outgoing tenant to write his name on the back of the certificate, and when the parties appear at the Licensing Court to get a transfer to the incoming tenant, to refer to the signature on the back as evidence that the old tenant is going out. But his writing his name on the back of the certificate is merely an indication that he is not occupying the premises. An endorsation in the legal sense of the word is not effected by any such action, because if there is anything certain in law it is this, that a licence is personal to an individual, and that the holder cannot transfer it with any legal effect whatever to anyone else. It is the Magistrates alone who can transfer a licence from one person to another between the dates of the ordinary Licensing Courts to which every one must apply for his licence. But even if it were otherwise, even if it could be held that there was such an endorsation possible, and if it could be held that the defender here had been proved to have made a promise to put such an endorsation on the back of the certificate, I do not think there is any obligation failure to fulfil which subjects him to damages. I assume (although I do not think it is so) that there could be such an obligation—a good obligation in law. Damage here could only arise if the pursuers were placed in a worse position by the failure to put that signature on the back of the certificate than they would have been in after such a proceeding. I think it is plain as anything can be upon the facts of this case that they had no difficulty—could have had no difficulty whatever—in showing the Magistrates that the person who had his name on the certificate applicable to the premises was no longer tenant, and was not in a position to carry on the premises at all. He had no right to do so, and that they could show to the satisfaction of the Magistrates, if that was the case, quite easily without having any name written on the back of the certificate. They had advertised in the public prints. They had the certificate in their possession, which this man had never possessed at all; and he was under an engagement to give his whole time at another place as a servant, and therefore it was quite impossible that he could be in a position to hold this licence. On the whole matter I think the Lord Ordinary has erred, and that this is not a case for damages. I think the proper course would be to recal the Lord Ordinary's interlocutor and assoilzie the defender.

LORD YOUNG—I am of the same opinion, and concur in what your Lordship has said. The pleas-in-law for the defender are a little curious; the second sub-division of the first plea is sufficient for the decision of the case — "The pursuers' averments are irrelevant." It is too clear to be disputed that a certificate such as is here referred to—to sell spirits—is personal, and is not negotiable; and not only not negotiable, but not transferable in any way. A "negotiable document" is language which is applied to documents imposing obligations which are transferable by endorsation. But the right under this certificate is not transferable in any way, but is quite personal to the holder of it, and

endorsation by the person in whose favour it is granted can have no legal effect whatever—no effect of which any court of law or magistrate can take cognisance. We were told that the magistrates in licensing courts, when a transference of an existing licence in a shop was asked to another party who was going into the shop, required that the certificate of the licence which they were asked to transfer should be produced and endorsed. The magistrates cannot upon any ground of which we can take cognisance make any such requirement as a condition of granting a transference which they think should be granted. They could not in the discharge of their duty refuse to transfer if they thought there were grounds for the transference, if they were satisfied that the original holder of the licence did not desire to carry on the business. Suppose he were dead, and any of the magistrates were satisfied of the fact—as they are satisfied with any other matter of fact—that he is not going on with the certificate for the premises, and that he could not in them or any other premises, then they have to consider whether the transference which is asked should be granted or not. Well, that is absolutely sufficient for the decision of the case. The idea which is presented on this record, that here there is a contract to write, quite inoperatively, the defender's name upon the back of this certificate, is as extravagant a proposition as I have ever heard propounded. It was put by way of illustration in the course of the argument: Suppose the contract was that he should have five, ten, or one hundred pounds for putting his name on the back. The promise on the one side is, we will give you five pounds or ten pounds for it; and he thereupon puts his name on the back, and they refuse to give him the money, and then he brings his action for breach of contract, and he proves that he was told that he was to get five, ten, or a hundred pounds for putting his name on the back of the certificate. Does it occur to anybody that that would be a maintainable action or a stateable case on the face of the record? People may promise a great many things which they are not bound to perform, and for their failure to perform which they are not liable in any way, although they may be censured by those entitled to censure them for their improper conduct. A man may promise to come and introduce one person to another. If he did not fulfil that promise, without any reason for it, he would be censurable. To promise to go and write your name in a visitors' book and not to fulfil that promise, or to promise to meet somebody at a friend's house on a particular occasion and not to fulfil that promise, without having any good ground for it, would be censurable. But the idea of being liable for breach of contract is as extravagant a proposition as in the course of a not short experience either on the Bench or at the Bar I can remember to have met with.

I am therefore of opinion with your Lordship that the action is irrelevant and that the defender should be assoilzied.

Lord Trayner—In the month of March 1900 an application was made to the Magistrates of Hawick for a licence in favour of the defender, it being then in contemplation that he would occupy the premises belonging to the pursuers as a licensed grocer. The premises were in a condition then which did not warrant the magistrates in issuing the licence, but they granted the licence on condition that it should not be issued until the premises were fit for occupation as licensed premises. The premises were not fit for that occupation until February 1901, and at that time the pursuers, not the defender, applied to the Magistrates to issue the licence which they had conditionally granted in the month of March before. They obtained possession of the certificate, and it has been with them ever since. It has never been in the possession of the defender at all. I think the pursuers should not have asked the Magistrates' Clerk for the licence certificate, because when they did so they were aware that the defender was not to be the occupant of the premises. They had eight months before that agreed with him that he was not to be their tenant, and they had at least one month before that let the premises to another tenant altogether, who was intending to occupy them. But the question in the case is whether the licence certificate which the pursuers' agents sought, and I think improperly obtained, was one which the defender was bound in law to endorse. The case presented to us is that he specially contracted with them to endorse it, and that through his failure to do so they suffered damage. I agree with what your Lordship has said, that the endorsation of a licence certificate by the person in whose name it has been issued is a futile proceeding. A licence is not transferable; it is a strictly personal right. It is said that the only benefit to be derived from the endorsation was to afford the Magistrates proof that the person in whose name the licence certificate had been issued did not desire to carry on the business. But I ventured to say in the course of the discussion that that was not to my mind the best evidence of any such fact; that the Magistrates could be satisfied of the fact of the assent of the tenant of the premises by other evidence, and better evidence, than the name of the licensee being written on the back of the certificate. I assume for the moment that the defender distinctly promised that he would endorse the certificate, and I also assume, although it is contrary to my own opinion, that he had no good reason for refusing to do so. If he was under a legal obligation to do it he is certainly responsible for damages if damages were incurred. But no such damage has been established. The only benefit to be derived from the endorsation was evidence of the defender's cession of the premises and his intention no longer to carry on business there. But that could have been proved in many ways quite accessible to the pursuers, and particularly by their production of the missive of lease to Mr Cochrane, who succeeded the defender

in the tenancy. It appears to me that even if there was an obligation on the defender of an enforceable character to endorse that certificate, his refusal to do so did not inflict any damage on the pursuers. I am of opinion on the whole matter that the Lord Ordinary's interlocutor should be recalled and the defender assoilzied.

LORD MONCREIFF—I am also of opinion that there is no relevant case, and that on that ground the defender should be assoilzied. This action is raised for a sum of £1000 in respect of the defender's failure to endorse a licence. The Lord Ordinary has marked his sense of the damage that the pursuers have suffered by reducing the sum sued for from £1000 to £20. I am prepared to go a step further, and hold that no damage has been proved as the result of the defender's failure to endorse the licence. I understand it was necessary for the new tenant to go before the Magistrates to obtain a transfer of the licence, and the only effect of this licence if endorsed would have been to give a certain facility to the applicant in satisfying the Magistrates that the last tenant had ceased to have any connection with the licensed premises. But other proof could have been easily obtained and would have been quite as satisfactory. I think therefore that Huggan's refusal to endorse the licence does not form a relevant ground of action.

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

Counsel for the Pursuers and Respondents—Wilson, K.C.—Steedman. Agents—Steedman & Ramage, W.S.

Counsel for the Defender and Reclaimer—A. J. Young—W. Thomson. Agents—Steele & Johnstone, W.S.

Tuesday, November 4.

FIRST DIVISION.

[Exchequer Cause.

THE LORD ADVOCATE *v.* TROTTER.

Revenue—Excise—Licences—Beer—Retailing Beer without Licence—Process—Exchequer—Information—Specification—Person to whom Liquor Sold—Exchequer Court (Scotland) Act 1856 (19 *and* 20 *Vict. c.* 56), *secs.* 5 *and* 7, *Sched. B—Revenue (No.* 2) *Act* 1861 (24 *and* 25 *Vict. c.* 91), *sec.* 12.

The Court of Exchequer Act 1856 provides for Exchequer causes being instituted by subpœna and information, and various forms of information are given in the schedules. The form of information for illegal trading without a licence does not provide for the specification of the name of the person to whom the illegal sale was made. Section 12 of the Revenue (No. 2) Act 1861, which provides a penalty for retailing beer without a licence, provides that in any information for the recovery of such penalty "it shall be sufficient to charge that the defendant sold beer by retail without having duly obtained a certificate, . . . and it shall not be necessary further or otherwise to describe such offence." The Act of 1861 does not contain any form of information applicable to proceedings against persons charged with an offence against section 12. In an action raised by the Crown in respect of an alleged offence under this section, the information contained no statement of the name of the person to whom the liquor was sold. The defender objected to the relevancy of the information. The Court *repelled* the objection.

Section 12 of the Revenue (No. 2) Act 1861 (24 and 25 Vict. c. 91), provides that "If any person shall in Scotland sell beer by retail—that is to say, in any quantity less than four and a-half gallons, or in less than two dozen reputed quart bottles at one time (whether to be drunk or consumed on the premises or not) without having duly obtained a certificate and also an Excise licence respectively authorising him to sell beer under the provisions of any Act or Acts in that behalf, he shall forfeit, over and above any other penalty to which he may be liable under such Act, the sum of £20, . . . and in any information or other proceeding for the recovery of the penalty hereby imposed it shall be sufficient to charge that the defendant sold beer by retail without having duly obtained a certificate and also an Excise licence respectively authorising him to sell beer under the provisions of the statute in that case made and provided, and it shall not be necessary further or otherwise to describe such offence."

Section 5 of the Exchequer Court (Scotland) Act 1856 provides that Exchequer causes may be instituted "by issuing . . . against the defender a subpœna in the form as nearly as may be of Schedule A hereunto annexed." . . .

Section 7 provides for the form of the information following on the subpœna, and directs that it is to be in the form of Schedule B. Schedule B (3) is in the following terms:— . . . "That on or about the day of 18, at in the County of A (*Designation*) did exercise or carry on the trade or business of a , for the exercising or carrying on of which a licence was by statute required, without taking out such licence, contrary to the Act 6 Geo. IV. c. 81, sec. 26, whereby the said A has forfeited the sum of £ ."

Section 26 of the Excise Licences Act 1825 (6 Geo. IV. c. 81), provides penalties for persons carrying on business for which a licence is required by the Act without taking out such licence.

An information was presented by the Lord Advocate against Alexander James Trotter, 2 Graham Street, Edinburgh, under the Excise Licences Act 1825 (6 Geo. IV. cap. 81), sec. 26, and the Revenue (No. 2) Act 1861 (24 and 25 Vict. cap. 91), sec. 12.