ment is that the shepherd did not inform the defender there were signs of scab. The reason why he did not inform him may have been because he did not know. If one looks to the probabilities, it may be probable that the shepherd did know. But anyone listening to the statement in Court would just have gone away with the impression that the shepherd had not told his master, but would not have known the reason for his not doing so. In other words, what was said was quite consistent with no breach of duty on the part of the shepherd.

I have had occasion to remark before that one of the worst uses to which this Court is put is the bringing of trumpery actions of slander. I am unwilling to torture innuendos out of words that do not in any reasonable manner bear the interpretation sought to be put upon them.

I am therefore of opinion that the Lord Ordinary's interlocutor should be recalled and the action dismissed.

On the view I have taken it is unnecessary to deal with the second matter dealt with by the Lord Ordinary in his note.

LORD KINNEAR and LORD PEARSON concurred.

The Court recalled the interlocutor of the Lord Ordinary and dismissed the action.

Counsel for the Reclaimer and Defender —Cooper, K.C. — Macmillan. Agents— Hamilton, Kinnear, & Beatson, W.S.

Counsel for the Respondent and Pursuer —Crole, K.C.—Ballingall. Agent—W. B. Rainnie, S.S.C.

Saturday December 15.

FIRST DIVISION.

[Lord Salvesen, Ordinary.

BLACK AND OTHERS *v.* MAGISTRATES OF GRANGEMOUTH.

Public-House—Certificate—Hours of Closing—Ultra vires—"Particular Locality"—Resolution Defining Area as "Particular Locality"—Licensing (Scotland) Act 1903 (3 *Edw. VII, c.* 25), *sec.* 35.

The magistrates of a burgh in the *bona fide* exercise of their discretion resolved that a certain area of their burgh was "a particular locality" within the meaning of section 35 of the Licensing (Scotland) Act 1903, and that the hour of closing therein should be nine o'clock. The area in question was the old town, and formed the first ward of the burgh, but as matter of fact it included within its boundaries all the public-houses in the burgh.

Held that the resolution was valid, and not *ultra vires*. *Ashley* v. *Magistrates of Rothesay*, June 20, 1873, 11 Macph. 708, 10 S.L.R. 513, *affd.* April 17, 1874, 1 R. (H.L.) 14, 11 S.L.R. 487, *distinguished.*

Public-House — Hours of Opening and Closing — Reduction of Hours during which Public-Houses may be Kept Open below Number in Scheduled Form of Certificate.

Held that the magistrates of a burgh may reduce the number of hours during which the public-houses in a particular locality may be kept open, below the total number of hours in the scheduled form of certificate.

Public-House—Register of Applications — Certificate — Certificate Disconform to Register—Conditions as to Early Closing not Entered in Register—Form of Certificate — Licensing (Scotland) Act 1903 (3 *Edw. VII, c.* 25), *sec.* 35, *Schedules V and VI.*

In the Register of Applications, kept in terms of section 16 of the Licensing (Scotland) Act 1903, certain applications were entered as "granted," without any reference to any restriction on the hours for business. The certificates bore to be in terms of the register, were in the form of Schedule VI annexed to the Act, and did not contain *in gremio* any limitation as to the hours of closing, but they had appended a foot-note stating that the premises were in "a particular locality" in which the hour of closing was nine p.m.

In an action for reduction of the certificates, *held* that they were not invalid, although (1) they did not contain *in gremio*, as they should have done, the hour of closing, and (2) were disconform to the register in that they contained the note as to early closing.

Opinion that the limitation as to the hour of closing should have been noted in the register.

Public-House—Appeal to Licensing Appeal Court—Appeal against Resolution Defining Particular Locality and Providing for Early Closing therein and against Certificate in Terms thereof — Competency.

Held that an appeal to the Licensing Appeal Court against (*a*) a resolution of the magistrates of a burgh defining a "particular locality" and providing for early closing therein, and (*b*) the restriction of hours in the certificate granted by the magistrates, in terms of their resolution, had been rightly dismissed as incompetent. *Cameron* v. *Magistrates of Glasgow*, February 28, 1903, 5 F. 490, 40 S.L.R. 577, *followed.*

The Licensing (Scotland) Act 1903 (3 Edw. VII, c. 25), sec. 35, provides—"*Power to Vary Form and Hours of Certificates.*—It shall be lawful for a licensing court, where they shall deem it inexpedient to grant to any person a certificate in the form applied for, to grant him a certificate in any other of the forms contained in the Sixth Schedule annexed hereto: Provided always that in any particular locality within any county or district or burgh requiring other hours for opening and closing inns and hotels and public-houses than those specified in such forms of certificate applicable

thereto, it shall be lawful for such court to insert in such certificate such other hours, not being earlier than six of the clock or later than eight of the clock in the morning for opening, or earlier than nine of the clock or later than eleven of the clock in the evening for closing the same, as they shall think fit."

On 5th June 1906 David Black, hotel-keeper, Queen's Hotel, Grangemouth, and others, the whole inn, hotel, and public-house-keepers in the burgh of Grangemouth, raised an action against (1) the Provost and Magistrates of Grangemouth as the Licensing Court of the Burgh; (2) the Town-Clerk of the Burgh as Clerk to the said Court; (3) the members of the Licensing Appeal Court for the said Burgh under the Licensing (Scotland) Act 1903; and (4) the Clerk of the Peace for Stirlingshire as the Clerk to the said Licensing Appeal Court. In it they sought reduction of (1) a resolution of the Magistrates defining an area as a "particular locality," and providing for closing at nine o'clock therein; (2) the deliverances of the Licensing Court renewing the pursuers' certificates; (3) the certificates issued to the pursuers; and (4) the deliverance of the Licensing Appeal Court dismissing as incompetent the appeals taken by the pursuers.

The pursuers pleaded—"(1) The pursuers are entitled to decree of reduction of the pretended resolution and the provision as to the closing at nine o'clock inserted in their certificates, as concluded for, in respect— . . .

"(*b*) That the Magistrates were not entitled to deal with said area as a particular locality within the meaning of the Licensing (Scotland) Act 1903, section 35.

"(*c*) That it was incompetent and illegal to compel the pursuers to close their licensed premises at nine o'clock at night without allowing them to open their said premises at seven o'clock in the morning, and to insert a provision as to closing at nine o'clock in the pursuers' certificates.

"(2) *Separatim*, the pursuers are entitled to reduction of the provision as to the closing at nine o'clock inserted in their certificates for the year to Whitsunday 1907, in respect that the insertion of said provision by the defender second called was not warranted by the terms of the book or register kept by him in terms of the Licensing (Scotland) Act 1903.

"(3) Alternatively, the pursuers are entitled to decree of reduction of said deliverance or judgment of the Appeal Court in respect that Court was bound to have entertained their said appeals, and to have heard and determined the same on their merits, and that in refusing to entertain and in dismissing said appeals that Court acted *ultra vires*, and contrary to their statutory duty."

The resolution of the Magistrates in question, dated 24th April 1906, was—"The Magistrates of the Burgh of Grangemouth having taken into their serious and careful consideration the following facts and circumstances—(1) That the particular locality after defined constitutes the Old Town of Grangemouth, and forms Ward I of the burgh, and that it is intersected by the Forth and Clyde Canal, the river Carron, and by the Junction Locks, and contains the old harbour, basins of the canal, timber basins and docks, which are all in large measure unprotected and constitute a constant and serious danger to life, and specially to persons under the influence of liquor. (2) That every year a number of deaths from drowning accidents take place, and from time to time bodies are taken out of the canal, basins, and docks, and it is believed that many of these cases have been caused by the unfortunate persons having been under the influence of liquor at the time. (3) That recently three model lodging-houses have been opened in the area referred to, housing on an average 300 to 400 persons nightly, and that these persons constitute a considerable floating and migratory population, who obtain casual employment in and about the docks, and are irregular in their habits, and that many of them take liquor to excess, and that persons from these houses are frequently brought before the Magistrates in the Police Court charged with drunkenness, breach of the peace, &c. (4) That the population of the whole burgh is about 9250, and that the population of the said area is about 2500. (5) That no trains enter the burgh between the hours of 9 and 10 p.m., and that only one train leaves the burgh between these hours, viz., at 9·15 p.m. (6) That no new licences have been granted in the burgh for over twenty years, during which period the population of the burgh has doubled, and that the existing licences have thus a close and probably increasing and profitable monopoly. (7) That the number of persons dealt with in the Police Court in 1905 was 633, whereof 296 were persons resident in the said area, 142 were persons resident in other parts of the burgh, and 195 were resident outside the burgh. (8) That of said total number of cases in 1905, 530 had their locus in said area and 103 had their locus outside said area, and that out of said total number, 445 were under the influence of liquor when charged. (9) That representations have been made to the Magistrates by a large number of members of the community, expressing a strong desire that some steps should be taken to endeavour to effect a diminution of the cases brought to Court and an improvement in the state of the streets in said area. (10) That the Magistrates have had the matter under consideration and observation since the commencement of the Licensing (Scotland) Act 1903, and at the Licensing Court, held in April 1905, asked the licence holders to co-operate with them in putting down drunkenness and disorderly conduct, and intimated that unless an improvement took place they would consider as to exercising their discretionary powers in regard to the closing hours of hotels and public-houses within the burgh, and that they are satisfied no improvement has taken place, the decrease in the number of cases in 1905 as compared with previous year being ex-

plained by the departure of navvies at new docks under construction, the slackness of employment at the dockyard, and other causes. (11) That the Magistrates being of opinion it is desirable and expedient they should exercise their said discretionary powers, and having in view the circumstances and requirements of the locality known as Ward I, or the Old Town area of the burgh . . . thereupon, in virtue of the powers conferred on them by section 35 of the Licensing (Scotland) Act 1903, resolved, and hereby resolve, that the said area is a particular locality within the burgh of Grangemouth, under and within the meaning of said section; and further, the Magistrates resolved and hereby resolve that the hour for closing to be inserted in the certificates granted for inns and hotels and public-houses in that particular locality shall be nine of the clock in the evening."

In the register of applications kept in terms of section 16 of the Licensing (Scotland) Act 1903 the pursuers' applications were thus entered—

No.	Names and Designations of Applicants.	For Inns and Hotels and where situated.	For Public-Houses and where situated.	For Dealers in Spirits, Groceries, and Provisions	Rental of Premises.	How disposed of.
		I. Hotels				
1.	David Black . . .				£250	Granted
	. . . .					
2.	. . . .					
	. . . .	. . . .	. . . .	. . . .	. .	. . .

The certificates issued were as follows:—"The Licensing Court acting for the said burgh assembled at the said meeting, did authorise and empower . . . now dwelling at . . . to keep an inn and hotel at . . . in the burgh aforesaid, for the sale in the said house, but not elsewhere, of victuals and of spirits, wine, porter, ale, beer, cyder, perry, or other exciseable liquors, provided the said . . . shall be licensed and empowered to sell such liquors under the authority and permission of any Excise licence to him or her in that behalf granted, on the terms and conditions following: That is to say, that the said . . . . . and do not keep open house, or permit or suffer any drinking on any part of the premises belonging thereto, or sell or give out therefrom any liquors before eight of the clock in the morning of any day, or after such hour at night of any day not earlier than ten and not later than eleven, as the Licensing Court may direct, with the exception of refreshment to travellers or to persons requiring to lodge in the said house or premises . . . . . This certificate to continue in force, upon the terms and conditions aforesaid, from the twenty-eighth day of May One thousand nine hundred and six, and until the twenty-eighth day of May One thousand nine hundred and seven, and no longer.

"*The above Certificate is made out according to the deliverance in the Book or Register appointed to be kept in terms of the Act of Parliament.*

"JAMES P. MACKENZIE, *Clerk.*

"*Note.*—The hour for closing fixed by the Licensing Court is nine o'clock p.m. as regards inns and hotels and public-houses in the particular locality defined by the resolution of the Court, and the premises referred to in above certificate are situated in the particular locality.

"JAMES P. MACKENZIE, *Clerk.*"

The pursuers, *inter alia*, averred in support of their plea I (*b*)—"The defenders first called have exceeded their powers . . . for though Ward No. 1 of the burgh of Grangemouth is geographically only a part of the burgh, it is not a 'particular locality' within the meaning of the Act. For the purposes of licensing that ward does in fact comprise the whole of the burgh, because it comprises the whole of the inns, hotels, and public-houses in the burgh. The pursuers' inns, hotels, and public-houses are all situated in that part of the burgh known as Ward No. 1. The said resolution includes and affects every inn, hotel, and public-house within the said burgh. The inhabitants in the parts of the burgh other than Ward 1 have all to come to Ward 1 to obtain spirituous liquors in the hotels and public-houses. The police statistics prove that, while most of the offences are committed in Ward No. 1, of those charged with said offences by far the greater number are residents outside Ward 1. The area within the said limits was chosen and the said resolution was made wrongfully and in wilful evasion of the Act, and in excess of the Magistrates' statutory powers, in order to introduce a new and illegal restriction to nine o'clock as the hour for closing all the inns, hotels, and public-houses within the burgh. The area within the said limits is not a 'particular locality' within the burgh requiring in the sense of the Act other hours for opening and closing hotels and public-houses than those provided by the Legislature as aforesaid. The Magistrates in so acting had no reasonable cause for believing that it was within their statutory powers to adopt the procedure complained of."

In their answers the defenders admitted that Ward I comprised the whole of the inns, hotels, and public-houses in the burgh.

On 19th July 1906 the Lord Ordinary (SALVESEN) assoilzied the defenders from the conclusions of the summons.

Opinion—"The pursuers here are three hotel-keepers and seven other persons who carry on public-houses in Grangemouth, and they are the only persons in that burgh who have licences for the sale of exciseable liquors under either form of certificate. The compearing defenders are the Magistrates of Grangemouth and their Town Clerk, the other defenders being the persons who constituted the Licensing Court of Appeal for the burghs of Stirling, Grangemouth, and Kilsyth, held at Stirling on 19th May 1906, and their Clerk. The action

takes the form of a reduction of a resolution passed by the Magistrates of Grangemouth in April 1906, by which the Magistrates resolved that the hour for closing to be inserted in the certificates granted for inns and hotels and public-houses in Ward 1, or the old town area of the burgh, should be nine of the clock in the evening. The leading question argued was whether that resolution was *ultra vires* of the Magistrates, on the ground that, though in form it dealt with only the licensed houses in a particular locality, in reality it affected the whole Burgh of Grangemouth just as effectually as if it had expressly been made applicable thereto. The question is thus one of importance, and I have been assisted in coming to a decision upon it by a very able argument from both sides of the bar.

"The statutory authority under which the Magistrates professed to act is contained in section 35 of the Licensing (Scotland) Act 1903, which consolidated and amended the whole law as to licensing in Scotland. The proviso in that Act which requires construction is in these terms. . . [*Quotes proviso to section supra*] . . . The sixth schedule contains the form of a certificate for inns and hotels and the form of a certificate for public-houses; and each of them makes this provision with regard to this hour of closing, viz., that the licence-holder 'do not keep open house . . . after such hour at night of any day, not earlier than ten, and not later than eleven, as the Licensing Court may direct;' and it is conceded that, without any special resolution, the Licensing Court might lawfully insert ten o'clock as the hour of closing in any certificate which they granted. The only power, however, of inserting an earlier hour than ten o'clock for closing is contained in the proviso which is quoted above. This proviso is, word for word, the same as occurred in section 2 of 25 and 26 Vict. cap. 35.

"It was practically admitted by the pursuers that the words 'requiring other hours for opening and closing' must be construed as meaning requiring in the opinion of the Licensing Court; and there is no challenge of the *bona fides* of the resolution which the Magistrates have passed, and which they support by elaborate reasons under eleven separate heads. It was contended, however, that under the decision of the First Division, in the case of *Ashley* v. *The Magistrates of Rothesay*, 11 Macph. 708, *affirmed* 1 R. (H.L.) 14, the very question raised in the present case has been decided in the pursuers' favour. There are undoubtedly many passages in the opinions of the learned Judges who decided that case which, at first sight, appear to be in terms applicable to the present. These opinions, must, however, be read with reference to the circumstances of the particular case with which the Court was dealing, and not as laying down as a proposition in law that a resolution by a licensing authority for the earlier closing of public-houses than ten o'clock is necessarily *ultra vires* if it affects the whole hotels and public-houses in the burgh or district. Now what the Magistrates of Rothesay had done was to define a certain part of the burgh, and make the new hours applicable to that part of the burgh only. But then the line, as the Lord President says, was so ingeniously drawn that, in that part of the burgh to which the change of hours was made applicable, every hotel and public-house being used in the burgh was situated. In his opinion the practical effect was the same as if they had come to a resolution that nobody in Rothesay should be allowed to keep his licensed house open after ten; and the attempt to make this take the appearance of a provision for a particular locality was simply a fraud on the statute.

"It is plain from this and the other opinions that the limits of the geographical area, which was defined as a particular locality by the Rothesay resolution, had been fixed for no other reason than to secure that all the public-houses and hotels should be included within it, irrespective entirely of the circumstances which were applicable to each. The case was therefore an illustration of an abuse of the discretion committed to the licensing authority, or rather an evasion of the general law under the pretence of exercising such discretion.

"The circumstances here are, in my opinion, entirely different. The locality which has been defined by the Magistrates is one of the three wards into which the area of the burgh has been divided by a private Act of Parliament, 5 Edward VII, cap. 66. No doubt the area of the ward was fixed for a different purpose, and primarily with a view to municipal elections; but none the less the geographical limits of the locality are fixed and defined by statute. It so happens that all the public-houses and inns in Grangemouth are situated in this ward, and indeed in a very small area of the ward. I was informed that they were all within a hundred yards of a basin in the old town which is marked on a plan exhibited for my information. In this respect Grangemouth is probably unique amongst all the burghs of Scotland; and the peculiarity is accounted for by the fact that the superior of the lands which constitute Wards II and III—the Marquis of Zetland—has declined to feu his property for building except under a prohibition with regard to public-houses and hotels. If the resolution is invalid as being *ultra vires* it would follow that the proviso has no application to the case of Grangemouth as it is at present, because it is impossible to make any real distinction *inter se* between the various public-houses and inns, as to the hour of closing, or to suggest that there is any room for apportioning them to different localities. They are all in one locality; and the conditions applicable are identical both as regards the surroundings and the character of the population which frequents them. The alternative therefore is to hold either that the resolution is good—although in this particular and highly exceptional case it happens to be applicable to all the hotels and public-

houses within the burgh—or that the licensing authority have no discretion in the case of Grangemouth, although the proviso in sec. 35 is presumably applicable to that burgh as well as to others in Scotland. I prefer the former alternative.

"I do not think that my view conflicts with the decision in the case of *Ashley*. Lord Selborne in his opinion expressly excepts a case somewhat analogous to that which has occurred here. He says—'Without saying absolutely that no case could possibly be conceived in which there happened to be only one or two public-houses situated within the district, and those really so situated that a good reason could be given for applying the exception to them—without saying that such a case is impossible—it is enough to say that it is perfectly clear and on all hands conceded that that case does not exist here.' In other words he makes it obvious that the ground of judgment so far as he was concerned was that the locality had been defined without reference to differences in the conditions of the various areas embraced in it. The language of the proviso may be accounted for on the ground that it is of general application; and in the other burghs of Scotland it may be assumed that public-houses and hotels are distributed more or less throughout all the different wards or districts into which these may be geographically divided. It is also worth noting that the resolution does not affect grocers in that or any locality, so that the inhabitants are not debarred from purchasing exciseable liquors, for consumption in their own homes, after nine o'clock in the evening. Further, if it were said that the resolution was against the wishes of a majority of the inhabitants, they have the matter in their own hands, as they can return representatives pledged to alter the hour of closing in accordance with their wishes.

"Another ground of reduction is embodied in the third plea-in-law for the pursuers; but it was conceded by their counsel that, so far as the Outer House is concerned, the matter is foreclosed by the decision in the case of *Cameron*, 5 F. 490. They desired, however, to keep the point open with the view to arguing it in a higher Court. In the same case another matter, which the pursuers also wished to keep open, was dealt with by Lord Kincairney, namely, the contention that it was not within the power of the Magistrates to reduce the number of hours during which public-houses might lawfully be kept open, from fifteen to fourteen; and that if an hour was taken off at night it must be added in the morning. I am content on this point to express my concurrence with Lord Kincairney's opinion reported on pages 496 and 497.

"The only matter argued was that embodied in the second plea-in-law for the pursuers, which is based on an alleged disconformity between the register, kept by the Town Clerk in terms of the Licensing (Scotland) Act 1903, and the certificates granted to the pursuers. This argument rests on a series of provisions in the Licensing Act of 1903, and particularly secs. 11, 16, and 24 to 26. Section 16 provides for a register being kept, and specifies the columns and the particulars which require to be entered. One of these columns provides for the deliverance in each case being entered, and the provision is that this deliverance shall specify 'whether such applications respectively were granted or refused, or continued for further enquiry, or how otherwise disposed of.' In each case with which the pursuers are concerned the entry in the register kept by the Town Clerk consists of the word 'granted;' and the argument was that in fact the application was not granted except under a limitation not contained in the application; and that this limitation ought to have appeared on the face of the register which is the warrant of the Clerk making out the certificate. The certificate itself is in the form of Schedule 6, and does not contain *in gremio* the limitation of the hour of closing, but instead adopts the precise language of the statutory form. It contains, however, at the foot a note, partly printed and partly filled in in manuscript, in these terms:—'Note.— . . . [*quotes note to certificate supra*] . . .' I cannot say that I think the certificate is in an ideal form, for the provision as to closing in the certificate itself is contradictory of what is contained in the Note; and I think it would have been far better if the certificate issued had omitted the meaningless words 'or after such hour at night on any day, not earlier than ten and not later than eleven, as the Licensing Court may direct,' and to have inserted instead the simple words, 'or after nine of the clock at night.' But if the resolution is valid—as I have held—this objection, which is at best of the most technical kind, is, I think, not a sufficient ground of reduction. The resolution having been adopted by the Licensing Court, before proceeding to grant the certificates, imposed a limitation with reference to the hour of closing of all hotels and public-houses in the locality to which it related. The applications were therefore in fact granted; and I do not think it can invalidate the entry in the register that it omitted a limitation that had already been duly notified to each applicant, and which was duly marked on the certificate before he received it. The question that I am now dealing with was incidentally noticed in Lord Kincairney's opinion in the case of *Kerr* v. *Marwick*, 3 F. 470—see p. 476—where he treats the register as primarily a list of the persons who have applied for certificates and of those who have received certificates. I do not think it would have been incompetent to have entered in the register, under the column of 'How disposed of,' words indicating that the hour of closing, in the particular case, had been fixed at nine o'clock. But the absence of such a note is surely no ground for reducing the provision as to closing at nine o'clock, inserted in the certificates, if the resolution imposing this limitation had been duly adopted before the certificates

were in fact granted and was not *ultra vires*.

"I therefore reach the conclusion that the defenders should be assoilzied from the whole conclusions of the action."

The pursuers reclaimed, and argued—(1) The *bona fides* of the Magistrates was not questioned. The issue was whether their actings were *ultra vires*. They were not entitled to disfranchise a burgh *quoad* drinking facilities under the guise of dealing with a particular area thereof—*Ashley* v. *Magistrates of Rothesay*, June 20, 1873, 11 Macph. 708, 10 S.L.R. 513, *affd.* April 17, 1874, 1 R. (H.L.) 14, 11 S.L.R. 487. A resolution which had the effect of closing all the public-houses was a fraud on the statute—Licensing (Scotland) Act 1903, sec. 35. Grangemouth was peculiar, in respect that all the public-houses were in Ward I, and was a *casus improvisus*. (2) The Legislature had intended that public-houses should be open for a definite period, viz., fourteen hours, and while the Magistrates might vary the "*termini*" of the period they were not entitled to curtail it —Licensing (Scotland) Act 1903, sec. 35 and Schedule VI. (3) The certificates were not, as they ought to have been, issued in terms of the register—Licensing (Scotland) Act 1903, secs. 11 (1), 16, 24, 25, 26, Sched. VI. The register was the only warrant for the certificate, and it did not contain any reference to the Note appended to the certificates as issued. The certificates were therefore invalid — Licensing Act 1903, sec. 38. The register was the official record as to how the application had been disposed of, and if the certificates were disconform thereto they would not be such as the Commissioners of Excise would be bound to accept or would accept—*per* Lord Kincairney in *Kerr* v. *Marwick and Gray*, February 14, 1901, 3 F. 470, at p. 475, 38 S.L.R. 330, at p. 332. (4) The certificates being disconform to the register the appeals were clearly competent—Licensing (Scotland) Act 1903, sec. 22. The form of the register was prescribed by the Act—Schedule V—(excerpt from register quoted *supra*). To say that the certificates had been "granted" was incorrect; they had only been granted *sub modo*. The case of *Cameron* v. *Magistrates of Glasgow*, February 20, 1903, 5 F. 490, 40 S.L.R. 577, relied on by the respondents, was wrongly decided and should be reconsidered. The opinion of Lord Moncreiff in that case was right.

Argued for respondents — (1) The mere fact that all the public-houses in the burgh were situated in Ward I did not invalidate the resolution. The ward required special treatment and had got it. The Magistrates had fairly and *bona fide* exercised their discretion. In *Ashley's* case (*cit. sup.*) there was an attempt to commit a fraud on the statute, for the Magistrates went out of their way to carve out an area so as to "rope in" every public-house in Rothesay and their actings were therefore *mala fide*. That was an important distinction—*per* Lord Selborne in *Ashley* (*cit. sup.*) (2) The proposition maintained by the reclaimers that public-houses must be open for so many hours was untenable. The only warrant for it was a suggestion of Lord President Inglis in *Ashley* (*cit. sup.*) Moreover, the suggestion was made with reference to a different schedule from that now in question, viz., Schedule A appended to the Licensing Act of 1862. Further, the dictum was disapproved in the House of Lords, *vide* Lord Chelmsford's opinion; see also opinion of Lord Kincairney in *Cameron* v. *Magistrates of Glasgow* (*cit. sup.*) (3) The certificates did not need to be in terms of the register. The certificate was not an "extract." Where the entry in the register read "granted," the certificate might competently be issued with modifications. It might competently be granted *sub modo*. *Quoad* the merits of an application the conditions of the certificate were not *hujus loci*. The entry in the register was merely a judgment on the merits. The Act did not prescribe for what hours or for how many hours licences were to be granted. Such regulations fell to be inserted in the certificate after the application had been disposed of. The terms of Schedule VI implied that that was so. The clerk was bound to issue the certificate in terms of Schedule VI, and it was quite competent to insert in a foot-note to the certificate the conditions on which the licence had been granted or as to how the licence was to be exercised. (4) The question as to the competency of the appeals was determined by the case of *Cameron* (*cit. sup.*)

At advising—

LORD ARDWALL—In this case the pursuers seek reduction, firstly of a resolution of the Magistrates of Grangemouth to the effect "that the hour for closing to be inserted in the certificates granted for inns and hotels and public-houses in that particular locality shall be nine of the clock in the evening," the particular locality being Ward No. 1 of the burgh of Grangemouth, and then reduction is sought of the judgments at the Licensing Court following on that resolution, the certificates issued to the pursuers, and the judgment of the Court of Appeal dismissing as incompetent appeals taken by the pursuers against the terms in which the Magistrates had granted certificates.

The first ground for reduction relied on by the pursuers was that Ward 1 was not a particular locality within the sense of section 35 of the Licensing (Scotland) Act 1903, because that ward embraced all the public-houses in Grangemouth, and that under the Act magistrates were not entitled to prescribe an earlier hour than 10 p.m. for closing all the public-houses in a county or burgh, but only for closing a portion of them, and that this had been so decided in the case of *Ashley* v. *M'Beth*, 11 Macph. 708 and 1 R. (H.L.) 14. I am unable to give effect to this argument, and I do not think *Ashley's* case rules the present. I am of opinion that the accident of there being no public-houses in Grangemouth outside the comparatively restricted limits of Ward 1 does not disentitle the Magistrates to treat that ward as a particular locality, or deprive

it of the character of a particular locality, which it admittedly would possess if public-houses were scattered all through the various wards of the town. The *ratio decidendi* in *Ashley's* case was that the Magistrates there had, by drawing a tortuous line through the burgh, contrived to bring within its circuit every public-house in Rothesay, and were thus attempting to effect by a trick what they could not have done directly. This conduct was stigmatised by Lord President Inglis as a fraud upon the Act, and their proceedings were accordingly set aside.

In the second place, it was argued that the Magistrates were not entitled to restrict the hours during which any public-house should be open to less than fourteen hours, and that by the resolution in question they restricted them to thirteen hours. I can only say that I can find nothing in the Act to justify this objection, and I concur in Lord Kincairney's remarks on this subject in the case of *Cameron* v. *Magistrates of Glasgow*, 5 F. at pages 496-7. I am therefore of opinion that so far as the resolution is concerned no relevant grounds of reduction have been shown to exist.

But it is said, in the next place, that, assuming the resolution to be valid, the Magistrates have not taken the only way competent under the said Act of rendering it effectual, by, in the terms both of section 35 of the said Act and of the resolution, inserting in the certificates of the pursuers the hour of nine o'clock as the hour of closing. Instead of doing so, they have in the body of the certificate copied exactly the words in Schedule 6 appended to the Licensing (Scotland) Act 1903; these words are, "do not sell or give out therefrom (*i.e.*, from the licensed premises) any liquors before eight of the clock in the morning of any day, or after such hour at night of any day not earlier than ten, and not later than eleven, as the Licensing Court may direct." And then they add a note to the effect that the hour for closing fixed by the Licensing Court for the particular public-house is nine o'clock p.m. I must say that I think this is a deviation from the terms of section 35; but it may well be questioned whether it can be said to be a deviation from the statute read as a whole, because the words taken from the form of certificate in Schedule 6 already quoted, while evidently the result of bad draftmanship, are yet in the form prescribed by the Act apparently for all certificates, and what the defenders have done here is to follow strictly the form of the certificate prescribed by the Act, and then to endeavour to comply with section 35 by the note appended to the certificate. I am of opinion that they ought to have taken upon themselves to bring the form of the certificate into line with the resolution they had passed by inserting as the hour of closing in the body of the certificate, nine o'clock in the evening. But I cannot hold that the course they have taken is so contrary to the Act as to form a good ground for a reduction of the certificates. If the objection to the form of the certificate were to lead to anything in the present process it would only lead, in my opinion, to the Court ordaining the defender James Purves Mackenzie as Clerk of the Licensing Court to correct the pursuers' certificates, and insert nine o'clock in the body of them as the hour of closing; and this, of course, would not put the pursuers in any better position than they are at present, and would after all be merely correcting what in the circumstances must be regarded as a non-essential error in form.

As to the reclaimers' next point, viz., that the register of deliverances does not contain any notice of the acceleration of the hour for closing which gives rise to this question, I confess I have had some difficulty in reconciling what was done in the present case with the sections of the statute providing for the institution of a book or register of deliverances, and for the use of the entries in said book or register in connection with the subsequent issuing of certificates; and my own view rather is that if a certificate was to be granted under so special a condition as that the premises should be closed at nine o'clock p.m., it would have been right that such a condition should have been noted in the book or register of deliverances with which the certificates are under the Act required to conform. But while this is so I can find nothing in the Act requiring any entry regarding hours of opening or closing to be made in such book; and indeed Schedule 6 already referred to is the only place in the Licensing (Scotland) Act 1903 where hours of closing are, so far as I can discover, referred to at all. I accordingly think it impossible to hold that the omission of this condition in the book or register of deliverances can have the effect of rendering the certificates issued in the present cases open to challenge on the ground that they contain more than is entered in the book of deliverances, and therefore are not conform to the entries in such book as it seems to be contemplated they should be under secs. 16, 24, 25, and 26 of the said Act.

With regard to the competency of reducing the judgment of the Court of Appeal for the burghs of Stirling, Grangemouth, and Kilsyth, held at Stirling on 18th May 1906, I am of opinion that that point is decided against the pursuers by the case of *Cameron* v. *Magistrates of Glasgow*, 1903, 5 F. 490.

I accordingly think that the Lord Ordinary's interlocutor ought to be adhered to.

LORD KYLLACHY and LORD PEARSON concurred.

The LORD PRESIDENT, LORD M'LAREN, and LORD KINNEAR were absent.

The Court adhered.

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