learned Sheriff that the neighbouring proprietor is not liable for damage done by game bred on his lands to crops growing on lands which he does not own, and that he has no duty towards his neighbours in the matter of keeping only a reasonable stock of game upon his lands. It would, therefore, seem to follow that the landlord, who is to be made responsible in this case, would have no right of relief against the person who was the real author of the mischief.

If it is possible to read an Act in a sense which is consistent with elementary justice I am always in favour of doing so. I cannot attribute to the Legislature an intention to violate those principles. I think it is possible in this case thus to read the Act in view of the fact that by the landlord giving permission to the tenant he can evade his own responsibility, although the tenant would be in no better case than he was under the circumstances that are disclosed here. In short, the tenant would be as helpless to prevent the injury to his crops by birds coming from neighbouring land as the landlord in this case was. The two things must be co-existent, namely, that the damage is done in close time and done by birds coming from neighbouring proprietors, because if the damage were being done during the shooting season the landlord would have a right, and in a question with his tenant a duty, to destroy the game so as to prevent them doing injury to his tenant's crops. When, however, the birds come on the land only in close time, when neither the landlord nor his tenant can shoot them, it seems to me that it is inequitable that the former should be held responsible for damage which he could not have prevented. It is beside the point to suggest that he might have employed people to scare the game away, because as I read the case the tenant only intimated his claim after the damage had been completely effected.

LORD GUTHRIE—I agree with your Lordship in the chair. It is not at all singular that a statute expressed in general terms should do injustice in individual cases; individuals often suffer in the interests of the majority. We are told, and I think it is very probable, that this very question was considered by the Legislature. But I do not go on that. Even although the matter was not in view of Parliament, language has been used which is so general that there is no room for construction.

Looking to the situation as a whole, and to what is practical in the way of business, I do not think that the tenant's contention is at all inconsistent with elementary justice, although as I have said an individual case may be figured where the result would be inequitable.

The Court dismissed the appeal.

Counsel for the Appellant — Fenton. Agents—Cowan & Stewart, W.S.

Counsel for the Respondent — Scott. Agents—Carmichael & Miller, W.S.

Thursday, May 22.

FIRST DIVISION.

[Lord Ormidale, Ordinary.

ROBERTSON AND ANOTHER *v.* TAYLOR AND OTHERS.

Public-House—Licensing Authorities—Procedure—Renewal of Certificate—Failure to Hear Applicant—Licensing (Scotland) Act 1903 (3 *Edw. VII, cap.* 25), *sec.* 11.

The Licensing (Scotland) Act 1903 enacts—Section 11—". . . It shall not be competent to refuse the renewal of any certificate without hearing the party in support of the application for renewal in open court, if such party shall think fit to attend, and any certificate granted otherwise than at such meetings shall be void and of no effect."

A public-house trust company ran several public-houses. Its constitution provided that its profit, beyond a certain dividend, should be applied by trustees to such objects of public utility or well-being, either local or general, as the trustees should determine. It brought an action for declarator that the licensing court was not entitled to impose as a condition-precedent to consideration of an application for renewal of a certificate for one of the houses on its merits, that the company should produce balance sheets showing how the surplus profits from that house were applied, and that it was *ultra vires* to refuse to renew the certificate on the sole ground of the non-production of such balance sheets. In the licensing court the bench asked for production of the balance sheets showing how the profits of the house in question were applied. The company maintained that it could not competently be asked to disclose how the surplus profits of any particular house were applied, and refused to furnish the information demanded. In addressing the bench the company's representative did not otherwise support the application. The licensing court refused the application, and the appeal court sustained their decision. *Held* (*rev.* Lord Ormidale, Ordinary) that, on the evidence, (1) the company had been heard as required by section 11 of the Act of 1903, and (2) the production of the accounts had been asked and their non-production considered as bearing on public feeling in the district with regard to there being a licensed house there; and the defenders *assoilzied.*

William Robertson, writer, Dumbarton, and The Public-House Trust (Dumbarton County District), Limited, *pursuers*, brought an action against (1) John Taylor and others, the Licensing Court of the Burgh of Clydebank, and (2) Henry Melville Napier and others, the Licensing Appeal Court of the Burgh of Clydebank, *defenders*, concluding for (*firstly*) reduction of a deliverance or deliverances of the defenders first called,

dated on or about 9th and 30th April 1918, refusing an application by William Robertson on behalf of the other pursuers for renewal of a public-house certificate for a public-house at Radnor Park, Clydebank, and for reduction of a deliverance of the defenders second called refusing an appeal against the deliverance above referred to; and (*Secondly*), whether decree of reduction was pronounced or not, for declarator "(*a*) that it was illegal and *ultra vires* of the defenders first called, sitting as the half-yearly general meeting of the Licensing Court foresaid, in terms of the statute hereinafter libelled, to impose as a condition-precedent to consideration upon its merits of the said application at the instance of the pursuer William Robertson for the other pursuers for a renewal of the certificate aforesaid that he should produce balance sheets or copies of the balance sheets of the Radnor Park Branch of the business of the pursuers the said Public House Trust, Limited, for the five years bygone prior to the meeting of said Licensing Court, and showing the drawings of that branch and the net profits of that branch for each of the said five years; and (*b*) that it was illegal and *ultra vires* of the said defenders, and incompetent on their part, to refuse a renewal of the said certificate upon the sole ground of the non-production of said balance sheets and/or accounts; and further (*thirdly*), but only if it appear to our said Lords necessary and expedient, it ought and should be found and declared by decree foresaid that it was illegal and *ultra vires* of the defenders second called (*a*) to refuse to consider upon its merits the appeal of the pursuer William Robertson, for and on behalf of the other pursuers, against the said *ultra vires* and illegal deliverance or deliverances of the said Licensing Court for the Burgh of Clydebank, and (*b*) to refuse the said appeal upon the sole ground of the non-production of said balance sheets and/or accounts as aforesaid; (*fourthly*) It ought and should be found and declared by decree foresaid that in pronouncing the said deliverance or deliverances dated 9th and/or 30th April 1918, the defenders first called, and in refusing the appeal of the pursuer William Robertson for the other pursuers the Public-House Trust, Limited, on 21st May 1918, as aforesaid, the defenders second called, acted contrary to their statutory duties to the prejudice of the pursuers; and (*fifthly*) our said Lords ought and should remit to the defenders first called to hold a meeting or meetings of the Licensing Court for the Burgh of Clydebank, and to entertain and hear *de novo* the application of the pursuer William Robertson for the other pursuers The Public House Trust, Limited, for renewal of the said certificate, all as accords of law and in accordance with the provisions of the Licensing (Scotland) Act 1903, with such special directions as our said Lords may think fit to give."

The *facts* of the case were thus narrated by the Lord Ordinary (ORMIDALE) in an opinion delivered at an earlier stage of the case.

Opinion. — "The Public House Trust (Dumbarton County District), Limited (to which I shall afterwards refer as the Trust), carry on business as hotel and innkeepers, &c. Under its memorandum and articles of association the net profits arising out of its business, subject to the payment of a maximum dividend of 4 per cent. to the shareholders, are handed over to trustees to be applied by them to such objects of public utility or wellbeing, either local or general as the trustees in their discretion may determine.

"Mr Ballantyne is the manager, and Mr William Robertson the secretary, of the Trust.

"At the date of the proceedings complained of the Trust held four certificates for licensed premises in the Dumbarton County District, including one for the Radnor Park public-house in Clydebank, and it appears that grants have been made from year to year by the trustees for charitable and other purposes in the various localities in which their licensed premises are situated.

"The certificate for the Radnor Park public-house was first granted in 1906, and renewal of it had been granted from year to year up to 1918.

"In December 1917 the Magistrates of Clydebank, through their Town Clerk, requested the manager to furnish them with copies of the annual reports and balance sheets of the Trust for the past five years, with particulars of how the profits had been distributed among local charities or for other purposes. In response, copies of the annual reports and statements of accounts of the Trust were forwarded to the Magistrates. This did not satisfy the Magistrates, and they requested that they might have copies of the balance sheets of the Radnor Park branch showing the drawings and net profits of the branch. The Trust explained that they had no such balance sheets. In the course of a correspondence that followed the Magistrates insisted that as a matter of right they should be supplied with such balance sheets. This demand the Trust thought was unwarranted, and they did not comply with it.

"So standing matters the Clerk to the Licensing Court of Clydebank, being the Town Clerk, on 26th March 1918 wrote to the secretary of the Trust, in whose name the certificates were granted, as follows:—'Dear Sir—Licensing (Scotland) Act 1903—You are requested to attend the half-yearly meeting of the Licensing Court to be held in the Lesser Town Hall, Clydebank, on Tuesday, 9th April, at 11 a.m., when your application for renewal of licence will be considered, and the hours of opening and closing of licensed premises will also be considered with a view to uniformity of practice in the burgh.'

"On 9th April Mr Robertson attended the Licensing Court. It is admitted that with respect to his application for a renewal of the Radnor Park public-house certificate no notice of objections by any person entitled to object, in terms of the Licensing (Scotland) Act 1903, section 19, had previously been given, and that on his application for

renewal being called, no objection was stated by the Procurator-Fiscal, Chief Constable, or Superintendent of Police, in virtue of section 20 of the Act, but Mr Robertson was called upon by Mr Taylor, the Provost and Chairman of the Court, to produce the Trust's balance sheets and accounts of the Radnor Park business, and the case was continued to the 30th April that they might be produced. The entry in the register bears —'Continued till Tuesday, 30th April, and applicant ordered to lodge balance sheets for the past five years, showing drawings, disbursements, and profits derived from Radnor Park premises on or before 23rd current, with details of how surplus profits were disposed of for local charities.'

"On the 23rd April Mr Robertson lodged with the Clerk a note of the grants made out of the whole surplus profits of the Trust from 1909 to 1917, as also a note of the allocation thereof by the trustees.

"On the 30th April no objections were taken to the conduct of the public-house or to Mr Robertson personally as licence-holder, but Mr Robertson was again required to produce the accounts as ordered, and on his declining to do so his application for a renewal was refused. [*On the evidence as to what occurred, v. opinions infra.*]

"Mr Robertson having appealed to the Licensing Appeal Court, his appeal was heard on 21st May. No objection was taken by anyone present to his application for a renewal, but his appeal was refused.

"In the present action reduction is sought of the deliverances dated 9th and 30th April and 21st May."

The pursuers *pleaded, inter alia*—"1. The pretended deliverances of the defenders first called as the Licensing Court for the Burgh of Clydebank and the said pretended deliverance of the Licensing Appeal Court for the Burgh of Clydebank being incompetent, *ultra vires*, and null and void, and, *separatim*, have been pronounced contrary to the provisions of the Licensing (Scotland) Act 1903, ought to be reduced as concluded for. 2. The defenders first called and the defenders second called having acted in pronouncing said deliverance incompetently and *ultra vires* in the respects condescended on, decree of declarator in terms of the declaratory conclusions should be pronounced. 3. The proceedings complained of being contrary to the provisions of the Licensing (Scotland) Act 1903, are illegal and ought to be set aside. 4. The demand of the Licensing Court for production of the Trust Company's accounts being illegal and oppressive, and, *separatim*, being *ultra vires* of the said Court, its deliverances should be set aside. 5. The members of said Court having met, considered, and decided the case contrary to the terms of the statute regulating the sitting of their Court, its deliverances were illegal and should be set aside. 6. The application of the pursuer William Robertson for renewal of the said certificate not having been competently dealt with or refused, the Court should remit to the Licensing Court for the Burgh of Clydebank to proceed as accords of law in the consideration of said application."

The defenders *pleaded*—"... 2. The pursuers' averments, so far as material, being unfounded in fact, the defenders should be assoilzied. 3. The decisions of (1) the Licensing Court of the Burgh of Clydebank, and (2) the Licensing Appeal Court for the Burgh of Clydebank, being valid and competent the defenders should be assoilzied. 4. The proceedings having been legal, regular, and in conformity with the provisions of the Licensing (Scotland) Act 1903, the defenders should be assoilzied."

On 12th March 1919 the Lord Ordinary, after a proof, pronounced the following interlocutor:—"Finds and declares in terms of the second, third, and fourth conclusions of the summons, and decerns: Remits to the defenders first called to hold a meeting or meetings of the Licensing Court for the Burgh of Clydebank, and to entertain and hear *de novo* the application of the pursuer William Robertson for the other pursuers The Public House Trust Limited for the renewal of his certificate, all as accords of law and in accordance with the provisions of the Licensing (Scotland) Act 1903, and that upon the 31st day of March 1919, after due notice and in the usual manner, with power to them to adjourn said meeting to a day or days, all in accordance with the provisions of the said Act."

Opinion.—"By the interlocutor of the First Division, dated 21st January 1919, parties were allowed a proof of their respective averments on record.

"The sole question which falls to be determined is what passed at the meetings of 9th April, 30th April, and 21st May. According to the pursuers' averments on record, all that Mr Robertson, their representative, was invited to do was to state why he should not produce the accounts and balance sheets showing the profits made from the business done at the Radnor Park public house, and how these profits had been disposed of.

"What moved the Magistrates to require the production of these accounts was that while for the earlier years which followed upon the granting of a licence to the pursuers in 1906 a considerable sum had been disbursed upon objects of interest and benefit to the Clydebank community—Radnor Park having become in 1907 the 5th ward of the burgh of Clydebank—there had been a marked diminution in the amount of the sums so disbursed in the later years. The figures were—in 1907 £500, in 1908 £600, in 1909 £239, and diminishing to £110 in 1913, to £90 in 1916, and to £80 in 1917. In the view of the Magistrates there was no reason to suppose that the profits derived from the business had to a corresponding extent fallen away.

"The annual statements or balance sheets issued by the pursuers had in fact disclosed the profits made by the Radnor Park business from 1907 to 1911. Thereafter there was a change made in the form of the balance sheets, which with the exception of that for 1914 did not as formerly specify the profits effeiring to the particular businesses carried on by the pursuers, but disclosed only the profits resulting generally

from the whole businesses carried on. What the Magistrates wanted was such a statement as would let them know for 1912 and 1913 and for 1915, 1916, and 1917 the profits and the disposal of the profits of the Radnor Park public-house taken by itself.

"This information they said they were entitled to get, because of promises made that it would be supplied to them not only in 1911 but in 1906, when the licence was first granted—that in effect it was a condition of the licence being granted. Nothing is said on record about any promises having been made in 1906, and the pursuers deny that any such promises were at any time made. The certificate granted, and from year to year renewed, bears to be unconditional, and technically therefore the pursuers cannot be said, and were not said, to have been guilty of any breach of their licence.

"Into the rights and wrongs of this controversy I do not propose to enter. This is not a Court of Appeal from the Licensing Courts. I shall only say that I think that the Magistrates' claim to have the information they desired and accounts disclosing it as a matter of right was unfortunate, because so far as I can judge they would have got the information as a matter of courtesy. On the other hand, I think it was equally unfortunate that the pursuers did not see their way to waive or reserve the point of right and give the information desired.

"The question to be decided is what passed at the Licensing Courts—was the applicant heard in support of his application for the renewal of his certificate, and was he called upon to address himself to objections tabled to its renewal.

"Mr Robertson admits that he was heard, but not with regard to any objections to the renewal of his certificate, but simply and solely with regard to his declinature to obtemper the order to produce the balance-sheets called for. He asserts that all that is now said to have been stated by the Magistrates in disposing of his application was stated by them as grounds to support and to justify their order.

"I have come to think, though with some hesitation, that on a fair view of the proceedings this was so. The order of 9th April sounds the note which continued to be heard throughout the meetings of 30th April and 21st May—'Produce the accounts or the renewal of your certificate will be refused.'

"I refer to the correspondence which passed between the Town Clerk and the officials of the Trust Company and to the two letters from the Clerk of the Licensing Court, dated 26th March 1918, requiring the presence of Mr Robertson at the meeting of 9th April, and setting forth the grounds on which he was required to attend, the special ground on which he was required to attend, as distinguished from other licence-holders, being that he might produce the accounts.

"On the 9th April the only matter discussed was the failure to produce the accounts. Mr Taylor, at that time Provost of Clydebank, now Member of Parliament for the Dumbarton Burghs, says—'Very little passed at that meeting, but we told Mr Robertson that we would give him time to produce the information, and we told him the accounts we asked for. We knew from the note of grants how much was actually being spent in our district, but we did not know how much profit was actually being earned in the public-house in question.'

"Bailie Hogg says—'I was at the Court on 9th April 1918, and at that Court I moved that the case should be continued to allow Mr Robertson to produce a statement, and my reason for that motion was that Mr Robertson had spoken at considerable length, but so far he had not produced the balance sheet or shown the profits for Radnor Park, which was the only licence we were interested in . . . , and in order to give Mr Robertson a fair opportunity to provide the balance sheets I moved that we continue the case for a fortnight to allow Mr Robertson further time to bring these forward.'

"The entry in the register bears that the application was continued, and applicant ordered to lodge balance-sheets . . . with details of how surplus profits were disposed of for local charities.'

"So far it is clear that although Mr Robertson was heard, it was only in connection with his failure to produce the accounts. No other objection to the renewal of the certificate was suggested.

"At the adjourned meeting on 30th April the only application dealt with was Mr Robertson's. The meeting was a prolonged one. There was a great deal said by Mr Robertson, and a very great deal by the Magistrates, and it is difficult to extract anything orderly out of the confused and chaotic wrangle that appears to have taken place, but at the end of it Mr Robertson's application was refused. In my opinion, as I have said, it was refused because Mr Robertson did not produce the accounts asked for.

"Mr Taylor is asked—'(Q) Beyond the question of the accounts and the question of the promise relative to the production of the accounts, was any subject discussed during the whole of that meeting?—(A) Except in regard to the production of the accounts and in regard to the promises that were made when the licence was granted, and the non-fulfilment of these promises, there was no other question.'

"Bailie Hogg says in answer to the question—'The issue between you and Mr Robertson was that very question whether you were entitled to know exactly what profits were made out of the Radnor public-house alone?—(A) That is what we wished to know. (Q) And that continued the issue right to the end?—(A) Right to the end;' and again—'The only reason why the Court was adjourned was to give Mr Robertson an opportunity to produce the accounts. (Q) And the purpose of the adjournment having failed, you refused the renewal?—(A) We refused the renewal because we thought there would be no hardship on the public. (Q) But, as you have told us, one of the

reasons was the failure to produce the accounts?—(A) That may have been one of the reasons. We thought that Mr Robertson had a moral duty to produce the accounts, and also from the public point of view.' Bailie M'Laughlin concurs in the evidence of Bailie Hogg.

"It is said on record that after Mr Robertson had been heard on the competency of the Magistrates' request for information he was asked to speak on the merits. There is a conflict as to what occurred. As a matter of fact, after the wrangle had continued for some time, Bailie Hogg, thinking that Mr Robertson had finished what he had to say, moved that the application should be refused, when the Clerk intervened, and Mr Robertson was invited to continue his statement, and he did so. He did not break any new ground apparently, and took no notice of certain topics of public interest which it is said Bailie Hogg had referred to in making his motion. I am satisfied that he was not invited to speak 'on the merits,' and that the word 'merits' was never used. The Clerk Mr Hepburn is the only witness who says that he was. There is no reason at all to discredit Mr Hepburn, but he did not pretend to have a *verbatim* recollection of all that was said, and to the best of my judgment no fresh topic was stated from the Bench to which Mr Robertson was invited to address himself. His point was that the Magistrate could not, because of his declinature to produce the accounts, refuse his application for a renewal, and he seems to have cited authority in support of that argument. That the public interest was referred to is undoubted, but that, in my opinion, was to justify the order to produce the accounts. No separate or substantive ground for refusal founded on the public interest was put forward. What the Magistrates might have done if the accounts had been produced was an open question. I note that Bailie Hogg says that at the end of the discussion his view had remained the same as it was when he first made his motion — that was when, admittedly, the only question which had been considered by the Court was the right of the Magistrates to insist on the production of the accounts. He says with reference to what was stated by Mr Robertson in continuation — 'Mr Robertson's argument, to put it shortly, was to the effect that there was no objection before the Court which would allow them to refuse the renewal.'

"At the meeting of the Appeal Court the position appears to me to have been precisely the same, and what passed at it confirms the opinion that I have formed that the substantive reason for refusing the renewal of the pursuers' certificate on the 30th April was Mr Robertson's declinature to produce the accounts called for, and nothing else. Mr Craig, the clerk, was asked more than once whether it was a valid ground for refusing renewal and he expressed the opinion that it was not. He says 'it was pretty much put to me in this way whether they were entitled to insist as a matter of right on getting those accounts, and whether if they did not get these accounts they were entitled to refuse the licence.'

"That was essentially the only question discussed according not only to Mr Craig but also to Mr Napier and Mr Shields. I gather that that was Mr Stewart's view also, but that he agreed with the Magistrates that they were entitled as matter of right to insist on getting the accounts. Mr Taylor said on 21st May that in his opinion it was a short-sighted policy to refuse the information asked for and that he did not see any reason why it should not be given, and that if the pursuers expected any renewals from the Licensing Bench it was reasonable information required by the Magistrates. Bailie Hogg depones—'I then said that I considered that as this was a public company and not a private individual out for profit I could see no reason why they, seeing they posed as philanthropists, should not show their balance sheet and let not only the Magistrates but the public see what their profits were.'

"At both Courts therefore the prime reason for refusing Mr Robertson's licence was his refusal to produce the balance sheets asked for, and while incidentally matters of public interest may have been referred to I am satisfied that they were so referred to merely in justification of the licensing authorities proceeding on the ground they did. That being so the Magistrates exceeded their statutory jurisdiction in respect that they failed in any reasonable sense of the term to hear Mr Robertson in support of his application for a renewal, and without hearing him refused his application.

"The question of the exercise of the discretion vested in the licensing body does not in the view I take of the proven facts arise."

The defenders reclaimed, and argued—The Lord Ordinary's interlocutor should be recalled. The conclusions of the summons in terms of which he had granted decree necessitated a finding in fact to the effect that the sole ground upon which the Licensing Court had proceeded was the non-production of the balance sheets. Upon the evidence it was impossible to reach such a conclusion. Further, it was not proved that the Licensing Court had made it a condition-precedent to the consideration of the pursuers' application that they should produce the balance sheets of the Radnor Park house. Further, the pursuers had been heard in support of the application for renewal as required by section 11 of the Licensing (Scotland) Act 1903 (3 Edw. VII, cap. 25). The Licensing Court could hear and determine objections stated by its members without giving notice of those objections—section 20. The objection taken by the Court was not to the non-production of the balance sheets but to the withholding of information as to the use made of the profits from the Radnor Park house. They were quite entitled to require that the pursuers who professed to expend profits in a particular way should satisfy the Bench that the profits had been so expended. Upon the evidence it was clear that such an accounting was what was required of the

pursuers, and that that had been made clear to them. In answer, however, the pursuers merely addressed themselves to the legal argument that the Bench could not call for the accounts of that house. If they chose so to limit their answer and to withhold the information desired they must abide by the result, but they could not say they had not been heard. *Baillie* v. *Wilson*, 1917 S.C. 55, 54 S.L.R. 58, was distinguished, for there the applicant was not heard at all, neither was any statement of the objection made to him. Further, the Licensing Bench was not bound to put every point which might influence them to an applicant. No doubt overt facts and specific objections must be declared to the applicant but not general questions of policy which might influence the decision of the bench. *Walsh* v. *Magistrates of Pollokshaws*, 1905, 7 F. 1009, *per* Lord President Dunedin at p. 1017 and p. 1019, 42 S.L.R. 784, 1907 S.C. (H.L.) 1, 44 S.L.R. 64; *Sharp* v. *Wakefield*, [1891] A.C. 173; The Licensing (Consolidation) Act 1910 (10 Edw. VII and 1, Geo. V, cap. 24), section 16, were referred to.

Argued for the pursuers (respondents)—The pursuers had not been heard in support of the application for renewal. The bench had called for the production of the accounts of the Radnor Park house, and the refusal to produce had really ended the matter, although possibly a semblance of a hearing had been given. The Licensing Bench was not entitled to call for the production of these accounts, and the pursuers were entitled to refuse their production. That was the only objection tabled, and the pursuers could not be held to have been heard when they were only heard on an invalid objection. *Baillie* v. *Wilson* (*cit.*) was exactly in point. *Sharp* v. *Wakefield* (*cit.*) was referred to.

At advising—

LORD PRESIDENT—The question at issue in this case is—Did the Licensing Court at Clydebank refuse to consider the application for a renewal of the certificate which had been granted to the pursuers for the sale of exciseable liquors, and impose as a condition-precedent to consideration of renewal the production of the balance sheets of the business carried on by them in the Radnor Park district at Clydebank? Differing from the Lord Ordinary, who reached with difficulty the conclusion at which he arrived, I am disposed to answer that question in the negative. I cannot find in the evidence any support for the view that any such condition as I have indicated was imposed by the Licensing Court. The reason for the refusal to renew appears to me to have been that the requirements of the neighbourhood did not call for the continued existence of this licence, seeing that the profits of the business were not being spent in the Radnor Park district on what are called "counter attractions to drink." There is no doubt that public opinion in the district was antagonistic to the grant of a licence in its midst; and when some years ago the licence was granted it was on the clear and distinct understanding that the Public-House Trust, not desiring to make profit for shareholders but rather to discourage drinking, would expend the surplus profits derived from the sale of liquor on counter attractions within the district. Although public opinion was keenly divided on the propriety of granting any licence at all, still it was thought that those who objected might be reconciled to the presence of a drink shop in their neighbourhood by the considerations I have mentioned. And thus what had for years been regarded as practically a teetotal district had a public-house set down in its midst. For a long time substantial contributions were made to local objects of public utility out of the profits of the concern, but bye-and-bye these contributions began to dwindle, and as all the other licence-holders in Clydebank were making more profit than they had ever done before, a suspicion, which seems to have been not without foundation, arose that the surplus profits of the pursuers' business were not being directed to the provision of counter-attractions in the district. If this in reality was so, then there can be no doubt that public feeling in the district was distinctly hostile to the renewal of the licence. Accordingly the Magistrates determined to reconsider the question of renewing the pursuers' licence, and gave them due notice to attend the Licensing Court to be held on the 9th of April 1918, and to furnish the Magistrates with particulars of the amount of the profits derived from the business during the past five years, and the mode in which they had been disposed of. The pursuers' secretary Mr Robertson appeared at the Court on the 9th of April, but refused to give the information regarding profits desired by the Magistrates. To enable him to reconsider his position and produce the balance sheets, the case was continued till the 30th of April. On that day a lengthened wrangle took place between Mr Robertson and the members of the Court relative to the disclosure of the amount of the profits at their disposal. In the upshot Mr Robertson stood firm in his refusal to disclose, and thus confirmed the suspicion to which I have referred, that the understanding as to the application of profits had been departed from; and it then became the duty of the Licensing Court to consider, in the absence of the information desired by them, the propriety of renewing the licence. Did they perform that duty, or did they refrain? Some of them were undoubtedly nettled at the refusal to disclose, but they were advised that it was contrary to the statute to decline to consider the propriety of renewal on the sole ground that disclosure of the amount of the profits and of their disposal had been refused. It seems therefore very unlikely that the members of the Court should have deliberately turned their backs on the only question they had met to discuss. It was really a very simple question. They all knew that public opinion in the Radnor Park district was against a renewal of the licence unless the profits were devoted to counter attractions and drinking was dis-

couraged; they all knew that they had been denied access to the information which alone would have enabled them to make certain that the profits were being spent as they desired. To conclude from these simple facts that the licence was not required in the public interest was natural and easy. That the Licensing Court did come to that conclusion I see no reason to doubt. For when Mr Robertson had, as the members of the Court thought, finished his speech, the witness John Hogg, one of the magistrates of Clydebank, rose and moved that the licence be not renewed. He says—"I gave reasons why I was making such a motion. I went into the merits of the case. . . . I went into the case from a public point of view, and I pointed out that when this licence was originally granted we had sufficient evidence to show that certain promises were made if a licence was granted. These promises were to the effect that the profits after paying a certain dividend . . . would be used by way of counter attractions to the consuming of liquor. As I pointed out to the Court that day, it appeared to me that all their promises and pledges seemed to point to making the place into an entire new place—in short, to discourage drunkenness—and I pointed out that very little had been done in that way. I put that from a public standpoint, and I was dealing with it entirely from a public standpoint. . . . I considered it would be no hardship on the people if the licence was not renewed, knowing the district as I did." Bailie Hogg depones that in the Appeal Court he repeated substantially the same arguments against a renewal of the licence. If this evidence is reliable, I cannot doubt that the pursuers' case must fail, for it is impossible to affirm the declaratory conclusions of the summons which rest on the proposition that the requirements of the neighbourhood and the public interest were never considered at all. Now I can see no reason whatever to doubt the truth of Bailie Hogg's statements, and none was suggested at the debate. They receive very striking confirmation in the following passage taken from the evidence of the town clerk—"After Mr Robertson had spoken for the better part of half an hour or perhaps three-quarters of an hour there was a pause, and Bailie Hogg, under the impression that Mr Robertson was finished, as was also my impression, moved and spoke to his motion which he has spoken to in the witness-box. Bailie Hogg put his motion on public grounds generally, viz., that the public were not getting the benefit of the profits from this place—were not getting what they had been led to expect; that there was no restriction in the sale of intoxicating liquor there more than in any other public-house; and that, from his opinion of the district and from what he had known of it for many years, there would be no hardship although this licence was taken away, because he was fully convinced that the people of Radnor Park did not want licences there, and that had been the opinion of the Magistrates ever since they got the licences into their own hands, because there had been no new licences granted by them in Radnor Park. He also mentioned the restricted supplies of drink for individual licence-holders. He put that simply that the restricted hours and the restricted quantities provided left the public-house very little to do." This evidence is confirmed by the senior magistrate, John Williamson, and also by the Provost of the burgh, who presided at the Court. The evidence of these four witnesses was not contradicted. Their veracity was not questioned. The line of argument taken by Bailie Hogg was what one would naturally have expected, having in view the facts of the case as they were known to him and to everybody else concerned. And when we find that as soon as the bailie had finished his speech Mr Robertson was invited to resume his and to state fully everything that he could urge in support of a renewal of the licence, it is impossible to doubt that what has been called "the merits" of the "case" were duly laid before and considered by the members of the Court, and afforded one of the grounds at all events on which the renewal of the licence was refused. In short, the only ground on which the existence of the licence was tolerated by the people of the Radnor Park district was the dedication of the profits of the business "to fostering counter-attractions to the public-house, and encouraging rational recreation and entertainment." And when the pursuers ceased to show that they were so disposing of their profits everybody knew that the requirements of the locality no longer called for the existence of a public-house in its midst.

I differ from the Lord Ordinary in this case not on any question involving the credibility of witnesses or the weighing of evidence. At the close of his opinion he says—"At both Courts, therefore, the prime reason for refusing Mr Robertson's licence was his refusal to produce the balance-sheets asked for, and while incidentally matters of public interest may have been referred to I am satisfied that they were so referred to merely in justification of the Licensing Authorities proceeding on the ground they did. That being so the Magistrates exceeded their statutory jurisdiction in respect that they failed in any reasonable sense of the term to hear Mr Robertson in support of his application for a renewal, and without hearing him refused his application." In my view of the evidence matters of public interest were not referred to merely incidentally. They constituted the staple of Bailie Hogg's speech, the ground on which he rested his motion for the refusal to renew the licence, and the topic to which Mr Robertson was invited to address himself in his final speech. If this be so, the pursuers' case confessedly fails.

LORD MACKENZIE—This case is different from *Baillie* v. *Wilson*, 1917 S.C. 55, 54 S.L.R. 218, although the ground of objection is the same, viz., that the magistrates failed to give the applicant an opportunity of being heard. In *Baillie* v. *Wilson* it was admitted the applicant had not been heard

—in the present case the applicant says that he was heard. The ground of his objection is that he was never heard on the proper point. I confess I had great difficulty throughout the whole discussion in knowing what the case was which was being made on each side, and the difficulty was not lessened by the fact that junior and senior counsel for the pursuer put their case on different grounds.

The issue, as it appears to me, is purely one of fact—Did the Magistrates give the applicant an opportunity of being heard on the merits of his application? The pursuer says they did not—that the Magistrates never went into the merits of the case at all in consequence of his refusal to produce a balance-sheet showing what the profits were of the public-house within the burgh. The Lord Ordinary has endorsed this view of the case, and I am slow to differ on a question of fact from the judge who heard and saw the witnesses. I am, however, quite unable to reconcile this view of the facts with the evidence of Mr Hepburn, corroborated as it is by other witnesses in the case. Mr Hepburn, with reference to the Licensing Court on 30th April, says—"After Mr Robertson had spoken for the best part of half an hour, or perhaps three-quarters of an hour, there was a pause, and Bailie Hogg, under the impression that Mr Robertson was finished, as was also my impression, moved and spoke to his motion which he has spoken to in the witness-box. Bailie Hogg put his motion on public grounds, viz., that the public were not getting the benefit of the profits from this place—were not getting what they had been led to expect; that there was no restriction in the sale of intoxicating liquor there more than in any other public-house; and that from his opinion of the district, and from what we had known of it for many years, there would be no hardship although this licence was taken away, because he was fully convinced that the people of Radnor Park did not want licences there, and that had been the opinion of the Magistrates ever since they got the licences into their own hands, because there have been no new licences granted by them in Radnor Park. He also mentioned the restricted supplies of drink for individual licence-holders. He put that simply that the restricted hours and the restricted quantities provided left the public-house very little to do. I did not intervene when Bailie Hogg was speaking; I let him finish. When he had finished I drew the attention of the Court to the fact that Mr Robertson's remarks had hitherto been directed towards the production of those balance-sheets and that he had not been heard on the application for a renewal of his licence and that they had better hear him on that before coming to any resolution. That suggestion on my part was accepted by the Provost, and Mr Robertson then applied himself to the reasons why this licence should be renewed." This agrees with what Bailie Hogg says. Provost Taylor is to the same effect. Mr Hepburn and Bailie Hogg are corroborated by Mr Williamson. With reference to the Appeal Court on 21st May Mr Robertson's own witness, Mr Stewart, says Mr Robertson was given a full hearing upon all the different remarks made from the Bench. Mr Robertson in his cross-examination admits that at the Appeal Court he was asked by Bailie Hogg to say what he had done in Radnor Park to prevent drunkenness while the licence was in existence.

Now the ground of challenge in the summons is that the renewal of the licence was refused on the sole ground of the non-production of the balance-sheet asked for. The averments in support of this conclusion are in Cond. 7. "No objection was made verbally or in writing to the grant of the renewal by any particular member of the Court," and "the pursuer William Robertson was given no opportunity to address the Bench in favour of the renewal of the certificate."

These averments are in my opinion negatived by the evidence. The evidence in my opinion negatives the pursuers' contention that the licence was refused without any consideration of the merits, solely because the balance-sheet asked for was not given.

I am therefore unable to hold that the pursuer has established that the Licensing Authority failed to give judicial consideration to his application.

LORD SKERRINGTON—I agree with the view of the evidence which has been fully explained by your Lordships, and I do not think I can usefully add anything.

LORD CULLEN—The Lord Ordinary by his interlocutor under review has granted decree in terms of the second, third, and fourth declaratory conclusions of the summons. He has not dealt with the reductive conclusion and the pursuers do not seek decree in terms thereof.

The said declaratory conclusions, such as they are, involve as their basis that the Licensing Court and the Appeal Court did not enter at all on the merits of the application for renewal, or allow the pursuer Mr Robertson any opportunity of being heard thereon, but stopped severely short of the merits, and proceeded on the non-production of the balance-sheet or accounts as something separate from, and involving a condition precedent to, the consideration of the merits. And the view taken by the Lord Ordinary as expressed in his opinion is that they did act in such a manner.

On an examination of the evidence I am unable to agree in the view taken by the Lord Ordinary. It seems to me that the request for the production of a balance-sheet or accounts represented a request for information which was regarded by those making the request as going to the merits of the application. According to the manner in which the pursuers' case was presented to us, I do not think it is *hujus loci* to enter on the topic of how the information may have been intended to be applied, had it been forthcoming, in dealing with the application. For it is essential to the pursuers' case, as I have said, to affirm that on the information being refused the Bench shut their minds to all other considerations,

did not in any way deliberate on the merits of the application as these stood in the absence of the information desired, and allowed the pursuer Mr Robertson no opportunity of being heard save in response to the demand for production. And I am unable so to affirm. The matter of production or non-production appears to have been the subject of considerable controversy. And the absence of the information which production would have afforded no doubt contributed to the refusal of the application. But I am unable to affirm that when the Bench came to say Yea or Nay to the application the sole ground on which they resolved to answer Nay was the non-production of the information. I think indeed that the fair import of the evidence is to show that circumstances relevant to the continuance of the licence, such as public opinion in the district, were overtly adverted to by the Bench in the presence and hearing of the pursuer Mr Robertson. And I think that Mr Robertson had full opportunity allowed to him of urging all considerations which he thought favourable to his application. If this is so it appears to me that what the pursuers make the essential basis of the declarators sought by them is not established, and that accordingly the defenders should be assoilzied.

The Court recalled the interlocutor of the Lord Ordinary and assoilzied the defenders.

Counsel for the Pursuers (Respondents)—Watson, K.C.—A. M. Mackay. Agent—George Scott, S.S.C.

Counsel for the Defenders (Reclaimers)—Wilson, K.C.—R. M. Mitchell. Agents—Douglas & Miller, W.S.

Friday, June 6.

SECOND DIVISION.

[Lord Anderson, Ordinary.

TAYLOR *v.* GLASGOW CORPORATION AND ANOTHER.

Expenses—Several Defenders—Liability of Unsuccessful Defender for Expenses of Pursuer—Liability of Pursuer for Inner House Expenses of Successful Defender.

In an action against two defenders "jointly and severally" for damages in respect of injuries sustained in a collision between two vehicles belonging to the two defenders, one of the defenders was found liable and the other assoilzied. The unsuccessful defender and also the pursuer reclaimed.

Held (*dis.* Lord Salvesen) in the circumstances of the case that, while the unsuccessful defender was liable in expenses to the pursuer, as the successful defender had been brought in to the Inner House owing to the pursuer reclaiming the pursuer was liable in his expenses there.

Donald Taylor, coal miner, 91 Dale Street, Bridgeton, Glasgow, *pursuer*, raised an action against the Corporation of the City of Glasgow and the Scottish Farmers' Dairy Company (Glasgow), Limited, *defenders*, jointly and severally, for damages in respect of personal injuries sustained by him in a collision between a corporation tram-car, on which he was a passenger, and a steam tractor belonging to the second-named defenders. The case was heard on 29th May 1918 by Lord Anderson, who on 13th June 1918 assoilzied the defenders The Corporation of the City of Glasgow and granted decree for the pursuer against the defenders the Scottish Farmers' Dairy Company, whom in the exercise of his discretion he found liable in expenses both to the pursuer and the successful defenders. Both the defenders the Scottish Farmers' Dairy Company and the pursuer reclaimed, the latter on the ground that both defenders were liable to him. On 6th June 1919 the Second Division adhered to the interlocutor of the Lord Ordinary.

On the question of the Inner House expenses, argued for the defenders the Corporation of Glasgow—Both the pursuer and the defenders the Scottish Farmers' Dairy Company ought to be found liable in expenses to the defenders the Glasgow Corporation—*Morrison* v. *Waters & Company and Another*, 1905, 8 F. 867, 43 S.L.R. 646. The pursuer ought to have rested content with his judgment and not reclaimed.

Argued for the pursuer—Wherever parties blamed each other, the pursuer, if successful, ought to get his expenses against the unsuccessful defender, and the successful defender ought to get them against the unsuccessful defender—*Craig* v. *Aberdeen Harbour Commissioners*, 1909 S.C. 736, 46 S.L.R. 508. As in the present case each defender blamed the other, the pursuer was not entitled to prejudge the case by withdrawing his claim for damages against either. If he failed to state his case against both defenders, then the defenders the Glasgow Corporation could not be called on to reply. Beyond that the pursuer had no interest in maintaining the reclaiming note; he was rather in the position of holding a watching brief.

LORD JUSTICE-CLERK—In this case I am of opinion that the reclaimers, the Dairy Company, must of course pay the pursuer's expenses of the reclaiming note. As to the expenses of the Corporation, senior and junior counsel for the pursuer—I am not reflecting in the least on the course they took—each concluded his argument by asking for decree conjointly against the Dairy Company and against the Corporation. The Dairy Company in their argument, while of course they required to argue that they were not liable and that the Lord Ordinary's interlocutor against them was wrong in respect that it found fault against them, were necessarily driven to say by the way the case was brought that the fault which caused the accident was the fault of the Corporation. They had no plea directed against the Corporation and no motion was made by anyone against the Corporation except by the pursuer.