

those for whom they are responsible, she is entitled to decree in terms of the first of the alternative conclusions of the petition, with expenses. (2) Pursuer having been permanently injured through the fault of the defenders, or those for whom they are responsible, under the Employers Liability Act 1880, she is entitled to compensation in terms of the second alternative conclusion, with costs. (3) The defenders, or those for whom they are responsible, having been in fault in failing to have fenced or protected the machinery in question, as they were bound to do, . . . they are liable to the pursuer in terms of the first conclusion."

The defenders pleaded—" (1) No relevant case."

On 9th June 1890 the Sheriff-Substitute (LEES) pronounced the following interlocutor:—"Sustains the first plea-in-law stated for the defenders: Dismisses the action, and decerns: Finds the pursuer liable to the defenders in expenses."

The pursuer appealed to the Second Division of the Court of Session, and argued—The machine might easily have been fenced. Five girls had been mutilated by the machine prior to the pursuer's case, and this series of accidents might have shown the defenders that further safeguards were necessary.

Argued for the defenders—It was essential that some mode of fencing the machine should be stated on record. No averment was made that the usual precautions had not been used—*Moore v. Ross*, May 24, 1890, 17 R. 796; *Waterston v. Murray & Company*, July 1, 1884, 11 R. 1036; *Forsyth v. Ramage & Ferguson*, October 25, 1890, 23 S.L.R. 26.

At advising—

LORD JUSTICE-CLERK—The pursuer here states as the cause of her injury the neglect of her employers in not having fenced the machine for moulding bricks at which she was working. There are no grounds for holding, on the pursuer's own statements, that this machine was in any way different from similar machines as ordinarily used. If it was the practice to fence such machines, that could easily have been averred. We must therefore take it that this was an ordinary machine used in the ordinary way, and in its usual state. It is said for the pursuer that she would not have been injured if the machine had been fenced. But in my opinion the defenders' contention is sound, that if the pursuer alleges that the accident was caused by the faulty arrangement of the machine in question she must aver not only that the machine might have been made safe, but must give some description of the precautions required for her safety. I therefore think that the interlocutor appealed against should be affirmed.

LORD YOUNG—I am of the same opinion. I should not, however, like to put our judgment on the absence in the condescendence of the pursuer of any specification of the mode in which danger might be averted. I put my judgment on this ground, that there is no averment on record that this

machine was not of such a construction or in such a condition that a master might use it in his works with perfect safety to his servants. If the pursuer had averred that the machine was of a novel construction or in bad condition all would be right. But nothing of that kind is averred here. There is no suggestion that anything was being done unusual or out of the way. A mere statement that a safer machine might be invented, or that a fencing might be constructed to make the work safer, will not make this a relevant case.

LORD RUTHERFURD CLARK—I also think that we must take it that the machine was of the ordinary kind used in many other brickfields throughout the country, and worked in the same manner as other machines of a similar kind are worked. I do not think that in such circumstances there is any relevant case on record. I agree with Lord Young's opinion.

Counsel for the Pursuer—A. S. D. Thomson. Agent—W. A. Hyslop, W.S.

Counsel for the Defenders—Asher, Q.C.—Guy. Agents—Macpherson & Mackay, W.S.

Thursday, October 30.

FIRST DIVISION.

[Lord Trayner, Ordinary.

CALDER v. LOCAL AUTHORITY OF THE DISTRICT OF THE COUNTY OF LINLITHGOW.

Contagious Diseases (Animals) Act 1878 (41 and 42 Vict. c. 74), sec. 30, sub-sec. 7—Power of Local Authority to Refuse to Pay Compensation for Animals Slaughtered by their Order—Form of Resolution by Local Authority to Withhold Compensation.

The Contagious Diseases (Animals) Act 1878 provides, sec. 30, sub-sec. 7, that a local authority may, if they think fit, withhold compensation, either wholly or partially, in respect of an animal slaughtered under that Act by their orders, where the owner or the person having charge thereof has in their judgment been guilty in relation to the animal of an offence against the Act.

In consequence of an outbreak of pleuro-pneumonia a local authority, in exercise of their powers under the above Act, caused a herd of cattle to be slaughtered. With regard to certain of the animals slaughtered it was alleged that offences had been committed against the Contagious Diseases Acts, or the regulations made by the local authority in terms thereof, and in accordance with section 179 of the Animals Order of 1886 the local authority gave the owner an opportunity of making representations with regard to the alleged offences. They subsequently minuted a resolution to the effect, that

having considered the answers made by the owner they were of opinion that he "had not adduced any reason to induce the authority to pay compensation for these animals in regard to which it is alleged that an offence had been committed, and resolved to withhold compensation" for these animals accordingly.

In an action by the owner against the local authority for payment of compensation for these animals, the Court held that the resolution was not in terms of the statute, in respect that it did not state that the defenders were satisfied that the pursuer had been guilty of offences in regard to the cows for which compensation was withheld, but that the defenders might still remedy the defect in their resolution, and continued the case to give them an opportunity of doing so.

The defenders thereafter lodged an amended resolution to the effect that having heard and considered the representations made by the pursuer, and examined his byre-book, and referred to declarations emitted with regard to cows belonging to him which had been removed from one district to another, and fully considered the whole facts and circumstances of the case, they found and determined that offences had been committed by him or persons in charge of the cattle on his behalf in regard to each of the cows in question, and accordingly resolved to withhold compensation for all said cows.

Held that this determination was conclusive in regard to the pursuer's claim for compensation, and defenders *assoilzied*.

In September 1889 an outbreak of pleuropneumonia occurred in a herd of cows belonging to James Calder, Borrowstounness. Intimation of the outbreak having been given to the local authority of the county of Linlithgow, they caused the whole herd, 46 in number, to be slaughtered. Before being slaughtered, the cattle were valued by Andrew Kerr on behalf of the local authority for the purposes of compensation, and Calder agreed to abide by this valuation.

At a meeting held by the local authority they agreed with regard to 25 of the cows slaughtered to pay Calder compensation, but before coming to any determination with reference to the other 21 animals they resolved to give Calder an opportunity of making explanations and representations with regard to offences against the Contagious Diseases (Animals) Act alleged to have been committed by him in respect of these animals.

This resolution was accordingly submitted to Mr Calder accompanied by a statement of a number of cases in which it was alleged he, or persons in charge of his cows, had committed offences against said Act or the regulations made by the local authority in terms thereof, by moving cows from one district to another without their being accompanied by the proper declarations or by uttering false

declarations, or by otherwise contravening the said Act and regulations. Certain of the offences set forth in the statement were alleged to have been committed in January and April 1889, and the animals in regard to which it was stated that offences had been committed were not identified in any way in the statement with the 21 cows already mentioned.

Answers were lodged by Calder to the charges made against him, in which he denied certain of the charges, and made representations with regard to others.

On 5th May 1890 the local authority came to the following resolution, which they minuted—"The meeting having considered the answers for Mr Calder to the queries put to him by the local authority, along with the report of the Bo'ness Committee thereanent, were of opinion that Mr Calder had not adduced any reason to induce the authority to pay compensation for those animals in regard to which it is alleged that an offence had been committed, and resolved to withhold compensation for the following animals accordingly." The byre numbers of the cows and their numbers in Kerr's valuation were then given.

In January 1890 Mr Calder raised an action against the local authority of the county of Linlithgow concluding for payment of the compensation withheld.

The pursuer averred—"In rejecting the pursuer's claim for compensation the defenders were acting outwith the statute, and their conduct was characterised by malice and oppression. The cows with regard to which the offences were charged were not said by the defenders to be, and in point of fact were not, the same cows as those for the slaughter of which compensation is now refused. The said charges, which are referred to, were in themselves frivolous and purely technical, and it was not even pretended by the defenders that these alleged offences had any connection whatever with the outbreak of pleuropneumonia."

The defenders averred—"The defenders, by their clerk, examined on several occasions the byre-book of the pursuer, and made other inquiries as to the identity of the cows for which compensation is refused with those with regard to which offences were committed. In the judgment of the defenders the pursuer was guilty of offences against the statute or against regulations framed by the defenders under the Animals Acts aforesaid with reference to the twenty-one cows slaughtered by them, for which compensation is now refused, and it is on account of their opinion to that effect that compensation is withheld. This judgment and determination was arrived at after the defenders had given the pursuer an opportunity of making representations to them respecting the facts and circumstances of each case, and after they had considered the same."

The pursuer pleaded—" (5) The defenders' actings having been outwith the said Act, and having been characterised by malice and oppression, the jurisdiction of the Court is not excluded."

The defenders pleaded—“(3) The jurisdiction of the Court being excluded by the provisions of the said Act (the Contagious Diseases (Animals) Act 1878), the present action is incompetent. (4) The defenders being entitled, in exercise of the discretion committed to them by the said Act, to refuse payment of compensation, the present action is unfounded.”

By section 21, sub-section 1, of the Contagious Diseases (Animals) Act 1878 it is provided that “a local authority shall cause all cattle affected with pleuro-pneumonia to be slaughtered within two days after the existence of the disease is known to them.” Sub-section 2 empowers the local authority, if they think fit, “to cause all cattle to be slaughtered which have been brought in contact with those affected by pleuro-pneumonia.” Sub-section 3 provides that the local authority shall pay compensation out of the local rate for the cattle slaughtered under the section. By section 30, sub-section 7, it is provided—“Notwithstanding anything in this Act, the Privy Council or a local authority, as the case may be, may, if they think fit, withhold either wholly or partially compensation or other payment in respect of an animal slaughtered under this Act by their respective order where the owner or the person having charge thereof has in their respective judgment been guilty in relation to the animal of an offence against this Act, or where the animal being a foreign animal was in their respective judgment diseased at the time of its landing.”

Section 179 of the Animals Order of 1886, issued by the Privy Council, provides—“A local authority before determining under paragraph 7 of section 30 of the Act of 1878 to withhold either wholly or partially compensation or other payment in respect of an animal slaughtered by their order, shall give to the owner of the animal an opportunity of making representations to them respecting the facts and circumstances of the case, and shall consider the same.”

By the Pleuro-Pneumonia Slaughter Order of 1888, section 1, sub-section 1, it is provided—“A local authority shall cause all cattle being or having been in the same field, shed, or other place, or in the same herd, or otherwise in contact with cattle affected with pleuro-pneumonia, to be slaughtered within ten days after the fact of their having been so in contact has been ascertained, or within such further period as the Privy Council may in any case direct;” and by section 2 (1)—“The local authority shall, out of the local rate, pay compensation as follows for cattle slaughtered under the authority of this order—The compensation shall be the value of the animal immediately before it was slaughtered, but so that the compensation do not in any case exceed £40.”

On 19th June 1890 the Lord Ordinary (TRAYNER) pronounced this interlocutor:—“Finds that in exercise of their statutory powers the defenders have determined that as regards the twenty-one cows for which they have refused compensation the pursuer has been guilty of offences against the

Contagious Diseases (Animals) Act 1878, and that such determination is conclusive: Finds that in consequence of such determination the pursuer has no claim for compensation for said twenty-one cows which can be enforced in this action: Assolizies the defenders from the conclusions of the summons in so far as concerns compensation sought for said twenty-one cows, and decerns, &c.

“*Opinion.*—The pursuer sues, *inter alia*, for compensation on account of forty-six cows belonging to him which were slaughtered by order of the defenders under the powers and provisions of the Contagious Diseases (Animals) Act 1878. The defenders offer payment of a certain amount as compensation for twenty-five of said cows, but refuse compensation in respect of the remaining twenty-one, on the ground that in their judgment the pursuer has been guilty in relation to the said twenty-one cows of offences against the foresaid Act. I think this determination by the defenders is *vi statuti* final and conclusive, and one which I cannot review or alter.

“The pursuer contends that the defenders have acted outwith the statute, and with malice and oppression, in reaching the judgment which they have expressed. So far as I can see, the defenders’ proceedings have been in conformity with the statutory provisions, and there is no relevant averment on record to the contrary. I do not understand how, if acting within their statutory powers, the defenders can be guilty of malice or oppression.

“The parties are not agreed as to the amount of the compensation payable in respect of the twenty-five cows, and I shall allow a proof as regards this part of the case.”

The pursuer reclaimed, and argued—The defenders’ resolution was not in terms of the statute, nor arrived at in the exercise of their powers thereunder. In the first place, they had not found that offences had been committed in reference to each of these animals for which compensation was withheld; and in the second place, they had not found that there was any possible connection between the offences charged and the outbreak of disease. In regard to the second point, they did not even aver such a connection, and indeed some of the offences charged were on their own statement committed eight months before the outbreak occurred. Further, the opportunity given to the pursuer of making explanations was rendered of no avail, as the defenders in stating the charges against him did not condescend on the particular offence committed in respect of each cow for which compensation was withheld. The defenders had for the reasons stated acted oppressively in rejecting the pursuer’s claim, and their judgment was therefore subject to the review of the Court. (3) Even if the defenders’ resolution was to be regarded as their recorded judgment on a matter on which the statute constituted them the judges, they had not before them material sufficient to enable them *bona fide* to exercise their judgment with

regard to the question before them, and therefore was subject to review—*Macdonald v. Campbell*, February 27, 1889, 15 R. 540.

Argued for the defenders and respondents—It was true that the minute recording the resolution of the local authority was not strictly in terms of the statute, as it did not state that offences had been committed in connection with the animals for whom compensation was refused. But the local authority had applied their minds to and determined that the offences had been so committed, and had made an averment to that effect on the record. That objection was merely a technical and formal objection, and the defect in the resolution might yet be remedied. It was not necessary to establish any connection between the offence and the outbreak of disease. The statute left the sole judgment in the matter of withholding compensation to the local authority, and their judgment was not subject to review—*Brand v. Police Commissioners of Arbroath*, May 23, 1890, 17 R. 790; *Macfarlane v. Mochrum School Board*, November 9, 1875, 3 R. 88; *Strain v. Strain*, June 26, 1886, 13 R. 1029. The pursuer had made no relevant averment on record that this was not a *bona fide* exercise of the judgment of the defenders.

At advising (on 12th July 1890)—

LORD PRESIDENT—I do not think there is any real difficulty as to the construction of the 30th section of the Contagious Diseases (Animals) Act 1878 so far as it applies to this case. The seventh head provides—“Notwithstanding anything in this Act, the Privy Council or a local authority, as the case may be, may, if they think fit, withhold either wholly or partially compensation or other payment in respect of an animal slaughtered under this Act by their respective order where the owner, or the person having charge thereof, has in their respective judgment been guilty in relation to the animal of an offence against this Act, or where the animal, being a foreign animal, was in their respective judgment diseased at the time of its landing.”

Now, the duty and right of the local authority under that part of the section seems to be to refuse compensation if in the case of any animal slaughtered under their orders they have satisfied themselves and have formed a judgment that the owner or person in charge has been guilty of an offence in relation to such animal, or in the case of a foreign animal, that it was diseased at the time of its landing in this country. Of course that implies that they must take the proper means to satisfy themselves of the facts on which they proceed, in the first case that the owner has committed an offence in respect of the animal for which they refuse compensation, and in the second, that the animal being foreign was diseased at the date of its landing in this country.

Now, when a public body such as a local authority have such a power, and have to exercise it after forming their judgment on certain points, I do not see how they can proceed otherwise than by recording in a

minute the determination at which they have arrived, and the Lord Ordinary has, we find, proceeded upon that view in the present case, for in his interlocutor he “Finds that in exercise of their statutory powers the defenders have determined that as regards the twenty-one cows for which they have refused compensation the pursuers have been guilty of offences against the Contagious Diseases (Animals) Act 1878, and that such determination is conclusive: Finds that in consequence of said determination the pursuer has no claim for compensation for said twenty-one cows which can be enforced in this action.”

Now, if that determination had been recorded duly in a minute I should have agreed with the Lord Ordinary's decision, and I think that the local authority are now quite sensible of the duty devolving upon them under the statute, for they have averred on record—“In the judgment of the defenders the pursuer was guilty of offences against the statute or against regulations framed by the defenders, under the Animals Acts aforesaid, with reference to the twenty-one cows slaughtered by them, for which compensation is now refused, and it is on account of their opinion to that effect that compensation is withheld.” If we had only had a minute to that effect the case would have been in shape under the statute, and the decision of the local authority would not have been open to challenge. But unfortunately they have not done so. In the minute of 5th May 1890 it is said—“The meeting having considered the answers for Mr Calder to the queries put to him by the local authority, along with the report of the Bo'ness Committee thereanent, were of opinion that Mr Calder had not adduced any reason to induce the authority to pay compensation for those animals in regard to which it is alleged that an offence had been committed, and resolved to withhold compensation for the . . . animals accordingly.” That is not a determination in the point at all. Mr Calder was not required to produce any reasons at all to induce the local authority to pay compensation. What the local authority ought to have done, and what they have not done, was to determine whether an offence in point of fact had been committed in reference to the animals in question. I do not see how any reason could be stated in regard to the animals in question to induce the authority to pay compensation if an offence had been committed. They do not find that an offence has been committed at all, but only that Mr Calder had not adduced any reason to induce the authority to pay compensation for animals in regard to which it is alleged that an offence had been committed. I daresay that is only a loose form of expression arising from a want of attention to the terms of the Act, but it is necessary that when such large powers are given by statute to a local authority they should be very strictly exercised.

On the whole, therefore, I think we cannot sustain this as a determination of the local authority which is protected from all

challenge. I see perfectly well, however, from the statement of facts on record that the local authority have formed a judgment on the matter, and therefore I think that it is only fair that they should have an opportunity to express the judgment at which they have arrived; and the course which I should propose to your Lordships is, that we should continue the case to allow the defenders an opportunity of showing that they have exercised their judgment on the matter, and have come to the determination that an offence has been committed in regard to the animals for which they refuse compensation, which they may do by lodging a minute recording these facts.

LORD SHAND—I agree in thinking that if the defenders in this case had stated in substance in a minute what they have stated on record that the Lord Ordinary's interlocutor ought to be adhered to. In that answer they have stated—"In the judgment of the defenders the pursuer was guilty of offences against the statute or against regulations framed by the defenders under the Animals Acts aforesaid with reference to the twenty-one cows slaughtered by them for which compensation is now refused." That, as I understand it, means that in the judgment of the defenders the pursuer was guilty of an offence in relation to each of the cows for which compensation is refused. Your Lordship is of opinion that the minutes do not show that. I confess that though the minutes are loosely expressed I should have been inclined to hold that they expressed enough to satisfy the statute, because it is enough if they show that the local authority has formed an opinion that offences were committed in respect of all the animals for which compensation has been refused. Now, in the present case the local authority first of all agree to pay compensation for the animals slaughtered "in respect of which it does not appear that any offence had been committed," and "before coming to any determination with reference to these animals in respect to which it is alleged that an offence had been committed," they give Mr Calder an opportunity to answer certain questions, and in the next minute they say that they are not satisfied with his answers. So I should be inclined to read the minutes as sufficient, but still they are loosely framed, and it may be a salutary lesson for local authorities to learn that where they are entrusted with such powers they must be careful to express their determination in clear terms.

In regard to the argument submitted for the parties, and which, I presume, we are not to have over again if the report of the local authority comes back to us, it is clear, in the first place, that the question of withholding compensation or not is a matter for the judgment of the local authority, and is not a matter for the review of this Court if the authority have formed a judgment in regard to it. I do not say that if they had formed their judgment without inquiry or without giving the owner of the

cattle, for which compensation is withheld, any opportunity to make explanations, we might not interfere, but if after making inquiry, and after giving the owner of the cattle an opportunity to make any representations he can, they have then formed the judgment that the particular cattle to which they decline compensation are cattle in reference to each of which an offence has been committed, we cannot interfere with the decision at which they have arrived.

In the second place, it appears with regard to a number of the cattle that the offences were committed for nine or even eleven months before their slaughter took place, and the reclaimer contends that there must be read into the statute something to the effect that the offence in respect of which compensation is refused must be related to the disease which subsequently broke out, and that it will not do to take any offence committed at any previous date. I am not prepared to take that reading of the statute. The statute says—"A local authority . . . may, if they think fit, withhold, either wholly or partially, compensation or other payment in respect of an animal slaughtered under this Act by their respective order, where the owner or the person having charge thereof has in their judgment been guilty in relation to the animal of an offence against this Act." It is not said that the offence must have been committed within 3 or six months of the date of the slaughter of the cattle, nor that the offence must have some relation to the outbreak of the disease. The clause is in perfectly general terms, and therefore I do not think we should add the words limiting its effect contended for by the pursuer. It may be said, as the defenders maintained, that the owner should suffer a loss where he has committed offences against the statute. At all events, the power of the local authority is to withhold the compensation if they think fit. It is for them to judge, looking to the circumstances of the case, such as the length of time between the offence and the outbreak, and the fact that the one bears no relation to the other, whether in the particular case they can excuse the offence which has been committed, and accordingly if they produce a minute clearly and distinctly identifying the cows with reference to which the minute is framed, and, in the next place, expressing the decision of the authority that an offence has been committed in reference to each of these cows, I think the owner's claim for compensation is gone.

LORD M'LAREN—Without entering on the terms of the clause, I may say, that as I understand the Act of Parliament and the Orders of Council following upon it, their aim is to prevent the spread of contagious diseases among animals in two ways—first, by putting restrictions on the movement of animals from one market to another when the disease is in a latent state; and second, to extirpate it by endeavouring to slaughter all infected animals, and those which have come in contact with them. In

order to effect the first object they place herds under quarantine, and any new animals which may be introduced are not allowed to be removed till the lapse of fifty-six days, which is the period of development of the disease, and it is plain that the accomplishment of the object of the Act depends very much on the strict observance of both of the requirements which I have mentioned.

Then provision is made for the compensation of the owners of animals which are slaughtered, on the ground doubtless that the slaughter of such animals is for the benefit of the locality, and partly also because it was recognised that there would be an inducement to the owners of infected animals to make the outbreak of the disease known to the local authority if they were fairly dealt with. The right to compensation, however, is qualified in an important way. If any owner has not observed the requirements of the first part of the Act, and has been guilty of an offence with regard to the removal of animals, he is not to receive compensation for any animals which have been removed contrary to the Act, or in respect of which an offence has been committed. The statute does not lay on the local authority the duty—impossible for it to fulfil—of tracing a connection between the outbreak of the disease and the offence committed, but aims at distributing average justice by proportioning the stoppage of compensation to the degree of negligence. The power of determining whether an offence has been committed rests with the local authority, and in order to guard against any harsh or inconsiderate exercise of discretion it is provided that no order for stoppage of compensation shall be final till an opportunity has been given to the owner to make an explanation of his conduct. In such cases, therefore, the duty of the local authority is, first, to inquire into the facts connected with the alleged contravention of the Act; second, if they have established a *prima facie* case against the owner, to give him an opportunity to answer it; third, to consider his answer, inquiring certainly into any additional facts alleged to have a bearing on the case; and lastly, to express the determination at which they arrive. Up to the last part of their duty the local authority acted with perfect fairness and justice, but they omitted to apply their special finding of facts, and to express their ultimate determination on the whole case. The question then is, whether that omission can be supplied, the local authority having acted with substantial justice. The Act does not specify a time within which a determination must be arrived at or the form in which it is to be expressed. Evidently, therefore, if a claim for compensation is made, it may be met by a judgment contrary to it, and this indeed has been recognised in the present case in the lodging of the minutes, which have been a subject of argument subsequent to the closing of the record.

I agree in thinking that if there has been any omission there is no obstacle to its being remedied, because any time before a

proof is allowed on the question of compensation a claim may always be met by a determination of the local authority in terms of the Act of Parliament.

I therefore agree that the case should be continued in order to enable the local authority to remedy what I consider to be merely a defect in form of their determination.

LORD ADAM was absent.

The Court continued the cause till the third sederunt day of the ensuing session.

On 27th October the following excerpt from a minute of meeting of the defenders held on 17th October was lodged:—"The local authority having communicated to Mr Calder their minute of 31st January 1890, and considered his written answers thereto, and having at the request of Mr Calder's agent met Mr Calder on 25th April last, and afforded him an opportunity of submitting to it any further representations and explanations that he thought necessary; and having on 3d October current again met with Mr Calder and Mr Alexander Ure, advocate, Edinburgh, his counsel, and heard Mr Ure upon the case; and having subsequently again got access to Mr Calder's byre book; and having again identified the cattle numbered therein with those enumerated in Mr Kerr's valuation; and having again referred to the various declarations which were formerly before the local authority; and having fully considered the representations for Mr Calder, and the whole facts and circumstances of the case; and having fully inquired and informed themselves as to the offences against the Contagious Diseases (Animals) Acts, and against the regulations made by this local authority in terms thereof—find and determine that Mr Calder, or the person in charge on his behalf or by his instructions of the cattle after mentioned, was guilty of an offence or offences against the said Acts and regulations in regard to each of the twenty-one cows slaughtered by them, and numbered 2, 19, 20, 21, 22, 23, 24, 30, 35, 36, 39, 40, 41, 42, 44, 47, 48, 50, 51, 52, and 54 in Mr Kerr's valuation; and they accordingly resolve to withhold compensation for all the said cows."

Counsel for the parties were thereafter again heard.

At advising—

LORD PRESIDENT—The Lord Ordinary in this case has in effect sustained the third plea-in-law for the defender, which is as follows:—" (3) The jurisdiction of the Court being excluded by the provisions of the said Act" (the Contagious Diseases (Animals) Act 1878), the present action is incompetent." I entirely agree that a very large discretion is given to the local authority, and their deliverance, if in terms of the statute, is not subject to review. In the state of the case as formerly before us there was certainly a considerable defect in the deliverance of the local authority in terms of section 30, sub-section 7, of the statute, and accordingly we gave the local authority

an opportunity to amend their deliverance, and the amended deliverance is now before us.

It is certainly not a sufficient ground for refusing compensation that the owner of cattle is alleged to have committed an offence under the Act. It must be proved to their satisfaction and established in their judgment that the owner has been guilty of such offence.

The question we have now to consider is, how does the case stand under the amendment which the local authority have made upon their deliverance? That amendment to my mind supplies the defects in the deliverance, and shows very clearly that the local authority had before them the sort of evidence and amount of information contemplated by the statute. The amended deliverance bears—"Having communicated to Mr Calder their minute of 31st January 1890, and considered his written answers thereto, and having at the request of Mr Calder's agent met Mr Calder on 25th April last, and afforded him an opportunity of submitting to it any further representations and explanations that he thought necessary"—that is quite in accordance with the provision of the Order of Council—"and having on 3d October current again met with Mr Calder and Mr Alexander Ure, advocate, Edinburgh, his counsel, and heard Mr Ure upon the case; and having subsequently again got access to Mr Calder's byre book; and having again identified the cattle numbered therein with those enumerated in Mr Kerr's valuation; and having again referred to the various declarations which were formerly before the local authority; and having fully considered the representation for Mr Calder, and the whole facts and circumstances of the case; and having fully inquired and informed themselves as to the offences against the Contagious Diseases (Animals) Acts, and against the regulations made by this local authority in terms thereof"—they proceed to find and determine as there set forth. It is important to observe what according to the minute was the material before the local authority. They had first of all Mr Calder's explanation of the charges against him. Then they had Mr Calder's byre book, in which of course there would be an entry of each cow and of the time it was brought to the byre, and comparison could then be made between the byre book and the faulty declarations emitted by Mr Calder in regard to each cow, and that comparison would enable the local authority to declare which cow had been the subject of offences against the statute. In these circumstances they come to the conclusion, and "find and determine, that Mr Calder, or the person in charge on his behalf or by his instructions of the cattle after mentioned, was guilty of an offence or offences against the said Acts and regulations in regard to each of the twenty-one cows slaughtered by them, and numbered" (the numbers of the cows in Kerr's valuation being then given), and accordingly they resolve to withhold compensation. It appears to me that the minute is precisely in terms of the statute, and that

we cannot get behind it in any way except on allegations of fraud or corruption.

An attempt was made on the part of counsel for the pursuer so to construe the statute as to show that the deliverance on the facts of this case is not within the statute, and in the first place it was contended that the statute contemplated that the offence disabling an owner from claiming compensation should have some connection with the outbreak of the disease. I do not see a trace of such an idea in the statute, and I have the greatest difficulty in understanding how such a provision could be expressed in workable terms. I accordingly disregard the argument entirely as being outwith the meaning of the statute, and am satisfied the offences contemplated in the statute are offences of the kind dealt with in the last deliverance of the Lord Ordinary.

The second ground of complaint put forward by the pursuer was that the minute did not give sufficient information of the ground of their decision. I do not know that the statute requires the local authority to give any information. They are to be satisfied that each animal slaughtered is one in connection with which an offence has been committed. But the pursuer's counsel contended that they were bound in justice to let the pursuer know what offence had been committed in the case of each cow, and also to communicate that information in special findings in their ultimate deliverance. I do not think that such a duty lay on the local authority. It appears to me that having satisfied themselves on evidence, which seems to me very complete, that the owner had committed an offence in regard to each of these cows in question, they were entitled to find that the owner was precluded from receiving compensation for them.

LORD ADAM—There can, I think, be no doubt, reading the words of the determination, that the local authority has, in terms of the statute, thought fit to withhold compensation. That determination is one which it was quite within their power to arrive at, and it seems to me that it is conclusive, and that there is no appeal to us.

It was argued that the local authority had gone beyond their powers, counsel for the pursuer maintaining that the offences for which compensation is withheld must be connected with the facts which led to the outbreak of disease, which in turn led to the slaughter of the cattle. I suppose that what is meant is that compensation should only be withheld in cases where the outbreak of pleuro-pneumonia which caused the slaughter of the animals can be traced to some prior offence committed in respect of these animals. I agree with your Lordship, and also with Lord Shand and Lord M'Laren, that the Act says nothing of the sort, for the reason no doubt that though in many cases the previous offence may be the cause of the outbreak of disease, that is not a matter which admits of easy proof. The Act therefore says if a man chooses to commit offences the responsibility for subse-

quent unpleasant consequences rests with him. Such being my view of the meaning of the Act, the determination of the local authority is not subject, in my opinion, to the objection I have mentioned.

Then counsel for the pursuer put forward the further objection that the pursuer has not given sufficient information with regard to the offences alleged against him, and wishes on that ground to get behind the determination. In the Act itself there is no provision for any information of that kind being given by the local authority to the party accused of offences, and so far as the Act is concerned the local authority might come to a determination without giving any information to the party accused. Apparently, however, that rule was found to work rather harshly in practice, and the Privy Council issued an order to the effect that a local authority before determining to withhold compensation for animals slaughtered by their order should give to the owner of the animals an opportunity of making representations in reference to the facts of the case, and that they should consider the same. It is, however, on the owner that the *onus* of making representations is laid.

In the present case the defenders informed the pursuer of the offence alleged against him, but if we look at his answers we see that what he wanted was not information, but to go to law, for in place of asking for further information he says—“It is not attempted to be shown that the cows or any of them, referred to in the statement, are the cows with reference to which the local authority are refusing to pay compensation, and the present answers are made without prejudice to Mr Calder’s plea that the statements are entirely irrelevant.”

Having considered the case to the best of my judgment, I think that the local authority have pronounced their determination, and that there is no getting behind it.

LORD M’LAREN—I have already had an opportunity of expressing my view of the policy and construction of the Contagious Diseases (Animals) Act and of the relative Orders of Council, and the proceedings under these enactments in the present case. I have also given my best attention to the arguments of counsel, and they have certainly shown in my judgment that strict justice has not been done in the way of apportioning the penalties to the offences committed. But I think the answer is that the award of compensation is not a judicial proceeding at all, but that the policy of the Act is to leave the distribution of compensation to a popularly constituted body consisting of persons in the locality, and if they have arrived at a judgment on the matter to hold it conclusive, and I agree that they have arrived at a judgment in this case. If the matter was to be considered judicially the Legislature would not have left its consideration to a body consisting of people out of whose pockets the compensation had to be paid.

It appears to me the local authority have

not deviated from the statute, and I am of opinion that the determination of the local authority is not subject to review.

LORD KINNEAR concurred.

The Court adhered to the Lord Ordinary’s interlocutor.

Counsel for the Pursuer—Asher, Q.C.—Ure. Agent—Alex. Morison, S.S.C.

Counsel for the Defenders—Low—Gillespie. Agents—Tods, Murray, & Jamieson, W.S.

Friday, October 31.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.]

LUNDIE v. PROVOST AND MAGISTRATES OF FALKIRK.

Jurisdiction—Review of Deliverance of Licensing Court—Public Houses Acts Amendment Act 1862 (25 and 26 Vict. c. 35), sec. 34.

A publican whose certificate the magistrates of a burgh had refused to renew, brought a reduction of their deliverance, averring that certain evidence had been improperly admitted against his application, and he had been refused an opportunity of leading evidence in reply. *Held* that there was no relevant averment that the magistrates had exceeded their jurisdiction, and that any review of their decision by this Court was therefore incompetent under section 34 of the Public Houses Acts Amendment Act of 1862.

Public House—Licensing Court—Disqualification of Magistrate or Justice—Home-Drummond Act (9 Geo. IV. c. 58), sec. 13.

Section 13 of the Home-Drummond Act enacts that no justice of the peace or magistrate shall act as such in the execution of that Act who is a brewer, maltster, distiller, dealer in, or retailer of any exciseable liquors. *Held* that a magistrate who was the trustee under a private trust for behoof of creditors on an estate consisting in part of a public-house business was not disqualified under that section from sitting in a Licensing Court.

Denis Lundie, tenant and occupant of a public-house in Falkirk, was refused a renewal of his certificate at a Licensing Court held in Falkirk in April 1890. He appealed to Quarter Sessions, but his appeal was dismissed.

He then raised the present action against Borthwick Watson, Archibald Rennie, Gavin Hamilton, and John Weir—being the Provost and Magistrates of Falkirk—and against James Wilson, the Town-Clerk of the burgh, (1) for reduction of, their deliverance refusing him a renewal of his certificate; (2) for declarator that it was the