bankruptcy, was, they allege, reducible under the Act 1696, cap. 5.

The important question thus comes to be, whether the disposition of 10th July 1899 was granted in security or satisfaction of a prior debt, in which case it would be reducible, or whether it was granted in respect of some new or additional consideration, and I agree with the Lord Ordinary in thinking that the latter is the true view. In consequence of the death of Mrs Roy the estate had become divisible, and if the bankrupt did not repay the loan which he had obtained from the defenders they would have been entitled to realise or enforce their security. Instead, however, of leaving the defenders to do this, Roy entered into a fresh arrangement with them, that in consideration of their renewing or extending the period of the loan he would grant to them a disposition of certain specific property to which, in consequence of his mother's death, he had acquired an unburdened right. The defenders agreed to this and the arrangement was carried out. The arrangement appears to me to have been entered into in consequence of new and adequate consideration, and I therefore concur with the Lord Ordinary in thinking that the disposition was not granted in security of the prior loan but as the counterpart of the consideration stipulated under the new arrangement.

For these reasons I am of opinion that the interlocutor of the Lord Ordinary should be adhered to.

LORD ADAM concurred.

LORD M'LAREN — This case has raised considerable difficulty in my mind, and I have come to be satisfied that this is a good security, chiefly on the ground that when the original security for a debt is given up and a new and equivalent security is accepted in its place it may be said that the latter is a security for a new debt, or at least that it is not a security or satisfaction of a prior debt. In a proper case of a substituted security the consideration for the security is not simply the old debt but that debt together with the surrender of the original security. In the case of a bank which held securities for an overdraft consenting to the debtor realising these on condition that the price should be applied in the purchase of other securities to be held by the bank, I think it would be a complete misapprehension of the principle and provisions of the Act of 1696, and of the Bankruptcy Act 1856, to affirm that the creditor had thereby obtained satisfaction or further security for a prior debt. Applying this distinction to the facts of the present case, I begin by observing that the respondents had originally a good security over the borrower's interest in his father's trust estate. When in consequence of the death of the borrower's mother that estate came to be realised, it was in the power of the lender to object to that realisation, or at least to insist on being paid out of the first proceeds of the estate. He assented to the realisation of the trust estate upon an undertaking by the borrower that in place of the general right over the borrower's share in his father's estate he should receive a specific security over certain heritable property. On the best consideration I have been able to give to the case I have come to the conclusion that the creditor here did not surrender his rights over the general estate except upon the condition of obtaining the specific security which he in fact obtained, and I therefore agree with your Lordship that the case does not fall under the statutory regulations annulling securities for prior debts granted within sixty days of the debtor's bankruptcy.

LORD KINNEAR—I am of the same opinion. I agree with Lord M'Laren that it is not quite accurate to say that the security which is here attacked was given for a new loan. It would be more accurate to say that it was the substitution of a new for an old security, the debt remaining the same. It was a new transaction, the true consideration for which was not the discharge of the original debt but the surrender of the original security. It was an arrangement to leave the loan standing but change the security.

That was a perfectly honest transaction, and could not prejudice the other creditors, and it does not in my opinion fall within the words of the statute because it was not "a further security," and the consideration for it was not the existence of a prior debt.

The Court adhered.

Counsel for the Pursuer and Reclaimer—C. K. Mackenzie, K.C.—Hunter. Agents—Dalgleish & Dobbie, W.S.

Counsel for the Defenders and Respondents—Wilson, K.C.—D. Anderson. Agents—Alex. Campbell & Son, S.S.C.

Friday, March 20.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

STEVENSON *v.* HUNTER.

Public-House—Appeal to Quarter Sessions — New Certificate — Licensed Premises Rebuilt — Publicans' Certificates (Scotland) Act 1876 (39 *and* 40 *Vict. cap.* 26), *secs.* 4 *and* 5.

The Publicans' Certificates (Scotland) Act 1876 provides (section 5) that the decision of the magistrates in refusing any application for a new certificate shall be final and not subject to appeal to Quarter Sessions. By section 4 a "new certificate" is defined as meaning "a certificate granted" . . . "to any person in respect of any premises which are not certificated at the time of the application for such grant, but shall not apply to the rebuilding of certificated premises which have been destroyed by fire, tempest, or other

unforeseen and unavoidable calamity."

Held (*aff.* judgment of Lord Kyllachy, Ordinary) that where certificated premises had been rebuilt in such a way that the old premises were entirely demolished and new premises substituted, but business was carried on in the premises throughout these operations, an application in respect of these premises was not an application for a new certificate, and therefore that the applicant, if refused a certificate by the magistrates, had a right of appeal to Quarter Sessions.

Statute — Proviso — Publicans' Certificates (Scotland) Act 1876 (39 *and* 40 *Vict. cap.* 26), *sec.* 4.

The Publicans' Certificates Act 1876 (section 4) defines a new certificate as one granted "to any person in respect of any premises which are not certificated at the time of the application for such grant, but shall not apply to the rebuilding of certificated premises which have been destroyed by fire, tempest, or other unforeseen and unavoidable calamity." *Held* that the proviso in this definition did not imply that an application in respect of certificated premises which had been rebuilt must necessarily be an application for a new certificate if the premises in question had not been destroyed by fire, tempest, or other unforeseen or avoidable calamity.

Process — Reduction — Competency — Reduction of Certificate — Resolution of Quarter Sessions not Brought under Reduction — Public-House.

On appeal against a decision of the magistrates refusing a certificate for a public-house, the Justices in Quarter Sessions resolved that the certificate should be granted, and the clerk to the magistrates accordingly issued a certificate. *Held* that an action concluding for reduction of the certificate, but containing no conclusion for the reduction of the resolution of the Justices in Quarter Sessions, was incompetent.

This was an action at the instance of James Verdier Stevenson and George Neilson, the Chief-Constable and Procurator-Fiscal of Glasgow, against James Hunter, wine and spirit merchant, 157 Bellfield Street, Glasgow, and also against the Justices of the Peace for the county of the city of Glasgow, the Clerk of the Peace of the said county, and the Town Clerk of Glasgow. Hunter alone lodged defences. This action was taken as a test case among a number of others raising substantially the same question.

The conclusions of the action were (1) for reduction of a certificate granted to Hunter for the sale of exciseable liquors at 5 Tobago Street, Glasgow, from 15th May 1902, and (2) for interdict against Hunter keeping a public-house in said premises,

The material facts of the case, on which parties were substantially agreed, were as follows:—In April 1901 Hunter obtained from the Magistrates of Glasgow, acting as the licensing authority, a renewal of a certificate previously held by him for the sale of exciseable liquors in premises No. 5 Tobago Street. During the year 1901-2 these premises were rebuilt, so that when the rebuilding was completed the old premises were entirely demolished. The frontage was diminished from 32 to 27 feet, and the superficial area occupied by the premises was considerably increased. During the rebuilding operations Hunter continued to carry on business as a publican in the premises.

On 21st March 1902 Hunter presented an application for a renewal of his certificate, and on 24th March he presented an application for a new certificate for the same premises. Both these applications were refused by the Magistrates.

Hunter then appealed to the Justices of the Peace in Quarter Sessions against the refusal of his application for a renewal of his certificate. On 12th May 1902 the Justices, after hearing an objection to the competency of the appeal, repelled the objection and sustained the appeal, and granted a renewal of the certificate. In consequence of this decision Sir James D. Marwick, Town-Clerk of Glasgow, issued to Hunter the renewal certificate now sought to be reduced.

The pursuers pleaded, *inter alia:*—"(2) The premises 5 Tobago Street, Glasgow, as they existed in April 1901 having ceased to exist, it was not competent for the Magistrates of the City of Glasgow or the Justices in Quarter Sessions assembled to grant a renewal in April or May 1902 of the certificate for the said premises. (3) The defenders the Justices of the Peace having granted in May 1902 a renewal of the certificate granted to the defender James Hunter in 1901, acted *ultra vires*, and the certificate granted by them should be reduced."

The defender pleaded, *inter alia:*—"(3) The action is incompetent. (7) The Justices of the Peace having heard and determined the defender's application according to law, their decision is not subject to review."

The Publicans' Certificates (Scotland) Act 1876, the full title of which is "An Act to Assimilate the Law of Scotland relating to the Granting of Licenses to Sell Intoxicating Liquors to that of England," enacts (section 5)—"Notwithstanding anything contained in section 14 of 9 Geo. IV. c. 58, or in any other enactment, no appeal shall lie to any justices of the peace assembled in Quarter-Sessions against any proceeding of any justices of the peace for any county, or Magistrates of any burgh, assembled for granting or renewing certificates for licenses for the sale of exciseable liquors, in refusing any application for a new certificate, but every such proceeding and refusal shall be final."

The definition of a "new certificate" in section 4 is quoted in the rubric.

On 22nd November 1902 the Lord Ordinary (KYLLACHY) pronounced an interlocutor by which he assoilzied the compearing defender from the conclusions of the action.

Opinion.—"In these cases, of which the

case of Hunter has been taken as representative, the Chief-Constable and Procurator-Fiscal of Glasgow seek to reduce certain licence certificates granted by the Quarter-Sessions last April, upon appeal from the Magistrates, by whom the licences had been refused. The ground of reduction is, that upon the just construction of the Licensing Statutes, and particularly the Act of 1876, known as Dr Cameron's Act, the whole of the licences in question were 'new' as distinguished from 'renewed' licences, and that as against a renewal of 'new' licences, the right of appeal to the Quarter-Sessions formerly existing was by the Act of 1876 taken away.

"I had the benefit of a very full argument, but I think it became in the end obvious that the question requiring to be decided was brought to a narrow point. In the first place, it appeared that as regards the facts the parties were not in dispute, at least they were sufficiently agreed to obviate the necessity of proof. In the next place, the defender's pleas to the pursuers' title to sue were not ultimately pressed. The pursuers, it was conceded, were to be taken as really representing the municipality, and it was not disputed that the municipality, if they had not a duty, had at least a sufficient interest to see that the Licensing Statutes were duly observed. In the third place, there was in the end no dispute that if the pursuers are right in their legal argument the question is not one of the right of this Court to review the Quarter-Sessions either on the facts or the law, but a question of the existence under the Statute of the right of appeal to Quarter-Sessions; that, of course, being a question depending on the view which this Court may take of the law applicable to the facts—that is to say, the facts admitted or proved in this action.

"Premising so much, the facts which raise the point at issue may be stated thus: —The defender Hunter (taking his case as a type of the rest) held a public-house licence for premises occupied by him at 5 Tobago Street for the year from Whitsunday 1901 to Whitsunday 1902. During that year his landlord made extensive alterations on the licensed premises and neighbouring property, which alterations involved, as is admitted, a complete though gradual demolition of the licensed premises, and their complete though gradual renewal on a somewhat enlarged scale and extended site. The degree of the enlargement and the extensiveness of the alterations, external and internal, varies more or less in the different cases, but is not probably material. For the purposes of the pursuers' argument the important, and, as they contend, only essential fact, is that in all the cases the licensed premises were during the year practically demolished and practically rebuilt. On the other hand, for the purposes of the defenders' argument, the chiefly important fact (common to all the cases) is that although the premises were so demolished and rebuilt, there was no breach in the continuity of the occupation. The business continued to be carried on all through the period of transition, the interference and inconvenience being of course greater, but not different in kind, from what would have followed if the period of transition had been say five years instead of one.

"The facts being these, what the pursuers contend is this:—

"They admit that as the statutory enactments stood previous to the Act of 1876, they (the pursuers) could not have refused to recognise the rebuilt premises as continuing, notwithstanding their being rebuilt, to be duly licensed. In other words, a licence having been granted at Whitsunday 1901 applicable to the premises No. 5 Tobago Street, the defender could not have been prosecuted during the year which followed for illicit selling by reason simply of the premises having been reconstructed during the year. To have attempted such a prosecution would at once have brought the pursuers into conflict with the series of English decisions referred to at the discussion, which, whether binding or not on this Court, are yet as decisions upon the import of practically identical enactments decisions of high authority. Nay more, the pursuers were, I think, ultimately obliged to concede that even with the help of the Act of 1876 they could not have succeeded in such a prosecution, say against the present defender; and not only so, but that they could not have refused the defender the privileges (other than the right of appeal to the Quarter-Sessions), which admittedly still attach to applications for renewal as distinguished from applications for new certificates. With those privileges the Act of 1876 does not deal, and with regard to them makes no difference. What is contended, however, is that that Act does deal with the right of appeal to Quarter-Sessions, and that as regards that appeal it establishes a difference between new and old certificates, for which purpose its interpretation clause (section 4) defines new licences thus—'"A new certificate" means a certificate granted by the competent authority for a licence for the sale of exciseable liquors to any person in respect of any premises which are not certificated at the time of the application for such grant, but shall not apply to the rebuilding of certificated premises which have been destroyed by fire, tempest, or other unforeseen and unavoidable calamity.'

"It is on this section of the Act, and particularly the proviso at the end, that the pursuers' case was in the end rested, and must in my opinion necessarily rest.

"Now, apart from the proviso which I have just read, I must observe, and I think it is obvious, that the section in question makes no difference in the law as it stood prior to 1876. In other words, there is not now any more than there was under the previous statutes any defined canon determining what shall be considered premises already licensed as distinguished from premises which have not been so. The question remains as before one of substantial identity, and with that it was well settled, at least in England, that even complete reconstruction is by no means irreconcilable.

"Everything therefore comes to turn on the effect of the proviso, and no doubt the proviso does by implication suggest that as the law stood—apart from the proviso—the rebuilding of licensed premises destroyed the license, and that the proviso was designed to redress that anomaly only in certain specified cases, viz., the destruction of the premises by fire, tempest, or other calamity.

"But, in the first place, the context of the Act has to be considered, and also its title, and the latter is, it must be acknowledged, curiously expressed if the Act was designed to operate the restriction now suggested in the received definition of a *new* licence. For the title of the Act is this—'An Act to assimilate the law of Scotland relating to the granting of licences to sell intoxicating liquors to the law of England.' And, as has been already said, there is a uniform series of English decisions to the effect that where licence (or, I should rather say, certificate) has been granted for certain premises, the substantial identity of these premises is not to be held as destroyed by operations of the kind which are here in question.

"In the next place, however, it is not, I think, a sound proposition that where a proviso is attached to an enacting or exegetical section of an Act of Parliament such a proviso falls necessarily to be construed on the principle of *expressio unius est exclusio alterius*. On that matter I had an impression during the argument that there was a good deal of authority, and at the close I was referred to a case in the House of Lords — *West Derby Union* v. *Metropolitan Life Assurance Society* [1897], L.R., App. Cases, 647. In that case, dealing with a similar argument as to the effect of a certain proviso, Lord Watson (page 652) makes the following general observation:—'Now, that being so, what is the meaning of the proviso? I have not been able to satisfy my own mind that it can be read, or ought to be read, in the sense suggested by Rigby, L.J., which has met with the approval of my noble and learned friend the Lord Chancellor; but I am perfectly clear that if the language of the enacting part of the statute does not contain the provisions which are said to occur in it, you cannot derive these provisions by implication from a proviso. When one regards the natural history and object of provisos, and the manner in which they find their way into Acts of Parliament, I think your Lordships would be adopting a very dangerous and certainly unusual course if you were to import legislation from a proviso wholesale into the body of the statute, although I perfectly admit that there may be, and are, many cases in which the terms of an intelligible proviso may throw considerable light upon the ambiguous import of statutory words. I therefore concur in the judgment which has been moved.' Lord Herschell (p. 655) says the same thing in greater detail, and Lords Shand and Davey concurred.

"It seems to me that the reasoning thus expressed is conclusive of the present case. I am of opinion—following the principle of the English decisions to which I formerly referred—that in none of the cases before me was anything done by way of alteration or reconstruction sufficient to destroy the substantial identity of the premises. That being so, I hold that the defenders' premises were, at the dates of their several applications for renewal, premises already licensed in the sense of the statutes, and so entitled to the privileges attaching to such premises, including amongst others the right of appeal to Quarter Sessions.

"The result is that the defenders will be assoilzied from the conclusions of the several actions, with, of course, expenses."

The pursuers reclaimed, and argued—This was a case where the premises were completely demolished and rebuilt; there was nothing left of the old premises but the address. In such a case an application for a certificate was an application for a new certificate under the definition of that phrase given in section 4 of the Act of 1876 (quoted in rubric), and therefore there was no appeal to Quarter Sessions. The site was not licensed, the premises which had been licensed had ceased to exist, and they had not been destroyed by fire, tempest, or other calamity. It was a question of fact, which did not arise in this case, whether structural alterations amounted to such reconstruction as would make the old premises into new. Here there was no question of degree, the premises were entirely new when the reconstruction was finished—*Craig* v. *Peebles*, June 16, 1875, 2 R., J.C., 30, 12 S.L.R. 490; *The Queen* v. *Raffles*, 1876, 1 Q.B.D. 207.

Argued for the respondent—The general rule, under 9 Geo. IV. cap. 58, sec. 14, was that the decisions of the Magistrates were appealable to Quarter Sessions. It was for the pursuers to show that the present case fell under the exception to that rule, introduced by section 5 of the Act of 1876. This they only attempted to do by reading the proviso in the definition of "new certificate" in section 4 of that Act, as if it were a substantive enactment that all premises rebuilt were to be regarded for licensing purposes as new premises unless they had been rebuilt in consequence of destruction by fire, tempest, or other calamity. That was, as the Lord Ordinary's judgment clearly showed, an illegitimate inference from a proviso—*West Derby Union Company* v. *Metropolitan Life Insurance Society* (1897), A.C. 647, *per* Lord Watson, at p. 652. The Act of 1876 was, as the title above quoted showed, intended to assimilate the laws of Scotland and England as to licensing matters. In dealing with this statute therefore the English cases were especially authoritative, and they clearly established that an application made in the present circumstances was not an application for a new certificate — *The Queen* v. *Justices of Hampshire*, 1879, 44 J.P. Cases, 72; *The Queen* v. *Albert Smith*, 1866, 15 L.T. (N.S.) 178; *Deer* v. *Bell*, 1894, 64 L.J., Mag. Cases, 85; *The Queen* v. *Raffles*, 1876, 1 Q.B.D. 207. (2) The form of the action was incom-

petent, in respect that it concluded for reduction of the certificate without concluding for reduction of the resolution of the Justices in Quarter Sessions. It was the duty of the Town-Clerk to issue a certificate if the Justices in Quarter Sessions granted an application—*Kerr* v. *Marwick and Gray*, February 14, 1901, 3 F. 470, 38 S.L.R. 330. Even if decree of reduction in the present action was granted it would still be the duty of the Town-Clerk to issue a new certificate as long as the resolution of Quarter Sessions stood unreduced.

At advising—

LORD PRESIDENT—The question in this case is whether the pursuers have established grounds for reducing a certificate bearing to have been granted by the Quarter Sessions of the Justices of the Peace for the County of the City of Glasgow on 12th May 1902 under the Licensing (Scotland) Acts, authorising James Hunter (hereinafter called the defender) to keep a public-house at 5 Tobago Street, Glasgow, for the sale there of victuals and exciseable liquors from 15th May 1902.

The defender had on 17th April 1901 obtained from the Magistrates of Glasgow a renewal of a certificate which he had previously held to keep a public-house at 5 Tobago Street. Shortly after the defender had obtained this renewal the proprietor of 5 Tobago Street and other properties in the neighbourhood began to make extensive alterations upon these premises by way of pulling down and rebuilding. The defender, however, continued throughout the whole of these operations to carry on his business of a publican in the licensed premises or parts of them, and he still continues to carry on that business in the altered, and to a large extent renewed, premises at 5 Tobago Street.

The frontage of these premises has, by the operations just mentioned, been diminished from 32 to 27 feet, and their depth from back to front has been increased from about 28 to 39 feet. The superficial area occupied by the premises and the accommodation for carrying on the business of a publican in them have been considerably increased, while the internal arrangements and the lavatory accommodation have been improved, and the shop has been opened up by the abolition of sitting rooms which previously existed in it.

On 21st March 1902 the defender presented an application under the Licensing (Scotland) Acts to the Magistrates of Glasgow for a renewal of his certificate for the premises at 5 Tobago Street, and on 23rd April 1902 the Magistrates, sitting as a Licensing Court, refused the renewal for which he applied.

The defender thereafter appealed to the Justices of the Peace for the County of the City of Glasgow, in Quarter Sessions assembled, against the refusal by the Magistrates of the application for a renewal of his certificate, and on 12th May 1902, at an adjourned Quarter Sessions of these Justices, and after an objection had been taken to the competency of the appeal, which was repelled by the Justices, they by a majority sustained the appeal, and granted to the defender a renewal of his certificate.

On 15th May 1902 the Town Clerk of Glasgow, giving effect to the determination of the Justices, issued a renewal certificate to the defender, authorising him to keep a public-house at 5 Tobago Street for the sale therein of victuals and exciseable liquors from the 15th of May 1902. The pursuers seek by this action to have this renewal certificate reduced.

The question whether they are or are not entitled to prevail in the action depends, in my judgment, upon whether the licence is a "new" one in the sense of the Licensing Acts, in which case there would have been no right to appeal to the Quarter Sessions, or a "renewed" one, in which case there would be such a right of appeal.

By section 4 of the Publicans' Certificates Act 1876 (39 and 40 Vict. cap. 26), it is, *inter alia*, provided that a "new certificate means a certificate granted by the competent authority for a licence for the sale of exciseable liquors to any person in respect of any premises which are not certificated at the time of the application for such grant, but shall not apply to the rebuilding of certificated premises which have been destroyed by fire, tempest, or other unforeseen and unavoidable calamity;" and by section 5 of that Act it is declared that the refusal of a new certificate by justices or magistrates shall be final, and that no appeal shall lie against it to any justices of the peace assembled in Quarter Sessions. By section 16 of the same Act of 1876 it is declared that, subject to its provisions, certificates shall be renewed and transferred, and the powers and discretion of justices or magistrates, and the rights of appeal relative to such renewal and transfer, shall be exercised as heretofore; and consequently, if the licence in question was a "renewed licence," or in other words if the premises were certificated at the time of the application for it, the appeal taken to the Quarter Sessions was competent, and the present action of reduction would fail.

The pursuers maintain that the character of the alterations made by the proprietor of 5 Tobago Street was such as to destroy the identity of the premises which had been licensed in 1901, with those for which a certificate was sought in 1902, as according to them the premises in respect of which the licence was granted in 1901 had been taken down and practically rebuilt. The defenders, on the other hand, deny that the identity of the premises was affected by what was done, and they contend that, as the business of a publican was carried on continuously in the premises while the changes were being made, the identity of the premises licensed with those which existed when the question of renewal arose was never destroyed. The pursuers, as already stated, rely strongly upon section 4 of the Act of 1876 already quoted, which defines "a new certificate," but I

agree with the Lord Ordinary in thinking that the question, subsequent as well as prior to the passing of that Act, is, whether there is substantial identity between the premises which were previously licensed, and those in respect of which a continued or renewed licence is desired. The question practically comes to depend upon whether the premises in which the business is being carried on are substantially the same as those in respect of which the previous licence was granted, and according to English decisions of high authority it is a question of fact for the Justices to decide whether such reconstruction as the premises have undergone does or does not destroy their substantial identity, and any decision at which they may arrive on this point is final for the purposes of such a question as the present. The terms of the proviso to section 4 no doubt do give room for the argument that it was assumed by the Legislature that but for its introduction the reconstruction of licensed premises would put an end to the licence, and it is contended that the proviso is directed merely to prevent this consequence from following when the destruction of the premises has been by one of the causes specified, viz., fire, tempest, or other unforeseen and unavoidable calamity. The Lord Ordinary, however, justly observes that this would be a strange result to be brought about by a statute the title of which bears that it is "An Act to assimilate the law of Scotland relating to the granting of licences to sell intoxicating liquors" to the law of England, when in England it has been held in a series of highly authoritative decisions that where a certificate has been granted, as the certificate in the present case was, the identity of the premises is not destroyed by the execution of such works as were done upon 5 Tobago Street. The passage quoted by the Lord Ordinary from Lord Watson's judgment in the case of the *West Derby Union Company* v. *The Metropolitan Life Assurance Company*, 1897, L.R., App. Cas. 647, appears to me to be very much in point in the present question. His Lordship there says that it would be very dangerous to import legislation from a proviso wholesale into the body of a statute, although there are many cases in which the terms of the proviso may throw considerable light upon the true meaning of statutory words where these are ambiguous. If I be right in thinking that the operations executed upon 5 Tobago Street did not destroy the identity of the premises licensed, and substitute for them other premises which were not licensed, it follows that when the application for a renewal of the licence held for 5 Tobago Street was made the premises there were already licensed in the sense of the Acts, and that the case therefore falls under the law applicable not to "new" but to "renewed" licences, and one of the provisions of that law is that an appeal lies to Quarter Sessions against the refusal of a renewed licence by the Justices. But if this be so, it was quite within the power of the Justices sitting in Quarter Sessions to grant the certificate now sought to be reduced, and the pursuers' claim to have that certificate granted by them reduced must fail.

It was pointed out by the counsel for the defenders that the present action is directed to obtain reduction of the certificate, but that it does not seek for reduction of the resolution of the Justices in Quarter Sessions that the certificate should be granted, and that as the resolution stands, even if the present certificate was reduced, it would be the duty of the Town-Clerk to issue a new certificate in terms of the resolution. I think that this contention is well founded, and it affords an additional and separate ground for upholding the interlocutor of the Lord Ordinary.

For these reasons I am of opinion that the interlocutor of the Lord Ordinary should be adhered to.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court adhered.

Counsel for the Pursuers and Reclaimers —Shaw, K.C.—T. B. Morison. Agents — Campbell & Smith, S.S.C.

Counsel for the Defender and Respondent — Sol.-Gen. Dickson, K.C. — Wilson, K.C.—Hunter. Agent — James Purves, S.S.C.

HIGH COURT OF JUSTICIARY.

Tuesday, March 17.

(Before the Lord Justice-Clerk, Lord Young, and Lord Pearson.)

RIDDELL *v.* NEILSON.

Justiciary Cases—Public-House—Weights and Measures—Sale of Exciseable Liquor not by a Measure Sized according to the Standard—"Schooner" of Beer—Public Houses Acts Amendment (Scotland) Act 1862 (25 *and* 26 *Vict. c.* 35), *secs.* 2 *and* 26—*Licensing (Scotland) Act* 1828 (*Home Drummond Act*) (9 *Geo. IV. c.* 58), *secs.* 15 *and* 21.

Held that the sale in a public-house, licensed for the sale of exciseable liquors by retail to be consumed on the premises, of a "schooner" of exciseable beer, being a sale of a quantity exceeding half-a-pint which was not made by a measure sized according to the imperial standard, was a contravention of section 15 of the Licensing (Scotland) Act 1828 (Home Drummond Act).

The Licensing (Scotland) Act 1828 (Home Drummond Act) (9 Geo. IV. c. 58), sec. 15, enacts as follows:—"Every person licensed to sell exciseable liquors by retail, to be drunk or consumed in his house or premises, shall sell or otherwise dispose of all such liquors by retail therein (except in quantities less than half a pint) by the gallon, quart, pint, or half-pint measure, sized according to the standard, and shall, if