The respondents, however, maintain that the Sheriff-Substitute has so found; I agree with your Lordships that he has not so found. He has not found that there was a strain. What he has said is that a contributing cause of the failure of the heart's action was the strain arising from the exertion made by the deceased in repeatedly stooping. As Lord Dundas has pointed out, that is the first use of the word "strain"; and as I read it the Sheriff-Substitute simply means that the man was exerting himself at the time, and that the consequence of his exertion, which he had been repeatedly making, was to produce the result that unfortunately happened. If the Sheriff-Substitute had found, as the result of a post-mortem examination, that it appeared that the heart had been at that particular moment subjected to a special strain, the result might have been different. As the case stands I agree with your Lordships in holding that the Sheriff-Substitute has gone wrong, and that the case of *Clover, Clayton, & Company*, does not rule this case.

The LORD JUSTICE-CLERK was absent.

The Court pronounced this interlocutor—

"Find in answer to the questions of law therein stated that there were no facts from which the arbitrator could competently infer that the death of Thomas Ritchie was due to injury by accident within the meaning of the Workmen's Compensation Act 1906: Therefore recal the award of the arbitrator and remit to him to dismiss the claim."

Counsel for Appellant—Constable, K.C. —MacRobert. Agents—Bonar, Hunter, & Johnstone, W.S.

Counsel for Respondents—Moncrieff, K.C. —Fenton. Agents—Langlands & Mackay, W.S.

Friday, February 7.

FIRST DIVISION.

[Lord Skerrington, Ordinary.

GOODALL *v.* MEMBERS OF LICENSING COURT OF GLASGOW AND OTHERS.

Public-House — Certificate — Objection to Renewal — Validity of Mandate to Object Obtained by Solicitation.

Mandates to object to the renewal of certain licences in Glasgow were granted by certain persons with a title to object to a law agent who was the agent of the Vigilance Association, a society one of whose objects was to effect a reduction in public-house licences. The agent lodged objections in the name of these persons on the general ground that the district was overlicensed, and he appeared before the Licensing Court in support of these objections. A licence-holder, to the renewal of whose licence objection had thus been taken, was refused a renewal by the Licensing Court and also on appeal by the Licensing Appeal Court, and thereupon raised an action of reduction of these determinations. He averred that the ostensible mandates were procured by solicitation by the agent of the Vigilance Association in order to give him a colourable title to appear at the Licensing Court, that the objections were conducted in the interests and at the expense of the Vigilance Association, and were in reality the objections of the Association. He maintained that the Court had acted illegally in thus hearing an objector who had no *locus standi*.

Held that the averments were irrelevant.

Public-House — Licensing Authority — Discretion — Mode of Exercising Discretion as between Various Applicants where the Only Objection to Any is that the District is Overlicensed.

Objections were lodged by private objectors to the renewal of certain licences in a district in Glasgow. The sole ground of objection in each case was that the district was overlicensed. A licence-holder, the renewal of whose certificate had been refused by the Licensing Court, and on appeal also by the Licensing Appeal Court, raised an action of reduction of these determinations. He averred that at the Licensing Court the applicants were called in their order, that in every case to which no objection was taken a renewal was immediately granted; that in every case to which objection was taken the Court reserved judgment, and thereafter refused some and granted others. He maintained that the Court had acted arbitrarily, injudicially and illegally, because by granting at once a renewal of certificate in every case to which no objection was taken they had precluded themselves from giving judicial consideration to his application in comparison with those to which no objection was taken.

Held (*aff.* the Lord Ordinary Skerrington, *diss.* Lord Johnston) that there were no relevant averments of arbitrary and injudicial procedure, because although the procedure had been unfortunate, yet, there having been no resolution to reduce the licences by any particular number, the Licensing Court had not precluded themselves from giving judicial consideration to, or from granting, all the applications.

Public-House — Certificate — Objection on Ground of Redundancy in Licences — Title of a Neighbour to State General Objection — Licensing (Scotland) Act 1903 (3 *Edw. VII. cap.* 25), *sec.* 19.

The right given by section 19 of the Licensing (Scotland) Act 1903 to a person in the neighbourhood of a house in respect of which a certificate

or renewal of certificate is applied for, to object to the granting or renewal of such certificate, is not confined to special objections to the particular house, but includes the right to object on the ground that the district is over-licensed.

The Licensing (Scotland) Act 1903 (3 Edw. VII, cap. 25), section 19, enacts—"Any person or the agent of any person owning or occupying property in the neighbourhood of the house or premises in respect of which any certificate or renewal of any certificate shall be applied for, may object to the granting or renewal of such certificate by lodging at any time, not less than five days before the general meeting of the Licensing Court, with the clerk to such Court, a notice in writing to that effect, signed by such person or his agent, specifying the grounds of such objection, which objection shall be heard at the then ensuing general meeting; and if such objection shall be considered of sufficient importance by the Court in such general meeting, and shall be proved to their satisfaction, the said certificate shall not be granted or renewed. . . ."

Alexander Goodall, wine and spirit merchant, 68 M'Alpine Street, Glasgow, *pursuer*, raised an action against (1) Sir Archibald M'Innes Shaw, the Lord Provost of Glasgow, and others, being the whole of the magistrates and members of the Licensing Court for Glasgow; (2) Sir Samuel Chisholm and others, being with the defenders first called the whole of the members of the Licensing Appeal Court for Glasgow; (3) the Clerk to the Licensing Court; (4) the Clerk to the Licensing Appeal Court; and (5) John Brown and others, persons in whose names objections had been lodged against the renewal of the pursuer's licence, *defenders*. The action was defended by (1) the members of the Licensing Court other than Sir Archibald M'Innes Shaw, and (2) the members of the Licensing Appeal Court with the same exception.

The pursuer sought reduction of (1) a determination of the Licensing Court refusing him a renewal of licence for premises situated at 68 M'Alpine Street, Glasgow, for the year from 28th May 1911, and (2) a determination of the Licensing Appeal Court refusing his appeal against the determination of the Licensing Court.

[A former application by the present pursuer for a renewal of his licence for the same premises for the year from 28th May 1907 had been granted by the Licensing Court, but on appeal refused by the Licensing Appeal Court, whose determination was however reduced by the Court (see *Goodall* v. *Bilsland*, 1909 S.C. 1152, 46 S.L.R. 555). Thereafter the pursuer's application for a new certificate at the Licensing Court in April 1908 was granted, and also his applications for renewals in the two succeeding years.]

The pursuer applied to the Licensing Court for a renewal of certificate for the year from 28th May 1911. Objections to the application were lodged by Mr Robert Kyle, solicitor, Glasgow (who was the agent for a society called the Vigilance Association), in the names of certain owners or occupiers of property in the neighbourhood. These objections set forth, *inter alia*—"1. There are more licensed premises in the neighbourhood where the said premises are situated than are necessary to meet the requirements of the inhabitants, as is shown by the following facts, viz.—that there is in the Broomielaw Ward, where the said premises are situated, one licence to every 92 persons, and that in the Brownfield area of the Broomielaw Ward, in which the present premises are situated, excluding the main thoroughfare of Argyle Street, there are 14 licences, while for the supplies of the necessities of life to the inhabitants there are 3 grocers, 1 butcher, 2 bakers, and 3 dairies. 2. The population in the Broomielaw Ward in 1905 was 7147, and in 1910 was 6460, showing a decrease of 687, and there has not been a proportionate reduction in the number of licences. 3. The physical, social, and moral tone of the district is very low, as is shown by the following facts, namely—that the death-rate in the Broomielaw Ward [and Brownfield area], especially of infants, was high in comparison with the rest of Glasgow, and that the percentage of irregularity in school attendance and of children requiring to be fed by the School Board is very high, and this condition of matters is largely due to the fact that there are more licences in the said ward than are meet and convenient. 4. In view of the facts above narrated, it is not meet and convenient that this application should be granted."

The pursuer's application was refused, as stated above, by the Licensing Court and by the Licensing Appeal Court, and he brought this action of reduction.

The pursuer averred, *inter alia*—"(Cond. 6) For a number of years there has existed in Glasgow a society known as the Citizens' Vigilance Association. The sole or principal purpose of said Association is to oppose the granting and renewing of licences. For this purpose it has employed and employs law agents and others, whose charges and expenses have been and are defrayed from its funds. The operations of the said Association are controlled, and the funds for carrying on its operations are provided by the voluntary subscriptions of a few individuals holding extreme views on the liquor question, who believe, or profess to believe, that by obtaining a reduction in the number of licensed premises in the city they are advancing the cause of temperance. In conducting their campaign against licences the practice of the said Association is for a committee thereof to take up, prior to each half-yearly Licensing Court, consideration of the whole licensed premises in the city; to select and decide on the licences to be objected to at the ensuing Court; and to instruct their salaried law agent and other paid officials to take steps to obtain from parties owning or occupying premises in the neighbourhood of the particular

licences to be objected to, ostensible mandates or letters of authority in order to give the Association's said law agent a colourable title to appear at the Licensing Courts and to press for the taking away of the licences. In pursuance of these instructions the said law agent or others, acting for and on behalf of the said Association, then proceed to search for parties who if they desired to object on their own account would have the necessary statutory qualification. Having obtained the signatures of a few such persons, who in many cases have no idea of the procedure to follow on their signature, or even of the purpose for which it is obtained, the said law agent then prepares and lodges in their names written objections. These are not the objections of the persons who sign the mandates, but are in reality the objections of the said Association. Thereafter the law agent of the Association takes complete charge of the proceedings and conducts the same to their conclusion, solely at the expense and in the interest of the Association, and without further reference to the parties in whose names the objections are professed to be made, none of whom appear or give evidence at the Licensing Court. Said parties are never at any time or in any sense clients of the said law agent. The said objections are not in reality *bona fide* objections to the licences within the meaning of section 19 of the said statute, but in substance constitute an attempt by the said Association to acquire a right to object and prosecute objections to licences which under the statute is a right personal to persons owning or occupying property in the neighbourhood of the licences to be objected to. . . . (Cond. 9) Prior to the Licensing Court for April 1911 the said Association procured, in the manner mentioned in article 6 of the condescendence, documents professing to be mandates in favour of the said Robert Kyle, and lodged objections to the renewal of 98 licences in the city, including that of the pursuer. . . . The whole of said objections were substantially in similar terms to those stated in the four heads of objections against pursuer's licence, with the exception that in some of the cases a fifth head of objection was added, namely —that the applicant was interested in another licence or other licences and could not therefore give that personal supervision to the licence objected to which the Court was entitled to demand. The names of the same parties were put forward as objectors to many of the licences. . . . (Cond. 12) At the said Licensing Court the total number of applications for licences amounted to 1631, of which 19 were for hotels, 1329 for public-houses, and 283 for grocers' licences. When the Court met on 11th April, the agent for the Vigilance Association appeared in support of the said 98 objections and made a general statement to the Court, in the course of which he referred to the views which had been urged upon the magistrates by . . . deputations, and he pressed for a large reduction in the number of licensed premises in the said three districts. Counsel for the applicants whose licences were objected to was then heard, and pointed out to the Court that, as was well known to them, the objections, although ostensibly in the names of the owners or occupiers of property in the district, were in reality the objections of the Vigilance Association, and maintained that these objections were incompetent and irrelevant, were not competently before, and ought not to be considered by, the Court. The Court refused to give effect to these contentions, and thereafter the various applicants for licences were called in their order [on the list]. In every case in which no objections were lodged or taken the renewal of the licence was immediately granted. In the cases in which objections had been lodged by the Vigilance Association as aforesaid, none of the nominal objectors in whose names objections were pretended to be taken appeared in Court, and no evidence of any kind was led on their behalf. In each case the Court reserved judgment. At the conclusion of the hearing on 11th April the members of the Court retired for a short interval, and on returning they announced that of the 35 licences in the Calton Ward to which objections had been lodged by the Vigilance Association as aforesaid, they had sustained the objections to 12 licences; that 2 applications were continued till the following day, and that the remainder of the 35 had been granted. . . . (Cond. 13) When the meeting of the Court was resumed on 12th April the procedure adopted was similar to that of the previous day. The individual cases objected to were dealt with separately, and again none of the nominal objectors appeared, and no evidence was submitted in support of the objections. At the conclusion of the hearing the members of the Court retired, and on returning announced that in the Broomielaw district 10 (including that of the pursuer) out of the 20 applications objected to had been refused and 10 granted."

The pursuer pleaded, *inter alia*—"(1) The objections to the pursuer's application for a renewal of his licence certificate having been irrelevant and incompetent, *et separatim* not having been competently before the Court, the pursuer is entitled to decree in terms of the conclusions of the summons. (3) The said objections having been taken and insisted in for and on behalf of the said Citizens' Vigilance Association, and said Association having no right or title to appear as objectors to the renewal of pursuer's certificate, the pursuer is entitled to decree in terms of the conclusions of the summons. (4) The actings of the members of, and the proceedings of said Licensing Courts, as condescended on, having been irregular and illegal, and contrary to the principles of reason and justice, the pursuer is entitled to decree as concluded for."

The defenders pleaded, *inter alia*—"(2) The pursuer's averments are irrelevant and insufficient to support the conclusions of

the summons, and the action should accordingly be dismissed."

On 14th March 1912 the Lord Ordinary (SKERRINGTON) pronounced this interlocutor—". . . Sustains the second plea-in-law stated for the compearing defenders W. F. Russell and others, members of the Licensing Court, other than Sir Archibald M'Innes Shaw and the Clerk of said Court, and the second plea-in-law for W. F. Russell and others, members of the Licensing Appeal Court other than as aforesaid, and the Clerk of said Court: Dismisses the action and decerns. . . ."

Opinion.—"I have to dispose of a group of fifteen actions of reduction brought at the instance of wine and spirit merchants in Glasgow, who were refused a renewal of their licences for the year from 28th May 1911 by the Licensing Court or the Licensing Appeal Court for the City of Glasgow. In the meantime I shall confine myself to the action at the instance of Mr Goodall, who a few years ago successfully prosecuted a somewhat similar action which is reported as *Goodall* v. *Bilsland*, 1909 S.C. 1152. It appears from the report of that case that on 9th April 1907 the Glasgow Licensing Court granted Mr Goodall a renewal of his licence for a public-house for premises at 68 M'Alpine Street, Glasgow. The renewal was granted in spite of the objections of certain owners or occupiers of property in the neighbourhood who had been induced to sign mandates in favour of a Mr Kyle, authorising him to sign, lodge, and support objections to the renewal of Mr Goodall's licence. Mr Kyle was the paid solicitor of the Citizens' Vigilance Association, one of whose principal objects was to effect a reduction of the number of public-house licences in Glasgow. Mr Kyle appealed to the Licensing Appeal Court on behalf of his nominal clients and obtained a judgment refusing the renewal of Mr Goodall's licence. This latter judgment was set aside by the Court of Session upon the ground that the mandates in his favour did not authorise Mr Kyle to appeal from the Licensing Court to the Appeal Court, and also upon the separate ground that two members of the Appeal Court who voted had been absent from the Bench for a substantial part of the hearing. Mr Goodall's licence was renewed in the years 1908-1910. In the present action he alleges that at the Licensing Court held in April 1911 he was again subjected to opposition nominally at the instance of neighbours who had granted mandates to Mr Kyle, that the Licensing Court on 12th April refused to renew his licence, and that on 9th May the Licensing Appeal Court refused his appeal. He asks for reduction of these judgments.

"I. The first ground of reduction is based upon the alleged actings of the Vigilance Association and of Mr Kyle in promoting and carrying to a successful conclusion the opposition to the renewal of the pursuer's licence. The pursuer's averments as regards this somewhat delicate matter are so framed that they could not be sent to proof as they stand. He has made voluminous averments in condescendences 6-8 as to the usual practice of the Vigilance Association in promoting opposition to licences, while his averments in condescendence 9 as to what the Association actually did in this particular case are wanting in necessary specification. This defect could be easily amended, but I do not invite the pursuer (and the fourteen pursuers of similar actions) to incur the expense of rewriting their pleadings, and of precognoscing a number of witnesses. The pursuer's counsel explained that in the present action his client did not maintain (as he did in the former case, but unsuccessfully on the evidence) that the persons who signed the mandates in favour of Mr Kyle did not understand the meaning and effect of what they were doing. The pursuer's complaint, as explained by his counsel, is that the objections as framed and lodged by Mr Kyle on behalf of the objectors were the objections of the Vigilance Association and of no one else in respect that the nominal objectors had not authorised him to state these particular objections, and did not in their own minds object to the renewal of the pursuer's licence upon the particular grounds stated by Mr Kyle. I find nothing in section 19 of the Act of 1903 which forbids an owner or occupier who objects to having a public-house in his vicinity from instructing his solicitor to search for and allege every objection which can be honestly stated, even though such objection may be unknown to his client. On the other hand, I have great sympathy with the view presented by the pursuer's counsel to the effect that section 19 was designed to protect the interests of individuals, and that it is contrary to the intention of the statute that temperance reformers disguised as neighbours should appear and object to the granting or renewal of particular licences. Such reformers have ample opportunity by way of deputations and otherwise of impressing on the Licensing Magistrates their views on the general temperance question, and particularly their opinion that a certain district is over-licensed. Accordingly, if the question had arisen for the first time, I should have given the pursuer an opportunity of amending his pleadings by alleging with proper specification that the mandates were not intended (as they profess) to constitute Mr Kyle the law agent of the granters, but were intended to cover a secret and illegal assignation in his favour as agent of the Vigilance Association. In other words, they were mandates *in rem suam*, and were intended to confer upon Mr Kyle an irrevocable right to oppose the pursuer's licence in the interests and for the purposes of the Vigilance Association, and that in return for and in consideration of the expenses incurred and to be incurred by the Association in connection with the opposition. If the proceeding contemplated by the mandates had been an ordinary litigation which was to be carried on in name of the signatories, but in the interest of and by

the Vigilance Association, these averments would not have affected the competency of the action, but would have been relevant merely to prove that the Association was the *dominus litis* and responsible for the expenses of a litigation in which it was truly the principal. The Vigilance Association, as assignee, might competently sue in name of its cedents. I should have thought, however, that in a question as to the valid exercise of a statutory privilege conferred upon certain specified classes of persons, the allegation was relevant that the right to object to a licence had been illegally transferred to a third party. I do not read the opinions of the Judges in the former case as expressing any different view of the law, but merely as declining to draw the inference in fact that the mandates were intended to accomplish more than their ostensible purpose—*per* Lord President, pp. 1165-7, *per* Lord Ordinary (Johnston), pp. 1173-4. Although, in the words of the Lord President, Mr Kyle 'acted entirely as if the litigation were his own,' his Lordship does not say that in his opinion the granters of the mandates so intended. It is, of course, open to the pursuer to ask the Court to draw a different inference from the facts in the present case, but as these facts seem to be substantially the same as in the former case, his prospect of success would probably not justify the expense of amending the record.

"II.—[*The Lord Ordinary here dealt with an objection regarding the Magistrates having received deputations. This was not insisted on in the Inner House.*]

"III. The pursuer alleges that the objections to the renewal of his licence, which were framed and lodged by Mr Kyle on behalf of certain neighbours, 'were not competent or relevant objections within the meaning of section 19 of the statute, and in any event were not competently before the Court, in respect that they were not specific objections to pursuer's licence, but general objections directed against alleged congestion of licensed premises in the district in which the pursuer's premises are situated.' This ground of reduction resolves into a criticism of the objections on the record, to which the pursuer's counsel proposes to apply a stricter standard of relevancy than is applied now to pleadings in the Court of Session. He pointed out that the first three paragraphs simply go to support the opening statement that 'There are more licensed premises in the neighbourhood where the said premises are situated than are necessary to meet the requirements of the inhabitants'; while the last paragraph states that 'In view of the facts above narrated, it is not meet and convenient that this application should be granted.' Logically there is here a *non sequitur*, because the pursuer's licensed house might be necessary for the accommodation of the public notwithstanding that the number of licensed houses in its neighbourhood was excessive. But I construe the objections as impliedly stating that the pursuer's licensed house was unnecessary owing to the number of similar houses available in the neighbourhood for the use of the public.

"IV. The next ground of reduction is founded upon the procedure adopted by the Licensing Courts in disposing of the applications for renewals of licences in the Broomielaw district where the pursuer's house is situated. The pursuer alleges that in every case in which no objection had been taken the renewal was immediately granted 'without exception and without consideration,' and that the Court reserved for subsequent consideration the applications to which objections, mostly on the ground of congestion, had been lodged. As it may be assumed that the policy of the Magistrates was to diminish the number of licensed houses, the victims of this policy fell, according to the procedure adopted, to be selected not from the whole body of licence-holders in the district, but from a black list of which the Vigilance Association were truly the authors. Further, it was impossible for the Magistrates to 'exercise a judicial or impartial discretion in disposing of' these objections without considering at the same time the position and advantages or disadvantages of the whole licensed houses in the district. The pursuer's counsel based his argument principally upon the *dicta* of Lord Alverstone, C.J., and of Lawrence, J,, in *Raven* v. *Southampton Justices*, [1904] 1 K.B. 430. This case was commented upon by the Lord President in *Walsh's* case (7 F. pp. 1019-20), and is certainly not an authority in Scotland. While the *dicta* referred to are entitled to respect, there is also force in the reasoning of the dissenting Judge, Kennedy, J. I do not need to choose between these conflicting views, because I have no right and no duty to instruct the Licensing Courts as to the way in which they ought to exercise the discretionary powers committed to them by the statute. On this point it is sufficient to refer to the opinion of the Lord President in *Walsh's* case (7 F. pp. 1017-18) and to the authorities there cited. All I need say is that the procedure adopted does not strike me as being unjudicial and capricious. I therefore hold this ground of reduction to be irrelevant.

"The decision in *Goodall's* case rules all the other cases. . . .

"I accordingly dismiss all the actions as irrelevant."

The pursuer reclaimed, and argued—(1) The objections were incompetent. They were really the objections of the Vigilance Association. (2) The general objection that the district was overlicensed was incompetent in the mouth of private objectors on a sound construction of section 19 of the Licensing (Scotland) Act 1903 (3 Edw. VII, cap. 25), and the objection was therefore irrelevant. That this was so was borne out by the terms of section 21. Review by the Court of Session was competent where objectors without a statutory title had been heard by the Licensing Court—*Goodall* v. *Bilsland*, 1909 S.C. 1152, Lord Johnston (Ordinary) at

1173, 46 S.L.R. 555. The case of *Walsh* v. *Magistrates of Pollokshaws*, July 19, 1905, 7 F. 1009, 42 S.L.R. 784, *aff.* 1907 S.C. (H.L.) 1, 44 S.L.R. 64, was distinguishable because there there was a particular objection to the insanitary nature of the premises (referred to by the Lord President at p. 1018, and by Lord Davey in the House of Lords at p. 4), and the Magistrates were there acting under section 11, and in a ministerial and not in a judicial capacity. (3) When the only objection taken to licences was the general one that the district was overlicensed, the Magistrates were bound to give judicial consideration to all the applications for renewal, and the proper method of coming to a judicial determination as to what licences, if any, ought to be refused was to consider the whole of the licences objected to before giving a decision in any—*Raven* v. *Southampton Justices*, [1904] 1 K.B. 430; *Rex* v. *Howard*, [1902] 2 K.B. 363; *Sharp* v. *Wakefield*, [1891] A.C. 173. Here by at once granting the licences not objected to the Magistrates had accepted the black list selected by the Vigilance Association as a short leet from which to make rejections, and in any case had deprived themselves of the power to consider the licences as a whole. All the licences not objected to might have been more suitable for rejection if they had been considered than the pursuer's.

Argued for the defenders and respondents, the Licensing Court (whose argument was adopted on behalf of the Licensing Appeal Court)—(1) The fact that private objectors allowed the agent of the Vigilance Association to conduct their case did not render these objections incompetent—*Goodall* v. *Bilsland* (*cit. sup.*). (2) Section 19 of the Licensing Act 1903 did not confine the right of private objectors to specific objections, nor did it make general objections by such objectors incompetent. (3) The Magistrates had not proceeded on any black list of the Vigilance Association. They were entitled to grant the licences to which no objection had been taken. That did not preclude them from granting those objected to, and indeed many of those had been granted. Moreover, one applicant was not entitled to be heard on another's application (*Walsh* (*cit. sup.*), Lord Davey at p. 4), and consequently had no ground of complaint if another's application was disposed of before his was heard. The very fact that the Court had considered together all those objected to showed that it had acted judicially and not arbitrarily.

At advising—

LORD PRESIDENT—The pursuer in this case, in 1911, being the holder of a licence for a public-house situated at 68 M'Alpine Street, Glasgow, applied to the Licensing Court for a renewal, and that renewal was refused. He then appealed, and the judgment of the Licensing Court was affirmed. The present action is an action of reduction of this deliverance, and the Lord Ordinary has held that the action as laid is irrelevant, and has therefore dismissed it.

The matter arises out of circumstances which, in a certain aspect of them, have already been before this Court in a previous action at the instance of the same pursuer. There is a society in Glasgow called the Vigilance Association which tries to prevent the granting of certain licences. It goes round and finds objectors who by their local position have a *locus standi* under the statute, it assists those objectors, and, indeed, practically conducts their cases for them. In the present instance that procedure had been followed, and objections were put in at the instance of certain objectors who had allowed the agent for the Vigilance Association to conduct their cases. These objections, as stated, were entirely of the nature of general objections—that is to say, in other words, the objectors would not make any particular complaint of the way in which the pursuer's public-house was conducted, or of the unfitness of the pursuer to conduct it, but they put forward, as forcibly as they could, the redundancy of licences in the neighbourhood and the inadvisability of those licences being kept at the same number, the *sequitur* being that the pursuer's licence ought to be refused. The agent for the Vigilance Association was heard upon these objections, and the first objection of the pursuer is that the voice that was heard in Court was truly the voice of the Vigilance Association and not of the particular objector. I do not wish to waste your Lordships' time by repeating what I said in the case of *Walsh*. I think it clearly follows from what I there said that, however much the true moving spirit may have been the Vigilance Association, and however much the oration of the agent for the objector may have been coloured by the views of the society, there was nothing illegal about that, and if the objector chooses to employ the agent of the Vigilance Association as his agent and to allow him to conduct his case, that is not a ground for reducing the deliverance that may be afterwards pronounced.

The case of insufficiency of mandate, which wrecked the proceedings in the former case, is not really presented in this case. There is something said about the getting of the mandates and so on. But the case was not pled in that way before the Lord Ordinary, and was not pled in that way before your Lordships. To sustain a case of that kind it would have been necessary to allege specifically that the mandates in their terms did not cover the appearance, and nothing of that sort has been urged. But the next objection—and it is a more formidable one and has given me some anxiety, more especially as I know that there is a difference of opinion among us upon the subject—is founded on the way in which the Licensing Committee proceeded in this matter. The Vigilance Association had, I think I may say, found objectors in a certain number of cases, and in a certain number of cases they had not. Now it is said—and this being upon relevancy I must take it that the statement of

the pursuer is true—it is said—". . . [*His Lordship here read Cond.* 12 *and* 13 *as quoted above*] . . ."

Now upon that statement the pursuer argues thus. He says—"There was here no objection to me individually at all; the only objections were general objections founded upon the advisability of reducing the number of licences. And the licensing body so handed themselves over to the Viligance Association that they took from them the position that licences to which they had not objected could safely be granted; and thus allowed them to select, so to speak, for the Court those licences against which it was proposed to execute the general purpose of reducing the licences." The pursuer says that by that method of proceeding the Magistrates never did and never could consider the case judicially, but assumed that the pursuer's licence was a proper one to be refused, first, because they had already granted *de plano* a large number of licences, and, secondly, because, so far as the others were concerned, they had not made that selection by any consideration of their own, but simply had taken what is tantamount to a list handed in by the Viligance Association. I certainly am not without hesitation upon this matter, because I do think it was a very unfortunate method of proceeding. I cannot understand why the licensing body, who, I presume, want to act fairly as between all persons, if they are of opinion that there should be a reduction of licences in a certain district, should not themselves go into the matter by getting a report from the police or some one in whom they have trust, and then, directing their own minds to the questions raised in that report, avoid acting in such a manner as, at anyrate, gives the appearance of being unduly influenced by the views of a set of persons who, although I am perfectly willing to give them credit for good motives, still have no real *locus standi* in the matter, and who are not people whom one can believe to be very prone to act in a judicial spirit. But although I feel that very strongly, I do not think that what the licensing body did is sufficient to allow us as a court of law to set aside their deliverance. Here again I do not propose to make any general observations, because I said all I have to say in the case of *Walsh*, and I believe that what I said there was approved in the House of Lords. I cannot myself say that it was wrong for the Licensing Court, if they came to the conclusion that there were too many licences in the district, to say to themselves, "We will, in selecting those that are to be refused, be influenced by the fact that A, B, and C are objected to by their neighbours, and that D, E, and F are not." However much the Vigilance Association may have been the prime movers in the matter, still that is the eventual result. After all, the Vigilance Association were able to find the neighbours of A, B, and C who did put in objections, and it does not alter the situation that the objection of the neighbours of A, B, and C were not very spontaneous. So that I do not feel that the licensing body did anything wrong in saying "When we consider this question we shall take it that if any licences are to go, those had better go to which the neighbours object."

Then you come to the next stage. The Licensing Court take up the objections and they hear the parties, and they take the cases into consideration. Now it seems to me that the licensing body had still kept it in their power to grant every one of those licences. Their hearing parties upon those cases to which objections were lodged did not prevent them granting one and all of them, and up to the last moment, until they pronounced judgment, they were able to select as they chose between them. Of course we cannot tell what were the precise reasons which led them to think that the pursuer's licence should be refused while somebody else's should not. But it has been held again and again that in this matter the Licensing Court are entitled to make use of their own knowledge. They are not bound to consider only what they hear in Court, brought before them as evidence; and accordingly I think they were entitled to discriminate as they chose. If there had been a general resolution by which the licensing body had bound themselves to reduce the licences by a certain number, then I think they would have put themselves into a position in which it would be impossible to do justice as between A, B, C, D, and so on, without considering each and every case. But they did not do that. They had heard deputations upon the matter, but there was nothing in their procedure up to this moment which prevented them granting every one of those licences if they choose.

Accordingly on the whole matter I think that no relevant case here has been made out against what the Court did. I have expressed myself as strongly as I am entitled to as to what I think ought fairly to be done when licences are to be refused upon the ground of numbers alone, because although in one sense the question arises as a new one upon each particular person's application, still anyone with any common sense of fairness would feel that if there are twenty licences in a district which are to be reduced to fifteen, there ought to be consideration as to which five should be taken. On the whole matter I agree with the Lord Ordinary.

LORD JOHNSTON—I regret that I am unable to arrive at the same conclusion as your Lordship and my brother Lord Mackenzie, as I think that the Lord Ordinary's judgment as regards the fourth head of his very lucid and exhaustive opinion is not well founded. The ground of my dissent may be shortly stated. I recognise that under the Licensing Act of 1903, section 11, the Licensing Court at their general half-yearly meetings are empowered to grant certificates for the keeping of public-houses for the ensuing term "to such and so many persons as the Court then assembled at such meeting shall think meet and convenient." The

Court therefore has conferred upon it a very wide discretion, but it is a discretion which I think it is now fully accepted must be exercised fairly and reasonably and not arbitrarily. It is a public fact that large capital is embarked in the licensed house business, and while I am far from suggesting that the licence-holder has any vested interest, far less any right of property, in his licence, this public recognised fact calls for such fair and reasonable, if not judicial in the higher sense, treatment of their business by the Licensing Court.

If I thought that the present was on all fours with the case of *Walsh* (7 F. 1009) I should feel bound to concur with your Lordships. But I think that in its circumstances it is not *in pari casu* with that of *Walsh*, and that it differs from it precisely in such a way as to lead to a different conclusion. I do not detain your Lordships by a comparison of the circumstances of the two cases. The distinction between them is at once apparent.

In this relation it is, I think, not without pertinence to advert to the different way in which applications for new certificates and for the renewal of old certificates is treated by the Act. I refer to sections 13 and 23 as compared with section 22.

Against the granting or renewing of any certificate objection may be taken, without notice, by any member of the Court or by certain public officials in the public interest (section 20), and by any person or the agent of any person owning or occupying property in the neighbourhood of the premises for which a certificate or the renewal of a certificate is applied, but this only on notice specifying the grounds of objection. And such objection shall be heard by the Court, and if it is considered by them of sufficient importance and proved to their satisfaction, the certificate shall not be granted or renewed (section 19). Though the last part of this clause is not repeated in section 20, I think that it is implied. Provision is also made for the obtaining and leading of evidence on behalf of any party interested in relation to applications for the granting and renewing of certificates (section 21).

Now objection may be either general or particular, as, for instance, on the one hand, that a district or neighbourhood is over-supplied with public-houses, or on the other, that an individual house is insanitary or ill-contrived in its construction, or that it has been badly conducted. It is rare that a purely general objection, as that there is a congestion of public-houses in the neighbourhood, is taken to an individual public-house except in conjunction with a particular objection to that house. But I do not think that it is incompetent for such general objection only to be taken, or for it to be taken by a private objector under section 19. But I think that it is incumbent on the Court, if it is to act fairly and reasonably and not arbitrarily, to proceed somewhat differently in disposing of such general objection, and such general objection only, than where it is dealing with a particular objection. And the question in the present case is whether the Court has so dealt fairly and reasonably and not arbitrarily with this pursuer's licence. It has been subjected to a general objection only, and at the instance of private objectors as disclosed in the notice of objection which is narrated in cond. 4. Nothing could be more general. The objection states merely that there are more licensed premises in the neighbourhood where the said premises are situated than are necessary to meet the requirements of the inhabitants, as is said to be shown by a comparison of the population with the number of public-houses, and by the fact of reduction in the population without a proportional reduction in the number of licences. And further, reference is made to the low physical, social, and moral tone of the district, as proved by the high death-rate, and particularly the high infantile death-rate, and by the high percentage of irregularity in school attendance and of the number of children requiring to be fed by the School Board. It may be true—and if the facts alleged are correct I think must almost be admitted to be true—that the district is over-licensed. But, then, why is this particular public-house selected as one the licence of which is to be cancelled in preference to others, it having subsisted for a great many years, and there being no particular objection stated to it in conjunction with this general objection? I do not suggest that the Licensing Court, if they are of opinion that a district is over-licensed, are not entitled under the Act to reduce the number of licences and to refuse any particular certificate without having in addition some particular objection which they can sustain, not as *per se* sufficient to justify them refusing a renewal irrespective of the consideration of congestion, but as pointing to the propriety of selecting the individual house as the one to be suppressed where in their opinion there is congestion. I only maintain that in making their selection they must act fairly and reasonably and not arbitrarily; and if the statements in cond. 12 are proved, the Licensing Court in the present case, at their Spring sitting in 1911, by their course of procedure precluded themselves, in my opinion, from acting fairly and reasonably and did act arbitrarily.

The case as presented to this Court is mixed up with very lengthy averments as to the action of a certain body known in Glasgow as the Vigilance Association. There is no question that this association instigated these general objections to the pursuer's and a number of other licences, and entirely controlled the objections in each case. But I put out of sight all these allegations as unnecessary for the pursuer's true case. Mr Kyle, the agent for the Vigilance Association, produced to the Court sufficient mandates to appear for the alleged nominal objectors, and for my purpose I assume that he was quite entitled to be heard, and was heard on behalf of these individual objectors. Now

at the Licensing Court in question the total number of applications for licences amounted to 1613, the objections amounted to ninety-eight, and the objections were all supported by Mr Kyle as agent for the nominal objectors, and were all, as alleged, substantially in the same terms as those which I have summarised above. The Court met on 11th April, and it is said that after hearing and repelling objections to Mr Kyle's right to appear, they called the various applicants for licences in their order. In every case in which no objections were lodged or taken it is alleged that the renewal of the licence was immediately granted. But in the cases in which objections had been lodged and in which Mr Kyle appeared for the objectors, without evidence led, the Court reserved judgment. At the conclusion of the Court of 11th April, the Court, after retiring for consultation, are said to have announced that of thirty-five licences in the Calton Ward to which the above general objection had been lodged, they refused the renewal of twelve and granted the remainder, and then adjourned to the following day. It is then further alleged that on the 12th of April similar procedure was followed. The cases objected to were dealt with separately. None of the nominal objectors appeared personally, but Mr Kyle was heard, and at the conclusion of the hearing the Court, after consultation, announced that in the Bromielaw district they refused ten licences (including that of the pursuer) out of the twenty applications objected to, and granted the remaining ten.

In so acting the Court did, as it appears to me, preclude themselves from judging fairly and reasonably, and did proceed arbitrarily. They had nothing before them but the alleged over-licensing of the district. If they were satisfied of this they were bound to make a fair and reasonable selection of licences to be withdrawn, after a survey or consideration of the district or neighbourhood. By granting on 11th April all those licences to which no objection had been taken, they had precluded themselves from making such selection.

If they had made up their minds, on consideration of the general question prior to their sitting, that there ought to be a reduction in the number of licences, I do not think that inquiry could be demanded into the method they took to determine their selection of the licences to be cancelled unless something very flagrantly partial could be alleged. The matter is one committed to their discretion. But when they had not, so far as appears *ex facie* of their proceedings, considered the general question, and had, on entering upon their duties, proceeded to grant renewals of the great majority of the licences brought before them, they had, I think, debarred themselves from considering the general question in the course of the sitting of the Court—for they could only then proceed to carry any determination on the general question into effect, by selecting from the licences left those which they would cancel. Whether they had or had not considered and come to any determination upon the general question, they had already surrendered to others the function of making a short leet for them, and then they applied themselves solely to the consideration of the houses entered in that short leet. This in my opinion was arbitrary and not fair and reasonable. For these reasons, while the record contains a large amount of matter which I may term surplusage, there is in my opinion in conds. 12 and 13 a relevant case stated for reduction of the deliverance or finding of a Licensing Court. If the proceedings of the Licensing Court were thus vitiated, I do not think that their deliverances could be set up by any affirmance of the Licensing Appeal Court, particularly if, as is alleged, Mr Kyle, representing the nominal objectors, stated to the Court that he had no specific objection against the character of any of the applicants, and that his objections were entirely on the ground of congestion of licences.

LORD MACKENZIE—I agree with your Lordship in the chair.

The only ground of reduction in regard to which I desire to say anything is that founded upon the procedure followed at the Licensing Court. The pursuer's averments on this point are contained in articles 12 and 16 of the condescendence, which may be summarised thus—The Licensing Court refused to renew Goodall's licence in consequence of a general objection that there were more licensed premises in the neighbourhood than were necessary to meet the requirements of the inhabitants. Before coming to this conclusion it was necessary for the Court to take into consideration the position of the whole licences in the neighbourhood; this, however, they could not do, because all the licences to which no objection had been stated were immediately granted, and it was only thereafter that the Magistrates proceeded to deal with the licences which had been placed on a black list by the Vigilance Association by means of objections taken under section 19 of the 1903 Act; therefore the Court had debarred itself from exercising a judicial discretion.

Now, no doubt the objection as stated involves a *non sequitur*. The fact that there are too many licences in the district is not *per se* a reason why the licence of A should be taken away. On the other hand I do not think that the fact of the objection being stated in these terms makes the procedure invalid. If the true question was whether in the public interest the licence of A should go, the form of the objection is not material, provided the pursuer cannot aver facts which show that it was not possible that the true question was considered and decided. The grounds upon which the Licensing Court may proceed in coming to a conclusion are pointed out by the Lord President in the case of *Walsh*.

It is evident from the terms of condescendence 12, that if, after the whole cases had been called and parties had been heard

in those where there were objections, avizandum had been made with all the cases, the pursuer could not have said anything against the procedure. The averments in condescendence 16 could not have been made. As the averments stand in condescendence 12, I think they lack one essential element to make them relevant. There is no averment that when the Licensing Court came to deal with Goodall's licence they had as a Court prejudged the question whether there should be any reduction of licences on the ground of redundancy. The fact that a large number of unopposed licences had previously been granted did not debar the Court from exercising a judicial discretion when they came to those that were objected to. From the figures given it appears that a large proportion of the licences objected to were granted. In these circumstances I agree with the view taken by the Lord Ordinary.

As regards the English cases of *Raven* and *Howard*, these were decisions under a different statute.

I desire to say, in addition to what the Lord President has already said, that in dealing with the question of the redundancy of licences it is most desirable that the Licensing Court should proceed so as to avoid any appearance of unfairness.

LORD KINNEAR was absent.

The Court adhered.

Counsel for the Pursuer and Reclaimer —Horne, K.C.—MacQuisten. Agents — Alex. Morison & Company, W.S.

Counsel for the Defenders and Respondents (the Members of the Licensing Court for Glasgow) — Clyde, K.C. — Hon. W. Watson. Agents—Campbell & Smith, S.S.C.

Counsel for the Defenders and Respondents (the Members of the Licensing Appeal Court for Glasgow)—Morison, K.C. —D. M. Wilson. Agents—Carmichael & Miller, W.S.

Friday, February 7.

SECOND DIVISION.

[Sheriff Court at Hawick.

MUTTER, HOWEY, & COMPANY *v.* THOMSON.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *Sched. I* (1) (*a*)—"*Where Death Results from the Injury*"—*Death from Operation Following Injury—Operation on Pre-existing Injury—Casus novus interveniens.*

By an accident in the course of his employment a workman ruptured himself so that an operation was rendered necessary. At the time of the accident he was already suffering from another rupture of long standing. A double operation was performed, both hernias being operated upon, and the workman died. The arbitrator found that the cause of death was heart failure brought on by the strain of the operation. The medical evidence indicated that in order to operate successfully on the later hernia it was necessary to operate on the earlier one also. On the workman's widow claiming compensation for his death the employers pleaded that the second operation was a *novus actus interveniens* taking the case outwith the Act.

Held that the arbitrator was entitled to find that the workman's death resulted from the accident.

This was an appeal by way of Stated Case from a decision of the Sheriff-Substitute (BAILLIE) at Hawick in an arbitration under the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) between Mrs Helen Cavers or Thomson, widow of William Lockie Thomson, railway lorryman, Hawick, *respondent*, and Mutter, Howey, & Company, railway contractors, Edinburgh and Hawick, *appellants*.

The Case stated—"This is an arbitration upon a claim by the respondent for an award of compensation under the Workmen's Compensation Act 1906, in respect of the death on 30th May 1912 of her said husband William Lockie Thomson.

"Evidence was led before me, and I have had the assistance of the medical referee with reference to the medical evidence. I held the following *facts* to be admitted or proved:—(1) The deceased William Lockie Thomson was a lorryman in the service of the appellants and was sixty-four years of age. (2) On Thursday, 26th October 1911, he went to his work in good health, and on his last journey that day he was engaged at Weensland Mill in loading skips of yarn to his lorry. . . . On Monday the 30th he consulted Dr Hamilton, who found him to be suffering from sprain and injury to the abdominal muscles and hernia, and in answer to Dr Hamilton's inquiries as to how it had happened he informed him that he had slipped when catching or steadying a skip, but had not thought it was much. (9) Dr Hamilton was satisfied that a slip of this nature would be quite sufficient to produce a hernia. (10) Dr Hamilton sent him to bed, and on that and the following few days he and his son Dr Oliver Hamilton endeavoured to reduce the hernia, but though able to almost reduce it found that it was impossible to retain it in this reduced position, and an operation was accordingly rendered necessary. (11) On 7th November Thomson was operated on in the Cottage Hospital at Hawick by Professor Alexis Thomson, and this operation disclosed the existence of a femoral hernia of recent origin (which was the cause of the trouble at the time), and also disclosed the existence of an inguinal hernia of long standing. (12) This inguinal hernia had been in existence for about twenty-four years, during which period Thomson had regularly worn a truss, and it had not in any way interfered with his work as a