tions which lead to the latter course being adopted are, I think, their local character, the fact that all the likely witnesses are to be found on the spot, and the facility of visiting the premises if the judge should think it desirable to do so. It appears to me that, keeping in view the nature and character of this case, and having regard to the considerations to which I have referred, this case is not appropriate for jury trial in this Court, that indeed it is altogether inappropriate. I propose, therefore, that the case should be sent back for proof before the Sheriff.

LORD KINNEAR — I concur entirely in your Lordship's opinion. I think this is a proper case for the judge ordinary of the bounds, and that it is not a fit case for trial by jury in this Court. I am confirmed in that view by observing that the pursuer makes a strong point of the injury done to her by reason of the defender having, in replacing the brass plate which he had removed, put it up "on the other side of the doorway from where it was formerly stationed." Now, if that is a question which it is fitting to raise in any court, it must certainly be in the local court, and not in the Court of Session.

The LORD PRESIDENT concurred.

LORD M'LAREN was absent.

The Court pronounced this interlocutor:—

"The Lords having heard counsel for the parties upon the motion to appoint parties to lodge the issue or issues proposed for the trial of the cause: Refuse the motion, dismiss the appeal, and remit to the Sheriff to proceed with the proof allowed by the interlocutor of 16th December 1901, and to dispose of the cause: Find the defender entitled to the expenses of the appeal; modify the same to the sum of three guineas, for which decern against the pursuer."

Counsel for the Pursuer and Appellant—W. Thomson. Agent — John Veitch, Solicitor.

Counsel for the Defender and Respondent—P. Balfour. Agents—Alex. Morison & Company, W.S.

Wednesday, January 8.

SECOND DIVISION.

[Lord Kincairney, Ordinary.

SOUTHERN BOWLING CLUB, LIMITED *v.* ROSS.

Police—Club—Shebeening—Police Entering Private Club in Disguise to Detect Shebeening—Public Houses Acts Amendment (Scotland) Act 1862 (25 *and* 26 *Vict. c.* 35), *sec.* 13.

Held (*aff.* judgment of Lord Kincairney) in an action at the instance of a private club against the Chief-Constable and a sergeant of the Edinburgh Police Force, that the pursuers were not entitled to a decree declaring it to be illegal for members of the police force, acting on the instructions of the Chief-Constable, to enter the pursuers' premises in disguise with the purpose of discovering whether shebeening was practised in the club, or to interdict against their doing so.

Held by Lord Kincairney (Ordinary) that a private club is a place which the police are entitled to enter and inspect under the provisions of the Public Houses Acts Amendment (Scotland) Act 1862, section 13.

The Southern Bowling Club, Limited, incorporated under the Companies Acts 1862 to 1893, and having their registered office in Edinburgh, raised an action against Roderick Ross, chief-constable of the City of Edinburgh, and Hugh Calder, a police officer or constable in the Edinburgh Police Force.

The conclusions of the summons were (1) for declarator—"(First) That the defenders or any other officer or constable or member of the Police Force of the City of Edinburgh are not entitled to demand entrance to or to enter the pursuers' said premises at pleasure or without a lawful warrant or the authority of a lawful magistrate, or alternatively to the above conclusion that they are not entitled to demand entrance to or enter the pursuers' said premises except when in uniform or in the declared character and capacity of constable, police officer, or member or members of the said police force, and specially that they are not entitled to use any disguise or other means intended or calculated to conceal their character as constables, police officers, or members of the said force for the purpose of seeking or obtaining admission to the pursuers' said premises, or falsely to represent or hold out themselves to be persons entitled, by virtue of the constitution of the pursuers' club, to enter and use the said premises and be supplied with exciseable liquors in said premises; and (secondly) that the defenders or any other officer, constable, or member of the Police Force of the City of Edinburgh are not entitled to demand entrance to or to enter the premises of the pursuers at No. 13 West Preston Street, Edinburgh, for the purpose of trafficking or attempting to traffic within said premises in exciseable liquors with any of the pursuers' officials or servants or with any other person; and further, that they are not entitled in the pursuers' said premises to purchase from any official or servant of the pursuers or other person, or to order, request, or solicit any such official or servant or other person to supply them in return for payment with any wine, spirits, beer, cider, or other exciseable or fermented or distilled liquors, or in any way to traffic or attempt to traffic with such official or servant or other person, or to solicit any such official, servant or other person to traffic with them in any such liquors;" (2) for interdict against the defender and all others acting under the authority of the defender

Roderick Ross doing any of the preceding acts, and "from seeking or obtaining entrance to the said premises for the purpose of trafficking in wine, spirits, beer, cider, or other exciseable or fermented or distilled liquors with any servant or official of the pursuers or any other person in said premises, and purchasing or attempting to purchase in the pursuers' said premises from any official or servant of the pursuers or other person, and from ordering, requesting, or soliciting any such official or servant or other person to supply them in the said premises in return for payment with any wine, spirits, beer, cider, or other liquors as aforesaid, and from trafficking in any way with such official or servant or other person, or in any way soliciting any such official or servant or other person to traffic with them in said premises in any of said liquors;" (3) if necessary for interim interdict; and (4) for decree ordaining each of the defenders to make payment to the pursuers of £25 as damages.

The pursuers averred—"(Cond. 1) The pursuers were incorporated under the Companies Acts 1862 to 1893 on 29th October 1900 under the name of the Southern Bowling Club, Limited. The memorandum and articles of association are produced and referred to. The registered office of the company is situated at No. 13 West Preston Street, Edinburgh. The number of members of the company is fixed by the articles of association at 500, with power to the directors of the company, by resolution passed at a meeting of the company, to register an increase of members. Among the objects for which the company was formed, as specified in the memorandum of association, are these—'(*a*) to promote outdoor recreation and social intercourse between the members; (*b*) to provide and establish suitable meeting-rooms and premises and indoor amusements for the members.' The articles of the association lay down rules for the proper and efficient management of the club and its affairs, for the election of members, and the introduction of strangers into the club premises. These rules have all along been strictly observed by the club officials and members. On the incorporation of the club it became tenant of the maindoor premises situated at 13 West Preston Street, Edinburgh, in which it has since carried on the business of a club on the lines laid down in the said articles of association. Admitted that the pursuing company does not yet possess a bowling green and that the liability of members is limited by guarantee. (Cond. 2) Very soon after starting business an instance occurred of a person attempting to be served with liquor, who was not a member or introduced by a member in accordance with the rules and constitution. The pursuers informed the police and suggested a prosecution of the said party, but the police declined to prosecute. (Cond. 3) On the morning of Saturday, 15th December 1900, two men dressed as navvies called at the club premises and requested to be supplied with two pints of beer. The clubmaster, Mr Isaac Scott, recognised that the men were not members of the club, and therefore not entitled to be supplied with drink, and he accordingly refused to supply them and requested them to leave the premises. This they did without having obtained any liquor. The said men were the defenders police sergeant Calder and police-constable Fleming, members of the City of Edinburgh Police Force. The said men had so acted on instructions and orders received from the defender the Chief-Constable. They had disguised themselves for the purpose of endeavouring to procure drink in an illegal manner from the pursuers' servants, and to entrap the pursuers with the view of securing a conviction of illegally trafficking in exciseable liquors or other police offence by the evidence of the said officers. Admitted that the pursuers' clubmaster has repeatedly invited police officers to visit the club premises in their official capacity and in their known character of police officers." The pursuers then stated that they informed their law-agent, who had attempted to obtain from the Chief-Constable an assurance that he would not lend himself to any further attempts to send men to induce the club servants to supply drink to persons not members of the club, but that the Chief-Constable had stated that what had been done was justifiable deception and that he would continue to act as he had done, and that in answer to letters from the pursuers' law-agent he had written declining to discuss the matter. The pursuers further averred—"(Cond. 5) On Friday, 21st December 1900, the Chief-Constable sent two other officers of the City of Edinburgh Police Force disguised as clerks to the pursuers' said premises. These men requested the clubmaster, the said Isaac Scott, to supply them with two glasses of whisky, and tendered a two-shilling piece in payment, placing it on the bar of the Club. The clubmaster, again recognising that these men were not members of the Club, and were therefore not entitled to obtain drink, refused to supply it, and the men left without having obtained any liquor. The said coin, which was marked, was retained by the clubmaster and is now produced. The pursuers thereupon again consulted their agent, who on their instructions again wrote to the defender the Chief-Constable. . . . The pursuers believe and aver that the said two men, disguised as clerks as aforesaid, acted as above condescended on on the orders and instructions of the defender Chief-Constable Ross, whose orders and instructions they were bound to obey, and as the said defender Ross declined, on the application of the pursuers' agent, to disclose the names and addresses of these men, the pursuers are unable to condescend upon them. (Cond. 6) The pursuers have all along conducted their business legally and in accordance with the club's constitution, and this was well known to the police. The pursuers are willing that the police should visit the club premises openly in an official capacity, but they object to the police entering their premises in disguise and endeavour-

ing to induce their servants to break the law and render the pursuers liable to penalties and injure their business. In entering the pursuers' premises in disguise and in attempting to traffic with pursuers' servants with a view to the pursuers' prosecution or conviction the defender Calder acted illegally and wrongfully, and the defender Ross acted illegally and wrongfully in instructing or ordering him so to act. The said defender Calder had no warrant or authority or justification to enter the pursuers' premises on the occasion condescended on. Nor had the defender Ross any warrant, authority, or justification to order his subordinates to enter the premises on the said occasions or to act as they did on so entering. The actings of the defenders have become known, and the pursuers' premises have in consequence suffered in reputation as a club, and their business has sustained and will sustain loss and damage. The damage sustained by the pursuers is reasonably estimated at the sums sued for. In order to prevent continuance of the injury and annoyance suffered by pursuers as aforesaid the present action has been rendered necessary." . .

The pursuers pleaded—"(1) The pursuers are in the circumstances condescended on entitled to decree in terms of the declaratory conclusions of the summons. (2) In respect of the illegal and wrongful acts of the defenders condescended on, and the threatened continuance thereof, the pursuers are entitled to interdict as craved. (3) The actings complained of not being authorised or warranted either at common law or by any of the statutes pleaded by defenders, the pursuers are entitled to declarator and interdict as concluded for. (4) The pursuers having sustained loss and damage through the illegal actings of the defenders are entitled to reparation against each of them therefor, with expenses."

The defenders pleaded, *inter alia*—"(3) The pursuers' averments are irrelevant and insufficient to support the conclusions of the summons. (6) The actings complained of being legal at common law, and under (1) the Police (Scotland) Act 1857, (2) the Public Houses Amendment (Scotland) Act 1862, and (3) the Edinburgh Municipal and Police Act 1879, *et separatim*, under section 282 of the said Act, the defenders should be assoilzied."

The material part of section 13 of the Public Houses Acts Amendment (Scotland) Act 1862, upon which the defenders specially founded, is quoted in the opinion of the Lord Ordinary.

On 4th July 1901 the Lord Ordinary (KINCAIRNEY) pronounced the following interlocutor:—"Finds (1) That there is no relevant averment on the record of any difference between the parties which entitles the pursuers to crave decree in terms of the first primary conclusion or of the corresponding prayer for interdict; (2) that there are no averments in the condescendence which support the last part of the first alternative conclusion, or the second declaratory conclusion, or the corresponding prayer for interdict; and (3) that it is not relevantly averred that the actings of the defenders complained of have been illegal or beyond the powers of the defender, the Chief-Constable of Edinburgh, or in breach of the rights of the pursuers: Therefore assoilzies the defenders from the whole conclusions of the summons, and decerns," &c.

Note.—"The pursuers are the Southern Bowling Club, Limited, 13 West Preston Street, Edinburgh, incorporated under the Companies Acts. There are two defenders, Roderick Ross, Chief-Constable for the City, and Hugh Calder, a constable for the City. The case relates to questions of great general consequence and interest in regard to the rights of property in the burgh on the one hand, and on the other to the powers and duties of the police. It is important that the rights of such property be maintained so far as is consistent with competing rights of property and with the public interest; but it is also important that the officers of police be not without necessity hindered or hampered in the exercise of their public duties connected with the investigation and detection of crime or illegal practices. It is therefore necessary to exercise much caution in dealing with such general interests, and to abstain from pronouncing any judgment which may possibly have the effect of interfering with the action of the police and the discretion vested in police officials, unless the pursuers can show that their legal rights have been invaded and are threatened.

"The action contains declaratory conclusions of a very comprehensive and abstract character, which do not easily admit of judgments in more limited terms, and corresponding conclusions for interdict, under which judgment of a more restricted character might be pronounced. The questions which arise seem to be these two—whether the conclusions express or are based on sound legal propositions; and whether the actings of the defenders have been such as to entitle the pursuers to insist as matter of right on decree in terms of these conclusions or any of them.

"In order to determine the second of these questions it is necessary to attend very carefully to what the proceedings of the defenders have been, of which the pursuers complain, and, for that purpose, to have distinctly in view also what they do not complain of. That is not a difficult task, because I think there is no conflict or difference in the averments of the parties on these points.

"The pursuers do not complain that the police entered their club forcibly or against their will. It is not said that they did so; nor do the pursuers say that they had or have any objection to the police entering their premises. On the contrary, they invite them, if they come in their uniforms and in their official capacity. Therefore the circumstances raise no question as to the powers of the police to enter into private houses without a warrant, which is the point involved in the primary part of the first conclusion. The pursuers have no occasion to ask for the protection of the

Court against illegal trespass of that kind; and if it is not necessary to pronounce judgment on that question it would be inexpedient to do so.

"The complaint of the pursuers is of more limited scope and is quite explicit. It is that on two specified occasions two constables in disguise, acting under the direction of the Chief-Constable, applied at the pursuers' club, on the first occasion for beer and on the second for whisky, and tendered payment. The pursuers set forth very distinctly in condescendence 3 the object of the police in making the first visit. They say that the constables 'had disguised themselves for the purpose of endeavouring to procure drink in an illegal manner from the pursuers' servants, and so entrap the pursuers, with the view of securing a conviction of illegally trafficking in excisable liquors or other police offence by the evidence of the said officers.'

"The pursuers make no explicit averment about the object of the second visit, but presumably it was the same as before. They say (Condescendence 6)—'The pursuers are willing that the police should visit the club premises openly in an official capacity, but they object to the police entering their premises in disguise and endeavouring to induce their servants to break the law and render the pursuers liable to penalties.'

"If this last averment is meant to imply, what it does not express, that the police endeavoured to induce the pursuers' servants to break the law by selling excisable liquors, that is denied; but otherwise, the pursuers' averments are substantially admitted. The Chief-Constable admits that the visits complained of were made by his direction. He avers that the club is not really a bowling club, that the premises were not licensed, and were frequented by disorderly men; that he suspected that excisable liquors were sold there; and he makes various other averments of circumstances which made him determine 'that it was necessary to have a watch set on the said premises, and to find out if drink was sold to persons who were not members of the club by the club officials. The two visits to the club by constables in plain clothes were made by the directions of the defender, the Chief-Constable, for the purpose of finding out if the club trafficked in excisable liquors with non-members as was suspected.'

"The parties do not seem really at issue either as to what the defenders did or as to their object in doing it. I think I may regard them as agreed that the defenders' object was the detection of illegal sales of excisable liquors by the pursuers. The pursuers, indeed, say that they objected to the police endeavouring to induce their servants to break the law; but they do not positively aver that it was the defenders' object to induce the pursuers' servants to break the law, which it manifestly was not; but it was to ascertain whether the pursuers' servants were in the practice of breaking the law without any inducement. The question raised therefore is, whether the Chief-Constable was entitled to order constables in plain clothes to enter on the pursuers' premises and to apply for drink for the purpose of detecting whether the office-bearers of the club were in the practice of selling drink illegally.

"While the parties are at one thus far, they are diametrically at issue as to the character of the pursuers' club. It appears to me that on this point the defenders' averments are not quite so distinct as perhaps they might have been, for they do not seem to come up to an absolute averment that the pursuers' club is truly a shebeen, although they certainly point in that direction. I do not see, however, that these disputed matters can be gone into in this action. I think that at this point the *bona fides* of the pursuers' club must be assumed, and that it must be regarded as a private house.

"These being the circumstances, to a large extent ascertained by the concurring averments of the parties, the question is whether decree in terms of the conclusions of the summons, or of any of them, ought to be pronounced. In order to solve that question it is necessary to take the conclusions in detail. There are two declaratory conclusions, and the first conclusion is divided into two, the one alternative to the other, the latter part of the conclusion not being consequent on the former part, but alternative to it, and therefore independent of it. The first primary conclusion is—'That the defenders or other officer, constable, or member of the Police Force of the City of Edinburgh are not entitled to demand entrance to or to enter the pursuers' premises at pleasure or without a lawful warrant or the authority of a lawful magistrate.' Now, firstly, I think the pursuers cannot, in any view, get decree against anyone but the two defenders whom they have called; they cannot treat them as representative of the Police Force and get a decree expressly defining the rights and powers of the Police Force; but waiving that point as not of much consequence, the question which this conclusion seems to raise is as to the right of the police to enter private premises without a magistrate's warrant (disregarding the words 'at pleasure' as immaterial and unmeaning). On this question a very elaborate argument was presented, and the Police Statutes from 1617 and 1638 downwards to the General Police Act of 1892 (55 and 56 Vict. cap. 55) were examined, which I will afterwards notice. But I consider that I do not require and am not bound to decide that question for the reason already noticed, that no such question has been raised between the parties, and that the decision of it is not necessary for the protection of any threatened right of the pursuers. It is merely an abstract question of law on which the Court is not in use to give a deliverance. I may add, however, that I do not think that, in any view, any such absolute and unqualified deliverance could be given as is asked. Whatever be the general rule of law as to the right of the police to enter a private house without a warrant, it seems quite impossible to deny

that there may be exigencies under which the police may have right to enter a private dwelling, as is to some extent illustrated by the case of *Peggie* v. *Clark*, November 10, 1868, 7 Macph. 89, and it would in no view be right to pronounce an absolute declarator which would not apply to all circumstances and contingencies. I am therefore of opinion that the defenders must be assoilzied from the first and primary conclusion.

"But the alternative conclusion to the first conclusion is in a different position, and it is in part raised by the averments on record. It is that the defenders 'are not entitled to demand entrance to or enter the pursuers' said premises except when in uniform or in the declared character and capacity of constable, police officer, or member or members of the police force; and specially, that they are not entitled to use any disguise or other means intended or calculated to conceal their character as constables, police officers, or members of the said force, for the purpose of seeking or obtaining admission to the pursuers' said premises, or falsely to represent or hold themselves out to be persons entitled, by virtue of the constitution of the pursuers' club, to enter and use the said premises and be supplied with excisable liquors on the said premises.' This is a very verbose and complicated conclusion, and the last sentence of it seems to be nonsense, which is not and could not be supported by the record, and which may be disregarded. For it could not have been the object of the police to be mistaken for members of the club, and nothing of the kind is said in the record; for if the officials of the club furnished them with drink in the belief that they were members, no offence would be committed, and there would be nothing to complain of. What the police wanted, and what the pursuers say, expressly or by implication, that they wanted, was to conceal that they were policemen and to be mistaken for people who were not members of the club. The rest of the conclusion is, however, in a different position; but all its various sentences seem to mean merely this, that the police were not entitled to enter their premises in disguise. Now, if I understand the record rightly, they say that the defender Calder and some other constable or constables not named did this under the directions of the other defender, when they applied at the pursuers' bar for drink, and the defenders admit that they did so, and maintain their right to repeat the same manœuvre, and the question is whether it was and is beyond the power of the police to do so, and whether—which is a separate question—decree of declarator should be pronounced to that effect.

"It was contended for the pursuers that at common law a constable had no other rights or powers than an ordinary citizen, who might in possible contingencies have right to apprehend a man caught in a criminal act, and that all their exceptional powers were derived from statute. The statutes on the subject went back to 1617 and 1638, but the regulations issued then contained no power to enter private premises without the warrant of a magistrate, which seems to be the case; and the dictum of Hume, ii. 76, was referred to, to the effect that, in order to justify the forceable entry into any house, a constable must first demand and be refused admission, and must notify who he is and the purpose of his coming. It was further contended by the pursuers that no such power was contained in the more recent statutes, either in 20 and 21 Vict. cap. 72 (which besides relates to counties, not burghs), or in the Public-Houses Act 1862 (25 and 26 Vict. cap. 35), the Edinburgh Police Act 1879 (42 and 43 Vict. cap. 132), nor the General Police Act 1892 (55 and 56 Vict. cap. 55). It was further pointed out that while section 284 of the Edinburgh Police Act (42 and 43 Vict. cap. cxxxii.), and section 407 of the Burgh Police Act 1892 (55 and 56 Vict. cap. 55) conferred a general power on the police to enter places suspected of being gambling-houses, there was no such general power to enter houses suspected of being shebeens. It was maintained that whether the police had statutory power of entrance or no, there was no such power conferred on policemen in disguise, and no warrant for the deception which the defenders had practised.

"For the defenders it was contended that at common law the police had power in various contingencies to enter private houses without a warrant, that it was a question dependent on circumstances whether in any particular case entrance to private premises by the police was a trespass or not, as appeared from *Pringle* v. *Bremner*, 6th May 1867, 5 Macph. (H.L.) 55, and that therefore no general declarator in denial of that right could be pronounced. Further, the defenders referred to section 282 of 42 and 43 Vict. cap. 132, and section 401 of 55 and 56 Vict. cap. 55. But it seems to me that it would be difficult to bring the pursuers' club under any of the descriptions of premises contained in these sections. The case, however, seems different with regard to the 13th section of the Public-Houses Act (25 and 26 Vict. cap. 35), and it was upon that section that the defenders mainly relied. It provides that 'it shall be lawful for any chief constable, superintendent, lieutenant, or inspector of police at any time to enter and inspect any eating house, toll house, temperance hotel, shop, or other place, or any boat or vessel where food or drink of any kind is sold to be consumed on the premises, or in which he shall have reason to believe that excisable liquors of any kind are being unlawfully trafficked in.'

"The defenders contend that the pursuers' club is a 'place' in which the Chief-Constable has had reason to believe that excisable liquors are being unlawfully trafficked in. The pursuers maintain that the general word 'place' must be interpreted with relation to the places more specifically expressed, and that, in accordance with a settled rule of interpretation, it must be held to be a place *ejusdem generis* with those enumerated, viz., a place of public

resort into which the public were invited or entitled to go. This argument is no doubt of force. There is a general rule that general words at the close of an enumeration are to be understood as referring to things of the same kind as those previously enumerated. But the rule is not of universal application, and I do not think it applies in this case. The word 'place' in the clause in question is not at the end of the places enumerated, but is followed by the specification of boat or vessel. Further, seeing that the object of the clause is certainly to detect illegal practices, which are as a matter of course carried on, or supposed to be carried on, secretly, it would seem strange to exclude a place from the clause merely because it was, or purported to be, to a certain extent private. Further, the pursuers' club, as the nature of it is disclosed in the articles of association, is not so different from the places specified in the clause as to be obviously not a place of a like kind. It appears to me that this clause authorises entrance into such a place as the pursuers' club if the Chief-Constable had reason to believe that it was used for the sale of liquor without a licence.

"It was further maintained for the pursuers that their club was not a place in which the Chief-Constable had reason to believe that exciseable liquors were trafficked in; that he had, in fact, no such reason; and that his suspicions, if he had any, should have been set at rest by the failure of the two detective visits which he had directed. Now the Act does not require that the Chief-Constable shall disclose the reasons of his suspicion; and if he is entitled to Act on his suspicions, it is impossible to say that he was bound to verify them before taking action. At this point much must necessarily be left to the discretion of the officers of police, and unless it were averred that they acted maliciously I think the Court ought not to interfere. As it is not averred that the Chief-Constable acted from malice, it is not intelligible that he could have acted on any other ground or motive than because he believed that illegal traffic was carried on in the club.

"The defender has set forth on record certain of the grounds of his suspicion. These are founded to a large extent on the pursuers' articles of association, and I am unable to say that they are of a kind which the Chief-Constable could ignore.

"It was further contended that the Court ought not to approve of, but ought to discountenance and prohibit the methods of deception which the Chief-Constable had followed, which were to be reprobated in any case, and the more when it was considered that they might result in inducing the pursuers' servants to break the law, whether that was their object or not. Now, it is one thing to disapprove of these methods and another thing to declare them illegal. If the defenders have power to enter the pursuers' club, it is very hard to find grounds for saying that it is illegal to do so surreptitiously, deceitfully, or—if the word be applicable, which I think it is not—fraudulently. There is, so far as I know, no statute on the subject. I am not aware of any judicial *dictum* as to the limits of the devices to which the Detective Police Force may resort in their pursuit of crime. I am not prepared to lay down in the form of a declarator any general proposition on the subject.

"I am not to be understood as professing any favour for this police method. That, I think, is rather for the consideration of the police authorities than for mine. It has obvious disadvantages. It might result in breaches of the law which would not otherwise have been committed, and I suppose it will be very sparingly resorted to. I would point out also that in a city like Edinburgh it can seldom be necessary for the police to act in doubtful cases without the authority of a magistrate, although it may be that such authority could not be easily used in such detective business. I would also observe that, as this club is incorporated, its register is practically open to the police, and that no opposition of the club can avail to conceal it.

"I think, then, that in the circumstances, and for the reasons explained, decree of declarator in terms of this alternative conclusion ought not to be pronounced.

"I think so also for another reason which has been already adverted to, viz.—that various circumstances or exigencies in the course of a constable's duty might render it necessary for him to enter the pursuers' club or any other private club without any delay, and might place his right to do so beyond reasonable question, and, when that is so, it is unfit that any declaratory pronouncement of the illegality of doing so should be expressed.

"For these reasons I think the defenders should be assoilzied from the whole of the first declaratory conclusion.

"The second declaratory conclusion seems objectionable on another ground, namely, that it puts or seeks to put the case on a false issue, and might be misunderstood if pronounced. It was supported by various authorities to the effect that it is a wrong to a man to induce his servants or his clients to commit an offence or to leave his service or to break a contract—*Dickson* v. *Taylor*, November 1, 1816, 1 Murray, 141; *Ker* v. *Roxburgh*, 3 Murray, 126; *Lyons* v. *Wilkins*, L.R. 1896, 1 Ch., 811; *Allan* v. *Flood*, App. Cas. 1898, H.L. 1. I do not question the law contended for, and if it could have been affirmed that what the defenders did was to endeavour to induce the pursuers' servants to sell liquor contrary to law and contrary to their duty to the pursuers, they might have been entitled to decree of declarator such as is here concluded for. But, as already explained, I am perfectly satisfied that that is not so, and I think it is not averred; and it appears to me that this conclusion should not be granted, on the ground that it is not appropriate to the facts averred.

"The conclusions for interdict are not in exactly the same position, because where trespass is averred interdict and not de-

clarator is generally the appropriate remedy. But yet, on carefully considering the case, I am of opinion that the reasons which have induced me to refuse to give decree of declarator, and which I have endeavoured to explain, are applicable to the conclusions for interdict also; and I think it is not necessary to elaborate this point in detail, and I am therefore of opinion that the pursuers are not entitled to decree in terms of any of their conclusions."

The pursuers reclaimed. They gave up the first primary conclusion of the action, but argued that the first alternative conclusion and the second declaratory conclusion and the corresponding conclusion for interdict were well founded, and argued—This was a private club into which none but members were entitled to enter. The detectives were in no better position than private individuals at common law. In attempting to enter this Club they were therefore acting illegally unless some statute authorised their proceedings. It was argued that section 13 of the Public-Houses Act 1862 gave them authority. This was not so—(1) because that section did not apply to a private house or a private club. The places specified in the section were all public resorts, and the term "other place" meant "place of a similar nature;" and (2) even if the section referred to a club such as the present, an inferior officer of police was not entitled to enter without written authority, and the persons whose acts were complained of had no such authority.

Counsel for the defenders were not called on.

LORD JUSTICE-CLERK — The Lord Ordinary has decided this case rightly and on sound grounds. What is alleged to have happened is this, that persons disguised so that they might not be known as emissaries of the police went to this club on the instructions of the Chief-Constable and tendered money in order to discover whether people who were not members of the club would be supplied with drink. Now, that is just the ordinary work of detectives who have been informed that a breach of the law has been committed, and who wish to test the truth of the information. The pursuers, I understand, constitute a club, who have a perfect right to prevent anybody coming into their premises who is not a member of the club, and if any person goes there not as representing the police ostensibly either by being the chief-constable or superintendent of police or a person having written authority from them, such person may be refused admission to the premises, and it will be no answer for him to say that he is a detective. Of course the moment that he produces his authority his whole position as a detective will be at end, because his opportunity of pretending that he is not a police officer will be absolutely gone. Any person coming there as these detectives did might have been called on to remove from the premises, and doubtless would have removed from the premises when asked to do so. The Court are now asked to grant declarator and interdict by which the police of Edinburgh may be prevented from visiting such premises as these in the role of detectives. This is a declarator which I cannot think of granting, as it is quite plain that the giving effect to such a declarator might prevent the police from doing their duty in many cases in which they would have a proper duty to perform.

LORD YOUNG—I am of the same opinion. Shebeening—keeping a shebeen—trafficking in liquor without lawful authority—is an offence by the law of Scotland, and is punishable as such. By the law of Scotland lawful practices may be resorted to in the public interest in order to detect people who are in the way of committing offences, and if the police of Edinburgh or of any other town think that the law is being violated by shebeening at a certain place which is called a club they may employ all lawful methods of detecting the offence thus committed as secretly as possible with the view of preventing detection. The only way that occurs to me of detecting offences is for the police to employ detectives, and where a club was suspected of shebeening the only mode of discovering the truth of the matter was for the detectives to go to the club and ask to be supplied with spirits. There is no other mode occurs to me of detecting the offence, and if these detectives (not being members of the club, and there being no reason on the part of those supplying them with liquor to suppose that they are members of the club) are supplied with liquor, then the offence is detected and the result of stopping it by a prosecution is attained. Now, in the present action nothing else is complained of as having been done by the police, and I must regard the conclusions of this action as being unmaintainable to the extent of being absolutely and ridiculously extravagant. Declarator and interdict to restrain the police authorities from exercising detection in order to detect and put an end to shebeening is extravagant, and the declarator and interdict here sought against the police are of the character which I have attributed to them. I am therefore of opinion that the judgment of the Lord Ordinary is right and should be affirmed.

LORD TRAYNER—I am of the same opinion. The Lord Ordinary with his usual care has gone into the matter very fully. I am rather disposed to think that if it had come before me in the first instance I should have treated it with less ceremony.

LORD MONCREIFF—I concur. I think there is nothing in the Public-Houses Act 1862 to prevent the chief-constable or superintendent of police or other officers and constables entering such places in disguise.

The Court adhered.

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