Counsel for the respondent were not called on.

LORD JUSTICE-CLERK—I cannot see any ground for interfering with the decision of the Sheriff. The words of the Act are vague. It says that the want of notice "shall not be a bar to the maintenance of proceedings" if it is "occasioned by mistake or other reasonable cause." But that phrase has been the subject of decision in the case of *Rankine* (6 F. 375), which seems to me to be exactly in point. I have therefore no doubt that there was here reasonable cause for the want of notice.

I cannot help saying it is rather unfortunate that the clause has been so framed, for one can figure cases in which, under the clause, serious prejudice to the master might possibly arise; and therefore every case must be dealt with on its own circumstances. I can conceive of a case in which serious injury had been caused by neglect of doctor's orders, and however plucky—and in a certain sense praiseworthy—on the part of a workman it might be to continue at work in spite of his doctor's directions, in such circumstances there might not be reasonable cause for failing to give notice. But here there is no ground in the circumstances for thinking that this was not a case of "mistake or other reasonable cause."

LORD KYLLACHY, LORD STORMONTH DARLING, and LORD LOW concurred.

The Court answered the second question in the affirmative and found it unnecessary to answer the first question.

Counsel for Claimant and Respondent—G. Watt, K.C.—Munro. Agent—D. R. Tullo, S.S.C.

Counsel for Respondents and Appellants—Hunter, K.C.—R. S. Horne. Agents—W. & J. Burness, W.S.

Friday, December 14.

FIRST DIVISION.

[Lord Dundas, Ordinary.

M'DONALD *v.* M'LACHLAN.

Reparation—Slander—Relevancy—Innuendo—Master and Servant—Statement by Master after Pleading Guilty to an Offence, that Servant in Charge had not Informed Him of the Fact the Not-Reporting of which Constituted Offence—Qualified Privilege.

A farmer, after pleading guilty to a charge of not reporting cases of sheep-scab under the Diseases of Animals Act 1894, tendered a written statement to the Sheriff, which stated—"I left the management of my sheep stock entirely in the hands of my shepherd, who did not inform me that there were any signs of scab amongst them." This was read aloud and commented on by the Sheriff, and reports of the proceedings appeared in the local newspapers.

In an action to recover damages for slander raised by the shepherd against the farmer, on the ground that the statement falsely, calumniously, and maliciously represented "the pursuer to be a person neglectful of his duties, and unfit and incompetent as a shepherd," *held* (*rev.* Lord Dundas, Ordinary) that the statement would not support the innuendo, and action *dismissed.*

Opinion, per Lord Ordinary (Dundas), who allowed an issue, that the occasion of the statement was one of privilege, not absolute but qualified, requiring malice to be relevantly averred on record.

On May 29, 1906, James M'Donald, shepherd, Lochgoilhead, brought an action against Neil M'Lachlan, farmer, Knock, Lochgair, Lochgilphead, in which he sought to recover £250 as solatium and damages for slander.

The defender had been charged in the Sheriff Court at Lochgilphead with failure to report two cases of sheep-scab amongst his sheep, an offence under the Diseases of Animals Act 1894 and the Sheep-Scab Order 1905, and had, when pleading guilty, handed a written statement to the Sheriff, who read it aloud and commented on it. The statement was as follows—

"*Knock Farm.*

"Dear Sir,—In pleading guilty to the charge of sheep-scab as found on two hoggs, I may explain that I left the management of my sheep stock entirely in the hands of my shepherd, who did not inform me that there were any signs of scab amongst them. The stock was dipped in the usual way in November, and at that time there was not the slightest signs of scab or any other disease among them. It was with very great surprise I learned in February that two hoggs were affected with scab.

"I may say that I am tenant of Knock Farm for the last twenty-two years, and this is the first time there has been any complaint made against me.

"NEIL M'LACHLAN."

The pursuer, who had been in the defender's service as his only shepherd, averred that the statement was false; that the outbreak had been reported to the defender on 4th December 1905, when he had himself inspected the sheep and satisfied himself of the fact; that in January 1906 the defender had assisted in dipping some sheep which were affected; and that, in addition, the defender had been informed by two adjoining farmers whose names were given. "(Cond. 4) The foresaid statement made by the defender to the Sheriff was of and concerning the pursuer. It was not only false but was calumnious, inasmuch as it charged the pursuer with failure to report to the defender the outbreak of scab, thereby branding the pursuer with neglect of his duties, and with unfitness and incompetence as a shepherd. Further, the said statement was made maliciously and without probable cause. It was known to the

defender to be false, and was made by him recklessly and without regard to the consequences it involved to the character and reputation of the pursuer. The object of the defender in making said false and calumnious statement, it is believed and averred, was to endeavour as far as possible to exculpate himself from the charge made against him at the expense and to the detriment of the pursuer, his character and reputation as a practical and experienced shepherd."

The pursuer further averred that reports of the proceedings in the Sheriff Court, referring to the said statement, had appeared in the issue of the *Argyleshire Advertiser and Lochfyneside Echo* for March 28, 1906, and in the issue of the *Oban Times* for March 31, 1906, both of which newspapers had a large circulation in the surrounding country, and that he had in consequence been deeply wounded in his feelings, and that his character and reputation as an experienced shepherd had been seriously injured, as well as his future prospects imperilled.

The defender, *inter alia*, pleaded—"(1) The pursuer's averments being irrelevant, the action should be dismissed, with expenses. (2) The defender in making the statement referred to was absolutely privileged in doing so, and the pursuer is not entitled on account of said statement to sue the present action."

On November 7, 1906, the Lord Ordinary (DUNDAS) allowed an issue in the following terms:—"It being admitted that on 27th March 1906, within the Sheriff Court at Lochgilphead, the defender, in pleading guilty to a charge of having contravened the Diseases of Animals Act 1894, in respect of failure to report sheep-scab among his stock, handed to the Sheriff who presided at the trial a written statement in the terms contained in the schedule hereto annexed—Whether the said statement is, in whole or in part, of and concerning the pursuer, and falsely, calumniously, and maliciously represents the pursuer to be a person neglectful of his duties and unfit and incompetent as a shepherd, to the loss, injury, and damage of the pursuer."

Opinion.—"On 27th March 1906 the defender, an Argyllshire farmer, was charged in the Sheriff Court at Lochgilphead, at the instance of the County Council, with failure to report two cases of sheep scab among his stock. He was not professionally represented in Court. He pleaded guilty to the charge, and handed to the presiding Sheriff a written statement, the terms of which are fully printed in the record in this action. The statement contained, *inter alia*, an explanation that 'I left the management of my sheep stock entirely in the hands of my shepherd, who did not inform me that there were any signs of scab amongst them.' The pursuer of this action, James M'Donald, was in fact the defender's shepherd at the time in question. He avers that 'the written statement so handed by the defender to the Sheriff was read aloud and commented on by the Sheriff in Court, and was thereafter handed by him to the Clerk of Court;' and that a report of what took place in Court when the defender pleaded guilty and was fined appeared in the local newspapers, which 'made reference to the statement made by the defender to the Sheriff.' The present action is brought by the pursuer against his then employer, the defender, for damages for slander, which he assesses at £250.

"The first question is whether the statement made by the defender to the Sheriff imports a slander upon the pursuer. The innuendo upon record is that 'it charged the pursuer with failure to report to the defender the outbreak of scab, thereby branding the pursuer with neglect of his duties and with unfitness and incompetence as a shepherd.' I have had doubts upon this point. The innuendo seems to me to involve some strain upon the language of the defender's statement. But I think that, looking to the pursuer's whole averments, the innuendo is one which might not unreasonably be extracted from the written statement.

"It was next argued for the defender that the circumstances under which the statement was made afforded an absolute privilege to the defender. His counsel asserted that its contents were *in pari casu* with evidence given by the defender as a witness *in causa*. The absolute character of the privilege which the law accords to a witness is established beyond doubt or question, and its grounds are clearly explained by Lord Penzance in a well-known passage of his opinion in *Dawkins* v. *Lord Rokeby*, 7 E. and I. App. 744, which is quoted with approval by Lord President Inglis in *Williamson*, 1890, 17 R. 905. The defender's counsel referred to the recent case of *Watson*, 1905, 7 Fr. (H.L.) 109, where this privilege was extended to the case of statements made on precognition and not upon oath. But the statement here in question cannot, in my opinion, in any reasonable sense be said to have been given in evidence, or as that of a witness, or an intending witness; and, in my judgment, no absolute privilege attended the occasion of its production in the Sheriff Court.

"But an alternative argument was submitted for the defender which I think requires attention. His counsel maintained that the occasion was at all events one importing a qualified if not an absolute privilege; and that, upon that hypothesis, the pursuer's record is radically defective as lacking any sufficient averment of malice upon the part of the defender. The pursuer's counsel argued that there is here disclosed no case of privilege at all; because the statement was not pertinent to any cause, the cause as such having ended when the plea of 'guilty' was tendered, and also because the cases decided in regard to civil proceedings are not applicable in relation to a criminal prosecution such as was here instituted against the defender in the Sheriff Court at Lochgilphead. Upon both these points my opinion is adverse to the pursuer. I see no ground for differentiation

between civil and criminal proceedings upon this matter; and I think that the statement was made in the course of and was certainly pertinent to the disposal of the cause or matter in hand in the Sheriff Court. Its position seems to me to have been somewhat analogous to that of a minute or other judicial document brought into Court upon the instructions of a party litigant. It was, in my opinion, made in circumstances importing a qualified privilege. Malice must, I think, therefore be relevantly averred upon record. The pursuer alleges, and I must assume at this stage that his allegations are correct, that the statements of which he complains were false to the defender's own knowledge, and were made recklessly and without probable cause; and his counsel urged that these averments if proved would sufficiently import malice on his part. The defender's counsel referred to a somewhat peculiarly phrased passage in condescendence 4, where the pursuer says 'the object of the defender in making said false and calumnious statement, it is believed and averred, was to endeavour as far as possible to exculpate himself from the charge made against him at the expense and to the detriment of the pursuer, his character and reputation, as a practical and experienced shepherd;' and they submitted that the latter's own averment thus negatived the presence of that *animus injuriandi* upon the part of the defender which is the basis, and the necessary condition, of a successful action of damages for slander. This is, to my mind, too narrow and strict a reading of the pursuer's record. I think that the averment really means that the defender was anxious to save himself, and that with this end in view he defamed the pursuer. Of the decided cases in the books the one which is nearest to the present and throws most light upon the manner in which it ought to be dealt with is, in my opinion, that of *Williamson*, to which I have already alluded. In that case a solicitor read aloud, at a Justice of the Peace Licensing Court, a letter written by a client which contained language defamatory of one of the applicants. This applicant subsequently sued both the solicitor and the client for damages for slander. The action was held to be irrelevant *quoad* the former; but an issue was adjusted for trial as against the latter. I observe that the principal averment which was held to entitle the pursuer to that issue was to the effect that the defender in question knew that the statements were untrue, but 'made them maliciously for the purpose of defaming pursuer and thus succeeding in opposing his application.' In that case, as in the present, the pursuer averred that the defamatory statement made by the defender was made in order to secure a further end, in which malice was not necessarily involved at all, viz., in *Williamson's* case the refusal of a spirit licence in a district where the defender considered such a thing to be undesirable; in the present case the exculpation of the defender, or at all events the mitigation of his fine. Upon the whole matter I think that the pursuer's averments are such as to entitle him to the issue which he proposes, subject to the insertion of the words 'and maliciously' after the word 'calumniously.'"

The defender reclaimed, and argued—The statement complained of was not slanderous; it would not support the innuendo. No knowledge of the existence of the disease was imputed in it to the shepherd, and there was consequently no reflection on him. Even had the statement said that he knew, there would have been no reflection. Had it been alleged that he had failed to give notice to some authority to whom there was a duty on his part to give notice, it might have been different, but the failure alleged, if any, was only the omitting to inform his employer. The action was irrelevant, and should be dismissed.

Argued for the pursuer—The facts here were of importance. The pursuer averred that the statement made by the defender was false, and that the defender knew it was false. The statement further attributed to the pursuer a position of responsibility and a consequent duty, viz., the duty placed on "every person having in his possession or under his charge" an animal affected by sheep-scab to report it Diseases of Animals Act 1894 (57 and 58 Vict. cap. 57), section 4 (1) (*b*) and 52—and stated that he had failed in that duty. The innuendo was therefore good, and the issue should be allowed.

LORD PRESIDENT—This is an action to recover damages for an alleged slander uttered under the following circumstances:—The defender was charged in the Sheriff Court at Lochgilphead under the Diseases of Animals Act 1894. Although the actual charge is not set forth, it is clear that what he was charged with was a contravention of section 4 (*b*) of that Act by not having "with all practicable speed" given notice of sheep scab among the sheep in his possession. The defender pleaded guilty, but before sentence was passed handed to the Sheriff a written statement in the form of a letter in these terms.—[*His Lordship here read the written statement.*] The Sheriff read this letter aloud in Court, and then imposed on the defender a fine of £1.

The pursuer is the shepherd referred to in the letter, and he says he was slandered by the allegations used in the letter about him. The way in which he makes out he has been slandered is that he says the letter contains false, malicious, and calumnious statements about him. He says they were false because he did in fact inform the defender that there was scab among the sheep. That is so far good. But he must also show that the statements were calumnious. He proposes to innuendo the words used in this way, that they "falsely, calumniously, and maliciously represent the pursuer to be a person neglectful of his duties, and unfit and incompetent as a shepherd." In my opinion, the words in question will not bear such an innuendo, because the only state-

ment is that the shepherd did not inform the defender there were signs of scab. The reason why he did not inform him may have been because he did not know. If one looks to the probabilities, it may be probable that the shepherd did know. But anyone listening to the statement in Court would just have gone away with the impression that the shepherd had not told his master, but would not have known the reason for his not doing so. In other words, what was said was quite consistent with no breach of duty on the part of the shepherd.

I have had occasion to remark before that one of the worst uses to which this Court is put is the bringing of trumpery actions of slander. I am unwilling to torture innuendos out of words that do not in any reasonable manner bear the interpretation sought to be put upon them.

I am therefore of opinion that the Lord Ordinary's interlocutor should be recalled and the action dismissed.

On the view I have taken it is unnecessary to deal with the second matter dealt with by the Lord Ordinary in his note.

LORD KINNEAR and LORD PEARSON concurred.

The Court recalled the interlocutor of the Lord Ordinary and dismissed the action.

Counsel for the Reclaimer and Defender —Cooper, K.C. — Macmillan. Agents— Hamilton, Kinnear, & Beatson, W.S.

Counsel for the Respondent and Pursuer —Crole, K.C.—Ballingall. Agent—W. B. Rainnie, S.S.C.

Saturday December 15.

FIRST DIVISION.

[Lord Salvesen, Ordinary.

BLACK AND OTHERS *v.* MAGISTRATES OF GRANGEMOUTH.

Public-House—Certificate—Hours of Closing—Ultra vires—"Particular Locality"—Resolution Defining Area as "Particular Locality"—Licensing (Scotland) Act 1903 (3 *Edw. VII, c.* 25), *sec.* 35.

The magistrates of a burgh in the *bona fide* exercise of their discretion resolved that a certain area of their burgh was "a particular locality" within the meaning of section 35 of the Licensing (Scotland) Act 1903, and that the hour of closing therein should be nine o'clock. The area in question was the old town, and formed the first ward of the burgh, but as matter of fact it included within its boundaries all the public-houses in the burgh.

Held that the resolution was valid, and not *ultra vires*. *Ashley* v. *Magistrates of Rothesay*, June 20, 1873, 11 Macph. 708, 10 S.L.R. 513, *affd.* April 17, 1874, 1 R. (H.L.) 14, 11 S.L.R. 487, *distinguished.*

Public-House — Hours of Opening and Closing — Reduction of Hours during which Public-Houses may be Kept Open below Number in Scheduled Form of Certificate.

Held that the magistrates of a burgh may reduce the number of hours during which the public-houses in a particular locality may be kept open, below the total number of hours in the scheduled form of certificate.

Public-House—Register of Applications — Certificate — Certificate Disconform to Register—Conditions as to Early Closing not Entered in Register—Form of Certificate — Licensing (Scotland) Act 1903 (3 *Edw. VII, c.* 25), *sec.* 35, *Schedules V and VI.*

In the Register of Applications, kept in terms of section 16 of the Licensing (Scotland) Act 1903, certain applications were entered as "granted," without any reference to any restriction on the hours for business. The certificates bore to be in terms of the register, were in the form of Schedule VI annexed to the Act, and did not contain *in gremio* any limitation as to the hours of closing, but they had appended a foot-note stating that the premises were in "a particular locality" in which the hour of closing was nine p.m.

In an action for reduction of the certificates, *held* that they were not invalid, although (1) they did not contain *in gremio*, as they should have done, the hour of closing, and (2) were disconform to the register in that they contained the note as to early closing.

Opinion that the limitation as to the hour of closing should have been noted in the register.

Public-House—Appeal to Licensing Appeal Court—Appeal against Resolution Defining Particular Locality and Providing for Early Closing therein and against Certificate in Terms thereof — Competency.

Held that an appeal to the Licensing Appeal Court against (*a*) a resolution of the magistrates of a burgh defining a "particular locality" and providing for early closing therein, and (*b*) the restriction of hours in the certificate granted by the magistrates, in terms of their resolution, had been rightly dismissed as incompetent. *Cameron* v. *Magistrates of Glasgow*, February 28, 1903, 5 F. 490, 40 S.L.R. 577, *followed.*

The Licensing (Scotland) Act 1903 (3 Edw. VII, c. 25), sec. 35, provides—"*Power to Vary Form and Hours of Certificates.*—It shall be lawful for a licensing court, where they shall deem it inexpedient to grant to any person a certificate in the form applied for, to grant him a certificate in any other of the forms contained in the Sixth Schedule annexed hereto: Provided always that in any particular locality within any county or district or burgh requiring other hours for opening and closing inns and hotels and public-houses than those specified in such forms of certificate applicable