we undoubtedly have in too generous a way. The result would be that a pursuer who desired to submit the assessment of his claim to a jury would simply proceed at once in the Supreme Court. If his claim were for more than £50 it would be a competent action in the Supreme Court, and if the action was one for personal injury the pursuer would be entitled to lay it before a jury. As matters stand, it is often very convenient that the early procedure should take place in the Sheriff Court, where it can be more cheaply carried through, and it is only when it has been ascertained that there is to be no settlement of the claim that there need be an appeal to this Court in order that a jury may be summoned to assess the damages or ascertain the liability. Accordingly I think it would be very unfortunate if we took the suggestion of Mr Lippe and remitted this case to the Sheriff Court. He says it would be as well tried by the Sheriff. I should be slow to differ from him, but the pursuer has a right to have his claim assessed by a jury. A jury may or may not be more generous than the Sheriff-Substitute would be, but the pursuer presumably thinks they would be, and accordingly he prefers that they should be his tribunal rather than the local judge. We are not entitled to deprive the pursuer of that opinion in this case, and I am very clearly of opinion that we should not accede to the motion for the defender.

LORD GUTHRIE — I am of the same opinion. I do not think the case is ruled either by the case of *Barclay* or by the case of *Macnab*. It seems to me that the particulars your Lordships have mentioned differentiate the case from these.

LORD DUNDAS was on circuit.

The Court ordered issues.

Counsel for the Pursuer—A. Mackenzie Stuart. Agents—Balfour & Manson, S.S.C.

Counsel for the Defender—Lippe. Agents—Macpherson & Mackay, S.S.C.

Friday, February 28.

FIRST DIVISION.

[Lord Skerrington, Ordinary.

M'GEEHEN *v.* KNOX AND OTHERS.

Licensing Laws — Administration — Disqualification—Bias—Officials of Temperance Societies.

Certain members of the Licensing Court and of the Licensing Appeal Court were leading officials of Temperance Societies, the object of which was the total suppression of all licensed premises.

Held that the profession of these opinions did not disqualify these officials from sitting as members of the Licensing Courts.

On 9th August 1911 Robert M'Geehen, spirit merchant, Airdrie, *pursuer*, brought an action against James Knox, Provost of the burgh of Airdrie, and others, being the members of the Licensing Court and the Licensing Appeal Court of the burgh, and others, *defenders*, for reduction of the deliverances of these Courts refusing to renew the pursuer's licence.

The parties averred — "(Cond. 5) The said judgment [*i.e.*, the judgment of the Licensing Court], deliverance, or finding refusing the pursuer's application was null and void. It was incompetent and *ultra vires* of the Licensing Court to hear objections by the Procurator-Fiscal or Chief Constable on the ground that there were too many licences in the district. The only objections competent to these officials under the Licensing Act, and in particular sections 19, 20, and 21, are objections which apply to the particular licence under consideration. The question of the over-licensing of a district is one for the Court itself under section 11 of said Act. The members of the Licensing Court, and in particular the said James Knox, Matthew M'Laren Henderson, William Jack, and Thomas Armour, were disqualified from acting by reason of bias. In considering the said applications the said Licensing Court did not act judicially, but illegally and oppressively. The members of the Court particularly above mentioned belong to associations or lodges the object of which is the total suppression of all licensed premises. In taking part in the proceedings of said Court the said members did not intend to exercise, and did not in fact exercise, an honest judgment. The said James Knox, the chairman of the Court, is the Chief Templar of the 'Airdrie' Lodge of the Independent Order of Good Templars. The said Thomas Armour and William Jack are also leading and active officials of the said lodge. The said Matthew M'Laren Henderson is a member of said lodge, an official of a local 'Order of Rechabites,' and a member of a body called 'The Sons of Temperance.' The following are the 'principles' of the said Independent Order of Good Templars sworn to and to be rightly observed by all members of said Order, viz:—'Total abstinence enforced by a lifelong pledge and the absolute prohibition of the manufacture, importation, and sale of intoxicating drinks as beverages.' The following also are what is termed the Good Templars' Platform, viz:—'1. Total abstinence from all intoxicating liquors as a beverage. 2. No licence in any form under any circumstances for the sale of liquors to be used as a beverage. 3. The *absolute prohibition* (these two latter words are in italics) of the manufacture, importation, and sale of intoxicating liquors for such purposes; prohibition by the will of the people expressed in due form of law with the penalties derived for a crime of such enormity. 4. The creation of a healthy public opinion upon the subject by the active dissemination of truth in all modes known to enlightened philanthropy. 5.

The election of good honest men to administer the laws. 6. Persistence in efforts to save individuals and communities from so dreadful a scourge against all forms of opposition and difficulties until our success is complete and universal.' The pursuer avers that the defenders the said James Knox, Matthew M'Laren Henderson, Thomas Armour, and William Jack, as officials or members of such Order, and having sworn or pledged themselves to maintain and uphold without reservation the foresaid 'principles' and 'platform' above referred to, were incapable of exercising in the public interest or in the interest of the pursuer a fair or full consideration of or honest judicial discretion in the pursuer's application, and accordingly their decision is null and void. The explanations and statements in answer, so far as not coinciding herewith, are denied. (Ans. 5) Admitted that the defender James Knox is the Chief Templar of the Airdrie Lodge of the International Order of Good Templars, that the defender Thomas Armour is an official of the said lodge, that the defender William Jack is a member of the said lodge, and that the defender Matthew M'Laren Henderson is a member of the said lodge, an honorary member of the local Order of Rechabites, and a member of the Sons of Temperance. The document quoted is referred to for its terms. Explained that the said Airdrie Lodge have not at any time attempted the practical furtherance of the general principles of the central body by active interference in political, municipal, or licensing affairs. *Quoad ultra* denied. The said defenders individually, and also the bodies mentioned to which they belong, are interested in the promotion of temperance, but the said defenders were not on that account in any way disqualified from acting as members of the said Court or from considering fairly and judicially the applications submitted to the Court. The decision of the Court in refusing the pursuer's application was arrived at after fair and full consideration of the whole circumstances, and in the proper exercise of the discretion conferred upon the Court in the public interest. (Cond. 6) The said James Knox in September 1905 published a pamphlet entitled 'The Triumph of Enthusiasm, or Social and Temperance Reform in Airdrie.' The said James Knox also wrote a letter, which appeared in the *Glasgow Herald* on or about 6th February 1910, dealing with 'Temperance Progress in Airdrie.' At the time said letter was written and published the said James Knox was, as Provost of Airdrie, a member and chairman of the Licensing Court of the burgh of Airdrie, and also a member of the Licensing Appeal Court for the said burgh. The said letter was written in his official capacity as Provost of the burgh, and is so signed. . . . These writings show that the said James Knox could not and did not exercise an honest judicial discretion in dealing with the applications before the Court, and particularly with the pursuer's application. . . . (Ans. 6) Admitted that the defender James Knox in September 1905 published the pamphlet mentioned, and wrote to the *Glasgow Herald* a letter dealing with temperance progress in Airdrie which appeared in the issue of the said paper for 6th February 1910. Admitted also that at the time of his writing the said letter the defender James Knox was Provost of Airdrie, and as such held the other offices mentioned, and that he added the words 'Provost of Airdrie' below his signature to the said letter. . . . (Cond. 7) On behalf of the pursuer and the other nine licence-holders whose applications were refused, appeals were lodged to the Appeal Court of the burgh. . . . The appeals of the pursuer and other six applicants were dismissed. . . . (Ans. 7) Admitted that the . . . appeals of the pursuer and seven other applicants were dismissed. . . . The decision of the Appeal Court in each case was arrived at after a full and fair consideration of the circumstances. (Cond. 8) The judgments, deliverances, or findings of the Appeal Court in refusing said applications were null and void. The members above referred to as being disqualified from sitting in the Licensing Court sat in the Appeal Court. They were also disqualified from sitting in the Appeal Court for the same reasons. (Ans. 8) Admitted that the said defenders sat as members of the Licensing Appeal Court. *Quoad ultra* denied. Reference is made to Ans. 5."

The pursuer pleaded, *inter alia*—"(1) The pursuer is entitled to decree in terms of the conclusions for reduction and declarator in respect— . . . (*b*) that members of both Courts were disqualified from hearing and determining the application by the pursuer for the renewal of his certificate by reason of bias."

The defenders, *inter alia*, pleaded—"(1) The pursuer's averments being irrelevant and insufficient to support the conclusions of the summons the action should be dismissed."

On 20th March 1912 the Lord Ordinary (SKERRINGTON) sustained the first plea-in-law for the defenders and dismissed the action.

Opinion.—"The pursuer carried on business as a wine and spirit merchant in the burgh of Airdrie for nine years prior to 1911. At the Licensing Court held on 11th April 1911 objections to the renewal of his licence were stated verbally by the Procurator-Fiscal on behalf of the Chief Constable, upon the sole ground that there were too many licences in the district and that pursuer's licence was unnecessary. At this Court a number of applications for renewal were granted, but consideration of some thirty cases, including the pursuer's, was adjourned until 17th April. The pursuer and the other applicants in the same position had been duly cited to attend the first Court, and they were again cited to appear at the second diet. On this occasion twenty-two of the applications for renewal were granted, and ten, including the pursuer's, were refused. At the Licensing Appeal Court held on 8th May

seven appeals, including the pursuer's, were dismissed and two were sustained. The five burgh magistrates, who were also members of the Appeal Court, voted for refusing the pursuer's appeal, while the five county justices voted for sustaining it. The pursuer's appeal was dismissed by the casting vote of the Provost, Mr Knox. The pursuer concludes for reduction of these judgments.

"1. The first ground of reduction (conds. 5 and 10) is that it was incompetent and *ultra vires* of the Licensing Court and of the Appeal Court to hear objections based on the ground that the district was congested. Questions of this kind, it was argued, are for the Court itself in terms of section 11 of the Act of 1903, and cannot competently be raised in the form of objections to particular licences at the instance of neighbours under section 19, or at the instance of a member of the Court or of the procurator-fiscal, chief constable, or superintendent of police under section 20. This view of the statute is an entirely novel one, and it does not seem to have occurred to any of the eminent counsel engaged in the case of *Walsh* v. *Magistrates of Pollokshaws*, 7 F. 1009, *aff.* 1907 S.C. (H.L.) 1. I find no warrant for it either in the language or in the policy of the Act. . . . . .

"4. The last and principal ground of reduction is that Provost Knox and three of his colleagues in the burgh magistracy, who sat and voted both in the Licensing Court and in the Appeal Court, were disqualified by bias. An objection on the ground of bias means in the ordinary case that a licensing magistrate had such an interest in the granting or refusing of a particular licence or group of licences that he ought not to have adjudicated on an application or appeal relating to such licence or licences. The interest which will disqualify need not be direct or pecuniary. Thus a licensing magistrate who was organising secretary of a society which had promoted and financed the opposition to certain applications was interdicted from adjudicating upon these applications, *per* Lord President in *Goodall* v. *Bilsland*, 1909 S.C., pp. 1177-8. In the present case the alleged bias is of a different kind. It is directed against the granting of all licences for the sale of intoxicating liquors, and it is said to arise from and to be evidenced by the opinions held by the burgh magistrates as to the proper policy of the State towards the liquor traffic. These magistrates are alleged to be leading and active officials of temperance societies, the object of which is the total suppression of all licensed premises. The pursuer avers that Mr Knox and his colleagues, having sworn or pledged themselves to maintain and uphold the 'principles' and 'platform' quoted in condescendence 5, were 'incapable of exercising in the public interest or in the interest of the pursuer a fair or full consideration of, or honest judicial discretion in, the pursuer's application.' The 'principles' are—'Total abstinence enforced by a lifelong pledge and the absolute prohibition of the manufacture, importation, and sale of intoxicating drinks as beverages.' The 'platform' is as follows:—'1. Total abstinence from all intoxicating liquors as a beverage. 2. No licence in any form under any circumstances for the sale of liquors to be used as a beverage. 3. The *absolute prohibition* (these two latter words are in italics) of the manufacture, importation, and sale of intoxicating liquors for such purposes; prohibition by the will of the people expressed in due form of law with the penalties derived for a crime of such enormity. 4. The creation of a healthy public opinion upon the subject by the active dissemination of truth in all modes known to enlightened philanthropy. 5. The election of good honest men to administer the laws. 6. Persistence in efforts to save individuals and communities from so dreadful a scourge against all forms of opposition and difficulties until our success is complete and universal.'

"It is not surprising that the pursuer should distrust the discretion of magistrates who advocate legislation absolutely prohibiting and making criminal the trade by which he lives. If the question to be decided had been whether Mr Knox and his colleagues were likely to be influenced by these opinions in the exercise of the discretion entrusted to them by the Licensing Act, I should have had no difficulty in answering it in the affirmative. In considering the number of licences which it is 'meet and convenient' to grant in a certain district, and in deciding whether a particular licensed house is or is not necessary for the public convenience, the standpoint of a temperance reformer like Mr Knox would probably be different from that of a man who approves of our present licensing system, or again from that of a man who disapproves of all legislative restrictions on the liquor traffic. The influence of his opinions upon his practice in the case of a licensing magistrate is frankly admitted by Mr Knox in a pamphlet, upon which the pursuer founds in condescendence 6. It was published in 1905, and on pp. 22 and 24 the writer gives the following account of what he calls 'A famous Victory':—'At the approach of the annual Licensing Court in the month of April 1902 reform began to fill the air. The Town Council at their March monthly meeting had unanimously passed a resolution recommending the magistrates to take every available opportunity to reduce the number of licences, and there was a general expectation that something would be done in that direction. The composition of the bench was favourable to reform, for of the five magistrates who constituted it, three were members of the lodge. The result of the Court was a great triumph for the reformers. There was a nett reduction of sixteen licences, and all the back and side doors of the remainder were ordered to be closed. The reduction was hailed with approval by the general community, and the utmost satisfaction was

felt when on appeal being made to Quarter Sessions the magistrates' decisions were all confirmed. This was the first direct blow the liquor interest in Airdrie had received, but it was not to be the last. During the past four years a total of thirty licences have been cancelled, or more than 25 per cent. of the whole. Needless to say the remaining 75 per cent. are having attention and will be dealt with in due course.'

"The pursuer also founds upon a letter which Mr Knox, when Provost of Airdrie, wrote to a newspaper on the subject of 'Temperance Progress in Airdrie.'

"Unfortunately for the pursuer he must, in order to succeed, do a great deal more than allege and prove that Provost Knox and his colleagues are agitating the abolition of the existing licensing system, and hold opinions which will influence the exercise of their discretion as licensing magistrates. It is not impossible faithfully to administer a law of which one disapproves, and if a man declares in some particular case that he can conscientiously do so, that declaration seems to me to be conclusive in a court of law unless proved to be insincere by evidence of the most positive and convincing character. Different considerations apply where the appeal is made to public opinion and the pursuer may possibly be able to satisfy his fellow electors that Mr Knox and his colleagues are not fit and proper persons to represent them in the town council or to act as licensing magistrates. As a matter of law, however, it is the right and duty of a licensing magistrate to act upon his own opinions, whatsoever these may be, as to what is 'meet and convenient,' provided always that such opinions do not require him to refuse or to grant indiscriminately every application for a licence, and thus to substitute a policy of absolute prohibition or of absolute liberty for the policy of the statute, which requires that each application should be considered on its own merits. Every man is the best interpreter of the exact meaning and effect of his own opinions. It may be difficult for the pursuer to understand how Mr Knox and his colleagues can honestly and intelligently allow even a single shop to remain open for the sale of what they regard as a poison; but they have in effect declared that they can do so by accepting office as magistrates. I find nothing in the writings quoted or referred to by the pursuer which proves or even suggests that this declaration is dishonest and untrue, or which would entitle me to allow a proof for the purpose of showing that Mr Knox and his colleagues are prepared to betray their trust and abuse their position as licensing magistrates by refusing indiscriminately all applications for licences so far as they can safely do so without such misconduct becoming apparent to the public eye. . . .

"I accordingly sustain the first plea-in-law for the defenders and dismiss the action."

The pursuer reclaimed, and argued—*Esto* that the holding of strong opinions on the question of total abstinence was not enough to disqualify the holder of such opinions from acting as a magistrate, it was different where, as here, the defenders had pledged themselves to do all they could to carry these opinions into effect. That created a real likelihood of bias on their part, and that was sufficient to disqualify them—*The King* v. *Sunderland Justices*, [1901] 2 K.B. 357, *per* Smith, M.R., at p. 367; *The Queen* v. *Huggins*, [1895] 1 Q.B. 563, *per* Wills, J., at p. 565. The mere risk of bias was enough—*Cameron* v. *Magistrates of Glasgow*, February 20, 1903, 5 F. 490, *per* Lord Kincairney (Ordinary) at p. 497, 40 S.L.R. 577. [Counsel for the pursuer stated that while he wished the question as to the incompetency of the objections founded on the district being overlicensed kept open, he would not press the point in view of their Lordships' decision in the recent case of *Goodall* v. *M'Innes Shaw*, 1913, *supra*, p. 438.]

Argued for defenders—The fact that the magistrates were temperance reformers was not enough to disqualify them, for there was no real danger of bias. What they had pledged themselves to do was to obtain legislative sanction for their reforms, not to carry them out at their own hand. The cases in which magistrates had been held disqualified were either (*a*) where they had a pecuniary interest; or (*b*) where they had acted from biassed motives and not *bona fide*; or (*c*) where they had sat as judges in their own cause. The present case did not fall within any of these categories. The mere possibility of bias did not *ipso facto* disqualify; there must be "real" bias—*The Queen* v. *Rand*, (1866) L.R., 1 Q.B. 230; *The Queen* v. *Meyer*, (1875) L.R., 1 Q.B.D. 173; *Leeson* v. *General Council of Medical Education and Registration*, (1889) L.R., 43 C.D. 366; *Allinson* v. *General Council of Medical Education and Registration*, [1894] 1 Q.B. 750; *Goodall* v. *Bilsland*, 1909 S.C. 1152, *per* the Lord President at p. 1177, 46 S.L.R. 555. The case of *The King* v. *Sunderland Justices* (*cit.*) was distinguishable, for it involved the element of pecuniary interest. *Esto* that certain of the magistrates were in favour of total prohibition, they had undertaken on oath to administer the existing law impartially, as indeed they were bound to do—*Sharp* v. *Wakefield*, [1891] A.C. 173, *per* Halsbury, L.C., at p. 181. And that being so, the fact that they thought that no licences at all should be granted was not sufficient to disqualify them from acting as magistrates.

At advising—

LORD PRESIDENT—This is an action of reduction at the instance of a wine and spirit merchant whose licence was refused at the Licensing Court held in April 1911 in the burgh of Airdrie. Various grounds of reduction have been stated, which are dealt with in the Lord Ordinary's note, but the pursuer's counsel very properly admitted that the point argued in *Goodall's*

case, decided by us last week, could not be reopened before this Court, although, technically, he insisted on it in order to keep the point open for the House of Lords if an appeal should be taken and should prove successful in *Goodall's* case. Accordingly the argument before your Lordships was really limited to one, viz., that several members of the Licensing Court, and in particular the chairman thereof, were members of certain temperance societies. The chairman was admittedly a leading member of the temperance society called the Independent Order of Good Templars, and it is said that in order to obtain admission to that society you have to pledge yourself to total abstinence and also asseverate that you will, to the best of your endeavours, promote what is called the "platform" of the society—the "platform," I suppose, being the determinate policy of the society. It comprehends among other things the following: That the person himself is to abstain from all intoxicating liquors as a beverage; that no licence in any form is to be given for the sale of liquors to be used as a beverage; and that there is to be an *absolute prohibition* of the manufacture, importation, and sale of intoxicating liquors—"prohibition by the will of the people expressed in due form of law, with the penalties derived for a crime of such enormity."

Now it is said that anybody who has taken this pledge and professed adhesion to this platform is necessarily so biassed as to make it inconsistent with the proper administration of the law that he should sit upon the Licensing Court. The Lord Ordinary has dealt very carefully with this matter, and, in the main, I entirely agree with him, and I only add a few words because of the general importance of the case. In the first place, I should like to associate myself with a remark of Mr Justice Wright in the case of *The Queen* v. *Huggins* ([1895] 1 Q.B. 563). That case dealt with an objection to a conviction under the Merchant Shipping Act, which imposes a penalty on an unqualified pilot who assumes or continues in charge of a ship after a qualified pilot has offered to take her in charge, and in that case a qualified pilot belonging to the pilotage district within which the offence was committed had sat upon the bench. The conviction was quashed, but in the course of his opinion Mr Justice Wright says this—"I will only add this. Some of the cases in which the Court has been asked to interfere are cases of decisions by administrative bodies, such as the London County Council and others. They are very different from cases of decisions by judicial tribunals. In my judgment the Court ought to be slow to interfere in the former, but in the latter ought to interfere on much slighter grounds." In that particular case, as necessarily follows from what I have already said, the convicting justices were sitting as a judicial tribunal. Now the present case is rather a case of an administrative body, which has, however, to sit—if I may so phrase it—in a judicial spirit. That is clear from the judgment of the House of Lords in the well-known case of *Sharp* v. *Wakefield* ([1891] A.C. 173). But at the same time I think that the distinction taken by Mr Justice Wright is a very wholesome one.

It would, I think, be a dangerous proceeding if one were to attempt *ab ante*, by words of general definition, to say precisely in what cases the Court would, and in what cases it would not, interfere, and therefore anything I am now going to say must not be taken as definitive or exhaustive, but rather as illustrative, of the cases in which the Court may or may not interfere. Speaking in that spirit, and with that caution, I may say that I can scarcely imagine a case in which an administrative body would be interfered with by the Court where the objection to the person acting as a member of that body was based on an opinion he might happen to hold, where that opinion had not been carried into practical operation by any active proceeding. We have already had a case in the courts of this country in which that matter was considered—viz., the case I referred to in my judgment in *Goodall* v. *Bilsland* (1909 S.C. 1152, at p. 1177). In that case I said that Bailie Battersby had been rightly interdicted from sitting on the Licensing Court. But that was a case where the matter had gone far beyond opinion. That gentleman had acted as the organising secretary of an association which not only professed opinions but practically got up cases and managed them. That was obviously a case of disqualification, because, to repeat what I said in *Goodall's* case, it is contrary to the idea of elementary justice that a man should get up cases and then proceed to adjudicate upon these cases upon the bench.

The English cases which were quoted to us related mainly to decisions by judicial tribunals, and there I take the same view as was expressed by Mr Justice Wright and Mr Justice Wills in the case of *Huggins*, namely, that such decisions must be regarded with greater strictness, and that, as Mr Justice Wills said, "it is far safer to enlarge the area of this class of objections to the qualification of justices than to restrict it." But when you are dealing with decisions by administrative bodies, there is a difference, and I am very much moved by this, that if we were to interfere upon the ground that the members of the administrative body in question held certain opinions, or belonged to a certain society, we should be practically placing upon them a disqualification which the Act of Parliament has not expressed. That the Legislature understands how to impose a disqualification is clear from the disqualification which it has placed upon persons having an interest in the liquor trade. It is a question of policy with which we have nothing to do, but with which Parliament had to do—whether it was fair to impose that disqualification and not to insert another with regard to persons who have,

so to speak, committed themselves to a certain set of opinions. But it is not there, and I do not think it is for the Court to read into the Act of Parliament a clause which it does not contain.

Moreover, it must be kept in view that in this so-called "platform" there is much that obviously cannot be effected except by way of legislation. But the point I lay stress upon is this—that there is no averment here that this gentleman was in any way affected in his conduct as chairman of the Court by the general opinions which were professed by the society of which he was a member. It is for him, in his own conscience, to know how far those general opinions can be entertained consistently with the performance of the duty which he has undertaken on oath to perform—namely, to conduct with fairness and impartiality the proceedings of the tribunal of which he is chairman. While that is so, I cannot see that anything is averred which, if proved, would compel us to hold that this gentleman had neglected his duty, and had decided the question before him, not upon the grounds upon which he is bound to decide, according to the Act of Parliament under which he sits, but according to certain preconceived opinions for which in other places he has professed an admiration.

Upon the whole matter, therefore, I am of opinion that the Lord Ordinary's interlocutor is right and should be affirmed.

LORD KINNEAR—I agree with your Lordship and with the Lord Ordinary. I think it is impossible for this Court to lay down as law that any man who entertains strong opinions that the present licensing system should no longer exist, or that the sale of liquor should be absolutely prohibited, is therefore incapacitated for administering the system honestly in particular cases while it still subsists.

I also agree with your Lordship and the Lord Ordinary that whether he can conduct the administration of the statute fairly and impartially in particular cases, or whether he may not be exposed to the risk of having his judgment affected by his own strong opinions, is a question for the magistrate himself—and it may be a very delicate question—but I think there is no authority which would justify the Court in laying it down as a matter of law that every person who entertains such opinions is thereby disqualified from performing his duty as a magistrate.

LORD MACKENZIE—I am of the same opinion. The averment of the pursuer in cond. 5 is that the defenders were incapable of exercising an honest judicial discretion in discharging their duty as members of the Licensing Court, and his reason for making that averment is also contained in the same article of the condescendence, namely, that the defenders are members of a body whose principles are total abstinence, no licences, and absolute prohibition. But when the averment is examined, it will be found that it really comes to no more than this, that the defenders have certain principles and that they have expressed them. The way in which it is proposed to carry into execution these principles is "by the will of the people expressed in due form of law with the penalties derived for a crime of such enormity." It is not difficult to see what was meant to be expressed by that, although it is not very clearly worded, namely, that they intend to do all they can to bring about a change in the law. If, instead of that, they had announced that their purpose was to carry out their wishes by voting against every licence that came up in the Licensing Court, then, of course, the matter would have been entirely different, and the case for the pursuer would have been plain. There is no averment that the defenders voted against every licence, and when one considers what was done in the Licensing Court, the number of licences which were granted, and the number which were refused—twenty-four were granted ultimately, I think, and eight refused—it will be seen that there was a certain discrimination, and that the defenders had not in all cases voted against the licences.

The defenders have undertaken conscientiously the administration of the existing law, and they must interpret it in accordance with the principles which were laid down in the case of *Sharpe* v. *Wakefield*, namely, that they will fairly decide the questions submitted to them, and will not by evasion attempt to repeal the law by which public-houses exist. They have taken an oath to discharge their duty in accordance with these principles, and it is between them and their conscience whether they faithfully discharge that duty or not. But all that is necessary for the decision of the present case is to say that the mere fact that the defenders disapprove of the existing law, and have expressed their disapproval in the terms set out on record, does not necessarily mean that they cannot faithfully administer the law as it exists. It is for the Legislature, as your Lordship has already pointed out, to decide whether a section similar to section 9 in the Statute of 1903 should or should not be introduced in future legislation in order to debar a person with strong opinions upon the question from endeavouring to discharge that administrative duty.

LORD JOHNSTON did not hear the case.

The Court adhered.

Counsel for Pursuer (Reclaimer)—Horne, K.C.—MacRobert. Agents—Bruce & Black, W.S.

Counsel for Defenders (Respondents)—Sandeman, K.C.—D. P. Fleming. Agents—Drummond & Reid, W.S.