name of the person supplied that should be done.

On the question upon the merits I confess I have not much difficulty. We have the choice of three alternatives. The case is either a breach of certificate, or hawking, or no offence. Given these three choices I have no hesitation in saying that it is a breach of the certificate. It is certainly not hawking, and it would be an unfortunate thing if it were no offence.

Lord Lee—I agree that the only point of difficulty or importance is that raised upon the relevancy. The only essential thing in a charge of breach of certificate is that it should be sufficiently stated that liquor has been given out on a Sunday in breach of the certificate. But I agree that notice must be given, if it can be given, of the persons to whom the liquor has been given out. But the rule as to notice is a rule not essential to relevancy. It is a rule of procedure founded upon the administration of justice fairly to the accused party, and accordingly the only effect of not giving notice is to put it upon the prosecutor to say that the name is not known to him, and the only effect of that is that the prosecutor is not entitled at the trial to proceed to prove that the liquor was sold or given out to some particular individual. In the present case the name was not known to the prosecutor. The trafficking was done secretly, and was observed from a distance by the police. In these circumstances I do not think that the accused was deprived of any information which would have been of advantage to him by the omission of the words "to some person to the prosecutor unknown." I therefore concur in the judgment proposed by your Lordship.

The Court found that the complaint was relevant, and that the accused was legally convicted.

Counsel for the Procurator-Fiscal — James Clark. Agent—Party.

Counsel for the Appellant—Salvesen. Agents—Sturrock & Graham, W.S.

Wednesday, November 21.

(Before the Lord Justice-Clerk, Lord Rutherfurd Clark, and Lord Lee.)

DUNCAN *v.* LANG.

Justiciary Cases—Public-House—Contravention of Hotel Certificate—Alternative Complaint and General Conviction—Public-Houses Acts Amendment (Scotland) Act 1862 (25 *and* 26 *Vict. cap.* 35).

George Duncan, hotel-keeper, Crown Hotel, Alloa, was charged in the Police Court at Alloa with a contravention of the terms of his certificate, which was in form of Schedule A of the Public-Houses Acts Amendment (Scotland) Act 1862 (25 and 26 Vict. cap. 35), in so far as he "did keep open house or sell or give out" liquors after ten o'clock at night, and was convicted by the magistrate "of the offence charged." *Held* (following the case of *Murray* v. *M'Dougall*, February 7, 1883, 5 Coup. 215) that the charge was alternative, and conviction *suspended.*

Counsel for the Appellant—R. L. Orr. Agents—Irons, Roberts, & Company, S.S.C.

Thursday, November 22.

(Before the Lord Justice-Clerk, Lord Rutherfurd Clark, and Lord Lee.)

KIDGER *v.* M'PHEE.

Justiciary Cases — Police — Affixing Bills to Building without Authority—Glasgow Police Act 1866 (29 *and* 30 *Vict. cap.* 273), *secs.* 149, 131, *and* 132—*Exclusion of Review except by Circuit Court—Suspension—Competency.*

The Glasgow Police Act 1866, by sec. 149, imposes a penalty on "every person who is guilty of any of the following disorderly acts or omissions . . . in any street, . . . namely," *inter alia* (sub-section 28), "who affixes, without the consent of the proprietor and occupier, to any building any bill or notice."

The occupier of a building was charged under this section with affixing, "without the consent of the proprietor," certain bills to the wall of the building occupied by him, and was convicted. In a suspension the Court *held* that the section did not apply to the case of the occupier or owner of a building placing bills upon it, but only to third parties, and that the complaint and whole proceedings were outwith the statute and illegal, and *quashed* the conviction.

The procedure and conviction being *ex facie* illegal, an objection to the competency of the suspension, founded on sections 131 and 132 of the Act, which provide for the exclusion of review except by the next Circuit Court, *repelled.*

The Glasgow Police Act 1866 (29 and 30 Vict. c. 273), sec. 149, enacts that "Every person who is guilty of any of the following disorderly acts or omissions on any turnpike road, or in any public or private street, or court, or on the outside of any building adjoining the same, or in any common stair, shall, in respect thereof, be liable to a penalty not exceeding the respective amounts, or to imprisonment for a period not exceeding the respective periods hereinafter mentioned" . . . (Sub-section 28) "Every person who . . . affixes, or causes to be affixed, . . . without the consent of the proprietor and occupier, to any other building, or to any wall, fence, or hoarding, any bill or other notice . . . shall, in respect thereof, be liable to a penalty not exceeding forty shillings, or in default of payment to imprisonment for fourteen days."

Section 131 of the said Act provides, *inter alia*, . . . "No proceeding or trial before the magistrate, and no order or sentence of the magistrate thereon, or the extract thereof, shall be . . . subject to suspension, or to any other form of review, unless in manner and on some one or more of the grounds hereinafter mentioned." Section 132—"Any person who feels aggrieved by any order or sentence of the magistrate may within fourteen days after its date appeal to the Court of Justiciary at the next Circuit Court to be held at Glasgow, in the manner and under the rules, limitations, and conditions contained in the Act for Abolishing Heritable Jurisdictions (20 Geo. II. cap. 43), on the ground of corruption, malice, or oppression on the part of the magistrate, wilful deviation in point of form

from the statutory enactments, incompetency or defect of jurisdiction, but on no other ground."

John Kidger, designing himself as a "fancy letter writer," was charged before the Police Court, Glasgow, with a contravention of the Glasgow Police Act 1866, sec. 149, sub-sec. 28, in so far as he did on the 19th day of October 1888 affix, or cause to be affixed, to the wall of a building or part of a building occupied by him in West Nile Street aforesaid, three or thereby bills or other notices without the consent of M'Dougall & Hamilton, house factors, No. 109 West George Street, Glasgow, proprietors of said building or part of a building.

Kidger objected to the relevancy of the complaint on the ground that the sub-section libelled was not directed against either proprietor or occupier, which latter he was, but against third parties.

The Magistrate repelled the objection, and thereafter, on the evidence adduced, found "the charge of having caused to be affixed the bills as libelled proven, convicted Kidger of the offence libelled," and fined him ten shillings and sixpence, with the alternative of seven days' imprisonment.

Kidger presented a bill of suspension, in which he averred that the complaint was irrelevant on the ground above specified, and pleaded —"(1) The complaint on which conviction of the complainer proceeded is irrelevant, in respect (1) that the sub-section or clause founded on does not apply to him; (2) that he is tenant and occupier of the subjects referred to; (3) that the bills or notices referred to are notices relating to the complainer's business or samples of the work done by him therein; and (4) that no offence whatever, either under statute or at common law, is disclosed in the complaint."

The respondent, the Procurator-Fiscal, objected to the competency of the suspension, on the ground that review by the High Court of Justiciary was excluded by sections 131 and 132 of the Glasgow Police Act 1866.

He argued—The objection here was to relevancy. It was so stated by the suspender. Review, if competent at all, could only be by the Circuit Court. The case was not like those of which *Marr* v. *M'Arthur*, March 28, 1878, 5 R. (J.C.) 38, 4 Coup. 53, was a type, where the proceedings of the Inferior Court were *funditus* null, the complaint and proceedings being plainly outwith the statutory authority under which it acted. It was in such cases only that the Court would interfere—*Walker* v. *Lang*, November 25, 1867, 5 Irv. 506, and 40 Scot. Jur. 89; *Mackenzie* v. *Lang*, November 9, 1874, 2 R. (J.C.) 1; *De Belmont* v. *Lang*, June 28, 1871, 2 Coup. 95, and 43 Scot. Jur. 572; *O'Brien* v. *M'Phee*, October 30, 1880, 8 R. (J.C.) 8. On the merits, the sub-section founded on made it a condition of lease that the consent of both the proprietor and occupier should be obtained to affix bills to a building. The charge relevantly stated that the consent of one of these, the proprietor, had not been obtained. It was beside the question to say that the person here charged was the occupier; the statute made no exception in his favour. If this were not the meaning of the statute the clause would have run, "without the consent of the owner or occupier." But assuming that the clause applied only to third persons not being occupiers or proprietors, the question who was an occupier was always a question of circumstances, and it was perfectly open to read this complaint as setting forth that the suspender was an occupier for a limited purpose, which gave him no right to affix bills to the premises in the manner alleged. The letting of premises as a shop would not justify their use as a place for sticking bills. In such circumstances the use of the premises being beyond the implied authority of the occupier, was struck at by the Act unless the consent of the proprietor had been obtained.

The suspender argued—(1) No offence was charged. The terms of the complaint excluded any offence, for in charging an offence said to have been committed without the consent of the proprietor and occupier it at the same time stated that the accused himself was the occupier. (2) The statute applied only to third persons not being either owner or occupier. The words "every person" in the statute must receive a reasonable interpretation *secundum subjectam materiam*—Maxwell on the Interpretation of Statutes, p. 75. In the introductory clause of the section the various acts detailed in the sub-sections were spoken of as "disorderly acts," which indicated that the object of the provision was to prevent strangers from placing bills upon buildings without full authority. If the provision applied to third persons only, then there was no offence libelled, and the proceedings were *funditus* null. In these circumstances it was within the powers and was the practice of the High Court to give redress—*Marr* v. *M'Arthur*, *supra*; *Wemyss* v. *Black*, March 19, 1881, 8 R. (J.C.) 25; *Stirling* v. *Murray*, June 13, 1883, 10 R. (J.C.) 59; *Bell* v. *M'Phee*, July 18, 1883, 10 R. (J.C.) 78; *Craig* v. *M'Phee*, March 14, 1883, 10 R. (J.C.) 51; *Collins* v. *Lang*, November 3, 1887, 15 R. (J.C.) 7, 1 White, 482.

At advising—

Lord Justice-Clerk—The Act of Parliament under which this prosecution was raised is an Act of Parliament for the purpose of the "better regulation and government" of the city of Glasgow in the matter of police, and a very large number of offences are contained in that Act. Under sec. 149 the Act prescribes—[*His Lordship here read the clause and sub-section quoted above*]. Now, I think it would be inconsistent with the construction of the Act to read any of the detailed offences in the sub-sections in section 149 except in relation to the opening part of the section which describes the intention of the section. The whole of those things which are described in the sub-sections are plainly acts of a public nature, interfering with public rights, public amenity, and public decency. If the sub-section and that part of it which refers to the consent of the proprietor and occupier can be read consistently with its being a question between the police and a person who has no right at all to interfere with the building in any way, I think that is the natural and common sense reading of the clause, and it would be a strained reading of the clause to hold that it applied to the settling by the magistrate of questions which might arise between proprietor and tenant—questions which are amply provided for by the general law of the land, and

which have nothing whatever to do with questions of police. I take it that the words "proprietor and occupier" are inserted because a third person who interferes with any building by affixing a notice to it is doing a disorderly act if he does it without the consent of both these persons. It is disorderly towards the proprietor, because he has a right to prevent his property from being disfigured, and it is disorderly towards the occupier because it is out of the question, even if the proprietor allowed it, that anyone should post up bills upon it without the occupier's consent. I am accordingly of opinion that this clause is not one under which an occupier can be charged for putting up a notice on his premises without the consent of the proprietor.

The only remaining question is, whether this suspension is incompetent in respect of the restrictive provision as regards appeal or review contained in the Glasgow Police Act? That turns upon the question whether the complaint is in its essence a bad complaint, rendering all the proceedings following upon it lawless proceedings. It is quite clear that if all that had been wrong was some matter of detail, such as a defect in specification, then the clause would have applied, and the only course open would have been an appeal to the Circuit Court of Justiciary. But this Court has always held that it is entitled to interfere to prevent the carrying out of a judgment which follows upon proceedings which are in themselves lawless proceedings. As I consider that what is set forth in this complaint is not an offence at all under the Act of Parliament, and that therefore the complaint sets forth nothing which in law could have justified a conviction even if set forth with perfect accuracy, I am of opinion that we can interfere with this conviction and that it ought to be quashed. In coming to this conclusion I go upon the same grounds as were expressed by Lord Young in *Collins* v. *Lang*—"Now, it has been frequently decided in this Court, without referring to Acts of Parliament or any provisions that may be referred to as to the method of review, that if the procedure and conviction upon a complaint are *ex facie* illegal, remedy may be given by way of suspension." We are not proceeding to review this judgment, but to give redress against proceedings which from their commencement were entirely illegal.

Lord Rutherfurd Clark and Lord Lee concurred.

The Court quashed the conviction.

Counsel for Suspender—Rhind. Agent—W. Officer, S.S.C.

Counsel for Respondent—D.-F. Mackintosh—Ure. Agents—Campbell & Smith, S.S.C.

COURT OF SESSION.

Thursday, November 15.

FIRST DIVISION.

[Lord Lee, Ordinary.

WHYTE *v.* MURRAY.

Bankruptcy—Trustee—Discharge—Radical Right of Bankrupt in Estate after Discharge without Composition—Title to Sue.

Where a bankrupt has been discharged without being re-invested in his estate, and the trustee under his sequestration has also been discharged, the radical right of the bankrupt in his estate revives, so as to give him a title to sue an action for recovery of funds belonging to his estate.

Succession — Assignation — Marriage-Contract—Power of Division, Exercise of.

By a marriage-contract the wife conveyed, *inter alia*, to herself in liferent, and failing her to her husband in liferent, exclusive of the *jus mariti*, and in any case to the children of the marriage in fee, certain bank shares, subject to a power in the husband to divide the provisions made for them among the children. There were three daughters and one son. By his settlement the husband conveyed his whole estate to trustees to pay certain special legacies to the daughters, and "the whole residue and remainder of my estate, heritable and moveable, for behoof of my son," declaring that he had made this division in virtue of the powers in the marriage-contract. The husband predeceased the wife, who thereafter executed a transfer of the bank shares to herself in liferent, and the children equally among them in fee. The son conveyed to a creditor his whole interest in the residue of his father's estate. In a question between the son and an assignee of the creditor—*held* that the latter had no right to the bank shares, in respect that they had never formed part of the residue of the father's estate.

This action was raised by George Whyte against the Commercial Bank of Scotland (Limited) and David Hill Murray. The pursuer, *inter alia*, sought for decree of declarator that he had a right to one-fourth part of 12½ shares of Commercial Bank stock, and one-half share of the stock of the same bank, and that the defender Murray had no interest in the same.

By contract of marriage entered into between Gerge Whyte senior, the pursuer's father, and Mrs Isabella Mess or Whyte, the parents of the pursuer, the latter, in consideration of certain provisions granted by the former, disponed and made over, *inter alia*, certain shares of Commercial Bank stock, including those now sued for, "to herself in liferent, but exclusive of the *jus mariti*, and failing her by death to the said George Whyte in liferent, and in either case to the children of the marriage, equally among them if more than one, in fee, subject to the power of division and other conditions" mentioned in the contract. The