of the Act of 48 Geo. III. makes no reference to internal communication or anything of the kind as being necessary; on the contrary, it is quite obvious that the sort of premises there in view are premises occupied in connection with the dwelling-house, but not by any means necessarily communicating with the dwelling-house in any way. And just as little is there any such idea to be found in the schedule of the more recent statute. I therefore think this assessment is well laid on.

Lord Mure concurred.

Lord Shand—It appears to me upon the statement of the case that we have here a dwelling-house and pertinents such as are described in rule second of the Act of 48 Geo. III., in the occupation of the committee of the hunt, upon whom the assessment has been laid, and as these are to be regarded, as I think, as one subject, and are above the value which renders the subjects liable to assessment, I have no doubt the assessment has been well laid on.

Lord Adam concurred.

The Court affirmed the determination of the Commissioners.

Counsel for the Appellant—Chisholm. Agents—Wallace & Begg, W.S.

Counsel for the Commissioners — Young. Agent—Solicitor of Inland Revenue.

Tuesday, November 27.

FIRST DIVISION.

[Exchequer Cause.

HENDERSON *v.* THE LORD ADVOCATE.

*Revenue — Public-House — Licence-Duty—Early Closing—Deduction—*25 *and* 26 *Vict. cap.* 35 —37 *and* 38 *Vict. cap.* 94, *sec.* 7—50 *and* 51 *Vict. cap.* 38, *sec.* 4.

By section 7 of the Act 37 and 38 Vict. cap. 94, made applicable to Scotland by a later Act, the holder of an early closing licence is obliged to close his premises one hour earlier than the ordinary hour provided by the Act, and is entitled to a deduction of one-seventh from the licence-duty which he would otherwise have to pay.

By the form of certificate contained in Schedule A of the Act 25 and 26 Vict. cap. 35, the hour of closing for public-houses in Scotland was fixed at eleven at night. By section 4 of the Act 50 and 51 Vict. cap. 38 (which does not apply to places of over 50,000 inhabitants), the form of certificate was altered, and it was prohibited to sell or give out liquor "after such hour at night of any day, not earlier than ten, and not later than eleven, as the licensing authority may direct."

Acting under the power so conferred upon them, the justices of a county passed a resolution closing all public-houses in the county at ten p.m. In an action by a publican in the county to recover from the Commissioners of Inland Revenue one-seventh of the licence-duty, as calculated on their rental—*held* that he was not entitled to recover the amount claimed, not being the holder of an early closing licence in the sense of 37 and 38 Vict. cap. 49, sec. 7.

This action was raised by William Henderson, wine and spirit merchant at Straiton, in the county of Midlothian, against the Lord Advocate, as representing the Commissioners of Inland Revenue. The sum sued for was £4, 5s. 9d., being part of the sum paid by the pursuer to the defenders as licence-duty, and to which extent he maintained he had been overcharged by them.

Section 49 of 35 and 36 Vict. cap. 94, dealing with Sunday trading, enacts that "where on the occasion of an application for a new licence or transfer or renewal of a licence which authorises the sale of any intoxicating liquor for consumption on the premises, the applicant at the time of his application applies to the licensing justices to insert in his licence a condition that he shall keep the premises in respect of which such licence is or is to be granted closed during the whole of Sunday, the justices shall insert the said condition in such licence. The holder of a licence in which such condition is inserted (in this Act referred to as a six-day licence) shall keep his premises closed during the whole of Sunday, and the provisions of this Act with respect to the closing of licensed premises during certain hours on Sunday shall apply to the premises in respect of which a six-day licence is granted as if the whole of Sunday were mentioned in those provisions instead of certain hours only. The holder of a six-day licence may obtain from the Commissioners of Inland Revenue any licence granted by such Commissioners which he is entitled to obtain in pursuance of such six-day licence, upon payment of six-seventh parts of the duty which would otherwise be payable by him for a similar licence not limited to six days; and if he sell any intoxicating liquor on Sunday, he shall be deemed to be selling intoxicating liquor without a licence."

By section 7 of 37 and 38 Vict. cap. 49, it is enacted that "where on the occasion of any application for a new licence, or the removal or renewal of a licence which authorises the sale of any intoxicating liquor for consumption on the premises, the applicant applies to the licensing justices to insert in his licence a condition that he shall close the premises, in respect of which such licence is or is to be granted, one hour earlier at night than that at which such premises would otherwise have to be closed, the justices shall insert the said condition in such license. The holder of an early closing licence in which such condition is inserted (in this Act referred to as an early closing licence) shall close his premises at night one hour earlier than the ordinary hour at which such premises would be closed under the provisions of this Act." It is further enacted "that the holder of an early closing licence may obtain from the Commissioners of Inland Revenue any licence granted by such Commissioners which he is entitled to obtain in pursuance of such early closing licence, upon payment of a sum representing six-sevenths of the duty which would otherwise be payable by him for a similar licence not limited

to such early closing as aforesaid."

Section 8 further enacts that "a person who takes out a licence containing conditions rendering such licence a six-day licence, as well as an early closing licence, shall be entitled to a remission of two-sevenths of the duty."

By the 44th section of the Inland Revenue Act 1880 (43 and 44 Vict. cap. 20) the provisions contained in the sections of the Acts above quoted were made applicable to Scotland.

After the passing of the Inland Revenue Act 1880, the Commissioners of Inland Revenue recognised the right of Scottish publicans to a remission of one-seventh of the total licence-duty, as the holders of six-day licences, in virtue of the fact that they could not open their premises on Sunday.

In Scotland the hour of opening and closing were fixed by the form of certificate contained in Schedule B of the Public-Houses Acts Amendment Act 1862 (25 and 26 Vict. cap. 35), which provided that a publican should not "keep open house, or permit or suffer any drinking in any part of the premises belonging thereto, or sell or give out therefrom any liquors, before eight of the clock in the morning, or after eleven of the clock at night of any day," or "open his house for the sale of any liquors, or permit or suffer any drinking therein, or on the premises thereto belonging, or sell or give out the same, or any other goods or commodities on Sunday."

Section 2 of the same Act contained a *proviso* that "in any particular locality within any county or district or burgh, requiring other hours for opening or closing inns and hotels and public-houses than those specified in the forms of certificates in said schedule applicable thereto," it shall be lawful for the justices or magistrates respectively "to insert in such certificates such other hours, not being earlier than six of the clock or later than eight of the clock in the morning for opening, or earlier than nine of the clock or later than eleven of the clock in the evening for closing the same, as they shall think fit."

By the 4th section of the Act 50 and 51 Vict. cap. 38 (which does not apply to any town, burgh, or populous place containing 50,000 inhabitants), the form of certificate was materially altered, for it enacts—"(*b*) The form of certificate for public-houses set forth in schedule A of the Public-Houses (Scotland) Acts Amendment Act 1862, shall be amended as follows—'The words "and do not keep open house, or permit or suffer any drinking in any part of the premises belonging thereto, or sell or give out therefrom any liquors before eight of the clock in the morning or after eleven o'clock at night of any day," shall be omitted from the said certificate, and there shall be inserted in place thereof these words, "and do not keep open house, or permit or suffer any drinking in any part of the premises belonging thereto, or sell or give out therefrom any liquors before eight of the clock in the morning, or after such hour at night of any day not earlier than ten, and not later than eleven, as the licensing authority may direct."'

Acting under the powers thus conferred upon them, the Justices of the county of Midlothian resolved that all licensed houses within the county should be closed at ten o'clock at night. In virtue, however, of the special powers reserved to them by section 7 of this last mentioned Act, they gave a special exemption to the keeper of the Granton Hotel to keep open house till eleven o'clock at night.

In consequence of the resolution of the Justices above mentioned the following special endorsement was made upon the pursuer's correct certificate—"The licensing authority, at a meeting held on 14th March 1888, resolved that from and after Whitsunday next, and until the licensing authority shall otherwise determine, all licensed houses within the county of Midlothian shall be closed at ten o'clock at night."

The pursuer claimed a deduction of two-sevenths from the total licence-duty as calculated on his rental in terms of secs. 7 and 8 of 37 and 38 Vict. c. 49. The Commissioners granted the established deduction of one-seventh for a six-day licence, but refused the deduction of another seventh claimed by the pursuer as the holder of an early closing licence.

The pursuer pleaded—"(1) The pursuer is, in law and within the meaning of the Inland Revenue Act 1880, the holder of an early closing licence for the current year, and he is therefore entitled to a deduction of one-seventh from the licence-duty imposed by the said statute."

The Lord Ordinary (FRASER) on 27th October 1888 assoilzied the defender from the conclusions of the summons.

"*Opinion.*—The sum sued for in this action is only £4, 5s. 9d., but it is stated on the record that the action is brought by agreement in order to settle an important point on the construction of the Revenue Laws as to publicans' licences. It is necessary, in disposing of the questions raised, to consider not merely the statutes relative to public-houses applicable exclusively to Scotland, but also certain Inland Revenue Acts which are applicable to the United Kingdom:

"The first statute (1872) requiring attention is the Act 35 and 36 Vict. cap. 94, which by the second section is declared not to extend to Scotland, but which in part by a subsequent enactment was so extended. The 49th section of this Act, dealing with Sunday trading, enacts as follows—'Where on the occasion of an application for a new licence or transfer, or renewal of a licence which authorises the sale of any intoxicating liquor for consumption on the premises, the applicant at the time of his application applies to the licensing justices to insert in his licence a condition that he shall keep the premises in respect of which such licence is or is to be granted closed during the whole of Sunday, the justices shall insert the said condition in such licence. The holder of a licence in which such condition is inserted (in this Act referred to as a six-day licence) shall keep his premises closed during the whole of Sunday, and the provisions of this Act with respect to the closing of licensed premises during certain hours on Sunday shall apply to the premises in respect of which a six-day licence is granted as if the whole of Sunday were mentioned in those provisions instead of certain hours only. The holder of a six-day licence may obtain from the Commissioners of Inland Revenue any licence granted by such Commissioners which he is entitled to obtain in pursuance of such six-day licence, upon payment of six-seventh parts of the duty which would otherwise be payable by him for

similar licence not limited to six days; and if he sell any intoxicating liquor on Sunday he shall be deemed to be selling intoxicating liquor without a licence.'

"The next statute (1874) is 37 and 38 Vict. cap. 49, which the defender says is not exclusively applicable to England, and there is no express declaration in the statute, as there is in the Act of 1872, that it is not to extend to Scotland. It is of no consequence to determine the point, because by a subsequent enactment the two sections bearing upon the present question have been made applicable to the United Kingdom. The seventh section of this statute enacts that when an application is made for a licence, and the applicant applies to the justices to insert in the licence a condition 'that he shall close the premises in respect of which such licence is or is to be granted one hour earlier at night than that at which such premises would otherwise have to be closed, the justices shall insert the said condition in such licence.' And then it is enacted that 'the holder of an early closing licence in which such condition is inserted (in this Act referred to as an early closing licence) shall close his premises at night one hour earlier than the ordinary hour at which such premises would be closed under the provisions of this Act.' It is next enacted that the holder of such early closing licence shall obtain from the Commissioners of Inland Revenue the licence granted by such Commissioners upon payment of six-sevenths of the duty which would otherwise be payable by him for a licence not limited to such early closing. And the 8th section enacts that 'a person who takes out a licence containing conditions rendering such licence a six-day licence as well as an early closing licence, shall be entitled to a remission of two-sevenths of the duty,' that is to say, an English publican who takes a licence with the condition that he shall not open his house on Sunday, and who agrees to shut it an hour earlier on other days of the week, gets a deduction of two-sevenths of the duty.

"These two statutes apparently were held to be applicable only to England, because by the Inland Revenue Act of 1880 (43 and 44 Vict. cap. 20, sec 44), it is enacted 'that the provisions regarding six-day licences and early closing licences, contained in section 49 of the Licensing Act 1872, and sections 7 and 8 of the Licensing Act 1874, shall be deemed to apply throughout the United Kingdom.'

"The Commissioners of Inland Revenue have recoguised the right of the Scottish publican to a remission of duty by reason that he is by the Scottish law restricted to a six-day licence in respect that he cannot open his premises on Sunday, but they have refused to recognise his right to demand remission of duty on account of his being restrained by the regulation of the justices acting under the recent 'Public-Houses Hours of Closing (Scotland) Act 1887,' from carrying on his trade beyond ten o'clock at night. The pursuer contends that he is thus forced to an early closing, and is entitled in consequence to remission of another one-seventh of the duty.

"It is therefore necessary now to see what is the course of legislation in reference to this matter of early closing in Scotland. The English practice of the applicant applying to the justices to insert in his license from them (in Scotland called a certificate) a condition that he will close his premises one hour earlier than the ordinary hour for closing, is not in accordance with the Scottish practice. It is not necessary to have such an application in order to limit the publicans' business hours. The certificate which he received from the justices peremptorily stated, until the passing of the Act of 1887, hereafter mentioned, what is the hour of closing without the intervention of the applicant at all. It is unnecessary to refer to the earlier statutes, because this subject, until last year, was regulated by the Act of 1862 (25 and 26 Vict. cap. 35). The second section of this Act enacts that 'the forms of certificates contained in Schedule A to this Act annexed shall come in place of the forms of certificates provided by the recited Acts, or either of them.' Now Schedule A contains a form of certificate for public-houses in which there is this enactment, 'and do not keep open house, or permit or suffer any drinking in any part of the premises belonging thereto, or sell or give out therefrom any liquor before eight of the clock in the morning or after eleven of the clock at night of any day; and do not open his house for the sale of any liquors, or permit or suffer any drinking therein, or on the premises thereto belonging, or sell or give out the same or any other goods or commodities on Sunday.' There is in the body of the statute itself no provision enacting any rule as to the hour of closing. It rests simply on this certificate. This clause in the certificate was a repetition of the form contained in the Act of 1853 (16 and 17 Vict. cap. 67), called 'The Forbes Mackenzie Act,' where it appears for the first time. In the Home Drummond Act, 9 Geo. IV. cap. 58, the condition in the certificate is merely that the publican shall not suffer any drinking in the premises 'during the hours of divine service on Sundays, or other days set aside for public worship by lawful authority, nor keep the same open at unseasonable hours.'

"A further step in the way of restriction, or in the power of restraining the publican, was taken in the Act of 1887 (50 and 51 Vict. cap. 38), which does not apply to any town, burgh, or other populous place containing 50,000 inhabitants. It is not disputed that it applies to the premises held by the pursuer. Now the 4th section of this Act materially alters the terms of the certificate, for it enacts '(*b*) the form of certificate for public-houses set forth in Schedule A of the Public-Houses (Scotland) Acts Amendment Act 1862, shall be amended as follows:—The words "and do not keep open house, or permit or suffer any drinking in any part of the premises belonging thereto, or sell or give out therefrom any liquors before eight of the clock in the morning or after eleven o'clock at night of any day," shall be omitted from the said certificate, and there shall be inserted in the said certificate in place thereof these words—"And do not keep open house, or permit or suffer any drinking in any part of the premises belonging thereto, or sell or give out therefrom any liquors before eight of the clock in the morning, or after such hour at night of any day not earlier than ten and not later than eleven, as the licensing authority may direct."' Acting under the powers thus conferred upon them, the Justices of Mid-

lothian, at a meeting held on the 14th of March 1888, resolved—'That from and after Whitsunday next, until the licensing authority shall otherwise determine, all licensed houses within the county of Midlothian shall be closed at ten o'clock at night.' The pursuer does not state that in defiance of this resolution of the Justices he has kept his premises open, and the remedy he seeks is a return of duty, in consequence of the loss he sustains by the restriction of the hours of business. It was suggested that the Justices had no power to pass a general resolution applicable to the whole county of Midlothian, but that they must deal with each man's certificate by itself if they choose to restrict the business hours. The Lord Ordinary is not called upon in this process to deal with any such question. All that he has to determine is, whether there is a good claim in law here for the return of one-seventh of the duty in addition to the one-seventh at present allowed for the Sunday closing.

"The case of the pursuer is simply this, that the ordinary hour of closing was eleven o'clock, and if he must now close at ten, then his license is an 'early closing licence,' and he is entitled to a return of the duty. Now, the assumption here made is quite unfounded. Eleven o'clock no doubt was the hour mentioned in the form of certificate in the Act of 1853 and the Act of 1862, but it can be carried no further back, and it rests upon the condition inserted in the certificates granted under these statutes. Now, when the Act of 1887 expressly declares that the condition fixing the hour of closing at eleven o'clock shall be deleted from the certificate and another form of condition inserted, viz., an hour to be fixed by the justices, the hour so fixed by them becomes the ordinary hour of closing for the district to which the resolution applies. Eleven o'clock is entirely blotted out of the regulations as to business hours, and a substitute put in its place. There is now no 'ordinary' hour for closing except the hour so fixed; and there is no early closing at an hour other than the ordinary one. The result consequently must be that this action fails.

"The pursuer complains that the Justices have extended the time to the Granton Hotel for closing. This they did in virtue of powers specially reserved to them by the Act of 1887, the seventh section of which enacts that 'nothing contained in this Act shall affect the provisions of the sixth section of the Act 25 and 26 Victoria, chapter 35, respecting the granting of special permissions.' Now this sixth section of the Act of 1862 gives power to the chief magistrate and to the justices of any county respectively to grant permission to extend the time for supplying liquors in regard to any public or special entertainment, or in any other place or premises during any particular time beyond the time prescribed by the certificate for closing. It was under this power that privilege was granted to the Granton Hotel. And it is further enacted by the Act of 1862 that it shall be lawful for the justices or for the magistrates 'to make such general regulations touching such permissions as they shall think fit, and such special permissions shall be subject to such general regulations.' The power therefore to pass general regulations by the justices, as was done by the Justices of Midlothian in 1888, seems to be thus recognised."

The pursuer reclaimed, and argued—The 44th section of the Act of 1880 was not meant to introduce into Scotland any new system as to licences, but to give the Scottish publican certain financial benefits enjoyed by publicans in England and Ireland. After the passing of the Act the Commissioners of Inland Revenue had allowed Scottish publicans a deduction of one-seventh from the total duty payable as being holders of six-day licences, in respect that they could not keep open house on Sunday. Sec. 2 of 25 and 26 Vict. c. 35, gave the justices power to close public-houses earlier in particular localities than eleven, which was the general hour of closing—*Macbeth* v. *Ashley*, 11 Macph. 708 (H. of L.), 1 R. 14. Suppose the Justices had exercised this power in any particular locality, could it have been said that the publicans who were obliged to close earlier that the general hour were not entitled to a deduction of duty as the holders of early closing licences in virtue of 37 and 38 Vict., secs. 7 and 8? The case here was almost the same. The Justices had exercised the powers conferred on them by sec. 4 of 50 and 51 Vict. cap. 38, and as a consequence the pursuer had been obliged to close his premises one hour sooner than what had before been the ordinary hour of closing. There was no statutory enactment fixing another hour of closing than eleven, but the pursuer was compelled to close at ten. He was therefore entitled to a deduction of a seventh from the licence-duty as the holder of an early closing licence. The indulgences granted in particular cases, such as the Granton Hotel, and the fact that in Edinburgh and Leith the closing hour was still eleven, emphasised the hardship to which he would be subjected were the benefit of the deduction claimed not granted.

The respondent was not called upon.

At advising—

LORD PRESIDENT—By the Inland Revenue Act of 1880 it is provided that "the provisions regarding six-day licences and early closing licences, contained in section 49 of the Licensing Act 1872, and sections 7 and 8 of the Licensing Act 1874, shall be deemed to apply throughout the United Kingdom." Now, of course that means only that if there are cases in Scotland or Ireland of the same nature as those provided for in these previous statutes with regard to England, then the previous Acts shall apply to these cases. It becomes necessary therefore to consider what is the case of a six-day licence and what is the case of an early closing licence, which entitles a party holding such licence to a deduction from the full amount of his licence-duty.

Now, in the case of a six-day licence, the statute makes it very clear that the case contemplated is that of the party applying for a licence desiring to have inserted in his licence a condition that he shall close on Sunday, and that the Justices shall comply with that application, and insert the condition in the licence. In regard to the early closing licence, the 7th section of the Licensing Act of 1874 provides that "where, on the occasion of any application for a new licence, or the removal or renewal of a licence which authorises the sale of any intoxicating liquor for consumption on the premises, the applicant applies to the licensing justices to insert in his licence a con-

dition that he shall close the premises, in respect of which such licence is or is not to be granted, one hour earlier at night than that at which such premises would otherwise have to be closed, the justices shall insert the said condition in such licence. The holder of an early closing licence in which such condition is inserted (in this Act referred to as an early closing licence) shall close his premises at night one hour earlier than the ordinary hour at which such premises would be closed under the provisions of this Act." Now, the Licensing Statutes are clear in their provisions. I do not think they admit of any ambiguity. They both contemplate—both the Statute of 1872, regarding a six-day licence, and the Statute of 1874, regarding an early closing licence—that the applicant for a licence shall desire to be put under a restriction, and if he does, then the restriction shall be quoted in the licence by the Justices, and they shall be obliged to keep it. In the case of the early closing licence it is made very clear what is meant by early closing. It is closing at an hour earlier than the ordinary hour at which such premises would be closed. Now, if after the passing of the Inland Revenue Act 1880 this question had arisen, the condition of the law relating to the licensing of public-houses was such that a very nice and important question would have arisen as to whether the English Licensing Statutes were applicable, or could be made applicable, to the then existing state of the law. By the Act 16 and 17 Vict. cap. 67, and also by the Act 25 and 26 Vict. cap. 35, the condition which the holder of a licence came under was, that he "do not keep open house, or permit or suffer any drinking in any part of the premises belonging thereto, or sell or give out therefrom, any liquors before eight of the clock in the morning or after eleven of the clock at night of any day." Now, if in that state of the law the applicant for a certificate had inserted in his petition a prayer that he should be put under obligation by his certificate that he should close his premises at ten o'clock at night instead of eleven—eleven o'clock being then the ordinary hour of closing—it would have been difficult to say that the effect of the Act of 1880 would not have been to have given him the benefit of the 7th section of the Act of 1874. But I put the case also upon this—Supposing the applicant for a certificate did not himself desire or apply to be put under that restriction, but that the Justices, in the exercise of the power committed to them by the existing Public-House Acts, had put his premises under the condition of closing at ten o'clock instead of eleven, would or would not the provisions of the English Licensing Acts, made applicable to Scotland by the Revenue Act of 1880, have applied? That might admit of a good deal of argument, as I think it would. That is not the case we have to deal with here, otherwise we should have required to consider the matter more anxiously. But putting that aside altogether, it is quite obvious that where a party is bound to close at ten o'clock instead of eleven under the Act of 1880 and the Public-Houses Acts then in existence, the fact of his being obliged to close at ten instead of eleven would clearly bring him into this category, that he was under obligation to close an hour earlier than the ordinary hour of closing, and that certainly would have brought him within the spirit of that clause of the Act of 1874, which gives a right to a deduction of one-seventh of the licence-duty in such circumstances. But this case turns upon the more recent Act of 1887 (50 and 51 Vict. cap. 38), and the question of course which naturally arises under that statute is whether there is now any ordinary hour of closing at all. If there be none, I do not very well see how the 7th section of the Act of 1874 can be applied, because there could only be a right to the deduction of one-seventh from the licence-duty in the event of the licence holder being put under the condition that he shall close an hour earlier than the ordinary hour of closing, or, in other words, that he shall close earlier than his neighbours generally; but the Act of 1887, while it professes in the preamble to meet a desire that an earlier hour than eleven o'clock at night should be fixed for the closing of premises licensed for the sale of exciseable liquors, does not by its enactments really carry out that object, because it does not by these enactments fix any hour at all; on the contrary, it leaves it to the justices in Quarter Sessions—the licensing authority as they are called—to dispose of that question at their discretion. The form of certificate is to be altered from that contained in Schedule A of the Public-Houses (Scotland) Acts Amendment Act 1862, and in place of the existing form this is to be inserted—"And do not keep open house, or permit or suffer any drinking or selling of any liquors before eight of the clock in the morning, or after such hour at night of any day not earlier than ten and not later than eleven, as the licensing authority may direct." Now, the statute does not thereby fix an hour; on the contrary, it leaves it to the licensing authority to fix the hour, and they may fix any hour between ten and eleven or ten or eleven. I do not suppose it will be contended that under this provision it would not be competent for the Justices to fix half-past ten, or to fix a quarter-past ten, or a quarter to eleven; all that is within their discretion, and what they have done in this particular case is to come to a general resolution that ten o'clock in the county of Midlothian shall be the hour for closing—that is to say, the ordinary hour of closing. Now, that being so, how can it be said that the applicant here is under a condition or obligation to close his premises, in terms of the 7th section of the Act of 1874, "one hour earlier at night than that at which such premises would otherwise have to be closed," or, as it is put in another part of the clause, "shall close his premises at night one hour earlier than the ordinary hour at which such premises would be closed." Instead of being an hour earlier, the hour at which he closes his premises is the ordinary hour at which all other premises are closed, unless there is some special dispensation with regard to the particular locality. Therefore I come to the same conclusion with the Lord Ordinary, that the passing of the Act of 1887 made the clauses of the Act of 1874 inapplicable to any case within the county of Midlothian, or any case to which the Act of 1887 applies, and therefore it is impossible to grant this relief to the applicant.

Lord Mure—I agree with your Lordship. As I understand, this early closing licence is given to a party who applies, under the English Acts, to the magistrates or justices to have his pre-

mises closed at an hour earlier than that fixed in the statute as the ordinary hour of closing, and if the magistrates or justices make an arrangement of this sort, and his licence is so fixed that he shall close his premises at ten o'clock instead of eleven, then that is an early closing licence, and he is entitled to a reduction of licence-duty. Now, that is the way in which the thing is done, as I understand, in the English cases. Before the passing of the later Acts the magistrates or justices in Scotland had no such power, but a six-day licence in Scotland was granted since the passing of the Inland Revenue Act 1880, by which less duty was charged for the six-day licence than the seven-day licence. Then in the English Act of 1874 the general hour for closing in certain districts, which had been eleven o'clock before, was fixed to be ten o'clock, but that did not make the parties who closed at ten entitled to an early closing licence. If a party wished to have an early closing licence under the general provision of the Act of 1880, he still required to go to the justices and put himself under a further restriction in the matter of time than the Act itself did. He then put himself in the position of closing earlier than the ordinary hour fixed by the statute. He could still do that, and get his early closing licence. So standing the matter, we come to the Act of 1887, which gives a discretionary power to the licensing justices as to the hour of closing. Now, under that Act of 1887, instead of eleven o'clock being taken as the general hour of closing, there are certain provisions by way of alteration of the certificate by which the general hour of closing is made different if the magistrates choose to make it different. There is a power given them, and under that power the licensing justices in each district can fix a general hour instead of that being done by the Act of Parliament itself; and the Magistrates of Midlothian have, as I understand, fixed ten o'clock under the powers so given, and the certificate which was handed up to us bears that that is the hour. Now, the applicant's certificate binds him to close at ten o'clock, but he is not closing earlier than any other person in Midlothian holding such licences; they all close at ten o'clock. Therefore I agree with your Lordship that the Lord Ordinary's interlocutor should be adhered to.

Lord Shand—Notwithstanding the full and able argument which has been addressed to us on the part of the reclaimer here, I am of opinion that the judgment of the Lord Ordinary is well founded. It appears to me that after the passing of the Inland Revenue Act of 1880, which was intended to give to publicans the benefit of the provisions regarding six-day licences and early closing licences, which had been conceded to persons carrying on businesses of that kind in England and Ireland only, those who had obtained certificates or licences in this country would have had the benefit of these provisions. It is conceded that they did get the benefit of the provisions so far as the Sunday licence was concerned. They got a-seventh off the licence, because practically they were holding six-day licences, and got the benefit in that way. But I further think that although there may have been some difficulty as to the form in which it was to be done, there can be no doubt that some form could have been arrived at by which they could also have got the benefit of the early closing licence. Your Lordship has put one case. Supposing a person making an application, in making it conforms literally with the provision of the statute by applying to have his licence limited so that he should close his premises an hour earlier than that at which his premises would otherwise have to be closed, then I cannot doubt that the magistrates must have dealt with that application and acceded to his request; they would have marked it on his certificate, and he would have got the benefit of the provision. But we must further bear in mind that at that time, when the Statute of 1880 was passed, in virtue of sec. 2 of 25 and 26 Vict. c. 35, the Act of 1862, while the certificate did contain the usual hour as at that time 11 o'clock, being the hour of closing, there was this provision—"Provided always that in any particular locality within any county or district or burgh requiring other hours for opening and closing . . . public-houses than those specified in the forms of certificates, . . . it shall be lawful for such justices or magistrates respectively to insert in such certificates such other hours, not being earlier than six of the clock or later than eight of the clock in the morning for opening, or earlier than nine of the clock or later than eleven of the clock in the evening for closing the same, as they shall think fit." And if magistrates, in the exercise of that power in any particular district, said certain persons holding certificates must now close at ten instead of eleven, which was the hour which the statute authorised them to be open to, speaking generally, then I take it there would be room for holding clearly that in that case also the publican would have had the benefit of the early closing licence, which would give him a seventh off—at least I say there is a great deal to be said on the point. Matters remained in that position from 1880 to 1887.

I concur in holding that all that has been changed by the Statute of 1887. What is the feature of the English Act which is sought to be applied to the Act of 1887? It is this, that the reduction of the sum paid upon the licence is to be given where the person holding the licence shall close his premises at night one hour earlier than the ordinary hour at which such premises would be closed under the provisions of this Act. We must read these words as meaning that he is to close his premises one hour earlier than the ordinary hour at which such premises would be closed under the statute we are now reading, viz., the Statute of 1887. Now, can it be shown that the reclaimer has to close his premises an hour earlier than the ordinary hour at which under this Act he would be entitled to keep his premises open? The answer to that is just what the Lord Ordinary has given, there is no longer any fixed hour up to which he is entitled to keep open, and requiring that he should be restricted in order to take away the right. The question here is, what is the ordinary hour of closing? The ordinary hour is not eleven o'clock, but such hour not earlier than ten, and not later than eleven, as the Magistrates may think fit to fix, and as the Magistrates have fixed ten, I do not think it can be said that the reclaimer is a person who has to close his premises earlier than the hour which the statute sets forth as the ordi-

nary hour of closing. Upon that ground I agree with all that your Lordships have said. I am of opinion that the Lord Ordinary's judgment should be adhered to.

Lord Adam—It appears to me that the provisions as to early closing, as they have been explained to us, are clear and intelligible in their native soil, and as applicable to the English system, but I confess that since they have been transplanted here, I see and would have seen great difficulties in reconciling them with our Scottish system, which was entirely different, and if this question had occurred prior to the passing of the Act of 1887 I should have participated in your Lordship's difficulties upon the case, and would have wished further time for consideration. But now, after the passing of the Act of 1887, I do not think this case is attended with difficulty. Every certificate, as has been pointed out, must now bear that the publican does not keep open house after such an hour at night of any day not earlier than ten and not later than eleven as the licensing authorities may direct. Therefore, now, as I read that, the licensing authority must direct what the hour of closing is to be. The hour of ten is not fixed, and the hour of eleven is not fixed, and there is no hour between these two fixed by statute; there is no hour fixed, but the licensing authority shall say what the hour shall be. That is the position of matters under the Act of 1887. Now, that being so, the question comes to be, whether this publican, whose certificate ordains that he shall close at ten o'clock, has what is called an early closing licence? Early closing implies that it must be earlier than something. Earlier than what? Now, that takes us back to the English statute, because it is the English statute which introduces this. It is said that the premises shall be closed at an hour earlier than that at which such premises would have to be closed. Otherwise than what? If we go a little further down the clause we find what it is; it is earlier than the ordinary hour at which such premises shall be closed under the provisions of the Act—that is to say, under the provisions of the Act we are now considering. But, as has been pointed out, there is no ordinary hour fixed by the Act of 1887 at all; that is to be fixed by the licensing authority. In this case the licensing authority have fixed ten o'clock as the hour of closing for the whole of Midlothian, and that is the ordinary hour if there is any ordinary hour. Well, then, the question comes to be, as this gentleman's certificate declares that he shall close at ten o'clock, is that earlier than the ordinary hour fixed by the statute or by the Justices under the statute? I am totally unable to see that it is. Therefore I am unable to see that this is an early closing licence or certificate in the sense of the English Acts, and therefore I agree with your Lordship and the Lord Ordinary.

The Court pronounced the following interlocutor:—

"The Lords having heard counsel for the pursuer in support of the reclaiming-note against the interlocutor of Lord Fraser of date 27th October 1888, and considered the cause, Adhere to the interlocutor reclaimed against, and refuse the prayer of the note: Find the defender entitled to additional expenses," &c.

Counsel for the Pursuer (Reclaimer)—Baxter—Vary Campbell. Agents—Wylie & Robertson, W.S.

Counsel for the Defender (Respondent)—Young. Agent—The Solicitor of Inland Revenue

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Wednesday, November 28.

FIRST DIVISION.

ROSSBOROUGH'S TRUSTEES *v.* ROSSBOROUGH.

Succession—Heritable and Moveable—Bond and Disposition in Security—Conversion—Terce—Jus relictæ.

The husband's infeftment at the time of his death is the measure of the widow's right of terce.

The holder of certain heritable bonds had before his death taken steps towards realising the securities. Intimation and requisition for payment was served on the debtor in one of the bonds, but no further steps were taken. Similar intimation was made in respect of another bond, and the subjects of the security were advertised but not exposed for sale. The subjects under a third bond had been exposed for sale, but had not found a purchaser. In the fourth case the subjects had been exposed for sale and sold, but the purchaser having failed to pay the price had not obtained infeftment at the death of the bondholder. His widow claimed her legal rights.

Held that the bonds had not been rendered moveable as to the widow by the steps taken to realise the securities, and that she was not entitled to any part of the sums contained in the bonds *jure relictæ*.

Succession—Heritable and Moveable—Trust—Liferent—Residue—Capital and Income—Lease.

A testator in his trust-disposition and settlement, after making certain provisions for behoof of his widow in liferent, directed his trustees to pay the income of the residue of his estate to his sister and her children, and after her death, and when the youngest of the children had attained the age of twenty-five, to divide the capital of the residue among them. The testator was tenant of certain premises, where he carried on business as a purveyor of public entertainments, and when he died some years of the lease were still to run. His business was wound up after his death, and the trustees having failed to dispose of the lease or to sublet the premises, they became unoccupied. The testator's widow repudiated her provisions under the settlement, and claimed her legal rights.

Held that, in a question with the widow, the loss occasioned to the estate by the premises being unoccupied fell to be charged against the moveable estate of the deceased; and in a question between the trustees, as representing the fiars and the sister of the