a form short of marriage which he thought would effect the objects which the pursuer had in view. On the other hand I am quite satisfied that the defender led the pursuer to believe that he was marrying her, and that she honestly believed him, and understood that she was being married. She intended marriage, and nothing short of that. If that is so, then, as your Lordship and the Lord Ordinary have said, it makes no difference that the defender did not intend marriage, it being the fact that he led the pursuer to believe he did.

LORD MONCREIFF—I agree with the Lord Ordinary. I hold it to be distinctly proved that what passed between the pursuer and the defender on 19th November 1902 in Mr Watson's office constituted a valid marriage. It is distinctly proved that the pursuer so understood and intended. And in that view it is immaterial, if the defender in his own mind resolved not to be bound by the contract, because that mental reservation, if it existed, was not communicated to the pursuer or to any of the parties present on that occasion—Fraser on Husband and Wife, p. 436, *et seq.* I am by no means satisfied that the defender did not intend to marry the pursuer; he had compromised her, and she seems to have had sufficient influence with him to induce him to make this reparation. Again, it may be that after the marriage the defender thought that he saw his way to back out of the contract by not registering it, but that does not affect the question.

My opinion is that the defender knew quite well what he was about, and that he quite understood the explanations given by Mr Watson as to the law of the matter. His evidence and line of defence show considerable cunning, and on the whole matter I think the defence is a shabby and unsuccessful attempt to back out of the contract which he had deliberately entered into.

The Court adhered.

Counsel for the Pursuer and Respondent —Hunter — Spens. Agents—Dove, Lockhart, & Smart, S.S.C.

Counsel for the Defender and Reclaimer —Salvesen, K.C.—J. A. Christie. Agents —St Clair Swanson & Manson, W.S.

HOUSE OF LORDS.

Thursday, November 17.

(Before the Lord Chancellor (Halsbury), Lords Davey and Robertson.)

CASTANEDA *v.* CLYDEBANK ENGINEERING AND SHIPBUILDING COMPANY, LIMITED.

(In the Court of Session June 17, 1903, 5 F. 1016, 40 S.L.R. 713.)

Contract—Breach of Contract—Damages for Late Delivery of Ship — Penalty or Liquidate Damages.

While endeavouring to suppress the insurrection in Cuba, and apprehending the intervention of the United States, the Spanish Government by two contracts, dated in June and December 1896, contracted with a Clyde shipbuilding firm to build four torpedo boat destroyers at prices under the first contract of £67,180, and under the second of £65,650, for each vessel, to be delivered within periods varying from six and a-half to seven and three-fourth months from the date of the contract. A clause in each of the contracts provided that "the penalty for later delivery shall be at the rate of £500 per week for each vessel." The vessels were delivered forty-six, forty-one, twenty-eight, and twenty weeks late respectively.

In an action of damages for late delivery brought in 1900 by the Spanish Government against the shipbuilders, *held* (*aff.* the judgment of the Second Division) that as the sum stipulated to be paid in the event of late delivery applied to one particular term of the contract, and not to the contract generally, and was proportioned in amount according to the extent of the breach, it was *prima facie* liquidate damages and not penalty, and as the defenders had not shown that the amount was in the circumstances exorbitant or unconscionable, the pursuers were entitled to the full sum of £500 per week as damages.

Personal Objection—Waiver—Payment of Price of Ship without Reservation of Claim for Damages for Late Delivery.

Circumstances in which *held* (*aff.* the judgment of the Second Division) that the acceptance by the purchaser of delivery of a ship after the date stipulated for in the contract, and the payment by him of the last instalment of the price without reservation, did not imply waiver of his right to insist on a clause in the contract entitling him to a specified sum as damages for late delivery.

This case is reported *ante ut supra.*

The defenders the Clydebank Engineering and Shipbuilding Company, Limited, appealed to the House of Lords.

At the conclusion of the argument for the appellants the respondents' counsel were not called upon, and their Lordships gave judgment as follows:—

LORD CHANCELLOR — This is a case in which a party to an agreement has admittedly broken it, and an action was brought for the purpose of enforcing the payment of a sum of money which by the agreement between the parties was fixed as that which the defenders were to pay in the event that has happened.

Two objections have been made to the enforcement of that payment. The first objection is one which appears upon the face of the instrument itself, namely, that it is a penalty and not therefore recoverable as a pactional arrangement of the amount of damages resulting from the breach of contract. It cannot, I think, be denied—indeed I think it has been frankly admitted by the learned counsel — that not much reliance can be placed upon the mere use of certain words. Both in England and in Scotland it has been pointed out that the Court must proceed according to what is the real nature of the transaction, and that the mere use of the word "penalty" on the one side or "damages" on the other would not be conclusive as to the rights of the parties. It is, I think, not denied now that the law is the same both in England and in Scotland. The different form of its administration gave rise doubtless to the Act of William III, which, of course, is that upon which English lawyers rely when this question occurs; but that difference only arises from a difference in the mode of administering in this country the two branches of jurisprudence which we call law and equity, while the Scottish Judges had full jurisdiction in each of the Courts to administer justice, and in administering justice to administer it according to both branches of jurisprudence.

We come, then, to the question—What is the agreement here? and whether this sum of money is one which can be recovered as an agreed sum as damages, or whether, as has been contended, it is simply a penalty to be held over the other party *in terrorem* —whether it is what I think gave the jurisdiction to the Courts in both countries to interfere at all in an agreement between the parties—unconscionable and extravagant, and one which no Court ought to allow to be enforced,

It is impossible to lay down any abstract rule as to what it may or it may not be extravagant or unconscionable to insist upon without reference to the particular facts and circumstances which are established in the individual case. I suppose it would be possible in the most ordinary case where people know what is the thing to be done and what is agreed to be paid, to say whether the amount was unconscionable or not. For instance, if you agreed to build a house for £50, and agreed that if you did not build the house in a year, you were to pay a million of money as a penalty, the extravagance of that would be at once apparent. Between such an extreme case as I have supposed and other cases a great deal must depend upon the nature of the transaction, the thing to be done, the loss likely to accrue to the person who is endeavouring to enforce the performance of the contract, and so forth. It is not necessary to go into a minute disquisition upon that subject, because the thing speaks for itself. But, on the other hand, it is quite certain, and an established principle in both countries, that the parties may agree beforehand to say, Such and such a sum shall be damages if I break my agreement. The very reason why the parties do in fact agree to such a stipulation is, that sometimes, although undoubtedly there is damage, and undoubtedly damages ought to be recovered, the nature of the damage is such that proof of it is extremely complex, difficult, and expensive. If I wanted an example of what might or might not be said and done in controversies upon damages unless the parties had agreed beforehand I could not have a better example than that which the learned counsel has been entertaining us with for the last half-hour in respect of the damage resulting to the Spanish Government by the withholding of these vessels beyond the stipulated period. Supposing there was no such bargain, and supposing the Spanish Government had to prove damages in the ordinary way without insisting upon the stipulated amount of them, just imagine what would have to be the cross-examination of every person connected with the Spanish administration such as is suggested by the commentaries of the learned counsel—"You have so many thousand miles of coast-line to defend by your torpedo-boat destroyers—what would four torpedo-boat destroyers do for that purpose? How could you say you are damaged by their non-delivery? How many filibustering expeditions could you have stopped by the use of four torpedo-boat destroyers?"

I need not pursue that topic. It is obvious on the face of it that the very thing intended to be provided against by this pactional amount of damages is to avoid that kind of minute and somewhat difficult and complex system of examination which would be necessary if you were to attempt to prove the damage. As I pointed out to the learned counsel during the course of his argument, in order to do that properly and to have any real effect upon any tribunal determining that question, one ought to have before one's mind the whole administration of the Spanish Navy —how they were going to use their torpedo-boat destroyers in one place rather than another, and what would be the relative speed of all the boats they possessed in relation to those which they were getting by this agreement. It would be absolutely idle and impossible to enter into a question of that sort unless you had some kind of agreement between the parties as to what was the *real measure* of damages which ought to be applied.

Then the other learned counsel suggests that you cannot have damages of this character, because really in the case of

a warship it has no value at all. That is a strange and somewhat bold assertion. If it was an ordinary commercial vessel capable of being used for obtaining profits, I suppose there would not be very much difficulty in finding out what the ordinary use of a vessel of this size and capacity and so forth would be, what would be the hire of such a vessel, and what would therefore be the equivalent in money of not obtaining the use of that vessel according to the agreement during the period which had elapsed between the time of proper delivery and the time at which it was delivered in fact. But, says the learned counsel, you cannot apply that principle to the case of a warship, because a warship does not earn money. It is certainly a somewhat bold contention. I should have thought that the fact that a warship is a warship, her very existence as a warship capable of use for such and such a time would prove the fact of damage if the party was deprived of it, although the actual amount to be earned by it, and in that sense to be obtained by the payment of the price for it, might not be very easily ascertained—not so easily ascertained as if the vessel were used for commercial purposes and where its hire as a commercial vessel is ascertainable in money. But is that a reason for saying that you are not to have damages at all? It seems to me it is hopeless to make such a contention, and although that would not in itself be a very cogent argument because the law might be so absurd, yet it would be a very startling proposition to say that you never could have agreed damages for the non-delivery of a ship of war although under the very same words with exactly the same phraseology in the particular contract you might have damages if it was a vessel used for commercial purposes; so that you would have to give a different construction to the very same words according to whether the thing agreed to be built was a warship or a ship intended for commercial purposes. I think it is only necessary to state the contention to show that it is utterly unsound.

Then there comes another argument which to my mind is more startling still—the vessel was to be delivered at such and such a time; it was not delivered, but the fleet which the Spanish Government had was sent out at such a time and the greater part of it was sunk, and, says the learned counsel, "If we had kept our contract and delivered these vessels, they would have shared the fate of the other vessels belonging to the Spanish Government, and therefore in fact you have got your ships now, whereas if we had kept our contract they would have been at the bottom of the Atlantic." I confess after some experience I do not think I ever heard an argument of that sort before, and I do not think I shall often hear it again. Nothing could be more absurd than such a contention, which, if it were reduced to a compendious form, such as one has in a marginal note, would certainly be a striking example of jurisprudence. I think I need say no more to show how utterly absurd such a contention is. I pass on to the other question.

It seems to me when one looks to see what was the nature of the transaction in this case, it is hopeless to contend that the parties only intended this as something *in terrorem*. Both parties recognised the fact of the importance of time; it is a case in which time is of the essence of the contract, and so regarded by both parties; and the particular sum fixed upon as being the agreed amount of damages was suggested by the defendants themselves; and to say that that can be unconscionable or something which the parties ought not to insist upon—that it was a mere holding out something *in terrorem*—after looking at the correspondence between the parties, is to my mind not a very plausible suggestion. I have therefore come to the conclusion that the judgments of the Courts in Scotland are perfectly right in this respect, and I think there is no ground for the contention that this is not pactional damage agreed to between the parties—and for very excellent reasons agreed to between the parties—at the time the contract was entered into.

Then there comes the further question as to waiver. That question of course assumes that these damages can be recovered, apart from the question of whether or not this vested right of action, which undoubtedly was a vested right of action, for the non-delivery of these boats within the limits of time can be answered by saying that it has been released by waiver. I am not certain that I understand the application of the doctrine of waiver to such a question as we are now dealing with, of the release of a right of action already vested; but assuming we get over that difficulty, I do not feel as a matter of fact that there is any evidence upon which anybody could reasonably rely that there was an agreement assented to by both parties that these damages should be waived. The earlier part of this transaction and the correspondence between the parties I think is quite satisfactorily dealt with by the Lord Ordinary in his very lucid judgment, and it comes to this, that because for some time—I think I may say, in aid of the defendants' argument, some considerable time—this was not put forward or insisted upon, that of itself is to be absolute evidence of a waiver. I do not see it. I must say I never heard of a waiver, the issue upon which is undoubtedly upon the party who averred it, established by such a proposition. The mere fact of payment without deduction I think may be dealt with very shortly. Assuming a great desire to get these vessels, and assuming that the Spanish Government were in earnest—and I do not know why it can be suggested that they were not—to get these vessels with great urgency, it would to my mind have been a very extraordinary thing if they should have risked the delay which would have arisen from a controversy in respect of claims which the builders undoubtedly had, and if they had given, as it were, an excuse for the non-delivery of the ships by

reason of those claims giving rise to the sort of argument which has lasted not a short time here and which would have come up to this House long after the war between the American and the Spanish Governments had come to an end. Under those circumstances it appears to me a very natural thing that the claim was not insisted upon in the first instance; and with reference to the delay afterwards I cannot help having regard to the mode of Spanish administration; apart from any intention to waive I can well imagine that for some time the question was allowed to hang over until the departments in London and in Madrid had ascertained their respective rights, and the Spanish Government had made a claim. It is enough, however, to say that there is no evidence upon which any tribunal should reasonably act, even if there could be a waiver in point of law, as to which I venture to express considerable doubt; but be that as it may, there is no evidence upon that, and I need not therefore express any opinion upon that subject.

I am entirely of opinion that the judgments of the Court below are right, and I move your Lordships that this appeal be dismissed with costs.

LORD DAVEY—I am of the same opinion, and I can express the grounds upon which I have come to the same conclusion as my noble and learned friend on the Woolsack in a very few words.

As to the first question, it is, as my noble and learned friend has pointed out, a question not of words or of forms of speech but of substance and of things, viz., whether a clause like the one in question provides for liquidate damages or for a penalty strictly so called in the sense of punishment irrespective of the damage sustained.

It appears to me that a very sensible, if I may respectfully say so, and a very useful rule for guiding the Court in this matter has been laid down for us in this House by Lord Watson and Lord Herschell and the other noble and learned Lords who took part in the decision of the case of *Lord Elphinstone* v. *Monkland Iron and Coal Co.* (June 29, 1886, 13 R. (H.L.) 98, 23 S.L.R. 870). In that case Lord Watson said this—"When a single slump sum is made payable by way of compensation on the occurrence of one or more or all of several events, some of which may occasion serious and others but trifling damage, the presumption is that the parties intended the sum to be penal and subject to modification. The payments stipulated in article 12 are not of that character; they are made proportionate to the extent to which the respondent company may fail to implement their obligations, and they are to bear interest from the date of the failure. I can find neither principle nor authority for holding that payments so adjusted by the contracting parties with reference to the actual amount of damage ought to be regarded as penalties." Lord Herschell expressed himself in equally strong language when he said—"I know of no authority for holding that a payment agreed to be made under such conditions as these is to be regarded as a penalty only, and I see no sound reason or principle or even convenience for so holding."

I therefore conceive that it may be taken as an established principle in the law of Scotland that if you find a sum of money made payable for the breach, not of an agreement generally, which might result in either a trifling or a serious breach, but a breach of one particular stipulation in an agreement, and when you find that the sum payable is proportioned to the amount, if I may so call it, or the rate of the non-performance of the agreement—for instance, if you find that it is so much per acre for ground which has been spoilt by mining operations, or if you find, as in the present case, that it is so much per week during the whole time for which the non-delivery of vessels beyond the contract time is delayed—then you infer that *prima facie* the parties intended the amount to be liquidate damages and not penalty. I say "*prima facie*," because it is always open to the parties to show that the amount named in the clause is so exorbitant and extravagant that it could not possibly have been regarded as damages for any possible breach which was in the contemplation of the parties, and that is a reason for holding it to be a penalty and not liquidate damages notwithstanding the considerations to which I have alluded.

I confess I know of no other grounds; there may be grounds which may appear in future cases, but speaking from my present knowledge I am not aware of any other grounds upon which a clause fixed under the conditions I have mentioned for breach of a particular stipulation in an agreement can be held to be a penalty and not liquidate damages. But in *Forrest & Barr* v. *Henderson & Company* (Nov. 26, 1869, 8 Macph. 187) the Lord President (Inglis) says this—"I hold it to be part of our law on this subject that even where parties stipulate that a sum of this kind shall not be regarded as a penalty, but shall be taken as an estimate and ascertainment of the amount of damage to be sustained in a certain event, equity will interfere to prevent the claim being maintained to an exorbitant and unconscionable amount." My only criticism upon that sentence would be this, that I do not think that that is the right way of putting it. I think the fact of a claim being of an exorbitant or of an unconscionable amount as compared with any possible damages that could have been within the contemplation of the parties is a reason for holding it not to be liquidate damages but a penalty. But that is only a difference of expression, and with the substance of the observation I entirely agree. But the Lord President adds this significant sentence—"But, of course, the question whether it is exorbitant or unconscionable is to be considered with reference to the point of time at which the stipulation is made between the parties." That is to say, you are to consider whether it is extravagant, exor-

bitant, or unconscionable, whatever word you like to select, at the time when the stipulation is made, that is to say, in regard to any possible amount of damages, or any kind of damage which may be conceived to have been within the contemplation of the parties when they made the contract.

I hold it to be perfectly irrelevant and inadmissible for the purpose of showing the clause to be extravagant, in the sense in which I use that word, to admit evidence such as the learned counsel who has last addressed us has drawn our attention to of the damages which were actually suffered by the Spanish Government. I agree that it was for the very purpose of excluding that kind of evidence that the parties determined to have the damages liquidate in this manner by naming a specific sum, and it appears to me that the learned counsel have been doing the very thing which the parties intended to prevent by the way in which they have framed their contract.

There is no evidence that this sum would be extravagant or unconscionable in the sense in which those words are used in the passage which I read from the Lord President's judgment in *Forrest & Barr* v. *Henderson & Company*—I need not dwell upon that. I may, however, point out that the sum was suggested by the defenders themselves in their tender, and was accepted by the Spanish Government, the other contracting party. I adopt, and it is unnecessary for me to repeat, the very lucid and clear terms in which that subject has been dealt with both by the Lord Ordinary and by the Inner House.

Now, with regard to the other question, viz., as to the waiver of the right to this sum which the respondents have got judgment for, I can only say that no such waiver is proved to my satisfaction, nor indeed do I think there is more than the merest scintilla of evidence, if there be any at all, in favour of it.

I repeat, what the appellants undertake to do is to prove the release of a vested right of action, and the way in which they attempt to do it is chiefly by drawing our attention to the fact that in March 1898 when the instalments were due on, I think, three of the vessels, the vessels having been delivered in the meantime, the Spanish Government paid the instalments without reserving any right to the liquidate damages. Of course the onus on this part of the case is upon the appellants. It may be that it would have been more prudent—it may even be that it would have been fairer—of the Spanish Government in making the payment of the last instalments to have reserved their right to make this claim, but it was not necessary for them to do so. There is no inconsistency between paying the instalments of the purchase price, and after considering all the matters which were placed before them for their consideration by the pursuers, making up their minds whether they would make this further claim or not. Indeed, they were almost bound to pay these instalments at once, because although it is quite true that, changing their minds, the shipbuilders had given delivery of the vessels, still as a matter of honour the Spanish Government were bound, and certainly the delivery was given in expectation that the payment would be made at an early date, and I doubt whether it is even evidence of any intention to release this right of action in regard to these claims. It may very well be that the pursuers thought, or rather hoped, that the matter was settled, and that they would hear no more about it, but that of course would not amount to a release or waiver by the other party. The payments made in March 1898 were not a settlement, and they did not even purport to be a settlement, of all claims, because at the same time that the payments were made there were other claims which had been made and had to be settled for—extras and other incidental expenses of that kind; so that there was not and did not even purport to be a settlement in March 1898. I see no grounds whatever for holding that there was any waiver of the claims which had been put forward in this action.

I will not repeat further lest I should seem to water down or whittle away the very full, clear, and lucid manner in which this part of the case has been dealt with in the judgment of the Lord Ordinary, with whose observations I entirely agree.

LORD ROBERTSON—I agree that these judgments ought to be affirmed.

This clause sought to be enforced is not a general penalty clause but a specific agreement that sums of money graduated according to time shall be paid as penalties for delays in delivering these vessels. Now, the Court can only refuse to enforce performance of this pecuniary obligation if it appears that the payments specified were—I am using the language of Lord Kyllachy—"merely stipulated *in terrorem* and could not possibly have formed a genuine pre-estimate of the creditor's probable or possible interest in the due performance of the principal obligation."

Now all such agreements, whether the thing be called penalty or be called liquidate damage, are in intention and effect what Professor Bell calls "instruments of restraint," and in that sense penal. But the clear presence of this element does not in the least degree invalidate the stipulation. The question remains, had the respondents no interest to protect by that clause, or was that interest palpably incommensurate with the sums agreed on. It seems to me that to put this question in the present instance is to answer it. Unless injury to a State is as matter of law inexpressible in money, Spain was or might be deeply interested in the early delivery of these ships and deeply injured by delay.

To my thinking Lord Moncreiff has in two sentences admirably stated the case:—"The subject-matter of the contracts and the purposes for which the torpedo-boat destroyers were required make it extremely improbable that the Spanish Government ever intended or would have agreed that

there should be inquiry into and detailed proof of damage resulting from delay in delivery. The loss sustained by a belligerent or an intending belligerent owing to a contractor's failure to furnish timeously warships or munitions of war does not admit of precise proof or calculation; and it would be preposterous to expect that conflicting evidence of naval or military experts should be taken as to the probable effect on the suppression of the rebellion in Cuba or on the war with America of the defenders' delay in completing and delivering those torpedo-boat destroyers."

The appellants' counsel frankly maintained that the delay merely saved the Spanish Government so much expense, as vessels of war do not earn freight, an argument which would be equally applicable to the case of the vessels never being delivered at all, so that a total breach of the contract would be a positive good in itself. But in truth the only apparent difficulty in the present case arises from the magnitude and complexity of the interests involved and of the vicissitudes affecting them, and as the question is whether this stipulation of £500 a-week is unconscionable or exorbitant these considerations can hardly be considered a formidable difficulty in the way of the respondents.

On the question of waiver I must say I think the appellants' case completely fails, and this matter is very adequately dealt with by the Lord Ordinary.

Interlocutors appealed from affirmed and appeal dismissed with costs.

Counsel for the Pursuers and Respondents—The Solicitor-General for Scotland (Dundas, K.C.) — Blackburn. Agents — Macandrew, Wright, & Murray, W.S., Edinburgh—J. T. Davies, London.

Counsel for the Defenders, Reclaimers, and Appellants — Lawson Walton, K.C.—Ure, K.C.—Rufus D. Isaacs, K.C.—Tait—Cassel. Agents—M'Gregor, Donald, & Co., Glasgow — Forrester & Davidson, W.S., Edinburgh — Ashurst, Morris, Crisp, & Co., London.

Monday, November 21.

(Before the Lord Chancellor (Halsbury), Lord Davey, and Lord Robertson.)

ROSSI *v.* MAGISTRATES OF EDINBURGH.

(In the Court of Session, February 20, 1903, 5 F. 480, 40 S.L.R. 375.)

Burgh — Magistrates — Powers — Police — Ice Cream Vendors — Conditions in Licences for Premises where Ice Cream Sold—Ultra vires—Lawful Day—Sunday —Edinburgh Corporation Act 1900 (63 *and* 64 *Vict. cap. cxxxiii*), *sec.* 80—*Edinburgh Corporation Order Confirmation Act* 1901 (1 *Edw. VII. cap. clxxxiv*), *sec.* 57.

By section 80 of the Edinburgh Corporation Act 1900, as amended by section 57 of the Edinburgh Corporation Order 1901, it is provided, *inter alia*, that any person selling ice cream (except in a duly licensed hotel) without a licence from the Magistrates, "who are hereby empowered to grant the same" for the house, building, or premises where such ice cream is kept for sale or sold, shall be liable to a penalty, provided that such licences shall run from the date of issue until the 15th of May next ensuing, and upon renewal from the date of the expiry of the licence so renewed to the 15th of May succeeding, "unless the same shall be sooner forfeited, revoked, or suspended," and that "every person licensed . . . to sell ice cream under the provisions of this Act who shall . . . sell ice cream except during the hours between" 8 a.m. and 11 p.m. "on any lawful day or at such extended hour at night as the Magistrates may by special regulation in particular cases, for reasons assigned, permit," shall be liable to the penalty prescribed. No statutory form of licence was provided by the Act.

The Magistrates proposed to issue to ice cream vendors licences containing the following conditions—"(1) That the said licensee shall not keep open said premises or sell or permit the sale of ice cream therein on Sunday or on any other day set apart for public worship by lawful authority. (2) That the said licensee shall not keep open said premises or sell or permit the sale of ice cream therein before 8 o'clock in the morning or after 11 o'clock at night. (3) That the said Magistrates, or any of them, may at any time suspend or revoke this licence."

Held (*rev.* judgment of the Second Division) that the insertion of these conditions in the proposed form of licence was *ultra vires* of the Magistrates, because (1) with respect to the first and second conditions there was no prohibition in the Act against a person who combined the sale of ice-cream with other branches of trade, keeping his premises open for the sale of other commodities during the hours and days when the sale of ice-cream was prohibited; and (2) with respect to the third condition, that the Act did not confer on the Magistrates any power to suspend or revoke the licence.

Opinion (*per* Lord Davey and Lord Robertson) that while Sunday was not a "lawful day" in the sense of the Act, the words "any other day set apart for public worship by lawful authority" were ambiguous; and (*per* Lord Robertson) "it is quite out of place for a licensing body to put into the licence their gloss on the statute on such points, whether it be more or less probably correct."

Process—Action of Declarator—Competency of Action — Title to Sue — Appropriate Form of Remedy—Action by Trader for Declarator that Conditions in Proposed Licence by Magistrates Illegal.

Where magistrates are empowered by Act of Parliament to grant licences