title as trustees foresaid to the trust funds and estate specified, with power to the trustees so to be appointed to assume such other person or persons as they shall think fit to act as trustees along with them or after their decease in the execution of the said trust, and with all other usual and necessary powers; and to grant warrant and authority to the petitioners William John Kirk and John Henderson to resign the office of trustee under said marriage-contract, and to find them entitled to the expenses of and incident to this application out of the said trust funds presently under their charge, or to do further or otherwise in the premises as to your Lordships shall seem proper."

The petition was unopposed, but on 18th July the Court, after hearing counsel, sisted the petition for the purpose of ascertaining whether William Grayson and Donald M'Lean, if appointed trustees, would submit to the jurisdiction of the Court of Session in matters relating to the trust in the event of their being appointed.

On 22nd November the following undertaking was lodged in process, signed by Grayson and M'Lean, whose signatures were tested by two witnesses and certified by a notary-public:— "We, William Grayson, solicitor, and Donald M'Lean, proprietor of Moose Jaw Flour Mills, both residing in Moose Jaw, Saskatchewan, Canada, . . . do hereby, in the event of our being appointed by the Court of Session as trustees under said marriage-contract, agree and bind and oblige ourselves to submit to the jurisdiction of the said Court in all matters relating to the trust created by said contract of marriage, and to obey all orders of the said Court made upon us thereanent. . . ."

The Court pronounced an interlocutor in terms of the prayer of the petition.

Counsel for the Petitioners — Spens. Agents—Hope, Todd, & Kirk, W.S.

HOUSE OF LORDS.

Monday, December 3.

(Before the Lord Chancellor (Loreburn), Lords Halsbury, James of Hereford, Davey, and Robertson.)

WALSH *v.* POLLOKSHAWS MAGISTRATES AND OTHERS.

(In the Court of Session, July 19, 1905, reported 42 S.L.R. 784, and 7 F. 1009.)

Public-House—Licensing Court—Certificate—Refusal to Renew—Discretion of Licensing Authority—Licensing (Scotland) Act 1903 (3 *Edw. VII, c.* 25).

The Licensing (Scotland) Act 1903 does not interfere with the discretion of the Licensing Authority, and consequently an action to reduce a deliverance of such licensing authority save on the ground of its having exceeded its statutory jurisdiction, or its having refused a hearing allowed by statute, or of actual corruption, is irrelevant.

A licence-holder brought a reduction of the deliverance of the Licensing Authority refusing to renew the licence. He averred that the proceedings had been illegal and oppressive in respect (1) that an objection to the renewal, on the ground that the premises were insanitary and the district congested, had been given effect to, although no evidence had been led in support of the objection, and the applicant had offered to carry out any alteration of the premises which might be suggested; and (2) that the refusal was in pursuance of a preconceived policy of reducing the number of licences as being too numerous. *Held* [*aff.* judgment of First Division (Seven Judges)] that the action was irrelevant.

Lundie v. *Falkirk Magistrates*, October 31, 1890, 18 R. 60, 28 S.L.R. 72, *approved* and *followed*.

Statute—Interpretation—Appeal—Grant of an Appeal to Particular Court Excluding All Other Appeal—Finality Clause in One Part of Statute Applicable Only to Decisions under that Part—Licensing (Scotland) Act 1903 (3 *Edw. VII c.* 25).

The Licensing (Scotland) Act 1903 is divided into Seven Parts. Part I deals with "Constitution of Licensing and Appeal Courts." Part II deals with "Powers, Duties, and Procedure of Licensing and Appeal Courts," and in section 22 gives an appeal from the Licensing to the Licensing Appeal Court. Part VI deals with "Legal Proceedings," and in section 103 provides—"No warrant, sentence, order, decree, judgment, or decision made or given by any quarter sessions, sheriff, justice or justices of the peace, or magistrate, in any cause, prosecution, or complaint, or in any other matter under the authority of this Act, shall be subject to reduction, suspension, or appeal, or any other form of review or stay of execution, on any ground or for any reason whatever other than by this Act provided."

Opinion (*per* Lord Chancellor Loreburn) that while section 103, looking to its terms, could not apply to a decision of a Licensing Court, the same result was reached in that the conferring in section 22 of an appeal to a particular court impliedly excluded all other appeal.

Opinion (*per* Lord Davey) that section 103 applied only to such decisions as were given under the authority of that Part of the Act.

This case is reported *ante ut supra.*

The Licensing (Scotland) Act 1903 (3 Edw. VII, c. 25) so far as is required is given *supra* in the second rubric.

Mrs Agnes Boyle or Walsh, the pursuer (reclaimer), appealed to the House of Lords.

At delivering judgment—

LORD CHANCELLOR—On 12th April 1904 the pursuer Mrs Walsh, who held a public-house certificate in respect of 81 King Street, Pollokshaws, was deprived thereof by a refusal to renew it on the part of the Licensing Court. In May 1904 this refusal was confirmed by the Licensing Court of Appeal. The licence appears to have been held for about fifty years prior to this refusal. Thereupon she brought this action against the Magistrates and Town Clerk of Pollokshaws, and also against the members of the Licensing Appeal Court and the Clerk of the Peace for the County of Renfrew, upon the ground that the refusal was unlawful. The facts or alleged facts on which she relies are as follows:—

No complaint of the management or objection to renewal was ever made. Nor was any notice of objection given at any time prior to April 1904. But at the Licensing Court on that date Inspector Geddes verbally objected to the renewal on the ground that the premises were insanitary and the district congested. He was not put on oath, nor were any explanations or evidence given as to either of the objections. The pursuer's agent offered to carry out any recommendation in regard to the sanitary arrangements, but the Court made none, and the pursuer alleges that they knew nothing about the sanitary condition and made no inquiry. After hearing pursuer's agent the Court, without calling for evidence, refused her application for a renewal.

The pursuer alleges that Inspector Geddes was supposed by her agent at the time to be acting Superintendent, and therefore his objection was admitted without demur, but that in fact he had no authority from the County Council to act as superintendent. Further, she alleges that prior to the hearing, the Town Clerk, on behalf of the Magistrates, had, by a circular, notified their opinion that the number of licensed premises was excessive, and that the refusal was the result of a preconceived determination, and that they arranged for Inspector Geddes to make the objections which he made. Lastly, she charges that the defenders received shortly before April 12th deputations from local parties inimical to the granting of any public-house licences, which she says was irregular, and biassed the defenders against renewing the pursuer's licence, and that the renewal was refused in pursuance of the policy so arrived at by the Magistrates, and under the influence of parties outside the sphere of the Licensing Courts.

In regard to the Court of Appeal, pursuer states that the appeal was overruled because the Court was actuated by the same motives and the same preconceived determination, though no one appeared for any objector and no evidence was heard, and no one did appear and bear evidence against the appeal.

Apart from the charges of ignorance, prejudice, and bias against the two Courts, I assume, in pursuer's favour, that the facts were as stated. I will deal with these charges later.

The Act of 1903, which governs this case, establishes new in place of the old Licensing Authorities, which is a substantial change, and styles them courts, which is simply a matter of terminology not affecting the law. But it in no way interferes with the discretion of the Licensing Authorities. Indeed, the sections operative on that point in the Act of 1903, namely, sections 11, 18, 19, 20, are either echoes or adaptations that do not alter the sense of corresponding sections in the earlier Acts, namely, section 7 of the Act of 1828, and sections 9, 11, 12 of the Act of 1862 respectively. And the ruling decision of *Lundie* v. *Magistrates of Falkirk*, 18 Rettie 60, decided under the old Acts, applies equally to the new. It is difficult to imagine a stronger case than that. Lundie's application for renewal was refused on the evidence of constables, and on the knowledge of one of the Justices. His case was that he could have explained and offered to explain that evidence in a sense favourable to himself by other witnesses whose evidence was not heard. And it was there averred that the hearing was a mere pretence, the decision against the pursuer having been arranged beforehand; and substantially all the complaints in regard to the hearing that have been advanced in the present case were advanced in that also. Yet the Inner House decided that there was nothing on record that could be made the subject of inquiry in the Court of Session, and dismissed the action. The Lord President in *Lundie's* case, said—"We are not entitled to touch a judgment of the Justices or of the Quarter Sessions unless it can be shown that these tribunals, or either of them, have exceeded their statutory jurisdiction." If there were a charge of actual corruption or that the applicant had been refused the hearing prescribed by statute, then no doubt the Courts might interpose on other grounds. Otherwise I am of opinion that the language of the Lord President covers the ground and applies to the new Licensing Court and Court of Appeal as it did to the old Licensing Authorities.

I desire to add that though the finality clause (section 103 of the Act of 1903) cannot be applied to the decisions of a Licensing Court or Court of Appeal, because, except in certain burghs, those Courts may include persons who are not among the persons enumerated in that clause, yet the result is the same as if it could be applied. For I agree with Lord President Inglis that the appeal given to a particular tribunal (viz., the Court of Appeal) impliedly excludes any other appeal.

Applying that law, it follows that in this case the Licensing Court were not bound to put Inspector Geddes on oath, or to require from him or anyone else either explanation or evidence, or to make any recommendation as to the sanitary arrangements. Likewise in the Court of Appeal there was no necessity for any appearance or any evidence. The Court were entitled to reject the appeal without either one or the other, acting on their own knowledge or opinion.

The Lord Ordinary allowed proof upon the point whether Geddes had a *locus standi* to make objections or not. Your Lordships have not been asked to interfere with that allowance, and accordingly I abstain from expressing any opinion upon it.

As to the charges of ignorance, prejudice, and bias. The only facts alleged in support of these charges was that the Magistrates had before the Court was held formed and publicly declared their opinion that there were too many licensed houses, and had received deputations of persons hostile to any licences. They were entitled to do both these things. Their duty is in the main administrative. And in coming to an administrative conclusion on questions of licensing policy they may use their own judgment and hear whom they please.

I think this appeal must be dismissed.

LORD DAVEY—It is sufficient for me to say in this case that I have carefully considered the judgment delivered by the Lord President and concurred in by his colleagues on the Bench, by the light of the arguments addressed to us by the learned counsel for the appellant, and I see no reason to differ from that judgment. In particular, I think that the Licensing Court was entitled to form the opinion, based on their local knowledge and inquiries, and (as they say) "after full consideration of all circumstances" that the number of licensed houses in the town was in excess of the reasonable requirements of the inhabitants. The appellant might, of course, show that her house has supplied a want which would be unsatisfied if her licence was not renewed, or that on other grounds her licence ought to be renewed, but I doubt whether she was entitled to be heard on the general question of administrative policy.

I also think that the Court was entitled, in its discretion, to entertain the objection (which must be assumed for the present purpose to have been made with proper authority) that the appellant's premises were in an insanitary condition without requiring the objection to be supported by evidence on oath. I think they were entitled to rely on their personal knowledge, and the circumstance (which impresses my mind strongly) that the appellant's agent does not appear to have traversed the allegation of fact but preferred to confine himself to offering to put the premises in a better condition. It is averred that the appellant's agent was heard before the Court retired to consider the appellant's application, but there is no averment that the appellant's agent offered to call evidence or was refused the opportunity of doing so, or that he even asked for particulars or controverted the fact alleged.

With regard to what has been called the finality clause (section 103 of the Act of 1903), I agree with the Lord President that it applies to such matters as prosecutions and decisions of magistrates sitting as such, and not to decisions of the specially constituted Licensing Courts. I observe that the statute is divided into parts. Part 2 applies to the "powers, duties, and procedure of Licensing and Appeal Courts." Section 103 is found not in part 2 but in part 6, relating to "legal proceedings," and I think it is the sounder construction to make it apply only to such decisions as are given under the authority of that part of the Act.

I agree that the appeal should be dismissed with costs.

My noble and learned friend Lord Halsbury is not able to be present to-day and has requested me to say that he concurs in the judgment I have jnst read.

LORD ROBERTSON—I think the judgment ought to be affirmed.

LORD CHANCELLOR—I have been asked by my noble and learned friend Lord James of Hereford to say that he concurs in the conclusions at which your Lordships have arrived.

Their Lordships refused the appeal with expenses.

Counsel for the Appellant—Danckwerts, K.C.—Hunter, K.C.—J. Watt. Agents—James Purves, S.S.C., Edinburgh—Godden, Son, & Holme, London.

Counsel for the Respondents — Scott Dickson, K.C. — Orr, K.C. — Maconochie. Agents—Inglis, Orr, & Bruce, W.S., Edinburgh—John Kennedy, W.S., Westminster.

COURT OF SESSION.

Tuesday, November 6.

FIRST DIVISION.

INLAND REVENUE *v.* CARDONALD FEUING COMPANY, LIMITED.

Revenue—Income-Tax—Profits—Ascertainment of Profits—Company Dealing in Heritage—Sale of Feu-Duties Created by a Company over Land Bought and Built upon by it—Income-Tax Act 1842 (5 *and* 6 *Vict. cap.* 35), *sec.* 100, *Schedule D, First Case.*

A company whose business was the purchase, sale, and development of heritage, bought land on which it erected houses yielding rent. Over the property so occupied it created feu-duties which were sold, the price being applied in reducing a bond over the property, which with its buildings continued to belong to the company. The Inland Revenue claimed income-tax on the price of the feu-duties less the original price of the land, as being profits earned by the company in its business. *Held* that this method of ascertaining the alleged profits was incorrect, since the value of the feu-duties was at least partially attributable to the buildings erected by the company, the cost of