respect that when it was pronounced an amendment had been put upon record without any interlocutor allowing the same to be received, and closing the record of new. The Court *repelled* the objection.

The case of *Hastie* v. *Steel* was decided in March 19, 1886 [*ante*, vol. xxiii. p. 559], and the pursuer found liable in expenses to the defender, and a remit made to the Auditor to tax the defender's account and report. The pursuer lodged objections to the report of the Auditor. The principal objection taken was that when the case was in the Inner House, and during the argument there, an amendment by the defender relating to the matter in dispute was put upon record, but no interlocutor appeared upon the interlocutor-sheet, allowing the amendment to be received, and closing the record of new. The pursuer referred to the Judicature Act 1825, which by section 4 provides—"And be it further enacted that in ordinary causes where the defender shall make appearance and neither party shall abandon the cause, neither the Lord Ordinary officiating in the Outer House, nor the Court, shall proceed to give judgment upon the merits in the cause until the respective averments of the parties in fact, and their pleas in matter of law, shall, as hereinafter directed, be set forth on the record, and the record made up and authenticated in manner hereinafter appointed." The pursuer maintained that in these circumstances the interlocutor remitting the defender's account of expenses to the Auditor to tax and report was incompetent, as the record was not closed upon the amended statement.

Authority quoted—*Harvey* v. *Lindsay*, July 20, 1875, 2 R. 980.

At advising—

Lord Justice-Clerk—I do not think that we can sustain this objection to the Auditor's report. The defenders account of expenses is now objected to in a case which was allowed to go to judgment before this Court, and a decision was given by the Court in favour of the defender, with expenses, without any such objection being taken as the pursuer now makes, though he was represented by counsel as I understand—for I was not present. Now, the Auditor has made his report, and this objection is taken. The pursuer says the interlocutor remitting the account to the Auditor was an invalid interlocutor, an amendment having been put upon the record without any interlocutor authorising that to be done, and finally closing the record of new. I do not think that that is a relevant objection. The judgment was delivered by the Court and has become final, and it cannot be set aside now by any procedure such as this, which is an objection to the Auditor's report on a remit validly made. I do not think that Mr Hastie has shown any case of essential error in point of fact. It is only a statement, at most of an error in process. What effect it may have if the question is raised by another form of procedure I do not say, but it cannot have the effect of preventing us from considering this Auditor's report. I do not think we can sustain this objection.

Lord Young—I am of the same opinion. The question between the parties was originally one of jurisdiction. An action for damages for slander was brought against a gentleman who resided in Calcutta, all the matters referred to having taken place in Calcutta. It was sought to sue him here on the ground that this Court had jurisdiction over the defender, as he was the proprietor of heritable property in Scotland—a house in St Vincent St., Glasgow. The defender denied that he was proprietor of any such heritable property, and in order to make his denial specific he desired to have it written upon the record that the house belonged not to him but to his brother John Steel. Now, I doubt whether even the possession of a house in St Vincent St., Glasgow, would necessarily make a defender liable to our jurisdiction in an action of damages for slander uttered in Calcutta. But assuming that to be important, perhaps the clerk ought to have written an interlocutor allowing the amendment to be received; it would have been more regular. But these words were written upon the record without any interlocutor in regard to them. The question was argued and decided, and that decision cannot be altered now. We can do nothing now except pass to the consideration of the Auditor's report. I should only wish to say now, as I did during the course of Mr Hastie's statement, that I do not and never did entertain any doubt of the power of a Judge in the Outer House or of this Court to correct any error in fact in any interlocutor. If the name of the defender is inserted instead of that of the pursuer, or if decree is given for £1000 instead of £100, for example, all that can be remedied at once. It would be ridiculous to require an appeal to the House of Lords or an action of reduction. But this is not a matter of that kind at all. The utmost irregularity that it can be brought up to is that no interlocutor was written allowing the amendment to be received and closing the record again. It is always a question of degree, but we cannot listen to this objection at this stage.

Lord Craighill and Lord Rutherfurd Clark concurred.

The Court repelled the objections, approved of the Auditor's report, and decerned against the pursuer for the amount thereof, found the defenders entitled to the expense of this appearance, and modified the same at the sum of two guineas.

Counsel for Pursuer—Party.

Counsel for Defender — Pearson. Agent—J. B. M'Intosh, S.S.C.

Thursday, February 17.

SECOND DIVISION.

[Lord Fraser, Ordinary.

NORTH BRITISH RAILWAY COMPANY *v.* PATERSON (INSPECTOR OF CARDROSS).

Poor—Poor-Rate—Railway—Poor-Law Amendment Act 1845 (8 *and* 9 *Vict. c.* 83), *sec.* 36—*Assessment—Classification.*

A classification of lands and heritages under the 36th section of the Poor-Law Amendment Act 1845 must, in order to be valid, comprehend all the lands and heritages in the parish.

In 1846 the Parochial Board of the parish of Cardross, with concurrence of the Board of Supervision, adopted a classification of lands and heritages under section 36 of the Poor-Law Act 1845, by which they divided into two classes (1) lands let for farming, (2) houses let as dwelling-houses or shops, the rate on class 1 to be at the rate of one-sixth the annual rent of the land and houses let along with it, and the rate on class 2 to be on the whole annual rent. There were within the parish at that date other species of lands and heritages besides those mentioned in the classification, and the Parochial Board treated the classification as embracing all these, every kind of lands and heritages not falling under class 1 being assessed under class 2. After the introduction of railways into the parish these were assessed as falling under class 2, until the question of the validity of the classification was raised in 1885 by a railway company whose line passed through the parish. *Held* that the classification was not valid and legal, as it did not embrace all the lands and heritages within the parish, and that the Parochial Board was not entitled, until a legal classification should be adopted, to impose upon the railway company any higher rate of assessment than that imposed on any other lands and heritages within the parish.

By section 34 of the Poor-Law Amendment Act 1845 it is enacted—"That when the parochial board of any parish or combination shall have resolved to raise by assessment the funds requisite [for the relief of the poor], such board . . . shall resolve as to the manner in which the assessment was to be imposed, and it shall be lawful for any such board to resolve that one-half of such assessment shall be imposed upon the owners, and the other half upon the tenants or occupants of all lands and heritages within the parish or combination, rateably according to the annual value of such lands and heritages." . . . .

By section 36 it is enacted—"That where the one-half of any assessment is imposed on the owners and the other half on the tenants or occupants of lands and heritages, it shall be lawful for the parochial board, with concurrence of the Board of Supervision, to determine and direct that the lands and heritages may be distinguished into two or more separate classes, according to the purposes for which such lands are used and occupied, and to fix such rate of assessment upon the tenants or occupants of each class respectively as to such boards may seem just and equitable."

At a meeting of the Parochial Board of the parish of Cardross held on 16th April 1846 it was resolved that there should be an assessment, and that the mode should be that one-half of such assessment should be imposed upon the owners and the other half upon the tenants and occupants of all lands and heritages within the parish. The classification then fixed was—"Class 1, lands let for farming; class 2, houses let as dwelling-houses or shops, the rate on class 1 to be at the rate of one-sixth of the annual rent of the land and houses let along with it, and the rate on class 2 on the whole annual rent." This classification received the sanction and approval of the Board of Supervision. At this period there was no railway in the parish of Cardross, although it was made matter of admission in this case that the Caledonian and Dumbarton Junction Railway Company had given Parliamentary notice in November 1845 that an application would be made to Parliament for power to make a railway through Cardross. Under an Act in 1851 a railway from Balloch to Bowling was constructed, and under the Glasgow, Dumbarton, and Helensburgh Railway Act 1855 a railway from Dumbarton to Helensburgh was constructed. These two lines passed through Cardross. Under Acts passed in 1862 the two companies owning them were amalgamated with the Edinburgh and Glasgow Railway Company. The latter railway was amalgamated with the North British Railway Company in 1865.

After the introduction of the railway system into Scotland numerous applications were made to the Board of Supervision for their sanction to the alteration of classifications, and on 10th December 1868 the Board issued a circular to the various parochial boards in Scotland, in which they stated that their practice in giving effect to the principle on which they thought applications to amend classifications ought to be dealt with was to approve of a classification of lands and heritages into (1) dwelling-houses, (2) shops and manufactories, railways, fishings, mines, and quarries, (3) agricultural subjects. The first of these classes paid at the full rate assessed, the second at two-thirds of the rate paid on dwelling-houses, and the third at one-fourth or one-fifth of the rate paid on dwelling-houses. Where, however, as was the case with Cardross, a board did not apply for a new classification the principles explained in this circular could not receive effect.

On the introduction of railways into the parish of Cardross the Parochial Board dealt with them as falling under class 2 of their original classification in 1846, and assessed them as if they were "houses let as dwelling-houses or shops," at their full annual value.

This action was raised in March 1886 by the North British Railway Company against William S. Paterson, Inspector of Poor of the Parish of Cardross, to have it declared, *inter alia*, "that the following classifications of lands and heritages in the said parish, viz., 'Class 1, lands let for farming; class 2, houses let as dwelling-houses or shops,' which was adopted by the Parochial Board of said parish with the concurrence of the Board of Supervision on or about the 29th May 1846, is not now a legal and valid classification under the 36th section of the Poor-Law Amendment Act 1845, in respect it does not comprehend or include the whole lands and heritages in the said parish," and that "unless and until a legal and valid classification of the whole lands and heritages in said parish, distinguishing the same into two or more separate classes according to the purposes for which they are used or occupied, has been adopted by the said Parochial Board with the concurrence of the Board of Supervision, in accordance with the 36th section of said Act, the said Parochial Board are not entitled to impose on the pursuers, or levy from them as tenants or occupants of lands and heritages within the said parish, any assessment at a higher rate than is imposed by the said Parochial Board for the same period on the tenants and occupants of any other lands and heritages within the said parish;" and there was a conclusion for

interdict against assessing under the existing classification, and an alternative conclusion that in the event of the existing classification being sustained the pursuers' railway should be placed under class 1, lands let for farming, and not class 2, houses let as dwelling-houses or shops.

The pursuers stated that the classification in 1846 was not now a legal and valid classification, and was, in particular, incomplete in respect that it did not comprehend railways. The inclusion of railways under the second head of the classification embracing "houses let as dwelling-houses or shops" was totally unauthorised and unwarranted. Such a description could not be held to apply to or embrace such subjects according to any fair or reasonable interpretation of the language employed in the classification. Under the classification they were assessed at the full annual value of their property, while according to the existing practice of the Board of Supervision they should only be assessed on two-thirds of that value. In 1846 the lands now used as railways were used as agricultural subjects, and were embraced in class 1, and so long as there was no change in the classification they fell to be dealt with in the same way, and not transferred to class 2.

In answer the defender stated that the principle of classification was reasonable, in respect it proceeded on the distinction between lands and heritages used for agricultural purposes only and those used for other and in particular for commercial undertakings. The railways were *opera manufacta* on the surface of the land, and ought not to be classed with agricultural land.

The defender pleaded—"(2) The said classification having been made by the Parochial Board of Cardross with concurrence of the Board of Supervision in terms of the statute, and being a legal and valid classification, the defender is entitled to be assoilzied with expenses. (3) The pursuers' undertaking not consisting of lands let for farming is properly included in and assessed under class 2 of said classification."

The Lord Ordinary (FRASER) after proof pronounced this interlocutor—"Finds that there is no legal classification as under the 36th section of the Poor-Law Amendment Act 1845, now in force in the parish of Cardross, of the tenants and occupiers of lands and heritages liable to be assessed for poor-rates: Therefore finds, decerns, and declares in terms of the first declaratory conclusion of the summons: Interdicts, prohibits, and discharges in terms of the conclusion to that effect, and decerns, &c.

"*Opinion.*— . . . This classification was made in 1846, and was approved by the Board of Supervision, and has remained unaltered ever since, although attempts have been made to get it altered. The Board of Supervision approved of it, at a time when that Board had very little experience in regard to the matter of classification, and they would certainly not approve at the present day, a classification so inequitable as this. Their later practice was to classify lands and heritages into four classes—(1) dwelling-houses, (2) shops and manufactories, (3) railways, fishings, canals, and quarries, (4) agricultural subjects. The first of these classes paid at the full rate, the second at two-thirds, the third at one-half, and the fourth at one-fourth. Therefore dwelling-houses paying 1s. per pound of assessment, the second class would pay only 8d., the third 6d., and agricultural subjects only 3d.

"In 1846, when the classification for the parish of Cardross was approved, no railway went through the parish, and the omission of any mention in 1846 in the classification of railways is thus accounted for. It is made matter of admission by the parties that the Caledonian and Dumbartonshire Junction Railway Company had given Parliamentary notice in November 1845 that an application would be made to Parliament for power to make a railway through Cardross. But no such railway was in existence when the classification was made in 1846, and the railway company had at that time no heritable property in the parish. The adherence to the classification, and the refusal to take means to change it, now that a railway runs through the parish, are based upon considerations of pecuniary advantage which can scarcely be called fair dealing.

"The assessment imposed upon the railway is upon the whole annual rent, and the company are brought in under class 2. Having got such a classification with reference to so wealthy a parishioner as the railway company, the Parochial Board are very unwilling to let go their hold. They know perfectly well that if they made any change upon the classification the Board of Supervision would not approve of a classification which made railways assessable at the same rate as dwelling-houses, and they know that the Board of Supervision has no initiative power in this matter, and cannot compel them to take action so as to remedy a most inequitable classification. Nor can this Court do so. But this Court can declare whether or not there has been a classification within the meaning of the statute.

"The ground upon which I hold that there has been here no legal classification is this, that properties liable to assessment have not been classified, such as railways, fishings, quarries, limeworks, dyeworks, chemical works, and there are all such properties within the parish. An improper classification of this sort does not fulfil the purpose of the statute, and it was *ultra vires* of the Parochial Board to make it, and of the Board of Supervision to sanction it.

"The principles upon which classification ought to have been made were very ill understood by the parochial boards, and hence in the year 1868 Sir John M'Neill, the chairman of the Board of Supervision, at the request of the legal members of the board (Mr Edward Gordon, Mr Schank Cook, and myself), drew out the instructive explanatory circular, of date 10th December 1868, which has been put in evidence, and which, in regard at least to the parish of Cardross, seems to have failed in its intended effect. It was laid upon the table of the Parochial Board, the inspector states, and there it lies still—a dead letter. Its advice, with the explanations which accompanied it, were more successful with other parochial boards, who had got illegal classifications sanctioned in the early days of the Board of Supervision, and who gave concurrence to modification and amendment. But notwithstanding this, one of the reforms still needed (when there is an amendment of the Poor Law Acts) will be the giving to the Board of Supervision the power of enforcing equitable classifications, instead of the mere negative power of amendment and disapproval which they at present possess, and this only in the case

where application is made to them by a parochial board. The individual ratepayer is helpless. His appeals to the Board of Supervision were answered, and must always be (until an Amendment Act be passed), in the same way—'We have no power to help you.'

"The Parochial Board brings the railways under the head of 'Houses let as dwelling-houses or shops. But this is to do inadmissible violence to the English language, and for which there is no justification whatever in the circumstances of the case. A railway is neither a dwelling-house nor a shop. No doubt an arbitrary and non-natural meaning may be attached to a word, but if that be intended there must be a clause *de interpretatione verborum*. It may be allowed to a man to use his own glossary provided he furnishes the translation, or to write in a cipher provided he furnishes the key to it. He may declare that by 'houses' he means 'railways,' and by 'lands let for farming' he means 'dyeworks.' But unless this be done by way of glossary, a court of law must give to words the meaning which they commonly bear, and therefore the only conclusion I can come to is, that there is no existing legal classification in the parish of Cardross, and that therefore this case must be dealt with on the footing that none such exists.

"Now, the result of this must be, of course, that all property shall pay at the full rate under deductions allowed by section 37 of the Poor Law Act. Consequently farmers must pay at the same rate as all other ratepayers, a result also very inequitable, but which is the consequence of the non-existence of a legal classification. But the imposing such liability on farmers will have the good effect of very speedily forcing the Parochial Board to adopt a classification more in accordance with justice than the existing one.

"I am unable to adopt the contention of the railway company (which is sought to be given effect to in the alternative conclusion of the summons), viz., that 'railways' come under the first class of 'Lands let for farming.' That contention is just as absurd and untenable as the contention of the Parochial Board that they come under the second class of 'Houses let as dwelling-houses or shops.'"

The defenders reclaimed, and argued—The classification in question was legal and valid. It was equivalent to a classification into (1) lands let for farming, (2) all other lands and heritages. The intention of the board in making the classification must be looked to rather than the words used, and that intention was to embrace in class 2 all other lands and heritages except those embraced in class 1. The object of the board was to give a special exemption to farmers in preference to all other occupants of lands and heritages. This appeared from the minutes of the board and the communications passing between them and the Board of Supervision at and before the date when the classification was adopted. The words "lands let as dwelling-houses and shops" used in the minute of the Parochial Board adopting the classification were intended rather as an example of the class to which no exemption is given than as a definition of it. Further, the Parochial Board had always so interpreted the classification, and had assessed the parish on that footing since its introduction without question from any ratepayer till the present proceedings. The introduction of a new subject into the parish such as railways could not render invalid a classification which was legal and valid when it was adopted.

The pursuers replied—The classification never was legal and valid. The intention of the Board could only be gathered from the words used, and these did not embrace all the lands and heritages in the parish at the date when the classification was adopted. The fact that the Parochial Board had assessed upon this classification since its adoption could not give validity to a classification which was and had always been illegal and invalid. Even if the classification were held to have been exhaustive at the date of its adoption, it ceased to be so on the introduction of railways into the parish, they being a new subject of assessment which could not in any view be embraced within the classification, as they did not fall under its terms. Not being then in existence they could not have been within the intention of the Board when it was made.

The Court after hearing counsel directed the process to be laid before the Board of Supervision, requesting the Board to inform the Court whether they continued to concur in the classification complained of as in their opinion just and equitable.

The following minute was lodged in answer to the request:—"The Board beg very respectfully to state that they have been in use to regard the duty devolved on them by the Poor-Law Act, in the matter of assessments, as of a judicial character, and have not considered it consistent with their statutory duty to determine as to any classification submitted to them by a Parochial Board without affording to the parties, supporting or opposing the classification submitted, an opportunity of being heard thereon. They therefore regret that they are unable to give the Court a definite answer to the question put to them in the remit, as by doing so, they might be held to have prejudged the question, if it were hereafter to be submitted to them in the manner contemplated by the statute. Subject to this explanation, the Board have to state that they have been in the habit of approving of classifications as just and equitable in which railways have been placed in a class between houses and shops on the one hand and agricultural lands on the other. But they have not adopted any inflexible rule to the effect that railways must always be so classed, and would consider it their duty to have regard to the whole circumstances of a parish in each particular case."

At advising—

Lord Justice-Clerk—The Poor-Law Act was passed in 1845, and in 1846 the Parochial Board of Cardross had before them the question of classifying the lands and heritages in the parish under the 36th section of the Act, with the view of imposing a graduated scale of rates. Under the classification which they resolved upon they included on the one hand, houses—that is to say, occupied houses and houses intended for occupation—and on the other hand, land, by which they intended land devoted to agricultural purposes. They did not propose that their classification should comprehend any other members. This classification was duly reported to the Board

of Supervision, and I think we must read the interposition of the Board of Supervision as an assent to the classification so proposed. Since the year 1846 an important line of railway has been constructed through the parish, and the question which we have now to consider is, whether the classification which the Parochial Board have adopted does or does not apply to the rateability of that trading concern, for that is what it is. It is said on the part of the railway company that the classification does not and cannot apply to their line, in the first place, because the line did not exist at the time the classification was resolved upon; and in the second place, equitably, because it is said to lay upon the railway company an amount of burden entirely inequitable in itself, and which could not by possibility have been contemplated at the time the classification was made. Now, I do not think that there can be any dispute that the classification is of this inequitable character. The Parochial Board, however, had the remedy in their own hands, for they could have resolved upon another classification, which would apply and apply equitably to the railway company, who occupy a large portion of land in the parish. The Parochial Board when applied to declined to take that course, and the Board of Supervision, who have a supereminent jurisdiction to give or refuse their assent to classifications which may be proposed by parochial boards, are of opinion that they are not entitled to take any initiative in this matter, and that their control over parochial boards is on this point limited to that power of giving or refusing their assent to classifications which the statute confers on them. On the whole, I am inclined to think that the Board of Supervision are right in taking that view of their functions. We, however, asked the Board what their opinion was on such a question as we have here to consider, and they apparently indicate that if a proposal were made to them to classify the subjects in this parish now they would be inclined to rate the railway in a class mid-way between houses and agricultural lands.

I am clearly of opinion that this is not a classification which is applicable to this railway. It has no place for railways, and I think it is the plain duty of the Parochial Board to revise the classification, and to adjust it on a more equitable scale. I cannot see that there is any difficulty in coming to this result, because the classification at the time when it was adopted could not apply to railways, as there were none then in the parish, although it was perfectly well suited to the other subjects in their existing condition. Therefore, without going further into the matter, I am for affirming the judgment of the Lord Ordinary. The Parochial Board may find their own way out of the difficulty. They may revise the classification and get the concurrence of the Board of Supervision to the revised one.

Lord Young—The question which the Lord Ordinary has decided by the interlocutor reclaimed against is, whether or not the classification of lands and heritages in this parish adopted on 29th May 1846 is a legal classification under the statute. The Lord Ordinary has found that it is not, and I think rightly. He is of opinion, and I agree with him and with your Lordship, that a classification in order to be good under the statute must be exhaustive. That indeed was admitted at the bar. It must be such as to include the whole lands in respect of the ownership or occupation of which the statutory assessment is imposed. It cannot be partial and must be comprehensive, and so comprehensive as to be exhaustive. Now, the Lord Ordinary's decree imports no more than an assumption that a classification of the lands and heritages in this parish into, first, lands let for farming, and secondly, houses let as dwelling-houses, is not an exhaustive classification. I think that is a sound assumption. I do not think it applies to railways, or to anything except lands let for farming, or houses let for dwelling-houses or shops. These are the words used in the statutory determination and direction of the Board of Supervision, or rather in the determination and direction of the Parochial Board which they submitted to the Board of Supervision in 1846 for approval, and they are the words of which the Board of Supervision then approved. The only ground on which it is sought to defend the classification as rightly made, so as to comprehend railways and be exhaustive of all other lands and heritages in the parish is by reading the words "houses let for shops or dwellings" as comprehending railways, shootings, quarries—everything, in short, except land let for agricultural purposes. Now, I cannot so read these words, and with respect to the board having hitherto been in use to impose assessments on the occupiers of shootings, quarries, fishings, and the like, without any objection being made, I can only attribute that to the ease with which taxes are levied, and the willingness of people to submit rather than raise questions. If the question were raised, whether shootings, quarries, or fishings are either lands let for farming or houses let for dwelling-houses or shops, I cannot imagine that there would be any doubt about the answer, any more than about the answer to the question which we have here, whether railways are houses let for dwelling-houses or shops. I cannot say that I have any difficulty about the usage. It is not a usage between contracting parties, showing what they meant by the contract. It is a usage between a taxing body and persons submitting to the imposition of the tax. That is not a sort of usage which would incline me to attribute to language a meaning so foreign to its ordinary meaning as that for which the Parochial Board here contend. But I do not need to go into that. The classification must be approved of by the Board of Supervision, but they had only the language of the classification, not the usage, before them to approve of, and I must hold that their approval was limited to the ordinary and proper meaning of the words of the classification of which they expressed their approval.

I am therefore of opinion that this classification is bad, and must be declared to be so, as the Lord Ordinary has done. The result no doubt is that there will be no classification at all in the parish, and that all lands and heritages will be assessed on their full value alike. That has not been found in practice to be desirable because it has not been found to be equitable. I do not for a moment doubt therefore that the Parochial Board will set about making a new classification which will be exhaustive, and that they will name railways and the other subjects

with a view to separate rating. That will be placed before the Board of Supervision for their approval; until that is done there is no classification, and the equal rating must continue, but after these two authorities have approved of a classification which is exhaustive of the subjects in the parish we have nothing to do with the equity of it.

Lord Craighill and Lord Rutherfurd Clark concurred.

The Court adhered.

Counsel for Pursuers—Balfour, Q.C.—Comrie Thomson—Strachan. Agents—Millar, Robson, & Innes, S.S.C.

Counsel for Defender — Jameson — Younger. Agents—J. & J. Ross, W.S.

HIGH COURT OF JUSTICIARY.

Friday, February 18.

(Before Lords Young, Craighill, and M'Laren.)

SINCLAIR *v.* WINK (P.-F. OF J.P. COURT FOR COUNTY OF ELGIN).

Justiciary Cases—Trafficking in Exciseable Liquors—Brewery—Breach of Certificate—Sunday Sale—Public-Houses Acts Amendment Act 1862 (25 *and* 26 *Vict. c.* 35), *Sched. A, No.* 3.

A complaint charging an offence under the Public-House Acts bore that the accused, a brewer, did upon a Sunday "open his premises, and did sell or give out therefrom beer or ale, or other exciseable liquors," to certain named persons, "or one or other or more of them," and the accused was convicted "of the offence charged." It appeared from the Case that his employees, with his knowledge, had shared their Sunday allowance of beer with friends "as customers, and not by way of treating." *Held* that the facts as stated did not disclose a case on which the conviction could be sustained.

John Sinclair, proprietor and occupier of the West Brewery, Elgin, was charged by complaint under the Summary Jurisdiction (Scotland) Acts 1864 and 1881 with an offence within the meaning of the Public-House Acts 9 Geo. IV. c. 58 (16 and 17 Vict. c. 67, and 25 and 26 Vict. c. 35), or one or other of them, "in so far as upon Sunday, the 5th day of September 1886, he, the said John Sinclair, who holds a certificate in the form of No. 3 of Schedule A of the last-mentioned Act, for his premises at the West Brewery . . . . did by himself or servants, for whom he is responsible, open his said premises at the West Brewery aforesaid, and did sell or give out therefrom beer or ale or other exciseable liquors, to" [eleven named persons], "or to one or other or more of them, contrary to his said certificate."

The Justices, in respect of the evidence adduced, convicted Sinclair of the offence charged.

As stated the Case contained a narrative of the proceedings but no findings in fact, and it was remitted to the Justices for amendment in this particular. It was returned with the following marginal addition:—"They (the Justices) were satisfied on the evidence, and found it proved, that beer was sold or given out by the appellant's servants on the day libelled at the appellant's brewery to one or more of the persons named in the complaint; that such beer was sold or given out to such person or persons as a customer or customers, and not by way of treating, and that the appellant himself was at the brewery on the day libelled, and personally opened the premises to one or more of the persons named in the complaint, and that the beer was so sold or given out with his knowledge. They accordingly convicted the appellant of the offence charged."

The appellant argued—(1) The facts proved did not amount to a breach of certificate. He was charged with opening his premises, but it was not stated that he opened his premises "for business." With regard to the alleged sale, there was no suggestion that money had been paid for the beer—*Smith* v. *Stirling*, March 6, 1878, 5 R. (J.C.) 24; *Kay* v. *Gemmell*, November 13, 1884, 12 R. (J.C.) 14; *Petrie* v. *Kennedy*, March 19, 1885, 12 R. (J.C.) 34. The case showed that the brewery employees had shared their Sunday allowance of beer with visitors, but even although they had sold the beer to their friends, this would not have been chargeable as breach of the master's certificate, unless this were shown to be within the scope of the employees' authority—*Greenhill* v. *Stirling*, March 19, 1885, 12 R. (J.C.) 37. (2) The complaint libelled eleven persons as having received the beer, the Justices found that it had been sold or given out to one or more, but there was no finding to show that the Justices had agreed as to any one individual to whom the sale had been made. The conviction was therefore wanting in specification. (3) The conviction was in general terms on an alternative complaint—*Charleson* v. *Duffes*, June 10, 1881, 4 Couper 470, 8 R. 34; *Boyd* v. *M'Jannet*, May 21, 1879, 4 Couper 239.

The respondent argued—"Selling or giving out" were not properly alternatives. In *Boyd M'Jannet* these were taken to import one act. They were no more alternatives than the words "permit or suffer" in the certificate. There might be a case of "giving out" apart from sale, and yet a breach of certificate—*Bruce* v. *Linton*, 24 D. 184. The words only imported alternative elements of the offence charged; they did not go to the essence of the offence. (2) The Magistrates meant that the sale was to the whole of the parties libelled, and not only to some of the number.

At advising—

Lord Young—This is an appeal against a conviction for "selling or giving out beer on Sunday." When the case was last before us we expressed our opinion that it was unsatisfactory, because it did not set forth the facts on which the conviction proceeded. We directed it to be amended, and that has been done. The question now is, whether the conviction ought or ought not to be affirmed?

On the facts which appear the case is one of remarkable character. The statute under which the complaint was brought is distinct enough. The form of certificate granted to the appellant bears—"And do not open his premises for