finality clause, therefore, if your Lordships were to adopt the construction of the defender—the construction the Lord Ordinary has sanctioned—would be that the statute has given to an administrative body an absolute and uncontrolled authority to determine questions of civil right which the statute itself assumes to be proper for the courts of law, and that not merely as incidental to the execution of their own administrative powers, but absolutely and for all purposes. That would appear to me to amount to a deprivation of civil and private rights which we cannot impute to the Legislature unless it is expressed in clearer language than any that can be found in this statute. The Commission is to decide these questions incidentally. It is not a court of law, and it is debarred by the statute itself from using those methods which in the best equipped courts of law are considered to be indispensable for the just determination of disputed rights, because they are to decide the questions summarily, that is, immediately, when they are raised before them in the place where they happen to be when hearing an application for fair rents, and where neither the forms nor the investigation which is necessary for a complete judgment can be at all practicable. I therefore have little difficulty in coming to the conclusion adopted by your Lordships that this final jurisdiction of the Commissioners is not applicable to the absolute determination of questions of civil or private right, but only to the decisions which are incidental to the performance of the duties which are specially committed to them, and which the courts of law are neither fitted nor empowered to discharge.

I must confess I had some difficulty in consequence of the point to which your Lordship has referred, arising from the structure of the present summons. If this were to be read as a summons intended to reduce the decision of the Commissioners in so far as it fixes the fair rent, or in so far as merely incidentally and for the purpose of fixing the fair rent it determines whether the application before it shall be entertained or not, I should be very clearly of opinion that we should not entertain such an action. We cannot interfere with anything that the Commissioners have done in the exercise of their administrative duty from defect of jurisdiction in this Court, and therefore we should throw out an action of reduction such as I have supposed. And if it had been maintained by the defender that on a proper construction of the determination of the Commissioners they had done nothing more than fix the fair rent, and incidentally and for the purpose of fixing it determine that they should entertain the application as the application of a crofter, I think we should have had some difficulty in coming to the conclusion that this summons could be entertained, because I think it might very well be said that in construing that part of the deliverance of the Commission we must assume—if the words they have employed will allow us to do so—that they acted within their jurisdiction and not in excess of it. But the defenders are far from maintaining that position, but, on the contrary, they maintain absolutely that the deliverance of the Commissioners of which the pursuer complains is a final and absolute decision for all purposes of the question of right which the pursuer desires this Court to determine. And they go so far in maintaining that defence as to have taken their stand on the preliminary defence against the satisfying of the production, which means that the deliverance of the Commissioners is so sacred that the Court cannot even look at it for the purpose of considering whether it is within or in excess of their jurisdiction, and the Lord Ordinary gave effect to that plea because he sustained the defence as preliminary, and so in effect decided that it is impossible that the document should be looked at at all. Both parties therefore have concurred in raising before us in the present process the question which your Lordships have thought right to express your opinion upon, and in which I concur. And therefore I think there is quite enough before us to enable us to decide the questions raised by the two pleas which your Lordship proposes to repel. How the action is to be dealt with for other purposes, or what final judgment the pursuer can obtain in this process, either as it stands or if it be amended, is a question for future consideration by the Lord Ordinary. I agree therefore with the course which your Lordship proposes.

The Court pronounced the following interlocutor:—

"Repel the second and third pleas-in-law for the defender, and decern: Find the pursuer, reclaimer, entitled to expenses from the date of the closing of the record, and remit the account thereof to the Auditor to tax and to report to the Lord Ordinary, and remit to his Lordship to proceed as shall be just, with power to decern for the taxed amount of said expenses."

Counsel for Pursuer — Rankine, Q.C. — Macphail. Agents—Mackenzie & Kermack, W.S.

Counsel for Defender—Kennedy—A.-S.-D. Thomson. Agents—W. & J. L. Officer, W.S.

Wednesday, June 21.

SECOND DIVISION.

[Lord Stormonth Darling, Ordinary.

MENZIES *v.* MACDONALD.

Reparation—Slander—Whether Terms of Letter Libellous—Innuendo.

The chief-constable of a burgh wrote to the manager of an hotel within the burgh in the following terms:—"*Special Licenses.*—Sir,—It has come to my knowledge that on two occasions recently in connection with special licenses

in the Palace Hotel the neighbourhood was disturbed by the firing of shots or fireworks there, and I think it right to give notice that if there is any repetition of this or any other breach of the conditions of the license, I will consider it my duty to strenuously oppose the granting of any special licenses to the house in future. — Yours faithfully, JOHN MACDONALD, *Chief-Constable.*"

In an action of damages for slander raised by the proprietor of the hotel against the chief-constable, *held* that the letter contained no charge of a breach of licence, and was not libellous, and the action *dismissed* as irrelevant.

A. J. P. Menzies, proprietor and occupier of the Palace Hotel, Inverness, raised an action for £1000 damages for slander against John Macdonald, Chief-Constable of Inverness.

The pursuer averred—"(Cond. 2) On or about the 10th of January 1899 the pursuer's manager in the said hotel received from the defender a letter in the following terms:—[*quoted in rubric.*] In a subsequent letter from the defender to the pursuer's agent, dated 13th January 1899, the defender specifies the two occasions by date, viz., 7th October 1898 and 7th January 1899. The pursuer believes and avers that no complaint of disturbance on the occasion mentioned was made by any member of the public to the police authorities. The peace of the neighbourhood was in no respect disturbed on either occasion by the pursuer or by any of his employees, nor by anything done by any person in or upon the pursuer's premises. (Cond. 3) On the first of the two occasions above mentioned, viz., on the 7th day of October 1898, the special licence was obtained for a social function over which Sir Robert Finlay, M.P. for the Inverness burghs, and Solicitor-General for England, presided as chairman, and the Provost of the town of Inverness as croupier. On this occasion, in honour of the Member of Parliament in the chair, some fireworks were displayed about 10 p.m., which is the ordinary closing hour, by some of the company on the roof of the hotel, which stands in its own grounds. On the second occasion above mentioned, viz., on the 7th day of January 1899, the special licence was obtained for a dinner of railway engineers. The guests left the hotel before the expiry of the licence, and did not, while within the premises, fire shots or fireworks of any kind. (Cond. 4) The letter of which the pursuer complains charges him with breach of licence on these two occasions. Said charge is false and calumnious, and was made by the defender recklessly, maliciously, and without probable cause. No breach of licence took place on either of the said occasions, and the defender, when he wrote the said letter was well aware that such was the case. The pursuer has never been convicted of breach of licence, nor has he had any notice of a prosecution for breach of licence. He denies that any breach of licence took place on either of these two occasions. The defender has failed to aver any act on the part of the pursuer amounting to a breach of licence, and he was not at the time said letter was written, nor is he now in possession of any information warranting the allegations that a breach of licence had been committed. The pursuer avers that the charge of breach of licence on the two occasions before mentioned is made by the defender in the knowledge that no breach of licence had been committed, and in reckless disregard of the pursuer's interests. The said charges were not made by the defender in the execution of any official duty, but in breach of duty and maliciously, and for the purpose of annoying and injuring the pursuer and his business. (Cond. 5) Further, the said letter, by the use of the words 'repetition of this or any other breach of the conditions of the licence,' charges the pursuer with other breaches of the licence which are not specified, or at all events means, and was intended by the defender to mean, that the pursuer had been guilty of other breaches of licence. No breach of licence having ever occurred while the pursuer has held the said licence, and this being within the knowledge of the defender, the said charge or allegation is calumnious and without probable cause, and is made recklessly and maliciously." (Cond. 6) The said Palace Hotel owing, *inter alia*, to the exceptional attractions of its situation, arrangements, and fittings, is a favourite rendezvous for social functions of a high class order, for which special licences are frequently required. The defender's said charges of breach of licence, and his threatened action consequent on these unfounded and malicious charges, are in the highest degree injurious to the pursuer and to his business reputation, and endanger the continued granting to him of special licences in the future, and are to the serious loss, injury, and damage of the pursuer and his business. The pursuer estimates the damage which he has and will suffer, and the *solatium* to which he is entitled, at £1000."

The defender averred—"On 7th January information was laid before the defender as Chief-Constable of the burgh of Inverness by the constable on duty near the Palace Hotel that on the two occasions, viz., 7th October 1898 and 7th January 1899, when the said Palace Hotel was open at late hours in virtue of special licences, the neighbourhood had been disturbed by fireworks having been let off from the said hotel on 7th October after ordinary closing hours, and by a shot having been fired in front of said hotel at 2·25 a.m. on 7th January 1899, when a party who had been in the hotel in virtue of a special licence was leaving. Neither the pursuer nor his said manager were personally known to the defender. The said letter was written by the defender in the discharge of his duty as Chief-Constable aforesaid and was privileged. It is an implied condition of a special licence that the peace of the neighbourhood should not be disturbed."

He pleaded, *inter alia*—"(1) The action is irrelevant."

On 14th March 1899 the Lord Ordinary (STORMONTH DARLING) approved of an issue

for the trial of the cause. In this issue malice was not inserted.

The defender reclaimed, and argued that there was no relevant case stated on record.

Argued for pursuer—The letter contained a charge by the Chief-Constable against the defender of breach of special licence. This was the only possible meaning of the letter. The licence was that by means of which an innkeeper made his living, and to an innkeeper nothing was so important as that he should retain his licence. To act upon an unfounded rumour and charge the pursuer with breach of licence was libellous on the part of the Chief-Constable, and the action was therefore relevant—*Keay* v. *Wilson*, January 11, 1843, 5 D. 407; *Carmichael* v. *Cowan*, December 19, 1862, 1 Macph. 204; *M'Iver* v. *M'Neil*, June 28, 1873, 11 Macph. 777; *Macrae* v. *Wicks*, March 6, 1886, 13 R. 732.

Lord Justice-Clerk—In this case the defender, the Chief-Constable of Inverness, wrote a letter to the pursuer in which he says that it had come to his knowledge that on two occasions recently in connection with special licences in the pursuer's hotel the neighbourhood was disturbed by the firing of shots or fireworks there, and then he goes on to say that "I think it right to give notice if there is any repetition of this or any other breach of the licence I will consider it my duty to strenuously oppose the granting of any special licences to the house in future," Now, this was a letter which the Chief-Constable was under no obligation to write to this innkeeper. It was practically a private communication by way of warning or hint. It appears to me that it was a most proper letter for the Chief-Constable to write. He does not assert as a fact that what he says is true; he merely says that certain things had "come to his knowledge." I cannot see anything libellous in that. I think that any chief-constable dealing with a respectable innkeeper would naturally communicate with the innkeeper and tell him what had come to his knowledge, and then add by way of caution that if such and such things happened again he might have to take action. I think that the defender was quite within his right in what he did, and that the action ought to be dismissed.

Lord Young—I concur. The Lord Ordinary has allowed an issue. I have a sincere respect for the judgment of the Lord Ordinary in this case, and but for that opinion I might have been disposed to use pretty plain language in expressing my view of this action. As it is, I think it sufficient to say that I differ from the Lord Ordinary. I think it only due to the Chief-Constable of Inverness to add that so far as we have any materials to form a judgment, I think that he acted with perfect propriety and in a manner altogether becoming in writing this letter.

Lord Trayner—I am of the same opinion. The case which the pursuer makes is that this letter charges him with a breach of his licence. If the letter could bear that innuendo I think that it would be libellous, for in my opinion it is a libel to charge a public-house keeper with breach of his licence. But will the letter, fairly read, admit of the innuendo suggested by the pursuer? I think not. The letter is written to the pursuer by the Chief-Constable in a friendly spirit, and is to the effect that he had heard of certain bad conduct on the part of guests in the pursuer's hotel on the last two occasions on which a special licence was granted. So far it is obvious, I think, that there is nothing in the letter which can be innuendoed as a libel against the pursuer. The letter goes on—"I think it right to give notice that if there is any repetition of this, or any other breach of the conditions of the licence, I will consider it my duty to strenuously oppose the granting of any special licences to the house in future." Now, that means nothing more than that if in the future there should be any disturbance on the part of guests in the hotel, or any breach of the licence, the writer would oppose the granting of special licences for the hotel. I can find nothing in the letter in question open to censure. On the contrary, it was a very proper letter for the defender to write in the circumstances. I am therefore of opinion that the issue proposed should be refused and the defender assoilzied.

Lord Moncreiff—I am of the same opinion. This is not a libellous letter in any sense of the term. I rather think that the Chief-Constable was under the impression that if what he said had occurred really did occur the pursuer had committed a breach of his certificate; but I regard the letter as a warning most properly given that such things must not occur again. Such a letter certainly is not libellous.

The Court recalled the interlocutor reclaimed against, assoilzied the defender from the conclusions of the action, and decerned.

Counsel for the Pursuer—Ure, Q.C.—Cooper. Agent—John A. Tweedie, Solicitor.

Counsel for the Defender—Guthrie, Q.C.—C. D. Murray. Agents—W. & J. L. Officer, W.S.

Friday, June 23.

SECOND DIVISION.

[Sheriff of Dumbartonshire.

MACFARLANE *v.* DUMBARTON STEAMBOAT COMPANY, LIMITED.

Restraint of Trade—Stipulation by Seller not to Carry on Similar Business—Area of Restriction — Whether Restriction Necessary for Protection of Purchaser.

In the contract of sale to a limited liability company of the business of a carrier between Dumbarton, Glasgow,