

the officer upon whom rests the duty of representing the society under the rules. Accordingly, when we come to consider the 163rd section on which the case for the Crown rests, which is in these words, "Any person charged or chargeable to the duties granted by this Act, either by assessment or by way of deduction from any rent, annuity," and so on, or other annual payment, will be entitled to prove the grounds of exemption, they say that that is a clause which is meant to exempt only an individual, and does not apply to societies, corporations, companies, and such like. I do not think that is the proper reading of it at all. The treasurer, or the person representing the society, is the person referred to in that clause of the Act; and accordingly, as I suppose this Old Monkland Association could not appear as a body, when a person representing them appears on their behalf, I think he was clearly the person representing the society referred to in that 163rd section of the Act. It clearly appears that he, as the person representing the society, was entitled to obtain the exemption if he proved his right to it. All through the Act, where there are references to these associations and companies and corporations, it is always a person that is spoken of, and a person who represents and is bound to represent and act for the company. Now, this is a matter in regard to which the Act says that this person as representing the society should be exempted. Again, the interpretation section of the Act says that the word "person" referred to in the Act shall be understood to include several persons. Well, what is this Association? Is it not just an Association of several persons? I think that the true reading of the Act is that the person mentioned in the section includes the person entitled to appear as representing the association and claim exemption. On these grounds I think your Lordship's conclusion is right.

LORD M'LAREN—It has been the policy of the Revenue authorities, in applying to Parliament for money, to cast a wide net and with meshes so small that no person within the general range of the Act can hope to escape upon the ground that he is not specifically included. In the year 1842, when the Income-Tax Act was passed, we had not the benefit of a General Interpretation Act for Acts of Parliament, and accordingly, to avoid all such questions as have been argued in this case, it was customary to put every proposition both in the singular and the plural, with the addition of a reference to bodies corporate and others who might not be supposed to fall within the scope of a statute putting a tax upon persons or individuals. That practice led to a great deal of redundant phraseology, but it had the merit of making the intention perfectly clear to anyone who read the Act. Now, in this Act, as in other taxing statutes, we find that the Income-Tax is laid not only upon individuals but on bodies politic and corporate and on unincorporated societies or fellowships. I agree with Lord Adam in

holding that these last-mentioned words were unnecessary, because an unincorporated society is merely an aggregate of individuals who, if the question be of taxation on heritable property, may be regarded as tenants in common, or if it is taxation of income, may be regarded as traders in common, and therefore affected by the general words "person or persons." It so happens that while in the clause laying on the tax the unincorporated societies are referred to in express terms, yet in the clause relating to the exemption of small incomes unincorporated societies are not specially referred to. It may be that the framers of the Act had not thought that there would be any cases in point needing to be provided for, but of course it is not necessary to mention unincorporated societies at all; the meaning of the two clauses will be the same—I mean that the persons to whom they apply must be the same. I should be extremely reluctant to admit the supposition that some of the clauses of the Income-Tax Acts were intended to apply to a range of persons which included unincorporated societies, and that others which it is necessary to construe along with them were not to be applied to unincorporated societies. Nothing but the very clearest language of exclusion would, I think, lead to such an unnatural scheme of construction of an Act of Parliament. I therefore agree with your Lordships that both clauses are to be read as perfectly general in their terms and application, and therefore that this club, which it is admitted has no income, is entitled to exemption.

LORD KINNEAR concurred.

The Court dismissed the appeal and sustained the deliverance of the Commissioners.

Counsel for the Appellant the Surveyor of Taxes—The Solicitor-General (Dundas, K.C.)—Young. Agent—Philip J. Hamilton Grierson, Solicitor of Inland Revenue.

Counsel for the Respondents—R. S. Horne. Agents—Gray & Handyside, S.S.C.

Thursday, November 24.

SECOND DIVISION.

[Sheriff Court, Edinburgh.]

GORDON v. JOHN CRAN & COMPANY.

*Master and Servant—Apprentice—Contract of Apprenticeship—Constitution of Contract—Proof of Contract.*

In a contract of apprenticeship, though the obligation of the master to teach and of the apprentice to learn is of the essence of the contract, it does not require to be stated in express terms in the writing which embodies the contract.

Averments of contract of apprenticeship which held relevant.

This was an action raised in the Sheriff Court at Edinburgh at the instance of William Gillespie Gordon, apprentice en-

gineer, Leith, against John Cran & Company, engineers, Leith. The pursuer sought to have the defenders ordained to implement their obligations to him under an alleged contract of apprenticeship, or alternatively to pay him £500 damages.

The pursuer averred—“(Cond. 1) The pursuer is an apprentice engineer, and until lately was in the service of the defenders, who are engineers and boilermakers in Leith, under a contract of apprenticeship for five years, dating from 26th March 1900, constituted by (a) application form signed by the pursuer and accepted by the defenders, and (b) *rei interventus* and homologation following thereon as hereinafter set forth. (Cond. 2) Upon the faith of the said contract the pursuer duly entered into the service of the defenders on the 26th day of March 1900, in the fitting department of their works, as an apprentice engineer. On 2nd April 1900 he paid to the defenders a deposit of £5, stipulated by the contract, conform to receipt herewith produced, and he has since continued to discharge his duties in the defenders' service at the wages stated in the contract, with the view of qualifying himself as a journeyman engineer. By the said deposit and service the original informal contract has been duly validated. (Cond. 3) The pursuer's apprenticeship has thus run for over a period of four years, and would have expired on the 25th March 1905. The defenders, however, on the first day of April 1904, without cause, wrongously and unjustly dismissed the pursuer from their employment, and unlawfully terminated his service. The said defenders are thus in breach of the contract entered into with the pursuer, and in breach of their duties towards pursuer as an apprentice. (Cond. 4) Under their contract the defenders are bound to retain the pursuer in their service, and to instruct him in his trade during the whole period of his apprenticeship, but they refuse to do so. The pursuer is willing and anxious to continue his apprenticeship with the defenders, and is prepared to commence work again in their employment. (Cond. 5) Otherwise, and in the event of the defenders refusing to take the pursuer back into their service, they are bound to grant him a certificate to the effect that he has served under them as an apprentice for the time during which he has so served, and to repay to him the deposit of £5 which he made. The certificate of apprenticeship is necessary to enable him to continue his service elsewhere, and the contract expressly provides that the deposit shall be returned on the completion of the apprenticeship. The defenders have, however, declined either to grant a certificate in proper form or to repay the deposit. (Cond. 6) Otherwise, the defenders are liable to the pursuer in damages for breach of contract, and the amount thereof is not less than the sum of £500 concluded for. Unless defenders will consent to allow pursuer to continue his apprenticeship, or will grant a certificate as above condescended on, he will require to commence a new apprenticeship of five years, and the period which he has already served will be lost.”

The application form referred to in condescendence 1 was produced by the defenders and was in the following terms:—

“John Cran & Co.,

Albert Engine Works, Leith.

“*Apprentice Application Form.*

Name—William Gillespie Gordon.

Address—42 Dudley Avenue, Leith.

Age last Birthday—15 years.

Recommended by Mr James Gillespie.

To serve five years in Fitting Department.  
2/4/1900.—(Intld.) J. A.

“NOTE.—If the apprentice serves in fitting department only or in machine department only, the term of apprenticeship is five years. If the apprentice serves in both fitting and machine departments the term of apprenticeship is six years.

“*Rules.*

“The apprentices' time will be added up in July each year, and the three who have kept the best time throughout the year will be allowed a fortnight's holiday, drawing their pay for said fortnight in advance.

“Vacancies occurring in the drawing office will be filled up by the most deserving apprentices in the fitting and machine shops.

“Apprentices requiring leave of absence will procure signed permission lines from their respective foremen, and all time lost during the year, unless accounted for by foremen's lines or certificates of sickness, must be made up at the end of each year before their rate of pay is advanced for the next year.

“Apprentices may be discharged at any time during their apprenticeship for bad conduct or bad time-keeping, and they must conform to the General Rules and Regulations of the Works.

“*Weekly Rate of Pay.*

1st Year...4s. 3rd Year...6s. 5th Year...8s.  
2nd Year...5s. 4th Year...7s. 6th Year...9s.

“A deposit of £5 sterling to be handed by the apprentice to the employers before beginning work. This sum to be returned in full to the apprentice, provided he completes his apprenticeship to the entire satisfaction of the employers, otherwise it is to be forfeited.

“I hereby agree to the foregoing rules and rate of pay. WILLIAM G. GORDON.

“Date of application, 21st June 1899.

“(Written on back) 128.

“Gordon entered shop, 26/3/00.”

The receipt referred to in condescendence 2 was as follows:—

“Leith, 2nd April 1900.

“Received from William Gillespie Gordon the sum of five pounds sterling (£5) as deposit. The conditions of said deposit being that if the said William Gillespie Gordon serves his apprenticeship with us to our entire satisfaction in every respect the money is to be returned, otherwise it is to be forfeited. Apprenticeship started on 26th March 1900, and to serve five years in one department.

“{ Signed } £5 stg. JOHN CRAN & CO.  
{ on Id. } p. J. Anderson.  
{ Stamp. } 2nd April 1900.”

The pursuer pleaded—“(1) The defenders having entered into a contract of apprenticeship with the pursuer for a period of five years are bound to allow him to complete his apprenticeship with them, or otherwise to grant a certificate for the period of his actual service, and to repay the sum of £5 deposited by him, with expenses. (2) Or otherwise, the defenders having broken their contract with the pursuer are liable to him in damages.”

The defenders pleaded—“(2) The pursuer's statements are irrelevant. (4) There being no contract of apprenticeship existing between pursuer and defenders, and the latter being under no obligation to grant the certificate of service referred to in the first prayer of the petition, said prayer ought to be refused and the defenders ought to be assolizid, with expenses.”

On 29th June 1904 the Sheriff-Substitute (HENDERSON) sustained the second plea-in-law for the defenders and dismissed the action.

The pursuer appealed to the Sheriff, and on 13th July the Sheriff (MACNOCHIE) adhered to the interlocutor appealed against.

Note.—“The question is whether the pursuer was an apprentice indentured to the defender. It is said that the relationship of master and apprentice is here constituted by the signature of the pursuer to the application form followed by *rei interventus*. That document bears date 21st June 1899; it is not signed by the defenders, but it bears a docquet that the pursuer ‘entered shop’ on 26th March 1900, and the pursuer avers (Cond. 2) that ‘upon the faith of said contract’ he entered into the service of the defenders on said 26th March 1900 ‘as an apprentice engineer,’ and that ‘on April 2nd, 1900, he paid to the defenders a deposit of £5, stipulated by the contract, conform to receipt produced.’ The pursuer had been about four years in the shop when he was dismissed. Though the document founded on contains some of the requisites of an indenture of apprenticeship it does not contain what is perhaps the most important of all, namely a stipulation on the part of the master to teach and an undertaking by the apprentice to learn the trade in question, and on the other hand none of its provisions seem to me to be inconsistent with an ordinary contract of service. The document is no doubt headed ‘Apprentice Application Form,’ but as pointed out by the Sheriff-Substitute it has been decided that the insertion of the word apprentice does not constitute the relation of master and apprentice, and a mere graduated scale of wages does not necessarily or *prima facie* infer apprenticeship. I have no hesitation in holding that this application form signed by the pursuer does not fulfil the requirements of an indenture. If that is so, I cannot see how anything subsequently done can set it up as an indenture through *rei interventus*. But the facts subsequent to the date of the deed (21st June 1899) seem to me to show very clearly that the parties did not understand that there was any contract between them as at its date, for nothing was done under it until nine

months afterwards. If the document was a completed contract of apprenticeship, then the pursuer did not fulfil his part of it by going to learn until nine months after its date; if it was not a completed contract then it seems to me that the acts founded on as showing *rei interventus* are not on the pleadings relevantly connected with it, and if that be so there is no written contract, which is an essential of the contract averred. In my view the written document was simply what it bears to be, ‘an application’ for work at some future time, and I cannot hold that both parties at the date it was sent in took, or were bound to take, the view that it formed a binding contract of apprenticeship between them, and that it did form such a contract of apprenticeship between them (as appears from Cond. 2) is the case for the pursuer.”

The pursuer appealed to the Court of Session, and argued—Apart from apprenticeship, as to which the averments were relevant, there was relevant ground of action for breach of the five years' engagement, and the pursuer was entitled to a proof. It was not necessary that the master's obligation to teach, and the apprentice's to learn, should be the subject of express stipulation in a contract of apprenticeship.

Argued for the respondent—The action was based upon a contract of apprenticeship, and there were no relevant averments of such a contract, for the constitution of which it was essential that the obligation of the master to teach and of the apprentice to learn should be expressed—*Erskine*, i, 7, 62; *Juridical Styles*, ii, 217—*Frame v. Campbell*, June 9, 1836, 14 S. 914; *Grant v. Ramage & Ferguson*, November 3, 1897, 25 R. 35, 35 S.L.R. 48; *Rex v. Creditor*, 1831, 2 Barnewall & Adolphus, 493; *Rex v. Billingham*, 1836, 5 Adolphus & Ellis, 676; *Paul v. Barclay & Curle*, November 24, 1856, 2 Irv. 537.

LORD JUSTICE-CLERK—I think the Sheriffs were precipitate in the course which they have taken in this case.

The contract commenced by an application made by the pursuer upon a printed form supplied to him by the defenders for leave to serve in their employment, and headed, “Apprentice Application Form.” The defenders required the pursuer to deposit £5 before beginning work, “this sum to be returned in full to the apprentice provided he completes his apprenticeship to the entire satisfaction of the employers.” He paid the money and the receipt for it bears that “Apprenticeship started on 26th March 1900.” From beginning to end there is no suggestion of anything else than that he is to serve as an apprentice, whatever the defenders' own views may have been as to the footing on which he entered their employment. It is said that whereas the date of the application is June 1899, the pursuer did not enter the shop till March 1900; but I cannot see what bearing this has upon the relevancy of the pursuer's averments, which is the only question we are considering at present.

I think the averments *prima facie* indicate a contract of apprenticeship, and that the pursuer's motion for a proof is proper and reasonable. I am accordingly of opinion that the Sheriff's interlocutor should be recalled and a proof allowed.

LORD YOUNG—I agree. I think there is here a relevant record upon the question as to the constitution of a contract of apprenticeship, even assuming, as I do, that such a contract must be in writing. There are documents dealing both with the constitution of the contract and with the procedure upon it during a period of four years. The first document is a printed form headed, "Apprentice Application Form," properly filled in and signed by the apprentice. The second is a receipt for a deposit signed by the defenders, referring to the date on which the "apprenticeship" started, and stating specifically the period for which it is to last. I am of opinion that these two documents constitute a *prima facie* good written contract of apprenticeship. The contention that no document will be sufficient to found a contract of apprenticeship unless it expressly bears the mutual obligation of the master to teach and the apprentice to learn is a most ridiculous proposition.

LORD TRAYNER—I am of the same opinion. Both the Sheriff and the Sheriff-Substitute seem to proceed upon the view that there is no connection between the application in 1899 and the commencement of employment in 1900, and to base their judgments upon this fact. I think, on the contrary, that the connection is clear, and that the proof of it is supplied by the defenders themselves. The application was made by a lad of fifteen years of age, and therefore presumably not a journeyman. When it was made there was apparently no vacancy in the defenders' works, but some months later the pursuer was taken into the defenders' employment. That this is directly connected with the previous application is clearly shown by the marking on the back of the form stating that the pursuer entered the shop on a certain date. I therefore think the Sheriffs have taken an erroneous view of the facts, and on this ground alone I should be prepared to hold that the judgment appealed against should be reversed. But I go further. We have under the defenders' own hand an acknowledgment of the contract of apprenticeship contained in the receipt dated 2nd April. [*His Lordship quoted the terms of the receipt.*] I cannot in the face of that see how the defenders can say that the pursuer has not relevantly averred a good *prima facie* contract of apprenticeship.

The other ground of judgment alluded to by the Sheriffs is that the obligation of the master to teach and of the apprentice to learn is essential to a contract of apprenticeship, and that there is no statement of such an obligation in the documents founded on. I agree that such an obligation is of the essence of the contract, but I do not agree that it requires to be stated in express terms in the writing which embodies the

contract. That writing may be informal and may require to be validated by *rei interventus*, but it may be informal just in respect that it does not contain such an express stipulation, and that may be the informality which requires to be cured.

I think the judgment of the Sheriff should be recalled and a proof allowed.

LORD MONCREIFF—I am of the same opinion, and I think that the case should be remitted for proof. If it had not been for the defenders' averments as to the pursuer's misconduct, I should have doubted whether, looking to the very explicit terms of the documents, we should not have been justified in deciding the case against the defenders now upon the evidence before us. But as there must be a proof on the defenders' statements I think it better that the whole case should be remitted for probation.

The Court sustained the appeal, recalled the interlocutors appealed against, and remitted to the Sheriff to allow the pursuer a proof and the defender a conjunct probation.

Counsel for the Pursuer and Appellant—Constable—Armit. Agent—A. J. Simpson, S.S.C.

Counsel for the Defenders and Respondents—Salvesen, K.C.—W. F. Watson. Agents—Beveridge, Sutherland, & Smith, S.S.C.

## REGISTRATION APPEAL COURT.

Friday, November 25.

(Before Lord Kinnear, Lord Trayner,  
and Lord Kincairney.)

DUNLOP v. MACKENZIE.

*Election Law—Parliamentary Election—Qualification for Burgh Franchise—Property Situated in One and Residence within Seven Miles of Another Parliamentary Burgh in the Same "District of Burghs"—Representation of the People (Scotland) Act 1832 (2 and 3 Will. IV, c. 65), sec. 11—Representation of the People (Scotland) Act 1868 (31 and 32 Vict. c. 48), sec. 59—Burgh Voters Act 1856 (19 and 20 Vict. c. 58), sec. 34—Redistribution of Seats Act 1885 (48 and 49 Vict. c. 23), sec. 13, sub-sec. 3.*

The owner of heritage situated in one of the burghs forming a Parliamentary "district of burghs," who had resided for the qualifying period within seven miles of another of the burghs in the same "district of burghs," claimed the right to vote in the burgh where his property was situated in the election of a Member of Parliament for the "district of burghs" referred to.

The Court *disallowed* the claim on the ground that he had not resided within seven miles of the burgh in which the vote was claimed.

The Representation of the People (Scotland) Act 1832 (2 and 3 Will. IV, c. 65), sec.