

May 19th, was an unintentional mistake; that by the 27th he realised that the time for lodging the accounts was up; and that he did not realise that he could lodge his own declaration and return at any time on or before the 27th without at the same time lodging the candidate's declaration. The mistakes and misunderstandings which occurred here could not be ascribed to "inadvertence," or to any "reasonable cause of a like nature," in the case of a professional man. The cesser of the excuse for employing unskilled persons—which followed on the disappearance of the exceptional conditions that made their employment justifiable—applies also to unskilled persons offering themselves for employment in that capacity. As Lord Mackenzie put it in *Munro and M'Mullen*—"It must be understood that a man who is not a lawyer, if he engages to act as an election agent, must recognise that his first duty is to make himself acquainted with what his obligations are." In the same case the Lord President (Lord Strathclyde) said this—"I wish to add that after *Smith and Sloan*, and after this case, I do not think that this Court will be very ready to accept such excuses as have been offered in the case of the second-named petitioner" (viz., the election agent). "This case, I think, ought to be sufficient warning to men who take up the duties of election agent that their first business is to acquaint themselves with what these duties are, especially with reference to the statute." It follows that the time for giving indulgence to unskilled persons such as the election agent in the present case must be regarded as past. He says nothing in his evidence to explain the terms of his letter of May 28, which the candidate speaks to having received from him, and which is printed in the proof and appendix. The terms of that letter cast no favourable light on the agent's attitude towards the responsible duties he had undertaken, and are not consistent with any reasonable view of how they should have been discharged. The order asked for in his case must therefore be refused.

LORD MACKENZIE, LORD SKERRINGTON, and LORD CULLEN concurred.

The Court pronounced this interlocutor—

"The Lords having considered the petition (no answers having been lodged) along with the proof and productions and heard counsel for the petitioners, appoint the petitioner John Templeton Scanlon to lodge with the returning officer on or before Saturday the 27th inst. the accounts in the form prescribed by the statute, together with the statutory declaration by him; also appoint the petitioner David Graham Pole to lodge with the returning officer, on or before Saturday, 4th December next, the statutory declaration by him, and on said documents being lodged as aforesaid, allow an authorised excuse for the said David Graham Pole's failure to comply with the provisions of the Corrupt and Illegal Practices Prevention

Act 1883, in respect that he did not timeously make a declaration respecting election expenses as provided for by section 33 of said Act: *Quoad ultra* refuse the prayer of the petition, and decern."

Counsel for the Petitioners—Christie, K.C.—Ingram. Agents—Robertson & Wallace, S.S.C.

Thursday, November 17.

## SECOND DIVISION.

### JOHNSON-FERGUSON v. BOARD OF AGRICULTURE FOR SCOTLAND.

*Arbitration—Procedure—Review—Case Stated for Opinion of Sheriff—Competency of Appeal to Court of Session—Corn Production Act 1917 (7 and 8 Geo. V, cap. 46), sec. 11, sub-sec. 1—Agricultural Holdings (Scotland) Act 1908 (8 Edw. VII, cap. 64), Second Schedule, Par. 9.*

An appeal against an opinion of the Sheriff pronounced in a Case stated by an arbiter acting in an arbitration for the assessment of compensation under section 9, sub-section 9, of the Corn Production Act 1917, is *incompetent*.

The Corn Production Act 1917 (7 and 8 Geo. V, cap. 46, sec. 11 (1), enacts—"Arbitrations under this part of this Act shall be before a single arbitrator, under and in accordance with the provisions of the Second Schedule to the Agricultural Holdings Act 1908; provided that the arbitrator shall be nominated, in default of agreement, by the President of the Surveyors' Institution."

The Agricultural Holdings (Scotland) Act 1908, Second Schedule, par. 9, enacts—"The arbiter may at any stage of the proceedings, and shall if so directed by the Sheriff (which direction may be given on the application of either party), state in the form of a special case for the opinion of the Sheriff any question of law arising in the course of the arbitration."

In the course of arbitration proceedings between Sir Jabez Edward Johnson-Ferguson of Springkell, Baronet, and spouse, the proprietors of the estate of Springkell, and the Board of Agriculture for Scotland, to recover compensation under section 9, sub-section 9, of the Corn Production Act 1917 (7 and 8 Geo. V, cap. 46), the arbiter, Mr R. Macmillan, Woodlea, Moniaive, stated a Case for the opinion of the Sheriff of Dumfries and Galloway upon certain questions of law.

On 15th June 1920 the Sheriff (MORTON) returned an answer to the questions.

Sir Jabez Edward Johnson-Ferguson and spouse appealed to the Court of Session.

At the hearing in the Summar Roll objection was taken to the competency of the appeal.

Argued for the appellants—There was a right of appeal to the Court of Session under the Corn Production Act 1917 (7 and 8 Geo. V, cap. 46). *Esto* that there was a

burden on the pursuers of showing that the Act allowed such appeal, there was a strong presumption that every inferior judgment was appealable unless the right of appeal was expressly excluded, and that although a new statutory code had been provided—*Harper v. Inspector of Rutherglen*, 1903, 6 F. 23, 41 S.L.R. 16. Admittedly the Sheriff had given an opinion and not a judgment. Nevertheless his opinion was appealable. An opinion in a special case was not appealable, but a special case was a matter of contract, and if the parties asked for a judgment, the judgment was appealable—Court of Session Act 1868 (31 and 32 Vict. cap. 100), section 63. The case of *Lawrence v. Comptroller-General of Patents*, 1910 S.C. 683, 47 S.L.R. 524, was distinguishable. In that case a new jurisdiction had been created by statute. In the present case there was no new jurisdiction. *Cathcart v. Board of Agriculture*, 1915 S.C. 166, 52 S.L.R. 108, was also distinguishable. The decision in that case was founded upon the exceptional course adopted in the Small Landholders (Scotland) Act 1911 (1 and 2 Geo. V, cap. 49)—see Lord President (Strathclyde) at p. 167, 52 S.L.R. 109. Under that Act the Lord Ordinary was substituted for the Sheriff, and certain sections of the earlier Act were excised. That was a very different code of procedure from the code under the Corn Production Act 1917, which incorporated the whole code of the Act of 1908, including the right of appeal allowed by that Act to the Court of Session—Agricultural Holdings (Scotland) Act 1908 (8 Edw. VII, cap. 64), sec. 11, sub-sec. 3. [THE LORD JUSTICE-CLERK referred to *Macdougall and Others*, 1869, 7 Macph. 976, 6 S.L.R. 608.]

Argued for the respondents—The appeal was incompetent. The present case was indistinguishable from *Cathcart (cit.)*. The case of *Harper (cit.)* was distinguishable. In that case if the right of appeal which was contended for had been refused, it would have resulted in one party only to the case having a right of appeal—see Lord Justice-Clerk (Macdonald) at 6 F. 25, 41 S.L.R. 17, and Lord Trayner at 6 F. 25, 41 S.L.R. 18. The Act of 1908, section 11, sub-section 3, and the Codifying Act of Sederunt D. v. 1, provided a special code of appeal to the Court of Session. So also did the Act of 1911, section 25, sub-section 2, but the Act of 1917 only provided for arbitration, and gave no right of appeal to the Court of Session. Section 9, sub-section 10, and section 11, sub-section 1, of the Act of 1917 spoke of “arbitrations under this part of this Act.” and the Second Schedule of the Act of 1908, which was referred to in section 11, sub-section 1, of the Act of 1917, gave a right of appeal to the sheriff only.

LORD JUSTICE-CLERK—Consideration of this note of appeal discloses a sharp question of competency. An arbiter stated a case for the opinion of the Sheriff upon questions of law arising in the course of an arbitration to recover compensation under the Corn Production Act 1917. The Sheriff on 15th June 1920 answered the questions of law which were submitted to him. The

present appeal was then taken on the footing that the whole of the statutory provisions and relative sections of the Codifying Act of Sederunt which apply to appeals under the Agricultural Holdings Act 1908 were applicable.

The provisions of the Act of 1917 which are relevant to the question in this case are contained in section 9 (10) and section 11 (1). Section 9 (10) provides—“The amount recoverable or payable by the Board under sub-section (8) or sub-section (9) of this section shall be determined in each case in default of agreement by arbitration under this part of this Act”—that is, under Part IV of the Act of 1917. Section 11 (1) provides—“Arbitrations under this part of this Act shall be before a single arbitrator under and in accordance with the provisions of the Second Schedule to the Agricultural Holdings Act 1908: Provided that the arbitrator shall be nominated, in default of agreement, by the President of the Surveyors’ Institution.” In section 1 of the Second Schedule to the Act of 1908 the arbitrator is, in default of agreement, to be nominated by the Board of Agriculture and Fisheries, so that the schedule is not, as Mr Robertson argued to us, adopted in its entirety, but is adopted with a variation. The terms of section 9 (10) and section 11 (1) appear to me to provide quite clearly that all that is referred to, and all that is introduced into the procedure under the Corn Production Act, is the Second Schedule to the Act of 1908. That schedule is also referred to in Part III, section 8, of the Act of 1917, which deals with the fixing of rents, and provides that “. . . Any question as to whether the rent payable under such a contract is in excess of the rent permitted by this section, or as to the amount of the excess, shall be determined by a single arbitrator under and in accordance with the provisions of the Second Schedule to the Agricultural Holdings Act 1908 (8 Edw. VII, cap. 28).” So far as the present question of competency is concerned it seems to me that these sections are to the effect that what was borrowed from the 1908 Act was the Second Schedule as varied by section 11 (1), and nothing more.

The appellants’ appeal is on the footing that section 11 of the 1908 Act is in all its terms imported into the Act of 1917 so far as arbitrations are concerned. Their appeal must be upon that footing, because the Second Schedule is in itself a complete code enabling the arbitrator to obtain guidance upon points of law. Section 9 of the Second Schedule to the Statute of 1908 provides—“The arbiter may at any stage of the proceedings, and shall if so directed by the sheriff (which direction may be given on the application of either party), state in the form of a special case for the opinion of the sheriff any question of law arising in the course of the arbitration.” That is a method of consulting a legal authority with which we are quite familiar, but it is noticeable that the arbitrator’s powers, or the duty laid upon him, is to state a case, and to state it for the opinion solely of the Sheriff. I think, so far as the terms of the schedule are con-

cerned, that the opinion so obtained is not to be a matter for appeal at all.

I cannot draw any distinction between this case and the well-known case of *Cathcart v. Board of Agriculture* (1915 S.C. 166), which was referred to in the argument. There the authority whose opinion was to be asked was the Lord Ordinary instead of the Sheriff, and the ground of judgment was that the jurisdiction which was given was a jurisdiction which began and ended with the opinion of the person whose opinion was to be sought. Here in the same way the arbitrator is entitled to go to the Sheriff for his opinion, and that opinion is to end the matter. Under the Agricultural Holdings Act of 1908 the position would have been the same but for section 11 (3) of that statute, which provides—"If in any arbitration under this Act the arbiter states a case for the opinion of the sheriff on any question of law, the opinion of the sheriff on any question so stated shall be final, unless, within the time and in accordance with the conditions prescribed by Act of Sederunt, either party appeals to either Division of the Court of Session, from whose decision no appeal shall lie." There is no such provision in the Act of 1917, and I cannot see that by any legitimate inference you can reach the conclusion that not only the provisions of the Second Schedule to the 1908 Act, but also the provisions of section 11 (3) of the statute itself, were to be imported into the Act of 1917. Even on the statute, as Mr Watson pointed out, by section 11 all the provisions are carefully confined to arbitrations under the 1908 Act. If it had been intended that there should be an appeal under the Act of 1917 something like this would require to have been provided—"All the provisions of section 11 of the Act of 1908 shall apply to all arbitrations under this Act in the same way as if they had been under the Act of 1908." But nothing of the kind is provided, and it seems to me that what is given by section 11 (1) of the Act of 1917 is a right to the arbitrator to apply to the Sheriff for his opinion on a question of law, and that opinion when it is obtained is final upon that particular question of law arising in that arbitration.

I can see many good reasons why there should not be any appeal. It would cause additional delay and expense, and it would be going beyond the intention of the Legislature if we introduced a procedure which would allow the opinion of the Sheriff, given on the application of the arbitrator, to be matter of appeal to this Court.

I am of opinion therefore that the objection to this note of appeal on the ground of incompetency is well founded, and that we should refuse to consider the appeal.

**LORD DUNDAS**—I am of the same opinion. Section 11 (1) of the Corn Production Act of 1917 provides that "Arbitrations under this part of this Act shall be before a single arbitrator under and in accordance with the provisions of the Second Schedule to the Agricultural Holdings Act 1908." That schedule, when one turns to it, will be found to contain nothing about an appeal to the

Court of Session. I therefore find it exceedingly difficult to see how section 11 of the Act of 1917 can be held to incorporate into that Act anything more than the provisions of the Second Schedule to the Act of 1908, and in particular to incorporate section 11 of the 1908 Act, by sub-section (3) of which alone an appeal to the Court of Session is authorised. In these matters one must go carefully and strictly to work, and I cannot see how an appeal to the Court of Session can be held to be incorporated in the Act of 1917. I think that, where a new statutory jurisdiction is created, as is done by the Act of 1917, there is not any presumption that because it is "the Sheriff" to whom jurisdiction is given, there is to be an appeal from him to this Court as in the ordinary course when he is sitting in his own Court as sheriff—*cf. Lawrence v. Comptroller-General*, 1910 S.C. 683. It was recognised rightly in the case of *Cathcart*, 1915 S.C. 166, that the *onus* on a person who stands in the position such as that of the appellants in this case to establish his claim to the right of appeal is a heavy one, and here I think the appellants have failed to discharge it. The case of *Cathcart* is difficult to distinguish in any material respect—there are, of course, differences—from the present case. Accordingly I hold the appeal to be incompetent. I think it not improbable that appeal to the Court of Session was intentionally excluded by Parliament; but whatever the intention may have been, I cannot hold that the appellants have succeeded in showing that a right of appeal has been included.

**LORD SALVESEN**—I am constrained to come to the same conclusion. This case is distinguishable, perhaps, from the case of *Cathcart*, 1915 S.C. 166, in that the Lord Ordinary in the statute there under consideration replaced the sheriff in the Second Schedule to the Act of 1908, which contains the arbitration code. Section 11 of the 1908 Act expressly gives the right of appeal against the sheriff, but there was no corresponding provision expressly giving a right of appeal from the Lord Ordinary. We have not that difficulty here. At the same time I am unable to hold that the words which your Lordship has read from the Corn Production Act of 1917 incorporated not only the arbitration code in the Second Schedule but also section 11 of the Act of 1908.

If Parliament intended, as I daresay it may have, to make the provisions of the 1908 Act, so far as legal proceedings are concerned, applicable to the 1917 Act, it ought to have expressed it in very clear language. It would have been very easy to say—"In terms of section 11 and the provisions with regard to arbitration contained in the Second Schedule." It has not said so, and whatever may have been its intention we can only gather the intention of the Legislature from the words actually used. I may say I regret the decision, because it may lead to the law being different in different sheriffdoms, there being no mode by which uniformity can be enforced. Under the 1908 Act uniformity in the decisions of the

sheriffs could always be enforced by the appeal provided to this Court. But if the matter of law is to be finally decided by each sheriff, there is no obligation on the part of one sheriff to adopt the views of the law which some other sheriff may have stated. I think that is the only argument on principle—if one can introduce principle into these matters—which would have made me disposed to sustain the competency of this appeal, which I should have been disposed to do but for the precise language of the Act itself, which does not incorporate section 11 by reference or by implication, although it does incorporate the Second Schedule.

LORD ORMDALE—I agree entirely with what has fallen from your Lordship in the chair and Lord Dundas, and I do not think I can usefully add anything to what has been said.

The Court sustained the objections and dismissed the appeal as incompetent.

Counsel for the Appellants—Dean of Faculty (Constable, K.C.)—Graham Robertson. Agents—Graham, Johnston, & Fleming, W.S.

Counsel for the Respondents—Hon. W. Watson, K.C.—W. T. Watson. Agent—A. D. Callander, Solicitor to the Board of Agriculture for Scotland.

## HIGH COURT OF JUSTICIARY.

Monday, November 8.

(Before the Lord Justice-Clerk, Lord Hunter, and Lord Anderson.)

[Sheriff Court at Greenock.]

M'NINCH v. AULD.

*Justiciary Cases—Liquor Control Regulations—Sale of Whisky—Order by Food Controller—Whether Ultra vires—Defence of the Realm (Amendment) (No. 3) Act 1915 (5 and 6 Geo. V, cap. 42), sec. 2 (a)—New Ministries and Secretaries Act 1916 (6 and 7 Geo. V), secs. 3 and 4—Spirits (Prices and Description) Order 1920, secs. 5 (a) and 12.*

Held that an Order issued by the Food Controller with reference to the maximum price at which whisky might be sold had been competently issued.

*Justiciary Cases—Liquor Control Regulations—Sale of Whisky—Order Fixing Maximum Price—Contravention—Proof—Competing Evidence as to Strength of Spirit Sold—Label Attached to Bottle as against Evidence of Analyst—Spirits (Prices and Description) Order 1920, sec. 13.*

In a prosecution of a spirit dealer for having sold whisky above the maximum price, it was proved that the whisky had been supplied from a bottle to which was attached a ticket stating the strength of the spirits contained therein. Evidence on behalf of the accused was given by the analyst for the county

to the effect that the whisky which was being sold was of a greater strength than that shown on the label. Held that the statement on the ticket attached to the bottle was legal evidence of the strength of the whisky, and that the magistrate was entitled to accept it in preference to the statement of the analyst.

The Defence of the Realm (Amendment) (No. 3) Act 1915 (5 and 6 Geo. V, cap. 42) enacts—Section 1, sub-section 2—“His Majesty in Council has power to issue regulations under the Defence of the Realm Consolidation Act 1914, to take effect in any area to which they are applied under this Act—(a) for giving the prescribed Government authority, to the exclusion of any other person, the power of selling or supplying, or controlling the sale or supply of, intoxicating liquor in the area. . . .”

The Defence of the Realm (Liquor Control) Regulations, issued under the authority of the Defence of the Realm (Amendment) (No. 3) Act 1915, provide—Art. 1—“The prescribed Government authority shall be a Board to be called the Central Control Board (Liquor Traffic). . . .”

The New Ministries and Secretaries Act 1916 (6 and 7 Geo. V, cap. 68) enacts—Section 3—“For the purpose of economising and maintaining the food supply of the country during the present war, it shall be lawful for His Majesty to appoint a Minister of Food under the title of Food Controller, who shall hold office during His Majesty's pleasure.” Section 4—“It shall be the duty of the Food Controller to regulate the supply and consumption of food in such manner as he thinks best for maintaining a proper supply of food, and to take such steps as he thinks best for encouraging the production of food, and for those purposes he shall have such powers and duties of any Government Department or authority, whether conferred by statute or otherwise, as His Majesty may by Order in Council transfer to him, or authorise him to exercise or perform concurrently with, or in consultation with, the Government Department or authority concerned, and also such further powers as may be conferred on him by regulations under the Defence of the Realm Consolidation Act 1914, and regulations may be made under that Act accordingly.”

The Spirits (Prices and Description) Order 1920, April 9th, 1920 (No. 53L), issued under the authority of the Food Controller, provides—Art. 5—“On the occasion of a sale of any spirits . . . the maximum price shall be—(a) on a sale in a public bar where the sale is for consumption on the premises . . . the price applicable according to Part I of the Second Schedule.” Art. 7—“(a) On a sale . . . of any spirits in a public bar of licensed premises, the maximum price at which the spirits may be sold in a public bar and the strength . . . shall be legibly marked—(i) where such sale is by bottle, on the bottle, and (ii) where such sale is otherwise than by bottle, on the receptacle or tap from which such spirits are drawn, in such manner as to be visible to the purchaser.” Art. 12—“A person shall not sell . . . any spirits at a price