

Tuesday, November 20.

FIRST DIVISION.

BAIRD v. LEES.

*Company—Winding-up—Grounds for—“Just and Equitable” Cause—Statutory Irregularities in Conducting Business—Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69), sec. 129.*

Section 129 of the Companies (Consolidation) Act 1908 enacts—“A company may be wound up by the Court . . . (ii) If default is made . . . in holding the statutory meeting . . . (vi) If the Court is of opinion that it is just and equitable that the company should be wound up.”

A petition was presented by two shareholders for the winding-up of a company, which had been formed four years previously, to carry on the business of proprietors, managers, and lessees of music halls and picture houses. The petitioners averred that there had never been a meeting of the shareholders; that no balance sheets or profit and loss accounts had been submitted; that no audit of the company's accounts had ever taken place; that the titles to the heritable properties belonging to the company had been all along and were still held in the name of the principal shareholder; that no bank account was kept in the company's name; that the company's moneys were banked in the said shareholder's name without qualification, and that he conducted the business of the company as though it were a private business of his own.

Answers were lodged by the said shareholder and another member of the company in which they substantially admitted the petitioners' averments, but maintained that they were not sufficient to justify a winding-up order; that the petitioners had not exhausted the remedies available to them under the articles of association or addressed any communication to the company; that in any event the respondents themselves contemplated an early liquidation; and that an order for immediate winding-up would be prejudicial to the interests of the shareholders. No answers were lodged in the name of the company itself, the interest of the respondent first mentioned being so predominant and controlling that the company had virtually become identified with him.

*Held* that it was “just and equitable” that the company should be wound up, and petition granted.

James Baird, 68 Madeira Street, Leith, and William Burn, 49 Dudley Crescent, Leith, presented a petition praying for an order that Alhambra (Leith) Limited be wound up by the Court under the provisions of the Companies (Consolidation) Act 1908.

The petitioners averred—“That on 11th August 1919 Alhambra (Leith) Limited (hereinafter referred to as ‘the company’)

was incorporated as a private company under the Companies Acts 1908 to 1917. The Company's principal business is that of proprietors, managers, and lessees of music halls and picture houses; and its registered office is at 200 Leith Walk, Leith. The share capital of the company is £75,000 divided into 30,000 preference shares of £1 each, 30,000 ordinary shares of £1 each, and 60,000 deferred shares of 5s. each, whereof there have been allotted and issued as fully paid up 12,250 preference shares, 21,750 ordinary shares, and 40,000 deferred shares. The petitioner James Baird holds 1500 preference shares and 3000 ordinary shares, and the petitioner William Burn holds 3000 ordinary shares. The principal shareholder is John Arthur Greig, presently residing at 6 South Learmonth Gardens, Edinburgh, who holds 7250 preference shares, 7750 ordinary shares, and 40,000 deferred shares. 2. By article 18 of the articles of association of the company Henry Lees, 13 Mayville Gardens, Leith, and David Smith Greig, 42 London Street, Edinburgh, were appointed permanent directors of the company, being entitled to hold office as long as they live unless disqualified from any of the causes specified in article 22 of said articles of association. . . . A return of directors filed with the Registrar of Joint Stock Companies on 20th February 1923 shows that the directors at that date were the said David Smith Greig and the said John Arthur Greig. It is believed and averred that the said John Arthur Greig was never validly appointed a director, and in any case his appointment has never been ratified by the shareholders. 3. From the inception of the company its affairs have not been conducted in a proper and businesslike manner nor in accordance with the provisions of the Companies Acts and the company's articles of association. The petitioners believe and aver that the interests of the shareholders have been and are still being seriously prejudiced, and that they have suffered considerable pecuniary loss and are in danger of suffering still greater loss owing to the failure of the directors to conduct the business of the company in accordance with proper methods and with the provisions of the said Acts and articles of association. In support of the above general statement the following averments are made:—(a) There has never been a meeting of the shareholders of the company. (b) No proper books are kept by the company. (c) So far as petitioners know no balance sheet has ever been made out, and in any event no balance sheet has ever been sent to any of the shareholders. (d) No auditors have been appointed, and it is believed and averred that no audit of the company's accounts has ever taken place (e) The titles to the following heritable properties belonging to the company are, among others, held in the name of the said John Arthur Greig, viz.:—Alhambra Theatre, Leith Walk, Leith; Leith Picture House, Laurie Street, Leith; The Pavilion Picture House, Stockbridge, Edinburgh; The Oxford Picture House, Lochee, Dundee; and The Queen Hotel,

Leith. The Tron Picture House, High Street, Edinburgh, is held on lease by the company, and the lease is in the name of the said John Arthur Greig. (f) No bank account is kept in the company's name, and it is believed and averred that all moneys belonging to the company are banked in the name of the said John Arthur Greig without any declaration or qualification as to the ownership of said money. 4. The said John Arthur Greig conducts the business of the company as though it were a private business of his own. The said David Smith Greig, a director of the company, takes little or no interest in its affairs. The shareholders are never consulted with regard to the conduct of the business or the policy to be pursued by the company, nor have they ever been asked to ratify or confirm any important step taken by the company. No dividends have been paid on the ordinary shares of the company and no dividend has been paid on the preference shares since December 1921, although it is believed and averred that the company is in a position to pay dividends. 5. By section 129 of the Companies (Consolidation) Act 1908 it is provided, *inter alia*, that—'A company may be wound up by the Court:— . . . (ii) If default is made . . . in holding the statutory meeting . . . (vi) If the Court is of opinion that it is just and equitable that the company should be wound up.' In the circumstances above set forth the petitioners humbly submit that the said Alhambra (Leith) Limited should now be wound up by the Court in terms of the said Act and an official liquidator appointed for that purpose. The petitioners respectfully suggest that James Butler Bolton, chartered accountant, Edinburgh, is a suitable person for appointment to that office."

Answers were lodged by two of the shareholders, namely, Henry Lees, Duntrone, West Linton, and John Arthur Greig, 6 South Learmonth Gardens, Edinburgh, in which they stated—"1. It is admitted that the company, Alhambra (Leith) Limited, was incorporated as a private company on 11th August 1919 under the Companies Acts 1908 to 1917. It is admitted that the principal business of the company is that of proprietors, managers, and lessees of music halls and picture houses, and that its registered office is at 200 Leith Walk, Leith. It is admitted that the share capital of the company is as stated, that the respondent John Arthur Greig is the principal shareholder, and that he holds the number of shares stated. It is admitted that the petitioners are registered as holders of the shares specified in the petition. The respondent Henry Lees is also a shareholder in the company. It is explained that the petitioners are not the true owners of the shares of which they are the registered holders, and that actions at the instance of the respondents have been raised in the Court of Session to have this fact judicially declared. Prior to 25th December 1915 Leith Picture House and the Alhambra Theatre were owned by the petitioners, the respondent John Arthur Greig, and James Kinghorn Miles, S.S.C., Leith.

As from the said 25th December 1915 the said picture house and theatre were sold to the respondents at the price of £20,000. The terms and conditions of the said sale are set forth in an agreement between the buyers and sellers dated 12th February and 27th March 1916. By the said agreement the petitioners agreed to allow their shares of the purchase price to remain on loan to the respondents on the terms narrated in the said agreement. The said agreement also provided that the petitioners ceased to have any voice in the management or disposal of the business, property, and assets of the said picture house and theatre, and that their rights were limited to participation in the profits so long as their capital remained in the business. The respondents having added other places of entertainment to the said business so transferred resolved to form the company to take over the whole properties then held by them. By arrangement with the respondents the directors of the company took over the said properties and businesses at the price of £60,000. The respondents arranged that £16,000 of the price should remain on loan to the company, and they provided £1200 additional as working capital. The respondents agreed to take up the following shares in the company:—

|                              |                |
|------------------------------|----------------|
| 12,250 preference of £1 each | £12,250        |
| 21,750 ordinary of £1 each   | 21,750         |
| 40,000 deferred of 5s. each  | 10,000         |
|                              | <u>£44,000</u> |

This was and is the whole issued share capital of the company. The proceeds of these shares were applied towards payment of the price, and the respondents became creditors of the company for the balance of £16,000 and the said additional working capital less certain bonds over part of the properties to the amount of £5250. The respondents were at this time indebted to the petitioners and to other persons for various sums in terms of the said agreement and otherwise in connection with their picture-house business. At the request of the respondents there were allotted to these persons certain proportions of the shares which the respondents had agreed to take up—*inter alia*, to the petitioners the shares of which they are at present the registered holders. The petitioners did not themselves apply for shares or come under any obligation to take shares. Their only right to hold them is as nominees of the respondents, and in security of the sums due to them by the respondents. . . . The present respondents alone have a substantial interest in the company. Of the total issued capital of £44,000 they hold in their own names £28,000, including the whole of the deferred shares issued. The whole remaining shares are held by nominees on their behalf, or in security only for the implement of personal obligations jointly or severally undertaken by the respondents. In particular the respondents are the true owners of the shares standing in names of the petitioners. The petitioners have accordingly no right or title to present the petition. . . . 2. It is admitted that by the

articles of association, article 18, the respondent Henry Lees and David Smith Greig were appointed directors of the company on the terms stated in the petition. It is admitted that the directors at the time of the said return were the said David Smith Greig and the respondent John Arthur Greig. The memorandum and articles are referred to. *Quoad ultra* the averments in statement 2 of the petition are denied. The respondent John Arthur Greig was appointed an additional director on 18th November 1921 in terms of Article 85 of Table A of the Companies (Consolidation) Act 1908, which is incorporated in the articles of the company. In April 1922 he was appointed managing director in terms of Article 72 of Table A. This was done largely at the desire of the respondents. 3. The whole averments in statement 3 of the petition are denied subject to the following explanations:—(a) It is admitted that there has not been a general meeting of the shareholders other than the respondents and the directors. No shareholder has been prejudiced thereby. The petitioners have been informed of all that has been done since the respondent John Arthur Greig was appointed managing director, and have been in close touch with all details of the business of the company. In any event the petitioners, under article 13 of the company's articles of association, had the power of owners of shares at their own hand to call such a meeting, but they have never suggested doing so. The petitioners have not exhausted the remedy given them by the company's articles, and are barred from presenting this petition. The petitioners have never addressed any communication to the company or to the directors, but have all along corresponded with the respondent John Arthur Greig as an individual in regard to the company's affairs. (c) It is admitted that no balance sheet has been sent to the nominal holders of shares. (d) The books of the company are audited by Messrs A. W. Angus & Company, chartered accountants, Edinburgh. (e) The titles of the Alhambra Theatre and of the Pavilion Picture House are in name of the respondent John Arthur Greig. The titles of the Leith Picture House, the Oxford Picture House, Lochee, and the Queen Hotel are in the names of both the present respondents. The lease of the Tron Picture House is in name of the respondent Henry Lees. (f) In December 1922 the company's bank account was overdrawn to the extent of £340. The respondent John Arthur Greig paid off the said overdraft. The account was then closed, and the moneys since received by him from the company have been insufficient to meet this and other necessary disbursements made by him on its behalf. For the reasons already stated, the petitioners have no right or interest to take exception to any act or omission on the part of the directors. 4. The averments in statement 4 of the petition are denied. The respondent John Arthur Greig has done nothing outwith his powers as managing director of the company. The practical working of the business has, however, been

deputed to salaried employees, as was necessary. These employees included the petitioners, and the least successful parts of the company's business have been those in charge of the petitioners. . . . 5. The Act is referred to. 6. It is not just and equitable, or in the interests of the shareholders, that the company should be wound up at present. . . . Looking to (a) the extent of their holding in the company, (b) the obligation which they have undertaken to pay all shareholders in full, and (c) the fact that any loss or expense will fall to be borne by the respondents alone, it is just and equitable that their views on the question of winding-up ought to prevail. 7. In any event the respondents would object to the appointment as liquidator of Mr James Butler Bolton. Mr Bolton has been consulted by the petitioners, and has been advising them on the information they have supplied to him for some time back. 8. The respondents humbly submit that the petition should be dismissed on the following grounds:—1. That the petitioners have no title to present it, they not being the true owners of the shares of which they are the registered holders. 2. That the petitioners have no interest to present it, as full payment of their interest in the shares in respect of which they are registered, on whatever footing they may hold them, is assured. 3. That in view of the arrangement narrated, and the terms of the minute of the directors' meeting held on 7th September 1923, the petition is unnecessary. 4. That no sufficient reason has been adduced for interfering with the exercise by the directors and shareholders of their discretionary powers in regard to the time and method of realising and winding-up. 5. That the petitioners are not acting in *bona fide*, but have presented the petition from improper motives. 6. That the petitioners have, by their actings as averred herein in answer to statement 3 (a) of the petition, barred themselves from taking the present proceedings against the company. 7. That the material averments of the petitioners are unfounded in fact. 8. That no prejudice has been suffered by the petitioners or shareholders through any alleged irregularities in the conduct of the company's business. 9. That a winding-up order at the present juncture would be prejudicial to the interests of the company and of the shareholders. 10. That it is not just and equitable that the company should be wound up. In any event the respondents submit that proceedings in the petition should be sisted until the decision of the actions relating to the ownership of the shares of which the petitioners are the registered holders."

Argued for petitioners—The prayer of the petition should be granted in respect that (1) the statutory meeting of the company had never been held, and (2) that the admitted irregularities in the conduct of the company's affairs constituted a "just and equitable" cause for winding-up, as these words had been construed in recent decisions—*Galloway Saloon Steam Packet Company v. Wallace*, 19 R. 330, 29 S.L.R. 264; *Symington v. Symingtons' Quarries, Lim-*

ited, 8 F. 121, 43 S.L.R. 157; *Ellice v. Inver-garry and Fort-Augustus Railway Company*, 1913 S.C. 849, 50 S.L.R. 550; *In re Genidje Tobacco Company, Limited*, [1916] 2 Ch. 426.

Argued for respondents—The complainers had not exhausted the remedies available under the articles of association by calling a meeting of the company. The irregularities complained of were not sufficient to justify a compulsory winding-up in view of the fact that respondents were willing to wind up voluntarily after three months. Counsel referred to the following authorities:—Palmer's Company Law (11th ed.), pp. 163 and 412; *In re Middlesborough Assembly Rooms Company*, (1879) 14 Ch. Div. 104, *per* Cotton, L.J., at 110; *Gardner & Company v. Link*, 21 R. 967, 31 S.L.R. 804; *Cox v. "Gosford" Ship Company, Limited*, 21 R. 334, 31 S.L.R. 257; *Symington v. Symingtons' Quarries, Limited (cit.)*; *Scobie v. Atlas Steel-Works, Limited*, 8 F. 1052, 43 S.L.R. 739; *In re Anglo-Greek Steam Company*, 1866, L.R., 2 Eq. 1; *In re Rica Gold Washing Company*, (1879) 11 Ch. Div. 36; *In re Suburban Hotel Company*, 1867, L.R., 2 Ch. App. 737.

LORD PRESIDENT (CLYDE)—This is a petition brought by two shareholders of a limited company for the purpose of having the company wound up by the Court. The respondents are two other shareholders, of whom one was a director of the company under article 18 of the articles of association, and the other, Mr John Arthur Greig, is secretary of the company. No answer has been lodged in name of the company itself, which is probably explained by the circumstance that Mr Greig holds, either in his own name or in the names of others, an interest in the company so predominant and controlling that the company has come, for all practical purposes, to be identified with him. At the present moment there are actions depending in the Outer House at the instance of the respondents in this petition, attacking the title of the petitioning shareholders to their shares, and concluding that, on being paid whatever debts may be due to them by the respondents, they are bound to transfer to the latter the shares at present registered in their names. But, for the purposes of this petition, the respondents conceded that the two petitioners must be taken to be genuine shareholders; and, indeed, whether they own their shares out-and-out, or whether they hold them only as security for debts due to them by the respondents, is of no importance.

The grounds upon which we are asked to pronounce a winding-up order fall under the head of "just and equitable" cause described in sub-section (vi) of section 129 of the Companies Act 1908. The course of judicial decision—in England especially—reveals a progressive trend in the view which the Courts have taken of the ground covered by the statutory description "just and equitable" cause. The idea that just and equitable causes were limited to causes of the same kind (in one way or other) as the causes described in the preceding sub-

heads of the section has lost ground; and both in England and in Scotland—see *Symington v. Symingtons' Quarries, Limited*, (1905) 8 F. 121, especially *per* Lord M'Laren at p. 130, a wider view now prevails regarding the ambit of the discretion which is entrusted to the Court. This discretion must, however, be judiciously exercised. It is not enough for the Court in exercising it to have, in the familiar phrase of a decreer-arbitral, "God and a good conscience" before its eyes; grounds must be given which can be examined and justified. It has been suggested that the Courts have recognised only two classes of "just and equitable" grounds. First, there is the case in which circumstances occur which have the effect of knocking the bottom out of the company's business. Lord Cairns, L.J., in *In re Suburban Hotel Company*, (1867) L.R., 2 Ch. App. 737, instanced the case of a company formed to work a patent which turns out to be invalid, and the illustration he cited was drawn from the law of partnership. In such cases it has been said that the substratum of the business which the company was incorporated to carry on has become impossible. Second, there is the case in which the business of the company is brought to a deadlock by some cause which does not consist merely in a dispute between two bodies of shareholders with regard to the policy which the company should pursue—*Symington supra*, see especially *per* Lord President Dunedin, at p. 129. But the impossibility of reducing all "just and equitable" causes under these categories is illustrated by *Symington's* case and clearly reveals itself in the judgments delivered there.

What are the facts here? Mr Greig is now, and has been throughout the four years of the company's life, the predominating influence in its affairs. He either holds in his own name, or he holds indirectly in the names of others, the vast majority in number and value of the shares of the company. The company's business may thus be said, in a sense, to be substantially his. Unfortunately that has led to (or at all events it has been accompanied by) a course of administration in which every obligation incumbent upon the officials of the company towards the company and its shareholders has been ignored or disregarded. So far as appears, the company has never got an enforceable title to any of the assets of the syndicate or syndicates which were its predecessors. To this day it has no title, either direct or by way of acknowledgement of trust, to a single one of the heritable properties in which its business is carried on. These remain vested in Mr Greig. I assume in favour of the respondents—though the point may not be clear—that the company's birthday meeting (as the first statutory meeting under section 85 is called) was duly held. But it seems certain that no other meeting of the shareholders has ever been held. No balance sheets or profit and loss accounts have been submitted. There have been no regular ascertainment of profit available for dividend, no declaration of dividend, and no instructions given by the

company, from beginning to end, as to what was to be done with profits when profits were made—as appears to have been the case at least in some years. Latterly, at any rate, there has not even been a bank account in the name of the company; and it is by no means clear from the respondents' answers in what form the accounts have been kept at any stage of the company's history. There has been no appointment of directors at any meeting of shareholders nor any regular appointment of auditors to audit the accounts. I must not be understood to impute any want of integrity to Mr Greig, but nevertheless the fact is that the administration of the company from start to finish has been conducted by him practically as if the whole concern belonged to himself.

It is stated that the two petitioning shareholders have been aware of this state of things for the last four years. The company was formed in 1919, and we are now in 1923. Those two shareholders are servants of the company, holding salaried positions as managers of certain of the cinema houses which belong to it. It is pointed out that they have never attempted, by invoking the procedure of section 66 of the Companies Act 1908, to appeal to what is called the domestic tribunal of the company for a review of the methods under which it has been managed. Assuming that the petitioners were in a position to comply with the conditions of section 66, that is a fair observation to make. But it does not carry much weight when it is remembered that their position was that of salaried and dismissible servants, and that in any case their shares were an insignificant minority compared with the interest held by Mr Greig. We were informed by counsel for the respondents that he controlled the other issued shares.

Now the question which we have to ask ourselves is whether in these circumstances it is "just and equitable" that the company should be wound up. In deciding this question there is one feature of the case which is not without importance. It is that the respondents themselves contemplate an early liquidation, though they deprecate an immediate winding-up. The respondents have proposed to the directors (or perhaps I should say to those at present acting in that capacity) and the petitioners that some of the properties to which the company is entitled should be sold within the next few months so as to realise enough money to meet the claims of the petitioning shareholders as these may be adjusted, and that their interests being thus taken out of the way, the company should then go into voluntary liquidation with the view of the purchase of the whole remaining assets by the respondents. Accordingly the question is not between winding-up of the company on the one hand and allowing it to continue indefinitely in life on the other, but between winding-up the company now and postponing the date when the company shall be wound up in order to facilitate the plan which the respondents have put before the

directors and the petitioners. Considering the way in which the company's affairs have been administered during the last four years, and having in view the fact that there are not at the present moment any means for the immediate ascertainment of the amount due to the petitioners on a proper accounting, it does not seem expedient to leave the whole of the assets of this company in the hands and in the name of Mr Greig for a further period of, say, three months in order that, however honest his intentions, he and the other respondent may have the opportunity of carrying out partial sales of the company's assets as the preliminary to ultimate liquidation.

I have no intention of attempting a definition of the circumstances which amount to a "just and equitable" cause. But I think I may say this—A shareholder puts his money into a company on certain conditions. The first of them is that the business in which he invests shall be limited to certain definite objects. The second is that it shall be carried on by certain persons elected in a specified way. And the third is that the business shall be conducted in accordance with certain principles of commercial administration defined in the statute, which provides some guarantee of commercial probity and efficiency. If shareholders find that these conditions or some of them are deliberately and consistently violated and set aside by the action of a member and official of the company who wields an overwhelming voting power, and if the result of that is that for the extrication of their rights as shareholders they are deprived of the ordinary facilities which compliance with the Companies Acts would provide them with, then there does arise in my opinion a situation in which it may be just and equitable for the Court to wind up the company. It is, no doubt, always possible in such a case that there may be other shareholders whose interests would be adversely affected by the winding-up, and if it were possible that any shareholders in that position should exist in the present case, the justice and equity of pronouncing a winding-up order might be open to question. But there are none. Mr Greig, as we are told by his counsel, controls the interests of the other shareholders.

It seems to me accordingly that in the circumstances of this company there exist sufficient grounds for exercising our statutory discretion, and for holding it to be just and equitable that the company should be wound up now.

I am therefore for granting the prayer of the petition.

LORD SKERRINGTON—I concur.

LORD CULLEN—I am of the same opinion.

I think it unnecessary to add anything to what has been said by your Lordship in the chair regarding the grave and continuous statutory irregularities which have marked the history of this company since it came into existence in 1919. Matters have now come to be in this position that parties

appear to be at one in the view that the company should sell its properties, cease to carry on business, and be brought to an end. The practical question between them is whether, on the one hand, these proceedings should all take place under a statutory winding-up through the medium of a neutral liquidator, or whether, on the other hand, the respondent Mr Greig, in whose name the titles to the properties irregularly stand, should be suffered to sell at his own hand, as he desires and proposes, such of the properties of the company as he thinks fit, in such way and at such prices as he chooses, and that thereafter there should be initiated a voluntary liquidation under which he will have practically the control of the liquidator's appointment and under which he aims at purchasing for himself such of the properties of the company as remain unsold. The petitioners not unnaturally prefer the former course. They are not averse from a voluntary winding-up on the conditions that a neutral or agreed-on liquidator be appointed and that the proceedings for realisation take place under it, but to these conditions the respondents although invited to do so will not agree. In these circumstances the petitioners request the Court to solve the situation by pronouncing an order for winding-up by the Court. It appears to me that this is a reasonable request and that it is "just and equitable" that we should accede to it.

LORD SANDS—I concur.

The Court granted the prayer of the petition, but appointed a liquidator other than the person suggested therein.

Counsel for Petitioners—Gentles, K.C.—Macgregor. Agents—Steedman, Ramage, & Company, W.S.

Counsel for Respondents—Robertson, K.C.—MacLean. Agents—Philp & Ross, Solicitors.

## HIGH COURT OF JUSTICIARY.

Saturday, November 24.

(Before the Lord Justice-General, Lord Cullen, and Lord Sands.)

[Sheriff Court at Jedburgh.]

BROWN v. HILSON.

*Justiciary Cases—Complaint—Relevancy—Specification—Teacher Charged with Assaulting Schoolboy—Whether Necessary to Specify in Complaint the Relationship between the Accused and Person Assaulted, and that the Punishment Inflicted was Excessive.*

*Justiciary Cases—Review—Stated Case or Suspension—Review on Fact—Observations as to the Competency of Review on Fact by Way of Suspension.*

In a charge of assault against the head teacher of a school the complaint set forth that the accused, described therein as "school teacher," did on a

specified date, in a classroom within the school at M, assault a certain boy aged six years, and did strike him on the face with his hands, and did beat him with a pair of tawse, and with his hands on the hips and thighs, whereby he was injured in his person. In an appeal by way of suspension against a conviction it was maintained that the complaint was irrelevant, on the ground that it failed to set forth that the alleged assault took place in the course of the administration of school discipline, and also that it omitted to state that the punishment given was in excess of that which disciplinary chastisement required and justified. *Held* that the form in which the complaint was stated was not such as to mislead or prejudice the accused in his defence; that it was sufficient to the relevancy of the complaint that the statement of the *modus* contained therein would, on criminal responsibility being established, constitute a crime; and suspension *refused*.

*M'Shane v. Paton*, 1922 J.C. 26, 59 S.L.R. 265, *commented on*.

Robert John Brown, school teacher, the School House, Makerstoun, Roxburghshire, *complainer*, was charged in the Sheriff Court at Jedburgh at the instance of Sydney Hilson, Procurator-Fiscal of Roxburghshire, *respondent*, upon a summary complaint in the following terms—"You are charged at the instance of the complainer that on Wednesday, 11th July 1923, in a classroom within the school at Makerstoun, parish and county aforesaid, you did assault Thomas Ballantyne, aged six years, son of and residing with George Ballantyne, ploughman, Galalaw, Kelso, and did strike him on the face with your hands, and did beat him with a pair of tawse, and with your hands on the hips and thighs, whereby he was injured in his person. . . ."

The complainer pleaded not guilty, and on 23rd August 1923, after evidence had been led, the Sheriff (CHISHOLM) found him guilty as libelled, and sentenced him to a fine of £10, or in default of payment to imprisonment for fifteen days.

The complainer brought a bill of suspension in which he averred, *inter alia*—" (Stat. 4) It was well known to the respondent when he framed the said complaint that the present complainer was the head teacher of the said school, and that the said Thomas Ballantyne was a pupil therein; that a report was made to the complainer that the said Thomas Ballantyne had been guilty of serious misconduct in a class in which he was a pupil, while the said class was under instruction; that because of the said report and immediately thereafter the complainer took the said Thomas Ballantyne into his (the complainer's) classroom, and inflicted punishment on him; and that the said punishment was the alleged assault referred to in the complaint. These facts were proved at the trial. (Stat. 5) The said complaint was lacking in specification, and failed to aver