

that the interlocutor appealed from be reversed; that the cause be remitted back to the Court of Session with a direction to answer the question of law in the negative; and that the respondents do pay to the appellants their costs here and below.

In *Fife Coal Company, Limited v. Gordon and Another* it was ordered that the interlocutor appealed from be reversed; that the cause be remitted back to the Court of Session with a direction to answer the question of law in the affirmative, and to restore the determination of the Sheriff-Substitute and remit to him to proceed as accords; and that the respondents do pay to the appellants their costs here and below.

Counsel for A. G. Moore & Company (Appellants)—Sandeman, K.C.—Beveridge. Agents—W. T. Craig, Glasgow—W. & J. Burness, W.S., Edinburgh—Beveridge & Company, Westminster.

Counsel for Donnelly (Respondent)—Moncrieff, K.C.—Stevenson. Agents—Gray, Muirhead, & Carmichael, S.S.C., Edinburgh—P. F. Walker, London.

Counsel for the Fife Coal Company, Limited (Appellants)—Sandeman, K.C.—Beveridge—Wallace. Agents—W. T. Craig, Glasgow—Wallace & Begg, W.S., Edinburgh—Beveridge & Company, Westminster.

Counsel for Colville and Others and Gordon and Another (Respondents)—Moncrieff, K.C.—Scott. Agents—Macbeth, Currie, & Company, Dunfermline—Alex. Macbeth & Company, S.S.C., Edinburgh—P. F. Walker, London.

COURT OF SESSION.

Tuesday, November 16.

FIRST DIVISION.

POLE AND SCANLON, PETITIONERS.

Election Law—Corrupt and Illegal Practices—Authorised Excuse—Inadvertence or Reasonable Cause of a Like Nature—Failure to Transmit Return and Declaration Timeously—Corrupt and Illegal Practices Prevention Act 1883 (46 and 47 Vict. cap. 51), sec. 33.

A practising solicitor who was candidate at a bye-election employed as his election agent a person who had acted as agent in a recent election, and had been selected as agent for the bye-election by a former prospective candidate. He had no professional qualifications. After the contest the candidate went on holiday, trusting to the agent to attend to the statutory declarations and return of election expenses. The return and the agent's declaration were ready within the time fixed by statute for transmission to the returning officer. The candidate's declaration was not then ready. The agent did not realise that he could transmit the return and his own

declaration without at the same time transmitting the candidate's declaration, and accordingly failed to transmit them within the statutory time.

In a petition for an order allowing an authorised excuse for the failure of the petitioners to comply with the statutory requirements, the Court excused the candidate's failure, but *quoad ultra* refused the prayer.

Observations (per the Lord President) as to the employment of unskilled persons as election agents.

The Corrupt and Illegal Practices Prevention Act 1883 (46 and 47 Vict. cap. 51) enacts, section 33—“(1) Within thirty-five days after the day on which the candidates returned at an election are declared elected the election agent of every candidate at that election shall transmit to the returning officer a true return (in this Act referred to as a return respecting election expenses) in the form set forth in the Second Schedule to this Act or to the like effect. . . . (2) The return so transmitted to the returning officer shall be accompanied by a declaration made by the election agent before a justice of the peace in the form in the Second Schedule to this Act (which declaration is in this Act referred to as a declaration respecting election expenses). . . . (4) At the same time that the agent transmits the said return, or within seven days afterwards, the candidate shall transmit or cause to be transmitted to the returning officer a declaration made by him before a justice of the peace in the form in the first part of the Second Schedule to this Act (which declaration is in this Act referred to as a declaration respecting election expenses). . . . (6) If, without such authorised excuse as in this Act mentioned, a candidate or an election agent fails to comply with the requirements of this section, he shall be guilty of an illegal practice.”

Section 34—“(1) Where the return and declarations respecting the election expenses of a candidate at an election for a county or borough have not been transmitted as required by this Act, or being transmitted contain some error or false statement, then (a) If the candidate applies to the High Court or an election court and shows that the failure to transmit such return and declarations, . . . has arisen by reason of . . . inadvertence or of any reasonable cause of a like nature, and not by reason of any want of good faith on the part of the applicant; or (b) if the election agent of the candidate applies to the High Court or an election court and shows that the failure to transmit the return and declarations which he was required to transmit . . . arose by reason of . . . inadvertence or of any reasonable cause of a like nature, and not by reason of any want of good faith on the part of the applicant, the Court may, after such notice of the application in the said county or borough, and on production of such evidence of the grounds stated in the application, and of the good faith of the application and otherwise, as to the Court seems fit, make such order for allowing an authorised excuse for

the failure to transmit such return and declaration, . . . as to the Court seems just. . . . (3) The order may make the allowance conditional upon the making of the return and declaration in a modified form or within an extended time, and upon the compliance with such other terms as to the Court seems best calculated for carrying into effect the objects of this Act; and an order allowing an authorised excuse shall relieve the applicant for the order from any liability or consequences under this Act in respect of the matter excused by the order; and where it is proved by the candidate to the Court that any act or omission of the election agent in relation to the return and declaration respecting election expenses was without the sanction or connivance of the candidate, and that the candidate took all reasonable means for preventing such act or omission, the Court shall relieve the candidate from the consequences of such act or omission on the part of his election agent. . . .”

Section 68—“(4) The jurisdiction of the High Court of Justice under this Act shall, in Scotland, be exercised by one of the Divisions of the Court of Session, or by a judge of the said Court to whom the same may be remitted by such Division, and subject to an appeal thereto, and the Court of Session shall have power to make Acts of Sederunt for the purposes of this Act.”

David Graham Pole, S.S.C., 48 Albemarle Street, London, and John Templeton Scanlon, residing at 48 Claremont Street, Glasgow, *petitioners*, presented a petition craving the Court to make an order (first) for allowing an authorised excuse for the petitioner 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 (4) of that Act; and (second) for allowing an authorised excuse for the petitioner John Templeton Scanlon's failure to comply with the provisions of that Act, in respect that he did not make a return of election expenses in the form and manner provided by section 33 (1) of that Act, and did not timeously make a declaration respecting election expenses as provided by section 33 (2) of that Act.

The petition set forth—“In March 1920 the petitioner David Graham Pole became a candidate to represent the Parliamentary Burgh of Edinburgh, North Division, in Parliament, the seat being then vacant.

“The day of nomination in the said division was the 31st day of March 1920, and on the 29th day of said month the petitioner David Graham Pole duly named the petitioner John Templeton Scanlon as his election agent, and declared the said John Templeton Scanlon's name and address in writing to the returning officer in the Parliamentary election for said Division. . . .

“On the 22nd day of April 1920 Mr Patrick Johnston Ford, being the candidate returned for said Division, was declared elected as Member of Parliament for the said Parliamentary Division.

“On 4th May the petitioner David Graham Pole, who had been advised that he urgently required a rest, went to Belgium, where he remained for a fortnight. He continued his vacation in Wales from 20th May until 25th May, on the evening of which day he returned to London.

“On 19th May the petitioner Mr Scanlon had sent him the statutory declaration to sign, but it did not come into Mr Pole's hands until 26th May 1920, when he returned to his office. On that date Mr Pole, who was very busy, did not realise that the last day for lodging returns was the 27th of May. He let the matter of signing said declaration lie until the morning of 27th May, when he wrote Mr Scanlon to send on the return of election expenses which he had inadvertently omitted to send on 19th May but which required to be signed along with the said declaration, before a justice of the peace. That afternoon he received a telegram from Mr Scanlon stating that it was the last day for lodging the return, and that a petition to the Court would now be required. Mr Scanlon sent on the missing return that day, and Mr Pole signed said declaration and the return on receipt, and returned the same in course of post to Mr Scanlon, who received them on the morning of 31st May 1920.

“On 29th May 1920 Mr Pole, seeing that Mr Scanlon could no longer assist in the matter, instructed Mr J. P. Allan, writer, Glasgow, to obtain from Mr Scanlon all the papers that fell to be lodged, and to tender them, though late, to the returning officer. Proceeding on these instructions Mr Allan and Mr Pole's present agent attended on the returning officer on 2nd June 1920 and tendered the said declarations, return of election expenses and vouchers therefor to the returning officer's clerk, who declined to accept them as duly lodged, but marked them as tendered of that date, and took them into his custody.

“The return and declarations both by Mr Pole and Mr Scanlon along with the vouchers were tendered five days late, this being caused by the fact that Mr Scanlon, although he mentioned the return in his letter, inadvertently omitted to enclose it on 19th May to Mr Pole, and that Mr Pole did not receive the letter until 26th May and did not notice the omission until the following day.

“In the circumstances above narrated the petitioners, who acted in good faith, desire to obtain from the Court an order (1) for allowing an authorised excuse for the petitioner David Graham Pole's failure to transmit to the said returning officer a declaration made by him respecting election expenses, and (2) for allowing an authorised excuse for the petitioner John Templeton Scanlon's failure to transmit a return of election expenses in terms of the said Act and a declaration made by him respecting election expenses.”

The Court ordered a proof, which was taken by Lord Cullen. At the proof it emerged that the agent's declaration and return were complete sometime before the last date for transmitting them to the

returning officer, and that the agent did not then transmit them because he did not realise that he could transmit the return and his own declaration without at the same time transmitting the candidate's declaration.

Counsel for the petitioners referred to *Smith and Sloan, Petitioners*, 1919 S.C. 546, 56 S.L.R. 484; and *Munro and M'Mullen, Petitioners*, 1920 S.C. 218, 57 S.L.R. 184.

LORD PRESIDENT—The ground on which orders for authorised excuses are asked in this petition is that the failure of both candidate and election agent to comply with the statutory requirements arose "by reason of inadvertence" or of some "reasonable cause of a like nature, and not by reason of any want of good faith on the part of the applicants."

What happened was this. May 27th was the last day for the transmission to the returning officer of the agent's declaration and return of expenses. At the same time, or within seven days afterwards (*i.e.*, not later than June 3rd), the candidate had to transmit his own declaration relative to the return. The agent did not transmit his declaration and return on or before May 27th. But on May 19th he sent to the candidate the form for the candidate's declaration, omitting however to send along with it a copy of the return. The candidate, owing to his absence on holiday and to the fact that his office was closed during Whitsuntide, did not receive the letter until May 26. Being unable to make the declaration without a copy of the return he returned the form to the agent, pointing out the omission, and asking—"What is the date for lodging that return"? The agent telegraphed next day that the statutory time was up, and that application for authorised excuse would have to be made. On May 28th the agent wrote a letter to the candidate, again sending the form for the candidate's declaration together with the return. The candidate then made the declaration, and sent it and the return back to the agent next day, May 29th. On June 2nd the agent tendered his own and the candidate's declarations, together with the return and vouchers, to the returning officer's clerk, who declined to accept them as duly lodged, but marked them as tendered of that date, and took them into his custody.

It appears from the evidence which has been led that the candidate, wearied by the contest in which he had been engaged, had gone on holiday shortly after the election and trusted to his agent to keep him right. In such circumstances a candidate's failure to observe the statutory requirements may—in cases which present no specialty—be fairly attributed to inadvertence, or to a cause which is of the like nature with inadvertence, and is consistent with reasonable conduct on his own part. In the present case I do not doubt the sincerity of the candidate's statement in the letter which he wrote to the agent in reply to the latter's telegram of the 27th—"I had no idea that the time was so nearly up." Further, there is

nothing in the case to suggest any want of good faith on the candidate's part. But the case presents two specialities. Firstly, the candidate was himself a practising lawyer, and cannot plead a layman's unfamiliarity with the nature of his obligations under the statute; and secondly, he chose to employ as election agent a man whom he knew to be destitute of professional qualifications, and whose competency he appears to have taken very much on trust. Now neither "inadvertence" nor "reasonable cause of a like nature" will cover a case of disregard of known responsibilities. If the candidate in the present case had been his own election agent it would have been impossible, especially in view of his own professional competency, to excuse him for allowing his obligations to slip out of his mind when he was on holiday. He had, however, employed an election agent, and he says in evidence—"My position in this matter throughout was that I trusted to an election agent whom I had been informed had just previously carried through an election quite properly." The question remains, Whether a candidate can be excused on the ground of "inadvertence" or "reasonable cause of a like nature" when he chooses to put implicit trust in an agent as little skilled and experienced as the one who was employed in the present case. In *Smith and Sloan*, 1919 S.C. 546, 56 S.L.R. 484, the unskilled agent was brought in as a last resort after attempts had been made to get a professional man. Both in that case and in the later one of *Munro and M'Mullen*, 1920 S.C. 218, 57 S.L.R. 184, allowance was made for the dearth of skilled assistance, due to war conditions, which still prevailed extensively at the time of the General Election of 1918. But this excuse for employing unskilled persons in the capacity of election agent no longer existed in 1920, and there is no room for making the same allowance in the case of a bye-election occurring in that year. The reasonableness of the candidate's conduct must be measured in relation to the importance attaching to statutory requirements which are devised for the protection of the elective system against corrupt practices—a matter of the highest public concern. The candidate explains in his evidence that on entering into the contest he found that the agent had already been selected for duty in that capacity by a former prospective candidate. This circumstance, together with the fact that the agent was known to him to have already acted in the same capacity on at least one recent occasion, led the candidate to employ him. The present case is not covered, so far as the candidate is concerned, by either *Smith and Sloan* or *Munro and M'Mullen*; but while I have found the matter to be attended with difficulty, I think the candidate may get the order which he applies for.

The position of the election agent is different. He states in evidence that his declaration and return were ready some time before May 27th; that the omission to enclose this return (or a copy of it) along with the form for the candidate's declaration, sent on

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