

The fact that they had not been initialed by the Sheriff did not make them any the less adjustments. In many Sheriff Courts (including that of Ayr) it was not the practice to initial adjustments. The appeal was irregular and should be dismissed—*Lee v. Maxton*, February 2, 1904, 6 F. 346, 41 S.L.R. 281; *Bennie v. Cross & Company*, March 8, 1904, 6 F. 538, 41 S.L.R. 381; *Taylor v. Macilwain*, October 18, 1900, 3 F. 1, 38 S.L.R. 1.

Argued for the appellant—The adjustments not having been initialed by the Sheriff-Substitute must be regarded as immaterial, and consequently the record was in shape. The Sheriff-Substitute was bound to initial the adjustments—A.S. 10th July 1839, sec. 45; Sheriff Courts (Scotland) Act 1876 (39 and 40 Vict. cap. 70), sec. 18, and not having done so, the alleged adjustments were really no adjustments.

LORD KYLLACHY—It is very unfortunate that this irregularity should have crept into the proceedings—an irregularity for which it would seem as if neither the Sheriff nor any one else was really to blame. For it would appear that in the Sheriff Court at Ayr, and also we are informed in most Sheriff Courts, the provisions of the Act of Sederunt of July 10, 1839, with regard to the initialing by the Sheriff of adjustments of the Record are not in the habit of being observed. It has not however been shown to us that this Act of Sederunt has been repealed or that it has fallen into desuetude; and I am afraid therefore we must assume that it is still the duty of the Sheriff to initial all alterations put on the pleadings at adjustment. That being so, and it being admitted that various alterations not appearing on the print before us were made by the petitioner at adjustment and engrossed on the certified copy of the petition, but not authenticated by the Sheriff in the way required, it seems to me that (the point having been raised), we have nothing for it but to send the case back to the Sheriff to have the record put in order. I must therefore I am afraid move your Lordships to recal the interlocutor of the Sheriff closing the record and allowing a proof, and remit the case to him to initial any adjustments that may be proposed, and to proceed thereafter as may be just.

LORD PEARSON and LORD ARDWALL concurred.

The LORD PRESIDENT, LORD M'LAREN, and LORD KINNEAR were absent.

The Court pronounced this interlocutor; "The Lords having considered the appeal and heard counsel for the parties in respect that certain alterations which appear upon the certified copy of the Petition and which the defender states are adjustments of the record, have not been authenticated by the Sheriff-Substitute, recal the interlocutor of the Sheriff-Substitute dated 23rd October 1906 and remit the cause

to him of new to allow parties to adjust, and to initial the adjustments in terms of the Act of Sederunt 1839, and of new to close the record and to proceed as may be just. . . ."

Counsel for Pursuer and Appellant—J. A. Christie. Agent—Alexander Wylie, S.S.C.

Counsel for Defender and Respondent—M'Robert. Agents—Young & Falconer, W.S.

Thursday, November 22.

SECOND DIVISION.

SIMPSON'S TRUSTEES, PETITIONERS.

Trust—Trustees—Resignation—Appointment—Petition—Scottish Trust Beneficiaries Resident in Canada—Resignation of Scottish Trustees Authorised and Canadian Trustees Appointed—Procedure.

By her antenuptial contract of marriage a wife conveyed certain estate to two trustees, both resident in Scotland, the income to be payable to the wife and after her death to the husband, and the capital, on the death of the survivor, to the children, or in the event of there being no children to the wife or her heirs. At the time of the marriage the parties were domiciled and resident in Scotland. A few years afterwards, having gone to Canada, and having formed the intention of remaining there permanently, the spouses became desirous that the original trustees should resign and that their places should be filled by persons resident in Canada. The two original trustees, accordingly, with concurrence of the spouses, presented a petition craving the Court to appoint A and B, residents in Canada, as trustees, and to grant the petitioners authority to resign. There were no children of the marriage. The wife was aged 41. The trust estate consisted for the most part of a sum of £2000 lying on deposit-receipt at the date of the petition.

The Court granted the prayer, A and B having lodged their written obligations to submit to the jurisdiction, and obey all orders of the Court in all matters relating to the trust.

William John Kirk, W.S., Edinburgh, and John Henderson, writer, Edinburgh, were appointed sole trustees under an antenuptial marriage contract dated 19th December 1900, entered into between John David Simpson, Glenbran, Inchture, and Fanny Brown, daughter of Andrew Brown, of Lochton, in the county of Perth. By the marriage contract Fanny Brown conveyed to the trustees her whole interest in the estate held in trust under the general trust-disposition and settlement executed by her grandfather the late James Brown of Lochton, excepting certain articles of

furniture as mentioned in the marriage contract; (*second*) the whole interest, present and future, in a personal bond granted in her favour by her brother Captain James Andrew Brown, which assignation, however, in the eventualities which happened proved to be inoperative; and (*third*) all other sums of money and all other estate, heritable or moveable, to which she might during the subsistence of the marriage succeed or become entitled (including any right or interest in the estate of Lochton), provided such sums of money or estate should at her succession thereto be of the value of £500 or over, and that the deed or writing under which she succeeded did not exclude the trustees from right thereto. The trust purposes were of the usual nature, providing in particular for payment to the wife during her life, and after her death to the husband during his life, if he should survive, of the free annual income of the trust funds and estate at such times and in such amount as the trustees might find convenient; (*fourth*) on the death of the survivor of the spouses for payment of the whole trust funds and estate to the child or children of the marriage on their attaining majority, or alternatively in the case of daughters their being married; (*fifth*) in the event of there being no children, for payment of the trust funds to the wife if she should be the survivor of the spouses; and (*sixth*) in the like event of there being no children and the husband being the survivor of the spouses, then on his death to the heirs or assignees of the wife. The usual powers of investment, &c., were conferred upon the trustees. Shortly after the marriage Mr and Mrs Simpson went to Canada, where they formed the intention of remaining permanently, and they became desirous that the acting trustees should resign and that the trust should be managed in future by trustees residing in Canada.

Accordingly on 6th July 1906 Kirk and Henderson presented a petition for the appointment of new trustees and for authority to resign.

In the petition it was stated "That Mr and Mrs Simpson, who at the date of their marriage were both domiciled in Scotland, are now resident in Canada, Mr Simpson being secretary-treasurer of the City of Moose Jaw, Saskatchewan. They have, by letter dated 2nd May 1906, intimated to the petitioners that it is their intention now to reside permanently in Canada, and that it would be more satisfactory to them if trustees resident in Canada were appointed to manage the trust created by said marriage contract, and the petitioners were to resign office. They further request the petitioners to make the necessary application to your Lordships for leave to resign and for the appointment of new trustees, to which proposed application they thereby give their consent. That in said letter Mr and Mrs Simpson request the petitioners to crave the Court to appoint the following persons as trustees, viz., William Grayson, solicitor, and Donald M'Lean, proprietor of

Moose Jaw Flour Mills, both resident in Moose Jaw aforesaid. Each of these gentlemen has written a letter to the petitioners intimating his willingness to be appointed a trustee under the said marriage contract. That the said letters from Mr and Mrs Simpson and from Mr Grayson and Mr M'Lean are produced and referred to. That the petitioners are informed by Mr and Mrs Simpson that it is their desire and that it would be for their interest to have the trust funds invested in Canada as they could be invested in securities yielding a higher rate of interest than similar securities in this country. That the petitioners are advised that in view of the trust being domiciled in Scotland and also of the terms of the said marriage contract they have no power to put the administration of the trust wholly into the hands of persons resident beyond the jurisdiction of the Courts of Scotland, or at all events that they would not be in safety to assume as trustees only persons resident abroad and thereafter resign without receiving judicial authority for so doing. That the present application is therefore made to your Lordships for the appointment of new trustees who would carry on the administration of the trust in Canada, and on the appointment being made for authority to the petitioners to resign. The said William Grayson and Donald M'Lean are, so far as is known to the petitioners, fit and proper persons to be appointed as trustees. That there are no children of the marriage between Mr and Mrs Simpson, the latter of whom is 41 years of age, and they are therefore the only persons interested in the present application, to which they consent as aforesaid."

The trust-estate at the date of the petition consisted of (1) a sum of £2000 (formerly invested on heritable security) lying on deposit-receipt in view of the questions raised in the petition; (2) Ten preference shares in John Dewar & Sons, Limited, bought for £109, 1s. 2d.; (3) uninvested balance of £83, 2s. 9d.

The prayer of the petition was in the following terms:—" . . . To nominate and appoint the said William Grayson and Donald M'Lean, and the survivor of them, or such other person or persons resident in Canada as your Lordships shall think proper, to be trustees or trustee under the said marriage-contract between the said John David Simpson and Fanny Brown, now Simpson, dated and recorded as aforesaid, in room and place of the petitioners William John Kirk and John Henderson, the trustees appointed thereby, with the whole powers to the trustees so to be appointed conferred by the said marriage-contract and as conferred by law; further, to grant authority to the petitioners to transfer, make over, and pay to the said William Grayson and Donald M'Lean, and the survivor of them, or to such other person appointed by your Lordships as aforesaid, the whole of said trust funds and estate under their charge, and to grant warrant to and authorise the trustees so to be appointed to complete their

title as trustees foresaid to the trust funds and estate specified, with power to the trustees so to be appointed to assume such other person or persons as they shall think fit to act as trustees along with them or after their decease in the execution of the said trust, and with all other usual and necessary powers; and to grant warrant and authority to the petitioners William John Kirk and John Henderson to resign the office of trustee under said marriage-contract, and to find them entitled to the expenses of and incident to this application out of the said trust funds presently under their charge, or to do further or otherwise in the premises as to your Lordships shall seem proper."

The petition was unopposed, but on 18th July the Court, after hearing counsel, sisted the petition for the purpose of ascertaining whether William Grayson and Donald M'Lean, if appointed trustees, would submit to the jurisdiction of the Court of Session in matters relating to the trust in the event of their being appointed.

On 22nd November the following undertaking was lodged in process, signed by Grayson and M'Lean, whose signatures were tested by two witnesses and certified by a notary-public:—"We, William Grayson, solicitor, and Donald M'Lean, proprietor of Moose Jaw Flour Mills, both residing in Moose Jaw, Saskatchewan, Canada, . . . do hereby, in the event of our being appointed by the Court of Session as trustees under said marriage-contract, agree and bind and oblige ourselves to submit to the jurisdiction of the said Court in all matters relating to the trust created by said contract of marriage, and to obey all orders of the said Court made upon us thereanent. . . ."

The Court pronounced an interlocutor in terms of the prayer of the petition.

Counsel for the Petitioners—Spens.
Agents—Hope, Todd, & Kirk, W.S.

HOUSE OF LORDS.

Monday, December 3.

(Before the Lord Chancellor (Loreburn),
Lords Halsbury, James of Hereford,
Davey, and Robertson.)

WALSH v. POLLOKSHAW MAGIS- TRATES AND OTHERS.

(In the Court of Session, July 19, 1905,
reported 42 S.L.R. 784, and 7 F. 1009.)

*Public-House—Licensing Court—Certificate
—Refusal to Renew—Discretion of Licens-
ing Authority—Licensing (Scotland) Act
1903 (3 Edw. VII, c. 25).*

The Licensing (Scotland) Act 1903 does not interfere with the discretion of the Licensing Authority, and consequently an action to reduce a deliverance of such licensing authority save on the ground of its having exceeded its

statutory jurisdiction, or its having refused a hearing allowed by statute, or of actual corruption, is irrelevant.

A licence-holder brought a reduction of the deliverance of the Licensing Authority refusing to renew the licence. He averred that the proceedings had been illegal and oppressive in respect (1) that an objection to the renewal, on the ground that the premises were insanitary and the district congested, had been given effect to, although no evidence had been led in support of the objection, and the applicant had offered to carry out any alteration of the premises which might be suggested; and (2) that the refusal was in pursuance of a preconceived policy of reducing the number of licences as being too numerous. *Held [aff. judgment of First Division (Seven Judges)]* that the action was irrelevant.

Lundie v. Falkirk Magistrates,
October 31, 1890, 18 R. 60, 28 S.L.R. 72,
approved and followed.

*Statute—Interpretation—Appeal—Grant of
an Appeal to Particular Court Excluding
All Other Appeal—Finality Clause in One
Part of Statute Applicable Only to Dec-
isions under that Part—Licensing (Scot-
land) Act 1903 (3 Edw. VII c. 25).*

The Licensing (Scotland) Act 1903 is divided into Seven Parts. Part I deals with "Constitution of Licensing and Appeal Courts." Part II deals with "Powers, Duties, and Procedure of Licensing and Appeal Courts," and in section 22 gives an appeal from the Licensing to the Licensing Appeal Court. Part VI deals with "Legal Proceedings," and in section 103 provides—"No warrant, sentence, order, decree, judgment, or decision made or given by any quarter sessions, sheriff, justice or justices of the peace, or magistrate, in any cause, prosecution, or complaint, or in any other matter under the authority of this Act, shall be subject to reduction, suspension, or appeal, or any other form of review or stay of execution, on any ground or for any reason whatever other than by this Act provided."

Opinion (per Lord Chancellor Loreburn) that while section 103, looking to its terms, could not apply to a decision of a Licensing Court, the same result was reached in that the conferring in section 22 of an appeal to a particular court impliedly excluded all other appeal.

Opinion (per Lord Davey) that section 103 applied only to such decisions as were given under the authority of that Part of the Act.

This case is reported *ante ut supra*.

The Licensing (Scotland) Act 1903 (3 Edw. VII, c. 25) so far as is required is given *supra* in the second rubric.

Mrs Agnes Boyle or Walsh, the pursuer (reclaimer), appealed to the House of Lords.

At delivering judgment—