

and the arbitration would have been proceeded with.

Accordingly, I think that for want of attention to form the whole thing went wrong, and it has got so off the lines that the questions as put are really not questions that can arise at all. There is no question of the employer being entitled to make it a condition of payment and to demand a final discharge. There is nothing about that in the statute. On the other hand, there is in the statute a perfect right in the employer to ask the Sheriff to say that the compensation is ended. The result is that I do not think the questions put can be answered, because they are not questions which can properly arise, and that the whole case must go back to the Sheriff, with the declaration that he must repeat his finding of the workman being entitled to the £1, 15s. 11d., but that he must then take up the question proposed to him by the employers, as to whether the compensation should be declared to be ended upon the 13th April 1908. The workman must either say "yea" or "nay" to that. If he says "yea," there must be a finding as to that. If he says "nay," there must be proof.

LORD KINNEAR—I agree with your Lordship.

LORD PEARSON—I also concur.

LORD M'LAREN was absent at the hearing, and delivered no opinion.

The Court pronounced the following interlocutor:—

"Find that the questions of law do not raise the point at issue between the parties: Further, that in granting a decerniture for the sum of £1, 15s. 11d. the Sheriff-Substitute exceeded his jurisdiction as arbiter: Therefore recal the determination of the Sheriff-Substitute as arbiter: Remit the cause to him as arbiter to repeat his finding that the respondent is entitled to compensation amounting to £1, 15s. 11d., and further, to deal with the question raised by the minute for appellants lodged on 29th July 1908, and to proceed as accords: Find no expenses due to or by either party in connection with the stated case."

Counsel for the Appellants—Horne—Strain. Agents—W. & J. Burness, W.S.

Counsel for the Respondents—G. Watt, K.C.—Wilton. Agent—D. R. Tullo, S.S.C.

Saturday, January 30.

FIRST DIVISION.

(SINGLE BILLS.)

ROBERTSON, PETITIONER.

Bankruptcy—Sequestration—Omission to Make Timeous Insertion of Notice in the Gazette—Bankruptcy (Scotland) Act 1856 (19 and 20 Vict. cap. 79), sec. 48.

The petition in a sequestration presented to the Keeper of the Register of Inhibitions an abbreviate in statutory form which was recorded, but he omitted *per incuriam* after sequestration had been awarded, to have the statutory notices timeously inserted in the *Edinburgh* and *London Gazettes*. Thereafter he applied to the Court for authority to insert in the *Gazettes* a notice of the sequestration, and calling a meeting on a certain day to elect a trustee and commissioners.

The Court *de plano* granted the prayer of the petition.

Morrison, January 21, 1874, 1 R. 392, distinguished.

The Bankruptcy (Scotland) Act 1856 (19 and 20 Vict. cap. 79), sec. 48, enacts—" . . . the party applying for sequestration shall . . . if it is awarded by the Sheriff, within four days after a copy of said delivrance could be received in course of post in Edinburgh, insert a notice in the form of Schedule (B) hereunto annexed in the *Gazette*, and also one notice in the same terms within six days from the said date in the *London Gazette*."

John Robertson, 63 York Place, Edinburgh, presented to the Court a petition which set forth—"That on 18th December 1908 the first delivrance was pronounced in common form in a petition by the petitioner to the Sheriff of the Lothians and Peebles at Edinburgh for sequestration of the estates of George Flett, 4 Bright Terrace, Edinburgh.

"That as required by section 48 of the Bankruptcy (Scotland) Act 1856, the petitioner duly presented to the Keeper of the Register of Inhibitions at Edinburgh an abbreviate in the form prescribed, which was recorded on 19th December 1908.

"After further procedure in terms of said Bankruptcy Act, the Sheriff of the Lothians and Peebles at Edinburgh, on 11th January 1909, awarded sequestration of the estates of the said George Flett.

"There should have been thereafter inserted, within four days from the date of said last-mentioned delivrance in the *Edinburgh Gazette*, and within six days from the said date in the *London Gazette*, a notice in the form of Schedule B annexed to the Bankruptcy (Scotland) Act 1856. Owing to a mistake on the part of a clerk, who failed to despatch said notices, these notices were not inserted. The date fixed by said delivrance for the meeting of creditors—viz., 22nd January 1909—has now passed, and it will be necessary to fix another date.

"In these circumstances it is necessary to appeal to the *nobile officium* of the Court for authority to insert notices in the *Gazettes*, and to fix a date for the meeting of creditors to enable the sequestration to be proceeded with."

The prayer of the petition was for authority "to insert in the *Edinburgh* and *London Gazettes* within four and six days respectively from the date of your Lordships' deliverance, a notice in the following terms:—"The estates of George Flett, 4 Bright Terrace, Edinburgh, were sequestrated on the 11th day of January 1909 by the Sheriff of the Lothians and Peebles at Edinburgh. The first deliverance is dated the 18th day of December 1908. The meeting to elect a trustee and commissioners is to be held upon the 10th day of February, at eleven o'clock, within Dowell's Rooms, George Street, Edinburgh. A composition may be offered at this meeting, and to entitle creditors to the first dividend their oaths and grounds of debt must be lodged on or before 18th April 1909. All future advertisements relating to this sequestration will be published in the *Edinburgh Gazette* alone. JOHN ROBERTSON, Solicitor, 63 York Place, Edinburgh"—And to authorise the Sheriff of the Lothians and Peebles, upon proof of such notices having been duly inserted, to confirm the election of the trustee and commissioners and proceed in the sequestration as if the statutory notices had been inserted and the meeting held upon their due dates; or to do further or otherwise in the premises as to your Lordships shall seem fit."

Counsel for the petitioner, on 30th January, moved the Court to grant the prayer of the petition *de plano*, but called their attention to the case of *Morrison*, January 21, 1874, 1 R. 392.

LORD PRESIDENT—[*After stating the facts*]—On counsel moving your Lordships to grant the prayer of this petition our attention was called to the case of *Morrison*, 1 R. 392, where in a petition of a somewhat similar character the Court refused to grant *de plano* the prayer of the petition, but ordered intimation on the walls and in the minute book for eight days in common form. I do not think, however, that that decision need be followed here. There the mistake that had been made was that the abbreviate had not been presented to the Keeper of the Register of Inhibitions within the prescribed time. In such circumstances it is possible that meanwhile someone else might have got an inhibition put upon the register, and then, on this dormant sequestration being quickened into life might have found his inhibition shut out. Here, however, there is no question of any preference, and therefore I think that this petition may be granted *de plano*.

LORD M'LAREN, LORD KINNEAR, and LORD PEARSON concurred.

The Court granted the prayer of the petition.

Counsel for the Petitioner—R. S. Brown.
Agent—John Robertson, Solicitor.

HIGH COURT OF JUSTICIARY.

Wednesday, February 3.

(Before the Lord Justice-Clerk, Lord Pearson, and Lord Ardwall.)

WINNING v. JEANS.

Justiciary Cases—Complaint—Relevancy—Statutory Offence—Specification—Locus—Street Betting Act 1906 (6 Edw. VII, c. 43), secs 1 (1) and (4), and 3—Loitering for the Purpose of Betting—Close—Common Close.

The Street Betting Act 1906 enacts—sec. 1 (1)—"Any person frequenting or loitering in streets or public places . . . for the purpose of bookmaking or betting . . ." shall be liable to certain penalties. Sec. 1 (4)—"For the purpose of this section the word 'street' shall include any highway and any public bridge, road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not. . . ." Sec. 3—"In Scotland . . . 'passage' includes common close or common stair or passage leading thereto."

A person was charged with frequenting or loitering for the purposes of betting in a "close" situated at a certain place. *Held* that the complaint was irrelevant, in respect that the offence created by the statute was the frequenting or loitering in a "common close."

Justiciary Cases—Conviction—Continuous Offence—Relevant and Irrelevant Charges in Same Complaint—Complaint Libelling Contravention of Statute by Actings in Three Separate Places—Conviction with regard to Two of the Places, but Proceeding Partly on Evidence Relating to the Third, which was Irrelevant.

A person was charged with an offence under the Street Betting Act 1906, in that he had frequented for the purpose of betting three separate places on a certain specified day and hour, two of them being streets, and the third being a certain "close." At the trial, a plea to the relevancy having been repelled, evidence was led as to betting both in the streets and in the close, but the accused was convicted only in respect of betting in the streets. *Held*, on appeal, that the conviction fell to be quashed, in respect that it had proceeded on evidence which in part referred to the betting in a "close," which portion of the complaint was irrelevant.

James Winning was charged in the Burgh Police Court of Partick at the instance of Alexander Jeans, writer, and Burgh Prosecutor there, on a complaint under the Burgh Police (Scotland) Act 1892, which set forth that he "did, on 14th August 1908, between five minutes past one and fifty-five minutes past one o'clock afternoon, frequent or loiter in Gordon Street, in a close at 1052 Dumbarton Road, and in Dumbarton Road, near Gordon Street, all in Whiteinch, in the burgh of Partick, on behalf either of himself