

of the statute." The notice of meeting was, *per incuriam*, inserted in the Gazette of 15th March 1910 instead of that of 11th March, with the result that notice was given only six days prior to the meeting.

The petitioners accordingly craved the Court to hold the Gazette notice of 15th March as equivalent to one timeously given, or otherwise to appoint a new meeting to be held and to order advertisement of new.

The application, to which no answers were lodged, came before the Lord Ordinary officiating on the Bills in vacation.

Counsel for the petitioners argued that his Lordship had power to deal with the petition, and cited the following authorities—Mackay's Practice, ii, p. 358; Goudy on Bankruptcy, (3rd ed.) p. 167; Taylor, July 7, 1900, 2 F. 1139, 37 S.L.R. 872; Robertson, January 30, 1909 S.C. 444, 46 S.L.R. 356.

The Lord Ordinary (SALVESEN) pronounced the following interlocutor:—"The Lord Ordinary officiating on the Bills . . . holds the notice in the Edinburgh Gazette of 15th March 1910 . . . as equivalent to a notice in said Gazette at least seven days previous to 22nd March 1910 . . ."

Counsel for Petitioners—A. M. Hamilton.
Agents—Webster, Will, & Company, W.S.

Thursday, May 12.

FIRST DIVISION.

(SINGLE BILLS.)

BUCHANAN AND OTHERS, PETITIONERS.

Nobile Officium—Exercise of by Lord Ordinary on the Bills in Vacation—Failure of Licensing Court to Obtain Quorum at Statutory Meeting—Petition to Appoint New Meeting—Licensing (Scotland) Act 1903 (3 Edw. VII, c. 25).

Where a Licensing Court failed to obtain a quorum at its half-yearly statutory meeting, and no provision was made by the Act for such a contingency, a petition was presented to the First Division to appoint, in the exercise of its *nobile officium*, a new meeting. The Court being in vacation, and the matter urgent, the petitioners craved the Lord Ordinary officiating on the Bills to grant the authority craved.

Circumstances in which the Lord Ordinary refused to dispose of the petition, but granted, quantum valeat, an order for intimation and service.

Observations (per Lord Kinneir) as to the power of the Lord Ordinary on the Bills to exercise the nobile officium of the Court.

On 23rd April 1910 A. C. Buchanan, Solicitor, Stirling, clerk to the Licensing Court of the said county, David Wilson of Carbeth, Killearn, chairman of said Court, and others, being the remanent members thereof, presented a petition to the First Division,

in which they craved the Court, in virtue of its *nobile officium*, to appoint the said Licensing Court to meet in Stirling on 5th May 1910, or such other date as the Court might deem proper, for the purpose of carrying through the business falling to be transacted at a general half-yearly meeting of such Court. The petition stated that under the Licensing (Scotland) Act 1903 the Licensing Court for the county of Stirling consisted of fourteen members—seven members being a quorum; that in terms of the Act a half-yearly meeting of the Court fell to be held on 19th April 1910; that notices were duly issued to the members calling the meeting; that only four members attended; that as it was found impossible to constitute the Court on the statutory date the Court could not be held; that no provision was made by the said statute for such a contingency; that the existing certificates for the sale of exciseable liquor within the county would expire on 28th May 1910; and that unless new certificates were granted prior to that date by a competently convened Licensing Court a deadlock would result in the licensing administration of the county.

The petition further stated—"By section 17 of the said Licensing (Scotland) Act 1903, it is provided that 'The clerk to the Licensing Court shall, at least ten days before the general meeting of such Court, make out and advertise at least twice in one or more newspapers, printed or generally circulated in the district, a complete list in the form, or as nearly as may be in the form, of the fifth schedule' annexed to the Act, setting forth certain particulars of all applications for new certificates, or for certificates to new tenants, and for renewal of certificates transferred during the currency of the previous half-year. Advertisement was duly made, as required by said section, ten days before the Court fixed for 19th April; and the petitioners submit that in the circumstances no further advertisement is called for under this section in the event of your Lordships seeing fit to appoint a meeting of the Licensing Court to be held as craved in the prayer of this petition."

On 23rd April 1910 the petitioners moved the Lord Ordinary on the Bills (LORD DUNDAS) to dispose of the application on the ground of its urgency, and argued—The case was clearly one for the exercise of the equitable jurisdiction of the Court—*Banff County Road Trustees, Petitioners*, October 21, 1881, 9 R. 20, 19 S.L.R. 8. It was in his Lordship's power to dispose of the application—*Magistrates of Pollokshaws, Petitioners*, September 26, 1882, 20 S.L.R. 19; *Edgar v. Fisher's Trustees*, November 10, 1893, 21 R. 59, 31 S.L.R. 76; *Beveridge's Forms of Process (1826)*, i, 229, and cases there cited.

His Lordship held that in the absence of averments showing the absolute impossibility of timeously obtaining from the Court the authority craved, the Lord Ordinary on the Bills could not, even in vacation, competently exercise the *nobile officium* of the Court.

The case was again mentioned to the Lord Ordinary on 27th April, when his Lordship allowed the petition to be amended by the substitution of the words "such early day" for the words Thursday, 5th May, or such other date," and on an undertaking being given that the question of competency would be brought under the notice of the Court at its meeting, granted, *quantum valeat*, an order for intimation and service in the following terms:—"Appoints intimation of the petition as amended to be made on the walls and in the minute-book in common form, and to be served on the county clerk of the county of Stirling, and appoints all parties having interest to lodge answers, if so advised, within six days after such intimation and service; further, appoints notice of the petition to be advertised once in each of the *Stirling Journal* and *Falkirk Herald* newspapers."

On the petition appearing in the Single Bills of the First Division on 12th May counsel stated what had taken place in the Bill Chamber, and moved the Court to grant the prayer of the petition without further procedure.

The opinion of the Court (LORD KINNEAR, LORD JOHNSTON, and LORD SKERRINGTON) was delivered by

LORD KINNEAR—The facts on which this petition is presented are very simple. The statutory meeting of the Licensing Court could not be constituted because of the failure of a quorum to attend on the appointed date, and the statute provides no machinery for setting up the Court or enabling it to meet at another date. In such circumstances the Lord Ordinary on the Bills was probably right in thinking it to be at least extremely doubtful whether he might competently deal with the matter. But it does not follow that the intimation and advertisement which have been made must go for nothing. The practical point for us is whether we are satisfied that sufficient notice has been given to all having interest.

On the statement of counsel that intimation, advertisement, and service had been made as ordered by the Lord Ordinary on the Bills, the Court pronounced this interlocutor:—

"Authorise and appoint the County Licensing Court of the County of Stirling to meet within the Court-house at Stirling on Thursday 19th May current, at eleven o'clock forenoon, for the purpose of transacting the business mentioned in the prayer of the petition, with power to the said Court when so met to adjourn its meetings from time to time, but subject always to the conditions and limitations prescribed by the Licensing (Scotland) Act 1903; further, authorise and appoint the petitioner Andrew Chrystal Buchanan, as clerk of the peace for the county of Stirling, to notify the meeting of the Court so appointed as craved in the prayer of the petition; further, appoint said meeting to be advertised once in

each of the *Stirling Journal* and *Falkland Herald* newspapers; and decern."

Counsel for Petitioners—J. R. Christie.
Agents—Macpherson & Mackay, S.S.C.

Saturday, May 14.

SECOND DIVISION.

[Sheriff Court at Hamilton.]

MATTHEWS v. WILLIAM BAIRD & COMPANY, LIMITED.

Master and Servant—Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), Sched. II, 9(b)—Application by Dismissed Workman for Warrant to Record Memorandum of Agreement—Proof that Workman, before Dismissal, had in fact Returned to Work and was Earning the Same Wages—Warrant Granted on Conditions—Competency.

A workman who met with an accident resulting in incapacity received compensation from his employers under an unrecorded agreement under the Workmen's Compensation Act 1906 for some months, and afterwards returned to his former work and earned higher wages than before the accident. Some weeks later he was dismissed on a reduction of the staff. Thereafter, while he was still unemployed though not incapacitated, he presented an application for warrant to record the memorandum of agreement. The Sheriff-Substitute granted warrant on certain conditions.

Held that the Sheriff-Substitute was not bound to grant warrant to record *de plano*, but was entitled, in virtue of section 9 (b) of the second schedule of the Act, to adject conditions to the granting of the warrant.

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) enacts—"Second Schedule (9) (as applied to Scotland)—Where the amount of compensation under this Act has been ascertained . . . by agreement, a memorandum thereof shall be sent . . . to the [Sheriff-Clerk], who shall . . . on being satisfied as to its genuineness, record such memorandum in a special register without fee, and thereupon the memorandum shall for all purposes be enforceable as a [recorded decree-arbitral]. Provided that— . . . (b) Where a workman seeks to record a memorandum of agreement between his employer and himself for the payment of compensation under this Act, and the employer . . . proves that the workman has in fact returned to work and is earning the same wages as he did before the accident, and objects to the recording of such memorandum, the memorandum shall only be recorded, if at all, on such terms as the [Sheriff], under the circumstances, may think just."

In an arbitration under the Workmen's Compensation Act 1906 in the Sheriff Court