

action as this, which was an appeal to the *nobile officium* of the Supreme Court, and was therefore only competent in the Supreme Court.

The Court dismissed the appeal and affirmed the interlocutor appealed against.

Counsel for the Appellants (Pursuers) — Sandeman, K.C.—Wilson. Agents—Pairman, Miller, & Murray, S.S.C.

Counsel for the Respondents (Defenders) — Wilton, K.C.—Couper. Agents—Fraser, Davidson, & Whyte, W.S.—Turnbull & Findlay, Solicitors, Glasgow.

Saturday, January 17.

FIRST DIVISION.

MUNRO AND M'MULLEN,
PETITIONERS.

Election Law—Corrupt and Illegal Practices—Authorised Excuse—Ignorance of Statutory Provisions—Corrupt and Illegal Practices Prevention Act 1883 (46 and 47 Vict. cap. 51) sec. 34.

A doctor serving in the army was labour candidate at a general election; he nominated as his agent a working shipwright. The candidate was defeated; he failed to make the statutory declaration respecting election expenses. His agent failed to make the declaration respecting election expenses and to make a return thereof. Both were unaware of their statutory duties and the candidate's time was fully occupied with his military duties; both acted in *bona fides*. In a petition for an authorised excuse the Court granted the prayer.

Smith and Sloan, Petitioners, 1919, 56 S.L.R. 484, followed.

Observations per the Lord President that for the future the Court would not be ready to accept mere ignorance on the part of an election agent of his duties under the Act of 1883 as an excuse.

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, containing, as respects that candidate—(a) A statement of all payments made by the election agent, together with all the bills and receipts (which bills and receipts are in this Act included in the expression ‘return respecting election expenses’); (b) A statement of the amount of personal expenses, if any, paid by the candidate; (c) A statement of the sums paid to the returning officer for his charges, or, if the amount is in dispute, of the sum claimed and the amount disputed; (d) A statement of all other disputed claims

of which the election agent is aware; (e) A statement of all the unpaid claims, if any, of which the election agent is aware, in respect of which application has been or is about to be made to the High Court; (f) A statement of all money, securities, and equivalent of money received by the election agent from the candidate or any other person for the purpose of expenses incurred or to be incurred on account of or in respect of the conduct or management of the election, with a statement of the name of every person from whom the same may have been received. (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, or any of them, or any part thereof, or any error or false statement therein, has arisen by reason of his illness, or of the absence, death, illness, or misconduct of his election agent or sub-agent, or of any clerk or officer of such agent, or 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, or any part thereof, or any error or false statement therein, arose by reason of his illness or of the death or illness of any prior election agent of the candidate, or of the absence, death, illness, or misconduct of any sub-agent, clerk, or officer of an election agent of the candidate, or 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, or for an error or false statement in 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. (4) The date of the order, or, if conditions and terms are to be complied with, the date at which the applicant fully complies with them, is referred to in this Act as the date of the allowance of the excuse."

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."

Hector Munro, M.B., C.M., residing at 11 Seymour Street, Portman Square, London, and William M' Mullen, shipwright, Invergordon, *petitioners*, brought a petition craving the Court to make an order (*first*) for allowing an authorised excuse for the petitioner Hector Munro's failure to comply with the provisions of the Corrupt and Illegal Practices Act 1883, in respect that he did not 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 William M'Mullen'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 make a declaration respecting election expenses as provided for by section 32 (2) of that Act.

The returning officer (James Mackintosh, K.C., Sheriff of Ross and Cromarty), *minuter*, lodged a minute stating that he did not oppose the granting of the prayer of the petition, and submitting that it should be made a condition thereof that the return in due form should be lodged in his hands within such period as might be fixed by the Court and that he should be authorised to receive the return and declarations,

The *petition* set forth—"In the month of November 1918 the petitioner Hector Munro became a candidate to represent the Parliamentary Division of Ross and Cromarty in Parliament, the seat being then vacant owing

to a general election. The day of nomination of the said Division was the 4th day of December 1918, and on that day the petitioner Hector Munro duly named the petitioner William M'Mullen as his election agent, and declared the said William M'Mullen's name and address in writing to the returning officer in Parliamentary election of said Division. . . .

"On the 28th day of December 1918, The Right Honourable Ian Macpherson, being the candidate returned for said Division, was declared elected as Member of Parliament for the said Parliamentary Division.

"On 3rd March 1919 the petitioner William M'Mullen transmitted to the returning officer for the said Parliamentary Division a return of the expenses incurred in connection with the petitioner Hector Munro's candidature, as follows:—

Motor car accounts - - -	£22 15 4
Printing, stationery, and advertisements - - -	22 6 6
Halls and committee rooms -	6 13 0
Election agent's charges, sub-agents, clerks, and messengers, including travelling expenses, etc. - - -	71 0 0
Posts, telephones, and telegrams - - - - -	1 14 8
Candidate's personal expenses -	10 1 0
Miscellaneous expenses - - -	7 1 3
	£141 11 9

"The said return of expenses failed to comply with the provisions of section 33 (1) of the said Act, and the petitioner William M'Mullen further failed to comply with the provisions of section 33 (2) of the said Act, in respect that the said return of the election expenses was not accompanied by a declaration respecting election expenses made by him as election agent.

"The petitioner Hector Munro failed to comply with the provisions of section 33 (4) of the said Act in respect that he did not transmit to the returning officer a declaration respecting election expenses made by him.

"The petitioners Hector Munro and William M'Mullen failed to comply with the provisions of the said Act as set forth above entirely through inadvertence and in good faith. They believed that they had fulfilled all their obligations respecting a return of the election expenses incidental to the candidature of the petitioner Hector Munro. . . .

"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 Hector Munro'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 William M'Mullen'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 Mackenzie.

Counsel for the petitioners referred to *Smith and Sloan, Petitioners, 1919, 56 S.L.R.*

484, and *Clark v. Sutherland*, 1897, 24 R. 821, 34 S.L.R. 555.

LORD MACKENZIE—This is a petition presented by the candidate and the election agent in an election for the Parliamentary Division of Ross and Cromarty in December 1918, for an authorised excuse for the failure of the petitioner Hector Munro to transmit to the returning officer a declaration made by him respecting election expenses, and secondly, for an authorised excuse for the failure of the petitioner William M'Mullen to transmit a return of election expenses in terms of the Act.

We have had occasion in a recent case to express our views in regard to the construction to be put upon the sections of the Act of Parliament which are here involved. The 34th section provides that where the candidate or the election agent has been guilty of what are termed "illegal practices" it is necessary, in order that they may be restored against the consequences which would follow from those "illegal practices," to get from the Court what is called an authorised excuse. One of the grounds—and the ground upon which the authorised excuse is asked in the present case—is that there has been inadvertence or any other reasonable cause of a like nature.

Now the construction which has been put upon the term "inadvertence" is that it is to be taken as meaning negligence or carelessness where the circumstances show an absence of intention to disobey the law.

I heard Dr Munro give his evidence in this case, and nothing could be more frank than the way in which he made his statement and disclosed the whole facts of the case. Dr Munro was in an entirely exceptional position. He was serving his country, and he was summoned at short notice to engage as candidate on what was to him entirely new work. He says that he knew nothing about the statutory requirements, and certainly in his case there is the exceptional reason that his time was fully occupied, and that in all probability he had no spare time to make himself acquainted with what was necessary.

The same considerations do not apply to the election agent. He was a man who was on the spot, and whose duty it was to keep the candidate posted up in his duties, and also to make himself acquainted with what is incumbent upon him under the Act of Parliament. The best that can be said for him is that he was a shipwright and not a lawyer. His business therefore was not of a kind which led him to read Acts of Parliament. It is quite plain that it must not go out that such considerations will always be held to be an excuse, because as times go on and people become more familiar with these matters, amongst other things from reports of these cases, 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.

But in the present case I do not think it is possible to distinguish the position of M'Mullen from the position of the election

agent in the case of *Smith and Sloan*, 1919, 56 S.L.R. 484. I think the considerations to which weight was attached in the case of *Smith and Sloan* apply here. M'Mullen was not a professional man; the illegal practices may be regarded as being of a character which would not have affected the return of the candidate, and lastly, whenever his attention was directed by the procurator-fiscal to the omission he set about to do his best to repair what he had neglected to do at the proper time.

Accordingly, upon the whole matter I think that this is a case in which the Court will be justified in granting the authorised excuse upon the conditions indicated by the returning officer in his minute, following the conditions which were inserted in the interlocutor in the case of *Smith and Sloan*.

LORD SKERRINGTON—I am satisfied both from the evidence and from what has been said by Lord Mackenzie, who saw and heard the witnesses, that both the petitioners acted in good faith and that their failure to comply with the statute was due to inadvertence. I have, further, no difficulty in holding that the candidate has shown that he had a reasonable excuse for his inadvertence. He was occupied with very onerous duties and I think that it is quite excusable that he should have made this mistake because he relied upon his election agent.

The position of the election agent is more difficult, because all that he tells us is that he was appointed to that office and that he knew nothing whatever about the Corrupt and Illegal Practices Act 1883. It is strange that he should undertake a duty without knowing anything about the statute which defines what he ought to do and what he ought to abstain from doing.

Although the petitioner has not given any very intelligible explanation of his negligence, I think that we may on this occasion read his evidence in the light of our general knowledge of the position of matters at the end of December 1918, immediately after the Armistice had been concluded. We know that at that time there was a great scarcity of men in this country, and that those who remained were extremely busy either in connection with their own business or in connection with public duties arising out of the war. Further, this was the first General Election where all the contests took place on one day, and that made it difficult to obtain skilled persons' assistance. It would have been better if this petitioner had explained these points himself instead of leaving the Court to find an excuse for him. What we tolerate to-day must not be regarded as a precedent.

LORD PRESIDENT—I agree with the general views expressed by your Lordships and by Lord Guthrie in the case of *Smith and Sloan*, 1919, 56 S.L.R. 484. I agree also with the views expressed by your Lordships in the present case. 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 in this case. This case I think ought to be sufficient warning to men who take the duties of election agent to acquaint themselves with what these duties are, especially with reference to the statute.

We shall pronounce the interlocutor pronounced in the case of *Smith and Stoun*, but we shall allow one month instead of ten days for giving in the documents.

The Court pronounced this interlocutor . . . "On condition that the accounts in the form prescribed by the statute, together with the statutory declaration by both petitioners, be lodged in the hands of the returning officer within one month from this date, grant the prayer of the petition. . . ."

Counsel for the Petitioners—MacLaren. Agent—A. W. Gordon, Solicitor.

Counsel for the Minuter—A. R. Brown. Agents—Fraser, Stodart & Ballingall, W.S.

Wednesday, January 28.

FIRST DIVISION.

[Lord Anderson, Ordinary.

GROSSET v. BIRRELL'S TRUSTEES.

Succession—Trust—Construction—Administration—Appropriation of Securities to Meet Legacies.

A testator directed his trustees "to invest, hold, or set aside, and retain and administer for behoof of [his] six daughters . . . [certain] sums . . . for each of them, and to pay to each of [his] six daughters the annual interest or income arising upon the sum so set aside for each of them" as an alimentary liferent; upon the respective deaths of his daughters "the fee of the sums so held and set apart for each of [the] daughters" was to belong to and to be paid over by his trustees to the child or children of each of the daughters on their attaining the age of 25, with destinations-over. The fee was not to vest till the children attained 25, but the trustees were given power in certain contingencies to pay over to each of the daughters during her life any sum not exceeding one-half of the capital sum so liferented by her. Power was also given to retain any of the investments in which the testator left his estate. The testator specifically appropriated certain bonds and dispositions in security granted by the husband of one of the daughters to her legacy and provided that she should bear any loss on realisation of those loans. The share of one of the daughters was £2350. The trustees set aside a bond and disposition in security for £3550 and their half of another for £6700 (the other half being held by the residuary legatee who was a trustee) to provide for that daughter's legacy in full, for the legacies of other daughters in full, and for the legacy of another daughter in part. The amount of the legacies

so provided for was equal to the nominal value of the bonds so set apart. The daughter in question being dissatisfied with that joint security for her bequest, raised a declarator to the effect that the trustees were bound to allocate and appropriate money or securities separately and exclusively to her individual bequest. *Held* (rev. Lord Anderson) upon a construction of the terms of the settlement that the pursuer was entitled to decree to that effect.

Mrs Joanna Birrell or Grosset, with consent of her husband, and her husband as tutor and administrator-in-law of his pupil children, *pursuer*, brought an action against Mrs Elizabeth Steedman or Birrell, widow of the late Alexander Birrell of Tyrie and others (the testamentary trustees of Alexander Birrell), *defenders*, concluding for decree "that the defenders were bound at the term of Whitsunday 1917 to invest, hold, or set aside, and retain and administer for behoof of the pursuer the said Mrs Joanna Birrell or Grosset the sum of £2350 sterling, subject to provision or payment of legacy duty thereon by the pursuers, and to pay her the annual interest or income arising from said sum during the whole days and years of her life for her liferent alimentary use allenarly, and on the death of the said Mrs Joanna Birrell or Grosset to pay the sum so held and set apart to her child or children, equally among them, all in terms of and as set forth and directed by the said trust-disposition and settlement; and (*second*) the defenders ought and should be decerned and ordained by decree of our said Lords within one month from the date of the decree to follow hereon, or such other short time as our Lords shall appoint, to invest, hold or set aside, and retain and administer the sum of £2350 sterling, subject to payment or provision of legacy duty as aforesaid, and to hold, retain, and administer said sum upon such securities as are authorised by law or by the said trust-disposition and settlement for behoof of the said pursuer, and to pay to her the annual interest or income arising upon the said sum during the whole days and years of her life for her liferent alimentary use allenarly, and upon her death to make payment of the capital or fee thereof to the child or children of the pursuer equally among them upon their respectively attaining the age of twenty-five years complete or upon the death of the pursuer, whichever shall last happen, all in terms of the provisions of the said trust-disposition and settlement; and (*third*) the defenders ought and should be decerned and ordained by decree foresaid to make payment to the pursuer Mrs Joanna Birrell or Grosset, first, of the sum of £58 15s. sterling as at the term of Martinmas 1917, and the like sum of £53 15s. sterling as at the term of Whitsunday 1918, together with interest on each of said sums at the rate of £5 per centum per annum from the said dates when they respectively became due."

The *trust-disposition and settlement* of the late Alexander Birrell conveyed his whole estate, heritable and moveable, to trustees, of whom the defenders were now