

in the tenancy. It appears to me that even if there was an obligation on the defender of an enforceable character to endorse that certificate, his refusal to do so did not inflict any damage on the pursuers. I am of opinion on the whole matter that the Lord Ordinary's interlocutor should be recalled and the defender assoilzied.

LORD MONCREIFF—I am also of opinion that there is no relevant case, and that on that ground the defender should be assoilzied. This action is raised for a sum of £1000 in respect of the defender's failure to endorse a licence. The Lord Ordinary has marked his sense of the damage that the pursuers have suffered by reducing the sum sued for from £1000 to £20. I am prepared to go a step further, and hold that no damage has been proved as the result of the defender's failure to endorse the licence. I understand it was necessary for the new tenant to go before the Magistrates to obtain a transfer of the licence, and the only effect of this licence if endorsed would have been to give a certain facility to the applicant in satisfying the Magistrates that the last tenant had ceased to have any connection with the licensed premises. But other proof could have been easily obtained and would have been quite as satisfactory. I think therefore that Huggan's refusal to endorse the licence does not form a relevant ground of action.

The Court recalled the interlocutor reclaimed against and assoilzied the defender from the conclusions of the action.

Counsel for the Pursuers and Respondents—Wilson, K.C.—Steedman. Agents—Steedman & Ramage, W.S.

Counsel for the Defender and Reclaimer—A. J. Young—W. Thomson. Agents—Steele & Johnstone, W.S.

Tuesday, November 4.

FIRST DIVISION.

[Exchequer Cause.]

THE LORD ADVOCATE v. TROTTER.

Revenue—Excise—Licences—Beer—Retailing Beer without Licence—Process—Exchequer—Information—Specification—Person to whom Liquor Sold—Exchequer Court (Scotland) Act 1856 (19 and 20 Vict. c. 56), secs. 5 and 7, Sched. B—Revenue (No. 2) Act 1861 (24 and 25 Vict. c. 91), sec. 12.

The Court of Exchequer Act 1856 provides for Exchequer causes being instituted by subpoena and information, and various forms of information are given in the schedules. The form of information for illegal trading without a licence does not provide for the specification of the name of the person to whom the illegal sale was made. Section 12 of the Revenue (No. 2) Act 1861, which provides a penalty for retailing

beer without a licence, provides that in any information for the recovery of such penalty "it shall be sufficient to charge that the defendant sold beer by retail without having duly obtained a certificate, . . . and it shall not be necessary further or otherwise to describe such offence." The Act of 1861 does not contain any form of information applicable to proceedings against persons charged with an offence against section 12. In an action raised by the Crown in respect of an alleged offence under this section, the information contained no statement of the name of the person to whom the liquor was sold. The defender objected to the relevancy of the information. The Court *repelled* the objection.

Section 12 of the Revenue (No. 2) Act 1861 (24 and 25 Vict. c. 91), provides that "If any person shall in Scotland sell beer by retail—that is to say, in any quantity less than four and a-half gallons, or in less than two dozen reputed quart bottles at one time (whether to be drunk or consumed on the premises or not) without having duly obtained a certificate and also an Excise licence respectively authorising him to sell beer under the provisions of any Act or Acts in that behalf, he shall forfeit, over and above any other penalty to which he may be liable under such Act, the sum of £20, . . . and in any information or other proceeding for the recovery of the penalty hereby imposed it shall be sufficient to charge that the defendant sold beer by retail without having duly obtained a certificate and also an Excise licence respectively authorising him to sell beer under the provisions of the statute in that case made and provided, and it shall not be necessary further or otherwise to describe such offence."

Section 5 of the Exchequer Court (Scotland) Act 1856 provides that Exchequer causes may be instituted "by issuing . . . against the defender a subpoena in the form as nearly as may be of Schedule A hereunto annexed."

Section 7 provides for the form of the information following on the subpoena, and directs that it is to be in the form of Schedule B. Schedule B (3) is in the following terms:— ". . . "That on or about the day of 18, at in the County of A (*Designation*) did exercise or carry on the trade or business of a , for the exercising or carrying on of which a licence was by statute required, without taking out such licence, contrary to the Act 6 Geo. IV. c. 81, sec. 26, whereby the said A has forfeited the sum of £ . . ."

Section 26 of the Excise Licences Act 1825 (6 Geo. IV. c. 81), provides penalties for persons carrying on business for which a licence is required by the Act without taking out such licence.

An information was presented by the Lord Advocate against Alexander James Trotter, 2 Graham Street, Edinburgh, under the Excise Licences Act 1825 (6 Geo. IV. cap. 81), sec. 26, and the Revenue (No. 2) Act 1861 (24 and 25 Vict. cap. 91), sec. 12.

The counts of the information so far as relevant to the present case were as follows:—“(Third Count) That the said Alexander James Trotter did, on or about the 31st day of December in the year 1901, in the premises aforesaid, sell beer—to wit, three and a-half pints of beer—by retail without having duly obtained a certificate and also an Excise licence respectively authorising him then and there to sell beer under the provisions of the statute in that case made and provided, contrary to the Act 24 and 25 Vict. cap. 91, section 12, whereby the said Alexander James Trotter has forfeited the sum of £20. (Seventh Count) That the said Alexander James Trotter did, on or about the 2nd day of January in the year 1902, in the premises aforesaid, sell beer—to wit, four pints of beer—by retail without having duly obtained a certificate and also an Excise licence respectively authorising him then and there to sell beer under the provisions of the statute in that case made and provided, contrary to the Act 24 and 25 Vict. cap. 91, sec. 12, whereby the said Alexander James Trotter has forfeited the sum of £20.”

The other six counts, which labelled a contravention of section 26 of the Excise Licences Act 1825, were in the form contained in Schedule B of the Court of Exchequer Act 1856, quoted above.

The defender lodged answers, in which he stated—“(First to Eighth Count) The defender pleads that the said several counts are wanting in specification and are irrelevant, and further pleads ‘not guilty’ to all of the said counts. The whole of the averments in the information are denied. It is explained that the defender is the clubmaster of the Royal Albert Club, Edinburgh, whose premises are situated at 2 Graham Street there, and which is a *bona fide* club; and that if any sales of spirits, foreign wine, beer, and tobacco were in point of fact made by him on any of the occasions set forth in the various counts of the information under answer, such sales were so made by the defender as clubmaster of the said club to the members thereof.”

The Lord Ordinary (STORMONTH DARNING) pronounced the following interlocutor:—“Repels the defender’s plea of want of specification in so far as regards the first, second, fourth, fifth, sixth, and eighth counts in the information: As regards the third and seventh counts in said information, holds the same irrelevant for want of specification, and decerns: Reserves all questions of expenses in connection with the discussion in the Procedure Roll, and grants leave to reclaim.”

Opinion.—“The defender pleads with regard to all the eight counts of this information that they are wanting in specification. In considering this preliminary question it is necessary to distinguish between those counts (viz., the 1st, 2nd, 4th, 5th, 6th, and 8th) which label a contravention of the Act 6 George IV. cap. 81, sect. 26, and those (viz., the 3rd and 7th) which label a contravention of the Act 24 and 25 Vict. cap. 91, sec. 12.

“The counts in the first category aver that the defender, being a retailer of spirits or foreign wine or tobacco, as the case may be, did on certain days in certain premises exercise or carry on the trade or business of a retailer of spirits or of foreign wine or of a dealer in tobacco without taking out a licence. The objection is that the information ought to have added in what manner the particular trade or business was carried on. But the short answer which the Crown makes is that, in framing the information as they have done they have followed the form contained in Schedule B of the Court of Exchequer Act, 19 and 20 Vict. cap. 56. This I think is a good answer. Section 7 of the Exchequer Act provides that ‘every information to be lodged in terms of this Act shall be in the form, as nearly as may be, of the Schedule B,’ and under head 3 of that schedule there is a form applicable to contraventions of the Act 6 George IV. cap. 81. Now, when a statute specifies the terms in which an information or complaint about a statutory offence is to be framed it must be taken as superseding the rules of the common law as to the particulars to be given to an accused person.

“But it is otherwise in my view with regard to counts 3 and 7, which are founded on the Act 24 and 25 Vict. cap. 91. There is no form of information applicable to a contravention of that Act to be found in Schedule B of the Exchequer Act, for the very good reason that the Act of 24 and 25 Vict. had not then been passed. What the Act strikes at is selling beer by retail in Scotland without being duly authorised and licensed in that behalf, and it specifies the maximum quantity which shall constitute a sale by retail. The Act itself contains no form of information, but it contains a provision at the end of section 12 that ‘in any information or other proceeding for the recovery of the penalty hereby imposed it shall be sufficient to charge that the defendant sold beer by retail without having duly obtained a certificate and also an Excise licence respectively authorising him to sell beer under the provisions of the statute in that case made and provided, and it shall not be necessary further or otherwise to describe such offence.’ It will be observed that if these words were to be taken as equivalent to a statutory form of information it would not be necessary for the Crown to specify either the time when or the place where the offence was committed. But the Crown do not carry their argument so far as that. They admit that it is necessary for them to give time and place. What the defender says is that the charge being one of selling beer without a licence he ought to be told the name of the person or persons to whom he is accused of having sold the beer, if the name or names are known to the Crown. In my opinion he is entitled to make that demand. The words at the end of section 12 seem to me to refer only to the mode in which the offence itself is to be described, leaving the time, the place, and the mode

of its commission to be settled by the rules of the common law.

"Now, if this had been a summary complaint in an inferior court, there can be very little doubt that the prosecutor would have been bound to state the name of the person to whom the liquor was sold if he knew it, or else to add the words that the sale was to 'a person to the prosecutor unknown.' That appears from the case of *Muir v. Campbell*, November 21, 1888, 2 White 97, 26 S.L.R. 63, which related to the analogous case of a sale of liquor on Sunday in breach of the seller's certificate; and also from the case of *Stewart v. MacNiven*, February 7, 1891, 2 White 627, 28 S.L.R. 352, which related to a charge of shebeening. In both of these cases the want of specification was on special grounds not held a sufficient reason for quashing the conviction, but all the judges were clear that the prosecutor was bound to name the persons to whom the liquor was sold if he knew them. If that be a good rule for the inferior courts, I fail to see why it should not apply to the Court of Exchequer, unless there be some absolute statutory provision against it, because it is a rule founded upon obvious considerations of fair-play. It is said that the practice of the Revenue Authorities is the other way. I do not find that it was so in the reported case which is nearest in its circumstances to the present, that of *Madin v. McLean*, March 19, 1894, 1 Adam 376, 31 S.L.R. 680. That was a case of a complaint before the justices for retailing liquor without a licence, where the defence was that the accused persons were members of a club, and there the name of the person to whom the spirits were sold was given. But even if the practice be as stated the practice of a Government Department does not make law. It is suggested that the effect of giving the name or names in the present case might make it easier for the defender to prove that the sale was not a transaction between vendor and purchaser but between club and member. I suppose every particular which a prosecutor is required to supply helps the accused in preparing his defence. That is indeed the very object of requiring particulars to be given, and it is only another way of saying that the common law of this free country is far less solicitous about securing convictions than about ensuring that every accused person shall have an absolutely fair trial.

"I shall therefore repel the plea of want of specification as regards the first, second, fourth, fifth, sixth, and eighth counts, but shall sustain it as regards the third and seventh. If the Crown had been willing to give the names or to say that they do not know them, I would have allowed these counts to be amended; but as they desire to reclaim I shall grant leave, and hold these counts irrelevant for want of specification."

The pursuer reclaimed and argued—The forms under the Court of Exchequer Act applied to contraventions of subsequent Acts to which the procedure of that Act could be applied. It was clear from the

last sentence in section 12 of the Revenue (No. 2) Act 1861 that the form here adopted was sufficiently specific—*Guild v. Inland Revenue*, July 19, 1898, 25 R. (J.) 106, 35 S.L.R. 97; *The Queen v. Gibroys*, March 20, 1866, 4 M. 656, 1 S.L.R. 202. Under the schedule to the Exchequer Act time and place had to be specified, but the name of the person supplied with drink was not required. It was enough to comply with the provisions of that Act.

Argued for the respondent—It was only fair that the accused should have a chance of knowing to whom the illegal sale was alleged to have been made. Failing the name being given, it should be stated that the person was unknown. Unless the Crown were specially exempted from this obligation they were bound to fulfil it—*Muir v. Campbell*, November 21, 1888, 16 R. 20, 26 S.L.R. 63; *Stewart v. Macniven*, February 7, 1891, 18 R. 36, 28 S.L.R. 352. There was a statutory provision creating an offence, and unless the Crown could point to some provision exempting them from the ordinary rules by which the person would have to be specified they must conform to them. The prosecutor might change his mind in the course of the trial as to the occasion charged. This would be most inequitable, as the accused ought to have an opportunity of knowing the exact occasion libelled so as to be able to summon witnesses.

At advising—

LORD PRESIDENT—The question in this case is whether the third and seventh counts of an information at the instance of the Lord Advocate against Alexander James Trotter, charging him with having, on the days and in the premises therein specified, sold beer by retail without having duly obtained a certificate and also an Excise licence authorising him to do so, contrary to the Act 24 and 25 Vict. c. 91, sec. 12, are irrelevant for want of specification, because the names of the persons to whom it is alleged that the beer was sold are not stated.

The Act of 19 and 20 Vict. c. 56, entitled "An Act to constitute the Court of Session the Court of Exchequer in Scotland, and to regulate procedure in matters connected with the Exchequer," provides, *inter alia*, for Exchequer causes being instituted by subpoena and information, and these provisions are still in force. The proceedings now in question were accordingly instituted by subpoena and information.

The Lord Ordinary has held, as I think rightly, that the first, second, fourth, fifth, sixth, and eighth counts of the information are not irrelevant, as the defender maintained that they were, on the ground of their being wanting in specification, because they are in accordance with the form provided by Schedule B of the Court of Exchequer Act (19 and 20 Vict. c. 56), but he has held counts three and seven to be irrelevant for want of specification, upon the ground that they are founded upon the Act 24 and 25 Vict. c. 91, and that there is no form of information applicable to a con-

travention of that Act to be found in Schedule B of the Court of Exchequer Act, for the very good reason that the Act of 24 and 25 Vict. c. 91, had not then been passed. It is true that that Act does not contain a form of information applicable to the particular offence charged, but at the end of section 12 it is declared that "in any information or other proceeding for the recovery of the penalty hereby imposed, it shall be sufficient to charge that the defendant sold beer by retail without having duly obtained a certificate and also an Excise licence respectively authorising him to sell beer under the provisions of the statute in that case made and provided, and it shall not be necessary further or otherwise to describe such offence."

It is to be observed that this Act assumes the proceeding by information to be applicable to offences under it—that is to say, it takes up the rules of procedure provided by the Exchequer Act of 19 and 20 Vict. c. 56, and makes them applicable to the offences with which it deals. It therefore seems to me that where an information under the Act of 24 and 25 Vict. c. 91, contains all the particulars required by the Act of 19 and 20 Vict. c. 56, it is *prima facie* sufficient, and that in the absence of any provision for further or different particulars it constitutes a due compliance with the provisions of that Act. This view appears to me to derive strong confirmation from the declaration at the end of section 12 of the Act of 24 and 25 Vict. c. 91, that "it shall not be necessary further or otherwise to describe such offence." These words, in my view, expressly dispense with the necessity for any further particulars than are specified as requisite either in that Act or in the Act of 19 and 20 Vict. c. 56, and the names of the persons to whom the beer is alleged to have been sold are nowhere stated to be requisite. Seeing that the information in question thus complies with all the statutory requirements, I think that the objections stated to its relevancy are not well-founded. The particular person or persons to whom the beer was sold is not of the essence of the offence, which consists in selling the beer to anyone without having obtained a certificate and an Excise licence.

For these reasons I am of opinion that the Lord Ordinary's interlocutor should be recalled in so far as it finds the third and seventh counts of the information irrelevant for want of specification, and that a proof should be allowed to the Crown of these counts as well as of the others.

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

The Court pronounced this interlocutor—

"Adhere to the said interlocutor in so far as it finds counts one, two, four, five, six, and eight in the information are relevant: Recall the interlocutor in so far as it finds that the third and seventh counts in the information are irrelevant for want of specification: Find all the counts in the information

relevant, and remit to the Lord Ordinary to allow a proof thereof, and decern," &c.

Counsel for the Lord Advocate—Sol.-Gen. Dickson, K.C.—A. J. Young. Agent—Philip J. Hamilton Grierson, Solicitor of Inland Revenue.

Counsel for the Defender—J. Wilson, K.C. Agent—John Robertson, Solicitor.

Tuesday, November 4.

SECOND DIVISION.

[Sheriff Court at Glasgow.]

STEWART v. DUBLIN AND GLASGOW STEAM PACKET COMPANY.

Master and Servant—Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37), sec. 7, sub-sec. 2—Factory and Workshop Act 1895 (58 and 59 Vict. cap. 37), sec. 23, sub-sec. 1—Factory—Quay—Undertakers—Actual Use and Occupation of Quay.

A firm of shipowners had a particular berth in Glasgow Harbour allotted to them by the Clyde Trustees, which they used for loading and unloading their vessels. They had a box or office at this berth, and kept clerks and servants constantly there. The same berth was also used by another steamship company who had also a box or office there, and when it was not required by either of these companies the harbour-master allowed occasional trading vessels to use it.

In a stated case under the Workmen's Compensation Act 1897 with regard to an accident which happened on the quay to a coal-trimmer, employed by a subcontractor for the coaling of one of the shipowners' steamers, which was then coming up the Clyde and arrived at the quay an hour later, held that at the time of the accident the shipowners were not the occupiers of the quay, and consequently were not liable as undertakers under the Act.

Opinion (per Lord Moncreiff) that if the berth had been set aside and reserved exclusively for the shipowners' vessels the shipowners would have been the occupiers of the quay although the vessel had not arrived when the accident happened.

Master and Servant—Workmen's Compensation Act 1897 (30 and 31 Vict. cap. 37), sec. 4—Shipowners—Supplying Coal for Steam Vessels—Work Ancillary or Incidental to and no Part of or Process in Business of Undertaker.

Held that the supplying of coal to a steam vessel was no part of or process in the business carried on by the shipowners, but merely ancillary or incidental thereto.

In an arbitration under the Workmen's Compensation Act 1897 in the Sheriff Court at Glasgow Mrs Agnes Nisbet or Stewart,