

SUMMER SESSION, 1910.

HIGH COURT OF JUSTICIARY.

CIRCUIT COURT, GLASGOW.

Thursday, April 21, 1910.

(Before Lord Salvesen.)

H.M. ADVOCATE v. FLYNN.

Justiciary Cases—Insanity—Plea in Bar of Trial—Plea Tendered while Panel Enjoying Lucid Interval.

Where a plea of insanity in bar of trial was tendered on behalf of a person charged with crime, and it appeared that the accused was a dangerous lunatic, but was at the time of the trial enjoying a lucid interval, the Court *sustained* the plea, and ordered the accused to be detained during His Majesty's pleasure.

James Stewart and Michael Flynn were charged on indictment with assault and robbery.

A plea in bar of trial was lodged on behalf of Flynn, which was in the following terms:—"The panel Michael Flynn is unable to instruct a defence, being of unsound mind at the time of committal of the offence and now."

In support of this plea two medical witnesses were called, who deponed that the accused was a dangerous lunatic, who had lucid intervals, and that he was then (*i.e.*, at the time of the trial) enjoying such an interval and was able to instruct his defence.

The Advocate-Depute moved that Flynn should stand his trial along with Stewart.

Counsel for Flynn argued that the plea in bar should be sustained.

LORD SALVESEN—I think it is proved on the medical evidence that the prisoner Flynn is of unsound mind and capable of being certified as a lunatic. On that evidence I think that he should not be remitted to trial even although, as the doctors say, he has lucid intervals and is enjoying such an interval at this moment. I accordingly sustain this plea, and shall order Flynn to be detained during His Majesty's pleasure.

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The Advocate-Depute, in respect of the finding of the Court, deserted the diet *pro loco et tempore* against Flynn.

LORD SALVESEN then directed that the panel Flynn should be detained during His Majesty's pleasure.

Counsel for the Crown—Munro, K.C., A.-D.—Macdiarmid. Agent—Hart, P.-F.

Counsel for the Panel—Normand. Agent—Robert C. Paterson, Writer, Glasgow.

COURT OF SESSION.

Friday, April 8.

FIRST DIVISION.

[Lord Ordinary officiating on the Bills.]

NAISMITH AND ANOTHER, PETITIONERS.

Bankruptcy—Sequestration—Nobile Officium—Exercise of by Lord Ordinary on the Bills in Vacation—Gazette Notice not Timeously Inserted—Rectification of Notice.

Where in a sequestration the Gazette notice appointed to be given at least seven days before a meeting of creditors for the election of a new trustee was, *per incuriam*, inserted only six days before the meeting, the Lord Ordinary officiating on the Bills in vacation held the notice equivalent to one given within the prescribed period.

This was a petition presented by W. W. Naismith, C.A., Glasgow, and James Findlay, writer there, as commissioners on the sequestrated estates of G. L. Watson, coalmaster, Glasgow.

The petition set forth that in consequence of the removal from office of the trustee on the sequestrated estate the Sheriff of Lanarkshire appointed the creditors of the bankrupt to hold a meeting on 22nd March 1910 for the purpose of electing a new trustee, and appointed notice thereof to be made "at least seven days previous thereto in the Edinburgh Gazette in terms

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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 failing 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.