

duced to the accident which subsequently occurred.”

The Court recalled the interlocutor of the Sheriff, reverted to and affirmed the interlocutor of the Sheriff-Substitute, found in fact and in law in terms of the findings in said last-mentioned interlocutor, and of new decerned against the defenders for payment to the pursuer of the sum of £86, 5s. 2d.

Counsel for the Pursuer and Appellant—Hamilton. Agents—J. K. & W. P. Lindsay, W.S.

Counsel for the Defenders and Respondents—Macmillan, K.C.—T. G. Robertson. Agents—Morton, Smart, Macdonald, & Prosser, W.S.

Thursday, March 18.

FIRST DIVISION.

(EXCHEQUER CAUSE.)

[Lord Cullen, Ordinary.]

LORD ADVOCATE v. D. & J. NICOL.

Licensing Laws—Ship—Passenger Vessel's Licence—Licence in Name of Steward of Vessel Prohibiting Sale on Sunday—Sale on Sunday by Servants of Owners when Steward not on Board—The Passenger Vessels Licences Amendment (Scotland) Act 1882 (45 and 46 Vict. cap. 66), sec. 1—Licensing (Scotland) Act 1903 (3 Edw. VII, cap. 25), First Schedule D—Finance (1909-10) Act 1910 (10 Edw. VII, cap. 8), sec. 50 (3).

The owners of a passenger steamer nominated the ship's steward as the holder of a licence to sell liquor on board the steamer. The licence was endorsed with a condition against selling liquor during a voyage which began and ended on the same Sunday. On such a voyage liquor was sold by servants of the owners when the steward was not on board and had not authorised anyone to act for him. In an action against the owners of the vessel to recover penalties under the Finance (1909-10) Act 1910, section 50 (3), held that the sales had been made by the owners without a licence, not by the steward in breach of his licence, and that the owners were liable in penalties.

Licensing Laws—Sale of Liquor without Licence—Penalty—Finance (1909-10) Act 1910 (10 Edw. VII, cap. 8), sec. 50 (3).

The owners of a passenger steamer were proved to have sold without a licence, during a day's trip by their steamer, liquors for the sale of which a licence was required. The evidence showed that several sales had been made at different times during the day to the same individual.

Held (1) that a separate offence had been committed, and a separate penalty incurred, in respect of each sale; and (2) that the Court had no power to

modify the penalties imposed by the Finance (1909-10) Act 1910, section 50 (3).

Evidence—Licensing Laws—Sale of Liquor without Licence—One Witness—The Excise Management Act 1827 (7 and 8 Geo. IV, cap. 53), sec. 65—Finance (1909-10) Act 1910 (10 Edw. VII, cap. 8), secs. 50 (3) and 92.

Held that to prove an offence under the Finance (1909-10) Act 1910, section 50 (3), the evidence of one credible witness was sufficient.

The Excise Management Act 1827 (7 and 8 Geo. IV, cap. 53) enacts—Section 65—“ . . . For the recovery of any penalty imposed by this Act, or any other Act or Acts of Parliament relating to the revenue of excise, and incurred for or by reason of any offence committed against this Act, or the said other Acts, or any of them, . . . the information thereupon may be exhibited before any one or more of His Majesty's Justices of the Peace for the county, shire, division, city, town, or place wherein the offence shall have been committed, . . . and such information shall and may be heard, adjudged, and determined by any two or more of His Majesty's Justices of the Peace for the said county, shire, division, city, town, or place, . . . and any two or more of such Justices of the Peace . . . shall, and they are hereby . . . authorised and required . . . to proceed to the examination of the fact or facts in such information alleged, and to give judgment . . . for any such penalty or penalties which upon the due examination of one or more credible witness or witnesses on oath . . . shall be found to have been incurred. . . .” Section 78—“ . . . It shall be lawful for the . . . Justices of the Peace . . . when they shall see cause, except in cases where there is or shall be any provision that no mitigation shall be made by the Justices of the Peace, and they are hereby . . . authorised and empowered to mitigate any penalty incurred for any offence committed against this Act, or any other Act or Acts of Parliament relating to the revenue of excise. . . .”

The Passenger Vessels Licences Amendment (Scotland) Act 1882 (45 and 46 Vict. cap. 66), enacts—Section 1—“It shall be lawful for the Commissioners of Inland Revenue, or for any officer duly authorised by them, to grant licences for the retail of intoxicating liquors on board packets, boats, and other vessels employed for the carriage of passengers from one part of Scotland to another, or going from and returning to the same place in Scotland on the same day, in terms of the recited Acts, to indorse on such licences a condition that no intoxicating liquor shall be sold, retailed, bartered, or supplied on board such vessels during any voyage commenced and terminated on the same Sunday.”

The Licensing (Scotland) Act 1903 (3 Edw. VII, cap. 25), enacts—Section 53—“Every certificate to be granted under the authority of this Act shall be and be held on the terms, provisions, and conditions therein contained; and in case any person holding

such certificate, and having any excise licence for the sale of exciseable liquors, to him in that behalf granted, shall offend against any of the terms and conditions contained in such certificate, every person so offending shall, for every such offence, forfeit and undergo the several penalties and disabilities hereinafter mentioned; that is to say, for the first offence a sum not exceeding £5, with the expenses of conviction. . . . Section 65—“(1) Every person trafficking in any exciseable liquors in any place or premises without a certificate to him in that behalf granted . . . shall, upon his being convicted thereof, . . . forfeit and pay for the first offence a sum not exceeding £50, . . . and for the second offence . . . a sum not exceeding £100, . . . and for the third and every subsequent offence . . . a sum not exceeding £100. . . . (2) Any person prosecuted for such trafficking may be legally convicted thereof on his own confession, or on proof by the oath of one or more credible witness or witnesses or other legal evidence.” Section 92—“A person complained of for committing any breach of certificate shall be cited to appear before the court having jurisdiction at least six free days before the diet of appearance; . . . Any person so complained of may be legally convicted either on his own confession or by the testimony on oath of one or more credible witness or witnesses or upon other legal evidence.”

The Finance (1909-10) Act 1910 (10 Edw. VII, cap. 8), enacts—Section 43—“There shall be charged, levied, and paid on the licences for the . . . sale of intoxicating liquor specified in the First Schedule to this Act, the duties of excise specified in that schedule, and the provisions expressed in that schedule to be applicable to any such licences shall have effect with respect to those licences. . . .” Section 50—“(3) If any person sells by retail any intoxicating liquor, for the retail sale of which he is required to take out a licence under this Act, without taking out such a licence, he shall be liable in respect of each offence, at the election of the Commissioners, either to an excise penalty of £50, or to an excise penalty equal to treble the amount of the full duty. (4) If any person holding any of the licences specified in the First Schedule to this Act contravenes the terms of the licence, or sells otherwise than he is authorised by the licence, or contravenes any of the provisions applicable to the licence under that schedule, he shall be liable in respect of each offence, if the offence is not an offence for which any specific penalty is imposed by any Act relating to excise duties or licences, to an excise penalty of £50.” Section 92—“All the powers, provisions, regulations, and directions contained in any Act relating to excise duties or licences, or to penalties or forfeitures under Excise Acts, and now or hereafter in force, shall respectively be of full force and effect with respect to the excise duties charged by and the excise licences mentioned in this Act, so far as the same are applicable and are consistent with the provisions of this Act, as fully and effectually as if the same had

been herein specially enacted with reference to the said duties and licences.”

First Schedule—D.

“*Passenger Vessel Licence.*—(1) Licence to be taken out annually in respect of a passenger vessel by the master or other person belonging to the vessel nominated by the owner of the vessel—duty of £10. . . .

“*Provisions Applicable to Passenger Vessel Licences.*—(1) A passenger vessel licence granted in respect of any vessel authorises the sale by retail, while the vessel is engaged in carrying passengers, of any intoxicating liquor on the vessel to passengers for consumption on the vessel. . . . (3) In the event of any person to whom a passenger vessel's licence has been granted ceasing to be master of the vessel or to belong to the vessel, the licence may be transferred to any person who is for the time being master of the vessel or is for the time being a person belonging to the vessel and nominated by the owner of the vessel for the purpose. (4) In the event of the transfer of the vessel to some other owner, the licence granted under this section shall cease to have effect as respects that vessel, but may, in that event and the event of the loss of the vessel, be transferred on the application of the owner of the vessel to the master of some other vessel belonging to him or to some person belonging to such other vessel and nominated by the owner for the purpose.”

On 27th November 1913 the Lord Advocate, on behalf of the Commissioners of Customs and Excise, *pursuer*, raised an action against D. & J. Nicol, shipowners, Dundee, *defenders*, for payment of £900 as the amount of statutory penalties alleged to have been incurred by them in respect of the sale, without a licence, of liquor on board one of their ships during excursions on Sundays, 20th and 27th July and 7th September 1913, each of which excursions terminated by the return of the steamer to Dundee on the day of sailing. The licence in respect of the vessel was taken in name of the steward, Rhind, but it was admitted that Rhind was not on board the vessel on any of these occasions. The licence to Rhind was endorsed with a stipulation against the sale of liquor on Sunday if the voyage began and ended on the same Sunday.

The *defenders* pleaded, *inter alia*—“(1) The action is incompetent. (2) The *pursuer's* averments being irrelevant and insufficient to support the conclusions of the summons, the action should be dismissed.”

On 5th March 1914 the Lord Ordinary (CULLEN) repelled the first and second pleas-in-law for the *defenders* and allowed a proof.

Opinion.—“The *defenders* are the owners of a steamer which they employ during the summer season in making short excursions from Dundee. The present action relates to three Sunday excursions on 20th and 27th July and 7th September 1913 respectively, each of which terminated by return of the steamer to Dundee on the day of sailing. The claim of the Crown is for certain statutory penalties said to have

been incurred by the defenders in consequence of their having made sales of intoxicating liquors on the steamer to passengers during these three excursions. It is not denied that if the sales alleged were made they were unlicensed, but the defenders contend that any penalties thereby incurred are exigible not from them, the owners of the vessel, but from the holder of the licence applicable to the vessel, one Robert Rhind, a steward belonging to it.

"The claim for the Crown proceeds on section 50 (3) of the Finance (1909-10) Act 1910. It is desirable, however, to review shortly the course of legislation dealing with the matter of licences applicable to such passenger vessels.

"In 1828 there was passed the Act 9 Geo. IV, cap. 47, which, on the preamble that it would tend to the convenience and accommodation of passengers on vessels plying from one part of the United Kingdom to another 'if the master or commander or other person of or belonging to such vessels were by law authorised to provide for and to retail and sell to such passengers' wines, beer, spirituous liquors, &c., made it lawful for the Commissioners of Excise 'to grant a licence to any master or commander of any packet boat or other vessel employed for the carriage or conveyance of passengers from one part of the United Kingdom to another or other parts thereof, or to any other person belonging to such packet boat or other vessel who shall be nominated and approved of by the owner or owners . . . to provide for and to supply, retail, and sell to passengers on board, such vessels . . . foreign wine, strong beer, &c. A licence so granted was declared by the Act to be transferrable by an endorsement subscribed by the holder, or his executors or administrators, to any other master or commander or other person belonging to the vessel, or (in the event of its loss or break up) belonging to any substituted vessel of the same owners, with their approval. Section 3 enacted that if any person should retail on board any such vessel wine, beer, &c. 'without having taken out such licence as is by this Act required,' he should be liable in a named penalty.

"In 1882 there was passed the Passenger Vessels Licenses Amendment (Scotland) Act 1882 (45 and 46 Vict. c. 66), which was aimed at restraining the sale of intoxicating liquors on such passenger vessels during Sundays. On a recital of the Act 9 Geo. IV, c. 47, it provided, as to licences granted by virtue of that Act, that it should be lawful for the Commissioners of Excise or their authorised officer 'to endorse on such licences a condition that no intoxicating liquor shall be sold, retailed, bartered, or supplied on board such vessels during any voyage commenced and terminated on the same Sunday.'

"Section 2 enacted—'If any person holding a licence having such a condition as aforesaid endorsed thereon shall sell, retail, barter, or supply, or shall permit to be sold, bartered, or supplied, any intoxicating liquor on a Sunday on board any such vessel in contravention of the said con-

dition, such contravention shall be deemed and taken to be a retailing or selling intoxicating liquors without having taken out a licence, and such person shall be guilty of an offence within the meaning of the third section of the first-recited Act (9 Geo. IV, c. 47), and shall be liable to the penalties therein provided.'

"The Act of 1882 did not, apart from the provision for the endorsing the licence above mentioned, alter the licensing scheme contained in the leading Act 9 Geo. IV, c. 47. The penal section above quoted is aimed solely at the holder of an endorsed licence, who incurs the penalty if he either sells or 'permits to be sold' in contravention of the endorsement. It does not deal with sales on the vessel made by other persons than the licence-holder, and of which it cannot be predicated that they were made with his permission. A person who clandestinely hawked intoxicating liquors on board the vessel during a Sunday or any other days would have been liable in penalty not under the Act of 1882 but directly under the third section of 9 Geo. IV, c. 47.

"The Finance Act of 1910 repeals the Act (9 Geo. IV, c. 47) *in toto*. It does not repeal the Act of 1882, apart from the words 'in terms of the recited Acts' occurring in section 1. It makes obligatory, *inter alia* (Schedule 1, Head D), 'Passenger Vessel Licences.' The descriptive words used as regards annual licences for such vessels are—'Licences to be taken out annually in respect of a passenger vessel by the master or other person belonging to the vessel nominated by the owner.' Section 50 enacts penalties. Sub-section 3 thereof applies to the case of a person who sells by retail any intoxicating liquor for the retail of which he is required to take out a licence, 'without taking out such a licence.' Sub-section 4 deals with the case of a licence-holder who 'contravenes the terms of the licence, or sells otherwise than he is authorised by the licence, or contravenes any of the provisions applicable to the licence,' under the First Schedule to the Act. The present claim of the Crown against the defenders is laid on sub-section 3 of section 50.

"It will be observed that the Act of 1910 continues, in substance, the licensing scheme of the Act of 1828. The licence is not to be granted to the owner of the vessel *qua* owner, but to the master or some other person belonging to the vessel nominated by the owner. On what footing, as between the licence-holder and the owner, the liquor traffic is to be carried on must to some extent be matter of arrangement. The only authorised seller is the licence-holder, acting directly or through his agents. As the licence-holder is, *ex hypothesi*, a person in the employment of the owner on board the vessel, it follows that the owner is in a position to subject him, by the terms of his employment, to control *quoad* the extent and manner in which the powers of the licence are to be acted on.

"The current licence applicable to the vessel in question is in name of one Robert Rhind. It is common ground that Rhind

'belongs to the vessel' in the capacity of steward. There are no averments on record as to the terms of Rhind's employment regarding the use to be made of the powers of his licence, or as to the person or persons having the interest in the licensed liquor traffic on the vessel.

"The pursuer alleges that during each of the three Sunday excursions in question 'the defenders,' through the medium of a waiter, made certain sales of intoxicating liquors to passengers, which sales are specified in articles 5, 6, and 7 of the condescence. He further alleges that Rhind was not on board the vessel during any of said excursions. The defenders deny that the sales took place. They point to the fact that the licence is in name of Rhind. They argue that the pursuer's allegations do not disclose any relevant case against them, and that if the alleged sales took place, any claim for penalties in respect thereof lies only against Rhind. I am unable to accede to this argument. The pursuer's case, as stated, does not seem to me necessarily to involve a claim which would lie against Rhind. Rhind is said not to have been on the vessel during the days in question. He is not represented as having been the seller, directly or indirectly, or as having permitted the sales within the meaning of the Act of 1882. He therefore does not figure, on the pursuer's averments as having contravened the condition endorsed on his licence. I cannot hold that anything which an owner may do in the way of selling intoxicating liquors when his employee, the licence-holder, is off the vessel is to be ascribed to the latter as an act done or permitted by him. So far as the averments go, it is possible that Rhind did not even know of the Sunday liquor traffic taking place. It appears to me, on the other hand, that the pursuer's averments do make a relevant case against the defenders. They did not hold, nor was there, a licence applicable to the vessel authorising sales of intoxicating liquors during the Sunday excursions in question. Notwithstanding this, it is alleged that the defenders did sell such liquors during these excursions. Such sales, if they took place, were unlicensed, and on the averments they were sales made by the defenders, and not sales made by Rhind, directly or indirectly.

"A subsidiary point on relevancy was advanced by the defenders, to wit, that the name of the waiter through whom the defenders are alleged to have made the sales in question is not stated on record. The defenders, however, must know quite well who was the waiter in their employment who was on service on their vessel during the days in question. And in preparing their proof I do not think it can be said that they will be unduly hampered because of the pursuer not having stated the waiter's name.

"Following the views which I have expressed I shall allow a proof."

The defenders reclaimed, and on 21st May 1914 the First Division (the LORD PRESIDENT, LORDS MACKENZIE and SKERINGTON) recalled the Lord Ordinary's

interlocutor in so far as it repelled the second plea-in-law for the defenders, and *quoad ultra* adhered.

The facts established by the proof are given in the opinion (*infra*) of the Lord Ordinary, who on 10th November 1914 decerned against the defenders for payment to the pursuer of £500.

Opinion.—"Proof has now been taken, and I shall first state the facts established by it so far as relevant to the liability of the defenders in respect of such of the sales of liquor mentioned on record as have been proved.

"(1) Rhind, who holds the passenger vessel licence applicable to the 'Slieve Bearnagh' (which licence excludes sales on Sundays during excursions such as are here in question), is a steward in the employment of the defenders, and is under their orders, subject to the conditions of the licence. The licence duty was paid by the defenders.

"(2) Rhind during each of the Sunday excursions in question was not on board the 'Slieve Bearnagh,' but was acting in the employment of the defenders on board another vessel belonging to them.

"(3) During the said excursions the defender David Nicol was on board the 'Slieve Bearnagh.'

"(4) The alcoholic liquors sold or offered for sale on the 'Slieve Bearnagh' were the property of the defenders, and the proceeds of sales belonged to them.

"(5) Any alcoholic liquors sold during any of the said excursions were sold by stewards or waiters who were employees of the defenders and subject to their orders, and in particular were subject to their orders in the matter of selling or not selling alcoholic liquors.

"(6) The parties registered as owners of the 'Slieve Bearnagh' are the defenders David Nicol and James Nicol. On record (Answer 1) the defenders originally admitted 'that the defenders D. & J. Nicol are the owners of the steamship mentioned.' At the proof they were allowed to amend by substituting an admission 'that the defenders David and James Nicol are registered as joint owners of the steamship mentioned,' and a certificate of the registry vouching this has been produced. I think, however, that it is clear enough that the liquor traffic on board the 'Slieve Bearnagh' is a part of the business of D. & J. Nicol. In Answer 2 it is admitted that the alcoholic liquors were the property of 'the defenders.' I refer further on this matter to the evidence of Mr James Nicol.

"On the facts above stated I am of opinion that any sales of alcoholic liquors proved to have taken place on any of the Sunday excursions in question were sales made by the defenders. Rhind, who held a licence not applicable to the Sunday excursions in question, had nothing to do with such sales. He was not on board the vessel, and the stewards or waiters who sold were not his agents, but the agents of the defenders, acting in their interest and subject to their orders.

"I turn to the subject of the sales proved to have been made by the defenders on the

occasions in question, and the penalties exigible in respect thereof.

"In articles 5, 6, and 7 of the condescendence the offences charged are stated under eighteen heads, of which four relate to Sunday, 20th July 1913, two to Sunday, 27th July 1913, and twelve to Sunday, 7th September 1913. What is specified by the Crown under each of these eighteen heads is on record represented as a sale and an offence, and in respect of the whole eighteen the Crown claims penalties amounting to £900, being at the rate of £50 for each of the particular cases. (Section 50 (3) of the Finance (1909-10) Act 1910.)

"The defenders contended (1) that all sales proved to have been made on any one of the Sundays should be aggregated and treated as constituting one offence, or, alternatively, that all sales proved to have been made to any particular individual during any one of these days should be so aggregated. Neither of these contentions appears to me in any way supported by the terms of section 50 (3).

"Under some of the eighteen heads (*e.g.*, No. 3 in Cond. 5) the Crown has aggregated what the evidence shows to have been several sales made at different times to the same individual, and the question arises whether the Crown is entitled to treat such a case as making out several separate offences, the object of the Crown here being to counterbalance, in the estimate of the total penalties claimed, the admitted failure to prove some others of the eighteen cases. This does not seem to me to be legitimate. The fair reading of the record is, I think, that each of the eighteen cases is libelled as one sale and as constituting one offence.

"A further question is raised regarding such cases as I have mentioned and also some of the others. The defenders contend that the Crown, in order to success under any one of the eighteen heads, must prove that the whole of the liquors specified under that head, and neither more nor less, were sold at one sale to the person named. Thus if three glasses of whisky and three bottles of beer are alleged to have been sold to A, and it is proved that one glass of whisky and one bottle of beer were sold, the Crown must fail, according to the defender's view, in respect that the transaction precisely as libelled has not been proved. I think this is too strict a view. The offence is the same in quality and the penalty is the same whether the sale be of three glasses of whisky and three bottles of beer, or one glass of whisky and one bottle of beer as proved.

"I shall now state what appears to me to be the result of the evidence in regard to the eighteen cases libelled—

Cond. 5.—*Sunday, 20th July 1913.*

No. 1. Jane Ritchie or Macdonald, four glasses of whisky. I hold it proved that there was sold to this person two glasses of whisky at two different times. In accordance with the views above stated I treat this as one offence.

No. 2. Not proved.

No. 3. David Marshall, a glass of whisky,

a pint of beer, and three half-bottles of whisky. The sales were a glass of whisky—separately, several bottles of beer, and, separately, two half-bottles of whisky. I hold one offence proved.

No. 4. Not proved.

Cond. 6.—*Sunday, 27th July 1913.*

No. 1. Hamilton Payne, three glasses of whisky and a bottle of beer. The sales were three, each of them being of a glass of whisky and a bottle of beer. I hold the offence proved.

No. 2. Not proved.

Cond. 7.—*Sunday, 7th September 1913.*

No. 1. Charles M'Nab, four half-glasses of whisky.

No. 2. Do. seven half-glasses of whisky. One sale of whisky to M'Nab is proved. The amount of whisky sold was greater than either of the amounts stated under these two heads, being eight glasses. I hold one offence proved.

No. 3. Do. two pint bottles of whisky. Not proved.

No. 4. Agnes Rennie or King, two bottles of beer. Not proved.

No. 5. Do. two half-glasses of whisky. Proved.

No. 6. Margaret Morrison, one glass of whisky. Proved.

No. 7. Do. one glass of whisky. Proved.

No. 8. Jane Ritchie Macdonald or Webster, two half-glasses of whisky. Proved.

No. 9. Do. do. two half-glasses of whisky. Proved.

No. 10. William Ford, two half-glasses of whisky. Proved.

No. 11. Do. four glasses of whisky. I do not think the evidence in support of this sale satisfactory.

No. 12. James Higgins, two pints of beer. Not proved.

"The evidence adduced by the Crown in support of the sales charged was, for the most part, that of persons of a low class who seem to have been attracted to the excursions by the prospect of finding on the steamer what they could not find ashore, an open bar on Sunday. And, as was naturally to be expected, their recollection is sometimes better for the earlier than for the later events in the course of the proceedings. None of these witnesses have any bias or interest in favour of the Crown. And I have to say that they appeared to me to be truthful, and that I think their evidence reliable so far as regards their recollection of the cases which I hold proved.

"In the case of several of the sales which I have held proved, the evidence of the specific transaction was given by one witness. The defenders argued that corroboration was necessary. Assuming this to be so, I think that as regards the 20th July and the 7th September excursions, sufficient corroboration is found in the fact, proved by two or more witnesses, that an open bar was kept on the vessel at which alcoholic liquors were being freely sold to the public. This does not quite apply to the 27th July excursion, as to which there was only one witness, Hamilton Payne.

From the statutory provisions referred to at the hearing, however, and in particular section 65 of 7 and 8 Geo. IV, cap. 53, which has been carried forward, it appears to me that such offences against the licensing laws as are here charged may be proved by the evidence of one credible witness. And Payne and the other persons on whose evidence I have proceeded were, in my opinion, credible witnesses.

"The total amount of penalties incurred in accordance with the results of the evidence as stated is £500. The defenders moved me to modify the penalties. It appears to me, however, that I have no power to do so. I shall accordingly give decree for the said sum of £500."

The defenders reclaimed, and argued—(1) There was no relevant case against the defenders. The pursuer claimed penalties under section 50 (3) of the Finance (1909-10) Act 1910 (10 Edw. VII, cap. 8), which dealt with the sale of drink by a person who had no licence. But here there was a licence, and the only licence which could be taken in respect of the ship. The offence consisted in selling in contravention of the licence (section 50 (4)). The owner could not be the licence-holder, though he had to have a licence taken out for the ship. As there was a licence and a licence-holder, to make the defenders, who were not the holders, responsible, the pursuer must show that they had forcibly prevented the holder from performing his duties, or that they had taken the work out of his hands. There was no evidence of this, and failing such evidence the licence-holder was responsible for an infringement of the terms of his licence—as in the case of a public-house a sale after hours was a sale in contravention of the licence, not a sale without a licence. The licence-holder, in this case the steward, was responsible—Licensing (Scotland) Act 1903 (3 Edw. VII, cap. 25), section 53; *Linton v. Stirling*, July 17, 1893, 20 R. (J.) 71, 30 S.L.R. 893; *Patrick v. Kirkhope*, January 23, 1894, 21 R. (J.) 27, per Lord Kyllachy, at p. 29, 31 S.L.R. 340, at p. 341; *Commissioners of Police v. Cartman*, [1896] 1 Q.B. 655, per Lord Russell of Killowen, C.J., at pp. 657-8; *Mellor v. Lydiate*, [1914] 3 K.B. 1141; contrast *Greenhill v. Stirling*, March 19, 1885, 12 R. (J.) 37, 22 S.L.R. 564, and *Patrick v. Kirkhope* (cit.). In similar circumstances proceedings had been taken against the steward—*Rhind v. Wimpres*, 1914, S.C. (J.) 31, 51 S.L.R. 78. (2) The Lord Ordinary was wrong in holding that each separate sale was an offence. The offence consisted in opening the bar and selling thereat—Licensing (Scotland) Act 1903 (cit.), section 65, dealing with "trafficking" in exciseable liquors. The fair construction was to treat each of the three days as one offence. (3) The Lord Ordinary was wrong in holding that the evidence of one witness was sufficient to prove an offence. Some of the offences had therefore not been proved. The common law required two witnesses—*Kinnear v. Brander*, 1914 S.C. (J.) 141, per Lord Dundas at p. 145 and the Lord Justice-General at p. 150, 51 S.L.R. 660, at pp. 661

and 664—and the modification of the common law contained in the Excise Management Act 1827 (7 and 8 Geo. IV, cap. 53), section 65, the Licensing (Scotland) Act 1903 (cit.), section 92, and the Finance (1909-10) Act 1910 (10 Edw. VII, cap. 8), section 92, must be strictly construed. So construed power to convict on the evidence of one witness was not extended to the Court of Exchequer. (4) If the Excise Management Act 1827 (cit.), section 65, applied to the present case, section 78 also applied, and the Court had power to and should modify the penalties.

The respondent argued—(1) There was no licence in respect of this vessel which permitted sale of liquor on Sunday. The sales were therefore sales without a licence, and sub-section 3, not sub-section 4, of section 50 of the Finance (1909-10) Act 1910 (cit.) applied. The persons responsible were the defenders, by whose servants and on whose behalf the sales had been made—*Bremridge v. Tomlinson*, June 1, 1894, 21 R. (J.) 46, 31 S.L.R. 683. *Mellor v. Lydiate* (cit.) was a case under the Licensing (Consolidation) Act 1910 (10 Edw. VII and 1 Geo. V, cap. 24), not under the Finance (1909-10) Act 1910 (cit.). (2) Each sale was an offence, and for each the statutory penalty was payable. (3) The Excise Management Act 1827 (cit.), sec. 65, and the Finance (1909-10) Act 1910, sec. 92, soundly construed, gave power to all competent courts to convict on the evidence of one credible witness, and applied to all excise penalties. (4) The Court had no power to modify the penalties—*Lord Advocate v. M'Laren*, July 18, 1905, 7 F. 984, per Lord Adam at p. 991, 42 S.L.R. 762 at p. 766.

At advising, the LORD PRESIDENT and LORDS JOHNSTON and SKERRINGTON expressed their concurrence in the opinion of the Lord Ordinary both in fact and law. LORD MACKENZIE, who was absent at the hearing, but present at the advising, gave no opinion.

The Court adhered.

Counsel for Pursuer and Respondent—Solicitor-General (Morison, K.C.)—R. C. Henderson. Agent—R. Pringle, W.S.

Counsel for Defenders and Reclaimers—Constable, K.C.—Guild. Agents—Maxwell, Gill, & Pringle, W.S.

Saturday, March 13.

COURT OF SEVEN JUDGES.

(Before the Lord President, Lord Dundas, Lord Johnston, Lord Salvesen, Lord Mackenzie, Lord Cullen, and Lord Hunter.)

BAILLIE v. FLETCHER.

Sale—Sale of Heritage—Assignment of Rents.

The owner of an estate conveyed to a purchaser a part thereof consisting of two pastoral farms. The farms were let with entry at Whitsunday, and the rent