

make provision for further proceedings, by way of suspension or expulsion, being taken against recalcitrant members, and that such proceedings might result in such an invasion of the members' civil or patrimonial interests as the Courts would take cognisance of, but the pursuers do not aver that this is so, or that such proceedings must necessarily follow upon the refusal of a member to pay a fine. They state that they are aggrieved by the illegal and unfair manner in which they have been treated, and that they have been forced to raise the present proceedings to vindicate their rights; but the fine is the only thing they refer to on record of the nature of a pecuniary loss. In that state of the pleadings I agree with the conclusion arrived at by the Lord Ordinary, and think that the action must be dismissed.

That is enough for the disposal of the case, but the interlocutor of the Lord Ordinary sustains not only the defenders' fourth plea-in-law—their plea to the relevancy of the action—but also their third plea-in-law to the effect that the action is excluded by the arbitration clause, being rule 8 of the defenders' Society.

I am not prepared to sustain that plea.

1. I agree with your Lordship that the provision in rule 8 for the submission of differences to arbitration is subject to, and can only come into operation on the implementation of what is plainly a condition precedent in these terms:—"That both parties bind themselves in writing to agree to the decision of the Arbitration Committee." That condition is not safeguarded by any sanction or compulsitor. It is left apparently to the option of the parties whether they will or will not so bind themselves in writing, and it is nowhere stated on record that either party—much less that both parties—have in the present case come under any such obligation. There can therefore be no arbitration under rule 8.

2. If the arbitration clause did apply, then the proper course would be to sist the present action until the determination of the reference, and not to dismiss it.

3. I am not prepared, as at present advised, to hold that, on what I may call the merits, the rule applies to the present dispute.

I should like to add that, on the assumption that the pursuers were entitled to raise the present action, and if the argument submitted by the parties on the question whether the Court's jurisdiction was excluded by the Trades Union Act 1871, section 4, fell to be considered, I should be unable to decide that question without inquiry into the facts about which the parties are still in dispute. I do not detail them, but I specially refer to the question whether there was any agreement come to by the members in the shop, prior to the vote being taken on the question of working or not working on 1st May, that the minority should be bound by the decision of the majority. The minutes also, while they are admitted by the parties, are by no means self-explanatory, and their bearing and effect would be rendered much more intelligible and certain by evidence.

I agree that our judgment should be in the form proposed by your Lordship.

The Court recalled the interlocutor of the Lord Ordinary in so far as it sustained the third plea-in-law for the defenders. *Quoad ultra* adhered to the interlocutor.

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Tuesday, December 14.

FIRST DIVISION.  
(SINGLE BILLS.)

ANDERSON, PETITIONER.

*Administration of Justice—Law Agent—  
Woman—Apprenticeship under Indenture  
Begun before the Passing of the Sex  
Disqualification (Removal) Act 1919—Law  
Agents (Scotland) Act 1873 (36 and 37 Vict.  
cap. 63), secs. 5 (2) and 7—Sex Disqualifi-  
cation (Removal) Act 1919 (9 and 10 Geo.  
V, cap. 71), secs. 1 and 2.*

In a petition by a woman for admission as a law agent, held that her apprenticeship was not invalidated by the fact that it was begun prior to the passing of the Sex Disqualification (Removal) Act 1919.

Miss Madge Easton Anderson, M.A., LL.B., Glasgow, *petitioner*, presented a petition to the Court under the Law Agents (Scotland) Act 1873 and the Law Agents and Notaries Public (Scotland) Act 1891 to be admitted as a law agent. The facts and relative statutory enactments are fully set forth in the opinion (*infra*) of the Lord Ordinary (ASHMORE), who reported the petition to the First Division.

*Opinion*—"This is the first application of its kind under the Sex Disqualification (Removal) Act 1919 (9 and 10 Geo. V, cap. 71).

"The petitioner, a woman, is applying for admission as a law agent in Scotland on the ground that she possesses all the necessary qualifications.

"There is no opposition, and the only doubt which arises has reference to the statutory requirement as to service under indenture.

"In point of fact the petitioner has served an apprenticeship for the appropriate time, viz., three years, under indenture. The indenture, however, was entered into and the service under it was begun on 12th May 1917, whereas the Sex Disqualification (Removal) Act was passed only on 23rd December 1919. In 1917 no woman could qualify for admission as a law agent, and the Act of 1919 is not expressly made retrospective.

"In the case of *Hall v. The Incorporated Society of Law Agents*, 1901, 3 F. 1059, 38 S.L.R. 776, the petitioner Miss Hall, who had no degree in arts or law, was desirous

of passing what is called the entrance examination with the view of entering upon an apprenticeship. The secretary of the examiners having declined to enrol her for the examination on the ground of her sex, she thereupon petitioned the Court to authorise her enrolment, and in the event of her passing the examination to authorise any qualified law agent to enter into an indenture with her as an apprentice. Miss Hall's petition after being considered by the whole Court was refused, on the ground that women were not eligible for appointment as law agents.

"The Law Agents Act of 1873 prescribes the requisite qualifications, and, subject to the question to which I have referred as to the sufficiency in law of the present petitioner's service under indenture, and in view of the removal of sex disability under the Act of 1919, the petitioner does in my opinion possess all the statutory qualifications.

"She is over twenty-one years of age; she has in fact served an apprenticeship of three years under a qualified master—three years being the appropriate period in the case of one holding as she does the degrees of M.A. and LL.B. of the University of Glasgow; and she has made the statutory affidavit to the effect foresaid; further, the degrees in arts and law entitled her to be exempted from all the examinations except as regards forms of process, civil and criminal; and lastly, under judicial warrant and remit made on the presentation of the petition by the Lord Ordinary officiating on the Bills, the registrar of law agents accepted intimation of the pursuer's indenture, and the examiners having taken trial of her qualifications, fitness, and capacity for admission as a law agent (a) it has now been certified by the clerk to the examiners that the petitioner, in respect of the degree in arts held by her, is exempt from the examinations in general knowledge, and (b) the examiners have now reported that the petitioner had passed an examination in forms of process, civil and criminal, to their satisfaction, and that in respect thereof, and of the degree of Bachelor of Laws held by her, she is exempt from further examination in law.

"With reference to the question as to the sufficiency of the petitioner's service under indenture I think that it is necessary to have regard to the provisions both of the Law Agents Act of 1873 and of the Sex Disqualification (Removal) Act 1919, and I proceed to refer to and deal with these provisions *seriatim*.

"Section 5 (2) of the Act of 1873 reads as follows:—'An apprenticeship entered upon after the passing of this Act must be served under indenture, and the indenture shall be recorded in the register of probative writs of the county in which the same is entered into, and intimated to the registrar within six months from the date fixed for the commencement of the apprenticeship, and any assignation of such indenture shall be intimated to the registrar within six months of its date.'

"In the present case the indenture was duly recorded, and intimation to the regis-

trar within the statutory six months would also have been made but for the registrar having stated that in view of the decision of the Court in the case of *Hall* above referred to, he would decline to accept intimation.

"I find that in the case of male apprentices the Court has repeatedly and consistently accepted a reasonable excuse for failure to give due intimation to the registrar, apparently on the ground that the requirement of intimation within six months is merely directory. The language of the sub-section seems to me to justify the view which has been taken and acted on, because (a) whilst it is provided that the apprenticeship 'must' be served under indenture, the sub-section goes on to add that the indenture 'shall' be recorded and intimated within six months, and (b) because no penalty is imposed for failure to record or intimate the indenture within the time stated.

"In the present case, in which the petitioner did what she could to obtemper the statutory provisions within the six months, I am of opinion that the intimation which, under judicial authority, has now been given to the registrar and accepted by him ought to be regarded as sufficient.

"The only other section of the Act of 1873 which seems to bear on the question under consideration is section 7 relating to the admission and enrolment of applicants.

"It begins by referring to the qualifications for admission contained in sections 5 and 6, and as regards these specified qualifications I am of opinion that the petitioner has fulfilled all that is required.

"I proceed to quote verbatim the material part of section 7—'Any person qualified as hereinbefore provided may present to the Court a petition praying to be admitted as a law agent, and the Court shall examine and inquire, by such ways and means as they shall think proper, touching the indenture and service and the fitness and capacity of such person to act as a law agent; and if the Court shall be satisfied by such examination, or by the certificate of examiners as hereinafter mentioned, that such person is duly qualified and fit and competent to act as a law agent, then and not otherwise the Court shall cause him to be admitted a law agent and his name to be enrolled as such. . . .'

"I have quoted what I regard as the material provisions of the Act of 1873, and I am of opinion that there is nothing in them that strikes at the validity of the petitioner's indenture as regards the period of her service thereunder. Section 5 (2) makes it necessary that an apprenticeship 'entered into after the passing of the Act' (*i.e.*, the Act of 1873) must be served under indenture, and the petitioner's apprenticeship entered into in 1917 has been served under indenture. The fact that in 1917, as the law then stood, the apprenticeship did not count and might never count as qualifying for admission as a law agent does not seem to me to disentitle the petitioner from now putting forward the apprenticeship served both before and after 23rd December 1919 as sufficient under sections 5, 6, and 7 of the Act of 1873.

"In 1917 no doubt most people who knew

about Miss Hall's case would have regarded the petitioner's indenture as a useless formality; but there was nothing illegal in entering into and serving under the indenture, and the contract would have been recognised by the Court as binding in law on the parties according to its terms.

"I proceed to refer now to the Act of 1919. Section 1 provides, *inter alia*, that a person shall not be disqualified by sex or marriage from entering or assuming or carrying on any civil profession or vocation. I think that this provision, vague and general in its terms, enables women to qualify for admission as law agents.

"The only other provision which may have a bearing on the present case is section 2. It reads as follows—'A woman shall be entitled to be admitted and enrolled as a solicitor after serving under articles for three years only if either she has taken such a university degree as would have so entitled her had she been a man, or if she has been admitted to and passed the final examination and kept, under the conditions required of women by the university, the period of residence necessary for a man to obtain a degree at any university which did not at the time the examination was passed admit women to degrees.'

"The language used in this section is more appropriate to England than Scotland, but the Act itself is clearly an imperial statute. It is not expressly limited to England in any respect, and the schedule of enactments repealed includes both Scottish and Irish statutes as well as English.

"In construing it I think, therefore, that in the words of Lord Chancellor Campbell "the technicalities of the law of England and Scotland where they differ must be neglected and the language of the Legislature must be taken in its popular sense" (*Saltoun v. The Lord Advocate*, 1860, 3 Macq. 659).

"Moreover there is no difficulty in reading "solicitor" as law agent and "serving under articles" as serving under indenture. (See *voce* "Articles of Clerkship" in the Table of Stamp Duties in the Stamp Act of 1891.)

"I doubt, however, whether the provision has any direct bearing on the position of the petitioner, because the condition on which a woman holding a university degree may be admitted as a solicitor is that the degree would have entitled a man to be admitted. Now the degrees in arts and law held by the petitioner, if held by a man, would not have been sufficient to admit him. In addition he would have had to pass an examination in Forms of Process, Civil and Criminal—the examination which the petitioner has now passed as before mentioned.

"The vagueness and unsatisfactoriness which characterise the terms in which this remedial Act of 1919 is drawn are the more striking because as early as March 1919 a Bill backed by Lord Haldane, applicable to Scotland, entitled Advocates and Law Agents (Qualification of Women) Act 1919, was introduced in the House of Lords, containing the following precise provision—"A woman shall not be disqualified by sex from being admitted as a law agent or of prac-

tising as a law agent under the Law Agents (Scotland) Act 1873, and any other enactment for the time being in force relating to law agents." It would not, however, if passed in the shape in which it was introduced, have obviated the question which has arisen in this case.

"I have come to the conclusion that the petitioner is entitled to be admitted as a law agent in respect of the qualifications which she possesses and in virtue of the combined provisions of the statutes of 1873 and 1919 to which I have been referring. If the petitioner in this present case had been a man possessing the petitioner's qualifications his right to admission under the Law Agents Act of 1873 would have been undoubted,

"Now the Act of 1919, in this matter of admission to the legal profession, has put the petitioner in the position of a man. I think, therefore, that in accordance both with the letter and the spirit of the Act of 1919 the petitioner, being qualified in all respects under the Act of 1873, is entitled to have her petition granted."

On 14th December 1920, in the Single Bills of the First Division, counsel was heard on the petition and report.

LORD PRESIDENT—The only question which I think could be raised upon the Lord Ordinary's report is as to whether the apprenticeship which this applicant served under indenture fulfils the qualification with regard to apprenticeship laid down by the Law Agents Act of 1873. She served that apprenticeship of course before the passage of the Act of 1919. I see no reason to suppose that the contract of indenture of apprenticeship was otherwise than an effectual and valid contract. But it is possible to suggest that although in itself a valid and effectual contract it did not have qualifying power under the Act of 1873 in respect that the apprentice was by her sex during the whole period of service disqualified from ever becoming a law agent under the Act of 1873.

We have had the advantage of having before us the very clear opinion of the Lord Ordinary, and we have also had the advantage of hearing Mr Normand on the subject. And I am satisfied that inasmuch as the Act of 1919 removes from the applicant becoming law agent any disqualification theretofore attributable to sex, the only question for consideration is whether the applicant, so qualified in respect of the Act of 1919, has in fact complied with the conditions laid down in the Act of 1873. In fact she has so complied with regard to the indenture of apprenticeship, and I am therefore of opinion that the present application ought to be granted and that the petition should be sent back to the Lord Ordinary for that purpose.

LORD MACKENZIE—I concur.

LORD SKERRINGTON—I concur.

LORD CULLEN—I concur.

The Court remitted to the Lord Ordinary to grant the prayer of the petition.

Counsel for Petitioner—Normand. Agent—G. S. Donaldson, S.S.C.