

Wednesday, May 25.

FIRST DIVISION.

[Lord Ashmore, Ordinary.

LATHAM AND OTHERS v. GLASGOW CORPORATION.

*Statute—Construction—Temperance (Scotland) Act 1913 (3 and 4 Geo. V, cap. 33), sec. 5(1)—Poll—Validity—Issue of Requisition Forms to Non-Electors—Reduction—Averments—Relevancy.*

The Temperance (Scotland) Act 1913, enacts—Section 5 (1)—“The requisition for a poll shall be in the form set out in Schedule I to this Act, and shall be signed by not less than one-tenth of the electors in the area, and the signatures to the said requisition shall be appended thereto with the full addresses of the signatories on papers which shall be issued on demand of any elector by the clerk to the local authority. . . .”

In an action to reduce a poll taken under the statute the pursuers averred that the requisition papers were not demanded by or issued to any elector, that they were all issued to a person who was not an elector, and that individual electors demanding requisition forms from the clerk to the local authority were referred to that person's office. They further averred that requisition forms could be obtained there by anyone whether he was an elector or not. *Held* that the issue of a requisition paper to a person who was not an elector was not forbidden by the section, and action *dismissed* as irrelevant.

Harry Latham, Eglinton Street, Glasgow, and other licence-holders in Pollokshields ward, Glasgow, *pursuers*, brought an action against the Corporation of the city of Glasgow, as local authority under the Temperance (Scotland) Act 1913, Sir James Watson Stewart, Baronet, returning officer for a poll held under the Act on 2nd November 1920, and Sir John Lindsay, Town Clerk, Glasgow, and clerk to the said local authority, *defenders*, concluding for reduction of the whole proceedings in connection with the poll, or otherwise for declarator that they were null and void.

The pursuers *averred* — “(Cond. 3) In accordance with the provisions of section 5, sub-section 1, of said Act the requisition for a poll in any area requires to be made on papers which are to be issued on demand of any elector by the clerk of the local authority, and under section 15 ‘elector’ when used in relation to any area in a burgh means a person registered as entitled to vote at an election of town councillors for that area. Accordingly the papers for a requisition for a poll in the Pollokshields ward could only be validly issued to a registered elector for that ward. In point of fact, however, the requisition papers as regards said ward were not demanded by or issued to any elector therein. They were all demanded by and issued to Lieutenant-Colonel Robert Kyle, C.M.G., D.S.O., 121 St Vincent Street, Glasgow, Secretary of

the National Citizens' Council, who is not a registered elector in said ward. Colonel Kyle had no authority from any elector in said ward to apply for a requisition paper. The requisition papers having been thus invalidly issued the whole subsequent proceedings, including the requisitions lodged with the clerk of the local authority and the poll which followed thereon, are also invalid. The explanations in answer in so far as not coinciding herewith are denied. Explained that on 7th October 1920 Mr Alexander M'Clure, solicitor, Glasgow, as agent for electors in each of the thirty-seven wards of the city, wrote to the Town Clerk objecting to the said requisitions, *inter alia*, on the ground that they were invalid for the reasons above stated. This letter and the subsequent correspondence were embodied in a report by the Town Clerk to the Corporation, who proceeded with the pretended poll in face of the objection. Further explained that individual electors on making a demand on the Town Clerk for a requisition form were referred by him to the offices of the said National Citizens' Council, from which alone requisition forms were being issued. Requisition forms could there be obtained by any person whether he was an elector or not.”

The pursuers pleaded, *inter alia*—“1. The pursuers are entitled to decree of reduction or declarator as concluded for in respect that no requisition for a poll in accordance with the statutory provisions was lodged with the clerk of the local authority.”

The defenders pleaded, *inter alia* — “1. The pursuers' averments being irrelevant, the action should be dismissed. 7. The defenders being entitled to expenses as between agent and client in terms of the Public Authorities Protection Act 1893, expenses should be decreed for accordingly.”

On 9th May 1921 the Lord Ordinary (ASHMORE) sustained the first plea-in-law for the defenders and dismissed the action, and on 17th May 1921 found the defenders entitled to expenses as between agent and client.

*Opinion.* — “In this case the pursuers, who are licence-holders for the current year in the Pollokshields Ward of the City of Glasgow, are challenging the regularity and validity of the whole proceedings in connection with the poll taken in the ward referred to under the Temperance Act on 2nd November 1920, and are seeking to have the proceedings, including the declaration of the result of the poll, judicially reduced and declared to be null and void and of no force and effect.

“The action is directed against the Corporation of the City as the local authority under the Temperance Act, the Lord Provost as the returning officer for the poll, and the Town Clerk as the administrative functionary.

“The results of the poll as given by the returning officer were as follows:—For no change, 2741; for limitation, 334; for no licence, 4042; spoiled papers, 17. On these figures the returning officer declared that a no-licence resolution had been carried.

“The contention of the pursuers, stated generally, is that the requisition papers demanding a poll were invalidly issued, and that in consequence of this fundamental irregularity the whole proceedings, including the poll itself, were ineffectual.

“Under the Temperance Act the statutory machinery is to be set agoing by a requisition signed by not less than one-tenth of the electors in the area. In the words of section 2 (1)—‘If, in the manner hereinafter provided, a requisition demanding a poll under this Act in any area is found by the local authority to have been duly signed, the local authority shall cause a poll of the electors in such area to be taken in accordance with the provisions of the Act.’

“In section 5 (1) of the Act there are set forth certain provisions as to the issue of the forms of requisition papers, on which provisions the pursuers specially found. I shall therefore quote verbatim the passage referred to. It reads as follows:—‘The signatures to the said requisition shall be appended thereto with the full addresses of the signatories on papers which shall be issued on demand of any elector [i.e., any elector in the area] by the clerk to the local authority.’

“The precise ground of the pursuers’ objection is that the requisition papers were not issued on the demand of any elector in the area, but were issued on the demand of a person who was not an elector in the area.

“The pursuers’ averments on this subject are as follows:—‘In point of fact the requisition papers as regards said ward were not demanded by or issued to any elector therein. They were all demanded by and issued to Lieut.-Col. Robert Kyle, C.M.G., D.S.O., 121 St Vincent Street, Glasgow, secretary of the National Citizens’ Council, who is not a registered elector in said ward. Colonel Kyle had no authority from any elector in said ward to apply for a requisition paper.’

“The pursuers go on to explain ‘that individual electors on making a demand on the Town Clerk for a requisition form were referred by him to the offices of the said National Citizens’ Council, from which alone requisition forms were being issued. Requisition forms could there be obtained by any person whether he was an elector or not.’

“I have referred to all the material averments of fact made by the pursuers, and in considering the question of whether the pursuers have set forth a case which if established would entitle them to the legal remedies which they claim, I assume that the averments so made are well founded.

“As this is a public case, however, I think it right to add that the defenders, whilst admitting that they did issue requisition papers to Colonel Kyle as secretary of the National Citizens’ Council, explain, *inter alia* (a) that Colonel Kyle was authorised by electors in each ward of the city to apply for requisition papers, (b) that requisition papers were also issued under similar circumstances to the secretaries of other organisations, and (c) that in order to meet the

anticipated demands of the electors the Town Clerk opened and kept open throughout the whole period a special office for the issue of requisition papers to any elector, and that requisition papers were available to electors at that office.

“Reverting to the averments of the pursuers, it will be observed that their objection relates only to the absence of a demand for the requisition papers by a registered elector.

“It is not alleged that the requisition papers had not been ‘issued’ by the Town Clerk in terms of the statutory Rules and Orders relative to the Act. These prescribe, *inter alia*, the form of the requisition, and require that the requisition form shall bear the date of issue and the seal of the local authority, or the signature of the town clerk, ‘or some other sufficient mark of identification.’

“Further, it is not alleged that the signatures which were adhibited to the requisition forms so issued and which were computed in arriving at the statutory percentage were not the signatures of electors registered in the ward, and were not duly and properly adhibited and computed.

“The statutory Rules and Orders prescribe special precautions to prevent irregularities of the kind referred to. For example, (a) the signed requisition papers must be lodged with the town clerk by 30th September. (b) Notice of the receipt of the requisition must be published in not less than two newspapers circulating in the ward allowing inspection of the requisition by any elector. (c) Objections to the validity of the signatures may be lodged, and the town clerk may hear parties on these objections. (d) The town clerk must have the requisition checked with the register of voters, and thereafter report to the corporation the results of his checking and of his hearing the parties as to the validity of the signatures. And (e) The local authority, if satisfied ‘on the report of the town clerk and after such further investigation, if any, as they may determine’ that the requisition has been duly signed by not less than one-tenth of the electors, are then to fix the day for the poll.

“Under section 2 (1) of the Act itself—a section which I have already quoted—the Corporation having found the requisition to be ‘duly signed’ did appoint the poll for 2nd November 1920.

“In the absence of any averment to the contrary by the pursuers I must assume that the various requirements and formalities to which I have been referring were duly observed, and that the requisition on which the poll proceeded was in fact signed by not less than one-tenth of the electors in the area.

“One further comment suggests itself as to the absence of averment in the pursuers’ pleadings. While it is averred that Colonel Kyle had no authority from any elector in the ward to apply for requisition papers, it is not said that the fact that he was the means of obtaining the papers had any effect, prejudicial or otherwise, as regards the signing or not signing of the papers by

the electors in the area, or that any elector was prevented or hindered in any way in obtaining a requisition paper for signature.

“It seems to me to follow from the nature of the pursuers’ averments and the considerations to which I have been referring that the objection raised by the pursuers is purely technical. If, however, it could be shown that it related to the non-observance of an imperative statutory requirement, I think that neither the fact that the objection is technical, nor the absence of any averment as to the effect or possible bearing of the non-observance on the requisition for the poll or on the poll itself, would justify the Court in disregarding what *ex hypothesi* the Legislature had enacted as a provision which must be complied with.

“After considering the arguments on the one side and the other regarding the sufficiency of the pursuers’ averments, I have come to the conclusion that the pursuers’ averments are not relevant and disclose no well-founded case in fact or in law. In the first place, I think that the construction which the pursuers seek to put on the statutory provision is erroneous. The contention of the pursuers is that the provision means that signatures on papers which have not been issued on the demand of an elector are wholly ineffectual for the statutory purpose. In the absence of any express condition of that kind, however, I see no sufficient ground for implying it.

“Reading the words of the statute in their popular sense and ordinary meaning, I think that the true purport and object of the provisions is to confer on every qualified elector in the ward the right to obtain from the Town Clerk on demand a requisition form for signature. In that way the statute having conferred on a percentage of the electors the right to insist on a poll by requisition in an appropriate form also secures to the electors the means of exercising the right. In effect it enacts that if the elector wants a requisition paper he can get it on asking for it. So far as regards the electors the provision is enabling, not restricting—positive, not negative—in character. I see no justification for implying a condition which would make the efficacy of the signature of an elector depend on whether or not that elector or some other elector had or had not demanded from the Town Clerk the paper to which the signature was exhibited, and I see no reasonableness in reading into the statutory provision a provision which according to argument for the pursuers might vitiate and nullify the whole proceedings and the result of the poll held under the Temperance Act, merely because the person through whom the requisition papers, or some of the requisition papers, had been obtained for the purpose of being signed by the electors was not himself an elector.

“The scheme of the statute considered as a whole, the relation of the single item of procedure, which is the subject-matter of the case, to the general objects intended to be secured by the statute, and the absence of any reasonable ground for regarding the mere request for the requisition paper as of

the essence of the statutory provisions—considerations such as these seem to me to be appropriate in this case, and I think that they are adverse to the case which the pursuers have endeavoured to make.

“The recorded decisions afford no direct guidance on the particular question now under consideration. Nevertheless in a general way they are helpful.

“In the words of Lord Campbell in the case of the *Liverpool Bank v. Turner* (1861, L.J. Ch. 379, at p. 380)—‘No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute.’ In the later case of *Howard v. Bodington* (1877, 2 P.D. 211) Lord Penzance, after citing the foregoing passage from the opinion of Lord Campbell, added—‘I believe, as far as any rule is concerned, you cannot safely go further than that in each case you must look to the subject-matter, consider the importance of the provision that has been disregarded, and the relation of that provision to the general object intended to be secured by the Act, and upon a review of the case in that aspect decide whether the matter is what is called imperative or only directory.’

“In arriving at the opinion which I have expressed as to the meaning of the statutory provision and the effect which ought to be given to it I have endeavoured to construe it in the light of such general considerations as those referred to by Lord Campbell and Lord Penzance.

“If I am right in construing as I have done the statutory provision founded on by the pursuers, their case must fail. Even on the contrary assumption, however, I think that the pursuers cannot succeed.

“I am now assuming that the statute makes the demand by an elector in the area a necessary and absolute condition of the validity of a requisition although the requisition is otherwise conform to the statutory requirements in all respects.

“The question remains whether on that assumption in the circumstances averred by the pursuers and in the events that have happened, an irregularity of the kind alleged in this case is fatal to the whole proceedings. In my opinion the answer must be in the negative. I disregard on this question, as inapplicable in the present case, the salutary provisions of section 13 of the Ballot Act of 1872 regarding non-compliance with rules and other mistakes in cases in which an election has been conducted in accordance with the principles of the Act and the non-compliance or mistake has not affected the result.

“The principles of the common law, however, which are applicable in this case, seem to me to exclude the drastic remedies which the pursuers are seeking.

“I refer in particular to the statement of the law in the judgment of the Court as delivered by Lord Coleridge, C.-J., in *Woodward v. Sarsons*, 1875, 10 C.P. 733, at page 743.

“In the present case, so far as appears

from the averments of the pursuers, the statutory conditions and procedure were substantially fulfilled and carried out; the technical irregularity founded on by the pursuers did not affect and could not have affected either the requisition for the poll or the result of the poll. The desire of the statutory percentage of the electors to have a poll was freely expressed and the poll was duly taken. These facts are not even put in issue on the pursuers' pleadings.

"For the reasons which I have given on both branches of my opinion I consider that the pursuers' averments are irrelevant and that no ground has been shown for treating the proceedings complained of as nugatory or for setting aside the declared result of the poll.

"I shall therefore sustain the first plea-in-law for the defenders."

The pursuers reclaimed, and argued—There was here a breach of the statute, which invalidated the requisition and the poll. The provision that the requisition papers should be issued to an elector was imperative. To issue them wholesale to a propaganda society was to defeat the purpose of the Act. It was evident from the provision as to the time between the requisition and the poll that canvassing was to be discouraged.

Counsel for the defenders and respondents were not called upon.

LORD PRESIDENT—My opinion is in substantial agreement with that of the Lord Ordinary except as to one minor point. The Lord Ordinary expresses the view that even if the issue of the requisition forms to non-electors were illegal, such an irregularity would not affect the validity of the proceedings which follow, on the ground that it would not disturb the numbers of the poll. I do not think that the question whether such an irregularity—assuming that it is one—would or would not disturb the numbers of the poll is relevant to the point at issue, which is whether that which is a condition precedent to the statutory poll, namely, a valid requisition, did actually precede it. On the merits of the case I need say but little. It is clear that in terms of section 5 the requisition papers must be in a particular form, must emanate from the clerk to the local authority, and must be issued to any elector on demand, but I am unable to read that provision as meaning that the issue of a requisition paper to a person who is not an elector is forbidden. The Act contains careful precautions against the abuse of requisition papers by non-electors being induced to put their names to them, but even in the case of a genuine elector there is nothing in the Act to prevent the issue of a plurality of requisition forms to him, and once they reach his hands there is nothing that I can see to prevent him (if he is so minded) committing one or more of such papers to the agent of some organisation which promotes a "no licence" policy in the area. I am far from thinking that a wholesale devolution by the Town Clerk to persons other than

his own proper deputies of the function of issuing requisition papers would be consistent with the Act. I do not, however, read the averments of the pursuers as amounting to an allegation of that kind. What is said is that the Town Clerk referred some of those who asked him for requisition forms to a non-elector other than one of his proper deputies, who had applied for and obtained a large number of such forms. This is not an averment of wholesale devolution by the Town Clerk of his functions to an outsider, nor does it amount to an allegation of refusal by the Town Clerk to supply any elector with a form on his request. It is inevitable in connection with any appeal to the methods of popular requisition and popular suffrage that the ordinary methods of popular agitation and propaganda in favour of this view and that should be resorted to, and that while it is possible that what was done in this case may be open to criticism from the administrative point of view, I do not think that anything is alleged which amounted to a breach of the statute. I therefore think that the Lord Ordinary's judgment ought to be affirmed.

LORD MACKENZIE—I concur.

LORD SKERRINGTON—I concur.

LORD CULLEN—I concur.

The Court adhered.

Counsel for Pursuers—Moncrieff, K.C.—Fleming—Thom. Agents—Bruce & Stoddart, S.S.C.

Counsel for Defenders—Macmillan, K.C.—Graham Robertson. Agents—Campbell & Smith, S.S.C.

Thursday, May 26.

#### FIRST DIVISION.

[Lord Ashmore, Ordinary.]

MACFARLANE v. GLASGOW CORPORATION. (CATHCART CASE.)

DENHOLM v. GLASGOW CORPORATION. (CAMPBELL CASE.)

GOW v. GLASGOW CORPORATION. (WHITEINCH CASE.)

*Election Law — Combination of Polls — Legality — Ballot Act 1872 (35 and 36 Vict. cap. 33), First Schedule — Temperance Scotland Act 1913 (3 and 4 Geo. V, cap. 33), sec. 5 (3).*

A poll under the Temperance (Scotland) Act 1913 and a municipal election took place on the same day, in the same place, before the same presiding officers, and by means of the same ballot boxes, distinctively coloured ballot papers being issued. In an action for reduction of the poll under the Temperance Act, held (1) that there was no illegality in so combining the polls, and (2) that such a combination was not contrary to the true intent and meaning of the Act, and action dismissed as irrelevant.