

may be excused from entering very far into the difficult province which I have just indicated, because when you come to the facts you must inquire and find an answer to the question, whether or not the accused was, at the time when this incident occurred, under the influence of drink or drunk. Here again the burden of proof is upon the accused. Now, what is the evidence in that connection? [*His Lordship then examined the evidence with regard to the panel's condition on the night in question.*]

You will consider whether from first to last—assuming the law with regard to culpable homicide to be as I have stated—you will consider whether the prisoner has proved to your satisfaction that on that night, and in particular at the hour when this incident occurred, his mental state was unsound; that he was in a state of mental aberration, and not fully responsible for his actions. You will consider whether the evidence does not point the other way. That is for you, not for me. But I have read you the evidence, and you will give such weight to it as you think proper. . . .

Now, that is the case, ladies and gentlemen of the jury. On the first question you have to say whether you are satisfied that the prisoner's hand struck the blows. If not, that is an end of the case. If you are satisfied that it was so, you will then proceed to consider the second question, namely, whether it is proved by the prisoner that he was insane. If you think that is proved, you will acquit him on the ground of insanity from the charge brought against him. If, on the other hand, you do not think he has proved that he was insane at the time of the occurrence, you will consider the third question, whether the state of mind of the prisoner as revealed by the evidence—and you must proceed upon that alone—was such as to reduce the crime with which he is charged from murder to culpable homicide. You will now be good enough to retire and consider your verdict.

The jury returned a verdict of guilty as libelled; and the Lord Justice-Clerk pronounced sentence of death.

Counsel for the Crown—The Lord Advocate (Hon. W. Watson, K.C.)—Fenton, K.C., A.-D.—Hunter, A.-D. Agent—John Prosser, W.S., Crown Agent.

Counsel for the Panel—D. M. Wilson, K.C.—N. M. L. Walker. Agent—G. A. Rorer, W.S.

COURT OF TEINDS.

Friday, November 2.

(Before Lord Skerrington, Lord Cullen, Lord Sands, Lord Morison, and Lord Constable.)

PARISH COUNCIL OF ALVA AND THE MINISTER, MINUTERS.

Church—Glebe—Authority to Feu—Right of Pre-emption—Glebe Lands (Scotland) Act 1866 (29 and 30 Vict. cap. 71), sec. 17.

Where a minister had in 1873 received authority to feu his glebe, part of which, however, in 1923 still remained unfeued, held, following the case of *Stewart* (1887, 25 S.L.R. 164) that the conterminous proprietors, although they had failed to exercise their right of pre-emption within the period fixed by section 17 of the Glebe Lands (Scotland) Act 1866, might with consent of all parties interested be allowed to purchase.

The Glebe Lands (Scotland) Act 1866, sec. 17, enacts—“*Right of Pre-emption by Proprietors where Lands are Conterminous with the Glebe.*—Where the Court shall have made an order or interlocutor granting authority to feu or let on building lease, and fixing the minimum feu-duty or rent, any proprietor whose lands are conterminous with the glebe mentioned in such order or interlocutor may, within thirty days of the date of such order or interlocutor, intimate his willingness to feu or lease or to purchase so much of the said glebe at such a rate of feu-duty, or rent, or price as the Court may on a consideration of the whole circumstances of the case, and after directing such inquiry as they may consider necessary, determine; . . . and in case of sale shall pronounce a decree of sale thereof in favour of such heritor. . . .”

On 23rd May 1923 the Parish Council of the Parish of Alva and the Rev. James Alexander Williamson, minister of the parish, lodged a minute in the petition of the Rev. Andrew Kelly, formerly minister of the parish, under which he in 1873 had obtained authority in terms of the Glebe Lands (Scotland) Act 1866 to feu the glebe. The minute set forth the decree of the Court in the said petition, dated 3rd March 1873, which, *inter alia*, authorised the petitioner and his successors in office to feu the glebe.

The minute stated further—“That the said glebe has, following upon said interlocutor, been available for feuing for building purposes, but two feus only have been taken. . . . No feu has been taken off since 1887, and there is no immediate prospect of any demand for feus for building purposes. That the Alva Cemetery belonging to the Parish Council of Alva bounds the glebe on the east, and that the said Parish Council finds it necessary to acquire additional land for the purpose of extending the said cemetery. That after full investigation the said Parish Council has ascertained that the only lands suitable for the purposes of sepulture in the immediate neighbourhood of the said

cemetery are contained within the lands of the said glebe. That the minuters, the said Parish Council, desire to acquire a portion of the glebe of Alva in question for the purpose of extending the cemetery belonging to them, consisting of that portion of the said glebe extending to 1 acre, 2 roods, 7 poles, 16 yards or thereby imperial standard measure, bounded on the south-west and south-east by other portions of the said glebe, on the north-west partly by the manse garden and partly by Alva Parish Churchyard, and on the east by the existing cemetery of the said Parish Council, all as shown in red on the plan. Subject to the authority of the Court being obtained, they have arranged, to purchase same at the price of £200 per acre. Reference is made to the 17th section of the Glebe Lands (Scotland) Act 1866. That the said Parish Council of the Parish of Alva are conterminous proprietors in terms of the said statute, and although they have not exercised their right of pre-emption within the statutory period, the said Rev. James Alexander Williamson, now minister of the parish of Alva, is willing that they should have the same privilege with respect to the glebe in question as they would have been entitled to if they had intimated their willingness to purchase within the said period. That the consents of the Presbytery of Stirling and of the heritors of the parish through their general committee have been obtained to this application conform to certificates by their respective clerks."

The application was heard by the Teind Court on 25th May 1923, when counsel for the minuters craved the Court after such procedure and inquiry as should seem proper to fix the price which the Parish Council should pay for the said portion of the glebe, and thereafter to pronounce decree of sale in their favour subject always to the provisions of the said section in regard to the consignment of the price. He referred to the case of *Stewart*, 1887, 25 S.L.R. 164.

On 25th May 1923 the Court remitted to the Lord Ordinary to inquire into the circumstances set forth in the minute and to report.

On 8th June 1923 the Lord Ordinary (CONSTABLE) remitted to Mr Henry Allan Newman, architect and surveyor, Alva, to report what price should be paid for the portion of the glebe proposed to be purchased. Mr Newman having stated that in his opinion £370 was a reasonable price, the Lord Ordinary on 26th October 1923 reported the case to the Court.

On 2nd November 1923 the Court, without delivering opinions, and following the course adopted in the case of *Stewart* (1887, 25 S.L.R. 164), granted the prayer of the minute, and pronounced the following interlocutor:—

"Find that the price or value of the portion of the glebe of the parish of Alva . . . authorised to be feued . . . shall be £370 sterling, and . . . in terms of the 17th section of the statute sell, dispense, adjudge, decern, and declare the said portion of said glebe . . . to pertain and

belong heritably and irredeemably to the said parish of Alva and their successors at the foresaid price conform to the provisions of the statute, but supersede extract until consignment of the price shall be made in the hands of the Royal Bank of Scotland and the receipt be deposited in the hands of the Clerk of Court, and decern."

Counsel for Minuters—Jamieson. Agents—Dove, Lockhart, and Smart, S.S.C.

HOUSE OF LORDS.

Friday, November 23.

(Before the Earl of Birkenhead, Viscount Haldane, Lord Atkinson, and Lord Parmoor.)

STANDARD OIL COMPANY OF NEW YORK *v.* CLAN LINE OF STEAMERS, LIMITED (OWNERS OF S.S. "CLAN GORDON").

(In the Court of Session, December 21, 1922, 1923 S.C. 245, 60 S.L.R. 166.)

Ship—Seaworthiness—Obligation on Owners to Use Due Diligence to Make the Vessel Seaworthy—Owners' Failure to Communicate to Master Instructions as to Loading Issued by Builders—Liability of Owners—Harter Act 1893.

Ship—Bill of Lading—Exception and Exemptions—Exception of Accidents of Navigation not Resulting from Negligence of Owners—Owners' Failure to Communicate to Master Instructions as to Loading Issued by Builders—Liability of Owners.

Ship—Seaworthiness—Owners' Liability for Loss—Limitation of Liability—Merchant Shipping Act 1894 (57 and 58 Vict. cap. 60), sec. 503.

The owners of a line of steamers agreed to supply a vessel for the carriage of goods from New York to China. The charter-party provided that the contract should be subject to all the exemptions contained in the Harter Act of the United States of 1893, clause 3 of which provides "That if the owner of any vessel transporting merchandise or property to or from any port in the United States of America shall exercise due diligence to make the said vessel in all respects seaworthy, . . . neither the vessel, her owner or owners, agents, or charterers shall become or be held responsible for damage or loss resulting from faults or errors in navigation or in the management of the said vessel." The bills of lading issued in conformity with that Act provided that the following exemptions from liability should apply:—"Perils of the sea . . . or any latent defect in hull, machinery, or appurtenances . . . or other accidents of navigation of whatsoever kind (even where occa-