

COURT OF SESSION.

Tuesday, October 29.

FIRST DIVISION.

[Leith Dean of Guild Court.

LORD PROVOST, MAGISTRATES,
AND COUNCIL OF EDINBURGH v.
BEATSON AND ANOTHER.*Dean of Guild—Application for Warrant
—Competency—Ultra Vires.*

The provost and magistrates of a burgh presented an application to the Dean of Guild of an adjoining burgh for warrant to erect a hospital for contagious diseases within that burgh, in which they called the local authority as respondents. The local authority did not appear to oppose the application, but the Dean of Guild, on the ground that the rights of the local authority might be invaded and that their consent had not been obtained, refused to grant the warrant craved.

Held that the Dean of Guild had acted incompetently in giving effect to objections which might have been taken by the local authority but which were not taken.

The Corporation of Edinburgh, under requisition of the Local Government Board, determined to erect a temporary hospital for contagious diseases on the lands of Quarry Holes, Easter Road, near Edinburgh. The lands were within the burgh of Leith, and accordingly a petition for warrant to erect the hospital was presented to the Leith Dean of Guild Court.

William Beatson, burgh surveyor, Leith, was called as a respondent in the petition as representing the local authority of the burgh of Leith, and service was made upon him. He accepted service and lodged a report with the Dean of Guild in which he made some suggestions as to the treatment of sewage, but stated no objection to the structure.

When the case was called upon 5th August, Mr John Welsh, solicitor, appeared and craved to be sisted as a respondent, and to be allowed to lodge answers on the ground, *inter alia*, that the lands upon which it was proposed to erect the hospital formed the subject of an action at his instance in the Court of Session. The Dean of Guild sisted Mr Welsh as respondent, and ordered a condescence and answers to be lodged, which was accordingly done. When the case was called on 19th August the Provost of Leith appeared and stated that the consent of Leith local authority had not been obtained, and thereupon the Dean of Guild refused the petition *in hoc statu*, on the following grounds, as expressed in a note to his interlocutor—"The Court have become satisfied that under the Public Health Acts, especially section 39 of the Act of 1867, and section 1 of the Amending Act of 1890, the peti-

tioners have no right to erect and administer a hospital of this kind within the bounds of the burgh of Leith, at all events without the approval or consent of the Town Council of Leith, who are the local authority for the burgh of Leith, and of the Local Government Board, which have not been obtained."

The petitioners appealed. No appearance was made for the burgh of Leith.

Argued for the appellants—The judgment of the Dean of Guild was *ultra vires*, inasmuch as he had sustained an objection which was not before him. The local authority had not appeared to oppose, so this objection was not before the Court. Moreover, the petitioners had been refused a hearing on the question.

At advising—

LORD PRESIDENT—It is plain that this interlocutor cannot stand. There was a purely Dean of Guild application made to the Dean of Guild, and what he did was to conjure up objections which were not before the Court. He imagined that the burgh of Leith was having its rights invaded, although the Leith local authority had not brought forward or pleaded any objection. Accordingly, it seems to me that whatever the rights of the burgh of Leith might be, that interlocutor was unsustainable by anything before the Dean of Guild, and must be set aside.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court sustained the appeal, and remitted back to the Dean of Guild to proceed.

Counsel for Petitioners—Boyd. Agent—William Asher, S.S.C.

Wednesday, October 30.

FIRST DIVISION.

[Sheriff-Substitute of
Renfrewshire.LINTON AND OTHERS v. THE CITY
OF GLASGOW FRIENDLY SOCIETY.*Friendly Society—Process—Settlement of
Disputes between Society and Members—
Friendly Societies Act 1875 (38 and 39
Vict. c. 60), sec. 22.*

Section 22 of the Friendly Societies Act 1875 provides that, where the rules of the society contain no directions for the settlement of disputes between the society and its members, any member aggrieved may apply to a court of summary jurisdiction. Sub-section (e) of the same section further provides that the court may, at the request of either party, state a case for the opinion of either Division of the Inner House on any question of law.

Held that this method of appeal was competent in the case of small-debt

decrees in the Sheriff Court dealing with such disputes, notwithstanding the general exclusion of appeals in small-debt actions, except in the manner provided by sec. 31 of the Small Debt Act 1837.

Section 22 of the Friendly Societies Act 1875 (38 and 39 Vict. c. 60) provides that every dispute between a member, or person claiming through a member, and the society shall be decided in manner directed by the rules of the society, and the decision so made shall be binding and conclusive on all parties without appeal, and shall not be removable into any court of law or restrainable by injunction. This enactment is subject, *inter alia*, to the following provisions:—(a) The parties to a dispute in a society (or branch) may, by consent (unless the rules of such society or branch expressly forbid it), refer such dispute to the chief registrar, . . . who shall hear and determine such dispute. . . . (d) Where the rules contain no directions as to disputes, or where no decision is made on a dispute within forty days after application to the society (or branch) for a reference under its rules, the member or person aggrieved may apply either to the county court or to a court of summary jurisdiction, which may hear and determine the matter in dispute. (e) The court, chief or other registrar, may, at the request of either party, state a case for the opinion in England of the Supreme Court of Judicature, in Scotland of either Division of the Inner House of the Court of Session, or in Ireland of one of the Superior Courts of common law at Dublin, on any question of law." . . .

An action in ordinary form, and not bearing to be under the Friendly Societies Acts, was raised in the Small Debt Court at Paisley by Mrs Janet Linton, Paisley, and others, against the City of Glasgow Friendly Society, 6 Richmond Street, Glasgow. The pursuers claimed the sum of £6, 18s in respect of the death of Mrs Margaret Linton, whose life was insured with the defenders, and who died in August 1895. The defenders disputed that this amount was due.

The Sheriff having decerned in favour of the pursuers, the defenders called upon him to state a case for the opinion of the First Division of the Court of Session, in accordance with sec. 22, sub-sec. (e), above quoted.

The Sheriff accordingly stated a case, in which, after narrating the circumstances, he submitted the question whether his decision was right in law. The pursuer objected to the competency of an appeal in this form, and argued that the action having been raised as an ordinary action in the Small Debt Court, and not being founded on the Friendly Societies Act, the only competent method of appeal was that applicable to all small-debt actions under sec. 31 of the Small Debt Act of 1837.

At advising—

LORD PRESIDENT—I think this appeal is competent. As I read the section of the

Friendly Societies Act, if the parties agree to do so, and unless the rules of the society forbid it, they may refer their dispute to the chief registrar, and, failing such agreement, they may bring their action in any court of summary jurisdiction. In short, it appears to me that the emphasis in sub-section (d) is to be laid upon the word "summary." Accordingly, I think that the action was brought in the Small Debt Court in conformity with the regulations of the Friendly Societies Act, and an appeal from it may be taken on a case stated in the manner provided by that Act.

LORD ADAM—I concur. A special procedure has been provided in the Friendly Societies Act to regulate appeals. If the sum in question is above £25, there is no question that the parties can come here on a case stated, and I cannot see that the procedure provided by the Act is limited to cases where the sum is above that amount, when there is nothing to that effect contained in the Act.

LORD KINNEAR—I am of the same opinion. A special procedure is provided by the Friendly Societies Act to regulate appeals. It is no answer to the appellant's claim to have the benefit of such procedure, to say that under the Small Debt Act he would have had a different right of appeal, and not that which he claims under the Friendly Societies Act. There is nothing to take this case out of the jurisdiction of the Court to which such cases have been specially assigned. The only point raised against the competency of the case stated is, that the action in the Sheriff Court was not founded upon the terms of the Friendly Societies Act, and did not set forth that it was brought in accordance with the procedure prescribed therein. But the claim, as set forth in the case, makes it clear that the question brought before the Court is a dispute between a friendly society and one of its members, for the determination of which the Act has provided a special procedure with a restricted right of appeal.

LORD M'LAREN was absent.

The Court repelled the objection to the competency of the appeal.

Counsel for the Appellants—W. Campbell. Agents—Simpson & Marwick, W.S.

Counsel for the Respondent—Hunter. Agent—John Baird, Solicitor.