Water Trustees to itself in two other trust capacities without any statutory authority, and that such a transaction was contrary to established trust law. In order (as I apprehend) to fortify their title to state these objections, the appellants further set forth that their properties are within the limits of compulsory water supply and that they are rated for the purposes of the undertaking of the Water Trust.

I have summarised these arguments—I hope accurately—because, in my opinion, the mere statement of them suggests strongly how inappropriate such questions are for the decision of a Dean of Guild. I understand that the Dean of Guild Court was established in Greenock under a recent statute, but it was not argued that the Dean of Guild of Greenock has any special or extended jurisdiction on the matters here in controversy, and the case was argued on the footing that his powers are not exceptional in these respects. But whatever might be our desire to aid parties in terminating this dispute, I apprehend that we cannot decide a case on appeal from a Dean of Guild Court except upon grounds which could have been competently entertained by the Dean of Guild himself. Now although the limits of the Dean of Guild jurisdiction have varied from time to time, I am not aware that so wide an extension of them as is here proposed was ever made or attempted, nor were we referred to any authority to this effect. In my opinion the decision of such questions is altogether extrinsic to the Dean of Guild jurisdiction. It is plain that such title as the appellants have to raise these questions is derived not from their neighbourhood to the proposed buildings but from their being ratepayers in the burgh, which involves a different set of considerations altogether. And as to the merits, the questions raised appear to me to be remote from the familiar topics with which Dean of Guild Courts have to do and to which their jurisdiction has hitherto been confined, at least in modern times. They are really large questions as to the powers and policy of the Town Council itself in the administration of their Water Department on the one hand and of their Cleansing and Electricity Departments on the other. I do not say that the appellants are without a remedy, but only that this is not a competent process in which to state their pleas. For anything we have heard I think the Corporation are entitled to their lining.

LORD M'LAREN intimated that LORD KINNEAR, who was absent, concurred in this judgment.

The LORD PRESIDENT was not present.

The Court dismissed the appeal.

Counsel for the Petitioners and Respondents—Guthrie, K.C.—Macmillan. Agents—Cumming & Duff, S.S.C.

Counsel for the Objectors and Appellants—The Dean of Faculty (Campbell, K.C.)—Hon. W. Watson. Agents—Webster, Will, & Company, S.S.C.

Thursday, November 22.

FIRST DIVISION.

(SINGLE BILLS.)

[Sheriff Court at Ayr.

KILCOYNE *v.* WILSON.

Process—Appeal—Competency—Failure to Print Adjustments of Record—Duty of Sheriff to Initial Adjustments—A. S., July 10, 1839, *sec.* 45, *and March* 10, 1870, *sec.* 3 (1).

In an appeal from the Sheriff Court for Jury Trial under the 40th section of the Judicature Act, the record appended to the Note of Appeal did not contain the adjustments made at the closing of the record in the Court below. The adjustments made had not been initialed by the Sheriff.

Objection having been taken to the competency of the appeal, the Court *sustained* the objection and *remitted* the cause to the Sheriff of new to adjust and close the record, and to initial the adjustments.

The A. S., July 10, 1839, section 45, enacts:—"All alterations or additions made on the margin of the record at any period before it is closed shall be authenticated by the initials of the sheriff."

The A. S., March 10, 1870, section 3 (1), enacts:—"The appellant shall, during session, within fourteen days after the process has been received by the Clerk of Court, print and box the note of appeal, record, interlocutor, and proof, if any, . . . and if the appellant shall fail within the said period of fourteen days to print and box . . . the papers required as aforesaid, he shall be held to have abandoned his appeal, and shall not be entitled to insist therein, except upon being reponed as hereinafter provided."

Anthony Kilcoyne, labourer, Achil, Co. Mayo, raised in the Ayr Sheriff Court an action of damages for personal injuries, against James Wilson, timber merchant, Troon. The Sheriff-Substitute (SHAIRP) allowed a proof. The pursuer appealed for jury trial.

The copy of the record appended to the note of appeal did not contain the pursuer's adjustments made at the closing of the record. These had been put on the certified copy of the petition used in the Court below, and had been initialed by the pursuer's agent. They had not been put on the principal copy of the petition, nor had they been initialed by the Sheriff-Substitute. The defender had made no adjustments.

On the case appearing in the Single Bills counsel for the defender objected to the competency of the appeal on the ground that the record printed did not bear the pursuer's adjustments.

He argued—The case had been discussed on the certified copy of the petition which contained the adjustments. It was therefore essential that they should be on the record in the Appeal—A. S., 10th March 1870, sec. 3 (1). The Act was imperative.

The fact that they had not been initialed by the Sheriff did not make them any the less adjustments. In many Sheriff Courts (including that of Ayr) it was not the practice to initial adjustments. The appeal was irregular and should be dismissed—*Lee* v. *Maxton*, February 2, 1904, 6 F. 346, 41 S.L.R. 281; *Bennie* v. *Cross & Company*, March 8, 1904, 6 F. 538, 41 S.L.R. 381; *Taylor* v. *Macilwain*, October 18, 1900, 3 F. 1, 38 S.L.R. 1.

Argued for the appellant—The adjustments not having been initialed by the Sheriff-Substitute must be regarded as immaterial, and consequently the record was in shape. The Sheriff-Substitute was bound to initial the adjustments—A.S. 10th July 1839, sec. 45; Sheriff Courts (Scotland) Act 1876 (39 and 40 Vict. cap. 70), sec. 18, and not having done so, the alleged adjustments were really no adjustments.

LORD KYLLACHY—It is very unfortunate that this irregularity should have crept into the proceedings—an irregularity for which it would seem as if neither the Sheriff nor any one else was really to blame. For it would appear that in the Sheriff Court at Ayr, and also we are informed in most Sheriff Courts, the provisions of the Act of Sederunt of July 10, 1839, with regard to the initialing by the Sheriff of adjustments of the Record are not in the habit of being observed. It has not however been shown to us that this Act of Sederunt has been repealed or that it has fallen into desuetude; and I am afraid therefore we must assume that it is still the duty of the Sheriff to initial all alterations put on the pleadings at adjustment. That being so, and it being admitted that various alterations not appearing on the print before us were made by the petitioner at adjustment and engrossed on the certified copy of the petition, but not authenticated by the Sheriff in the way required, it seems to me that (the point having been raised), we have nothing for it but to send the case back to the Sheriff to have the record put in order. I must therefore I am afraid move your Lordships to recal the interlocutor of the Sheriff closing the record and allowing a proof, and remit the case to him to initial any adjustments that may be proposed, and to proceed thereafter as may be just.

LORD PEARSON and LORD ARDWALL concurred.

The LORD PRESIDENT, LORD M'LAREN, and LORD KINNEAR were absent.

The Court pronounced this interlocutor; "The Lords having considered the appeal and heard counsel for the parties in respect that certain alterations which appear upon the certified copy of the Petition and which the defender states are adjustments of the record, have not been authenticated by the Sheriff-Substitute, recal the interlocutor of the Sheriff-Substitute dated 23rd October 1906 and remit the cause to him of new to allow parties to adjust, and to initial the adjustments in terms of the Act of Sederunt 1839, and of new to close the record and to proceed as may be just. . . ."

Counsel for Pursuer and Appellant—J. A. Christie. Agent—Alexander Wylie, S.S.C.

Counsel for Defender and Respondent—M'Robert. Agents—Young & Falconer, W.S.

Thursday, November 22.

SECOND DIVISION.

SIMPSON'S TRUSTEES, PETITIONERS.

Trust—Trustees—Resignation—Appointment—Petition—Scottish Trust Beneficiaries Resident in Canada—Resignation of Scottish Trustees Authorised and Canadian Trustees Appointed—Procedure.

By her antenuptial contract of marriage a wife conveyed certain estate to two trustees, both resident in Scotland, the income to be payable to the wife and after her death to the husband, and the capital, on the death of the survivor, to the children, or in the event of there being no children to the wife or her heirs. At the time of the marriage the parties were domiciled and resident in Scotland. A few years afterwards, having gone to Canada, and having formed the intention of remaining there permanently, the spouses became desirous that the original trustees should resign and that their places should be filled by persons resident in Canada. The two original trustees, accordingly, with concurrence of the spouses, presented a petition craving the Court to appoint A and B, residents in Canada, as trustees, and to grant the petitioners authority to resign. There were no children of the marriage. The wife was aged 41. The trust estate consisted for the most part of a sum of £2000 lying on deposit-receipt at the date of the petition.

The Court *granted* the prayer, A and B having lodged their written obligations to submit to the jurisdiction, and obey all orders of the Court in all matters relating to the trust.

William John Kirk, W.S., Edinburgh, and John Henderson, writer, Edinburgh, were appointed sole trustees under an antenuptial marriage contract dated 19th December 1900, entered into between John David Simpson, Glenbran, Inchture, and Fanny Brown, daughter of Andrew Brown, of Lochton, in the county of Perth. By the marriage contract Fanny Brown conveyed to the trustees her whole interest in the estate held in trust under the general trust-disposition and settlement executed by her grandfather the late James Brown of Lochton, excepting certain articles of