The amount of damages was, even more than the other, a question for the jury. It was for them to say down to what period the profit was to run. True, the defenders might have applied to the arbiter to get the contract terminated, but unfortunately they did not do so, and they must now take the consequences.

LORD PRESIDENT—I thought this case at the trial one of difficulty, but, at the same time, the difficulties were not legal difficulties. The question was purely one for a jury, but, at the same time, there were so many circumstances bearing upon the main point of the case, that it was always of a perplexing nature. I think I took every opportunity of bringing the case fairly and carefully before the jury, and I observe my charge was an unusually long one. When they returned their verdict I cannot say I thought it wrong. There was indeed a good deal of evidence that bore careful construction and consideration, both as to its bearing and as to its truth, and I cannot say that at that time there was any very definite opinion in my mind one way or the other. I considered that the jury were the proper judges of the matter. But I am bound to say that I have now formed an opinion, and it is that the pursuer was entitled to a verdict. As to the amount of damages given, that was a point upon which a great many questions had to be considered. I do not know upon what system the jury calculated these damages, but I see no reason now why we should disturb their finding

Rule dismissed.

Agents for Pursuers—Maitland & Lyon, W.S.

Agent for Defenders—James Bruce, W.S.

Thursday, November 10.

DAVIE AND OTHERS *v.* THE COLINTON FRIENDLY SOCIETY.

Friendly Society—Alteration of Rules—Arbitration—Registrar's Certificate—Jurisdiction—18 and 19 *Vict. c.* 63, §§ 27, 41. In a reduction at the instance of certain members of a friendly society of a minute of meeting by which the rule as to the period when members became entitled to the benefits of the society had been altered, and of the certificate of the registrar certifying this alteration to be in conformity with law—*Held* (1) That the dispute not being one between an individual member or a person claiming in the right of an individual member and the society, did not come within the arbitration rules of the society. (2) That the registrar's certificate, though necessary to the validity, was not conclusive of the legality of the rules, or alteration of rules, so certified. (3) That in such questions the jurisdiction conferred on the Sheriff by the 41st sect. of the Act 18 and 19 Vict. c. 63, was privative, and excluded that of the Court of Session.

Opinion intimated, that questions with regard to friendly societies might occur which would be proper for the interposition of the supreme court.

This was a reduction at the instance of William Davie and certain other members of the Colinton Friendly Society of a minute of meeting of the said Society, held at Colinton on 14th October 1864, and of a certificate by Alexander Carnegy Ritchie, Registrar of Friendly Societies in Scotland, dated 1st March 1866, "by which minute the rules of the said society were altered, or pretended to be altered, by the adoption of a new rule or alteration in the rules, to the effect that the probationary period of entrants to the said Society should be reduced to one year instead of three years, as under the existing rules of the Society, and by which certificate it was certified, or pretended to be certified, that the said alteration was in conformity with law."

It appeared that the Society had been founded in 1804, remodelled in 1829, and that its rules, certified as in conformity with 10 Geo. IV. c. 56, had, with certain amendments made in 1837, 1844, and 1854, in terms of the then existing Acts, remained the rules by which the Society has been regulated down to the date when the amendment sought to be reduced was made.

By one of the fundamental rules of the Society, as they existed before 14th October 1864, entrants to the Society were obliged to go through a probationary period of three years before they received any benefit from the Society. The amendment upon the rules contained in the minute and certificate hereby sought to be reduced was to the effect that the probationary period of three years should be reduced to twelve months.

Alterations and amendments of the Society's rules were thus provided for. Rule 97 enacted "that all alterations or amendments of these rules must be intimated, submitted, and agreed to, in terms of the Act of Parliament, either by a general meeting of the Society, or by a committee nominated for that purpose at a general meeting. But it is hereby declared that no alteration or amendment shall be made on any of the fundamental laws tending to alter the contributions or allowances, without the report of a professional accountant." The terms of the Act of Parliament, 10 Geo. IV. c. 56, § 9, referred to in this rule, are, "That no rule, confirmed in manner aforesaid, shall be altered, rescinded, or repealed, unless at a general meeting of the members of such society as aforesaid, convened by public notice, written or printed, by the secretary or president, or other principal officer or clerk of such society, in pursuance of a requisition for that purpose, by seven or more of the members of such society, which said requisition and notice shall be publicly read at the two usual meetings of such society to be held next before such general meeting, for the purpose of such alteration or repeal, unless a committee of such members shall have been nominated for that purpose at a general meeting of the members of such society, convened in manner foresaid, in which case such committee shall have the like power to make such alterations or repeal, and unless such alterations or repeal shall be made with the concurrence and approbation of three-fourths of the members of such society, then and there present, or by the like proportion of such committee as aforesaid, if any shall have been nominated for that purpose." In addition to this, the existing Act, 18 and 19 Vic. cap. 63, section 27, enacts, "That after the rules of a friendly society shall have been certified by the registrar as aforesaid, it shall be lawful for such society, by resolution at a meeting specially called for that purpose, to alter, amend, or rescind the same, or any of them, or to make new rules; and it shall be lawful for any friendly society formed and established under any of the Acts hereby repealed, to alter,

amend, or rescind the rules by which the society is governed, regulated, or managed, or to make new rules, provided always that two copies of the proposed alterations or amendments, and of such new rules, signed by three members of such society, and the secretary or other officer, shall be submitted to the said registrar, to one of which shall be attached a declaration by the secretary or one of the officers of such society, that, in making the same, the rules of such society respecting the making, altering, amending, and rescinding rules, or the directions of the Act under which such society was established, have been duly complied with; and if the said registrar shall find that such alterations, amendments, or new rules, are in conformity with law, he shall give to the society a certificate, in the form set forth in the schedule to this Act, and return one of the copies to the society, and shall keep the other with the rules of such society in his custody, and for which certificate no fee shall be payable to the said registrar, and as against such member or person, such certificate shall be conclusive of the validity thereof, and all such rules, alterations, and amendments, so certified as aforesaid, shall be binding on the several members of the said society, and all persons claiming on account of a member, or under the said rules, but unless and until the same shall be so certified as aforesaid, such rules, alterations, and amendments shall have no force or validity whatsoever." The rule of the society regulating the number of members required to be present at meetings to form a quorum, is as follows:—That one for every ten members, including the "committee, shall be a quorum at all quarterly and extraordinary meetings; and no meetings shall be held fully constituted for altering or amending the rules, or passing judgment on any matter out of the ordinary way, unless the stipulated number be present." Such being the rules of the society, and the existing statutory enactments upon this subject, the pursuers alleged that the said pretended "rule or alteration in the rules was not proposed, and has not been adopted competently or in the manner prescribed by the constitution of the society, and is null and void. The alteration attempted to be made was an alteration upon the fundamental laws of the society, tending to alter the contributions and allowances of members, and it was made without the report of a professional accountant, as required by the 97th rule. The said alteration was not intimated, submitted, and agreed to, either by a general meeting of the Society, or by a committee nominated for that purpose at a general meeting, as is provided by the 97th rule. There was no intimation or notice calling the meeting at which it was brought forward, as a meeting for the purpose of altering the rules of the Society, and there was no requisition by any members of the Society to the preses requiring him to call the said meeting. The said meeting was not a meeting specially called for the purpose of altering or amending the rules of the Society, and the provisions of the Act 18 and 19 Vict. c. 63 were violated, by a motion for the alteration of the rules having been brought forward at such meeting. The number of members necessary to form a quorum was not present at the said meeting." The pursuers farther alleged that, notwithstanding that the said meeting and resolution come to thereat were illegal and inept, certain members of the Society, including the secretary, falsely and fraudulently represented to Mr Carnegy Ritchie, Registrar of Friendly Societies in Scotland, "that the alleged alteration or amendment had been made in terms of law, and of the rules of the said Society, but there was no declaration submitted to the registrar by the said secretary, or any other officer of the Society, that in making the said pretended alteration the rules of the Society respecting the alteration of rules, or the directions of the Act under which the Society was established, had been duly complied with, as is required by the Act 18 and 19 Vict. c. 63, § 27. Acting on these false and fraudulent representations, the said Alexander Carnegy Ritchie was induced to grant a certificate in the following terms: —'*Edinburgh*, 8 *Broughton Place*, 1*st March* 1866.—I hereby certify that the foregoing alteration and amendment of the rules of the Colinton Friendly Society at Colinton, in the county of Edinburgh, is in conformity with law.—A. Carnegy Ritchie, *Registrar of Friendly Societies in Scotland.* A copy kept. A. C. R.' The said certificate is false, the alteration and amendment therein referred to, for the reasons already stated, not being in conformity with law and the rules of the said Society. The said certificate was issued without the conditions enjoined by the Act 18 and 19 Vict. c. 63, § 27, as precedent to any such certificate being issued, having been complied with, and it is therefore destitute of legal validity. Even if it had not been procured by false and fraudulent representations, it was illegally and wrongfully issued by the registrar, and is null and void, or in any event reducible, and ought to be reduced."

The defenders stated the following preliminary pleas—"(2) The jurisdiction of the Court of Session is excluded by the rules of the society, and by the statute 18 and 19 Vict. cap. 63, which regulates the law relating to friendly societies. (3) On the assumption that the provisions of the Act 10 Geo. IV., chapter 56, apply, the jurisdiction of the Court of Session is excluded by that, and by the other Friendly Society Acts, and by the statute 18 and 19 Vict., chapter 63, and also by the rules of the society. (4) The society's rules in regard to the settlement of disputes by arbitrators, and the statutory provisions relating thereto, constituted a valid and effectual obligation binding the pursuers, as members of the society, to submit and refer the questions raised in this action to arbitration. (6) The certificate granted by the Registrar of Friendly Societies, that the alteration or amendment of the rules complained of is in conformity with law, is, under the statute, binding on the pursuers and on the whole members of the society."

In support of these they made the following statements:—"With reference to disputes and arbitrations, it is by the Society's rules provided (sec. 91) 'That all disputes between this Society, or any person acting under them, and any individual member thereof, or any person claiming on account of any member, shall be submitted and referred to arbitrators. The 92d rule provides for the election of twelve arbitrators. The twelve arbitrators were duly elected, and since the first election there always have been, and are now, in conformity with this rule twelve arbitrators of the Society. It is further provided by the rules, as follows:—'93. When any dispute shall arise, three of the arbitrators shall be chosen by ballot to decide the matter in dispute, and whatever award shall be made by the said arbitrators, or the major part of them, according to the

true purport and meaning of the rules of the Society, shall be binding and conclusive on all parties, and shall be final to all intents and purposes, without appeal. The award made by the arbitrators shall be expressed in the terms of the form hereto annexed. 94. That all disputes must be submitted to arbitration within three months from the date of the meeting by whose decision such member or his representative may think himself aggrieved; and any member delaying for a longer period to bring his case before the committee or Society, or to intimate his intention of referring it to arbitration, shall be held to have acquiesced. 95. No member shall bring any dispute between him and the Society or committee of management before a court of law without having first offered to refer it to arbitration, under the penalty of being expelled the Society, and of forfeiting all claims upon its funds.' By the statute 18 and 19 Vict. cap. 63 (23rd July 1855) which now regulates the law applicable to Friendly Societies, it is enacted (sec. 40) that 'Every dispute between any member or members of any society established under this Act, or any of the Acts hereby repealed, or any person claiming through or under a member or under the rules of such society, and the trustee, treasurer, or other officer, or the committee thereof, shall be decided in manner directed by the rules of such society, and the decision so made shall be binding and conclusive on all parties, without appeal.' And by section 41 of the said statute it is enacted that 'in all Friendly Societies established under this Act, or any of the said repealed Acts, all applications for the removal of any trustee, or for any other relief, order, or direction, or for the settlement of disputes that may arise or may have arisen in any society, the rules of which do not prescribe any other mode of settling such disputes, or to enforce the decision of any arbitrators, or to hear or determine any dispute if no arbitrator shall have been appointed, or if no decision shall be made by the said arbitrators within forty days after application has been made by the member or person claiming through or under a member, or under the rules of the society, shall be made to the county court of the district within which the usual or principal place of business of the society shall be situate, and such court shall, upon the application of any person interested in the matter, entertain such application, and give such relief, and make such orders and directions in relation to the matter of such application as hereinafter mentioned, or as may now be given or made by the Court of Chancery, in respect either of its ordinary or its special or statutory jurisdiction; and the decision of such county court upon and in relation to such application as aforesaid shall not be subject to any appeal: provided always, that in Scotland the Sheriff within his county, and in Ireland the assistant barrister within his district, shall have the same jurisdiction as is hereby given to the judge of a county court.'

The Lord Ordinary (MACKENZIE) pronounced the following interlocutor:—

"*Edinburgh*, 14*th June* 1870.—The Lord Ordinary having heard parties' procurators, and considered the closed record and process, sustains the second, fourth, fifth, and sixth pleas in law for the defenders, dismisses the action, and decerns: Finds the pursuers liable in expenses, of which allows an account to be given in, and remits the same, when lodged, to the auditor to tax and to report."

The pursuer reclaimed.

The Lord ADVOCATE and MACKAY, for the reclaimer, submitted that there were three objections to the proceedings by which the rules of this society had been altered:—(1) That there had been no preliminary report of an accountant; (2) That there had been no proper intimation of the meeting; and (3) That there had not been a quorum present. These being the objections to the validity of the amended rules, there were three preliminary questions which fell to be now argued:—(1) Whether the certificate of the registrar is final and cannot be reduced; (2) Whether the matter in dispute was one which must be decided under the arbitration rules of the society; (3) If not, whether it is a matter which falls under the jurisdiction of the sheriff to the exclusion of this court.

On the first question, they said that though the registrar's certificate was binding, that was not to say that it is irreducible and cannot be impugned. On the second question, they argued that no such matter as an illegal alteration of the rules was intended to be submitted to arbitration. It is sufficient to read the clauses concerning arbitration to see this, and they referred to *Kelsall* v. *Tyler*, 25th Jan. 1856, 25 Law Jour. Exch. Ca. 153. And on the third question they submitted that the cases quoted by the Lord Ordinary had no application, and referred to the clauses of the statute and to the cases of *Sommerville*, 6 Macph. 796; *Morison* v. *Glover*, 1849, 4 Exch. Rep. 430; and *Laing*, 4 Nov. 1869, 5 L. R. Ch. Ap. p. 4.

SHAND and BALFOUR, for the respondents, argued that it was the policy of the Friendly Societies Acts to exclude expensive litigation, and that § 41 of the Amendment Act must so be construed. The sheriff's jurisdiction is therefore privative here, and it is no objection that he has not in ordinary cases power of reduction. Reductive powers, or what are tantamount to them, are sometimes given him by implication, as for instance in the Bankruptcy Act 1857; see case of *Dickson*, June 5 1866; 4 Macph. 797. This 41st section includes "*all* disputes in *any* society," and the remaining words of the clause do not limit this. The Sheriff must have all powers necessary to explicate his own jurisdiction, even to a reduction if that be necessary, which is not admitted. They quoted the cases of *Johnston* v. *Brodie*, 24 D. 973; and *Woldridge*, 31 Law Journ., Qu. B. 122; and endeavoured to show that the case of *Laing*, quoted on the other side, was quite a different one from the present, the difference being that there the society was alleged to have done regularly that which was illegal and *ultra vires*, whereas here the proceedings would have been perfectly legal and valid had they been regularly carried through. The case of *Laing* might very well be competent in the supreme court, but it did not follow that this case was so too. As to the effect of the registrar's certificate, they argued that the same policy of the statutes applied, viz., the saving expense and delay, and that it was the intention of the Legislature to make the certificate conclusive of the validity of the rules and amendments.

At advising—

LORD PRESIDENT—The pursuers are seeking to reduce a minute of meeting of the Friendly Society of Colinton, of which they are members, at which meeting the society altered their rules, professedly

under certain powers, and reduced the probationary period of membership from three years to one. The Lord Ordinary has sustained certain defences of a preliminary nature, and has dismissed the action, and has assigned three separate reasons for that judgment. First, he has held that the dispute which had arisen fell, according to the rules of the society, to be settled by arbitration. I am unable to agree with his Lordship on this ground. The rules of the Society as to the settlement of disputes are Nos. 91 to 96. The 91st provides that "all disputes between this society and any individual member thereof, or any person claiming on account of any member, shall be submitted and referred to arbitration." The rules that follow provide for the choosing of arbitrators. The 94th rule provides that "all disputes must be submitted to arbitration within three months from the date of the meeting by whose decision such member or his representative may think himself aggrieved;" failing which the member, &c., shall be held to have acquiesced. The 95th lays down "that no member shall bring any dispute between him and the society or committee of management before a court of law without first having offered to refer it to arbitration, under the penalty of being expelled the society, and of forfeiting all claims upon its funds." Now, on the face of these rules I think the disputes intended to be settled by arbitration are disputes regarding the individual interests of members of the Society claiming something as members from the Society itself. This construction receives confirmation from the form of the award directed to be pronounced by the arbiters, which is appended to the rules, and which shows that the disputes intended to be referred are clearly those between one member, as an individual, and the society to which he belongs. The dispute here is, as to whether the Society did, on a certain occasion, conform to the conditions under which alone it has power to make alterations in its rules. It is needless at present to inquire into the merits of that question, but I am clearly of opinion that it is not one which was ever intended to be submitted to arbitration. I must therefore differ from the Lord Ordinary on this ground.

His second reason is, that the alteration of the rules having been approved and certified by the registrar is binding upon the members, so that they are not entitled to challenge the amendment made. Here again he is in error. No doubt the certificate of the registrar is very important. Sec. 27 of the Act of 1855 enacts, that "all rules, alterations, and amendments, when so certified as aforesaid, shall be binding on the several members of the said Society, and all persons claiming on account of a member, under the said rules; but unless and until the same shall be so certified as aforesaid, such rules, alterations, and amendments, shall have no force or validity whatsoever." It is quite plain under this section that, until the rules are so certified by the registrar, they have no binding effect at all; and if, on the face of the rules or alterations, or of the declaration laid therewith before the registrar, he is of opinion that what has been done is *ultra vires* of the Society, he will refuse his certificate. On the other hand, if he grant his certificate, while that certificate stands they are binding upon the several members. But does that mean, that if after the registrar has granted his certificate any fundamental objection is discovered to the rules, or alteration of rules, which he has certified, or to the way they were passed, or to his certificate itself, it shall be impossible to get behind that certificate and set things right? To such a proposition I cannot assent. It is no part of the registrar's duty to institute an inquiry, and inform his mind judicially whether the rules or amendments, and all procedure connected therewith, have been carried through competently and regularly. On the contrary, being assured that such is the fact, he takes it for granted, and directs his mind to the question whether the rules or alterations are themselves unobjectionable. His certificate is therefore, in my opinion, no bar to a challenge of the present description.

But the third ground the Lord Ordinary has taken is much more serious. He says that the jurisdiction of this Court is excluded in the matter, if it be competent to bring it before a court of law at all. Now § 41 of the above-mentioned Act is certainly not very happily expressed, particularly as it applies to Scotland. The main body of the section is concerned with the county courts and Court of Chancery in England, and the way in which the clause is made to apply to Scotland is this: "Provided always, that in Scotland the Sheriff within his county shall have the same jurisdiction as is hereby given to the judge of a county court." I confess that, reading that section alone, I have considerable difficulty in applying it to this country. But it appears to me that a good deal of light may be got from a consideration of the history of the legislation on this subject. This is by no means the first statute dealing with friendly societies, though it is at present the ruling one. The Act 10 Geo. IV. c. 56, provides for arbitrations within the society, failing which, it calls in the aid of the justices of the peace. By 4 and 5 Will. IV. c. 40, disputes such as those mentioned in the Society's rules are directed to be referred to arbitration. But neither of these statutes ousts the jurisdiction of the ordinary courts at all. That is abundantly clear from their terms. By 9 and 10 Vict. c. 27, a new provision was introduced, which seems to me to provide for a new class of cases altogether for the settlement of matters which, under the old law, must have gone to the Supreme Courts either of England or Scotland. Next comes 13 and 14 Vict. c. 115, § 22, where we have a very distinct recognition of a difference between two classes of disputes. 1*st*, Those which are to be settled in the manner prescribed by the rules of the Society. 2*d*, Those which, according to the law as it stood before this Act, must have gone to the Supreme Court, but which, according to its provision, might, at the option of either party, be referred to the Sheriff. This Act of 1850, then, intended to give a jurisdiction to the Sheriff under certain circumstances, in cases which previously could only have been taken to the Supreme Courts, but it was merely optional to the parties to avail themselves of this new jurisdiction conferred on the Sheriff. Though a mere option, it is, however, of value in interpreting the next statutes; it shows that the Legislature recognised certain distinctions between the two classes of cases. We now come to the existing Act of 1855, which says "that such (county) Court shall, upon the application of any person interested in the matter, entertain such application and give such relief as may now be given by the Court of Chancery; and the decision of such County Court, upon and in relation to such application as aforesaid, shall not be subject to any appeal." Now, it

seems to me that when, by the words at the end of the clause which I have already quoted, the Sheriff is appointed to have the same jurisdiction as the Judge in the County Court in England, we must read it as meaning, that in all the kind of disputes here mentioned the Sheriff shall have all power which, before the passing of the Act, belonged to the Court of Session. Now, what are the disputes which come under this class? They are "all applications for the removal of any trustee, or for any other relief, order or direction, or for the settlement of disputes that may arise or may have arisen in any society, the rules of which do not prescribe any other mode of settling such disputes, or to enforce the decision of any arbitrators," &c. They thus extend, we see, to one of the most delicate functions of a court, viz., the removal of a trustee, which is only mentioned *exempli gratia*. With regard to these questions, the jurisdiction conferred upon the Sheriff is privative—it excludes this Court altogether—there is to be no appeal. Now I am of opinion that the question raised in this action is just one of those embraced in this clause. No doubt difficulties may be expected to arise with regard to forms of process. Reductive conclusions may be necessary, while there are no forms in the Sheriff-court by which such an action can be carried through. Still, all such technical difficulties must be waived. The Sheriff must give the requisite relief somehow, no matter what the form may be. He and he alone can give it. No doubt, if the pursuer were to succeed, it would be in the form of an order setting aside the objectionable rule, and declaring it not binding upon the members. I do not think that there would be any real embarrassment.

But though I agree with the Lord Ordinary on this ground of his judgment, I am not at all disposed to say that it is impossible to imagine a case which might not require the interposition of the Supreme Court. If a friendly society were guilty of any gross irregularity—were to violate the statutes, or its own constitution—I do not say that it might not be restrained by the Supreme Court. I am not inclined to lay down any general rule; all that I am disposed to say is, that where the application comes clearly under the 41st section of the Act as here, the Sheriff has exclusive jurisdiction. There may be other cases which would require the interposition of the Supreme Court.

Lord Deas—The alteration which has here been made upon the rules of this Society is one of a fundamental description, namely, an alteration as to the number of payments necessary before an entrant becomes entitled to the benefits of the Society. It was not contended on the part of the pursuers that this was an alteration which the Society could not under any circumstances have made. But it was stated that the Society's rules prescribed certain preliminaries as necessary before such an alteration could validly be made, and that these regulations of the Society had not been complied with. It is the 97th rule of the Society to which I particularly allude, and the Act of Parliament there referred to is, I apprehend, 10 Geo. IV. c. 56. The 9th sect of that Act is embodied in the rule; and we are told that neither the provisions of the rule nor of the Act embodied in it have been observed. The answer made to this is, that the certificate of the registrar has been obtained in terms of 18 and 19 Vict. c. 23, § 27, and is conclusive. Now, even if we could omit the words "as against such member or person" from the section, and read it as if they had never stood there—simply thus, "and such certificate shall be conclusive of the validity thereof,"—I should hardly be able to hold that the registrar's certificate could not under any circumstances be reduced; and as we cannot do that, I am the more inclined to concur with the observation of the Lord Advocate, that this section is not meant to give finality to the registrar's certificate, so as to exclude all enquiry into the legality of the rules and procedure. Before the certificate is got, the rules are of no validity whatsoever. After the certificate is got, they are brought into operation; but that is all the effect the certificate has. It is not intended to prevent the possibility of any future enquiry into the legality. Whether the duty of the registrar extends to enquiring minutely into the facts and circumstances connected with the making and altering of the rules to which his certificate is asked, I do not require to decide; but I am by no means prepared to agree with your Lordship that it is no part of the registrar's duty to look into the procedure that has taken place. Whether this be so or not, however, is of no moment in the view I take, for I consider that the registrar's certificate is neither conclusive of fact nor of law, and that either matter can competently be enquired into without the necessity of a reduction, and therefore either question is quite proper to be entertained by the Sheriff. At the same time, I do not wish to be understood as expressing an opinion that the Sheriff would not be entitled to entertain a reduction if brought before him.

The clauses about arbitration in the Society's rules and in the statutes do not cover such disputes as we have here before us. On that point I agree entirely with what your Lordship has said.

Next comes the question of jurisdiction. I am humbly of opinion that it is given to the Sheriff, and that his jurisdiction is privative. We have one set of disputes to be settled in manner directed by the rules of the Society; we have another set for the determination of which the rules of the Society prescribe no method. The dispute here before us is not one for the settlement of which any other method is fixed, and it comes therefore distinctly under the latter category, and, under the 41st section of the Act of 1855, must be dealt with by the Sheriff, and by the Sheriff alone. Now, this section does not at all limit the jurisdiction of the Sheriff to cases which were competent to him before. The County Court is to have the full powers of the Court of Chancery; an immense jurisdiction is therefore given it which it had not before at common law, and a corresponding jurisdiction is conferred upon the Sheriff-court. It comprehends, therefore, such disputes as the present. At the same time, I do not say that it necessarily follows that no disputes or questions can arise in a friendly society which may not be brought before the Supreme Court.

Lord Ardmillan—I do not think that the jurisdiction of the ordinary courts of law is excluded by the arbitration clauses in the Society's rules. The case here is not one to which these clauses are applicable. The matter of the registrar's certificate is the next ground of the Lord Ordinary's judgment. That is attended with more difficulty. But I cannot think that the registrar's certificate excludes all enquiry into what has gone before it. Whether he is actually bound to ascertain the

legality of the proceedings reported to him is doubtful. But in any case, what he may do in that respect cannot be final, and his certificate therefore is not conclusive. Hence, on this point also, I cannot concur with the Lord Ordinary. But upon the last ground of his judgment I am disposed to agree with him. I think that the theory of the constitution of friendly societies, as conceived by the Legislature, is this, that subject to the certificate of the registrar, the society shall, as far as possible, govern itself; and that failing arbitration within itself (that being a remedy only applicable to certain cases, and not, for instance, to the present one), the jurisdiction of the Sheriff should be admitted, and should be privative, with this reservation, that a case may arise in which it is the duty of the Supreme Court to interfere. If the dispute is one within the society, dividing the society into factions, and not between any simple individual interest and the society as a body, then clearly arbitration is impossible, and is excluded. In such cases the statutory jurisdiction conferred upon the Sheriff is the proper remedy. Such, I think, is the constitution of friendly societies under the existing law; and I agree with your Lordships that it is the result of a long course of legislation all tending in this direction.

Lord Kinloch—The action now before us brings under reduction a certain minute of the Friendly Society of Colinton, altering the rules of the society "to the effect (as the summons bears) that the probationary period of entrants to the said society should be reduced to one year instead of three years," and also brings under reduction the certificate of the registrar sanctioning this alteration. The summons contains conclusions of declarator, consequent on such reduction being obtained, to the effect of the laws of the society being declared binding to their former effects, and all "cards of freedom" inconsistent therewith being declared unauthorised; and the office-bearers interdicted from issuing such cards.

It is pleaded that the Court has no jurisdiction to entertain this action, in respect that by the rules of the society the question raised is one to be submitted to arbitration. I am of opinion that this plea is untenable. When the rules declare "that all disputes between the society or any persons acting under them, and any individual member thereof, or any person claiming on account of any member, shall be submitted and referred to arbitrators," I am of opinion that they have reference to altogether different questions from that now before the Court. What are intended to be submitted to arbitration are the rights and claims of individuals against the Society; such, for instance, as the claim of an individual for a sick allowance, and not general questions touching the administration of the Society. These are not, in any sound sense, "disputes between the society and any individual member thereof."

But it is further pleaded that the jurisdiction of the Court is excluded by the 41st section of 18 and 19 Vict., cap. 63, which sends to the court of the Sheriff "all applications for the removal of any trustee, or for any other relief, order, or direction, or for the settlement of any disputes that may arise or have arisen in any society, the rules of which do not prescribe any other mode of settling such disputes." I am of opinion that this plea is well founded; and that the pursuers, when desiring the redress at present claimed by them, ought to have raised their proceedings in the Sheriff-court. I think the words of the statute are broad enough to comprehend the present dispute amongst "the disputes which may arise in any society." And what is sought may be given by the Sheriff under a "relief, order, or direction." I think the policy of the statute is to save to such societies the expense of proceedings in the Supreme Court, and to afford to them, for these disputes generally, a ready and economical remedy; the decision of the Sheriff being declared not liable to appeal. It may remain a question whether cases may not arise to which this exclusive jurisdiction is inapplicable, as where things are done which are not in any sound sense things done "in the society," but are destructive of the existence of the society. I do not enter on this controversy, and would indicate no opinion on the subject. The present is clearly a dispute arising "in the society," being simply how far an alteration of the rules could take place without a certain notice being given, and a certain quorum being present, and other formalities observed. I have no doubt that to this question the Sheriff is competent, and under the statutory provision exclusively so. That he cannot in general pronounce a decree of reduction seems to me no sufficient objection. The mere words of style of a reduction are not necessary to give effective relief. There are many different ways of wording a judgment, which may effectually remove from the books and administration of the society the regulation challenged. By the statute the Sheriff is vested in this matter with all the jurisdiction of the Court of Chancery in England; and I have not heard it questioned that this jurisdiction is sufficiently broad to put to right the rules of a village Friendly Society.

A third plea was maintained before us, to the effect that the certificate of the Registrar of Friendly Societies conferred on this new rule a validity which rendered it free from challenge. This seems to me to be not a plea to the jurisdiction. It is a plea importing that the new rule is unchallengeable in any Court whatever,—being in itself protected against impeachment by any member of the society. The plea assumes jurisdiction, for without jurisdiction the plea could not be disposed of by judgment. When I hold that I have no jurisdiction, I think that I hold *eo ipso*, that I cannot consider this plea. I have formed a very clear opinion on the plea; but I do not mean to tell what it is.

I agree with the Lord Ordinary in thinking that the present action should be dismissed; but only on the one ground, which I have now mentioned.

The Court accordingly recalled the interlocutor reclaimed against, and found that the Court had no jurisdiction to entertain the present action, in respect that section 41 of the Friendly Societies Act, 1855, excludes this Court, and confers jurisdiction upon the Sheriff in such cases; therefore dismissed the action.

Agent for Pursuers—Alex. Morison, S.S.C.
Agent for Defenders—William Traquair, W.S.

Thursday, November 10.

SECOND DIVISION.

STEUART *v.* STRACHAN.

Commissioner — Haver — Contumacy. ***Held*** that where a defender had been required under a