

Saturday, Dec 5.

SECOND DIVISION.

THE BOARD OF SUPERVISION v. THE LOCAL
AUTHORITY OF GALASHIELS.

*Petition and Complaint—Local Authority—Public
Health (Scotland) Act.*

The Board of Supervision having presented a petition and complaint against the Local Authority of a burgh, under the Public Health Act, calling upon them to introduce a proper system of drainage—held that such a petition was the proper ultimate remedy under the Act; and time given for maturing a scheme of drainage.

This was a petition and complaint at the instance of the Board of Supervision for Relief of the Poor in Scotland, with the approval of the Lord Advocate, against the Local Authority of the Burgh of Galashiels; and it set forth that Galashiels is a parliamentary burgh, with a population of less than 10,000 inhabitants, according to the census last taken. In July 1863 the General Police and Improvement (Scotland) Act, 1862, being the Act 25 and 26 Vict., cap. 101, was adopted in part by resolution of the Magistrates and Council. Under the 40th section of this Act the Magistrates and Council of the burgh became the commissioners for carrying into operation the Act so far as adopted; and under the Public Health (Scotland) Act, 1867, 30 and 31 Vict. cap. 101, the Commissioners of Police are the Local Authority to execute the last-named statute in Galashiels. The water supply of Galashiels is admittedly defective both in quantity and quality, being almost entirely derived from public and private wells sunk in porous gravel. Several of these wells are, and all of them are liable to be, contaminated with sewage or surface water from agricultural lands and other organic matter, to such an extent as to render the water unfit for domestic use, and liable to produce or promote epidemic or contagious diseases. The petitioners obtained from Dr Littlejohn, medical officer to the Board, a report on the water supply, with an analysis by Mr King, city analyst, of samples taken by Dr Littlejohn from a number of the wells.

Dr Littlejohn, *inter alia*, states that "three of the medical practitioners of Galashiels (including the medical officer of health), upon whom I called, expressed their opinion that the water supply of the burgh was deficient; and one of them, Dr M'Dougall, informed me—as might have been expected from the source of the water supply—that disease of a febrile type, and occasionally taking on the appearance of diphtheria, was scarcely ever absent from Galashiels, and that he attributed this state of the public health to the water supply."

Mr King says, "from all the results of my investigation I have come to the conclusion that the majority of these waters are not well suited for domestic supply, and that some of them are positively objectionable, and should not be used for dietetic purposes. It is my opinion that the wells from which these waters have been taken are subject to inflow of sewage or surface water from agricultural land, and may at certain seasons

become much more polluted than I have found them to be."

In reference to this analysis and report Dr Littlejohn says:—"These reports fully bear out the character I have formed of these sources of water supply from their position and the season of the year at which the samples were procured. I cannot but regard it as most unfortunate (to use the mildest term), that a burgh of the size and importance of Galashiels should be indebted for its main supply of water to wells sunk in porous gravel, which must always be looked on with suspicion and dread, as no one can predicate the changes that may hourly take place in the composition of the water."

The commissioners appointed by Her Majesty in 1868 to inquire into the pollution of rivers, also pronounced the water supply of Galashiels defective both in quantity and quality. Not only is the water supply inadequate and unfit for domestic uses, but there is absolutely no water for sanitary purposes. The petitioners' officer visited the burgh in 1871, for the purpose of inquiring into its sanitary condition, and he reported that the drainage was in a most unsatisfactory condition, owing principally to there being no means of flushing sewers, and that for this purpose it was absolutely necessary for the Local Authority to obtain a sufficient supply of water.

That the petitioners frequently, since the date of their officer's visit in December 1871, urged the Local Authority to obtain a proper supply of water for the burgh, and at first the latter fully recognised the necessity of doing so. In December 1871 they appointed committees to examine the whole of the burgh in regard to the supply of water for domestic use and sanitary purposes, and to report. On these committees giving in their reports they were remitted to a sub-committee to abstract and condense, and on 12th February 1872 the sub-committee reported "that the whole town is insufficiently supplied with water for domestic purposes, and that there is no supply whatever for sanitary purposes." This report was adopted by the Local Authority.

The extent of the evil being thus fully admitted, the water supply committee of the Local Authority took steps to ascertain the sources from which water could be procured, and the relative expense of various schemes. For this purpose they remitted to Mr Bathgate, Selkirk, and subsequently to Messrs J. & A. Leslie, C.E. The latter surveyed the whole district, and prepared a report and tabular statement showing the estimated cost of various schemes. It thus appears that plenty of good water can be obtained.

At a special meeting of the Local Authority, held on 1st September 1873 at Galashiels, the water supply committee's report was received and considered, and in accordance with the committee's suggestion it was then resolved to take the judgment of the ratepayers by plebiscite as to two schemes—the Caddon and the Luggate. This was done, with the following result:—239 voted for the Caddon scheme, 244 for the Luggate scheme, and 986 for neither. Hearing of this, the petitioners, in November 1873, informed the Local Authority that the water question was not one which could be disposed of by the votes of a majority of the ratepayers, but was a statutory duty which the Local Authority were bound to discharge, and if steps were not taken by them for the intro-

duction of water at the end of one month from that date, it would be the duty of the petitioners to adopt legal proceedings under the statute, in order to compel them to do their duty.

On Monday, 13th April 1874, at a meeting of the Local Authority held at Galashiels, the following resolution was moved by Councillor M'Caig:—"That the town is in want of a supply of water for domestic and sanitary purposes; that a committee of seven be appointed with powers to investigate and report as to the best attainable source and cheapest mode of bringing it in, whether under the Public Health Act or under a bill, and to submit draft of same to another meeting of this Board." The motion was agreed to without discussion; but on Councillor M'Caig proposing to name a committee, the members of the Local Authority, one and all, declined to act. Since that date no steps whatever have been taken in the matter by the Local Authority.

Ample powers are conferred upon them for this purpose under the Act; and, in these circumstances, the Board of Supervision complained that the failure of the Local Authority to introduce a proper supply of water for domestic and sanitary purposes into Galashiels was a refusal or neglect to do what is required of them under the statute, and an obstruction in the execution of the Act.

The petitioners set forth at length the sections of the Acts bearing upon this matter, viz., § 3, § 73, § 89, § 94, § 97 of the Public Health Act, 30 and 31 Vict., cap. 101. and § 19 of the General Police and Improvement Act, 25 and 26 Vict., cap. 101.

With a view to enforcing this obligation, the Board of Supervision asked the Court to order such inquiry into the matter as their Lordships might think fit, and thereafter that the Local Authority should be ordained to execute such works as might be necessary to procure a sufficient and suitable supply of water for the burgh.

Counsel for the petitioners based their case upon the authority of "*The Board of Supervision v. Local Authority of Montrose*, 11 Macph. 170, 10 Scot. Law Rep. 98.

The Court followed the same course adopted in that case, and pronounced the following interlocutor:—

"The Lords having heard counsel on the petition and complaint and answers, in respect the respondents judicially admit that it is their duty to take immediate steps for the introduction of an adequate supply of water to the burgh of Galashiels, Appoint the respondents to report to the Court on or before the first day of March next what steps they have taken for that purpose."

Counsel for the Petitioners—Dean of Faculty (Clark), Q.C., and Moncreiff. Agents—Murray & Falconer, W.S.

Counsel for Respondents—Maclean. Agents—Melville & Lindesay, W.S.

Saturday, December 5.

SECOND DIVISION.

[Lord Shand, Ordinary.]

MRS HUTCHISON AND HUSBAND IN M.P.
MISS MARY HILL AND OTHERS (TAIT'S
TRUSTEES).

Settlement—Beneficiary—Powers of Settler—Agreement—Essential Condition.

Certain beneficiaries under a settlement maintained that its terms were *ultra vires* of the settler, and in violation of the terms of her marriage-contract, whereas the trustees under the settlement maintained that the action was excluded by an express agreement to accept of a fixed sum. *Held* that the agreement was proved by the correspondence, and that it was not an essential condition thereof that the trustees should admit that the other parties were making thereby a considerable concession.

This case came up by reclaiming note against an interlocutor pronounced by the Lord Ordinary (SHAND), in a multiplepounding brought by the trustees of the late Mrs Margaret Hill or Tait, widow of the Rev. Adam Duncan Tait, minister of Kirkliston, to determine the question whether the late Mrs Tait's deed of settlement, in so far as regarded the provisions therein made in favour of her daughter Mrs Hutchison, wife of Mr Robert Hutchison, of Carlowrie, Linlithgowshire, was *ultra vires*, and in violation of the terms of the contract of marriage between Mrs Tait and her husband, Mrs Hutchison's father.

The trustees pleaded—"(1) The action is incompetent, in respect that the objectors have been divested of the estate sought to be brought *in medio* by the *bona fide* execution of the trust purposes of Mrs Tait's settlement. (2) The action is excluded by the agreement constituted by the letters of 29th October and 4th November 1873; and *separatim*, by the actings which have followed thereupon.

And the real raisers Mr and Mrs Hutchison put the following plea:—There having been no private settlement of the questions now submitted for judicial determination, the present action was competently brought, and the objections thereto ought to be repelled."

The Lord Ordinary (SHAND) pronounced the following interlocutor and note:—

"*Edinburgh, 14th July 1874.*—The Lord Ordinary having considered the cause—Finds that, by the letter dated 29th October 1873 from the agents of Mr and Mrs Hutchison, the real raisers, to the agents of the objectors, the Trustees of the late Mrs Tait, and the answer thereto of 4th November thereafter, and *separatim*, by these letters and the correspondence which followed, down to and including the letter of the objectors' agents of 17th December 1873, an agreement was entered into between the real raisers and the objectors, by which the former agreed, on the one hand, that they should not challenge the deed of settlement of the late Mrs Margaret Hill or Tait as being *ultra vires* and in violation of the terms of the contract of marriage between her and the Reverend Adam Duncan Tait; and, on the other hand, the objectors agreed that the sum of £3000, provided by said deed of settlement to Mrs Hutchison,