

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