

LORD M'LAREN—It is confessedly an unusual step which we are asked to take, that of interfering with the progress of an arbitration, which is founded on an *ex facie* relevant case of liability under the statute. The more usual course, where there is a possibility that an arbiter may be invited to decide questions beyond his statutory powers, is to leave such anticipated questions to be determined after the arbitration is closed. If, notwithstanding the apparent relevancy of the claims, it should appear that there is a good answer to them which admits of being instantly verified, *e.g.*, that the Company's Act prescribes a special mode in which such claims are to be dealt with, then, on being satisfied that the compensation claimed was excluded by statute, interdict might be granted. I agree, however, that a necessary condition of staying proceedings in an arbitration is that there should be a substantial case displacing the *prima facie* right to compensation which accrues under the Lands Clauses Consolidation Act. I confess that I do not see any such case here; on the contrary, the arguments which we have heard leave an impression on my mind that, if we had all the facts before us, we should find nothing tending to discredit the relevancy of the claims, nothing that could not be dealt with effectively under an action for interpreting, or it might be for setting aside, the arbiter's decision.

LORD KINNEAR—I think we cannot grant interdict to prevent the parties proceeding to arbitration unless it is clear that the arbiter is being called upon to exercise powers which he does not possess. I agree that the question necessarily depends, in the first instance at all events, on the claim submitted to the arbiter. I also think that the claim, so far as its terms are set forth, is *prima facie* a relevant claim. The Railway Company state an answer to it, which they may or may not be able to make good. They may or may not be able to show either that the rights or interests alleged by the claimant are valueless, or to satisfy the arbiter or the Court that the loss of such advantages as he enjoys from his privilege of access to the canal or to the road, however valuable, will not entitle him to compensation under the statute. I am not prepared to say that the Railway Company have established either defence now, and, indeed, as regards one branch of the claim they do not maintain that they have. If we had to decide the merits of the case, I should have thought that the Lord Ordinary had taken the proper course, because material facts are in dispute. But that shows that we should not grant the interdict which is craved. I think the rule laid down by the late Lord President in the case of *The Drumbarton Water Commissioners v. Lord Blantyre* (12 R. at p. 120) is applicable, that "We are not entitled to interfere with the action of the arbiter to the effect of preventing him from entertaining a claim which we do not ourselves at present clearly see our way to determine."

I am therefore of opinion with your Lordships that the Lord Ordinary's interlocutor

should be recalled, and the arbitration allowed to proceed.

The Court recalled the interlocutor of the Lord Ordinary and refused the note.

Counsel for Complainers—Dundas—Grierson. Agents—W. & J. Burness, W.S.

Counsel for Respondent—A. Jameson—Guthrie. Agents—Maconochie & Hare, W.S.

Thursday November 28.

FIRST DIVISION.

TOWN COUNCIL OF LANARK v. DISTRICT COMMITTEE OF COUNTY COUNCIL OF LANARK.

Public Health—Burgh—Parish—Joint Hospital—Parish partly Landward and partly Burghal—Transference of Powers of Parochial Board to County Council District Committee—Local Government Act 1889 (52 and 53 Vict. cap. 80).

A joint hospital was built by agreement between a town council and a parochial board, each of the contracting parties being entitled to the use of half the number of beds therein "for persons from their respective districts." The rights and duties of the parochial board were, by the Local Government Act 1889, vested in the district committee of the county council, whose "district" comprised a wider area than that controlled by the parochial board.

Held that the right of the district committee to send patients to the hospital was limited to that part of their district which had been under the control of the parochial board.

In 1887 the Town Council of the burgh of Lanark entered into an arrangement with the Parochial Board of the Parish of Lanark, the latter being the local authority under the Public Health Acts for that part of the parish of Lanark lying outwith the burgh, to provide a joint hospital. A site was purchased, and a hospital erected thereon. The parties, in 1889, entered into an agreement setting forth their respective rights, interests, and liabilities in the hospital. The agreement was entitled as being between "the Provost, Bailies, and Town Council of the Royal Burgh of Lanark, being the local authority under the Public Health Act of 1867, *on the one part*, and the Parochial Board of the parish of Lanark, being the local authority of the said parish under the said Act, *on the other part*;" and the preamble ran as follows:—"The said parties, considering that it had become necessary for them to provide for their respective districts, a hospital or place for the reception of persons suffering from sickness, fever, and infectious diseases or disorders; that, under the powers conferred upon them by section thirty-nine of the said Act, they resolved to combine for the purpose of providing a common hospital,

which should be the hospital for each party." The management of the hospital was vested in a committee, composed of members of both the contracting parties, to be called "The Lanark Fever Hospital Joint Committee." By the second article of the agreement it was provided:—"Second. Each of the parties shall be entitled to the use, for persons from their respective districts, of one-half the number of beds, and, in the event of either of the parties requiring a larger number of beds, and these being unoccupied, such party shall be entitled to use such other unoccupied beds as they shall require." It was further provided by the eighth article that "each party shall bear one-half of the cost of the site, of erecting and maintaining the buildings, and of the salary of the permanent clerk." By the 9th clause it was provided that "the cost of removal to and from, and the nursing and maintenance of each person in the hospital, shall be defrayed by the authority from whose district the patient shall have been received, as the same shall be fixed by the committee."

In virtue of the Local Government (Scotland) Act of 1889, the County Council are vested with the whole powers and duties of the local authority, under the Public Health Acts, of parishes so far as within the county; and by section 17 (2) of the Act, the District Committee are to be the local authority under the Public Health Acts, with all the rights, liabilities, and duties of the County Council, within each district of a county constituted in terms of the Act. With reference to the application of the Act to Lanarkshire, it was enacted that the Upper Ward should be a district for public health purposes. Within the area controlled by the Upper Ward District Committee there lies the landward part of the parish of Lanark, and accordingly the Upper Ward District Committee, as successors of the parochial board, furnished the members to the Hospital Committee previously drawn from the parochial board, and made use of the beds in the hospital, the number of which is eight. There are 22 parishes within the area administered by the District Committee, comprising a population of 38,500, the population of the district administered by the Town Council of Lanark being 4599, and that of the landward part of the parish 2531.

The District Committee having found the joint hospital too small for the accommodation of patients from their district, became desirous of enlarging it, to which the Town Council objected.

Accordingly a special case was raised by, *first*, the Town Council of the Burgh of Lanark, and *second*, the District Committee, for the purpose of fixing the rights of parties under the agreement of 1889.

The question for the consideration of the Court was—"(1) Are the second parties entitled, without the consent of the first parties, to send patients for treatment to the said joint hospital from any part of their district; or, is the right of the second parties to send patients limited to that part of the parish of Lanark lying outwith

and beyond the parliamentary area of the burgh of Lanark?" The second parties maintained the former, and the first parties the latter proposition.

Argued for the second parties—The agreement was to the effect that the different local authorities were to send patients from their "districts." The County Council came in place of the parochial board, taking its rights and liabilities, and carrying out its contracts. The "district" under the control of one of the parties to the contract had been enlarged, but that was no reason why the interpretation of "district" should be changed so as to limit it to a fraction of the district now controlled by this local authority. The result of thus limiting the meaning would be that the Act of 1889 would create an anomaly by carving out an area different from any of the units contemplated. The Act spoke all through, not of "parishes" but of districts—Local Government Act 1889, secs. 90, 101, sub-sec. 2. There was nothing inequitable in extending the area, since the contracting parties were each entitled only to half the number of beds in the hospital unless any of the remaining beds were vacant.

Counsel for the first parties were not called upon.

At advising—

LORD PRESIDENT—By the Local Government Act 1889 the County Council (which acts through its district committees) has succeeded to the rights and liabilities of each parochial board within its bounds. In this instance the District Committee of the Upper Ward of Lanarkshire took the place of the Parochial Board of the Parish of Lanark. The result of that transference was to surrogate and substitute the District Committee in place of the parochial board in all contracts which were current, and accordingly the District Committee are entitled to such fulfilment, and no other, as the parochial board would be entitled to under any contract into which they had entered.

Now, turning to the contract here in question, we find that it is an arrangement by which a hospital was to be available for the sick both of the burgh and of the landward part of the parish of Lanark. And the agreement seems to me very explicitly and definitely to carry out that object. The title of the agreement is part of the instrument; and from the title it appears that the parties are the royal burgh, who, of course, is also local authority within the burgh, and the parochial board, who at this date—for it was in 1889—were the local authority for the landward part of the parish. Now, such is the title of the parties to this agreement. And the agreement begins—"The said parties, considering that it had become necessary for them to provide for their respective districts an hospital or place." Now, I call attention to the word "districts," for it manifestly is used as being a common or neutral term, applicable alike to the burgh and to the parish. In short, by "district" is meant the area of jurisdiction of the two authorities who have been mentioned.

Well, then, the second article of the agreement provides that "Each of the parties shall be entitled to the use, for persons from their respective districts, of one-half of the number of beds."

Now, if anyone feels doubt as to what the district is, he has only to look back to the title, and he finds that it is the parish, because they are described as the "local authority of the said parish." Accordingly, it is matter of stipulation that the common use is to be for persons from those two stated districts.

Well, now, this transference under the Local Government Act takes place, and the District Committee comes and asks fulfilment of the agreement in this extraordinary sense—they say, "our district now has come to be, not one parish, but twenty-two parishes, and we claim fulfilment of this agreement with the parish of Lanark, in the sense of entitling all the other twenty-one parishes to send their sick to this hospital."

What possible foundation is there for this contention? The agreement, as I have said, plainly refers, not to any and whatsoever persons who may, in the future and by future legislation, come under the jurisdiction of the local authority for the time, but to persons who are in that specified district or parish of Lanark. That seems to me to be completely conclusive. I can imagine—although it would be a very improvident bargain—that some very speculative town council might have resolved that, whatever legislative changes might take place, the hospital should always be available to the whole area administered by the same authority as the landward part of the parish.

That is not what is provided here. A much more reasonable provision is made. The two parties to the agreement looked to the area of the parish, and provided for it. Therefore, I think the proper way of dealing with this case is, to find that the rights of the second parties to send patients is limited to that part of the parish of Lanark lying outwith and beyond the parliamentary area of the burgh of Lanark.

LORD M'LAREN—I am of the same opinion. If Parliament had provided that the Local Government Board of Scotland should be the controlling sanitary authority, with power to appoint agents to carry out agreements throughout the country, I scarcely think it would be maintained that this hospital at Lanark was to be used for the whole of Scotland; but I see no difference except a difference of degree between the actual case and the case which I put.

LORD ADAM and LORD KINNEAR concurred.

The Court affirmed the second alternative of the question.

Counsel for the First Parties—Lord Advocate Sir C. Pearson, Q.C.—M'Lennan. Agents—Maconochie & Hare, W.S.

Counsel for the Second Parties—H. Johnston—C. K. Mackenzie. Agent—Arthur B. Paterson, W.S.

Friday, November 29.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.]

WATSON v. WATSON.

Parent and Child—Husband and Wife—Process—Action of Divorce—Aliment—Conjugal Rights Amendment Act 1861, sec. 9—Minority.

In actions of divorce the Court has no jurisdiction to regulate the custody, maintenance, and education of the children of the spouses except under the Conjugal Rights Amendment Act 1861, sec. 9, and such jurisdiction as is conferred upon them by that section is confined to children in pupillarity.

In an action of divorce brought by a wife against her husband the Lord Ordinary pronounced decree of divorce; of consent found the pursuer entitled to the custody of the two children of the marriage, and ordained the defender to pay an annual sum for the aliment of the children, who were then in pupillarity. Five years after the younger of the two children had attained minority the pursuer awakened the action, and craved the Court to increase the amount of the aliment to a sum sufficient to complete the education of the children for the medical profession. The defender also lodged a minute in the action craving the Court to put an end to the aliment hitherto paid by him, on the ground that the children were now able to support themselves, and that he himself was in a condition of absolute want.

Held that both motions must be refused as incompetent in such an action.

On 9th February 1880 Mrs Eliza Catherine Liddell or Watson raised an action of divorce against her husband Hugh Watson. The summons contained conclusions for the custody and aliment of the children of the marriage.

On 10th March 1880 the Lord Ordinary (CRAIGHILL) pronounced an interlocutor, in which, after granting decree of divorce, he proceeded:—"Further, of consent of the defender, finds the pursuer entitled to the custody and keeping of Andrew Gordon Watson and John Liddell Watson, the children of the pursuer and defender, for the present, and until the further orders of the Court. . . . Ordains the defender to make payment to the pursuer of the sum of £75 sterling yearly, as aliment of the said Andrew Gordon Watson and John Liddell Watson, the children of the marriage of the pursuer and defender . . . so long as the said children shall remain in the custody of the pursuer. . . . Reserving to either the pursuer or the defender at any time to move the Court in the present action to increase or diminish the aliment now awarded to the pursuer for said children should a change of circumstances occur rendering such an increase or diminu-