

Saturday, February 20.

FIRST DIVISION.

COUNTY COUNCIL OF ELGIN *v.* TOWN  
COUNCIL OF BURGH OF ELGIN.

*Local Government—Police—Consolidation of County and Burgh Police—Police Act 1857 (20 and 21 Vict. c. 72), sec. 61—Local Government (Scotland) Act 1889 (52 and 53 Vict. c. 50). sec. 18, sub-sec. 5.*

The Police Act 1857 by section 6 provides that where an agreement has been entered into between the town council of a burgh and the commissioners of supply of a county for the consolidation of the burgh and county police, the magistrates and council of the burgh shall have power annually to appoint to be members of the police committee one or more of their number as may have been fixed in such agreement, who should have "the like powers as members of such committee with the members appointed by the commissioners of supply."

The Local Government Act 1889 vests in the county council the powers of the commissioners of supply as regards the making of such consolidations, and provides by section 18, sub-section 5, that the standing joint-committee appointed in terms of this section shall be deemed to be the police committee under the Police Act 1857.

The standing joint-committee is vested with other duties besides those connected with police administration.

Hold that under an agreement for consolidation subsequent to the Act of 1889, it is competent for burgh representatives to be members of the standing joint-committee when acting as a police committee, but that such members are not entitled to take part in the other business of the committee, or to vote in the appointment of its permanent chairman.

In March 1893 an agreement was entered into between the County Council of Elgin and the Provost, Magistrates, and Town Council of the Royal Burgh of Elgin, whose population exceeded 7000, to the effect that the police establishments of the county and burgh should be consolidated.

The minute of agreement provided:—*"Finally.* It is hereby agreed upon that the second party shall have right to appoint three of their number to be members of the Standing Joint Committee of the County of Elgin, but shall not be entitled to vote or act on any matters or things under section 18, sub-sections 6 and 7, of the Local Government (Scotland) Act 1889."

This agreement was duly carried out, and since its date the burgh of Elgin has not maintained a separate police force, and has sent three representatives to the Standing Joint Committee, who are regularly sum-

moned to and attend the meetings at which police business is dealt with.

The Police Act 1857 provides by section 61 that when a burgh has agreed to consolidate its police with the county police the magistrates and council of the burgh should have power annually to appoint "to be members of the police committee hereinbefore mentioned one or more of their number as may have been fixed in such agreement, who, while the agreement subsists, shall have the like powers as members of such committee with the members appointed by the commissioners of supply."

The following provisions are contained in the Local Government Act 1889:—

"97. *Saving for divisions and consolidation arrangements under 20 and 21 Vict. cap. 72.*—Nothing in this Act contained shall be held to abrogate or repeal . . . the consolidations of county and burgh police establishments which have been made under and by virtue of the powers contained in sections 61 and 63 of the same Act, or the power of making such divisions or consolidations after the passing of this Act or the mode of assessing therefor."

"11. *Transfer to county council of powers of commissioners of supply, road trustees, &c.*—Subject to the provisions of this Act there shall be transferred to and vested in the council of each county, on and after the appointed day, or at such times as are in this Act in that behalf respectively specified, (1) The whole powers and duties of the commissioners of supply, save as hereinafter mentioned." The proviso does not affect the powers of making consolidation.

"18. *Standing joint-committee of county council and commissioners of supply for certain purposes.*—(1) For the purposes in this section mentioned, and with respect to the powers of borrowing transferred or conferred by this Act or any other Act, there shall be a standing joint-committee of the county council and the commissioners of supply, consisting of such number of county councillors, not exceeding seven, as shall be appointed by the county council annually at their meeting in the month of May, and such number of commissioners of supply, not exceeding seven, as shall be appointed by the commissioners of supply annually at their meeting on the same day. Six shall form a quorum of the committee, and the committee may act notwithstanding any vacancy upon it. (2) The Sheriff of the county, or in his absence one of his substitutes to be by him nominated for that purpose, shall be *ex officio* a member of the said standing joint-committee, and the committee shall elect one of their own number to be chairman thereof. (5) The standing joint-committee appointed in terms of this section shall, after the appointed day, be deemed to be the police committee under the Police Act 1857 (20 and 21 Vict. cap. 72), and shall have all the powers of such committee and be subject to all the provisions of that Act

except in so far as these provisions are expressly modified by this Act. (6) No works involving capital expenditure (in this Act referred to as capital works) shall be undertaken in any county or any district thereof, under or in pursuance of powers transferred or conferred by this Act or any other Act without the consent in writing of the standing joint-committee appointed in terms of this section. (7) Capital works shall include the erection, rebuilding, or enlargement of buildings, the construction, reconstruction, or widening of roads and bridges, the construction or extension of drainage or water supply works, and shall also include the acquisition of land or of any right or interest or servitude in or over land or water for the purpose of any capital work."

A special case was presented to the Court by, first, the County Council of Elgin, and second the Magistrates and Town Council of the burgh, in which the following questions were submitted:—“(1) Are the second parties entitled to appoint three of their number to be members of the Standing Joint-Committee of the county of Elgin when acting as the Police Committee under the Police Act 1857? and (2) If the preceding question is answered in the affirmative, are the members so appointed by the second parties entitled to vote in the election of the chairman of the Standing Joint-Committee, or at any rate to do so when it is acting as the Police Committee under the Police Act 1857?”

It was contended by the first parties that the provision of section 61 of the Police Act 1857 for the representation of the burgh upon a police committee could not apply to the Standing Joint-Committee under the Act of 1889, which had important duties imposed by section 18 of that Act irrespective of police administration and affecting the interests of the county only. They contended further that the composition of the Standing Joint-Committee was laid down by section 18 (1) and (2) of the last named Act, and no one could be on the committee for any purpose whatever except those mentioned in said section. “Further, the Local Government Act contains exhaustive provisions with reference to the representation of burghs in county councils, and the first parties hold that the proper course is for the burgh to be represented on the County Council under section 8, which by subsection (3) thereof is made to apply to ‘any burgh which contains a population of more than 7000, but does not maintain a separate police force.’ The burgh representatives on the County Council would then be eligible for election to the Standing Joint-Committee in the same way as the other county councillors. . . . In these circumstances, the first parties maintain that the clause in the agreement entitling the second parties to appoint three of their number to be members of the Standing Joint-Committee was *ultra vires*, and that it cannot receive effect. Alternatively, the first parties maintain that if the police commissioners are entitled to be directly represented on the Standing Joint-Com-

mittee, these representatives are not entitled to vote in the election of the chairman of the Standing Joint-Committee.”

The second parties maintained that they were entitled to be represented on the Standing Joint-Committee when acting as a police committee under the Police Act 1857, although they took no part in its other business.

At advising—

LORD PRESIDENT—This case has been very well argued by all the counsel whom we have heard, but I cannot say I think it presents any difficulty for decision. In the 61st section of the Police Act 1857 it was declared to be lawful for the commissioners of supply, acting in treaty with the town council of a burgh, to agree upon the consolidation of the county and burgh police forces. In that same section it was provided that as a term of the consolidation agreement it should be arranged that one or more members of the town council should be appointed as members of the police committee of the county and sit in that capacity. Now, the question we have to consider is, how far that power has been kept alive and transferred to the County Council under the Act of 1889. It seems to me that this has been done with what, perhaps fortuitously, is a remarkable degree of clearness. First of all, as to the power itself, it is expressly carried forward by section 97, because nothing the Act contains is to be held to abrogate the power of making consolidations after the passing of this Act. Next I inquire, who then has the power that is carried forward? And the answer to that is plainly to be found in sec. 11, sub-sec. 1, by which there are transferred to the County Council the whole powers of the Commissioners of Supply “save as hereinafter mentioned.” “Save as hereinafter mentioned” has no application to the present question,

Well, then, the next question is, shall the powers so transferred have effect in altering the constitution of the committee to which the police forces are entrusted? That question, again, is specifically answered in section 18, sub-section 5, which says that the standing joint-committee shall be deemed to be the police committee under the Police Act 1857, and shall be subject to all the provisions of that Act. One of the provisions of that Act was that there might be introduced into the police committee one or more gentlemen from the consolidating burgh. And therefore it seems to me that the Act has in those three several appropriate places distinctly made plain, first, that the power of consolidation is to remain; second, by whom it is to be exercised; and third, with what effect upon the police committee. These considerations seem to me to be decisive of the first question in this case, but it is well to attend to the working of the system which is introduced, and the only difficulty in the way of giving free effect to those express provisions is the fact that the new police committee is not merely the police committee,

but is the standing joint-committee specially constituted, not merely for police purposes, but for other purposes which are in the view of the Act of very high importance. The standing joint-committee has the very responsible duty of determining whether works involving capital expenditure which have been decided upon by the county council shall be authorised, and they have also the power of determining whether the borrowing powers of the county council shall or shall not be exercised. But then it seems to me that here again the phraseology of the statute clears the difficulty which is thus created. It is quite clear that it would be an anomaly, if not an impossibility, to hold that under the treaty of consolidation relating solely to police, there should be seated on the standing joint-committee for all purposes these three gentlemen from the burgh, with power to interfere with matters with which they have no concern whatever—whether works of capital expenditure, not within but outside the burgh, and in the county, should be authorised, and whether the county is to be burdened with loans. As I have said, the section clears that, I think, in a very distinct way. It does not say that the standing joint-committee shall be for all purposes a police committee; that would be preposterous—that it should be deemed to be the police committee when sitting to consider whether a loan should be authorised. The true reading is, that as it is intended to vest this body with the powers given to the police committee under the Act of 1857, for the effectuation of these powers it shall be deemed to be the police committee under the Act of 1857. Not that it is, but that it shall be deemed to be the police committee to execute police functions. Now, when we have that before us, it becomes plain that the power which the Town Council now have is not to introduce people to sit upon the standing joint-committee in its general functions, but to place them on it when executing its police duties—that, in short, the standing joint-committee is, to use an intelligible phrase, in police business the acting police committee—and then these gentlemen come into their proper place. Now, that is exactly what this agreement has done, and I think the agreement is very well framed, because it expresses what I think would have been implied by law in an agreement which lacked that expression. It says that they shall not be entitled to vote or act on any matters or things under the clauses relating to capital expenditure. I agree with the criticism which was made by Mr Campbell in opening, that the draftsman had better have gone on to have referred to borrowing, but I make bold to say that the law would do what the draftsman omitted to express, that these gentlemen would have no right under this agreement to sit on questions relating to the authorisation of loans. Therefore I am in favour of answering the first query in the affirmative. As regards the second, the process of reasoning by which I arrive at that affirmative answer

of the first compels me to limit my affirmation of the second to the second alternative, because, holding as I do that these gentlemen are not introduced into the general business of the Standing Joint-Committee, I must go further and say that when the Standing Joint-Committee meets for its general affairs they have no place, and as one of the first duties is to elect a chairman, and that is not specifically a police matter, as that is a power which they exercise, not under the Act of 1857, but under the Act of 1889, sec. 18, sub-sec. 2, the burgh members have no right to interfere. But it is consistent with that that I should hold that if the chairman of the Standing Joint-Committee should be absent when police business is being transacted, the burgh members have a perfect right to take part in the appointment of a chairman for the day, that being part of the business before the police committee.

These are my views upon this matter, and I should propose to your Lordships to give judgment accordingly.

LORD M'LAREN and LORD KINNEAR concurred.

LORD ADAM was absent.

The Court answered the first question in the affirmative, and affirmed the second alternative of the second question.

Counsel for the First Parties—Ure—W. Campbell. Agents—John C. Brodie & Sons, W.S.

Counsel for the Second Parties—Asher, Q.C.—C. D. Murray. Agents—Boyd, Jame-son, & Kelly, W.S.

Tuesday, February 23.

## SECOND DIVISION.

[Lord Kincairney, Ordinary.]

### MACFARLANE v. MACFARLANE'S TRUSTEES.

*Agent and Client—Settled Account—Trustee and Beneficiary—Law Agent's Account—Right of Beneficiary to Insist on Taxation of Business Account of Trust after Discharge.*

The doctrine of settled account does not apply between trustees and a beneficiary, so as to prevent the latter, after he has discharged the trustees and their law-agent, from insisting upon taxation of the agent's business accounts, and this may competently be done in an action by him against the trustees for count and reckoning without reduction of the discharge.

This was an action at the instance of David M'Farlane, boilermaker, Dundee, against the testamentary trustees of his late father, concluding for reduction of a discharge dated 1st October 1895, whereby the pursuer had discharged the trustees of their actings and intromissions in