

lift the sum of £8 sterling consigned in the hands of the Clerk of the Sheriff Court.

Counsel for Pursuer—Gunn—Adam.
Agents—Mackay & Young, W.S.

Counsel for Defender—Salvesen—Craigie.
Agent—J. Pearson Walker, S.S.C.

Friday, October 27.

FIRST DIVISION.

WISHAW BURGH COMMISSIONERS v. CLELAND CO-OPERATIVE SOCIETY.

Burgh—Slaughterhouse—Slaughterhouse within Two Miles of Burgh—Burgh Police (Scotland) Act 1892 (55 and 56 Vict. cap. 55), sec. 284—Public Health (Scotland) Act 1897 (60 and 61 Vict. cap. 38), sec. 32.

The Burgh Police (Scotland) Act 1892 provides, section 284—“That where before the passing of this Act, or within one year thereafter, any burgh shall have erected slaughterhouses, no other slaughterhouse shall be erected within the distance of two miles from the existing boundaries of such burgh, unless either it is erected with the consent of the commissioners of such burgh, or is situated within the area of another burgh.”

The Public Health (Scotland) Act 1897, sec. 32, gives power to the local authority to grant a licence to carry on the business of a slaughterhouse in specified premises.

Held that burgh commissioners who had erected a slaughterhouse under the provisions of the Burgh Police Act were entitled to interdict the use of premises within two miles for that purpose, although these premises had been licensed by the local authority.

The Commissioners of the burgh of Wishaw brought this action in the Sheriff Court at Hamilton against the Cleland Co-operative Society, the prayer being “To interdict the defenders from erecting within two miles from the boundaries of the burgh of Wishaw, the same not being within the boundaries of any other burgh, a slaughterhouse, and from using any building within the said distance from the boundaries of the burgh of Wishaw, such building not being within the boundaries of any other burgh, any premises for the slaughter of cattle and sheep and other animals, without the consent of the pursuers.”

The Burgh Commissioners averred that they had erected a slaughterhouse for Wishaw, which fell under the provision of section 284 of the Burgh Police (Scotland) Act 1892 (quoted in rubric), and that the Co-operative Society were engaged in erecting a slaughterhouse on a site within two miles of the boundaries of Wishaw.

The Co-operative Society admitted that they were erecting a slaughterhouse on the site mentioned, but denied that it was

within two miles of Wishaw. They averred that they had obtained the sanction of the District Committee of the County Council of Lanarkshire, acting as the local authority under section 32 of the Public Health (Scotland) Act 1897.

Section 32 of that Act, after prohibiting the establishment of certain businesses, including slaughterhouses, without sanction, provides (sub-section 2)—“The local authority shall give their sanction by order” . . . “and where the local authority grants or withholds such sanction, any person aggrieved may appeal to the Board, whose decision shall be final.”

The defenders pleaded, *inter alia*—“(1) No jurisdiction. (2) Action incompetent. (3) The defenders having received the sanction of the local authority to establish the said business, they ought to be assoilzied, with expenses.”

The Sheriff-Substitute (MARK DAVIDSON) on 31st October 1898 repelled the first and second pleas-in-law for the defenders and allowed a proof.

Note.—“The defenders take objection to the competency of the action on the ground that they have a right to erect a slaughterhouse from the district committee of the county council, which is by the Act of 1897 constituted a Court; and that the pursuer’s proper course is to appeal against their decision in the manner provided by the Act. I do not decide on the question whether a Court is constituted by an Act or not, though I think such a proposition would be difficult to establish. But whether the local authority be a Court or not, I am quite clear that the jurisdiction of this Court, in a matter of the kind under discussion, is not excluded. The Act of 1892 distinctly prohibits the erection of a slaughterhouse within two miles of a burgh which has a slaughterhouse of its own, and no one has any more right to erect a slaughterhouse in such a position than he has to build a cottage on another man’s ground, or to carry on business in another man’s shop, without his consent. The magistrates of a burgh are a properly constituted Court for licensing the sale of intoxicating drink, but if they happened to grant a licence to a person to sell drink in premises to which he had no right, that would not be a bar to his ejection at the instance of the true owner, nor would the latter require to appeal to a bench of justices in the Confirmation Court. The case of *Kennedy v. Wyse*, 17 R. 1036, on which the defenders rely, does not seem to me to be in point. There were two grounds for the decision in that case—that the defender was asked to deliver articles of which he could not have possession, and that the matter was *res judicata*. These are not pleas in any way applicable to this case.”

The Co-operative Society appealed to the Sheriff (BERRY) who on 23rd December 1898 adhered.

A remit was made to Mr Gavin Paterson, architect, Hamilton, to report on the distance of the defenders’ slaughterhouse from the boundaries of the burgh of Wishaw.

On his reporting that it was within two miles the Sheriff-Substitute on 13th June 1899 granted interdict as craved.

The Co-operative Society appealed to the Court of Session.

Argued for the appellants—The action was an attempt to review the decision of the local authority. The Public Health Act provided that appeal should be made to the Local Government Board, and therefore the Sheriff had no jurisdiction. The local authority was a Court co-ordinate with that of the Sheriff, and the Sheriff had therefore no power to review its decision. As the proposed slaughterhouse was outside Wishaw, the Commissioners had no interest to object to it. They could prevent the butchers of Wishaw resorting to it—*Derrick v. Black*, December 10, 1889 17 R. J.C. 9.

Counsel for the respondents were not called upon.

LORD PRESIDENT—The Act of 1892 established, in favour of slaughterhouses erected under its provisions, a monopoly within two miles. The monopoly had been established by the section preventing the importation of slaughtered animals into a burgh, but the Act went on to say that it should not be lawful to erect a slaughterhouse within two miles of the burgh. It is perfectly clear that these provisions gave a right and a patrimonial interest to the owners of existing slaughterhouses to prevent the erection of others within that limit, and that that carries with it the right to apply to the Court in the ordinary way to enforce it. So that considering the question on the Act of 1892 and apart from the Act of 1897 I have no doubt.

What then does the Public Health Act of 1897 do? It does not make any change in the law prohibiting the erection of slaughterhouses; it leaves that where it was, but it provides that the local authority may grant licences to carry on that business of slaughtering. From the terms of the Act it is quite clear that the local authority or county council in so doing are exercising just the sort of authority which is exercised by the magistrates under the licensing statutes. Then the analogue to this case in the sphere of licensing law would be found if there were some previous Act of Parliament prohibiting the erection of public-houses within a certain area, and it is clear that in such a case parties interested might have recourse to the ordinary courts to enforce their monopoly. The licensing authority has no power to override or relax the statutory prohibition. They may assume, when asked to license anyone to carry on this business in a particular slaughterhouse, that the slaughterhouse has been legally erected. If it has not been legally erected, their licence has no effect to legalise it. These considerations apply equally to show that the local authority and the county council on appeal do not exercise any jurisdiction which can possibly oust the Sheriff from entertaining this interdict.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court dismissed the appeal.

Counsel for the Appellants—H. Johnston, Q.C.—Watt. Agents—Clark & Macdonald, S.S.C.

Counsel for the Respondents—Sym. Agent—D. Hill Murray, S.S.C.

Friday, October 27.

FIRST DIVISION.

[Lord Kincairney, Ordinary.

UNITED COLLIERIES v. GAVIN.

Process—Workmen's Compensation Act 1897—Sheriff—Duty of Sheriff as Arbitrator—Decree by Default—Reparation.

At a diet of proof fixed by a Sheriff as arbitrator in a claim under the Workmen's Compensation Act 1897, at which the only question at issue was the amount of the compensation to be found due, the pursuer was present with witnesses but no appearance was made for the defenders. The Sheriff, without taking evidence, gave decree for the pursuer in respect of no appearance for the defenders. Suspension of this decree granted (*rev. judgment of Lord Kincairney, Ordinary*), on the ground that the Act laid upon the Sheriff as arbitrator the duty of fixing compensation after such investigation as might be necessary in the circumstances of each case, and it was therefore incompetent for him to grant decree by default.

Brian Gavin, pitheadman, Baillieston, commenced proceedings in the Sheriff Court of Lanarkshire at Airdrie, to obtain compensation under the Workmen's Compensation Act 1897 for an accident suffered by him while in the employment of the United Collieries, Limited.

The defenders pleaded serious and wilful misconduct on the part of Gavin, but ultimately withdrew that plea, and the Sheriff-Substitute (Muir) appointed a diet of proof for 22nd December 1898.

At the proof the agent for the pursuer was present, with four witnesses on his behalf, but no appearance was made for the defenders. The Sheriff-Substitute, without taking evidence, pronounced the following interlocutor:—"Finds, in terms of the prayer of the petition, that compensation is due to the pursuer by the defenders, and ordains the defenders to pay to the pursuer compensation at the rate of 14s. 6d. per week from and after the 10th day of August 1898, and to continue the said weekly payments until the further orders of Court, with the legal interest on each weekly payment from the time the same falls due till paid." With regard to their non-appearance the defenders made certain averments as to an alleged undertaking by the Sheriff to send