ground on which the Inland Revenue attempt to justify the assessment is the part of the schedule of the Stamp Act which says "Deed of any kind whatsoever not described in this schedule, 10s.'

Now the Stamp Act does not define what a deed is, and I think it unnecessary to consider whether the word "deed" is there used as a term of art, because in any case it is only in England that it is so used. I am quite content to take "deed" as being used in the popular sense. The statute has not defined what a deed is, and I am not tempted to define it either; but I am certainly clearly of opinion that, whatever is a deed, this acceptance of trust is not, and I do not suppose that anyone could be found in the legal profession who would ever dream of calling it any such thing.

The acceptance by trustees, in usual practice, is made by the first minute in the trust sederunt book. Here they thought it would be a good thing to write it on the trust settlement, and in order, I suppose, to allow the trustees not to have the trouble of writing it holograph, it was signed and tested. To engross it in the manner I have described upon the trust-disposition was quite unnecessary but quite innocuous; and to suppose that that constituted the acceptance a deed is contrary to ordinary common sense and common parlance.

An attempt was made—as an attempt, of course, had to be made—by the learned counsel arguing for the assessment to say that this was a deed because it was something which constituted a new legal relation. Well, it did constitute a legal relation. But that attempted definition will never do. According to that you could not endorse an ordinary bill of exchange without a 10s. stamp, because you undoubtedly constitute a new legal relation when you endorse a bill of exchange. And many other examples might be suggested. According, to that argument, if you wrote a letter accepting sombody else's offer, you would have to put a 10s. stamp, on it, for it would constitute a new legal relation.

I am of opinion that the assessment is wrong, and that the appeal should be allowed.

LORD KINNEAR—I am entirely of the same opinion, and I agree with your Lordship that for the purpose of this case the word "deed" is a word of ordinary language because it is not in our system a term of art. I agree also that it is unnecessary to attempt any exact definition of what the word "deed" means; but I take the definition which was suggested in the ingenious argument for the Inland Revenue, in which it was said that a deed was any formal—instrument which creates a legal relation. Now this writing is certainly formal—indeed it is unnecessarily formal and cumbrous for the purpose for which it is made, but it does not by itself create any legal relation whatever. Taken by itself it is nothing; it has no effect or meaning at all. Its whole force depends upon its reference to the foregoing trust-disposition and settlement, which is undoubtedly a deed in the ordinary sense in which we use the word. It is an acceptance of the office conferred by the trust-disposition and settlement. It is a mere note of acceptance which might have been made in any form, or which might have been dispensed with altogether if the persons named as trustees were willing to act, because their attendance at meetings and a note to the effect that they had been present was quite enough.

It is true, of course, that the trust-disposition does not in itself constitute the particular persons as trustees until they do accept; but, so far as anything like a deed is concerned, it is that instrument, and that instrument alone, which creates the trust. The fact of acceptance may be proved by writing or by parole, and if by writing, by any informal note under the hand of a trustee or by any note made by the agent of the trust at a meeting of the trustees.

I therefore agree with your Lordship that the assessment here was wrong and that the appeal should be allowed.

LORD MACKENZIE—I am entirely of the same opinion.

LORD JOHNSTON was not present.

The Court pronounced this interlocutor—

". . . Sustain the appeal . . . : Find the instrument in question is not chargeable with any stamp duty: Order the said Commissioners to repay to the appellants the sum of ten shillings, being the amount of the duty paid by the appellants. . . ."

Counsel for the Appellants—Clyde, K.C.—Macquisten. Agents—Morton, Smart, Macdonald, & Prosser, W.S.

Counsel for the Respondents—Solicitor-General (Anderson, K.C.)—J. A. T. Robertson. Agents—Sir Philip J. Hamilton Grierson, Solicitor of Inland Revenue.

Thursday, June 19.

SECOND DIVISION.

[Sheriff Court at Glasgow.

M'GOWAN *v.* CITY OF GLASGOW FRIENDLY SOCIETY AND ANOTHER.

Friendly Society—Arbitration-Jurisdiction—Dispute between Member and Society—Friendly Societies Act 1896 (59 *and* 60 *Vict. cap.* 25), *sec.* 681.

The Friendly Societies Act 1896 enacts:—Section 68 (1)—"Every dispute between (*a*) a member . . . and the society . . . shall be decided in manner directed by the rules of the society or branch, and the decision so given shall be binding and conclusive on all parties without appeal, and shall not be removable into any court of law or restrainable by injunction; and application for the enforcement there-

of may be made to the Sheriff Court of the county."

The rules of a friendly society registered under the Friendly Societies Acts provided, *inter alia*—"All disputes between the society and any member as such . . . which cannot be settled in the Small Debt Court, may be determined by arbitration." A member having brought an action against the society and A B, another member, for declarator that the pretended election of the latter to the board of management of the society was null and void in respect that under the rules he was ineligible by reason of being more than ten weeks in arrears with his subscriptions, the defenders lodged defences in which they denied that A B was in arrears as stated, and pleaded that the Court had no jurisdiction and that the action was incompetent. *Held* that, in respect that the pursuer's complaint was that the society had acted in breach of its rules, the jurisdiction of the Court was not excluded.

Friendly Society—Sheriff—Process—Reduction—Action of Declarator that Delegate Invalidly Elected to Board of Management of Society—Reduction of Minute Recording Election as Delegate.

The rules of a friendly society provided that at each meeting for the election of delegates a minute of the proceedings should be transmitted to the secretary of the society. A member of the society having brought in the Sheriff Court an action of declarator that the pretended election of a delegate to the board of management of the society, for election to which only delegates were eligible, was null and void in respect that the delegate was in arrears with his subscription to an extent which under the rules debarred him from acting as delegate, *held* that it was not necessary to reduce the formal minute recording his election, and that the action could competently proceed in the Sheriff Court.

The Friendly Societies Act 1896 (59 and 60 Vict. cap. 25), enacts:—Section 9 (3)—"The rules of the society shall . . . contain provisions in respect of the several matters mentioned in the First Schedule to this Act." The First Schedule—"Matters to be provided for by the rules of societies registered under this Act. . . . (8) The manner in which disputes shall be settled."

Section 68 is quoted *supra* in rubric.

Arthur M'Gowan, residing at Grange Street, Kilmarnock, *pursuer*, brought an action against the City of Glasgow Friendly Society, registered under the Friendly Societies Acts, and having its registered office in Glasgow, and Robert Pirie, M.D., Glasgow, and others, the trustees of the Society, and also against Alexander Boag, hammerman, Dean Brae Street, Uddingston, *defenders*, in which he sought declarator that the pretended election of the defender Alexander Boag as a member of the board of management of the City of Glasgow Friendly Society, at the annual general meeting of delegates of said Society, held on adjournment on 13th December 1911, was null and void, in respect that under the rules of the Society he was ineligible as a delegate thereof, and therefore as a member of the said board of management, by reason of his being more than ten weeks in arrears with his subscriptions as a member of the said Society, both at the time of his pretended election as a delegate and also at the time of his pretended election as a member of the board of management of the said Society. The pursuer further craved interdict against the Society and its trustees summoning the defender Boag to meetings of the board of management as a member thereof, and paying him remuneration as a member, and also against the defender Boag acting as a member of the board of management.

The rules of the Society provided, *inter alia*—"To enable members to arrange for the management of the Society they shall be represented by delegates. No person . . . who is over 10 weeks in arrears . . . shall be eligible to act as a delegate.

"Each meeting [for the election of delegates] shall elect a chairman and a secretary who shall immediately after the close of the meeting transmit to the secretary of the Society a minute of the proceedings signed at the meeting by the chairman. . . .

"The delegates shall elect from among themselves a board of management consisting of nine members. . . .

"A member shall vacate office by ceasing to be a member of the Society, but not by ceasing to be a delegate.

"[The secretary] shall call and attend all meetings of the Society, of the board of management, and of the committees, and engross minutes of the proceedings in the minute books. Each minute shall be signed either by the chairman who presided at the meeting or by the chairman of the meeting at which it has been passed as correct.

"All disputes between the Society and any member as such . . . which cannot be settled in the Small Debt Court, may be determined by arbitration, and the following regulations shall apply to all arbitrations under the rules of the Society.

"The arbiter shall be appointed by the Sheriff or Sheriff-Substitute where the applicant for arbitration resides, after he has consigned . . . as security for the arbiter's fee the sum of £1, 1s. where the amount in dispute does not exceed £20 or £3, 3s. in all other cases."

The defenders lodged separate defences, in which they denied that the defender Boag was in arrears with his subscriptions to the extent averred by the pursuer. Both defenders pleaded (1) No jurisdiction; (2) the action is incompetent.

On 13th June 1912 the Sheriff-Substitute (BOYD) repelled, *inter alia*, the above pleas and allowed a proof.

The defenders appealed to the Sheriff

(GARDNER MILLAR), who on 20th July 1912 recalled the interlocutor of the Sheriff-Substitute, found that the case for the pursuer was incompetent as stated, sustained the plea of the defenders as to the competency, and dismissed the action.

The pursuer appealed to the Court of Session, and argued—The rule referring disputes between the Society and a member to arbitration was not imperative but permissive. Though there were cases where an imperative phrase had been construed as permissive, there was not the same authority for the construction of a permissive phrase as imperative. The cases of *Gray* v. *St Andrews and Cupar District Committees of Fifeshire County Council*, 1911 S.C. 266, 48 S.L.R. 409, and *in re Eyre and Corporation of Leicester*, [1892] 1 Q.B. 136, founded on by the defenders, were different, because the permissive words in those cases occurred in Acts of Parliament which conferred powers to be exercised for the public benefit by public authorities. Even if section 9 (3) and the first schedule of the Friendly Societies Act 1896 (59 and 60 Vict. cap. 25) made it imperative to make rules as to disputes, still such rules must be imperative in their terms before they could be enforced. Further, this was not a "dispute" in the sense of section 68 of the Act or in the sense of the rules. It was not a dispute between the Society and a member as such, but between the Society and a member complaining of something as *ultra vires*. The present action might have been brought by any member, and the lack of patrimonial interest would not have prevented him from enforcing the rules of the Society. The arbitration clause was not meant to apply to a non-domestic quarrel and did not apply when the Society was acting *ultra vires*. The only thing that the arbiter was empowered to do was to decern against some one for payment of money. If the grievance of the pursuer was founded on illegality or *ultra vires* he could get interdict in the civil courts, but he could not get interdict before the arbiter. As illustrations of the way in which the Courts regarded their jurisdiction in such cases as ousted or not, the pursuer referred to *Melrose* v. *Trustees of Edinburgh Savings Bank*, February 2, 1897, 24 R. 483, 34 S.L.R. 346, and *Symington's Executor* v. *Galashiels Co-operative Store Company, Limited*, January 13, 1894, 21 R. 371, 31 S.L.R. 253. In the present case the rules were permissive, referred to money, and could not possibly refer to *ultra vires* acts. The case of *Gall* v. *Loyal Glenbogie Lodge of the Oddfellows' Friendly Society*, July 14, 1900, 2 F. 1187, 37 S.L.R. 911, was not in point, because there the pursuer was asking a decree *ad factum præstandum*. Further, it was not necessary for the pursuer to reduce the minute recording the defender Boag's election as a delegate. The pursuer did not challenge his election as a delegate but merely his acting as such, and the minute was simply the record of a fact. In any event it was not necessary to reduce the minute recording the defenders' election to the board of management as that minute was not expressly required by the rules and might therefore be regarded as surplusage. The pursuer also referred to *Wilkinson* v. *City of Glasgow Friendly Society*, 1911 S.C. 476, 48 S.L.R. 504.

Argued for the defenders—The rules of the Society were wide enough to cover the present case, and the jurisdiction of the Courts was excluded. If by an Act of Parliament a society was directed to frame rules as to how a thing should be done, and the society in framing such rules used the word "may," then "may" meant "must"—*In re Eyre and Corporation of Leicester*, *cit. sup.*, and *per* Esher, M.R., at p. 142; *Gray* v. *St Andrews and Cupar District Committees of Fifeshire County Council*. *cit. sup.* The word "dispute" was not confined to money questions, but extended to other points of controversy. The present case was just such a dispute between the Society and a member as it was expressly contemplated should be referred to arbitration. No doubt if the Society was acting unconstitutionally the jurisdiction of the Courts would not be excluded—*Andrews* v. *Mitchell*, [1905] A.C. 78. There was, however, no unconstitutional action in the present case. The establishment of a breach of the rules was a condition-precedent of coming to the Courts. The case of *Andrews* v. *Mitchell*, *cit. sup.*, was different, because there the society was admittedly in default in transgressing its rules. If in that case the Society had maintained that they gave notice in accordance with the rules, the Courts could not have interfered. Pursuer's argument that the arbiter could not enforce his award would not apply, because under the Act the authoritative sanction of the Court might be obtained in the County or the Sheriff Court. An effective interdict against the Society could not be obtained in the Courts—*Gall* v. *Loyal Glenbogie Lodge of the Oddfellows' Friendly Society*, *cit. sup.* Further, the pursuer was bound as a preliminary to the present action to reduce the minute recording the defender Boag's election as a delegate. That minute was the warrant under the rules for the pursuer's election and must be recognised by the Society while it stood. The pursuer ought further to have reduced the minute recording the defender's election to the board of management.

LORD SALVESEN—In this case the pursuer seeks to have it declared that the pretended election of the defender Alexander Boag as a member of the board of management of the City of Glasgow Friendly Society was null and void *ab initio*, and he also seeks to interdict the Society and the trustees from summoning Mr Boag to the meetings of the board of management. The ground of the application is that Mr Boag at the date when he was elected a delegate to the Society, and also at the date when he was elected to the board of management, was not qualified according to the rules of the

Society to act either as a delegate or as a member of the board of management. The particular disqualification averred is that Mr Boag was more than ten weeks in arrear with his subscriptions.

The Sheriff-Substitute allowed a proof, but the Sheriff recalled his interlocutor and found that the case for the pursuer was incompetent as stated. I am unable to agree with the learned Sheriff in the view which he has taken or in the reasons by which he supports that view. The learned Sheriff seems to think that this is a domestic matter, and that as the Society has rules for settling disputes, which rules have the sanction of the statute under which they are framed, an appeal to the Law Courts is incompetent. If this were a mere pecuniary claim by a member of this Society under his policy against the Society for payment of the amount which he alleged to be due, I have no doubt that these rules, at all events so far as concerns amounts below £12, would have been operative. Whether if the sum were beyond £12, which was the statutory limit of the Small Debt Court jurisdiction at the date when these rules were passed, there would be an obligation on the member to submit his pecuniary claim to the arbiter, is a matter which we do not require, in the view I take of the case, to decide.

I think there is a great deal of force in the argument presented by Mr Moncrieff that the rules are intended by statute to be exhaustive, and that when the statute says that every dispute is to be decided in the manner directed by the rules of the Society the direction may be imperative although the rule is expressed in a permissive form. It is, however, I think, quite unnecessary to deal with that matter, because we are not here concerned with a question which has arisen under these rules at all.

The question which the pursuer seeks to raise is a constitutional question. In the case of *Andrews and Others* v. *Mitchell* ([1905] A.C. 78) it was held by the House of Lords that a member of a Friendly Society may competently raise such a question in the Law Courts, and indeed that the Law Courts form the only tribunal in which such questions can competently be raised. The point there was as to whether a friendly society had acted in accordance with its rules in expelling a member. If it had so acted the Courts had no jurisdiction at all in the matter. If it had not so acted it had acted unconstitutionally, and the decision was that the courts were not merely not incompetent to entertain the complaint but were alone competent to do so.

The matter was very tersely and clearly put by Lord Robertson in the two sentences to which I drew attention during the argument. "The Act of 1896," he says, "has not given *carte blanche* to the tribunals of these societies to pronounce decisions which shall be exempt from examination in courts of law. The decisions protected from review are constitutional decisions—decisions pronounced according to the rules, which as we know are registered under the Friendly Societies Acts." Now the substance of the pursuer's complaint is that this Friendly Society has acted against its rules in that it has elected to its board of management a person who was not qualified to act. That, accordingly, is not a constitutional question within the meaning of Lord Robertson's dictum, and I think the Law Courts are the only competent courts in which that question can be tried.

I pause to say that it is very much in the interests of friendly societies that there should be this control by the Law Courts over any unconstitutional actings; otherwise I do not see how the members of these societies could be protected against boards of management which, being once in the saddle, violated the rules under which they had been appointed to act. I can figure a case in which each and all of the members of a board of management had since their election become disqualified on one ground or another, and yet professed to manage the affairs of the society. Is that a matter to be determined by arbitration, or is it not rather to be determined by the courts of the country, which exercise jurisdiction over all voluntary societies—a jurisdiction to the effect of seeing that they conform to the rules of their own constitution? So long as they act within the rules which they have laid down for themselves, and which form the contract between the society and its members, the jurisdiction of the courts is excluded. When they violate these rules then the jurisdiction of the courts may be invoked by any member of the society.

Accordingly I think the present case does not fall under the special rule for settling disputes to which reference is made, and according to which either the Small Debt Court, or in special circumstances a court of arbitration, is, on the defenders' reading of the rule, the only competent tribunal for the decision of the question in dispute.

The only other point raised is as to whether as matter of form it was essential that the minute appointing Mr Boag as a delegate, or the minute appointing him as a member of the board of management should be reduced. The Sheriff inclines to the view that reduction was necessary, and that as an action of reduction is not competent in the Sheriff Court the action should be dismissed. That is an extremely technical objection; but apart from its technicality it appears to me to be unsound.

The minutes founded on by the defenders are not produced and we do not know their terms, but according to the statement of them they are merely records of what took place at certain meetings. The first is a record of the election at the branch meeting of Mr Boag as a delegate for the branch. According to the rules evidence of such election is to be transmitted to the Society; and provision is made for the chairman of the meeting transmitting a minute stating who has been elected. As regards election to the board of management, there does not seem to be any provi-

sion that the proceedings fall to be recorded in a formal minute, and I suppose the election would have been quite good although no written record of it had been kept. In a properly managed society, of course, one would imagine that such a record would exist, from which it might have been seen that those who were acting on the board of management had been duly elected after the proper procedure, but that again would be a mere record of what had taken place. It is not alleged that it is a certificate that each of the members so elected was qualified to act. But even if it had been so I do not think it would have been in the least necessary that an action of reduction should be raised. As it was put in argument, the disqualification may have attached after the election was made, whether as a delegate or as a member of the board of management.

Are the members as a whole, then, to have no remedy against unqualified persons acting on the board of management? If the argument of the defenders is worth anything it comes to this, that, once duly elected, a delegate or a member of the board of management may disregard the rules of the Society and subject himself to various disqualifications without any person having the right to call attention to the irregularity and to have the administration put upon a proper footing. The effective remedy which the pursuer seeks, and which he can obtain only from a court of law and not from an arbiter, is an interdict against the person who by the rules of the Society is disqualified from acting continuing to act; and assuming that the pursuer establishes the disqualification as having attached to Mr Boag at the time that this action was brought, I see no reason why he should not get that remedy.

We cannot consider what has taken place since. It may be that Mr Boag is now duly qualified, but the pursuer is entitled to have the judgment of the Court on the question whether his application was properly brought. It may be the best justification of the application that the Society has in consequence put its affairs upon a proper footing. It may, no doubt, affect the terms of the interdict, if any, which the Sheriff-Substitute will pronounce, but it cannot affect the right of a party complaining of a departure from the rules by those who have the administration of the Society to have their conduct inquired into.

There may also be a question whether, assuming Mr Boag was not duly elected, the pursuer was not entitled to the position and the remuneration which Mr Boag has enjoyed. It is always open to a member of a voluntary society to claim damages against the society which has deprived him of patrimonial benefits by acting in violation of its own rules. The case of *Andrews* is an illustration of that, because the pursuer there was suing for damages in respect of his expulsion from the society, on the ground that the expulsion had proceeded without his having received the written notice for which the rules provided.

On these grounds I am clearly of opinion that the Sheriff here has erred in dismissing the action, and that we should revert to the judgment of the Sheriff-Substitute.

The LORD JUSTICE-CLERK and LORD DUNDAS concurred.

LORD GUTHRIE was absent.

The Court recalled the interlocutor of the Sheriff of 20th July 1912, affirmed the interlocutor of the Sheriff-Substitute of 13th June 1912, and remitted to him to proceed.

Counsel for the Pursuer and Appellant—Graham Stewart, K.C.—W. J. Robertson. Agents—Watt & Williamson, S.S.C.

Counsel for the Defender and Respondent Alexander Boag—Gilchrist. Agents—Laing & Motherwell, W.S.

Counsel for the Defenders and Respondents the City of Glasgow Friendly Society—Moncrieff, K.C.—Lippe. Agents—Simpson & Marwick, W.S.

Wednesday, June 25.

SECOND DIVISION.

CITY OF GLASGOW LIFE ASSURANCE COMPANY AND SCOTTISH UNION AND NATIONAL INSURANCE COMPANY, PETITIONERS.

Insurance—Life Assurance—Transfer of Business—Transmission of Statement of Nature of Transfer, Abstract of Agreement, and Reports to Policyholders—Dispensing with Transmission—Assurance Companies Act 1909 (9 *Edw. VII, cap.* 49), *sec.* 13 (3) (*b*).

The Assurance Companies Act 1909, sec. 13, enacts—"(1) Where it is intended . . . to transfer the assurance business of any class from one assurance company to another company the directors of any one or more of such companies may apply to the Court by petition to sanction the proposed arrangement. . . . . (3) Before any such application is made to the Court . . . . (*b*) a statement of the nature of the . . . transfer, . . . together with an abstract containing the material facts embodied in the agreement or deed under which the . . . transfer is proposed to be effected, and copies of the actuarial or other reports upon which the agreement or deed is founded, including a report by an independent actuary, shall, unless the Court otherwise directs, be transmitted to each policyholder of each company in manner provided by section one hundred and thirty-six of the Companies Clauses Consolidation Act 1845 for the transmission to shareholders of notices not requiring to be served personally. . . ."