pers, that all that the parish of Dumfries had to do in the circumstances was to go against the parish of settlement. Hoddam is more liable than Dumfries in any view; but as Hoddam is the parish of legal settlement, Dumfries is not liable at all, whereas Hoddam is, failing any estate belonging to the lunatic. The Sheriff-Substitute thinks, therefore, that as it is admitted that Mr Thorburn has no means in Scotland, and it is Hoddam who avers that some can be got for him in England, that parish ought to recover the same *for its own relief*. It would not be *for the relief of Dumfries*, because in no case has Dumfries the chance of being left to pay. It seems very unreasonable to object, as was done for Hoddam at the debate, that Dumfries acted without an order of the Sheriff. It appears that, to avoid the intervention of the Procurator-Fiscal—which the Sheriff-Substitute understands was threatened—and all the consequent procedure, the inspector for Dumfries acted at once, and thus saved a great deal of expense, and now it is objected, as a reason why he should not be reimbursed, that he did not do that which would have caused more expense to be incurred. The Sheriff-Substitute can see no reason why the parish of Dumfries should not relieve a person destitute of the means of support in this way, as well as relieve in the ordinary way a destitute person who is not a lunatic.

"The 15th section of 25 and 26 Vict. c. 54 (under which the defender would have had the pursuer proceed, or rather allow matters to be dealt with), applies to the case of lunatics who shall be found unattended to, but that does not prevent the proper persons from attending to them without an official order. But whether this be so or not, it hardly seems competent for Hoddam to take this objection, if it admits that the person was a lunatic, and properly put in an asylum, while its interest in the matter seems to point to an approval of what was done as having saved expense.

"The Sheriff-Substitute does not think that there is anything in the objection that Hoddam will not be in the same advantageous position in applying for the £40 as Dumfries. If there be no legal claim to this allowance on the part of any one, their positions will be the same. If there be, the positions will be virtually the same, because Dumfries only acted *ad interim* with a right of relief against Hoddam."

On appeal the Sheriff (NAPIER) adhered.

The defender appealed, and sought to be allowed a proof of his averments with regard to Thorburn's means.

FRASER and LANCASTER for him.

MILLAR, Q.C., and BURNET in answer.

The Court held that the Sheriffs had taken a sound view of the case. Thorburn was placed in the asylum without any security either to the superintendent of the asylum or to the inspector of poor of Dumfries for reimbursement of their advances. No doubt it was alleged that the lunatic was then, and is now, entitled to a pension or annuity of £40 per annum. But there was certainly no fund in Scotland, or immediately available for his support. The question, therefore, did not turn upon a minute construction of particular clauses in the statutes. The pursuer was entitled to treat Thorburn as a pauper lunatic, and the Act gave him a direct right against the parish of Hoddam. If there are funds to which the lunatic has right the ratepayers of Hoddam will be relieved, and it lies upon that parish to make them forthcoming.

Agent for Pursuer—W. S. Stuart, S.S.C.

Agents for Defender—Mackenzie & Kermack, W.S.

Thursday, January 27.

SECOND DIVISION.

FRIENDLY SOCIETY OF STORNOWAY *v.* MACFARLANE.

Sheriff — Value of Action — Appeal — Competency. A member of a friendly society raised an action in the Small-Debt Court for aliment due to him by the society in consequence of inability to work. The conclusion of the summons was for £5, 4s. The case was remitted by the Sheriff-Substitute to the Ordinary Roll, and there disposed of. *Held*, on advising an appeal from the Sheriff's judgment, that the question of the future liability of the society was not involved in the action, which being under the value of £25 could not be appealed to the Court of Session.

This was an appeal from the Sheriff-court of Ross-shire in a cause which originated in the Small-Debt Court, but had been remitted to the Sheriff's ordinary roll. The conclusion of the summons was for the sum of £5, 4s., being the balance of aliment due to the pursuer as a member of the defender's society, in consequence of what the pursuer alleged was a temporary inability to work. The defence was that the pursuer had received all that under the rules he was entitled to; and, further, that the rules of the society provided for settlement of all differences by arbitration. The Sheriff-Substitute assoilzied the defenders' proceedings upon a certain resolution of the society, adopted at a meeting on the 8th April 1867, whereby the rates of aliment were fixed as contended for by the defenders.

The Sheriff (MONCRIEFF) altered. He added the following Note to his judgment:—"It is not disputed that the pursuer is entitled to the amount of allowance claimed, unless the rates of aliment were altered at the meeting of 8th April 1867, or unless the pursuer is barred by the 28th rule from pursuing in this Court.

"There are two ways in which the rules of the society may be effectually altered, so as to increase or decrease the rates of aliment therein specified. The one is the method provided by the 29th of the society's rules, and the other that provided by the 18 and 19 Vict., cap. 63, section 27.

"It was not contended at the debate that the formalities prescribed by the 29th rule had been complied with; and the position that was maintained was, that the alterations had been affected, and the rates of aliment decreased, by the simpler method prescribed by the Act of Parliament.

"It appears to the Sheriff to be impossible to hold that the rules were so altered under that section as to exclude the present claim. It is provided undoubtedly by the section of the Act above referred to that the rules of a friendly society may be altered by the members at a meeting specially called for the purpose. But there is a provision that the alterations made at such meeting shall be transmitted to the registrar, with a declaration by one of the officers of the society

that the directions of the Act under which such society was established have been duly complied with, or that the rules of the society itself respecting the making or altering rules have been observed; and upon the registrar being satisfied that the alterations are in conformity with law, he is bound to give to the society a certificate to that effect. And the Act specially provides that 'unless and until the same shall be so certified as aforesaid, such rules, alterations, and amendments shall have no force or validity whatever.'

"In the present case, the meeting at which the alterations are said to have been made was held on 8th April 1867. But the alterations said to have been made at that meeting were not transmitted to the registrar till 12th May 1869. The registrar thereafter sent a certificate in somewhat peculiar form, the effect of which, as giving force or validity to the alterations from its date, it is not necessary to consider; because this action was raised on 16th April 1869 for aliment due for a period prior to the rules having been communicated to the registrar, or his certificate received, and when, according to the express provisions of the statute, the decrease in the rate of aliment relied on by the defenders was invalid and ineffectual.

"In regard to the 28th rule of the defenders' society there is perhaps more difficulty. The rule provides for settlement of disputes by arbitration, and for an exclusion of appeal to the Civil Court against the judgments of such arbiters; and the 40th section of the Act of Parliament, already referred to, provides that all such disputes shall be decided in manner directed by the rules of such society. But, upon the whole, the Sheriff does not think that this case has been incompetently brought in this Court. A rule by which the ordinary jurisdiction of the Court is said to be excluded falls to be strictly construed. And, strictly construed, this rule does not appear to the Sheriff to apply to the present case. The rule specially deals with differences or disputes among the members. This is a difference between one of the members and the society itself. Nor is this entirely a formal distinction; it will be found to involve substantial difference. In regard to a dispute between two members, arbiters selected in the manner provided by the 28th rule might be able to apply their minds to it in the entire absence of any personal interest, and with perfect freedom from all bias. It is not so, however, in the present case. In this question all the members of the society are interested in one way or the other, and it appears to the Sheriff to be quite reasonable that the rule should provide for the former case, and not for the latter.

"Whether the reference would be rendered invalid by the absence of the names of arbiters in the special circumstances of this case it is not necessary to inquire, if the Sheriff is right in the view he has already expressed."

The defender appealed.

TRAYNER, for the respondent, objected to the competency of the appeal. The case was one which had been raised and decided in the Small-Debt Court, and if review was competent it was competent only before the Circuit Court of Justiciary (*Graham* v. *Mackay*, 6 Bell's App. 241). The fact that the Sheriff had remitted the case to his ordinary roll did not change its character, or make it other than a Small-Debt case, and the 14th clause of the statute (1 Vic., cap. 41), which provided that such remitted case "shall thenceforth be conducted according to the ordinary forms and proceedings in civil causes," was intended only to regulate the procedure before the Sheriff, and not to confer a right of review which was not otherwise competent.

SHAND for the appellants—The action here was raised no doubt for recovery of £5 odds in the Small-Debt Court; but the case involved more than the mere question of whether that sum was due or not. The pursuer's claim was for aliment from a friendly society, and the defence was rested upon a construction of the society's rules. This case really raised a question of future liability, as well as the extent of that liability; and judgment here would be *res judicata* between the parties. The pecuniary conclusion of an action is not the sole test of whether it can be appealed; the value of the cause is the test, and it may be much greater than the sum for which decree was sought; *Drummond*, 12th January 1869, 7 Macph. 347. The value of the present case was beyond £5, for it involved the liability of the society for the aliment of the pursuer for an indefinite period.

At advising—

LORD JUSTICE-CLERK—I am of opinion that this appeal is not competent. The case was raised in the Small-Debt Court, a circumstance which is entitled to weight in our consideration of the question before us. The conclusion is for £5, being arrears of aliment alleged to be due to the pursuer; and it appears to me that the whole question raised is, whether that sum is due to the pursuer or not. There is no question of future liability, and can be none. If the pursuer raises another action for aliment against the defenders, it will depend upon the circumstances then existing whether he will get his decree, and not at all depend upon the decision pronounced in the present case. Whether the 14th section of the statute gives a right to appeal which is otherwise excluded by the statute I do not say. But I am of opinion that the value of this case is under £25, and not appealable.

LORD COWAN—I am of the same opinion. The argument submitted for the appellants involves them in this difficulty—If the present case is merely for £5, and does not involve any question of future liability, the present appeal is incompetent; but if the case involves a question of future liability, it was not competent before the Small-Debt Court. That might have been a good ground of appeal to the Circuit Court, but not a ground of appeal to the Court of Session.

LORD BENHOLME concurred.

Appeal dismissed, with expenses.

Agents for Appellants—Morton, Whitehead & Greig, W.S.

Agent for Respondent—W. R. Skinner, S.S.C.

Friday, January 28.

FIRST DIVISION.

FORBES *v.* WELSH'S EXECUTORS.

Negotiorum gestor—*Acquiescence—Executor—Rent.*

A lady who had resided for many years with a deceased proprietor, and who was one of his heirs in *mobilibus* and executors, aided him in the management of his estate, and after his death continued the management till the heir's return, and for some time thereafter.