

Friday, June 10.

FIRST DIVISION.

[Sheriff of Perthshire.

PARISH COUNCIL OF STIRLING v.
PARISH COUNCIL OF PERTH.

Process—Appeal—Competency—Sheriff—Value of Cause—Sheriff Court Act 1853 (16 and 17 Vict. cap. 80), sec. 22.

Held that appeal to the Court of Session from the Sheriff was incompetent in a case in which one parish council sued another to recover a sum less than £25, representing the cost of relieving certain paupers who were no longer in receipt of parochial relief.

This was an action raised in the Sheriff Court of Perthshire by the Parish Council of Stirling against the Parish Council of Perth, concluding for payment of £16, 8s. 1½d., being the cost of maintaining certain children in the poorhouse at Stirling, under the Prevention of Cruelty to Children Act 1894 (57 and 58 Vict. cap. 41), sec. 5 (4).

It appeared from the record that the children were detained in the poorhouse from 17th April till 1st July 1897—a period of seventy-five days—and were then discharged.

The defenders denied liability on the ground, *inter alia*, (5) that the children's father, who was dead, had at his death a residential settlement in the parish of Stirling, which enured to his widow and children. They also pleaded—“(2) No title to sue.”

On 21st January 1898 the Sheriff-Substitute (GRAHAME) repelled the defender's plea to title, and allowed a proof.

On 3rd May 1898 the Sheriff (JAMESON) recalled the interlocutor of the Sheriff-Substitute, found that, on a sound construction of the Act of Parliament, “a parish which receives a child or children into a poorhouse as a” place of safety “under the provisions of said Act has no right of recourse for the expenses attending and following on such reception against the parish to which such child or children may belong, and that no such right of recourse exists either under the Act 8 and 9 Vict. cap. 83, or at common law;” therefore sustained the defenders' second and fifth pleas-in-law, and assolizied the defenders.

The pursuers having appealed, the defenders objected to the appeal as incompetent, and argued—The appeal was excluded by sec. 22 of the Sheriff Court Act 1853 (16 and 17 Vict. cap. 80), which made the Sheriff's judgment final in all causes not exceeding the value of £25. The sum at stake here was only £16, 8s., and no question of greater magnitude was involved.

There must be a clear case of continuous liability to make appeal competent in a case where the sum concluded for was under £25—*Macfarlane v. Friendly Society of Stornoway*, January 27, 1870, 7 Macph. 438. There was no such case here; for the children had been discharged from the poorhouse. [The

LORD PRESIDENT referred to *Standard Ship-owners' Mutual Association v. Taylor*, June 24, 1896, 23 R. 870.]

Argued for the pursuers—The appeal was competent. The true criterion of the value of a cause was not the sum concluded for in the summons, but what difference the decision would make to the pursuer. Here a very important question had been raised upon the statute of 1894, which deeply concerned all parochial authorities in Scotland. Moreover, the question of the father's settlement was in dispute, and its determination must necessarily be decisive, not only of the present case, but of any claim for parochial relief which these children might have in future against the pursuers. There was thus continuous liability, or at least a prospect of continuous liability, which was sufficient to take the case out of sec. 22 of the Act of 1853—*Drummond v. Hunter*, January 12, 1869, 7 Macph. 347.

At advising—

LORD PRESIDENT—It does not appear on the face of these proceedings that there is any pecuniary liability involved in this dispute beyond the sum mentioned in the summons. It is nothing to the purpose to say that the question being one of liability for the maintenance of a pauper other sums may eventually be involved, for if this were sufficient to sustain the appeal, then so long as the person in question is alive, although no longer a pauper, every action for his aliment, however small, would be appealable to the Court of Session, on the ground that he might conceivably relapse into pauperism. In the former decisions, to which I entirely accede, the Court have gone outside the summons to ascertain the value of the cause only where it clearly appeared that there were actual and not merely possible questions about a larger aggregate sum than that which was concluded for, and that those questions were really being tried in the action under consideration.

I am for refusing the appeal as incompetent.

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

The Court refused the appeal as incompetent.

Counsel for the Pursuers—Cook, Agents—Fraser, Stodart, & Ballingall, W.S.

Counsel for the Defenders—Deas, Agents—Menzies, Bruce-Low, & Thomson, W.S.

Friday, June 10.

FIRST DIVISION.

HADDOW v. SCHOOL BOARD OF
GLASGOW.

School—Duties of School Board—Whether Bound to Supply Books—Education (Scotland) Act 1872 (35 and 36 Vict. cap. 62), secs. 23, 24, 36, 69, 70—Education (Scotland) Act 1883 (46 and 47 Vict. cap. 56), sec. 4—Scotch Education Code 1897, Titles 6 and (32) b.

Held that a school board is not legally bound to supply books for the use of children attending the school, and is not bound to admit to the school a scholar presenting himself for admittance without being provided with such books as are needed for his efficient education.

Observed (per Lord President) that this decision does not imply that the school board has not the power in its discretion to provide books for the use of scholars where this is necessary for the maintenance of the efficiency of the school as a whole.

Section 23 of the Education (Scotland) Act 1872 (35 and 36 Vict. cap. 62) enacts that “the parish and other schools which have been established and now exist in any parish under the recited Acts, or any of them, together with teachers’ houses and land attached thereto, shall be vested in and be under the management of the school board of such parish . . . and the said school board shall thereafter with respect to school management and the election of teachers, and generally with respect to all powers, obligations, and duties in regard to such schools now vested in or incumbent on the heritors qualified according to the existing law and the minister of the parish, supersede and come in the place of such heritors and minister.”

Section 24 deals with the transference of burgh schools to school boards, which is effected *mutatis mutandis* in the same words as are used in section 23.

Section 36 enacts that “the school board of every parish and burgh shall maintain and keep efficient every school under their management, and shall from time to time provide such additional school accommodation as they shall judge necessary.”

Section 69, as amended by section 4 of the Education (Scotland) Act 1883 (46 and 47 Vict. cap. 56), enacts that “It shall be the duty of every parent to provide efficient elementary education in reading, writing, and arithmetic for his children who are between five and fourteen years of age.” . . .

The last part of the section, which directed the parochial board to pay the fees for children of parents so poor as to be unable to pay them, was repealed by section 88 of the Local Government (Scotland) Act 1889 (52 and 53 Vict. cap. 50).

The Scottish Education Code of 1897 con-

tains the following regulations—“6. In every school or department of a school in respect of which grants were made, the following regulations must be strictly observed—. . . No school shall be eligible for grants if (a) the average fee exceeds ninepence per week, or (b) more than one-third of the scholars in it pay fees exceeding ninepence a week. Compulsory payment for books or material must be included in reckoning the fee. (32) The amount which may be claimed by the managers may be reduced (b) by not less one-tenth nor more than one-half in the whole upon the inspector’s report, for . . . or (after six months’ notice) for failure on the part of the managers to remedy any defect in the premises which seriously interferes with the efficiency of the school, or to provide proper furniture, books, maps, and other apparatus of elementary instruction.”

A special case was presented by (1st) Alexander Haddow, 124 Salamanca Street, Glasgow, the father of Isabella Haddow, a scholar attending Parkhead Public School, and the said Isabella Haddow; and (2nd) The School Board of Glasgow.

The following facts, *inter alia*, were stated in the case:—“(2) Since 25th April 1892 the said Isabella Haddow has been in regular attendance at the Parkhead Public School. She is now in Standard V. Said school is maintained and administered by the parties of the second part under and in terms of the Education (Scotland) Acts, 1872-93. (3) No fees for attendance at said school are exacted by the parties of the second part in respect that they participate in the grants in relief of fees provided in terms of the Local Taxation (Customs and Excise) Act 1890, and the Education and Local Taxation Account (Scotland) Act 1892, as the same are distributed by the Scotch Education Department in terms of the said Acts, and of the Scotch Education Code annually submitted to Parliament. No fees are accordingly demanded from or paid by the parties of the first part to the parties of the second part in respect of the said Isabella Haddow’s attendance at said school. (4) In the said fifth standard instruction is provided by the parties of the second part in the following subjects, viz.—English, arithmetic, writing, drawing, sewing, cookery, drill, and music. The following are the books and materials used and required by pupils in said fifth standard in connection with these subjects, viz.—For English, Crown Reader No. V., Royal Scottish Reader No. V., Blackwood’s Grammar No. V., and dictation copy-book; for arithmetic, arithmetic book and arithmetic exercise book; for writing, writing book; for drawing, two drawing copies, geometry book, Barrodale’s free hand drawing-book, pencils and indiarubber; and for music a song-book. The total cost of these books and materials is 5s. or thereby. To enable the children attending the school to receive and benefit by the masters’ instructions and school exercises in the above-mentioned subjects of English, arithmetic, drawing, and music, it is necessary that the children