

Now, the next plea which has been sustained by the Dean of Guild relates to the construction to be put upon the Act of 1890. Under the 39th section of the Act of 1867, which I have hitherto alone referred to, the local authority was entitled to provide hospitals, but they must confine themselves to their own district.

But the Act of 1890 enables burghs to pass out of their own district, and take ground for an hospital within a convenient distance of such district. Now, it is said that because this power to invade a neighbouring district is conferred upon a burgh, it therefore follows that the invaded territory must necessarily be a landward district. I confess that seems to me a complete *non sequitur*. What is required is merely that the burgh is to be enabled to take ground, subject of course to the approval of the Board of Supervision, where ground is to be had more easily or conveniently.

As we know, many burghs, except in the matter of jurisdiction, are really country districts as regards part of their area, and many burghs also have more free land than their contiguous neighbour burghs, but to say that you must go to the county to get land seems to me to interpolate into the statute a limitation which is certainly not expressed in it, and which does not seem at all congenial to the theory of expediency and convenience which animates the enactment.

Now, I think that that is the last of the pleas which have been maintained in argument at the bar, and I consider that the proper result is that all the pleas stated by the burgh of Leith should be repelled.

I suppose your Lordships will necessarily, in repelling these pleas, remit to the Dean of Guild to proceed as shall be best. The remaining matter, therefore, will be the examination and approval of the plans, and I cannot doubt that these matters will be treated in the business-like spirit proper to the Dean of Guild Court.

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

The Court sustained the appeal, recalled the interlocutor appealed against, and remitted to the Dean of Guild to proceed.

Counsel for the Petitioners—Comrie Thomson—Boyd. Agent—William Asher, S.S.C.

Counsel for the Respondents—D.F. Asher, Q.C.—Salvesen. Agents—Irons, Roberts, & Company, S.S.C.

Tuesday, January 14.

FIRST DIVISION.

CLARK v. GIBSON.

(*Ante*, p. 174.)

*Process—Appeal to the House of Lords—Interim Execution pending Appeal—Poor's Roll.*

The defender having presented a petition of appeal to the House of Lords, and obtained an order of service thereon, the pursuer presented a petition for execution pending the appeal, in terms of the Act 48 Geo. III. cap. 151, sec. 17. The petitioner argued that it was the invariable custom to grant such petitions. The defender opposed the petition, pointed out that the determination of the matter was left by the statute in the absolute discretion of the Court, and stated that he had presented an application to the House of Lords to be admitted to the poor's roll. *Held* that the rule and practice being clear, there was nothing in the present case to take it out of the rule, and the prayer of the petition accordingly granted.

*Cochrane v. Bogle*, Dec. 11, 1849, 12 D. 302, and *M'Beath v. Forsythe*, October 25, 1887, 15 R. 8, referred to by petitioner.

Counsel for the Petitioner—Clyde. Agents—Webster, Will, & Ritchie, S.S.C.

Counsel for the Respondent—W. Thomson. Agent—Thomas M'Naught, S.S.C.

Tuesday, January 14.

FIRST DIVISION.

RELIGIOUS TRACT AND BOOK SOCIETY OF SCOTLAND v. SURVEYOR OF TAXES.

*Revenue—Income-Tax—Income-Tax Act 1853 (16 and 17 Vict. cap. 34), sec. 2, Schedule D—Profits Arising from Trade—Deduction.*

A society whose object was "by the circulation of religious books to diffuse a pure and religious literature among all classes of the community," carried on the trade of bookselling on strictly commercial principles at a depository, and at the same time distributed books throughout the country by means of a colportage agency, which was not, and could not by itself be, carried on at a profit as a commercial undertaking, and required the aid of voluntary subscriptions. The profits of the bookselling department were applied to cover the loss incurred in the colportage department.

In a question with the Surveyor of Taxes, *held* that the profits of the book-selling department were liable to assess-