

sioners, or for carrying the various purposes of this Act into execution, and to delegate to such committees the powers competent to the commissioners under this Act, in whole or in part, with regard to the subject which may be remitted, to name the convener, and to fix the numbers of such committees who shall form a quorum; and the convener who shall preside at such committees shall be entitled to a deliberative, and, in case of equality, a casting vote, and to convene the members by notices in the way he shall think most convenient."

The Police Commissioners of Dundee, in terms of this section, had delegated their whole powers in regard to such matters as the erection of buildings to the Works Committee.

The Works Committee remitted the plans and sections submitted by the appellant to a sub-committee of their number, with powers. The deliverance appealed against was pronounced by this sub-committee in name of the Police Commissioners.

Argued for the appellant—The deliverance was issued by a sub-committee of the Works Committee on the legal hypothesis that they had power to do so under the statute. They had no such power. They could not represent the Commissioners, who could only be properly represented by the Works Committee. The Works Committee were the delegates of the Commissioners, and they could not re-commit their duties to others—*Thomas v. Elgin*, July 4, 1856, 18 D. 1204; *Lord Advocate v. Sinclair*, November 26, 1872, 11 Macph. 137.

Argued for the respondent—The Police Commissioners were not acting *ultra vires* in delegating their powers to the Works Committee. The statutory quorum acted, and the character of the statutory quorum was not altered by calling it a sub-committee. The appellant's argument was founded upon the words, not upon the substance of the enactment. There was no true delegation here. The delegation was contemplated by the Act, and that distinguished the present case from *The Lord Advocate v. Sinclair*, *supra*. *Gillespie v. Young*, July 20, 1861, 23 D. 1357. There was no true delegation unless a principal body re-committed to others its powers and duties, and retired itself from the consideration of them. The quorum consisted of competent men. The appointment of such committees secured despatch, and such procedure was therefore in the public interest.

At advising—

LORD PRESIDENT—I do not think that we have anything to do with public interest, or the interests of the appellant, or general considerations of expediency. The question we have to determine is, whether this deliverance is good under the statute. Now, it certainly bears to be a deliverance by the Commissioners, and therefore, *ex facie*, it seems to be regular and good. But it is not disputed that the deliverance is not that of the Commissioners or of the committee appointed, but of a sub-committee of the committee appointed by the Commissioners, and the question is whether the committee appointed by the Commissioners had power to delegate their duties to this sub-committee. If they had not this power the deliverance is bad; if they had, the deliverance is good—the case therefore lies in a nutshell.

Now, the powers of delegation given by statute to the Commissioners are provided by section 63 of the General Police Act, incorporated in the Dundee Police Act sec. 28 (e). That section clearly provides a power to appoint committees to carry out the purposes of the Act, but does it import that the committees can re-commit to a certain number of their body to do their work in name of the Commissioners or of the committee? It appears to me that to hold that would be to disregard the well-known rule of law, *delegatus non potest delegare*. This committee has a delegated power from the Commissioners, and that delegated power cannot be re-committed or delegated to anyone else. I therefore think we must hold that this deliverance is null, and must be quashed.

LORD MURE concurred.

LORD ADAM—There is no doubt that this is a deliverance by a sub-committee of the Works Committee of the Dundee Commissioners, and it appears to me that a remit to this sub-committee with powers is just a delegation of authority. Such a case answers the definition proposed by Mr Balfour, who said that delegations arose when persons who owned powers committed them to others and retired from their performance. Now, that was just what happened here, for when the Works Committee appointed the sub-committee with powers all the other members of the committee retired from the consideration of the matter, and that simply amounted to delegation proper. I have no hesitation in concurring with your Lordships.

LORD SHAND was absent from illness.

The Court set aside and quashed the deliverance complained of.

Counsel for the Appellant—Sol.-Gen. Robertson—Kennedy. Agent—Gregor M'Gregor, S.S.C.

Counsel for the Respondents—Balfour, Q.C.—Macfarlane. Agent—J. Smith Clark, S.S.C.

Thursday, December 8.

FIRST DIVISION.

[Sheriff of Lanarkshire.

M'ARTHUR v. BOUCHER.

Process—Appeal for Jury Trial after Appeal to Sheriff—Judicature Act 1825 (6 Geo. IV. c. 120), sec. 40—Sheriff Courts (Scotland) Act 1876 (39 and 40 Vict. c. 70), secs. 27, 28, 29.

Held incompetent, in a case where the Sheriff-Substitute had pronounced an interlocutor allowing a proof, to remove the process to the Court of Session under the 40th section of the Judicature Act while the interlocutor of the Sheriff-Substitute was under appeal to the Sheriff.

In an action of damages in the Sheriff Court at Glasgow at the instance of Arthur M'Arthur against James Boucher, the Sheriff-Substitute (EBSKINE MURRAY) repelled the preliminary

pleas stated by the defender, and allowed a proof.

The defender appealed to the Sheriff.

The pursuer afterwards appealed to the Court of Session for jury trial under section 40 of the Judicature Act 1825, the claim being for more than £40.

On the case appearing in the Single Bills the respondent objected to the competency of the appeal, and argued—The case was before the Sheriff. This was a proper case for appeal to the Sheriff under the Sheriff Courts Act 1876 (39 and 40 Vict. c. 70), sec. 27. The appeal was in proper form—sec. 28. The effect of the appeal was to submit the whole case to the Sheriff—sec. 29. There was no standing interlocutor allowing a proof.

The respondent argued—The defender was not debarred from arguing a question of relevancy on the preliminary pleas which he had stated—*Virtue v. Police Commissioners of Alloa*, December 12, 1873, 1 R. 291. It was more convenient that the preliminary pleas should be considered here rather than that they should be sent back to the Sheriff.

LORD PRESIDENT—The liberty given to either party in the Inferior Court by sec. 40 of the Judicature Act, where the sum sued for is not under £40, is to remove the process by advocacy, and, according to present practice, by note of appeal in terms of the Court of Session Act 1868, sec. 73. Now certainly the provision of the 40th section of the Judicature Act is not for the purpose of allowing review of a judgment; its purpose is that the process may be brought here in order that it may become a Court of Session process, and being brought here, the intention is that it should end here by verdict and judgment.

But the condition attached to that form of procedure is, that there should be an interlocutor in the Sheriff Court allowing a proof, and the question now is, whether we have in this case an interlocutor allowing a proof? The answer is, that there is no standing interlocutor of the sort in the Sheriff Court, because the interlocutor of the Sheriff-Substitute is under appeal to the Sheriff, and may cease to be an interlocutor allowing proof after the Sheriff's interlocutor is pronounced. And so the very ground of the application under the 40th section of the Judicature Act is removed by the appeal to the Sheriff, and I think the objection now stated to the present appeal is well founded.

LORD MURE concurred.

LORD ADAM—I am of the same opinion. I think that when the interlocutor of the Sheriff-Substitute was appealed to the Sheriff there was no longer an operative judgment in the Sheriff Court. Nothing could have been done on the interlocutor of the Sheriff-Substitute, and it cannot be brought here under the Judicature Act.

LORD SHAND was absent from illness.

The Court sustained the objection and dismissed the appeal.

Counsel for the Pursuer and Appellant—*Baxter*. Agent—*William Black, S.S.C.*

Counsel for the Defender and Respondent—*Dickson*. Agents—*Macpherson & Mackay, W.S.*

Friday, December 9.

SECOND DIVISION.

[Sheriff of Ayrshire.]

ANDERSON (INSPECTOR OF MAYBOLE) v. GLASS (INSPECTOR OF DALMELLINGTON) AND ANOTHER.

Poor—Residential Settlement—Loss of Settlement.

A husband who had a residential settlement in the parish of M., left that parish at Whitsunday 1881, together with his wife and family. They never thereafter resided in the parish. The husband died on 23d March 1885, and his widow became chargeable as a pauper on 21st September 1885. Held that, as the pauper had been absent for more than four years from the parish of M., she had lost the residential settlement she had derived from her husband, and that the parish of her birth was liable.

William Arthur, together with his wife and family, had a residential settlement in the parish of Maybole, from which they removed at Whitsunday 1881, and never afterwards resided in the parish. On 23d March 1885 *William Arthur* died. On 21st September 1885 his widow, *Jane Arthur*, became chargeable as a pauper, and obtained relief from the parish of Ayr. The parish of her birth was *Stewarton*.

This was an action of relief in the Sheriff Court at Ayr, at the instance of the inspector of poor for the parish of Ayr against the inspectors of poor for the parishes of *Maybole*, *Stewarton*, and *Dalmellington*, the birth parish of the husband.

Pleaded for the parish of *Maybole*—“(1) The settlement which the said *Jane Anderson Murray* or *Arthur* took on her husband's death, being a residential settlement in *Maybole* parish, which was lost by the absence of her husband when in life and her own absence subsequent to his death, and the said *Jane Anderson Murray* or *Arthur* having been born in the parish of *Stewarton*, and having in consequence a birth settlement in that parish, such birth settlement is alone responsible, and the defender, the said *John Anderson*, as representing the Parochial Board of the parish of *Maybole*, is entitled to be assolizied, with expenses.”

Pleaded for the parish of *Stewarton*—“(2) The pauper's husband having acquired a residential settlement in the parish of *Maybole*, which fell to her at his death, the sums sued for ought to be paid by the defender *Anderson*.”

The Sheriff-Substitute (*ORR PATERSON*) on 28th March 1887 found in law “that the widow having become a proper object of relief, and having received relief prior to the expiry of four years from the date of her husband's removal from the parish of his residential settlement, has not lost by absence her husband's residential settlement in *Maybole*.” The Sheriff-Substitute found in fact that the pauper had become chargeable on 7th