

The Court answered the question stated in the negative.

Counsel for the First and Fourth Parties—Dove Wilson. Agents—Alex. Morison & Co., W.S.

Counsel for the Second Parties—Dundas, K.C.—Hunter. Agents—Gordon, Falconer, & Fairweather, W.S.

Counsel for the Third Parties—Lorimer—A. S. D. Thomson. Agent—Andrew Newlands, S.S.C.

Thursday, July 3.

SECOND DIVISION.

[Sheriff-Substitute of Lanarkshire at Glasgow.

BATTY v. SCOTTISH LEGAL LIFE ASSURANCE SOCIETY.

Friendly Society—Collector—Dismissal of Collector—Right of Nomination of Successor.

The rules of a friendly society provided that a collector should have power, subject to the discretion and approval of the board of management, to nominate a successor, but that no collector should have any right of property in his collecting-book.

The society dismissed a collector for acting improperly, as they alleged, in the conduct of their business, and refused to allow him to nominate a successor. The collector brought an action against the society, in which he claimed damages for having been deprived of the right of nominating a successor to his book.

Held that as a collector had under the rules no right of property in his collecting-book, and as any nomination he might make was subject to the approval of the board of management, the defenders were entitled to absolvitor.

Finlay v. The Royal Liver Friendly Society, October 25, 1901, 39 S.L.R. 23, followed.

This was an action raised in the Sheriff Court of Lanarkshire at Glasgow by Joseph Henry Batty, Little Hulton, Bolton, against Malcolm Campbell and others, as trustees on behalf of The Scottish Legal Life Assurance Society, registered under the Friendly Societies Acts, and having their chief office at 86 Wilson Street, Glasgow.

The pursuer, who had been a collector for the society, claimed £350 as damages for their refusal to allow him to nominate a successor.

The facts were as follows:—In October 1897 the pursuer was appointed a collector for the defenders' society under the Bolton agency. At the date of the pursuer's appointment the society was managed in conformity with certain rules approved of under the provisions of the Friendly

Societies Acts. The pursuer's appointment was subject to these rules.

By rule 29 it was, *inter alia*, provided as follows:—"Interest in Books.—Subject to the discretion and approval of the board of management, a collector, or, in the case of his death, either his widow or legal representatives, in the option of the board, shall have power to nominate a successor or successors in accordance with and subject to the following general conditions:—1. That any man having served not less than two years as collector will at any time thereafter be entitled to nominate a successor to collect the premiums on the business created by him. . . . 5. In all cases of nomination of books or business the nominee or nominees shall be subject to the approval of the board of directors, and receive their appointments under and be subject to the whole rules of the society. This privilege shall in no way interfere with the full power and absolute discretion of the board of management to conduct the affairs of the society in such a manner as they may deem expedient for the interests of the society, and shall confer no property in any collecting-book on any collector or his widow or representatives."

On 12th June 1901 the pursuer was dismissed from his situation as one of the defenders' collectors, and thereupon called upon the defenders to allow him to nominate a successor to his book. On 19th July the secretary of the society intimated to the pursuer's solicitor that the society was not prepared to allow him the privilege of nominating a successor, and the pursuer thereupon raised the present action of damages against the defenders.

The pursuer averred that by the beginning of June 1901 the amount of weekly premiums collected by him in small sums of a penny and twopence came to £10, 19s. a-week, and that the number of policyholders embraced in his book reached nearly 1000; that his remuneration as collector ultimately reached the sum of £3, 5s. per week, and his collecting-book was a valuable piece of property to him, coupled with his right under the rules of the society to nominate a successor to collect the premiums on the business which he had created; that at any time after he had served two years as a collector he had a right to nominate a successor for his book, and this right was one for which he might obtain a considerable sum from parties wishing to acquire a collecting-book in the society; that in June 1901, looking to the number of policyholders in his book, and the weekly returns payable in respect thereof, the value of his book was not less than £350.

He pleaded, *inter alia*—“(1) The pursuer having been appointed collector to the defenders' society, and in virtue of such appointment having the right to nominate a successor to collect the premiums on the business created by him, and having been refused by the defenders to exercise this right, he is entitled to recover from them all loss sustained by him thereby. (2) The pursuer's right to nominate a successor to

collect the premiums on the business created by him having been of the value of at least the sums sued for, the pursuer is entitled to decree therefor."

The defenders admitted that they had dismissed the pursuer, and that they had refused to allow him to nominate a successor. They averred that they had done so because he had been found acting irregularly and improperly in the conduct of his business.

The defenders pleaded, *inter alia*—“(1) The pursuer's statements are irrelevant. (3) The pursuer not having any right of property in his book, and any right of nomination being in the option and subject to the discretion of defenders, they should be assoilzied, with expenses. (4) *Separatim*—The pursuer, in the circumstances, not having any claim to nomination, the defenders should be assoilzied, with expenses.”

On 30th December 1901 the Sheriff-Substitute (BALFOUR) pronounced this interlocutor:—“Sustains the third and fourth pleas-in-law for the defenders: Assoilzies the defenders from the conclusions of the action, and decerns: Finds the pursuer liable to the defenders in expenses,” &c.

Note.—“In this case the pursuer claims from the defenders the sum of £350 in respect of his having been appointed a collector to the defenders' society, and of his having an alleged right to nominate a successor to collect his premiums, which was refused by the defenders. The pursuer was appointed collector subject to the rules of the society, one of which (rule 29) was that a collector should have power to nominate a successor in accordance with this condition, viz., that any man having served not less than two years as collector will at any time thereafter be entitled to nominate a successor to collect the premiums on the business created by him. The pursuer avers that he has created a large business for the defenders, and that the number of policy-holders embraced in his collecting-book amounts to nearly a thousand, and that his collecting-book therefore became a valuable property to him, coupled with his right to nominate a successor. On 12th June 1901 the pursuer received notice of dismissal from the defenders, and he thereupon called upon the defenders to allow him to nominate a successor, but on 19th July 1901 the defenders refused him the privilege.

“The defenders admit the pursuer's appointment and his dismissal, but they explain that the rule founded upon by the pursuer provides that such nomination is subject to the discretion and approval of the board of management; and further, that the privilege is in no way to interfere with the full power and absolute discretion of the board of management, and the rule specially provides that the privilege of nomination is to confer no property in any collecting-book on any collector.

“It was maintained for the pursuer that the board of management must exercise its discretion in a reasonable way, and that it cannot refuse to accept the pursuer's nomination without reason assigned, and

in this case the only reason assigned was too vague, viz., that the pursuer had been found to be acting very irregularly and improperly in the conduct of his business at the time of his dismissal, and that this was not the first offence.

“I was referred by the defenders' agent to the recent case of *Finlay v. Royal Liver Society*, 39 S.L.R. 23; and it appears to me that that case is almost on all fours with the present one, and forecloses me from pronouncing any independent judgment. In that case the action was directed by a collector against a society carrying on the same kind of business as the defenders, and he claimed damages for illegal dismissal and for having been deprived of the right of nominating a successor to his collecting-book. The rules of the Liver Society are not in precisely the same terms as the defenders' rules, but they are substantially the same, and there was an element in *Finlay's* case which does not exist here, in respect of *Finlay* having been barred, under section 68 of the Friendly Societies Act 1896, from suing the society in a court of law. No such bar arises in this case, as section 68 of the Friendly Societies Act has not been made to apply to the defenders' society by its rules. The other elements in *Finlay's* case, however, apply to the present, and it was there held that the right to employ a collector and to continue him, or not, in employment was entirely with the society, and that there was no obligation on the society to submit their reasons for disapproving of the nomination of a collector. It was held that *Finlay* was dismissed because, in the opinion of the committee of management, his conduct had been such as was calculated in their opinion to be injurious to the interests of the society, and the committee were not required to give any reason for their opinion; and further, that by the rules of the society the collector's book is expressly declared to be the property of the society, and not in any sense the property of the collector who holds it. In this case the pursuer has delivered up his collecting-book, and he contends that the provision in the rules as to the property in the book merely applies to the book as a book, and does not interfere with the pursuer's privilege to nominate a successor to the business created by the collector, and he maintains that the defenders are not entitled to deprive him of the business created by him without reason assigned and without showing just cause of refusal. The answer to that contention is that the defenders were to have an absolute discretion in the matter, and that, in accordance with the judgment in *Finlay's* case, the society were not bound to accept the collector's nominee, and the collector had no property in the collecting-book, and he had no claim of damage from the society's refusal to accept his nominee.”

The pursuer appealed, and argued—He was entitled to damages because he was not allowed to exercise his right of nomination. The right to nominate was independent of the society's right to decline his

nominee. The case of *Finlay*, quoted in the Sheriff-Substitute's note, was distinguishable from the present.

Counsel for the defenders were not called upon.

At advising—

LORD JUSTICE-CLERK—The pursuer here was one of the collectors of the defenders' society, the Scottish Legal Life Assurance Society. His employment was terminated on 12th June 1901, and he brings this action for payment of £350 in respect that the defenders' society have refused to allow him to nominate a successor as collector with the society. Now, under the rules of the society a collector has power to nominate a successor, but that power is declared to be "subject to the discretion and approval of the 'board of management' of the society." The society therefore are not bound to accept the outgoing collector's nominee. The society are not bound to make an appointment at all; they may if they please close the particular agency; and they are not bound to give reasons for making no appointment or for appointing some-one else than the old collector's nominee. The power of nominating a successor may be a matter of some value to the collector, because if the society accept his nominee, then he is entitled to the benefit of any arrangements with his nominee which he has made and may be profitable to him, but all that is subject to the condition that the society accepts the nominee, which they have full liberty to refuse to do.

LORD YOUNG—I think that this action is clearly irrelevant. The society acted very properly in letting the pursuer know that there was no use in his making a nomination as they were not going to accept his nominee. He made no nomination, and reasonably so on his part, for he knew that any nomination by him would be of no avail. But to say that he suffered a legal wrong entitling him to bring an action of damages through the society intimating that they would refuse to accept his nominee is to my mind absolutely extravagant.

LORD TRAYNER—I think the Sheriff-Substitute is right in saying that this case is not distinguishable from the case of *Finlay*, to which he refers. I am therefore of opinion that the Sheriff-Substitute's interlocutor should be affirmed.

LORD MONCREIFF was absent.

The Court dismissed the appeal.

Counsel for the Pursuer and Appellant—Guthrie, K.C.—Wilton. Agents—Robertson, Dods, & Rhind, W.S.

Counsel for the Defenders and Respondents—M'Kenzie, K.C.—Spens. Agents—J. & J. Ross, W.S.

COURT OF TEINDS.

Friday, July 4.

(Before the Lord President, Lord Adam, Lord M'Laren, Lord Kinnear, and Lord Low.)

MINISTER OF HUTTON v. THE HERITORS.

Teinds—Process—Augmentation—Procedure where Dispute as to Existence of Sufficient Free Teind—Clause of Reservation in Interlocutor Granting Augmentation.

In a process of augmentation where the minister asked for four chalders, the heritors, while admitting the existence of free teind sufficient to meet an augmentation of two chalders, denied that the free teind was sufficient to meet an augmentation of more than two chalders. They moved that a reservation should be inserted in the interlocutor to the effect that the modification should depend upon there being in existence a fund for the purpose.

The Court granted an augmentation of four chalders and refused to insert any reservation in the interlocutor.

In a process of augmentation raised by the Minister of Hutton against the heritors, the minister moved for an augmentation of four chalders to the stipend. It was stated for the minister that there was free teind in existence amounting to £100, being amply sufficient for the augmentation asked.

Certain heritors opposed an augmentation of more than two chalders. They stated that the free teind in the parish amounted only to £36, being sufficient for an augmentation of from two to three chalders only. They further stated that, with the exception of the teinds of one heritor, the teinds of the parish were almost exhausted, and that therefore the augmentation craved if granted would fall to be borne almost entirely by that one heritor. They moved that a reservation should be inserted declaring that the modification and the settlement of any locality thereof should depend on its being shewn that there existed a fund for the purpose.

Argued for the minister—The admission by the heritors that there was free teind to meet an augmentation of two chalders showed that the minister had a *prima facie* case. The question of the existence of free teind could be determined in the locality. This course had been followed in the *Minister of Banchory v. The Heritors*, July 1, 1863, 1 Macph. 1014. Reservations of the kind desired by the heritors were introduced into the interlocutor only in cases where some special questions were at issue between the parties. Thus in *Minister of Morvern v. The Heritors*, November 22, 1865, 38 Scot. Jur. 49, a reservation was inserted owing to there being a question as