encroached on the other engagements of counsel. I am not prepared to say that the sum of twenty-two guineas allowed by the Auditor is so inadequate as to justify our interference. I treat it as a pure question of taxation, and I do not think we should interfere with his decision.

The next point is in a sense a small one, because it only concerns an amount of two guineas, but it raises a point of principle. In the ordinary work-a-day business of the Outer House, a fee of three guineas is quite a fair one for drawing defences which, in a plain-sailing case, may be little more than a series of denials. But, on the other hand, I am far from saying that when a fee of five guineas has been sent in a case of such complexity and difficulty as the present, it is to be tested by this rigid rule and cut down in amount. We must take into consideration that much care and industry must have been expended in a case of such difficulty if a satisfactory pleading was to be prepared. It seems to me to be a case where the best attention of counsel was required, and I am therefore clearly against this disallowance.

The same reasoning applies to the case of the fee to senior counsel for adjustment. I think this was a very proper case for calling in senior counsel, and for their anxious supervision at a critical stage. If we were to come to any other conclusion it would lead to our being treated, more often than is at present the case, to defective records requiring to be remedied in the middle of the debate.

Now, the only remaining point is as to the fee for the third day's proof. That I regard as a mere matter of taxation, a question for the Auditor's discretion, and I am not prepared to say that I disagree with the manner in which he has exercised his discretion.

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

The Court pronounced this interlocutor—

"The Lords having heard counsel for the parties on the note of objections for the defender to the Auditor's report on his account of expenses, Sustain items Nos. 1, 2, 4, and 6 of the said objections *in toto*, and item No. 3 thereof to the extent of £26, 11s. 2d: Disallow the said objections *quoad ultra:* Decern against the pursuer for payment to the defender of the sum of £497, 0s. 9d. sterling, being the taxed amount of the said account of expenses, including the amount falling to be added in respect of the said items of the said note of objections sustained as aforesaid: Find the defender entitled to the expenses of discussing the said objections, modify the same at £2, 2s. sterling, and decern for payment thereof by the pursuer to the defender."

Counsel for the Pursuer — M'Lennan. Agents—Auld, Stewart, & Anderson, W.S.

Counsel for the Defender—Clyde—Wilton. Agent—W. Marshall Henderson, S.S.C.

Thursday, October 19.

SECOND DIVISION.

[Sheriff of Lanarkshire.

GLASGOW DISTRICT OF ANCIENT ORDER OF FORESTERS *v.* STEVENSON.

Friendly Society—Exclusive Jurisdiction of Courts of Society—Decree Conform—Friendly Societies Act 1896 (59 *and* 60 *Vict. cap.* 25), *sec.* 68.

The appropriate Court of a Friendly Society found the secretary of a branch guilty of irregularities and expelled him from the Society, and called upon him to deliver up the books of the branch to the district secretary. The branch secretary, while acquiescing in the judgment as regards expulsion, refused to deliver up the books, on the ground that under the general laws of the Society the books were the property of the branch and not of the district. The district raised an action in the Sheriff-Court to enforce the decision in terms of section 68 of the Friendly Societies Act 1896.

Held that the Court of the Society had, incidentally to their jurisdiction in the matter of expulsion, jurisdiction to order delivery of the books, and that decree conform must be granted, it being incompetent to inquire into the question of property raised by the defender.

The Ancient Order of Foresters is a friendly society registered under the Friendly Societies Act. It has branches throughout the United Kingdom, and for the government of these branches it has a system of courts (1) the High Court of the Order, (2) the District Courts and (3) the Branch Courts.

Law 1a, section 3, of the General Laws of the Order provides that "the funds and property of each branch (court or district) of the Order, whether acquired before or after the same was registered as a branch, shall vest in the trustees for the time being of such branch for the sole use and benefit of the members of such branch, and persons claiming through such members according to the rules of the said branch; and the whole of the funds and property of each branch shall be under the exclusive control of the members and trustees thereof, subject only to the General Laws of the Order with respect to the investment of such funds and their application to the objects of the branch and the objects of the district Branch with which the Court may be connected, and also the objects of the Order." Law 88, section 2, provides that the functions of the District Arbitration Committee shall be to hear and decide *inter alia* any charge made by an officer of the district against any officer of a Court in the district for violation of the rules of the Court or District or General Laws, when such violation infers penalties of suspension, expulsion, or a fine exceeding £1, 1s.

Section 4 of the same Law provides that the decision of the Committee shall be binding until reversed or altered upon an appeal to the Final Arbitration Committee. Under Law 90, section 3, appeals require to be taken within three months of the decision appealed against.

In 1897 John Stevenson, the secretary of Court "Captain Boyd," the Larkhall Branch of the Order, obtained relief from his branch on the ground of sickness. It was reported to the Glasgow District Court that he had obtained this relief on insufficient grounds. Upon a complaint being presented in proper form against Stevenson for this and other irregularities, and after evidence had been led the District Arbitration Committee on 27th July 1898 passed a resolution expelling him from the Order, calling upon him to hand over all books, papers, and properties belonging to the Order to the district secretary and finding him liable in the expenses of the arbitration meeting amounting to £1, 13s. 6d.

The decision of the Arbitration Committee was intimated to Stevenson, and he on 30th July 1898 wrote the secretary of the Glasgow District acknowledging the intimation and asking time to pay the expenses awarded against him. He never appealed against the decision.

Thereafter however he refused to deliver up the books in terms of the decision, and the Glasgow District raised an action against him in the Sheriff Court at Hamilton in which they prayed the Court "to interpone the authority of the Court, to the award of the Arbitration Committee of the Order, dated 27th July 1898, and to ordain the said John Stevenson, defender, to hand over and deliver the following books and papers, viz., Register of Members Contribution Book, Sick and Funeral Fund Book, Subscribing Benefit Fund Book, Treasurer's Cash Book of the Court 'Captain Boyd' Branch of the Glasgow District of the Order and belonging to the Order in his possession, to the District Secretary at the registered office of the Order, 2 South Apsley Place, Glasgow."

This action was raised in terms of section 68 of the Friendly Societies Act 1896 (59 and 60 Vict. cap 25), which provides that every dispute between a member of a registered society and the society or branch or an officer thereof "shall be decided in manner directed by the rules of the society or branch, and the decision so given shall be binding and conclusive on all parties without appeal, and shall not be removable into any court of law or restrainable by injunction; and application for the enforcement thereof may be made to the county court," which in terms of section 102 of the Act means in Scotland the Sheriff Court of the county."

The defender averred that on 4th August 1898 he handed over the books in his possession to Court "Captain Boyd," and pleaded, *inter alia*--"(1) The pursuers have no title to sue. (2) All parties are not called."

On 10th November 1898 the Sheriff-Substitute (DAVIDSON) sustained the first plea-in-law for the defenders.

Note.—. . . "After hearing the charge the Arbitration Committee expelled the defender and found him liable in costs, all of which procedure was, I think, quite within their right; but when they further ordered him to deliver to their secretary all the property of the Order in his possession, they were on totally different ground. . . . Of what Order? These (the books, &c.) are not the property of the general body of Foresters. Clause IA, section 3, of the Constitution of the Order provides that 'the funds and property of each branch (court or district) of the Order shall vest in the trustees of said branch, and the whole funds and property of each branch shall be under the exclusive control of the members and trustees thereof, subject only to the General Laws of the Order with respect to the investment of such funds and their application.' The pursuers, therefore, have no right of property over the effects of which they ask delivery. They have certain rights in regard to the books of the Court, which are defined in clause 41, section 2; but there is nothing in that section which gives them any right to demand delivery of them, unless perhaps from a contumacious Court, who refused their examiners access for the purpose of checking the audits.'

The pursuers appealed to the Sheriff (BERRY), who on 4th February 1899 adhered.

Note.—. . . "As regards the books and property, delivery of which is sought for in the petition, it appears from the General Law IA, section 3, that these belong to the Larkhall Branch not to the Glasgow District, and that the latter are not entitled to claim delivery of them from the defender. It is from the branch they must be claimed, if at all."

The pursuers appealed, and argued—The defender did now dispute the jurisdiction of the District Arbitration Committee. The defender had not appealed to the Superior Court of the Order against the decision. That being so, the pursuers were entitled to enforce their decree in the civil courts in terms of the Friendly Societies Act 1896, and the Sheriffs had no power to consider the terms of the decision of the committee. *Rombach* v. *M'Cormack*, Dec. 1, 1896, 4 S.L.T., case 264. The question, to whom did the books, &c., legally belong? could not be decided in the present action, and the defender if he had parted with the books had done so after the decision of the committee had been intimated to him, and was not entitled to plead that the books were now in the hands of another.

Argued for defender—The decision of the Sheriffs was right. The books, in terms of the General Laws of the Order, belonged to the branch and not to the district. The latter had therefore no title to sue. In any event, the books being now in the hands of the secretary of the branch, the branch must be made a party to the case. The books were not now in the defender's possession, and the Court would not issue a decree against the defender *ad factum præstandum* to deliver up books which were not in his possession.

LORD JUSTICE-CLERK—The defender was competently brought before the court of his society — the District Court of the society's Arbitration Committee — to answer as to irregularities as an office-bearer and member of the society. I say competently brought before it, for it is not now disputed that these proceedings were competent. The defender admits that that court had right to do certain things, and indeed if it had not he could competently have appealed to a higher jurisdiction within the society. He was removed from his office and was expelled from the society, and was also ordered to deliver up books and documents which he had in his possession as an office-bearer. Now, I cannot see his answer to that order. Any question which may exist as between the District Court and the Larkhall Branch of the society can in no way be affected by obedience to the order. If we decide in the pursuers' favour we only decide that the defender, when he had received notice from the competent court that he was removed from office and was called upon to deliver up the books, had no right to part with them to some-one else than the official to whom he was directed to deliver them, and is bound to deliver them up.

I think that the pursuers are entitled to decree-conform so as to enable them to enforce the judgment of that competent court.

It is said for the defender that he cannot now give up these books because he has already given them to another person, the official of the Larkhall branch. This is a question which does not arise at present. But I think we should order him to do what he should have done before if he had not, whether in collusion with the branch or at his own hand, chosen to deliver them to that body.

LORD YOUNG—In this case an application was made by the Glasgow District of the Ancient Order of Foresters to the Sheriff for a decree to enforce the decision of the District Arbitration Committee expelling the defender from the Order, calling upon him to hand over the books of the branch to the district secretary, and finding him liable in the costs of the arbitration meeting. It was not contended that the decision of the Arbitration Committee was bad so far as it dismissed him from his office or ordained him to pay the costs of the arbitration, but it was objected to in so far as it called upon him to hand over all the books and papers belonging to the Order to the district secretary. The Sheriffs refused to confirm the decision, on the ground that the books and papers were not the property of the district but the property of branch court. Now, I do not think that the Sheriffs were entitled to consider whether the books were the property of the one body or the other, and I do not intend to offer any opinion as to whether the Arbitration Committee had jurisdiction to determine any such question. But I am of opinion that their jurisdiction to inquire into his conduct and to dismiss him from his office being admitted, they were entitled and in duty bound to call upon him to hand over the books which were in his custody in virtue of his office.

I am therefore of opinion that the pursuers are entitled to have a judgment in terms of the prayer of their petition, and that the judgment of the Sheriffs ought to be altered. Our decision will determine nothing as to the persons ultimately entitled to the property of the books.

LORD TRAYNER — I am of the same opinion. The fallacy of the respondent's position seems to consist in his contention that there is here raised a question of right of property in these books. The pursuers are not getting a judgment and are not asking for a judgment to the effect that they are owners of the books in question. The District Court had jurisdiction to inquire into the defender's conduct, and to expel him from the society if they thought right, and as a consequence to direct him to deliver up the books which had come into his possession as an office-bearer and member of the society. All that we are asked to do is to grant a decree which will enable the petitioners to enforce the order of the District Court.

LORD MONCREIFF—I am of the same opinion. I agree with all that has been said, and I doubt whether the Sheriff had any power, the jurisdiction of the District Committee being admitted, to inquire into the matter of property.

The Court sustained the appeal, recalled the interlocutors appealed against, and granted the prayer of the petition.

Counsel for the Pursuers—Cook. Agents —Traquair, Dickson, & MacLaren, W.S.

Counsel for the Defender—David Anderson. Agents — Lister Shand & Lindsay, S.S.C.

Thursday, October 26.

FIRST DIVISION.

TOWN COUNCIL OF PETERHEAD AND OTHERS *v.* ABERDEENSHIRE COUNTY COUNCIL AND OTHERS.

Police—Burgh Police Act 1892 (55 *and* 56 *Vict. c.* 55), *sec.* 81—*Local Government* (*Scotland*) *Act* 1889 (52 *and* 53 *Vict. c.* 50), *sec.* 60.

Held that section 81 of the Burgh Police Act 1892 extends the provisions of the Local Government Act 1889, with reference to the policing of burghs with a population under 7000, to burghs with a population over 7000 and under 20,000 and not maintaining a separate police force of their own; and consequently that a county council is not entitled to meet the cost of policing such a burgh by levying a direct assessment upon lands and heritages within that burgh.