parties. And therefore if before the charter of confirmation was granted in favour of Hitchcock in 1858 the superior had proceeded against and recovered payment from the proprietor of the eastmost lot, that proprietor would have been entitled to relief from the proprietor of the remaining three lots to the west.

But the superior by restricting the feu-duty of Milne's lot to £12 altered the conditions. Thereafter the feu-duty was no longer the full amount of the original *cumulo* feu-duty, because Hitchcock held directly of the superior and was liable for no more than his £12, and I apprehend that it was no longer competent for the superior to poind Hitchcock's ground in respect of arrears due from the remainder of the original feu.

If in this state of matters the superior had poinded the eastmost lot (as the pursuers have done) he would have had nothing to assign to the proprietor of the eastmost lot as against Milne's lot, provided always that the proprietor of Milne's lot had paid up his £12. Thus the right of relief of the proprietor of the eastmost lot would have been confined to the two westmost lots, and would thus have been impaired.

In short, in the case supposed (which is the present case) the superior by his own act would have precluded himself from asserting a right which he would otherwise have possessed.

That is the view which the Lord Ordinary has taken, and although there are some theoretical difficulties in the way of accepting it, I have come to be of opinion that in the circumstances it is the sounder, as it certainly is the more equitable, view of the case.

A superior who grants a feu in the knowledge that it is to be divided and sold for building purposes may be within his rights in ignoring his vassal's allocation of the *cumulo* feu-duty and exacting it from the proprietor of one lot. But the enforcement of the superior's rights in such a case must sometimes be attended with hardship, because it is not always easy for the sub-feuar or disponee who has been compelled to pay the whole of the *cumulo* feu-duty to operate his relief. The present case is a good example. Miss Tod if obliged to pay could probably recover nothing from Jameson's lot, and the proprietor of Milne's lot would certainly dispute his liability for more than the allocated feu-duty.

If, then, the superior by his own actings has done anything to prejudice, or anything which may prejudice, the right of relief of the subvassal or disponee whom he elects to pursue, the Court is not, in my opinion, bound to strain the law in order to assist the superior to enforce what at least is a hard claim.

The LORD JUSTICE-CLERK intimated that LORD YOUNG (who was present at the hearing but absent at the advising) concurred.

The Court adhered.

Counsel for the Pursuers and Reclaimers—Campbell, K.C. — Craigie. Agents — Millar, Robson, & M'Lean, W.S.

Counsel for the Defender and Respondent (Miss Jean Tod)—H. Johnston, K.C. —Macphail. Agents—H. & H. Tod, W.S.

Thursday, February 18.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

CRICHTON *v.* TRUSTEES OF THE DALRY MYRTLE LODGE OF FREE GARDENERS.

Jurisdiction—Provident Society—Reference Clause—Dispute as to Decision that Membership had Lapsed—Friendly Societies Act 1896 (59 *and* 60 *Vict. c.* 25), *sec.* 68 (1).

The Friendly Societies Act 1896 provides (sec. 68 (1)) that every dispute arising between a member of a friendly society and the society, or a branch thereof, shall be settled in accordance with the rules of the society. The rules of a friendly society provided that disputes between a member and a lodge should be decided either by arbitration or by an appeal to the executive of the society. A member being dissatisfied with a resolution of his lodge's executive regarding the medical certificate to be from time to time obtained by him for a continuance of his sick allowance, appealed, in accordance with the regulations to the District Executive, and therefrom to the Grand Executive, but his appeal was dismissed. Having failed to observe the requirements of the resolution he ceased to receive sick allowance, and as the subscription to the society was in use to be deducted from such allowances before payment he fell into arrear with his subscription. When he was seven months in arrear the lodge resolved that his membership had lapsed. He then brought an action of reduction of this decision and of the preceding resolutions, and maintained that as the question was as to his right to be a member of the society, the society's rules as to the methods of settling disputes did not apply. *Held*, that the case fell within the rules of the society, and that the jurisdiction of the Court was thereby excluded.

Symington v. *Galashiels Co-operative Store Company, Limited*, January 13, 1894, 21 R. 371, 31 S.L.R. 253, *distinguished.*

George Logan Crichton, residing at 20 Fowler Terrace, Edinburgh, had been initiated on the 28th June 1889 a member of the Dalry Myrtle Lodge (No. 190) of the East of Scotland District of the British Order of Ancient Free Gardeners Friendly Society, which was registered as a friendly society, and had for some years thereafter contributed to the funds of the society. He brought an action against the trustees

of the said Lodge, and also against the trustees of the East of Scotland District and the trustees of the Order, in which he sought reduction of a decision of the Lodge that his membership had lapsed, and of certain resolutions preceding that decision.

In his condescendence he made the following averments—"(Cond. 4) For about four years back the pursuer has been and is still suffering from a severe attack of vertigo, which totally incapacitates him for work. During the first few months of that period the pursuer was under the treatment of Dr Macdonald Robertson, 41 Gilmore Place, Edinburgh, the Lodge surgeon. Being dissatisfied with the treatment of the said Dr Macdonald Robertson the pursuer put himself under the treatment of Dr Carswell, Glasgow, a recognised specialist in diseases of the brain. (Cond. 5) In or about the month of August 1901 the pursuer was required by the said Lodge to go to the Royal Infirmary for examination. This the pursuer refused to do, on the ground that he was not bound to go to any charitable institution. The said Lodge then ceased to pay the pursuer his sick-money, but on the pursuer procuring and submitting to them a certificate by Dr Murdoch Brown, 9 Walker Street, Edinburgh, to the effect that the pursuer was still unfit for work, the said Lodge paid up all arrears and resumed the regular weekly payment of his allowance to the pursuer. (Cond. 6) In or about the month of November 1901 the question of the pursuer's right to the said allowance was once more raised by the said Lodge, and the pursuer, at the request of the said Lodge, submitted himself for examination to Dr Byrom Bramwell, who would not certify him as fit for work. (Cond. 7) Notwithstanding the result of the said two examinations the said Lodge, on or about 17th January 1902, resolved that the pursuer must procure a medical certificate from Dr Carswell, and continue to do so every two weeks until he was fit for work, and instructed the Lodge surgeon not to sign the pursuer's card unless such a certificate was produced. The rules of the said Lodge gave them no authority to pass any such resolution. This is the first pretended resolution of which reduction is now asked. Under the rules of the said Dalry Myrtle Lodge every member within the three miles circuit, *i.e.*, residing within three miles of the registered office of the Lodge, must visit or be visited by the surgeon at least once every seven days, and is supplied with a card which the surgeon and stewards sign at each visit. If said card is not signed sick benefit may be withheld. (Cond. 8) The pursuer, though he considered that he was not bound to conform to the said resolution, on or about 1st February 1902, procured a certificate from Dr Carswell. On production of this certificate payment was made to the pursuer of his allowance down to 22nd February 1902. (Cond. 9) In accordance with said illegal resolution of 17th January 1902 Dr Macdonald Robertson thereafter refused to sign the pursuer's card unless the pursuer produced a fortnightly certificate from Dr Carswell, and the said Lodge thereupon refused to make payment to the pursuer of the sick benefit to which he was entitled. (Cond. 10) On or about 28th March 1902 the pursuer appealed to the Executive Committee of the East of Scotland District of the British Order of Ancient Free Gardeners against the said resolution of the Dalry Myrtle Lodge. The said appeal was heard by the said District Executive on 1st May 1902, when the Executive dismissed the appeal. This is the second pretended resolution of which reduction is asked. (Cond. 11) From this decision the pursuer appealed to the Grand Executive of the British Order of Ancient Free Gardeners. The pursuer's appeal was heard on 29th July 1902. The Grand Executive sustained the decision of the District Executive, and found the pursuer liable in 10s. of expenses. This is the third pretended resolution of which reduction is asked. (Cond. 12) On 19th September 1902 the pursuer wrote to the said John Grant, the Secretary of the Dalry Myrtle Lodge, a letter to be laid before the said Lodge intimating that he was prepared to produce a medical certificate each month while he remained on the sick-list. No reply was received to this letter until 18th October 1902. It is believed and averred that in the interval the said Dalry Myrtle Lodge consulted the District Executive as to this offer by the pursuer, and on or about 10th October the said District Executive resolved that the pursuer's membership had now lapsed, and that he could only now be admitted as a new member because he had not complied with General Order, Rule 32. This is the fourth pretended resolution of which reduction is asked. (Cond. 13) On or about 18th October 1902 the said Dalry Myrtle Lodge resolved that the pursuer, being at the date of his letter (19th September 1902) over seven months in arrears with his contributions, had allowed his membership to lapse, and further, that he could now only be readmitted to the Lodge as a new member. This is the fifth pretended resolution of which reduction is asked."

The defenders pleaded—"(2) The jurisdiction of the Court being excluded by the reference clauses in the said statute of 1896 and the rules of the Order, the action should be dismissed."

The book of general rules of the British Order of Ancient Free Gardeners Friendly Society contained the following—"All disputes arising between a member or person claiming through a member, or under these rules, or between any lodge or district branch, as also between any district branch and the Order, or any officer thereof, shall be decided by the several executives, committees, or boards of arbitration, as hereinafter provided for, viz., parties in dispute may take advantage of either course, but cases referred to executives for settlement cannot be afterwards heard by arbitrators, and in a like manner those referred to arbitration cannot be brought before the executives, each course being binding and conclusive in accordance with the rules laid down for the conducting thereof."

The book of rules of the Dalry Myrtle Lodge contained the following—"13 (6) Any sick member residing within the three-mile circuit, if not satisfied with the Lodge surgeon, shall be at liberty to call any other duly qualified surgeon, at his own expense, but such member must be examined by the Lodge surgeon and obtain a certificate from him before he can receive sick allowance, and the Lodge surgeon shall visit such member at least once a-week, and report from time to time to the Lodge on the state of his health."

The Friendly Societies Act 1896 (59 and 60 Vict. cap. 25), sec. 68 (1) enacts—"Every dispute between (*a*) a member or person claiming through a member or under the rules of a registered society or branch and the society or branch or an officer thereof, or (*b*) any person aggrieved who has for not more than six months ceased to be a member of a registered society or branch, or any person claiming through such person aggrieved, and the society or branch or an officer thereof: or (*c*) . . . 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." . . .

On 27th June 1903 the Lord Ordinary (KYLLACHY) sustained the defences and dismissed the action.

Opinion.— . . . "The facts of the case, shortly stated, seem to be these—The pursuer has for some time prior to January 1902 been in dispute with the Society over certain matters connected with his sick allowance. In these disputes he had up to a certain stage been successful, that is to say, he had obtained the right or privilege of being attended by his own doctor instead of the district doctor, but in January 1902 the executive of his Lodge and the executive of the Society passed a resolution which was substantially to the effect that although he might be visited by his own doctor he should not receive his fortnightly sick allowance unless he produced each fortnight a certificate from his own doctor to the effect that he was still unable to work. The pursuer, in terms of the rules, appealed against that resolution to the District Executive, and on the 1st of May 1902 that executive refused his appeal. He then appealed, also in terms of the rules, to the Grand Executive of the Society, but they ultimately agreed with the District Executive, and the appeal was dismissed. And so, according to the rules of the Society, the matter was closed. No other appeal within or without the Society was permitted by the rules.

"Now, if the pursuer had brought the present action at that stage the result would not have been, I apprehend, open to doubt. He was still a member of the Society and still bound by its rules, and he could not have appealed to the courts of law. Recognising that difficulty, the pursuer did not at that stage bring his action. What he did was this. He let his fortnightly subscription to the Society fall into arrear, and on 8th October 1902 he was seven months in arrear. And in respect of that arrear he was by the rules of the Society liable to expulsion. Accordingly he was expelled by resolution of his Lodge and of the District Executive in October 1902. And having thus ceased to be a member of the Society he, in December 1902, brought the present action by which, as I have said, he seeks to reduce all the previous proceedings, and to have in effect a re-trial in this Court of the dispute between him and the Society, that is to say, a re-trial of the question whether the Society were entitled to prescribe as a condition of his continuing to receive sick allowance that he should produce fortnightly a medical certificate from his own doctor. And he bases his claim to that re-trial, as I understand his case, upon this ground, that being no longer a member of the society the rules of the Society as to settlement of disputes could no longer be quoted against him. In other words, that the case comes within the principle, or supposed principle, of the decisions of this Court—decisions recited in the cases of *Symington*, 21 R. 371, and *Prentice*, L.R. 10 C.P. 679. Now I have considerable sympathy for the pursuer, I have the impression that he has been somewhat harshly dealt with, but I do not think that this action as now brought will do. The defence of jurisdiction must be sustained. I do not say what would have happened if the pursuer, when the dispute arose, had simply protested, and having left the society voluntarily or otherwise had then brought the action in this Court. I must say that I think he would even in that case have had considerable difficulty if the dispute arose while he was a member of the Society and had arisen with respect to his rights as a member against the Society. I should have required even in that case something more in the way of argument from the pursuer than the mere reference to the cases of *Prentice* and *Symington*. But it is not necessary to decide anything on that point. For the pursuer did not confine himself to protesting but accepted the jurisdiction of the society tribunals. Whether bound or not to do so he submitted his case in terms of the rule to the District Executive, the court of first instance under the rules. He had the option of proceeding to arbitration under the rules, but he chose rather to submit the dispute to the District Executive, and having failed before the District Executive he appealed to what is the court of appeal under the rules—the Grand Executive of the society. Having submitted his case to that tribunal he was again unsuccessful. The position, therefore, I think, simply is that whether bound to do so or not he made a valid and competent reference of his case to the domestic tribunal, and having done so, and the domestic tribunal being against him, he cannot now turn round and claim that the award of that domestic tribunal be reduced and that this Court should re-try the case on its merits."

The pursuer reclaimed, and argued—The Lord Ordinary had erred here in holding that the Court's jurisdiction was excluded, for it was not a question between the Society and a member, but between it and one claiming membership. The case therefore came under the rule established by *Symington's Executor* v. *Galashiels Co-Operative Store Company, Limited*, January 13, 1894, 21 R. 371, 31 S.L.R. 253; *Prentice* v. *Loudon, Longhurst, and Others*, L.R., 10 C.P. 679; *Pattison* v. *Dale* [1897], 1 Q.B. 257.

Counsel for the respondents was not called upon.

LORD ADAM — This action is an action of reduction of a resolution of the Dalry Myrtle Lodge of the British Order of Ancient Free Gardeners, of date 17th January 1902, and of the various resolutions which followed thereon. The defenders have declined to satisfy the production upon the ground that this Court has no jurisdiction to decide this point. They maintain that by the rules of the Society this is a matter for the domestic tribunal of the Society itself, and further, that even although the resolution of 17th January 1902 might be found to have been *ultra vires*, yet nevertheless the pursuer is barred now from insisting in his demand because in point of fact he did submit appeals, and having submitted appeals, whether bound to do so or not, and having obtained a judgment against him upon them, he cannot now throw all that away and sue this action as if such proceedings had never taken place. I understand that these are the questions which we have to decide.

The first question which appears to me to be raised is, whether the dispute which resulted in the resolution of 17th January 1902 was a domestic dispute or whether it was not—whether it was a dispute which falls under the 68th section of the Friendly Societies Act 1896—that is, a dispute between a member of a registered society and the society or branch or an officer thereof. I cannot have any doubt whatever that this was a dispute between a member and the branch of which he was a member—the question being whether he was entitled to an allowance on certain conditions or not—and the question, there can be no doubt whatever, was submitted to arbitration under the rules. But it is now said—"Oh, but I am not now a member, and therefore whether I rightly or wrongly ceased to be a member it is no longer a dispute between a member and the Society." The question, however, is this—At the date when the dispute arose was he a member of the Society, and was he then bound to submit to arbitration with the Society? That is the question, and it is the same thing as a question under any contract where there is a clause of arbitration and objection is taken that the action is incompetent because it has been agreed to refer to arbitration. It is just the same question. But to say that a member who at the time when the dispute arose was bound to submit the dispute to arbitration can get out of his obligation simply by the lapse of time, *i.e.*, to say that although on the 17th January 1902 this was a dispute which the pursuer must have submitted to arbitration, yet his position is different now, and he is released from his obligation because he has afterwards ceased to be a member, is to make a statement to which I cannot assent at all. Therefore I think clearly that this was a dispute which fell to be disposed of as a domestic dispute with the Society itself under the rules of the Society, and it was a dispute which this Court had at that time no jurisdiction to decide at all.

But it is said that the decision given in the dispute was *ultra vires*. It is not for me to construe the clause in the rules which would settle that matter, because that again, according to the rules of the Society, was referred to the Society's own tribunal. The clause with reference to that matter is 13 (6) — [*His Lordship quoted the clause.*] Under that what took place was this. The pursuer did not like the Lodge surgeon, but chose to consult a Dr Carswell, who resided in Glasgow, and the Lodge apparently for some time dispensed with the part of the rule which required the Lodge doctor to see him every week, and acting upon Dr Carswell's certificate for some time continued the allowance although the pursuer was not visited by the Lodge surgeon. The rule says that the sick member shall be seen and his certificate signed by a Lodge surgeon every week. But the Lodge said —"You have consulted your own doctor, Dr Carswell, and we will be satisfied with a fortnightly certificate from him, provided you show it to the Lodge doctor." And it was for them to say whether that was a reasonable and proper certificate to be satisfied with. It was, it is to be observed, less than their own rule required. We have not, however, to consider that question. The decision upon it is in my opinion for the Society alone, and therefore upon this point also I decline to consider whether that decision was *ultra vires*. It lay with the Society to decide that.

But the matter did not rest there. If the pursuer thought that that decision was *ultra vires*, and that he was not bound to obey it, that was his time to bring his reduction if he could do so, but not now. Instead of doing that he protested and appealed to the tribunals constituted by the rules of the Society to consider appeals. There was, first, one appeal to a court, and then another appeal from it to another court, and both of these courts came to the same conclusion as the original court had done, that it was a very proper decision and that the pursuer was bound to obey it, and the Lodge stopped, as they were bound to stop, his allowance on the one hand, and he stopped his fortnightly payments which was requisite to keep him as a member of that body. He accordingly ceased to be a member. That is the whole case. I think the Lord Ordinary's interlocutor should be adhered to,

LORD M'LAREN—In this action reduction is sought, first, of certain decisions of what have been termed the domestic courts of this friendly society relating to the conditions upon which the pursuer was entitled to obtain sick pay from the funds of the Society; and secondly, reduction is sought of two resolutions, one of the district branch, which is the higher branch as I understand it, and the other of the Dalry Myrtle branch, of which the pursuer is an immediate member, declaring that in consequence of the non-payment of contributions the pursuer had allowed his membership to lapse and could only be admitted as a new member. On reading the Lord Ordinary's judgment the only shadow of doubt that crossed my mind was with reference to the resolutions stating that the pursuer's right had lapsed. A possible distinction might be taken from this resolution by which the pursuer's active rights as a member had ceased without any act of his own, that he might be entitled at least to bring the resolutions into Court that they might be considered upon their merits, and that it might be seen whether the resolution was lawful. But if an order had been made to satisfy the production upon these two latter resolutions, it would not, in my judgment, have affected the ultimate decision of the case. We have had, without the formality of satisfying the production, the resolutions brought before us, and I am quite satisfied, first, that the Lodge acted within its rights in passing their resolution; and secondly, that if the pursuer were aggrieved by it his only remedy under the rules of the Gardeners' Association was to have claimed a hearing of his case before the official arbitrators who were nominated in accordance with the rules, or alternatively before the District Executive, with an appeal to the Grand Executive. Now, he did not claim his right of review, but submitted to go out of the Society, and not having claimed his right to be heard in the only way in which disputes can be heard between a member and the Lodge, I am of opinion that his action in this Court must fail. I agree with what has been said by your Lordship in the chair that these provisions for arbitration in the rules of friendly societies are equally binding and effective as excluding the jurisdiction of the ordinary courts of law as if they were clauses of reference to arbitration in a contract between man and man. If there be any difference the arbitration under the rules of friendly societies has, if possible, a more obligatory effect than arbitrations under a contract, because it has the sanction of an Act of Parliament. The 68th section of the Friendly Societies Consolidation Act provides in the most explicit terms that, where a dispute is, under the rules of any society, referred to arbitration, or to be disposed of in accordance with the rules, the decision of the case shall not be removable into any court, nor shall the proceedings be stayed by injunction, so that everything which could possibly be done for the purpose of ensuring finality of decision in these local committees has received the authority of the Legislature. While I am perfectly satisfied with the grounds of judgment, and it is quite unnecessary that we should enter into the merits of the question of the original resolution, I may say that after attending to all that has been urged I have been unable to satisfy myself that any substantial injustice was done to the pursuer by the proceedings taken in his case, because these are very special provisions with reference to sick pay in the rules of this Society. It is certainly very necessary that the regulations should be strict, because these are practically insurance societies, and if people were to get pay who were not entitled to it the scheme of the association would need to be revised or the fund would no longer be able to meet the charges upon it. Therefore I think it is only according to their duty and very necessary that the provisions with regard to sick pay should be strictly enforced.

As I read the rules I do not find that there is any compulsion on the part of a member to have his case treated by the surgeon of the Lodge.

He is entitled to the services of the surgeon of the Lodge, I presume, without payment, although that is not stated. That is a great boon to members of a benefit society. But it is expressly provided that he is not obliged to receive the visits of the surgeon to the Lodge. He is obliged to admit the officers of the Lodge, who are entitled to see him; but it is provided in rule 13 (6):—"Any sick member residing within three-mile circuit, if not satisfied with the Lodge surgeon, shall be at liberty to call any other duly qualified surgeon at his own expense." There could not be a wider discretion than that. But then each member must be examined by the Lodge surgeon, and must get a certificate from him before he can receive sick allowance. That is to say, if you are not content with the services of the Lodge surgeon, you may consult any doctor you please; but the Lodge, for its protection, must be satisfied by an examination conducted by their medical officer. I can see nothing unreasonable in that. He is not to be examined by the Lodge surgeon for the purpose of being medically or surgically treated; he is to be examined in order that this officer may make a report to the Lodge whether the state of his health entitles him to sick allowance. Now, the Lodge did not enforce that rule strictly. They might have insisted upon the lodge surgeon seeing him, but they said in effect if you will not receive the Lodge surgeon, we shall ask you to send a certificate from a physician of your own selection. There might possibly have been some intermediate course; but that is a matter upon which the pursuer could only appeal to the District Executive of this organisation. Therefore I cannot say if we were to go into the merits of the case that the pursuer would be likely to improve his position. I agree that the interlocutor of the Lord Ordinary should be affirmed.

Lord Kinnear—I quite agree with your Lordships, and should only desire to add that I do not consider that either anything that has been said or the decision which your Lordships propose to pronounce is in any way inconsistent with the decision in the cases of *Prentice* and *Symington*. I entirely assent to the principle of these decisions, and see no reason whatever for doubting their soundness. But then the principle really is that where a domestic tribunal is established for the determination of disputes between a member of a friendly society and the society itself, the consequent exclusion of the jurisdiction of the courts of the country does not apply to any question which is in substance a dispute between a person claiming to be a member against the denial of the friendly society itself that he is a member. Where the substance of the question is whether the litigant opposed to the society has or has not the rights of a member, it has been decided that the privative jurisdiction of the domestic tribunal is not invoked, and that upon the principle which is quite clearly and forcibly expressed by the Lord President in the latter of the two cases—that a society cannot at one and the same time assert that a person litigating with them is not a member of the society, and at the same time that he is a member and that he is bound by the domestic tribunal which decides only disputes between members and between members and the society. Now, I think it might possibly have been maintained, as indeed it was with great clearness by Mr Christie, that the present case fell within that principle if the only resolution complained of were the resolution that the pursuer had ceased to be a member, because what we are asked ultimately to find on consideration of all the conclusions of the summons is that the resolution by which he was held to have ceased to be a member was invalid, and that he is a member; and that that may resolve into a dispute between him and the Society as to whether he was or was not a member. But then the last resolution is the direct consequence, and it is not disputed—at least I heard no suggestion that it was anything but the necessary consequence, according to the rules, of all the previous resolutions; and therefore the medium through which we are asked to come to the conclusion that the pursuer is still a member is simply that the decisions of the domestic tribunal upon the dispute between him and the Society which he raised first before the tribunal of first instance, and afterwards before the statutory court of appeal, while he was a member, were wrongly decided upon the merits. That is the necessary and only medium through which we are asked to reach the conclusion that the pursuer is still a member of the Society. No doubt it was said that these decisions were *ultra vires*, but upon the explanation which was given in the course of a clear argument by Mr Christie as to what the substantive grounds upon which the plea of *ultra vires* was rested were, it was perfectly clear that what was intended was that the decisions were upon their merits erroneous, because the two domestic tribunals before which the question came in succession had wrongly construed and misapplied the rules of their Society. But then that was just the question which was before them as a court of arbitration, and it is of no consequence whether the arbiter has decided rightly or wrongly if he has given a decision upon the question which has been submitted to him for decision by the parties before him; and that the various committees who decided this question were deciding the question put before them by the pursuer himself, and no other question, is as plain as words can make it upon the pursuer's condescendence. I am therefore very clearly of opinion that the cases of *Symington* and *Prentice* do not apply, and that the question is exactly where the Lord Ordinary has put it—in the first place, that there was a court of arbitration instituted by statute and the rules of the Society, and in the next place that the pursuer himself having submitted the question in dispute to these domestic tribunals, the jurisdiction of this Court is therefore excluded. As to the question whether the Society had treated the pursuer harshly or unreasonably or not I desire to express no opinion. I daresay this is a question upon which a good deal might be said upon both sides. I have heard some statements on one side only. The decision of the Court is that it is not before us, and I am unwilling to express any opinion upon a question we cannot decide.

The Court adhered.

Counsel for the Reclaimers—Salvesen, K.C.—J. A. Christie. Agents—St Clair Swanson & Manson, W.S.

Counsel for the Respondents—C. D. Murray. Agents—Drummond & Reid, W.S.

Thursday, February 25.

FIRST DIVISION.

GRAY *v.* WYLLIE.

Process—Proof—Diligence—Action of Damages for Slander—Alleged Injury to Pursuer's Business—Defender's Right to Recover Pursuer's Business Books and Income-Tax Receipts—Transfer of Business to Company—Recovery of Books of Company.

In an action of damages for slander the pursuer averred that he had suffered injury to his business by reason of slanderous statements alleged to have been made by the defender regarding the pursuer's business character and his mode of conducting business. The pursuer's business was sold to a limited liability company between the date of the alleged slander and the date of the raising of the action.