

Thursday, December 21.

FIRST DIVISION.

[Sheriff Court at Glasgow.

JOHNSTON'S TRUSTEES v. SPECIAL
COMMITTEE OF GLASGOW
CORPORATION.

Process—Appeal by Stated Case—Competency—Appeal from Order of Sheriff Quashing Closing Order—Housing, Town Planning, &c., Act 1909 (9 Edw. VII, cap. 44), secs. 17 (3) and 39 (1).

The Housing, Town Planning, &c., Act 1909, as applied to Scotland by section 53 (14) thereof, enacts—section 17 (3)—that any owner of a dwelling-house aggrieved by a closing order pronounced by a local authority may appeal to the Sheriff within fourteen days thereafter. No other appeal is given, but section 39 provides “that the Sheriff may at any stage of the proceedings on appeal, and shall if so directed by the Court of Session, state in the form of a special case for the opinion of the Court any question of law arising in the course of the appeal. . . .”

A Sheriff issued an order quashing a closing order.

Held that a special case submitting for review certain questions of law decided by the Sheriff was incompetent and must be dismissed.

Section 17 (3) of the Housing, Town Planning, &c., Act 1909 (9 Edw. VII, cap. 44), as made applicable to Scotland by section 53 (14) thereof, is, so far as material, quoted *supra in rubric*.

Section 39 (1), as so applied, enacts—“The procedure on any appeal under this part of this Act, including costs, to the sheriff shall be such as the Court of Session may by Act of Sederunt determine, and on any such appeal the sheriff may make such order in the matter as he thinks equitable, and any order so made shall be binding and conclusive on all parties, and where the appeal is against any . . . order . . . made by the local authority, the . . . order . . . may be confirmed, varied, or quashed, as the sheriff thinks just: Provided that”—[*the proviso is quoted supra in rubric*].

On 3rd October 1910 the Special Committee of the Corporation of Glasgow, as the local authority under the Housing of the Working Classes Acts 1890 to 1909, made and notified to the trustees of Robert Johnston, the proprietors of a tenement of dwelling-houses situated at 77 Stewart Street, Cowcaddens, Glasgow, a closing order in regard to said property under section 17 (2) of the statute of 1909.

On 12th October 1910 Johnston's trustees, feeling aggrieved by the said order, appealed to the Sheriff under section 17 (3) of the Act.

On 5th January 1911 the Sheriff-Substitute (FYFE), having heard parties, pronounced an interlocutor whereby, having

made certain findings in fact, he quashed the said closing order.

On 7th January the Special Committee presented a note craving the Sheriff-Substitute to state a case for the opinion of the First Division upon certain questions of law.

On 7th April Johnston's trustees lodged a minute in which, under reservation of their whole pleas as to the competency of the appeal and the form thereof, they asked the Sheriff-Substitute in the event of his stating a Special Case to state certain additional questions.

On 11th May the Sheriff-Substitute, under reservation of all objections of competency, stated a Special Case, in which he, *inter alia*, set forth the facts above narrated and stated the questions desired by either side.

The case appeared in the Summar Roll on 24th October 1911, when counsel for Johnston's trustees objected to the competency of the case.

They argued—The appeal was incompetent. The Housing, Town Planning, &c., Act 1909 gave no appeal to the Court of Session. *Esto* that section 39 (1) provided for the opinion of the Court being taken upon questions of law, that was during the proceedings and prior to judgment. The case was ruled by *Steele v. McIntosh Brothers*, November 12, 1879, 7 R. 192, 17 S.L.R. 98. Reference was also made to *Knight v. Tabernacle Permanent Building Society*, [1892] 2 Q.B. 613.

Argued for the Special Committee—The stated case was not incompetent. The quashing of the closing order did not put an end to their right to claim a stated case.

At advising—

LORD PRESIDENT—In this case a closing order was made by the local authority of Glasgow under the Housing and Town Planning Act 1909. An appeal was taken from that closing order to the Sheriff-Substitute in terms of the section of the Act to which I shall refer. Upon that appeal, after certain procedure, the learned Sheriff-Substitute issued a judgment which, after various sets of findings, finishes with this—“Therefore quashes the said closing order.” That having been done, a minute was lodged for the Special Committee of the Corporation, in which, referring to the judgment to which I have just referred, the respondents respectfully crave the Sheriff-Substitute to state in the form of a stated case, for the opinion of the First Division of the Court of Session, certain questions of law. To that a minute was put in for the other side, in which, under reservation of all pleas as to the competency of the appeal and the form thereof, they ask him to add other questions. And accordingly the Sheriff-Substitute did state a Special Case.

Upon the Special Case appearing here the competency was at once objected to by the appellants in the Court below, that is to say, the parties against whom the closing order had originally been pro-

nounced, and your Lordships heard counsel on that matter, and did not go into the merits until we should have disposed of the question of the competency.

I am clearly of opinion that the stated case here is incompetent, because it is too late.

The section of the Act which deals with closing orders is the 17th. I need not go through it again, because we have just been going through it in the case we have last disposed of; but it provides that a local authority on their own initiative shall cause inspections to be made of their district, and if any dwelling-houses are dangerous to health it becomes their duty to issue a closing order. The closing order is to be forthwith served upon the owner, and if the owner is aggrieved by the order he may appeal to the Local Government Board by giving notice of appeal. The Local Government Board is, by the application of section 53, sub-section (14), translated into sheriff in Scotland. Now that is the appeal given, and the only appeal given. There is no appeal from the Local Government Board or sheriff to anyone else. But section 39 deals with the procedure under the appeal which is given to the Local Government Board, or in Scotland the "sheriff." Now that section, as applied to Scotland by section 53, sub-section (14), reads thus — "The procedure on any appeal under this part of this Act, including costs, to the sheriff, shall be such as the Court of Session may by Act of Sederunt determine, and on any such appeal the sheriff may make such order in the matter as he thinks equitable, and any order so made shall be binding and conclusive on all parties. . . . Provided that the sheriff may at any stage of the proceedings on appeal, and shall if so directed by the High Court," that is, the Court of Session, "state in the form of a special case for the opinion of the Court any question of law arising in the course of the appeal. . . ." That is the only provision. Your Lordships will observe that it is not a provision for a further appeal from the sheriff, but it is a provision that in the course of the appeal to the sheriff, the sheriff may, if he likes, and shall if directed by the Court of Session, state in the form of a special case a question of law for the opinion of the Court. "For the opinion of the Court" means that the Court will give the sheriff their opinion on a question of law, and he would not be entitled to disregard it; but it must be given at a time when as yet he has not pronounced a judgment, because if you allow him to go on and pronounce a judgment, then really stating a special case would not be giving an opinion for his guidance. He cannot recal his judgment, and there is no provision which allows us to recal it.

There are many instances in other statutes of appeal given by way of stated case; the Workmen's Compensation Act is one of which we have daily example. But in all those statutes there is a provision in the statute which gives the appeal. But here there is none. This law is not at all new law. I think it is absolutely decided by

authority both in Scotland and in England. In Scotland it is covered by the case of *Steele v. M'Intosh Brothers* (1879, 7 R. 192). There it was a question under the Excise Act, 7 and 8 Geo. IV, cap. 53, and it was this. Section 84 of that statute contains the following proviso:—"Provided always that it shall be lawful for such commissioners of appeal and justices of the peace, at such general quarter sessions respectively, as aforesaid, at their discretion, to state the facts of any case on which such appeal shall be made specially for the opinion and direction of the Court of Exchequer in England, Scotland, or Ireland, as the same shall have arisen therein respectively." Now the Lord President in that case goes into this precise question with great particularity, and he points out exactly the distinction I have just pointed out, namely, that there are statutes in which appeal is given by stated case, but that there are others in which nothing is said as to appeal, but there is only provision for opinion. The statute before your Lordships belongs to the latter class, and only makes provision for the sheriff obtaining the opinion of this Court to aid him in forming his own final judgment. The words in the Excise Act of 1827 are not precisely the same as in the Housing and Town Planning Act, but the reasoning is precisely applicable. In the English case *in re Knight and Tabernacle Permanent Building Society*, [1892] 2 Q.B. 613, the actual words are the same. It was an arbitration between Knight and the Tabernacle Permanent Building Society, and it arose out of the Arbitration Act, where it is provided that "any referee, arbitrator, or umpire may at any stage of the proceedings under a reference, and shall if so directed by the court or a judge, state in the form of a special case for the opinion of the court any question of law arising in the course of the reference." There again the argument was precisely on the same lines, and the decision was precisely on the same lines, as in the Scotch case.

I think, therefore, both on principle and authority, this application is too late, is incompetent, and cannot be entertained.

LORD KINNEAR, LORD JOHNSTON, and LORD MACKENZIE concurred.

The Court sustained the objection for the trustees and dismissed the case as incompetent.

Counsel for Johnston's Trustees—Sandeman, K.C.—D. M. Wilson. Agents—Fraser & Davidson, W.S.

Counsel for Special Committee of the Corporation of Glasgow—M. P. Fraser. Agents—Campbell & Smith, S.S.C.