LORD RUTHERFURD CLARK—There is no question here as to the delivery of the goods. The transaction was in security only, and therefore the Act does not apply. As regards the other question, I think we must follow the case of *Stiven* v. *Scott*, which is the latest authority. I think this is even a stronger case.

The LORD JUSTICE-CLERK concurred.

LORD YOUNG was absent.

The Court adhered.

Counsel for the Pursuer — Rhind—Salvesen. Agent—William Officer, W.S.

Counsel for the Defenders—Jameson—W. C. Smith. Agents—Davidson & Syme, W.S.

Friday, March 6.

SECOND DIVISION.

[Dean of Guild Court, Maryhill.

COUPER *v.* ELDER.

Burgh—Dean of Guild—Building in a Court—Access to Court—Police and Improvement (Scotland) Act 1862 (25 *and* 26 *Vict. cap.* 101), *sec.* 177—*Construction of Act.*

The Police and Improvement (Scotland) Act 1862, sec. 177, provides—"It shall not be lawful to form, lay out, or build any court unless the same shall be of a clear width of 15 feet, measuring from the buildings or intended buildings therein; . . . provided also, that there shall be an entrance to every such court of the full width thereof, and open from the ground upwards."

The proprietor of a court, surrounded by houses, and 124 feet in width, proposed to build across the same a row of tenements, 40 feet distant from one side of the court, and 35 feet from the other. The plans showed an entrance to the court by an open passage about 6 feet wide. *Held* that the plans were not in conformity with the provisions of the statute.

Opinion (*per* the Lord Justice-Clerk and Lord Trayner) that the word "house" means a tenement contained within the four walls which constitute the building, and not a separate dwelling-place.

Opinion (*per* Lord Trayner) that this clause is applicable to courts already existing as well as to courts to be made of new.

The General Police and Improvement (Scotland) Act 1862 (25 and 26 Vict. cap. 101), sec. 177, provides—"It shall not be lawful to form, lay out, or build any court unless the same shall be of a clear width of 15 feet, measuring from the buildings or intended buildings therein: Provided always, that to any such court in which there shall be more than eight houses there shall be an additional width of 1 foot for every such additional house; provided also, that there shall be an entrance to every such court of the full width thereof, and open from the ground upwards." Clause 3 provides, *inter alia*—"The word 'street' shall mean a public street, and shall extend to and include any road, bridge, quay, lane, square, court, &c., and public passage, or other place within the burgh used either by carts or foot passengers, not being a private street," &c.

George Couper, Glasgow, presented this petition in the Dean of Guild Court, Maryhill, for warrant to erect buildings in a court belonging to him. The petitioner's property consisted of a rectangular block, extending between Main Street and Whitelaw Street, to the former of which it had a frontage of 126 feet 9 inches, and to the latter a frontage of 125 feet 11 inches, while the two sides measured respectively 187 feet 10 inches on the south-east, and 184 feet on the north-west, and were bounded by properties of other parties. The property was in a populous part of the burgh, and the frontages to both streets on each side of the petitioner's property were occupied by buildings. The petitioner's frontage to Main Street was occupied by three tenements of shops and dwelling-houses, two storeys in height, while the Whitelaw Street frontage was occupied by three tenements of dwelling-houses two storeys in height, and in these six tenements there were a considerable number of small houses. The space from the back of the tenements fronting Main Street to the back of the tenements fronting Whitelaw Street formed the existing court for the use of the tenants in these tenements, and measured about 124 feet. The only access thereto was by covered closes through the tenements fronting Main Street and Whitelaw Street.

The plans produced showed—(1) That the petitioner proposed to erect on the existing court, and about midway between and parallel to the two streets, a row of four tenements of three storeys in height, to be occupied as sixteen dwelling-houses of one apartment, and twenty-four dwelling-houses each containing one room and kitchen—in all forty houses. These tenements would front to the back of the Main Street tenements, from which they would be separated by a space 40 feet in width, and they would be separated from the tenements fronting Whitelaw Street by a space about 35 feet in width. The four tenements proposed would occupy the full width of the petitioner's property, excepting that there would be left a passage about 9 feet in breadth at one end, extending from the area behind the Main Street tenements to the area behind the Whitelaw Street tenements. (2) That the present Main Street tenements were to be taken down, and replaced by four tenements four storeys in height, of eight shops and twenty-four dwelling-houses in the flats above, which would occupy the whole of the frontage to Main Street, excepting a space of about 6 feet in width at one end,

which was to be left as a passage from the street to the back ground, and to the proposed back buildings. As the ground fell considerably from Main Street towards Whitelaw Street, it was proposed to have a sloping foot passage and a stair of nine steps at the end of that passage, leading down to the two new courts shown on the plan.

The Magistrates found that the proposed alterations were not in conformity with section 177 of the statute.

"*Note.*— . . . . That section is not very clearly expressed, but its object evidently is to prevent the formation of any new 'courts,' unless on two conditions—(1) That there shall be in front of the dwelling-houses in the courts a certain open space proportionate to the population of the buildings fronting the court; and (2) that the new court shall have an entrance of the full width of the court itself. If these conditions are applicable to the proposed back buildings, it appears to the Magistrates that there should be in front thereof a space 47 feet in width, *i.e.*, 15 in width for the first eight houses, and 1 foot in width for each of the remaining thirty-two houses. This condition is not complied with, because the whole width of the court in front of the tenements is only 40 feet, as shown in the plans, even measuring to the back of the tenements fronting Main Street. It also appears necessary that there should be an entrance to the proposed new court 47 feet in width, and this condition likewise is not complied with, because, as has been pointed out, the only access from the street will be through covered closes so long as the present front buildings remain, and thereafter by the proposed entrance of 6 feet in width at the end of the Main Street tenements." . . . .

The petitioner appealed, and argued—There was ample space in front of the houses proposed to be built. The Dean of Guild was wrong in thinking that the word "house" in this section of the Act meant "dwelling-house;" it plainly applied only to "tenement houses." As there were less than eight tenement houses to be built here, the only space required was 15 feet, but here there was a width of 48 feet. The Dean of Guild was also wrong in thinking that this section of the Act applied. What was referred to was a public court, while here the petitioner was building on his own property, and if the proposed buildings were not dangerous to public safety, the burgh surveyor had no right to interfere. The Act recognised that a proprietor could make a court upon his own property, as in section 142 the words used were "all private courts, &c."

The respondent argued—The word "court" did not apply solely to public courts. The statute was meant to apply to the whole population of the burgh, and was not merely a direction to the Commissioners of Police in laying out new public courts. The petitioner was going to add a large number of new dwelling-houses in what was already a crowded district, and the burgh surveyor was entitled to interfere in the public interest. The petitioner was going to construct a new court having an inadequate entrance from the main street. The only entrance at present was by covered archways, and no proper provision was made to ensure that the entrance to the court would be of the whole width of the court. The word "house" as used in the Act did not apply solely to tenement houses, it meant "dwelling-house" as was shown by the way the word was used in clause 213.

At advising—

LORD JUSTICE-CLERK—This case is one of general importance, although I must say that in the particular case it does not look so important from a sanitary point of view as it may be in many other cases—this ground on which it is proposed to erect what is called a mid-tenement being so much on the slope of a hill that the buildings cannot be said to obstruct one another as regards light and air in any substantial degree at all. But that does not affect the principle, the statute with which we have to deal, —the Police and Improvement Act of 1862— not making any difference between sloping ground and level ground.

The question which we have to decide is whether or not the authority in Maryhill which controls the laying-out of buildings and authorises or refuses authority to their construction has been right in this case in refusing to allow the complainer to build between two tenements, one facing Main Street and the other facing Whitelaw Street, a mid-tenement on the back ground.

Now there are two substantial grounds on which objection is taken by the burgh surveyor for the burgh. In the first place, he says, that this proposed mid-tenement or row of houses is too near the existing houses under the statutory rules, and these rules are contained in clauses 177, 178, and 179 of the Act. Clause 177 enacts—"That it shall not be lawful"—[*Here his Lordship read the clause*]. Clause 178 relates to the height of houses in a court, and I do not think any case under that clause arises here. Then clause 179 is for the purpose of fixing the penalties for breach of the rules contained in clauses 177 and 178. Therefore it is upon clause 177 that this case really turns. There are two points in it. There is the point as regards the space to be left between the buildings to be erected and which will create the "court," and the nearest buildings, and there is the point about keeping the passage into the court open, and that that passage must be of the full width of the court.

The first question is a difficult one, and depends upon the interpretation to be put upon the word "house" in the Act of Parliament and it is rendered doubly difficult by the fact that although this is a statute which in a very large number of its provisions relates directly to houses, there is no definition whatever in the statute of the word "house" The burgh surveyor maintains that the word

"house" means every place occupied or to be occupied as a separate dwelling. The appellant, on the other hand, who objects to the decision of the Court below, maintains that "house" means tenement, that is to say, a house erected within four walls, consisting it may be of only one dwelling or many dwellings, according to the convenience of the locality. Now, in this case it is not necessary for us to decide that question, because I think the case can be decided quite sufficiently upon the second part of clause 177, but I think it would be hardly fair in a case of this importance to pass over that point altogether, although it is not necessary to give an authoritative decision upon it. I am inclined to state what my view of it is, viz., that the word "house" does not mean any part of a building that is occupied as a separate dwelling, but means a house in a building sense—that is, the tenement contained within the four walls which constitute the building. I find that in other clauses of the Act it is quite plain that that is the meaning. Section 210 speaks separately of a house and of part of a house separately occupied. That section plainly indicates that the statute recognises that part of a house, although occupied by a separate family, is to be taken as a different thing from a house. Then clause 212 speaks separately of the parts of a house. Section 213, which is the only one in which there is some ambiguity, alludes to where there are two or more houses in any tenement. I take that to mean that you may have a separate house altogether, though in the same tenement and within the same walls. It is a very common thing in Glasgow to have an entirely separate house on the ground, opening separately from the street, though within the same four walls as the rest of the house which contains a common stair above. Therefore, the leaning of my opinion would certainly be to this effect, that if the appellant here satisfies the statute as regards his houses by leaving a clear width of 15 feet between the houses and the other side of the court, he is not liable to add an additional foot unless there are more than eight separate houses in what he is building.

But, as I said before, it is not necessary in this case to decide that, because I think the decision of the Commissioners is right upon another point, viz., the second proviso of clause 177, by which it is enacted that there shall be an entrance to every such court of the full width thereof, open from the ground upwards.

We are told here—and we see it for ourselves—that the plans show a passage past the front tenement in Main Street into this court of only 6 feet wide. Then this is not an entrance of the full width of the court which is to be formed, and therefore I think that the burgh authority of Maryhill was right in refusing to allow the erection of this mid-tenement on that ground. Therefore I think we must affirm the decision of the local authority.

Whether or not the appellant, if he alters his plans so as to give the full width of the court from the entrance in Main Street backwards, will be entitled to proceed with his buildings is a question which depends on the interpretation to be put upon the first part of clause 177, as to which I have indicated my opinion; but in the meantime the decision will go, as I understand, upon the second half of the clause, that he has not kept the passage opening out to the street of the full width required by statute. It is quite obvious that the reason for that provision in the statute is that there may be a proper access for air on the level of the ground of sufficient width to properly air the court, but whatever the ground of it is, the provision of section 177 is so distinctly clear that I think there can be no doubt as to the decision we must pronounce.

LORD RUTHERFURD CLARK—The appellant admitted—and I think very properly admitted—that if the 177th section of the statute applied to this case, the judgment of the Dean of Guild was right. I am of opinion that the 177th section does apply to the case, and therefore upon that ground I affirm the judgment. I do not give any further opinion.

LORD TRAYNER—The determination of the question raised by this appeal turns, as your Lordship has said, on the construction to be put on the 177th section of the General Police and Improvement Act of 1862, and the construction of that clause appears to me to be a matter of considerable difficulty. In that respect it is similar to many other clauses in the same statute, but one must endeavour to get at its meaning as best one can.

Now, the clause provides a certain restriction upon the use to be made of courts, and the first question that troubled me was whether that section did not apply entirely to courts to be formed without any application to courts already existing, and that for the reason that the clause begins, "It shall not be lawful to form, lay out, or build any court," which rather looks as if it refers to something to be done in the formation of a court, and that is in one sense a new creation, but I am satisfied, on giving the clause some consideration, that that would be to restrict its application unduly, and I think it is applicable to courts that are being made or courts that exist at the time the question concerning the court arose. Forming a court undoubtedly has reference to a thing not existing but to be formed, but the words "lay out or build any court" seem to me to refer to operations upon an existing court—at least the words may certainly be so read without doing them any violence.

I think it may fairly enough be said that the proceedings of the appellant are of the nature described in the section, as laying out or building his court. Building a court is an unfortunate expression, because a court, which is an area of uncovered ground, cannot be built in any proper sense, but I think the statute means building round a piece of uncovered ground so as to form it into a court, or building upon a piece of uncovered ground. Now, taking

it in that sense, I think the section I have alluded to has a distinct application to the case in question. I think the petitioner is endeavouring to lay out and build upon this court in a way which the statute, in the section I am reading, does not permit.

The two questions that your Lordship in the chair has alluded to—one of them perfectly free from doubt, and the other involved in some difficulty—are of importance, and I am inclined with your Lordship to indicate an opinion upon them. I think the word "house" in section 177 means tenement, and not a separate dwelling-place, and I think so for this reason, among others, that the immediately following section uses the same word "house" or "houses" in the sense which, from its context, must mean tenement. Therefore I am disposed to read in section 177 the word "house" in the same way as it obviously is intended to be read in section 178, and the other sections that your Lordship referred to I think make this still clearer, and that is in the sense of its being a tenement, and not a separate dwelling-house.

But I agree with your Lordship that it is enough for the decision of this case to apply the last proviso of section 177, with regard to the passage to the court, which has to be open to the full width of the court. Upon that ground I think the Dean of Guild was quite right in holding that the proposed buildings were in violation of that section, and consequently that his judgment to that effect ought to be affirmed.

The Court adhered.

Counsel for the Appellant—M'Lennan—Glegg. Agent—James Skinner, S.S.C.

Counsel for the Respondent—Vary Campbell. Agents—Maitland & Lyon, W.S.

Wednesday, March 11.

SECOND DIVISION.

[Lord Kyllachy, Ordinary.

CLAVERING, SON, & COMPANY *v.* GOODWINS, JARDINE, & COMPANY, LIMITED.

Company—Reparation—Bona fide Holder for Value of Certificate for Fully Paid-up Shares—Share Certificate Issued by Secretary by Mistake—Scope of Employment—Fraud.

One of the managing directors of a company held, in addition to certain other shares in the company, 500 £10 shares upon which only £1 per share had been paid up. The secretary of the company sent him by mistake, along with other documents, certificates for these shares duly attested bearing that they were fully paid up. He wrote to the secretary saying he would like to keep the certificates, and enclosing his cheque for £4500, the amount still unpaid, but with the request that it should not be presented until he sent his consent, which was never given. He subsequently became bankrupt, and his cheque upon presentation was dishonoured. Meanwhile he borrowed £4500 from C, in whose favour he executed a transfer of the said 500 shares, which he delivered to him along with the certificates under an agreement that if the loan was not repaid within a month, the shares might be sold by him. After the month had elapsed and the loan remained unpaid, C sent the transfer and certificates to the secretary of the company, who duly noted the transfer and retained the certificates. Repeated requests were made by C to the secretary to have his name entered in the register of shareholders, and certificates issued in his favour with a view to getting the shares sold, but without effect. The shares afterwards became practically valueless, and C thereupon brought an action of damages against the company for not having been put in a position to dispose of the shares as fully paid-up shares at a time when they were a good marketable commodity. The company pleaded that their secretary had committed a fraud, and had acted outwith the scope of his employment, and that for these actings they were not responsible.

Held that the pursuer as a *bona fide* holder for value of certificates of fully paid-up shares bearing on the face of them to have been issued by the secretary in the ordinary course of business, was entitled to damages from the company for the loss he had sustained.

Damages — Interest on Damages — Time from which such Interest Begins to Run.

Held that interest upon damages does not run from the date when the damage was sustained, but only from the date of the final decree awarding said damages.

In the beginning of September 1889, William Jardine, iron merchant, Coatbridge, and one of the managing directors of Goodwins, Jardine, & Company, Limited, incorporated under the Companies Act 1862-1886, having their registered office at 79½ Gracechurch Street, London, and carrying on business as iron and steel manufacturers at Glasgow, held certain debentures and shares in said company, including 140 fully paid-up £10 shares, and 500 £10 shares upon which only £1 a share had been paid up.

Mr Francis Stobbs, the secretary of the company, sent to him by mistake along with the debenture certificates and the certificates of the fully paid-up shares, certificates for the said 500 shares duly signed by two directors and the secretary, and bearing that the said shares were fully paid up. Thereupon Jardine wrote to the secretary as follows:—"*5th Sept.* 1889.—My dear Sir—In sending me debenture certificates, you have enclosed certificate