

On December 3rd 1902 the agent for the pursuer gave notice of trial for the Christmas sittings.

On January 21st 1903 an interlocutor was pronounced by the First Division appointing the trial of the cause to take place before the Lord President and a jury on Monday, February 9th 1903.

On January 30th 1903 the pursuer or his agent should have paid to the Clerk of Court for transmission to the Sheriff-Clerk of the Lothians the fee fund dues for summoning a jury for the day appointed for the trial of the cause.

The dues were not paid, and it was impossible for the trial of the cause to take place on the date fixed as no jury had been or could then be summoned for the date fixed for the trial.

The defenders in these circumstances presented a note in which they craved the Court "to discharge the diet fixed for the jury trial on 9th February 1903, and in respect of the pursuer's failure to take the necessary steps to have the cause tried on that day to assolvie the defenders from the conclusions of the summons, and to find them entitled to expenses," &c.

In the letter by the agent of the defenders forwarding a copy of the note to the pursuer and also to his agent, the defenders gave notice that they were to move for the dismissal of the action.

Two notices of the date of trial were sent by the officials of the Court to the pursuer.

No appearance was made for the pursuer.

Argued for the defenders—The case came under the Act of Sederunt 16th February 1841, section 46, and was in the same position as a case which was abandoned by the party, or in which the party did not proceed to trial within twelve months after the issue was allowed. Accordingly the defenders were entitled to absolvitor.

The Court dismissed the action with expenses.

Counsel for the Defenders—F. T. Cooper.  
Agent—Thomas Hunter, W.S.

Thursday, February 5.

FIRST DIVISION.

SMART & SON v. MAGISTRATES OF PARTICK.

*Burgh—Statutory Bye-Law—Validity—Ultra Vires—Private Court or Common Area—Back Yard—Bleaching Green—Burgh Police (Scotland) Act 1892 (55 and 56 Vict. c. 55), secs. 316 B (8); 322; Sched. IV., Rule. 17.*

A bye-law of the burgh of Partick, under the powers conferred by secs. 316 B (8) and 322 of the Burgh Police (Scotland) Act 1892, and in pursuance of Rule 17 of Schedule IV. appended to that Act, and confirmed and published

as provided in the Act, enacts—"Every owner of a private court, common passage, or common area (other than bleaching-greens) shall, on receiving notice from the sanitary inspectors, pave or cause to be paved such private court, common passage, or common area (other than bleaching-greens) with natural or artificial stone, or such other material as the commissioners shall require." . . .

*Held* (1) that the bye-law was valid and within the statutory powers conferred by the provisions of the Burgh Police (Scotland) Act 1892, relative to which it was passed; (2) that a plot of ground behind a tenement, covered with engine ashes, used by the occupants of the tenement for drying clothes, but on which no grass was or could be grown, and accessible to the dwelling-houses of the tenement by a back entrance, was a court or area within the meaning of the bye-law; and (3) that the plot of ground in question did not come within the exception of "bleaching-greens."

A. Wilson Smart & Son, C.A., 64 Bath Street, Glasgow, presented a note of appeal under section 339 of the Burgh Police Act 1892 praying the Court to quash certain proceedings by the Commissioners of Police of the Burgh of Partick, and James Reid, sanitary inspector to the Commissioners.

The appeal set forth that the appellants factored a four-storey tenement of dwelling-houses situated at No. 1 Wood Street, Partick, and that they had been served with a notice, dated December 10, 1902, by the respondent James Reid, sanitary inspector, ordaining them "in terms of the Burgh Police (Scotland) Act 1892, and of Rule (17) of Schedule IV. appended thereto, and of the bye-law for the paving of private courts, common passages, and common areas (other than bleaching-greens) made and enacted by the Town Council of the Burgh of Partick on 12th March 1900, under the powers conferred by the said Act, particularly section 316 B (8) thereof and said Rule, and which bye-law was confirmed by the Local Government Board on 20th November 1900, and by the Secretary for Scotland on 28th November 1900, to pave or cause to be paved the private court or common area behind or attached to No. 1 Wood Street, in the burgh of Partick, with asphalt to the extent shown on a plan or sketch annexed, and to provide the said private court or common area with proper and sufficient means for taking off the surface water within the period of one month from and after the date of the notice."

The bye-law referred to in this notice is quoted in the rubric.

The appellants maintained that the bye-law was *ultra vires*, and further stated as follows:—"The plot of ground referred to in said notice is situated behind the said tenement, and is provided by the appellants' principals for the use of their tenants as a bleaching or drying-green, and it is

used as such by said tenants. The wash-house and ash-pit accommodation for said tenants adjoins said bleaching or drying-green, and the passage thereto from the back entrance to the close which gives access to the dwelling-houses is paved with asphalt. The appellants maintain that that plot of ground is neither a private court nor a common area, but is a bleaching-green within the meaning of the said Burgh Police (Scotland) Act 1892."

The ground in question was, it was stated, now covered with engine ashes.

The Provost, Magistrates, and Councillors of Partick lodged answers, in which they stated that in virtue of the provisions contained in the Burgh Police Act 1892, Sched. IV., rule 17 and sec. 316, the Town Council of Partick on March 12, 1900, enacted bye-laws, of which the bye-law in question was one, for general and sanitary purposes, and took the necessary steps to have them duly confirmed by the Local Government Board and the Secretary for Scotland. Objections were lodged by certain owners and house factors in Glasgow, and by the Partick Landlords and House Factors Association (of which the appellants were members), and observations upon these objections on behalf of the Town Council having been received, parties were heard upon the whole matter. The Local Government Board repelled the objections and confirmed the bye-laws, and the Secretary for Scotland thereafter, on 28th November 1900, also confirmed them. The practice was for the sanitary inspector to submit a list of back courts needing to be paved to the sanitary committee. A sub-committee personally inspected the back courts on the list and reported to the committee, and the recommendation of the committee was submitted to the Town Council. If they approve, the sanitary inspector is instructed to serve notice on the owners. The appellants were required to pave the Court with asphalt, but they laid only a portion with asphalt, the remainder being covered with engine ashes.

The ground in question was described by the respondents as a private court, common passage, and common area, which in the judgment of the Town Council and sanitary inspector was urgently in need of being paved with some hard material. They averred that it was not a bleaching-green, and was not used or capable of being used as such.

The Burgh Police (Scotland) Act 1892, Sched. IV., Rule 17, enacts—"All private courts, common passages, and common areas (other than bleaching-greens) shall be paved with natural or artificial stone, or such other material as the commissioners shall approve, and be provided with proper and sufficient means for taking off the surface water."

Section 316 (B) gives power to the commissioners from time to time to make bye-laws as they think fit for the purposes after-mentioned. . . . "(8) . . . for paving courts, common passages, and common areas, other than bleaching-greens."

Sec. 4, sub-sec. 10, enacts—"Court, where

by the context it applies to a space contiguous to buildings, shall mean a court or recess or area forming a common access to lands and premises separately occupied, including any common passage or entrance thereto."

Argued for the appellants—(1) The bye-law was invalid. Rule 17 of Schedule IV. of the Burgh Police Act applied only to new buildings, but this bye-law extended the provisions of the Act to all buildings. The bye-law, in order to be properly applicable to the case of the property in question, should have been made under section 316 B, sub-section 8, of the Burgh Police Act, which provided "for paving private courts, common passages, and common areas other than bleaching-greens." (2) The bye-law was not applicable to this piece of ground. It did not fall under any of the denominations of ground to which the Act and relative bye-law applied. The word Court was defined in the Act (sec. 4, sub-sec. 10) as ground "forming a common access" to separate buildings. The words of the definition were not "having" a common access, but forming, *i.e.*, being a common access. If the word "having" had been used this ground might have been within the definition, but it certainly could not be said to "form" a common access to buildings. The words "common areas" had a definite and well-known meaning, and could not cover a back-green such as this. If this ground fell within the description of the bye-law it also fell within the exception of "bleaching-greens." The term did not necessarily imply that grass grew on the ground. The real question was the purpose for which the ground was being used. A proof should be allowed.

Argued for the respondents—The bye-law was perfectly valid in view of the provisions of sec. 316 B (8), sec. 322, and Sched. IV., Rule 17, of the Burgh Police Act. All the requirements of sec. 322 as to confirmation and publication had been observed. The bye-laws had been considered and parties heard before the Local Government Board, and the Secretary for Scotland confirmed the bye-laws. In these circumstances the Court had no power to review the bye-laws; they had the power of statute—*Crichton v. Forfar County Road Trustees*, July 20, 1886, 13 R. (J.C.) 99, 23 S.L.R. 840. In interpreting the bye-law regard must be had to its purpose and intention. This piece of ground was precisely of a character and in a condition to be liable to the mischiefs which it was the intention of these provisions of the Burgh Police Act to remedy. These provisions were necessary for public health, and both these provisions and the relative bye-law were to be construed liberally. This ground was not in fact used as a bleaching-green, and therefore could not come under the exception. No grass did or could grow on it, and it would be as much a bleaching-green after it was paved with asphalt as it was now. The word "bleaching-green" in the bye-law must be taken in its natural sense as a place where grass grew.

LORD PRESIDENT—Two main questions have been argued in this case, the first

being whether the bye-law is valid, and the second, if it is, what is the meaning of the term "bleaching-green," as used in it. Very large powers to make bye-laws are conferred by section 316 of the Burgh Police (Scotland) Act 1892, and by section 322 it is declared that when confirmed and published as provided by the Acts such bye-laws shall be binding upon and be observed by all parties. I understand that all the statutory requirements have been complied with in this case, and it appeared to me that latterly Mr Clyde did not dispute that the bye-law was valid, but took the discussion on the footing that it was. I think it undoubtedly is valid, and therefore it is not necessary to say more upon that topic.

This of course leaves the question as to the applicability of the bye-law to the particular facts of the case, and the question whether it is applicable or not depends upon whether the place to which the present question relates is a "bleaching-green" within the meaning of the bye-law. The bye-law provides that "Every owner of a private court, common passage, or common area (other than bleaching-greens), shall, on receiving notice from the sanitary inspector," do certain things, in particular that he shall "pave or cause to be paved such private court, common passage, or common area (other than bleaching-greens) with natural or artificial stone, or such other material as the Commissioners shall require, and to such an extent as they shall prescribe: and shall provide the same with proper and sufficient means for taking off the surface water." That is a thoroughly intelligible bye-law and one which is eminently fitted to secure the cleanliness and salubrity of urban property. While the direction is made applicable to places—either open ground more or less paved or laid with something—it was quite intelligible that "bleaching-greens" should be excepted from an obligation to pave or spread ashes over them, and hence the exception "other than bleaching-greens." Now it seems to me that the word "bleaching-green" there is used in its ordinary and natural sense. There is no more familiar thing than a bleaching-green—everybody knows what it is. It is a place, *prima facie*, covered with grass more or less—the idea being that it is a place where grass either does grow or may grow, or at all events it is not so covered with paving stones, or bricks, or asphalt, or gravel, or other similar materials that it could not reasonably be described as a bleaching-green. Now what is the condition of this place? It is not said that anything grows or would grow upon the place to which the present question relates. The description given of it (I think a description as to which both parties were agreed in the course of the argument) is that it is a place behind one or more dwelling-houses, upon which nothing does or could grow, and that it is of such a character and condition that it would be liable to the mischiefs which it was the intention of the Burgh Police Act to prevent—a place which might be muddy or dirty whether wet or dry. Such a place

might become insalubrious from damp or from insanitary exhalations, especially in the centre of a great and crowded city. I think there is no hardship in asking the owner when he is not growing grass or other vegetation upon such a place to put it into such a condition that it can be kept clean and sanitary. When we look at the plain object of the statute in authorising such a bye-law, and at the terms of the bye-law—universal with one exception—it is plain to my mind that that one exception does not include such a place as we have described here, and as to the true character of which there is really now no dispute. I am therefore of opinion that the appeal should be refused and the order sustained.

LORD M'LAREN—No tangible objection has been stated affecting the validity of the bye-law. When Parliament gives the power to make bye-laws which are to be the basis of taxation, and provides for the review of the decision of the local authority by the Secretary for Scotland or other Departmental authority, we must hold that all matters of fact and matters of discretion are finally determined by the reviewing authority. It would only be where, through error or inadvertence, the bye-law was manifestly outwith the statutory powers, that we could entertain an objection to it. But the main argument was that the appellant should be exempt, first, because the case was not within the bye-law, and secondly, that if the case was within the description contained in the bye-law it was covered by the exception. I understood Mr Clyde to maintain that the subject in dispute was not a court or an area in the sense of the Act of Parliament and relative bye-law, because to bring it within the Act it must be a court or area "forming an access" to more than one house or tenement. Forming an access is not a very accurate expression, and the only meaning I should attribute to it is that the area constitutes an access or is accessible to more than one residence which opens upon it. In that sense I think this area is within the scope of the bye-law unless it is covered by the exception. On the question whether the piece of ground comes within the exception as to bleaching-greens, I agree with your Lordship that we must take "bleaching-green" as a word of ordinary language to be applied according to the common use. We know that there are bleaching-greens sown with grass and kept in good order that the clothes that are bleached or dried there may be free from dust. I cannot admit that a piece of ground set apart for drying clothes and which is not a green comes within the exception. I think, on the contrary, it would be just the kind of area to which the bye-law was intended to apply—a piece of waste ground neither sown nor paved, and liable to be trodden into mire, or to become a receptacle for insanitary refuse. I am therefore of opinion that the appeal ought to be dismissed.

LORD KINNEAR concurred.

LORD ADAM was absent.

The Court dismissed the appeal.

Counsel for the Appellants—Clyde, K.C.  
—Morton. Agent—W. A. Hyslop, W.S.

Counsel for the Respondents—Ure, K.C.—  
A. S. D. Thomson. Agents—Simpson &  
Marwick, W.S.

Thursday, February 5.

## SECOND DIVISION.

### CLARK BURSARY FUND (MILE-END) TRUSTEES, PETITIONERS.

*Educational Trust—Extension of Scheme—  
University Scholarships and Bursaries  
—Trust for Bursaries to Male Students  
—Admission of Female Students to the  
Benefits of the Trust.*

Authority granted to the trustees of  
a trust for providing bursaries and  
scholarships for men in the University  
of Glasgow to extend the benefit of the  
trust to female students.

A petition was presented by Lord Inverclyde and others, the trustees of the Clark Bursary Fund (Mile-end), for extension of the scheme under which they administered certain bursaries and scholarships under a trust-disposition and deed of settlement dated 30th June 1866, and a subsequent deed of direction, by the late Mr John Clark junior, Mile-end, Glasgow. By the deeds referred to the petitioners were directed to award out of the fund administered by them, which amounted to upwards of £36,000, certain bursaries or scholarships to male students in the University of Glasgow. Under the benefactor's scheme of administration the petitioners offered for competition at intervals, *inter alia*, a scholarship in modern languages. Female students were first admitted to the University of Glasgow at a date subsequent to the granting of the deeds referred to, and a female student was the only candidate for the Modern Languages Scholarship in Session 1902-1903. The petitioners stated as follows:—"Since the trust came into operation the university regulations have been so amended that women students can now attend most of the classes of the university, and can proceed to graduation in the Faculties of Arts, Medicine, and Science in the same manner as men. . . . The petitioners are of opinion that the utility of the trust under their administration would be greatly increased if the bursaries and scholarships provided as aforesaid were opened to the competition of female students instead of being restricted as in practice they have hitherto been to competition among men only. It has accordingly been resolved to seek the Court's authority to permit women to take part in future competitions for said bursaries and scholarships." The petitioners accordingly prayed the Court to

authorise the petitioners and their successors in the management of the said trust estate to extend the benefit thereof to female students in the University of Glasgow on the same terms as men by admitting them to competition for the bursaries and scholarships in the petitioners' appointment, and on their being found qualified by appointing them thereto.

On 25th November 1902 the Court remitted to Mr Charles Young, W.S., "to inquire and report as to the whole circumstances and the proposed extension of the benefits of the scheme." Mr Young reported in favour of the extension proposed by the petitioners.

On 5th February 1903, on the calling of petition in single Bills with Mr Young's report, the Court granted the prayer of the petition.

Counsel for the Petitioners—M'Clure—  
Skinner. Agents—Webster, Will, & Com-  
pany, S.S.C.

Friday, February 6.

## SECOND DIVISION.

[Sheriff Court at Glasgow.]

### REID v. THE ANCHOR LINE.

*Master and Servant—Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37), sec. 7, (1), (2)—Factory and Workshop Act 1895 (58 and 59 Vict. cap. 37), sec. 23, (1)—Factory—Dock—Ship in Dock—Machinery on Board Ship Used for Unloading.*

A workman was employed as a docker by a shipowner for the unloading of a cargo from a ship belonging to the shipowner in Glasgow Harbour. The cargo was being discharged by means of the ship's steam winch, derrick, and fall, and was wheeled ashore by labourers in the employment of the shipowner over gangways laid between ship and quay. The workman was killed by slipping on the ship's fixed ladder while ascending from the hold. *Held* that at the time of the accident he was employed in a factory within the meaning of the Workmen's Compensation Act 1897, and that the shipowner was liable to pay compensation in terms of the Act.

*Stuart v. Nixon & Bruce*, [1901], A.C. 79, and *Raine v. Jobson & Company*, [1901], A.C. 404, *followed*.

*Aberdeen Steam Trawling Company v. Peters*, March 16, 1899, 1 F. 786, 36 S.L.R. 573; *Jackson v. Rodger & Company*, January 30, 1900, 2 F. 533, 37 S.L.R. 390; *Healy v. Macgregor & Ferguson*, February 20, 1900, 2 F. 634, 37 S.L.R. 454; *Bruce v. Henry & Company*, March 8, 1900, 2 F. 717, 37 S.L.R. 511; *Low v. Abernethy*, March 8, 1900, 2 F. 722, 37 S.L.R. 506; and *Living v. Young & Leslie*, November 2, 1900, 3 F. 31, 38 S.L.R. 29, *overruled*.