

Master of Works in regard to this matter.

The second question arises under section 65 of the Glasgow Building Regulations Act 1900, which provides (1) that "Except as in this section provided, no building of the warehouse class shall be erected without the consent of the Corporation, if such building extend to more than 350,000 cubic feet, unless such building is divided by party walls in such manner that no division of such building shall extend to more than 350,000 cubic feet;" and that no addition shall, without such consent, be made to any building of the warehouse class or to any division thereof, so that the cubical extent of any such building or of any such division shall exceed 350,000 cubic feet."

It is admitted that the petitioner's building is of the warehouse class within the meaning of section 65 of the Act, as also that its cubical extent as it at present stands is 690,000 cubic feet or thereby, and that the effect of the operations now proposed to be carried out would be to add 6700 cubic feet or thereby to the building, so as to make its total cubical extent about 696,700 cubic feet. It is thus clear that if the building which the petitioner desires authority to erect was a new one, he would not be entitled to construct it without first obtaining the consent of the Corporation, as his present building is already nearly of twice the cubical extent authorised by section 65. Upon these provisions the Master of Works maintained that the petitioner is not entitled to execute the works which he proposes without first obtaining the consent of the Corporation. The petitioner, however, argues that section 65 does not apply, because it has reference to new structures, not to additions to existing buildings, which are already above 350,000 cubic feet in extent. It is true that section 65 does not in terms provide for a case like the present, where the building is already 690,000 cubic feet in extent, but I am disposed to think that, looking to the manifest purpose of the restrictions contained in the section, and to the fact that that purpose would be defeated if the construction contended for by the petitioner was accepted, the more reasonable view is to hold that where the building already extends to more than 350,000 cubic feet, no addition to its cubical area or contents can be made without the consent of the Corporation. I am unable to see any reason for imposing the restriction upon original buildings which would not equally apply to proposed additions to existing buildings.

For these reasons, although I am sensible that the question of construction is a very narrow one, I think that the judgment of the Dean of Guild upon the second point should be altered, and that authority to make the proposed additions to the petitioner's building should be refused unless and until the consent of the Corporation is obtained.

LORD M'LAREN and LORD KINNEAR concurred.

LORD ADAM was absent.

The Court pronounced this interlocutor:—

"Affirm the findings of fact in the interlocutor of the Dean of Guild, dated 7th August 1902: *Quoad ultra* recall the said interlocutor, and find in law that the authority to make the proposed additions to the petitioner's building should be refused unless and until the consent of the Corporation is obtained, and decern: Find no expenses due to or by either party, and remit to the Dean of Guild to proceed as may be just."

Counsel for the Appellant—Dundas, K.C.—Cooper. Agents—Campbell & Smith, S.S.C.

Counsel for the Respondent—Salvesen, K.C.—Younger. Agent—J. Gordon Mason, S.S.C.

Tuesday, March 17.

SECOND DIVISION.

[Sheriff Court at Glasgow.]

M'COSH v. GEORGE CROW & COMPANY.

Contract—Implied Contract—Confidentiality—Breach of Faith—Photograph—Rights of Photographer and Customer—Right of Customer to Prevent Photographer Exhibiting in Studio Enlargement of Photograph.

A photographer, who had taken a photograph for a customer, is not entitled to print copies or make enlargements from the negative either for sale or for exhibition in his studio or elsewhere without the consent of the customer.

A photographer, who in 1893 had taken photographs for a customer, subsequently without instructions from the customer made enlargements from the photographs. The business having been sold and resold several times, and the enlargements having passed by purchase to the several successors, *held (diss. Lord Young)* that the customer was now entitled to have the present proprietor of the business interdicted from exposing the enlargements for sale or exhibiting them in his studio or elsewhere, and ordained to remove the enlargements from the walls of his studio.

In August 1901 Thomas M'Cosh, writer, Glasgow, for his own interest and as tutor and administrator-in-law of his pupil daughter Juana Heredia M'Cosh, and Margaret Wyllie Kirkwood M'Cosh, also daughter of and residing with the said Thomas M'Cosh with his consent and concurrence as her curator-at-law, raised an action in the Sheriff Court at Glasgow against George Crow & Company, photographers and art publishers, Queen's Studio, 136 Buchanan Street, Glasgow.

The pursuers prayed the Court to interdict the defenders from printing, publish-

ing, exposing for sale, or exhibiting in their studio, or on the walls and passages leading thereto or elsewhere, photographs of the said Margaret Wyllie Kirkwood M'Cosh and Juana Heredia M'Cosh, or enlargements thereof made by any process whatever, and to ordain the defenders to remove from the walls of their studio and destroy enlargements of the photographs of the two girls.

The pursuers averred—“(Cond. 1) . . . The defenders are the successors to Beckford, Limited, who carried on a photographic business at said address, who in turn were the successors of Adamson Brothers, who also carried on a photographic business at the said address. (Cond. 2) On or about the 18th day of August 1893 the pursuer took his said two daughters to be photographed, and they were photographed by Messrs Adamson Brothers, who then carried on said business. The pursuer Thomas M'Cosh ordered and received eighteen cabinet photographs of each of said children and paid the account for the same on the tenth day of October 1894. (Cond. 3) The pursuers did not order the said Adamson Brothers to make enlargements of said photographs, nor did the said Adamson Brothers ask permission to do so. They, however, without the knowledge or consent of the pursuers, illegally made and exhibited in their studio an enlargement of each photograph. (Cond. 4) The defenders as successors of the said Adamson Brothers have come into possession of said two enlargements, and are exhibiting same on the walls of their studio to their customers and to the public for the purposes of trade. (Cond. 5) The pursuers have objected to the defenders using the said enlargements in the way above described, and have requested the defenders to have them removed. The defenders refuse to have them removed and destroyed, and the present action is therefore necessary.”

The defenders averred (Ans. 1) that on or about 14th October 1899 they purchased the furniture, fittings, &c., of the Queen's Studio from the firm of “Mora,” and that “Mora's” predecessors in the business were Beckford, Limited, who acquired it from a photographer named Gillon, who in turn acquired it from Adamson Brothers. They admitted (Ans. 4) that they were the owners of two enlarged autotype portraits of children apparently about four and six years old respectively, which the pursuer Thomas M'Cosh alleged to be the portraits of his children, and that they refused to remove and destroy these portraits. They “explained (Ans. 4) that the defenders purchased the two pictures in question along with other pictures, and the whole furniture, fittings, &c., of the studio, from ‘Mora’ on or about 14th October 1899, and that they were not aware of the identity of the subjects of the portraits. Explained further that the portraits were hanging amongst other pictures above the mantelpiece in one of the rooms of the studio (which is on the top flat of a four-storey building) when the defenders entered into possession, and that neither the defenders nor any of their em-

ployees have ever moved or even handled the portraits.”

The pursuers pleaded—“(1) The defenders or their authors having taken the negative likenesses to supply the pursuers with copies for money, ought to be interdicted from selling, printing, publishing, exhibiting, or exposing copies or enlargements of the same to the public or their customers. (2) There being an implied contract by the defenders or their authors not to use the said negative likenesses for exhibition or for advertising purposes, they ought to be interdicted from exhibiting same or copies or enlargements thereof. (3) The defenders being, as successors of the said Adamson Brothers, confidential agents of the pursuers, ought to be interdicted from disclosing any information or matter confided to them while acting as such agents. (5) The defenders or their authors, having without the authority or instructions of the pursuers, made enlargements of photographs, the copyright in which belongs to the pursuers, should be ordained to remove and destroy the same.”

The defenders pleaded—“(1) The action is irrelevant. (4) There being no privity of contract between the pursuers and defenders, the latter are entitled to absolvitor with costs. (6) The copyright of the said portraits not being the property of the pursuers the action ought to be dismissed. (7) The pursuers are barred *personali exceptione* from maintaining their pleas. (8) *Mora.*”

On 6th November 1901 the Sheriff-Substitute (STRACHAN) sustained the first plea-in-law for the defenders, found that no relevant or sufficient ground of action had been stated by the pursuers, and assoilzied the defenders from the conclusions of the action.

The pursuers appealed to the Sheriff (BERRY), who on 6th March 1902 recalled the interlocutor appealed against and allowed a proof.

After hearing proof the Sheriff-Substitute on 17th June 1902 pronounced the following interlocutor:—“Finds that on the instructions of the pursuer Thomas M'Cosh, his two children, the other pursuers, were photographed by Messrs Adamson, who were then photographers at Glasgow, on or about 18th August 1893, and that he received eighteen cabinet portraits of each of the children, for which he duly paid: Finds that thereafter Messrs Adamson enlarged and framed the said photographs, and hung them on the wall of a reception room in a studio: Finds that Messrs Adamson gave up the said business and removed from Glasgow in the year 1894, having sold their stock, fixtures, fittings, and negatives to a person named Gillon, who carried on business in the same premises: Finds that thereafter the said business and premises passed through several hands and were ultimately purchased by the defenders in the month of August 1899: Finds that by the said purchase the defenders acquired right to the furniture, fixtures, and other articles in the premises, including, *inter alia*, the said

enlarged photographs which were still hanging on the walls of the said reception room: Finds that in August 1901 the pursuer proposed to purchase the said enlargements, but the defenders declined to sell them at the price offered by him, and that he thereupon instituted the present proceedings: Finds that the defenders are not entitled without the consent of the pursuers to hang the said enlargements on the walls of their studio, to offer the same for sale, or in any way to exhibit them in their studio, or in any other place connected therewith: Therefore grants interdict as craved, and ordains the defenders to remove, as craved," &c.

The defenders appealed to the Sheriff, who, by interlocutor dated 27th October 1902, adhered to the interlocutor appealed against.

The defenders appealed, and argued—There was here no relevant case. They had no contract with the pursuers. They were *bona fide* purchasers of the studio and of these portraits, which were hanging on the walls of the studio when they purchased them. They were not publicly exhibiting the pictures, although they might have a right to do so, and they did not intend to sell them. All they contended was that they were entitled to keep these enlarged photographs hanging on their studio walls as examples of the kind of work done by them. The pursuers might have an action of damages against Adamson, but they could not possibly succeed in their action against the present defenders. Further, no appreciable wrong was set out on record by the pursuers. There could be no very great resemblance between the photographs of two children taken ten years ago and the two girl pursuers of to-day. The Court would not interfere or grant interdict in a case in which the pursuer did not set out any appreciable wrong—*Winans v. Macrae*, June 3, 1885, 12 R. 1051, opinion of Lord Young, 1063, 22 S.L.R. 692. Further, the principal pursuer was personally barred from insisting in this action. By his conduct he had assented to the photographs being exhibited in the studio. Where individual interests were concerned, acquiescence and lapse of time constituted a bar to action—*Cairncross v. Lorimer*, August 9, 1860, 3 M'Q. 827; *Blackburn v. Finlay*, February 4, 1848, 10 D. 590.

Argued for the pursuers—Although a customer was not entitled to demand the negative from the photographer, the photographer was not entitled to print copies from the negative except with the consent of the customer. It was a breach of confidence on the part of the photographer to print copies or make enlargements from the negative without the consent of the customer. The customer's consent must also be got before the photographs or enlargements could be exhibited in the show case or studio—*Pollard v. The Photographic Company*, 1889, 40 Ch. D. 345; *Stedall v. Houghton*, 1901, 18 T.L.R. 126. If the pursuers could have objected to Adamson's exhibiting the enlarged photographs, they had a better right to object to the defenders doing so. They had never

consented to Adamson selling the photographs to their successors. Nothing but the pursuer's express consent could have empowered Adamson to sell these photographs, and he had never received any such consent. Tacitly permitting the photographs to be exhibited for a certain time did not prevent the pursuers from at any time objecting to the exhibition continuing. A person to whom a wrong was done was entitled to proceed against anyone doing the wrong—*Caird v. Sime*, June 13, 1887, 14 R. (H.L.) 37, 24 S.L.R. 569.

At advising—

LORD JUSTICE-CLERK—In this case I am of opinion that the interlocutor in the Court below should be affirmed. I am unable to see on what ground a photographer can claim the right to exhibit in a place to which he invites the public to come any portrait or enlargement of a portrait taken on employment by a customer, if that customer objects to his doing so. The portrait is taken solely for the person ordering it, and while the photographer has his rights in the negative off which the pictures are taken, I am of opinion that he has no right to use it to obtain pictures for public exhibition by himself if the person who ordered the portrait objects to copies being publicly displayed. This has already been decided in the courts in England, and I am in accord with the views expressed there.

In this particular case the portraits which are in question had hung for a long time in the exhibition room, the pursuer, who was friendly to the photographer who took the pictures, having consented to their being so hung. But the business has changed hands more than once, and they can be no longer exhibited as specimens of the work done in that studio by Messrs Adamson, the original photographers, who alone were favoured by the pursuer. If the pursuer does not choose that his daughters' likenesses should be exhibited any longer, nothing that occurred in Adamson's time can make any difference on his right. I think he is within his legal right in asking that they be no longer exhibited. The fact that they have hung there for some time does not entitle the defenders to insist upon their being further exhibited. The case is stronger where they are not the work of the photographer now occupying the premises; but even if the original photographer were still in occupation, I hold that he would not be entitled to insist on these photographs being still exhibited if the pursuers desired that the exhibition of them should cease.

LORD YOUNG—The action relates to the two photographs (the enlargements) referred to in the record. These were on 14th October 1899 purchased from "Mora" by the defenders, and have since been in their peaceable possession as owners. The pursuer in this action, raised in August 1901, asks that they shall be interdicted from exposing them for sale or exhibiting them in their studio or elsewhere, and ordained to remove and destroy them.

If the defenders are not the owners of these photographs, some other (or others) must be. No other claims to be, and of course the pursuer does not, for if he did, he (being presumably of sound mind) would probably not pray that the defenders should be ordained to destroy them.

The case must therefore be considered and dealt with on the footing that the defenders are the owners in lawful possession of the photographs in question, and have been so for two years prior to the raising of the action. The only information we have of the purchase by which they became the owners is the defenders' explanatory statement on record (Ans. 4), taken along with the pursuer's answer to it, and in the evidence of Crow, one of the defenders.

We know nothing of "Mora" beyond what can be gathered from Mr Crow's evidence, which seems to be no more than this, that for some time prior to 14th October 1899 he carried on business as a photographer in Queen's Studio, Buchanan Street, when, finding it unprofitable, he gave it up, selling "the furniture, pictures, tenant's fittings, and negatives" to the defenders, who succeeded him in the tenancy of the premises—I presume on contract with the landlord. It has not been suggested that by their contract with the landlord for the occupation of the premises, any more than by their contract with the outgoing tenant for the furniture, pictures, and tenant's fittings therein, any relation whatever was established between them and Adamson Brothers, who had carried on a similar business in these premises for about twelve years prior to 1894. The pursuers' case must therefore be, that by purchasing the photographs the defenders undertook a duty and obligation to the pursuer as father of the children whose likenesses are represented, the duty and obligation being to put and keep them out of sight, and even to destroy them if desired by the pursuer to do so. I asked the pursuer's counsel whether the defenders' profession was of any materiality—i.e., whether, had the buyer of the photographs been, not a photographer who bought them as specimens of his art, but a private gentleman who bought them to hang on a wall as ornaments, the same duty and obligations to the pursuers, and similarly enforceable, would have been upon him, and the answer was that no maintainable ground of distinction occurred to him. I hope that what I have said expresses and intelligibly explains my opinion to the effect that even on the assumption that Adamson Brothers, by making the enlargements of the photographs in question and exhibiting them in their rooms as specimens of their art, violated an implied contract between them and the pursuer, to his injury and damage, this action against the defenders is irrelevant. The only contract between Adamson Brothers and the pursuer is that upon which his children were photographed in August 1893, and in implement of which eighteen copies of each photograph were delivered and paid for, and I more than

doubt the regularity in this process, to which Adamson Brothers are not parties, of inquiring whether anything more was implied and subsequently violated by them. I have, however, no objection to say that in my opinion no grounds have been stated for the view that anything more was implied. No ground is stated or suggested for holding that any obligation was imposed upon the pursuer beyond taking and paying for the eighteen photographs of each child as he did, or that Adamson Brothers on their part undertook any obligation to him to supply him with more at the same price or at any price.

When therefore the account was paid and settled there was in my opinion a complete end to the contract between them. The photographs were the work of Adamson Brothers with their own instruments and material, and executed with their own professional skill, the pursuer contributing nothing except the features of the two children. It is certainly a new, and on the statement of it I should say an absurd idea that a father has a copyright in the features of a child, or even in his own, and that by exhibiting these with a view to obtain drawings for himself he is making a confidential communication of his features and figure as seen daily by everyone he meets who cares to look at him. I do not, however, pursue this subject. If Adamson Brothers did anything to the pursuer's injury in violation of their contract with him his remedy must be against them.

In conclusion I desire to say that it is in my opinion proved by the uncontradicted testimony of Andrew George Adamson and of the defender Crow that it is a regular, well-known, and well-recognised practice of all photographers, both in England and Scotland, to make enlargements of photographs which they think suitable for exhibition in their rooms as specimens exactly as Mr Adamson explains he did with the photographs of the pursuer's children. It is also I think proved to the exclusion of all doubt that the pursuer knew that this was done with these photographs, which he saw expensively framed and hung in the room of Adamson Brothers, and never hinted an objection. They had been hanging there for, I think, about five years before the defenders purchased them in 1899, and indeed it was only when they declined the pursuer's offer to purchase them for rather under a third of the price of the frames that a right to object to the exhibition occurred to him. I am not to be understood as even suggesting a doubt that a man may have a legal remedy if he himself or a pupil child is held up to contempt and ridicule by drawing, however produced, just as he may if so held up by speech or writing. Monthly, weekly, or indeed daily experience of drawings published in this and other countries shows that the law does not readily recognise the exhibition and publication of likenesses as actionable.

LORD TRAYNER—In the course of the discussion before us the question was inci-

dentially raised (for it is not raised on the record) whether the negative of a photograph belonged in property to the customer ordering the photograph or to the photographer. In reference to that question it appears to me that the absolute property of the negative is not exclusively in either. I think the photographer is entitled to the custody of the negative in order to secure to himself the exclusive privilege of printing from it should the customer desire this to be done. I think further that should the customer refrain from ordering copies for a considerable time, the photographer might destroy the negative as being practically of no further use. On the other hand, the customer has so much property in the negative, for the taking of which he has paid, that he may prevent the photographer using it except on the order or with the consent of the customer. I think it fair to the parties that I should express this opinion. But whether the opinion I have expressed be sound or not, I am clearly of opinion that a photographer is not entitled to print copies of the negative either for sale or exhibition without the consent of the customer. Such consent as regards the mere exhibition of the picture, I have no doubt, is often given, and probably is more frequently assumed, and perhaps it may reasonably enough be assumed, so long as no objection to such exhibition is stated. But when the objection is stated the photographer must in my opinion give effect to it. And it is immaterial in my opinion to consider from what motive the exhibition is made, whether to show the public the persons who are among the photographer's customers, or to show what he is able to do in the execution of his art. I agree in the views expressed by the learned Judges in the English cases cited to us, that the relation between the photographer and his customer is a confidential one, and that a distinct breach of an implied term of this contract is committed when pictures for which the customer has sat are exhibited, even in the show room of the photographer, contrary to the wish of the customer. The defenders in the present case cannot exhibit the pictures in question for either of the reasons I have suggested; the pursuer and his daughters are not and never have been their customers, and the pictures in question are not specimens of their art or of their production. It was argued that the defenders had bought the pictures and were therefore entitled to deal with them as with any other part of their property. But they must, according to my opinion, have bought them in the knowledge which I attribute to them and all photographers that they are not entitled to sell or exhibit them without the consent of the subject. Nor is it anything to the purpose to say that the pursuer allowed Adamson (who took the photographs) to exhibit them, for what the pursuer might consent to one person doing, he may object to being done by another. I therefore agree with the Sheriff.

LORD MONCREIFF—For reasons which I shall mention presently, I have not much sympathy with the pursuer; at the same time I think he is entitled to interdict.

The question is one of contract and not of property. I shall assume that the property in the negative is with the photographer; the question is as to the use which he is entitled to make of it. In the case of *Pol-lard v. The Photographic Company*, 40 Ch. Div. 345, Mr Justice North says (p. 349)—“The object for which he (the photographer) is employed and paid is to supply his customer with the required number of printed photographs of the given subject. . . . In my opinion the photographer who uses the negative to produce other copies for his own use without authority is abusing the power confidentially placed in his hands merely for the purpose of supplying the customer; and further, I hold that the bargain between the customer and the photographer includes, by implication, an agreement that the prints taken from the negative are to be appropriated to the use of the customer only.” I think that these words correctly describe the nature of the contract between the photographer and the customer. I assume that the photographer is not bound to deliver the negative to the customer without an extra payment; and perhaps he is entitled to destroy the negative after fulfilling the original order for a certain number of copies. But if he does not destroy the negative he can only use it with consent of the customer. Such consent will in most cases be readily given, and may be readily implied. But if the customer does not consent, the photographer can be restrained from using the negative for his own purposes. And in my opinion this right of veto does not depend upon the customer being able to qualify prejudice or damage. If it exists at all it is absolute. In the present case, for instance, it is difficult to see what prejudice the pursuer can sustain from the photographs of those young children being exhibited.

I have had some doubt whether on the evidence there is not sufficient proof to support the plea that the pursuer is barred by acquiescence. I have a strong impression (notwithstanding his disclaimer) that what has led to the action was simply the pursuer's failure to get these photographs at his own price, and not a *bona fide* objection to their exhibition. But the pursuer's motive does not in my opinion affect the question. If he is entitled to object, he is not bound to assign a reason. Now the pursuer undoubtedly allowed Adamson without objection to exhibit the pictures for a number of years. But it does not follow that he is bound to allow the pictures to be exhibited by a purchaser from Adamson who was necessarily aware that the photographs were likenesses of customers.

I therefore agree with the majority that we should affirm the Sheriff's judgment.

The Court dismissed the defenders' appeal against the interlocutors of the Sheriff-Substitute and the Sheriff, dated respectively 17th June and 27th October 1902,

found in fact and in law in terms of the findings in the former interlocutor, and decerned of new in terms of the conclusions for interdict and removal.

Counsel for the Pursuers and Respondents—Wilson, K.C.—Horne. Agents—Davidson & Syme, W.S.

Counsel for the Defenders and Appellants—Watt, K.C.—Munro. Agent—John N. Rae, S.S.C.

Thursday, March 19.

FIRST DIVISION.

COUNTY COUNCIL OF MID-LOTHIAN
v. OAKBANK OIL COMPANY,
LIMITED.

COUNTY COUNCIL OF LINLITHGOW
v. PUMPHERSTON OIL COMPANY,
LIMITED.

COUNTY COUNCIL OF LINLITHGOW
v. UNITED COLLIERIES, LIMITED.

(*Ante*, *Midlothian County Council v. Pumpherton Oil Company*, July 15, 1902, 39 S.L.R. 797, and 4 F. 996).

River—Pollution—Proceedings by County Council under Rivers Pollution Prevention Acts, 1876 and 1893—Competency—Procedure—Notice to Alleged Offenders—Consent of Secretary for Scotland—Sufficiency of Notice—Rivers Pollution Prevention Act 1876 (39 and 40 Vict. cap. 75), secs. 4, 5, 6, 10, and 13.

Held (1) that, under the Rivers Pollution Prevention Act 1876, a sanitary authority does not have a title to take proceedings against alleged offenders against the Act until the consent of the Secretary for Scotland has been given to the institution of such proceedings; (2) that accordingly the two months' notice which, under section 13 of the Act, alleged offenders are entitled to receive of an intention to take proceedings cannot be effectually given until the Secretary for Scotland has consented to the institution of proceedings; and (3) that proceedings against alleged offenders taken by a sanitary authority, which had given the alleged offenders notice of their intention to take proceedings prior to the date at which the consent of the Secretary for Scotland was given to the proceedings being taken, were incompetent in respect that the sanitary authority had failed to give proper notice in terms of the Act, and so had deprived the alleged offenders of the opportunity of being heard before the sanitary authority, as provided for in section 6 of the Act.

These cases are reported *ante ut supra*.

The Rivers Pollution Prevention Act 1876 (39 and 40 Vict. cap. 75) enacts as follows:—
Section 4—"Every person who causes to

fall or flow, or knowingly permits to fall or flow or to be carried into any stream, any poisonous, noxious, or polluting liquid proceeding from any factory or manufacturing process, shall (subject as in this Act mentioned) be deemed to have committed an offence against this Act. Where any such poisonous, noxious, or polluting liquid as aforesaid falls or flows or is carried into any stream along a channel used, constructed, or in process of construction at the date of the passing of this Act, or any new channel constructed in substitution thereof, and having its outfall at the same spot, for the purpose of conveying such liquid, the person causing or knowingly permitting the poisonous, noxious, or polluting liquid so to fall or flow or to be carried shall not be deemed to have committed an offence against this Act if he shows to the satisfaction of the court having cognisance of the case that he is using the best practicable and reasonably available means to render harmless the poisonous, noxious, or polluting liquid so falling or flowing or carried into the stream."

Section 5—"Every person who causes to fall or flow, or knowingly permits to fall or flow or to be carried into any stream, any solid matter from any mine in such quantities as to prejudicially interfere with its due flow, or any poisonous, noxious, or polluting solid or liquid matter proceeding from any mine, other than water in the same condition as that in which it has been drained or raised from such mine, shall be deemed to have committed an offence against this Act, unless in the case of poisonous, noxious, or polluting matter he shows to the satisfaction of the court having cognisance of the case that he is using the best practicable and reasonably available means to render harmless the poisonous, noxious, or polluting matter so falling or flowing or carried into the stream."

Section 6—"Unless and until Parliament otherwise provides, the following enactments shall take effect:—Proceedings shall not be taken against any person under this part of this Act, save by a sanitary authority, nor shall any such proceedings be taken without the consent of the Local Government Board" [for which in Scotland there is substituted one of Her Majesty's Principal Secretaries of State (*see* sec. 21 (4)), and now the Secretary for Scotland (*see* Secretary for Scotland Act 1885 (48 and 49 Vict. c. 61), sec. 5 (1), and Schedule, Part I.)]. . . . The said Board in giving or withholding their consent shall have regard to the industrial interests involved in the case and to the circumstances and requirements of the locality. The said Board shall not give their consent to proceedings by the sanitary authority of any district which is the seat of any manufacturing industry, unless they are satisfied, after due inquiry, that means for rendering harmless the poisonous, noxious, or polluting liquids proceeding from the processes of such manufacturers are reasonably practicable and available under all the circumstances of the case, and that no material injury