

this order, and which were therefore entitled to precedence, but was wholly and solely due to the custom that when the loading of a ship has once been begun it must go on till it is finished before another vessel is allowed to take its turn at the berth, and, as has been pointed out, there were two vessels not all loaded, and therefore the "Ardandearg" had to wait till the loading of these vessels was completed. I am glad to be able to concur in all that has fallen from Lord Kinnear, as well as your Lordship in the chair.

The Court recalled the interlocutor of the Lord Ordinary, and assoilzied the defenders from the conclusions of the action.

Counsel for the Pursuers and Respondents—Shaw, K.C.—James Clark. Agents—J. & J. Ross, W.S.

Counsel for the Defenders and Reclaimers—Ure, K.C.—Hunter. Agent—Campbell Fail, S.S.C.

Thursday, January 21.

SECOND DIVISION.

[Lord Kyllachy, Ordinary.]

MONTGOMERIE & COMPANY v. YOUNG BROTHERS.

Process — Reclaiming - Note — Printing — Amendment of Record—Amendment Put on after Date of Interlocutor Reclaimed against — Court of Session Act 1825 (Judicature Act) (6 Geo. IV. c. 120), sec. 18 — A.S., 11th July 1828, sec. 77.

In an action concluding for interdict an interlocutor was pronounced whereby the Lord Ordinary granted interdict, but in less general terms than those of the conclusions of the summons, and allowed the pursuers "to amend the conclusions of the summons as proposed at the bar," opened up the record, and the amendment having been made re-closed the record. Three days after the interlocutor was pronounced an amendment was put on the process copy of the closed record by the pursuers restricting the interdict concluded for to the terms in which it had been granted. The defenders reclaimed. In the record appended to the reclaiming-note the summons was printed as originally framed. The pursuers objected to the competency of the reclaiming-note in respect that the amendment put on the summons was not printed. Objection *repelled*, in respect that when the interlocutor reclaimed against was pronounced no amendment had been made.

Process—Interdict—Master and Servant—Infringement of Rights of Others by Acts of Servant in Disobedience to Master's Instructions.

Question — Whether interdict the appropriate remedy against a master

whose servants, disobeying his orders, infringe the rights of others.

This was an action at the instance of Montgomerie & Company, Limited, malt extract manufacturers, Partick, Glasgow, against Young Brothers, Oakfield Hygienic Bakery, 114 Pleasance, Edinburgh, in which the pursuers sought to have the defenders interdicted from "advertising or representing themselves as bakers or sellers of Bermaline bread, or selling loaves of bread under said name *which have not been manufactured by the pursuers, or put on the market by the pursuers or with their authority.*" The words in italics were added by way of amendment on the process copy of the closed record as stated *infra*.

The pursuers were owners of a registered trade-mark for the use of the word "Bermaline" applied to an extract of malt manufactured by them, which was a distinctive ingredient of certain bread also manufactured by them and sold under the name of "Bermaline Bread."

The pursuers averred—"(Cond. 3) From 28th June 1897 the defenders held an agency for the manufacture and sale of Bermaline bread, and were supplied by the pursuers and their predecessors with Bermaline extract for such manufacture. On 22nd November 1902 they wrote to the pursuers, requesting the removal from their shop windows of all Bermaline advertisements. But the pursuers have recently become aware that for a considerable time prior to that date the defenders have been in the habit of wilfully and fraudulently, in their various shops, advertising for sale and selling as Bermaline bread bread not manufactured with Bermaline malt extract."

A proof was led, the nature of which is sufficiently disclosed for the purposes of this report in the opinion of the Lord Ordinary and in those delivered by the Judges in the Inner House upon the merits.

On 17th July 1903 the Lord Ordinary (KYLACHY) pronounced an interlocutor in the following terms:—"The Lord Ordinary allows the pursuers to amend the conclusions of the summons as proposed at the bar: Opens up the record for that purpose, and said amendment having been made, re-closes the record; and having considered the whole cause, interdicts, prohibits, and discharges the defenders from selling loaves of bread under the name of Bermaline bread which have not been manufactured by the pursuers or put on the market by the pursuers or with their authority: Decerns against the defenders for payment to the pursuers of the sum of 5s in full of the conclusion for damages."

Opinion.—"In this case I have not been able to resist the conclusion that during the period from 8th to 22nd November last there was sold at the defenders' shops to various persons loaves of bread which were described and sold as Bermaline bread, but which were not in fact Bermaline bread—that is to say, were not bread manufactured and put on the market by the pursuers or with their authority. There is a great conflict of evidence—a conflict perhaps extending even to the question

whether the alleged sales were made at all. But notwithstanding the strenuous denials of the defenders' shopwomen I have felt obliged to hold it as proved that what is alleged did occur, and did so on ten different occasions, and at five different shops, the sales being made to nine different purchasers, who were as it happens emissaries of the pursuers sent round to test by actual purchases the existence of a practice of which the pursuers had, as they believed, information.

"It is not necessary to go into detail. The question is a jury question, and I claim that I have tried to solve it as best I could. I quite accept the defenders' statement that they were not personally cognisant of what took place. Indeed I accept and quite believe their statement that when they terminated their agency for the pursuers on 5th November they sent or gave orders to all their shops that the sale of Bermaline bread should be stopped, and that if asked for the customer should be told that it was no longer kept. But although personally clear the defenders are of course responsible for their servants, and I am unable to doubt that perhaps from some misunderstanding, or more probably from what we sometimes find an invincible indisposition to obey or treat seriously orders of which the importance was not appreciated, the defenders' shopwomen at the five shops in question failed to inform the customers—at all events their casual customers—when asked for this particular kind of bread, that the article which they supplied was not the article asked for, but something which was considered equally good.

"Taking this view of the evidence, I am afraid it follows that the defenders have committed as against the pursuers a legal wrong. They have not only represented their own goods as the goods of the pursuers, but in so far as the distinction is of importance they have infringed the pursuers' registered trade-mark. And that being so, it makes, I am afraid, no difference that they were personally innocent, or even that their servants were probably unconscious that they were doing anything worse than taking a liberty. The unauthorised use either of a trader's name or of his registered trade-mark is, apart altogether from motive, an invasion of a proprietary right and a legal wrong. Fraud in the ordinary sense is quite unnecessary. That point is, I think, explained in Lord Cairns' judgment in the case of *Singer v. Wilson*, 3 App. Cas. 391. It is also noticed in various recent cases, amongst others the case of the *Cellular Clothing Company v. Maxton & Murray*, 25 R. 1098—a case which went to the House of Lords (1 F. (H.L.) 29, 36 S.L.R. 605).

"The pursuers therefore are unquestionably entitled to damages if they have suffered damage, and also, it seems to me, to interdict if there is any reasonable apprehension of a repetition or continuance of the offence. As to damages, I am relieved from attempting to assess them, because the pursuers admit that they have proved no actual loss, and they therefore only ask

nominal damages. But as to interdict, the matter is not quite so clear. There are some *dicta* on the subject by individual Judges, which, if authoritative, would be embarrassing, and to which I am not myself prepared to subscribe. But I quite acknowledge that interdict as a rule ought not to be granted unless there is (1) some wrongful act or wrongful conduct in the past, and (2) some reasonable apprehension of the repetition or continuance of the wrong in the future. If therefore it could be assumed that there was no room in this case for such an apprehension I should have been quite prepared to refuse interdict. But having regard to the whole circumstances, I am unable to make that assumption. It is not I think possible to hold that what happened here was mere inadvertence. The occasions were too numerous and too suggestive of a general practice, and besides I am not aware that the suggestion of inadvertence is open where as here everything is denied. I put it to the defender's counsel at the close of the proof whether they were prepared by minute to admit the fact, and to grant an undertaking that the thing would not again occur, but they did not see their way to put the case into that position. I accordingly propose to grant interdict against the defenders selling under the name of Bermaline bread bread not manufactured by the pursuers, or which has not been manufactured or put on the market by the pursuers or with their authority. The interdict asked is in wider terms—terms in which I could not possibly grant interdict. But the pursuers asked leave to amend their summons by expressing the necessary qualification, and I thought it right to allow that amendment." . . .

The defenders reclaimed. At the calling of the reclaiming-note the following facts were admitted at the bar with regard to the amendment of the conclusions of the summons referred to in the interlocutor reclaimed against, viz., that 'it was not until three days after that interlocutor was pronounced that any amendment was made, that the words printed in italics *ut supra* were then written upon the process copy of the closed record and initialled by counsel, and that they were not written upon the principal copy of the summons until December, the reclaiming-note having been printed and boxed in August.

In the record appended to the reclaiming-note the summons was printed as originally framed without the amendment.

Counsel for the respondents objected to the competency of the reclaiming-note, and argued—The amendment should have been given effect to on the copy of the summons appended to the reclaiming-note and so printed and boxed—Judicature Act 1825 (6 Geo. IV. c. 120), sec. 18; Act of Sederunt, 11th July 1828, sec. 77; *Williamson v. Howard*, May 18, 1899, 1 F. 864, 36 S.L.R. 645; *Muir v. Muir*, October 17, 1874, 2 R. 26, 12 S.L.R. 11; *Carter v. Johnston*, February 6, 1847, 9 D. 598; *Adam v. Adam's Trustees*, March 20, 1903, 5 F. 863, 40 S.L.R. 598; *Fisken v. Fisken*, October 20, 1900, 3 F. 7, 38 S.L.R. 4.

Argued for the reclaimers—The right to reclaim emerged at the date of the interlocutor reclaimed against; at that date no amendment existed, and the reclaimers' obligation was to print the record as it then stood.

LORD JUSTICE-CLERK—There can be no doubt as to the rule regarding the printing and boxing of reclaiming-notes. This rule has been carried out with great strictness, and I should be very sorry to interfere with a course of practice not only in accordance with enactment but also in itself most advisable. It has been held that when a substantial part of a record has not been printed and boxed with the reclaiming-note the latter is incompetent. In this case an amendment on the summons alleged to have been made in the Outer House by the pursuers has not been printed and boxed. There can be no doubt that if the amendment in question had been truly and properly made, and had been on record at the time when the interlocutor reclaimed against was signed, the objection to the competency of the reclaiming-note would have been good. But the case stands in a very peculiar position. At the date of signing the interlocutor there was nothing on record to indicate that an amendment had been made except the reference to an amendment contained in the interlocutor. It is admitted that three days after the interlocutor was signed the amendment was written upon the process copy of the closed record and initialled by counsel, and that it was not written upon the principal copy of the summons until long after the reclaiming-note was printed and boxed. In these circumstances we are asked to say that the reclaiming-note should be thrown out. I think this motion should be refused and the action allowed to proceed. The case is very exceptional, and I do not think that the course which I have proposed will in any way affect the rule of practice as laid down in previous decisions.

LORD YOUNG—I think it is proper to consider what the amendment is which the pursuer alleges to have been made on the summons; it is that these words should be added after the words "or selling loaves of bread under said name," viz., "which have not been manufactured by the pursuers, or put on the market by the pursuers or with their authority." The interdict concluded for is against selling loaves of bread under the name of "Bermaline." The question was put distinctly more than once what was the object of this amendment, and I think there was no answer given to that question. It certainly appeared to me that it was as purposeless as any amendment could possibly be. It is always competent for the Court to give a judgment within though not without the conclusions of a summons, whatever is concluded for, whether it be interdict or payment of a sum of money. The Court may grant interdict to any extent which is thought just within the limits of the interdict concluded for; just as it is competent for the Court to give decree for any sum of money

within the amount of the sum concluded for. If a summons concluded for payment of £50, 2s. 6½d., it would be idle to amend it by striking out the 2s. 6½d., and I think the amendment proposed in this case is as idle as that would be. I regard it as too idle an amendment to be made the ground of such an objection as was taken to the regularity of this reclaiming-note.

Apart from these considerations, the interlocutor reclaimed against was all that could be printed by way of printing the amendment. When that interlocutor was pronounced the Lord Ordinary became *functus*, and in reclaiming against his judgment there could be no obligation to print anything that was added either to the interlocutor sheet or to the summons after the interlocutor was signed. The interlocutor tells us that the record was opened up, the amendment made, and the record re-closed; but nothing of the kind was done. According to the statement made to us by the learned counsel—and we have nothing else to go by—nothing was done till the following Monday. What the reclaimers were bound to do was to print the summons as it stood when the interlocutor reclaimed against was pronounced. That is what they have done, and they would have been wrong to print it otherwise.

I am very clearly of opinion that there was no amendment here at all, and I am therefore of opinion that the respondents' objection to the present reclaiming-note ought to be repelled.

LORD TRAYNER—The objection to the competency of this reclaiming-note is that an amendment made on the record has not been printed and boxed with the note, as required by the provisions of the Judicature Act and relative Act of Sederunt. I think it is quite settled that these provisions are imperative and not merely directory. In my opinion there has been no failure to comply with these provisions. On 17th July last, when the interlocutor reclaimed against was pronounced, the Lord Ordinary was dealing with a closed record and concluded proof. In these circumstances no amendment could be made on the record without the leave of the Court; and accordingly this interlocutor bears that the pursuers were allowed to amend the conclusions of the summons "as proposed at the bar." The record was opened up to allow the amendment, and "said amendment having been made" the record was again closed. No such amendment admittedly was made when this interlocutor was pronounced, or was made for three days thereafter on any writ in process. Accordingly when the record was re-closed it was so re-closed on the record as it had stood without amendment. The only amendment which the Court allowed was one made, or said to have been made, before the interlocutor was pronounced. The amendment made three days later was not authorised. I think therefore that no amendment was made, and consequently there was no amendment to print or box. If that is so,

the objection to the competency of the reclaiming-note is ill founded and should be repelled.

LORD MONCREIFF was absent.

The Court repelled the objection to the competency of the reclaiming-note.

Counsel were then heard on the merits. The following authorities were cited for the reclaimers—*Bass, Ratcliff, & Gretton v. Laidlaw*, May 22, 1886, 13 R. 898, 23 S.L.R. 624. For the respondents—*Betts v. De Vitre* (1868), L.R., 3 Ch. App. 429; *Fouge v. Ward* (1869), 21 L.T. 480; *Sykes v. Howarth* (1879), 12 Ch. Div. 826.

LORD JUSTICE-CLERK—The Lord Ordinary has felt compelled to grant interdict. After giving all consideration to the case I do not think this was a case for interdict. The thing to be interdicted is the sale of what is not Bermaline bread as Bermaline bread. It would be a good ground for interdict if bread had been sold in such a way as to be an infringement of the rights of the pursuers, even had it been done by the defenders' servants and without the defenders' knowledge and approval. But in such a case as this we must look with care to see that there really was such a sale and how it was gone about. The question turns on the sale of a few loaves of bread. When an article is of great value the sale of even a single article may be so important as to justify interdict. But here the action being raised about the sale of a very small number of loaves there must be very clear evidence of such sales having been made so as to give ground for a court to take action. On reading the evidence I am not satisfied that such sales were made, or that if they were they were not made by pure inadvertence. I think the evidence should be very clear that what was being asked for was Bermaline bread. I am not satisfied that this was so. The evidence is conflicting, and it looks as if the proceedings of the pursuers had been gone about for the express purpose of entrapping the saleswomen. It seems to me very extraordinary that the action should be raised about the sale of an article of which the value is so small, and in the sale of which the defenders had so little interest. I agree with the Lord Ordinary that interdict should not be granted unless there is a reasonable apprehension of a repetition of the offence. Here there can be no apprehension. The defenders, it is true, were not willing to admit that they had committed an offence, but they are willing to undertake that sales of their bread as Bermaline bread shall not continue. That would be a sufficient ground for refusing interdict. But upon the evidence I am of opinion that there has been no satisfactory proof of the sale of bread as Bermaline bread which was not Bermaline bread, such as to entitle the pursuers to interdict, and I am therefore in favour of recalling the interlocutor under review.

LORD YOUNG—In this case the facts alleged by the pursuers are clear, empha-

tic, and strong. They allege that the defenders, who were at one time authorised by them to sell Bermaline bread by that name, to which the pursuers alone were entitled, renounced the right so to sell it on 22nd November 1902, but that notwithstanding that renunciation they sold bread under the trade name Bermaline, not accidentally but wilfully, to the pursuers' great damage. The averments to that effect are very clear. [*His Lordship read condescendence 3*]. The last occasion on which, as alleged, bread not manufactured "with Bermaline Malt Extract" was sold as Bermaline bread by the defenders was 21st November 1902, that is, six weeks before this action was raised. It was not contended by the learned counsel that there was any truth in that allegation. Both of the Youngs, the defenders, stated that they had no intention of selling Bermaline bread as such after they ceased to have the pursuers' authority, and that they instructed their servants accordingly. There is evidence to that effect by the defenders, and I ventured to put the question to Mr Constable at the end of his speech whether he disputed the truthfulness of the defenders' statement that they had no such intention and had given such instructions, and he said he could not dispute that. Now, when did the pursuers become aware of the facts they allege as having come to their knowledge recently before the action was raised? I asked whether inquiry had been made as to whether any customer had got Bermaline bread as such in the defenders' shops after the renunciation by them of the pursuers' agency. The answer was that no such inquiry had been made or would be possible. Therefore it was something approaching to wilful false statement on the record that the defenders "continue to make such infringements," that is, to sell as Bermaline bread loaves not manufactured with Bermaline malt extract. The pursuers could not prove any such sales except to the detectives employed by themselves after November 1902 to see if they could not catch the defenders' servants, and the evidence of these employees of their own was contradicted. I must say that upon the facts so disclosed the statements made on record are not only not warranted by any evidence but are shown by the evidence to be such as ought not to have been made. They were averments which it was discreditable to make. I venture to use that word. They were averments discreditable to be made without any inquiry having been made to ascertain the truth of them before they were made. Now, upon that I should be very clearly of opinion on the evidence that there was no case for an interdict at all. I do not accept the evidence of detectives and employees of the description I have referred to when contradicted by the evidence—which I accept as honest and truthful evidence—of the servants in the shops and of the defenders. I do not accept that evidence, and I therefore hold upon the proof here that there were no sales contrary to the instructions

of the defenders, the admitted instructions given by them and received by their employees. But I should go further and say that if even I could hold it as proved that those trapping witnesses who are employed to be trapping witnesses had succeeded in getting from the girls loaves which were not Bermaline loaves by the name of Bermaline, I should hold that to be no ground for an interdict in the face of what I hold to be proved, that the instructions of the defenders were distinct that there should be no such sales. I cannot agree to the proposition that if a servant disobeys the master's instructions in a matter of this kind the interdicting of the master is the remedy. The cases show, and the good sense and reason of the thing—such good sense and reason as almost all our common law is founded upon—shows that if a trader carries on business in a manner which he is not entitled to do to the detriment of another it will be no excuse to him, and nothing to prevent an interdict, that he has done it by others, not by his own hand, if he has not taken all the means in his power to prevent it. In the cases which have occurred the employer against whom an interdict was asked and obtained was carrying on the business, and carrying it on in a manner which he maintained he was entitled to do and which was not hurtful to his neighbours so as to entitle his neighbour to complain. When it was decided by the Court against that contention that it was, then it was quite proper to interdict him by himself, or others continuing to carry on the business or doing the things either with his own hand or by the hands of others employed by him, which he had been maintaining his right to do and defending his conduct in doing. But the case which I have put, and which is presented here, upon the assumption with which I am now dealing, is not of that kind at all, but simply of a servant in a shop violating accidentally or otherwise the instructions of her master. In a case of that kind to say that the remedy is to interdict the master and to punish him for breach of interdict, that is to say, for his contempt of the authority of the Court which has granted it, if his servant or any servant in any of his shops should ever violate his instructions again, is a proposition which is certainly not, in my opinion, to be accepted. The maintenance of such a proposition is not to be sustained. I am therefore of opinion with your Lordship that the defences ought to be sustained, the grounds of action repelled, and the defenders assolized, with expenses.

LORD TRAYNER—This case presents some features that, I think, are not commonly met with in actions of this kind. The complaint is that the defenders have violated a right of the pursuers to their detriment, but it appears, and it is not disputed, that the defenders disclaim any intention to do that which is complained of. They say that they have further instructed their servants to take care that all customers, regular or casual, who come to their pre-

mises for the purpose of purchasing Bermaline bread are to be told that they do not sell it. And the motive that they might have had for interfering with the pursuers' right is absolutely removed by this fact, which I think is sufficiently established, that the sale of Bermaline bread, at all events in the defenders' experience, has not been a commercial success but has been the contrary. They have therefore no motive for carrying on this trade, which the pursuers say they are carrying on. Now, it would be difficult in these circumstances, taking nothing else, to hold that the defenders should be interdicted from doing a thing which they not only deny they have ever done but which they distinctly state their intention not to do. But then, coming to the evidence, I agree with some of the observations which have been made upon the value of evidence of persons who are professional or non-professional detectives sent to premises for the purpose of trying to get up a case. That class of evidence, I think, is always to be received *cum nota*, and unless it is corroborated by independent testimony is not to be proceeded upon with any confidence. Now, in this case the witnesses who are brought to support the pursuers' case are persons who were sent, some of them from Glasgow, for the express purpose of trying to get people in the defenders' shops to sell them on their request for Bermaline bread something that was not of the description asked for. I say again that that evidence unsupported would not impress me favourably; but all the less do I give any weight to it when it is opposed by evidence entitled, as I think, to be accepted as sound and reliable. The servants in the defenders' shops are unanimous in stating not only that they had got the instructions from their masters, to which I have already referred, but that they were careful to keep these instructions in view and obey them, and they say they did. Now, it is quite possible to suppose that these witnesses examined for the pursuers did go and ask for Bermaline bread, and it is possible that they got something in reply to their demand which was not Bermaline bread on one or two occasions. That is quite possible, but then it is rather a curious thing that the persons who come to make these demands for Bermaline bread come at a time when the shops are full, when the shop girls are busy, doing their best to supply customers who do not want to be kept waiting, and in these circumstances it is not wonderful if the shop girl when the request was preferred did not hear or understand that it was Bermaline bread that was being asked for. It is not quite the same word, but it might quite well be misunderstood for brown bread, and brown bread they all got. But even if the pursuers' witnesses had gone to the defenders' shops on one or two occasions and asked distinctly for Bermaline bread and had in return got something which was not Bermaline bread, I would not have regarded one or two instances that might have arisen entirely from inadvertence a sufficient ground for granting the interdict

which has been craved. On the whole matter I am quite satisfied that the pursuers have entirely failed to make out a case for interdict, and that they have certainly proved no damage, and therefore I agree with your Lordships in thinking that the interlocutor should be recalled and the defenders assolized.

LORD MONCREIFF was absent.

The Court recalled the interlocutor reclaimed against and assolized the defenders.

Counsel for the Pursuers and Respondents—Salvesen, K.C.—Hunter. Agents—Hutton & Jack, solicitors.

Counsel for the Defenders and Reclaimers—Clyde, K.C.—Constable. Agent—T. S. Paterson, W.S.

Saturday, January 23.

FIRST DIVISION.

[Dean of Guild Court,
Partick.]

JOHN C. M'KELLAR, LIMITED v.
BRYCE.

Police—Buildings—Open Space Attached to Dwelling Houses—Lining Granted subject to Conditions—Second Application in Contravention of Conditions of Previous Lining—Burgh Police (Scotland) Act 1892 (55 and 56 Vict. cap. 55), sec. 170.

The proprietors of a rectangular area of ground situated in a burgh at the corner of two streets applied for a lining for three tenements, two of them to face one street and the third to face the other street. The burgh surveyor objected that a free space equal to at least three-fourths of the area to be occupied by the intended buildings, as required by section 170 of the Burgh Police (Scotland) Act 1892, was not provided. The petitioners thereafter lodged a minute restricting their petition to a lining for two tenements, and also made and initialled the following note on a new plan lodged in process showing only these two tenements—"Back space to be three-fourths the total area of buildings." There being a free space in excess of the area required by the Act for the two tenements, the Dean of Guild, in respect of this minute, granted the restricted application for two tenements conform to the new plan. Subsequently the proprietors presented a second application for a lining for a tenement identical in dimensions and design with the third tenement which had been shown on the plan originally lodged with the first application, and which had been dropped from that application. The burgh surveyor objected, and averred that if the petition was granted the two tenements formerly lined

would be left with less than the minimum free space required by the Act. The Dean of Guild Court refused the lining.

Held, in an appeal, that the petitioners were barred by their actings in the first application, and by the conditions under which the lining in that application was granted, from bringing the second application, and appeal refused.

The Burgh Police (Scotland) Act 1892 (55 and 56 Vict. cap. 55), sec. 170, enacts— . . . "Every building erected for the purpose of being used as a dwelling-house . . . shall have all the rooms sufficiently lighted and ventilated from an adjoining street or other open space directly attached thereto equal to at least three-fourths of the area to be occupied by the intended building." . . .

A petition was presented to the Dean of Guild Court, Partick, by John C. M'Kellar, Limited, 224 St Vincent Street, Glasgow, for a lining for a tenement of dwelling-houses proposed to be erected on the east side of Clyde Street, Partick, on ground belonging to them.

Objections were lodged by John Bryce, Burgh Surveyor for the burgh of Partick, for the public interest.

The following facts were stated in the petition and answers:—The total area of ground belonging to the petitioners was about 8553 square feet, extending northwards in Clyde Street to Dumbarton Road, and along Dumbarton Road eastwards. On May 4th 1903 the petitioners lodged a petition in the Dean of Guild Court at Partick for the erection of three tenements with offices on this area of ground, two of them having a frontage to Dumbarton Road and one of them having a frontage to Clyde Street. The Burgh Surveyor having lodged, *inter alia*, an objection to this petition that the free space required by section 170 of the Burgh Police (Scotland) Act 1892 (*i.e.*, equal to at least three-fourths of the area to be occupied by the intended buildings) was not provided. The actual area of the three intended tenements was 5756 square feet, three-fourths of which was 4317 feet, whereas the actual back space available was only 2797 square feet, being 1520 square feet less than the necessary minimum of 4317 square feet. On June 2nd 1903 the petitioners lodged a minute in said petition restricting their petition to a lining for the two tenements fronting Dumbarton Road, thereby reducing the area of building to 4046 square feet, and increasing the requisite free space to 3034 square feet. This left unbuilt on 2797 square feet of back ground in addition to the ground on which the third tenement was proposed to be erected, or 4507 square feet in all, an excess of 1473 square feet beyond the area required for the two tenements. The minute lodged by the petitioners restricting their petition to a lining for two tenements bore that they did so "without prejudice to their in future applying for a lining for" said third tenement, "and under reservation of their whole rights and pleas in the