

The opinion of the Court (the LORD PRESIDENT, LORD KINNEAR, LORD JOHNSTON, and LORD MACKENZIE) was delivered by

LORD PRESIDENT—I should like to bring to your Lordships' notice a serious grievance of the lieges disclosed by the petition. The petitioners obtained decree in absence against a defender resident in Thurso. They extracted the decree and desired to do diligence on that decree. In old days there would have been no difficulty, because the serving of the charge would have been effected by a messenger-at-arms, but owing to the alterations introduced by the Citation Act of 1882 (45 and 46 Vict. cap. 77) the calling of a messenger-at-arms no longer pays. There are now only thirty-two messengers-at-arms in Scotland, fifteen of these being in Edinburgh and Glasgow. Thus there are many places where such a messenger cannot be obtained except at considerable expense. In the present case it would be necessary to incur the expense of bringing a messenger-at-arms from Inverness. The Act provides for the service of summonses by post, but there is no provision for the serving of a charge by post. Any alteration in the law must be brought about by Parliament. All that your Lordships can do is to grant the prayer of the petition so far as to authorise a sheriff-officer to act as a messenger-at-arms in the present instance.

The Court pronounced this interlocutor—

“Grant warrant to any sheriff-officer in Caithness to charge the defender William Murray, named and designed in the petition, upon the extract-decree at the petitioners' instance mentioned in the petition, and thereafter to carry into execution all legal diligence competent to follow upon said charge, should the same expire without payment having been made: Dispense with the reading of the minute book, and authorise a certified copy of this interlocutor to be used in place of an extract.”

Counsel for Petitioners—Hon. W. Watson. Agents—Macpherson & Mackay, S.S.C.

Wednesday, June 26.

FIRST DIVISION.

[Lord Ormidale, Ordinary.

EDINBURGH MAGISTRATES v.
LORD ADVOCATE.

Statute—Crown—Police—Jurisdiction—Construction—Building Regulations—Exemption in Favour of Crown Property—Bar—Edinburgh Corporation Act 1906 (6 Edw. VII, cap. clxxiii), secs. 67 and 78.

The Edinburgh Corporation Act 1906, sec. 67, empowers the Corporation in certain cases to require that no houses or buildings shall be erected within

30 feet of the centre line of the street on which the ground abuts. Section 78 exempts from these provisions buildings “vested in or in the occupation of His Majesty either beneficially . . . or in trust for the public service.”

The Commissioners of His Majesty's Works obtained a warrant from the Dean of Guild for the partial erection of a building on ground held by them for behoof of the Crown. The building so far as then authorised extended to within 30 feet of the centre line of the street in front of it. No objection was taken by the Corporation to the erection of this, the first wing of the building, though the plans then produced showed the position of the building as completed. The Commissioners having subsequently proposed to complete the building by adding the other wing, the Corporation passed a resolution in terms of section 67 of the said Act, and thereafter raised the present action for its enforcement.

The Court *assolized* the defender, on the ground (*per* Lord President and Lord Kinnear) that the exemption in favour of the Crown was not limited to buildings actually in existence at the date of the Act, but applied also to future buildings; and (*per* Lord Johnstone) on the ground that the Corporation were barred from objecting to the completion of the building by having consented to the original plans.

Observations (per Lord President) as to the extent to which the Crown is bound by restrictions contained in local Acts.

The Edinburgh Corporation Act 1906 (6 Edw. VII, cap. clxxiii) enacts—Section 67—“*Distance Buildings may be kept back from Centre Line of Street.*—Where any ground, whether belonging to one or to more than one proprietor abuts on an existing street, and is for a continuous distance of two hundred yards or upwards along the street either unbuilt upon within a line parallel to and running at a distance of thirty feet from the centre line of the street, or not occupied within the said thirty-foot line by buildings of a greater height than fifteen feet, the Corporation may from and after the commencement of this Act require that no houses or buildings shall be erected within the said thirty-foot line: Provided that this section shall not apply to an existing street which has been formed or laid out under the provisions of the Edinburgh Municipal and Police Acts.”

Section 78—“*Exemption of Crown Property.*—Without prejudice to any existing right of His Majesty there shall be exempted from so much of the provisions of this Act as relates to buildings, structures, or works, every building, structure, or work vested in or in the occupation of His Majesty either beneficially or as part of the hereditary revenues of the Crown or in trust for the public service or for public services, as also any building, structure, or work vested in or in the occupation of any department

of His Majesty's Government for public purposes or for the public service."

Section 79—"Protection of Crown Rights.—Nothing in this Act affects prejudicially any estate, right, power, privilege, or exemption of the Crown, and in particular nothing herein contained authorises the Corporation to take, use, or in any manner interfere with any portion of the shore or bed of the sea, . . . or any land, hereditaments, subject, or rights of whatsoever description belonging to His Majesty in right of his Crown and under the management of the Commissioners of Woods or of the Board of Trade respectively. . . ."

On 9th October 1911 the Lord Provost, Magistrates, and Council of the City of Edinburgh, *pursuers*, brought an action against His Majesty's Advocate, as representing the Commissioners of His Majesty's Works and Public Buildings, *defender*, in which they craved declarator that the Commissioners had no right or title to erect houses or buildings on a portion of the Royal Botanic Gardens of Edinburgh within 30 feet of the centre line of Inverleith Row, one of the streets of the city vested in the pursuers in terms of the Edinburgh Municipal and Police Act 1879 (42 and 43 Vict. cap. cxxxii), along which it extended. Interdict against their doing so was also craved.

The following *narrative* is taken from the opinion (*infra*) of the Lord President—"In 1909 the Commissioners of His Majesty's Works and Public Buildings proceeded to erect in Inverleith Row certain buildings in connection with the Royal Botanic Gardens. These buildings had a facade to the street with an entrance, and the plans which were exhibited at that time show clearly, to my mind, that it was intended to complete the buildings which were first designed by the addition of another wing on the other side of the entrance, which, although at that time at the end of the building, was described as a central entrance. A warrant for the erection of the first wing, so to speak, of the buildings was duly obtained from the Dean of Guild Court at the time and the buildings were so far erected. These buildings were all inside the ground belonging to the Commissioners, and came forward to within less than 30 feet of the centre of the street in front of them. Last year the Commissioners decided to complete their original scheme by building the other wing. The facade of the other wing was naturally to be in line with the facade so far as erected. They again applied to the Dean of Guild Court and obtained a warrant for the erection of this new wing; but before the wing was erected, or indeed practically begun, the Town Council passed a resolution in terms of the powers which are conferred upon them by section 67 of the Edinburgh Corporation Act of 1906, a section which is headed 'Distance buildings may be kept back from centre line of street,' and which enacts—'. . . [quotes, *v. sup.*] . . .' The Town Council having passed that resolution, bring this action of declarator and

interdict to have it declared that the proposed building is to the extent of five feet in contravention of this regulation, and to interdict the Commissioners from further proceeding with their building."

The defender pleaded, *inter alia*—" . . . (2) In respect that the lands in question are the property of the Crown, the pursuers are not entitled to decree of declarator and interdict as concluded for. (3) In any event, the defender is entitled to be assoilzied from the conclusions of the action in respect of the exemption of Crown property contained in section 78 of the Edinburgh Corporation Act 1906. (4) In view of the position adopted by them in the Dean of Guild Court and the warrant of 7th September, the pursuers are barred from insisting in the present action. . . ."

On 7th March 1912 the Lord Ordinary (ORMIDALE) found in terms of the declaratory conclusion of the summons and granted interdict.

Opinion.—"The defenders ask that the action be dismissed on two grounds—*First*, they say that, standing the Dean of Guild warrant, the pursuers are barred from insisting in the present proceedings. *Second*, they say the exemption of Crown property contained in section 78 of the Edinburgh Corporation Act 1906 is applicable to the buildings which they propose to erect.

"I understood parties to be in substantial agreement with regard to what took place in the Dean of Guild Court.

"It appears that on 2nd September 1911 the defenders presented a petition in the Dean of Guild Court for warrant to erect 'upon a portion of the grounds forming the Royal Botanic Gardens, Edinburgh, on part of which portion of the said grounds a laboratory is at present erected, certain buildings to be used' for purposes which are described 'in connection with said gardens, all as shown on 5 plans' produced.

"On the plans the proposed new buildings are described as an extension of laboratory buildings (which were erected so recently as 1910 under a warrant obtained from the Dean of Guild in 1909), and the plans show that the proposed new buildings are, so far as their design and purpose are concerned, in complement of the existing buildings.

"The buildings for which warrant was craved included also a porch to the north-east of the proposed extension.

"The petition was served upon the pursuers. No answers were lodged by them, but on the 7th September an agent appeared for them, and while offering no objection to the petition so far as the main buildings were concerned, took exception to the porch.

"On that date the Dean of Guild granted interim warrant for the erection of the buildings other than the porch, the cause being continued *quoad* the porch.

"The interim warrant was extracted on the 14th September.

"On the 15th September the pursuers lodged a minute craving the Court to allow them to lodge answers relative to the whole

operations of the petitioners. This crave was afterwards abandoned and no answers were lodged.

"On the 20th September the pursuers passed what has been referred to as the sterilising resolution.

"On 3rd October the defenders lodged a minute consenting to their petition being dismissed so far as it craved warrant for the erection of the porch, and on 12th October the Dean of Guild, having heard parties' procurators, allowed the petition, so far as warrant had not been already granted, to be abandoned. No appeal was taken against any interlocutor of the Dean of Guild.

"As there is at present no proposal or intention to erect the porch, the present action appears to be unnecessary so far as it relates to the porch.

"In the circumstances I have narrated it does not appear to me that the pursuers are barred from insisting in the present proceedings either by the existence of the Dean of Guild's warrant or by anything they did or omitted to do in the Dean of Guild Court proceedings. At the time the warrant was granted they had no valid ground on which to oppose it. It was on that account that the supervenient resolution of 20th September was passed. Now the validity of the resolution is not challenged. It is not suggested that any of the physical conditions required by section 67 in order to warrant it were non-existent. What is maintained is, that it cannot be given effect to in connection with the present proposed buildings, in respect that the pursuers joined issue with the defenders on the question of the defender's right to erect the buildings in the manner and on the site proposed by them in a Court competent to deal with and to decide that question, and that the defenders obtained a judgment in their favour. But the warrant has not to any extent been put in execution, and I see no reason why the Court of Session should not *de plano* interdict the erection of the buildings complained of without the warrant being formally reduced, or by some other process set aside. I cannot give to the Dean of Guild's order the effect of a judgment ascertaining and determining the rights of parties. The matter is certainly not *res judicata*, for the objection now taken was not open to the pursuers on the 7th September, and the Dean of Guild did not in fact entertain or dispose of the present question, assuming that it was within his competency to do so. The existence of the warrant and the proceedings in the Dean of Guild Court, therefore, do not appear to me to form any bar to the present proceedings.

"The contention of the defenders, founded on section 78, raises a difficult question, but I have come to the conclusion that it does not apply to the buildings in question. The section purports to grant an exemption of certain Crown property from so much of the provisions of the Act as relates to buildings, structures, or works. These words are quite general in expression, and there is nothing in them, read by

themselves, to exclude from their purview buildings which are not yet erected. As section 67 regulates the distance at which buildings may be kept back from the centre line of a street, it seems to me clearly to contain provisions which relate to buildings in the sense of section 78, and accordingly, if the exemption conferred by section 78 had applied to all Crown property, I should have had no difficulty in giving effect to the defenders' contention. But what is exempted is not all Crown property, but every building, structure, or work vested in or in the occupation of His Majesty. Now these words of themselves impose a limitation, for buildings which are not yet erected, but which it is only proposed to erect, cannot be described as vested in anyone. What is vested in the Crown here is a piece of unbuilt-upon ground upon which it is proposed to erect buildings, and unbuilt-upon ground is not in terms exempted from the provisions of the Act relating to buildings, including section 67. I do not think I am warranted in reading into the section the words 'or which will be vested.' It was said that such a construction limits the effect of section 78 to buildings already erected, and that there are no provisions in the Act relating to such—that all the provisions relating to buildings, relate to buildings to be constructed. Even if that were so it would not alter the construction of the section. It would only mean that the Crown took no benefit from the exemption. But I do not think that it is so in fact, for there are certain provisions in sections 65, 66, and perhaps 69, which relate or may relate to existing buildings, and from these provisions buildings vested in the Crown would, on the construction I give to section 78, be exempt.

"It is to be regretted, I think, that the defenders should not be allowed to erect the buildings in question, for they are really an extension of existing buildings which are themselves built within the 30 feet limit, and it is difficult to understand in what way the public interest would be affected by the erection of the extended buildings. The phraseology of the two sections 67 and 68 does not, however, permit of any distinction being made between the extension of existing buildings over unbuilt-upon ground and the erection of entirely new and self-contained structures. Had there been room for such a distinction a proof would probably have been necessary to ascertain precisely the true relation of the addition which the defenders propose to make to the existing buildings, for the erection of which warrant was granted in 1909.

"I shall grant decree in terms of the first declaratory conclusion of the summons and the first part of the conclusion for interdict."

The Lord Advocate reclaimed, and argued—(1) The Corporation was barred by allowing plans to be sanctioned which showed the proposed buildings. The decree of the Dean of Guild Court was still subsisting, and being the decree of a competent Court it excluded the present action. (2) The

Lord Ordinary was in error in limiting the exemption in favour of the Crown to existing buildings exclusive of additions thereto. Such a construction was not warranted by the Act, the provisions of which were mainly directed to future buildings. Even if section 78 were limited to existing buildings, the present building fell within that category, for what was proposed was merely its completion. What was vested in the Crown was the building as a whole and not merely a part thereof. [As to the meaning of the word "building" reference was made to Deas on Railways (Ferguson) at p. 200, and to the case of *Grosvenor v. Hampstead Railway Company*, (1857) 26 L.J. Ch. 731, therein cited.] The construction contended for by the respondents would render section 78 inoperative, for no alteration of an existing building could be effected without consent of the Corporation. (3) The Act was not binding on the Crown, for the Crown was not affected by statute unless it had consented to be bound—Maxwell on Statutes (4th ed.), 202 and 209; *Coomber v. Justices of Berks*, (1883) L.R., 9 A.C. 61; *Hornsey Urban Council v. Hennell*, [1902] 2 K.B. 73; *Cooper v. Hawkins*, [1904] 2 K.B. 164; and *Gorton Local Board v. Prison Commissioners*, therein cited at p. 165, footnote; *Cuckfield Burial Board*, (1854) 24 L.J. Ch. 585. That was especially so where, as here, the Act in question was a municipal one and not a public statute—*Somerville v. Lord Advocate*, July 20, 1893, 20 R. 1050, 30 S.L.R. 868. Where an Act was intended to affect persons in the public service of the Crown it generally said so, e.g. Motor Car Act 1903 (3 Edw. VII, cap. 36), sec. 16.

Argued for respondents—(1) The respondents were not barred by the proceedings in the Dean of Guild Court, for that did not prevent them passing a subsequent resolution in terms of the Act. A Corporation could not surrender its statutory rights. (2) The exemption in favour of the Crown was inapplicable, for section 78 clearly referred to existing buildings. Where the Act meant to deal with future buildings it said so, as in section 65, which dealt with buildings to be erected after the commencement of this Act, and section 66, which referred to new buildings. It was to "buildings" not to "ground" that the exemption related. That being so, it did not apply to section 67, which dealt with "ground" and not with buildings. (3) The rule that the Crown was not affected by statute unless it had consented to be bound was not in accordance with the law of Scotland, for in the absence of express or implied exemption the Crown was subject to statutes affecting property—*Somerville (cit. sup.)* (per Lord Kyllachy at pp. 1065-6; Lord Kincairney at p. 1071; Lord M'Laren at p. 1076; and Lord Kinneir at p. 1076-7). That was especially so where, as here, the property in question was not held by the Crown *jure coronæ*, i.e., as part of the original property, but had been acquired for public purposes from a private owner. [As to the history of the Crown's title reference was made to the Universities

(Scotland) Act 1889 (52 and 53 Vict. cap. 55), sec. 24.] In any event, the terms of the Corporation Act plainly showed that the Crown had consented to be bound, for by claiming exemption from certain provisions it impliedly consented to be bound *quoad* the remainder—*The Crown v. Inverness Magistrates*, January 29, 1856, 18 D. 366; *Lord Advocate and Barbour v. Lang*, November 30, 1866, 5 Macph. 84, 3 S.L.R. 75.

LORD PRESIDENT—[After narrating the facts, *ut supra*].—Several questions have been argued before us. It is said by the Commissioners that the town are barred from insisting in their present demand because although they were parties to the case they made no opposition to the warrant being granted in the Dean of Guild Court. Personally I do not care to put my judgment upon that. I do not think myself that the town could be prevented from passing the resolution that they did pass, and when they did so it seems to me it gave them for the first time the title to object to what was being done. But, then, the general question was argued for the Crown—the Commissioners of His Majesty's Works and Public Buildings hold for the Crown—that the Crown is not bound by any restriction of this sort contained in any local Act unless the restriction is *totidem verbis* imposed upon the Crown. While I do not think that that is quite true as a general proposition, I do not think it is necessary to go at length into this matter. I may say that I agree generally with the views expressed by Lord Kyllachy in *Somerville's* case, and I think the outcome of that is this: while I do not doubt that there are certain provisions by which the Crown never would be bound unless that were clearly expressed—such, for instance, as the provisions of a taxing statute, or certain enactments with penal clauses adjoined, as, for example, certain provisions of the Motor Car Act, and so on—yet when you come to a set of provisions in a statute having for its object the benefit of the public generally, there is not an antecedent unlikelihood that the Crown will consent to be bound, and this, I think, would be so in the case of regulations which are meant to apply to all the land in a city and where the Crown's property is not property held *jure coronæ*, but acquired from a subject-superior for the use of one of the public departments. While I think that is so, yet all legislation being primarily for the subject and not for the Crown, you must in some way or other gather that the Crown means to be bound. In the present case there is, I think, no antecedent improbability of the Crown being bound, and I say that the want of antecedent improbability is turned into a certainty the other way when you find in a statute like this saving clauses put in which deal with the Crown's rights. Therefore, looking at this statute, I come to the conclusion that, as regards property acquired from the subject, the Crown did intend to be bound by the restrictions in the Act except in so far

as it was exempted by the saving clauses, viz., sections 78 and 79.

Coming to clause 78, the clause upon which the Lord Ordinary has based his judgment, I am humbly compelled to differ from the learned Lord Ordinary, who, I think, has put too narrow a construction upon it. His Lordship's judgment comes to this—he agrees that section 67 does contain provisions which relate to buildings in the sense of section 75, and so far I agree with him. But then he goes on to say that, when he reads section 78, "what is exempted"—I am now reading his words—"is not all Crown property, but every building, structure, or work vested in or in the occupation of His Majesty. Now these words of themselves impose a limitation, for buildings which are not yet erected, but which it is only proposed to erect, cannot be described as vested in anyone." I think that that is much too narrow a view to take, and would really make the clause of exemption quite futile. Put in ordinary language, the meaning of the clause of exemption is this, that in so far as there are prohibitions in connection with buildings which are to apply to other people, they are not to apply to the Crown. Well, of course, nearly all the prohibitions about buildings deal with buildings that are to be erected. It is very rarely indeed that a power is given in any Town Council Act to interfere with existing buildings; but there are a great many regulations as to what you may do, or may not do, with respect to buildings that are going to be put up, and to hold that the clause of exemption only applied to such provisions of the Act as deal with existing buildings, would, I think, be to cut down the exemption to nothing.

While, therefore, I agree with the Lord Ordinary in thinking that section 67 as well as section 78 both relate to buildings, I think the effect of section 78 is this, that it exempts from the provisions of section 67 every building, structure, or work vested in or in the occupation of His Majesty, either for himself or in trust for the public service. That obviously means not only the existing buildings which are erected already in Inverleith Row, but any extension of these buildings. And therefore in the circumstances of this particular case it seems to me that the prohibition of section 67 does not prevent the Crown from completing their plans of two years ago and building upon the ground which is contiguous to the building which already exists.

Accordingly, upon the whole matter, I think the interlocutor of the Lord Ordinary should be recalled, and that the defenders ought to be assoilzied from the conclusions of the summons.

LORD KINNEAR—I agree entirely with your Lordship, and I think that the question really depends upon the true construction of section 78 of the Act of Parliament. I cannot say that I see sufficient reason for attaching great importance to the proceed-

ings in the Dean of Guild Court. It seems to me that but for section 67 the Corporation had no good objection to the warrant, and until they had resolved to put that section into operation they had no title to object. Nor do I think they could be barred from taking the matter into consideration and determining in the public interest whether a new building should be allowed to encroach on the space reserved by the 67th section, by reason of their having abstained from opposing a warrant to erect other buildings to which the same objection might have applied. On the merits of the objection, now that it is stated, I am not of opinion that the Crown is entirely exempted from the provisions of this statute by virtue of its prerogative. I do not think it necessary to pronounce any definite opinion as to the extent to which it might be affected by provisions other than those which we are considering; but I am not at this moment prepared to hold that property which the Crown has acquired from a subject is, by reason of its now belonging to the Crown, necessarily exempted from building restrictions, whether statutory or conventional, which undoubtedly applied to it in the hands of the private owner whose right has been acquired by the Crown. But, then, I think that section 78 does directly apply to the question we have to consider. I think, with your Lordship, that the Lord Ordinary has taken too strict a view of the section. His Lordship takes out of the clause a particular phrase and analyses it as if it stood alone, instead of reading the whole clause together and construing particular words with reference to the context. So reading it, I cannot say I am embarrassed by the term "vested," in the use of which the Lord Ordinary requires a greater degree of exactness than ordinary language will bear. It is true that buildings cannot be vested in anybody till they exist; but, with great deference, the point that is raised upon that truism seems to me to be merely a verbal puzzle. I take the plain meaning of the clause to be that buildings, structures, and works belonging to the Crown or in the occupation of His Majesty or any department of Government, are to be exempted from the provisions of the Act relating to buildings. But there is a provision relating to buildings in the 67th clause which enables the Corporation to require that no house or building shall under certain conditions be erected within a certain distance of the centre line of the street. Then, according to the argument, buildings belonging to the Crown would be exempted from this provision were it not that buildings belong to nobody before they exist. The Crown, therefore, cannot have the benefit of the exemption until the buildings are erected, and in the meantime it may be effectually prevented from erecting the buildings. I cannot accept a construction which makes the clause so utterly futile. The plain meaning of it, in my opinion, is that a provision which prevents the erection of buildings in certain circumstances does not

apply to the Crown, which may therefore erect such buildings without regard to the prohibition.

Now the question is whether that is applicable only to existing buildings, so that no provision applicable to the extension or completion of an existing building could fall within the exemption. I think, in order to answer that, you must go back and read the clause which provided the restrictions from which the Crown is to be exempted in order to see what the exemption is. Now clause 67, on which the town founds its rights to prohibit the completion of the buildings in question, provides for buildings being kept back from the centre line of the street to a certain distance under certain circumstances. That is the clause which the Corporation proposes to enforce. Section 78 says that the Crown is exempted from the provisions of this Act relating to building. Is the provision that a building is to be kept back to a certain distance from the centre of the street, a provision that does not relate to a building? The argument is that it relates only to existing buildings. Well, then, if you find an existing building which does not encroach within the statutory distance of the centre line of the street, is it, or is it not, prohibited that that building shall be extended so as to make an encroachment? If it is, if the existing building is not to be extended towards the centre line of the street so as to encroach upon the prescribed area, then the proceedings of the Crown are not struck at all. If it is, then that is a prohibition which is directly within the plain terms of the exemption.

I cannot say, therefore, that I have any hesitation really in reading this clause as being applicable to the whole provisions relating to buildings belonging to the Crown or occupied by the Crown. I therefore agree with the interlocutor which your Lordship proposes.

LORD JOHNSTON—Certain questions of great general importance have been argued in this case, and if I had come to a conclusion either on the question of whether the Crown is exempt from all municipal legislation of the description of that of the Edinburgh Corporation Act 1906, or even on the question how far the exemption in section 78 of that Act is to be carried, I should have asked your Lordship for an opportunity of considering the case further. But it seems to me that this case bears to be disposed of on very simple grounds and without entering upon these larger questions.

It seems to me that in the circumstances of this particular case the town have moved too late in their endeavour to stay the completion of the building, which they now see will slightly diminish for a short distance the free area available for the widening of Inverleith Row.

I take the case, therefore, entirely on the footing that I am not concerned with the Crown's claim to exemption. I assume that the Crown is, just as much as a subject, subject to the provisions of section 67

of the Act, and the case appears to me thus—Three years ago, when in 1909 the Crown proposed to commence the building which they are now proposing to complete, the town might have said there is a long stretch from Goldenacre up to and including the ground proposed to be built upon which we want to keep free for road as far as the statute permits us, and therefore we must require you to keep back your building line. But I am not prepared to say that after such buildings have been permitted to be erected in part the town are entitled to say "You must stop. We have still got the statutory 200 yards from Goldenacre Toll up to the point which your building, so far as completed, reaches. Accordingly, we call upon you to keep the remaining portion of your building to the statutory distance from the centre of Inverleith Row to meet our requirements."

I think that this section 67 must be read reasonably; and when it says that where any ground, whether belonging to one or more than one proprietor, abuts on an existing street and is for a continuous distance of 200 yards or upwards along the street unbuild upon within a line parallel to and running at a distance of 30 feet from the centre line of the street, the Corporation may require that no houses or buildings shall be erected within the said 30-foot line, I conceive that that means that no building regarded as a completed whole shall be erected within that line. But a building may be fully planned but gradually built, and I think it would be stretching the section beyond reason to conclude that it may be applied at any time before the building in the full length of its frontage is commenced, and with reference only to a portion of that frontage when it cannot be applied to the whole.

Even if I was wrong in that view, I should still hold that the town were barred by the fact that in 1909 they were cited to the petition under which the Dean of Guild's warrant was obtained for the erection of the first portion of this building, and was obtained upon the submission of plans which showed, without question, not only that the portion of the buildings (warrant for which was then asked) was merely portion of a larger whole, but gave exact information as to what that whole was to be. The town having been called to that petition, did take exception to one matter connected with the proposed building, and then took no further interest in the proceedings.

It seems to me that, having allowed—it is hardly fair to call it an encroachment—but having allowed the original portion of this building to extend on ground which they might have kept clear had they chosen, they cannot be heard to come forward and say—"You are not entitled to complete your building because we have now awakened up to the fact that we should like to keep this road a little wider than it is, and we now call upon you to alter the plan of your building and modify it so that, although part of your

building impinges upon the statutory 30 feet, and we cannot now help that, the remainder shall not do so." I hold they cannot take up that position now, and I cannot say that I do so with very much regret, because, the building having been already part completed, and extending within the 30-foot line for about three-fifths of its length, it is really futile to require the remaining two-fifths of its length, extending to about 40 feet necessary for the completion of the building to be set back from the line, which must continue to be kept by the building so far as it is already up.

I therefore think that the case may be disposed of without determining the larger questions to which I have adverted.

LORD MACKENZIE was not present.

The Court recalled the Lord Ordinary's interlocutor and assolizied the defender.

Counsel for Pursuers (Respondents)—Cooper, K.C.—W. J. Robertson. Agent—Sir Thomas Hunter, W.S.

Counsel for Defender (Reclaimer) — Solicitor-General (Anderson, K.C.) — Pitman. Agent—Thomas Carmichael, S.S.C.

Thursday, July 11.

SECOND DIVISION.

[Lord Ormisdale, Ordinary.]

MELVILLE v. CUMMINGS.

Patent—Process—Reduction—Relevancy—Title to Sue—Concurrence of Lord Advocate—Jurisdiction of Court—Patents and Designs Act 1907 (7 Edw. VII, cap. 29), sec. 94 (3).

The Patents and Designs Act 1907, sec. 94 (3), enacts—"Proceedings for revocation of a patent shall be in the form of an action of reduction at the instance of the Lord Advocate, or at the instance of a party having interest with his concurrence, which concurrence may be given on just cause shown only. . . ."

A civil engineer, a member of a firm of reinforced concrete contractors, having obtained the concurrence of the Lord Advocate, brought an action in his own name for reduction of a patent relating to concrete. He averred that his firm did a large business in reinforced concrete, and that his, "the pursuer's business," was in danger of injury by the defender's threatening to take proceedings for infringement of the patent.

Held that the pursuer had, with the Lord Advocate's concurrence, a good title to sue in his own name.

Observed that the Court must decide the relevancy of the action, although the Lord Advocate had given his concurrence.

Opinion reserved as to whether the concurrence of the Lord Advocate was

conclusive on the question of title to sue.

The Patents and Designs Act 1907 (7 Edw. VII, cap. 29) enacts—Section 25 (3)—"A petition for revocation of a patent may be presented—(a) by the Attorney-General or any person authorised by him. . . ." Section 94 (3)—". . . [quoted in rubric]. . ."

Alexander Melville, civil engineer, of the firm of Melville & Dundas, reinforced concrete contractors and engineers, 30 George Square, Glasgow, *pursuer*, brought an action for reduction of a patent against Robert Augustus Cummings, of Pennsylvania, U.S.A., *defender*. The Lord Advocate granted his concurrence on 31st July, and the summons was signeted on 1st August 1911.

The pursuer averred, *inter alia*—" (Cond. 1) The pursuer is Alexander Melville, civil engineer, of the firm of Melville & Dundas, reinforced concrete contractors and engineers, 30 George Square, Glasgow, who do a large contracting business in reinforced concrete constructions. . . . (Cond. 2) The defender is patentee of the alleged invention described in the letters-patent mentioned in the summons. . . . [In condescendence 3 the pursuer averred that the patent was invalid for the reasons therein set forth.] . . . (Cond. 4) The said patent protects a process of manufacture of reinforced concrete which is directly in the line of the pursuer's business. The pursuer understands that the defender is threatening proceedings against any parties infringing his alleged rights under the said patent, and as the pursuer's business in Scotland is in danger of being seriously affected thereby, the present action for the revocation thereof has been rendered necessary in the interests of the pursuer's said business."

The defender pleaded, *inter alia*—" (2) The pursuer having no title or interest to sue, the action should be dismissed."

On 14th December 1911 the Lord Ordinary (ORMIDALE) sustained the second plea-in-law for the defender and dismissed the action.

Opinion.—"This is a short but an important point. I fail to see that the pursuer has set forth an interest and title, in respect that he has not stated that he is in any way carrying on a business which is affected by the existence of the patent.

"He describes himself as a civil engineer, and the firm to which he belongs as reinforced concrete contractors and engineers, who do a large contracting business in reinforced concrete construction. He says nothing about his carrying on any individual business. If he means by 'the pursuer's business' in cond. 4, the business of his firm referred to in cond. 1, then I think it was for his firm to sue the action, and as I read the record I find it difficult to understand why the firm should not have been the pursuers. The matter might be made perfectly clear and definite by a very slight amendment. As the record stands, I cannot hold that the pursuer has set forth a relevant averment of title and interest.