

The petitioner reclaimed, and argued—The interlocutor was *ultra vires* of the Dean of Guild Court. It was admitted that the petitioner's proposed alterations were in themselves improvements on the existing building, but the Dean of Guild Court instead of confining their attention to the alterations, which they were bound to do under section 167, had considered the state of the existing building, and on the principle that the better was the enemy of the good had refused warrant. The consequences of such a method of procedure would be most serious for owners of property. They might be precluded from improving existing structures until they became uninhabitable.

Argued for the Magistrates of Leith—The Dean of Guild Court had not exceeded its powers. It was authorised to refuse to grant warrant for the alteration of an existing house. The proposed alterations would probably increase the number of lodgers in the house; and section 169 forbade any alteration which would have that effect to be made without a warrant. The increased number of lodgers was a consideration embraced in the "other sanitary requirements" mentioned in section 167, provision for which must be made in the plans; and that phrase must be taken as alternative to light and ventilation.

At advising—

LORD PRESIDENT—Under the Burgh Police (Scotland) Act 1892 no one is entitled to alter the structure of an existing house in the burgh without a warrant of the commissioners. Anyone who proposes to alter the structure of a house has to present a petition to the commissioners for warrant to do so, and the petition must set forth a description of the alteration, with such relative plans as are necessary to show the height and mode of structure and arrangement of the intended alteration.

The present appellant proposed to alter the structure of his existing house, and he accordingly petitioned the Magistrates of Leith, who are the commissioners of that burgh, for warrant to do so, describing the proposed alterations, and lodging plans in accordance with the statute. The Magistrates have declined to grant the warrant craved, on the ground that they are not satisfied that the plans provide suitably for light and ventilation.

From the proceedings, however, it appears, and in debate it was admitted, that the objection of the Magistrates is not to the alteration, which alone required their sanction, but to the light and ventilation of the house as it exists, and as it will be after the alteration. It is admitted that the alteration, so far as it affects the light and ventilation of the house, improves them. This being so, it seems to me that the Magistrates were bound to grant the warrant. As this was a lawfully existing house, the question before the Court was the merits of the alteration, and not the merits of the house apart from that alteration. I have called this a lawfully existing

house, because *de facto* it existed unchallenged. If its defects in the matters of light and ventilation had exposed it to any hostile action on the part of the Magistrates, it is to be presumed that such action would have been taken. What has been done is to take advantage of the appellant's application to improve his house in order to condemn the house, and this is, in my judgment, a misapplication of section 167.

I am for recalling the interlocutor and remitting to the Magistrates to grant the warrant craved.

LORD ADAM and LORD KINNEAR concurred.

LORD M'LAREN was absent.

The Court recalled the interlocutor and remitted to the Magistrates to grant the warrant craved.

Counsel for the Petitioner—Cooper—Munro. Agent—Robert D. Ker, W.S.

Counsel for the Respondents—Balfour, Q.C.—Salvesen. Agents—Irons, Roberts, & Company, W.S.

Friday, June 18.

#### FIRST DIVISION.

[Sheriff of Aberdeen, Kincardine, and Banff.

MURRAY v. RENNIE & ANGUS.

*Contract—Implied Condition—Construction of Condition.*

In an action for implement of a contract constituted by an offer to execute certain mason-work for a certain sum and acceptance thereof within eleven days of the date of the offer, the defender founded upon one of a number of "conditions of tendering" agreed to by the architects in Aberdeen and the Master Masons Association, of which he was a member.

The condition founded upon was "that architects shall within seven days from date of lodging estimates (either by advertisement or otherwise) inform the contractors who have tendered for work as to who has been successful, and that contractors shall be held bound to abide by their estimates for the same time."

No date had been specified by the pursuer for the lodging of offers.

Held that whether or not these conditions might otherwise enter into the contract between the pursuer and defender, the condition in question had no application thereto, being designed to meet a state of matters where one definite date was fixed for the lodging of all estimates.

*Contract—Acceptance—Undue Delay in Acceptance—Proof.*

In an action for implement of a

contract constituted by acceptance within eleven days of an offer to execute certain mason-work, the defender maintained that there had been undue delay in accepting his offer, and founded on the condition above quoted as evidence in support of his contention.

*Held*, after a proof, that assuming the question at issue to be whether or not there had been unreasonable delay in accepting the offer, the defender had failed in establishing his contention both generally, and particularly in respect that the condition relied on had no application to the contract in question.

*Question*, whether an offer to build a house falls within the exception stated by Mr Bell (Comm. i. 343) to the general rule that an offer may be accepted at any time until withdrawn.

*Expenses — Expenses in Sheriff Court — Action ad factum præstandum, and Damages—A.S., 4th December 1878.*

Where in an action *ad factum præstandum*, with an alternative conclusion for damages to the amount of £25, the Sheriff, in terms of a joint-minute by the parties, had, before closing the record, authorised the pursuer to accept the offer of a third party for the execution of the work in question—*held* that, in the absence of any direction from the Sheriff, expenses in the Sheriff Court fell to be taxed on Scale I in terms of A.S., 4th December 1878.

*Opinion* that the question on which scale expenses in the Sheriff Court should be taxed ought to be raised when judgment is given on the merits, and not on the motion for approval of the Auditor's report.

Mrs Ellen Carr or Murray raised an action against Rennie & Angus, masons, Aberdeen, in the Sheriff-Court of Aberdeen, Kincardine, and Banff, to have the defenders ordained to carry out certain mason-work which they had contracted with the pursuer to execute, or alternatively to pay to the pursuer a sum of £25.

The pursuer averred that having resolved to erect tenements on a piece of ground feued by her, she got plans, specifications, and schedules duly prepared, and submitted the same to the defenders, who offered to execute the mason-work for £690, which offer the pursuer accepted. The pursuer further averred that when intimation was made to the defenders requiring them to proceed with the work, they declined to do so.

The defenders admitted that on 9th June 1896 the said schedule of quantities of mason-work taken out by Messrs M'Millan, architects, was submitted to them; that on 10th June they wrote to Messrs M'Millan offering to execute the work for £690, and that on 21st June they received a letter from the pursuer accepting that offer.

They averred that they were members

of the Aberdeen Master Masons Association; that by conditions of tendering drawn up by the architects in Aberdeen and that association in conjunction with other similar bodies, their offer was binding upon them for only seven days, and that consequently their offer not having been accepted by the 17th June, they considered that it had been declined and that they were no longer bound thereby.

The pursuer pleaded—“(3) There being no definite period in the defenders' offer for the acceptance of the same, and their offer being accepted within a reasonable time, the defenders are bound thereby.”

The defenders pleaded—“(1) The defenders' offer not having been accepted within seven days, as required by said conditions of tendering, or otherwise within a reasonable time, *ipso facto* fell, and consequently no contract was ever entered into.”

The defenders' offer, addressed to Messrs M'Millan, was as follows:—“We hereby offer to execute the mason-work of house to be erected in Hardgate for Mrs John Murray, according to plans, specifications, and schedule of quantities prepared by you, for the sum of £690 stg.”

The pursuer's acceptance was as follows:—“I beg leave to accept your offer to execute the mason-work according to specifications and schedule of quantities of two houses in Hardgate for the sum of £690 stg.”

The defender produced and founded on “Conditions of Tendering and forms of Schedules relative to contracts agreed to by the architects in Aberdeen and the respective associations connected with the building trade, Aberdeen, August 1881, revised and re-issued by the Aberdeen Master Masons Association, September 1890.”

Among the general conditions relative to contracts therein contained were conditions that every description of work should be measured and scheduled, that a uniform system of measuring and scheduling be adopted, that the measurer's fee be always stated, and the like.

Condition 7 thereof was in these terms:—“That architects shall, within seven days from date of lodging estimates (either by advertisement or otherwise), inform the contractors who have tendered for work as to who has been successful, and that contractors shall be held bound to abide by their estimates for the same time.”

After the signature of the delegates of the various associations there followed—“As many of the terms in the schedules are local on account of this being a granite district, parties to a stamped contract should see that the terms in general conditions, specifications, and schedule agree, and that the contract be fairly balanced as between proprietor and contractor, and, generally, that the arbiter named be other than the architect or the engineer on the work.”

A proof having been allowed, John Murray, builder, the pursuer's husband, deponed—“As regards the masons, I went myself

round the different tradesmen with the schedules . . . As soon as Mr M'Millan got the offers he posted them to me. . . . I applied my mind to these offers as soon as I possibly could. All the offers were accepted within three weeks from the time I got them. None of them were accepted as soon as seven days. No objection was taken by any of the other contractors that were accepted. . . . I considered that this offer was very early accepted." He also deposed that the next highest offer to the defenders was one for £701, 10s.

It is unnecessary to summarise the great bulk of the proof which dealt with the "conditions," knowledge of the "conditions," and custom of the building trade in Aberdeen.

Before the closing of the record the Sheriff-Substitute interponed his authority to a joint-minute for the parties, and in terms thereof authorised the pursuer to accept the next highest offer made for the work in question.

On 4th January 1897 the Sheriff-Substitute (ROBERTSON) assolized the defenders.

*Note.*—[After narrating the facts, the Sheriff-Substitute proceeded]—"The position taken up by defenders now is that by general custom of the trade in Aberdeen such offers require to be accepted within seven days; if not, the offerer may consider that his offer is not accepted and that he is free to offer elsewhere. In proof of this they put in a book containing conditions of tendering in such contracts agreed to by the architects and builders in Aberdeen.

"No. 7 of the general conditions relative to contracts stated in this book is to the effect that architects shall within seven days from date of lodging estimates inform the contractors who have tendered as to who has been successful, and that contractors shall be bound by their estimates for that time. The various conditions specified in this book are alleged to govern the building trade in Aberdeen in these matters so far as not altered by special agreement, and it was stated that if altered in essential points builders would refuse to estimate.

"Indisputable evidence of two of the leading architects and two of the leading builders in Aberdeen was led to the effect that the conditions of tendering in this book were always kept in view as between architects and builders and their employers, and specially that the condition in question as to the seven days' limit was universally held as giving the tenderer the option of going on or not if seven days elapsed without his hearing anything of the result of his offer.

"As I have already pointed out, Messrs M'Millan, whose names were on the schedule of quantities on which defenders offered, are architects in Aberdeen, defenders are members of the Master Masons Association, and in these circumstances it seems to me perfectly clear that defenders in making this offer as they did were entitled to assume that the condition referred to was incorporated in and was an implicit condition of their offer, and that therefore they were within their rights in declining to

implement their offer when not accepted within seven days.

"It was sought to be maintained that nothing could be considered here except the simple words of the contract, the offer, and acceptance; but it seems to me too clear for argument that a usage or rule of trade, such as is here in my opinion proved, may extend, limit, or qualify a contract, so long as the usage is consistent with law and is reasonable, and is not in contradiction of the terms of the contract, and further, must be presumed to be known to and relied upon by both parties.

"I think here that this condition was reasonable—the time was fixed as being reasonable by architects and builders in consultation — it is not contradictory of the terms of the contract, and looking to the evidence led, in my opinion the presumption is that the parties knew the condition and relied upon it. Certainly the defenders relied and acted upon the condition and if pursuers, or rather their architect, did not, they were themselves to blame—Bell's Comm. 3, 1, 3, Bell's Pr. 8th ed. sec. 524."

The Sheriff (CRAWFORD), upon appeal, affirmed the Sheriff-Substitute's interlocutor.

*Note.*—"The defence in this action is mainly laid on the usage of trade, and if that is established no better criterion could be found for deciding what is a reasonable interval between an offer and acceptance. The basis, and, so to speak, the text of the evidence in support of the contention that an offer must be accepted within seven days, otherwise the offerer is free, is the printed conditions of tendering agreed to by the architects in Aberdeen and the associations connected with the building trade. The rule on the subject, No. 7, is explicit. The conditions were recently revised in 1890, and this rule was retained, and the decided preponderance of the evidence confirms the presumption that that rule does express the usage of trade in Aberdeen. An effort was made to show that rules 8 and 9 were less strictly observed, which was partially successful. But these rules refer to matters of detail. Rule 7 must be weighed as evidence of a usage when supported by other evidence, not as binding on the Court in itself, and as evidence its importance is not diminished by the observations on rules 8 and 9. The pursuers, however, further contended that assuming the rule referred to to be binding on the parties who could reasonably be held to have subscribed to it, it was not binding upon them. Now, in the first place, the defenders made their offer to Messrs M'Millan, the architects, when no question had arisen, and they were anxious to obtain the contract. I think in the circumstances they were entitled to address themselves to Messrs M'Millan, and could hardly have done otherwise, and that in doing so they were entitled to rely on the usage of the trade as embodied in rule 7 being a condition understood on both sides. But secondly, assuming that the offer was really made to Mrs Murray, and that the

rule was not binding upon her, the question arises whether she was not bound to accept within a reasonable time. To decide what was a reasonable time there can be no evidence better or so good as the usage of trade as fixed by rule 7, and I see no reason in law or otherwise for regarding it as too short."

The pursuer appealed, and argued—The Sheriffs were wrong. The "conditions" formed no part of the present contract—*Holman v. Peruvian Nitrate Company*, February 8, 1878, 5 R. 657; *Armstrong & Company v. M'Gregor & Company*, January 19, 1875, 2 R. 339; *Sweating v. Pearce* (1861), 9 Scott's C.B. Reports (N.S.) 534. [The pursuer also submitted an argument with regard to "usage of trade."]

Argued for the defenders—The rule founded on was eminently reasonable, and must be held to be incorporated in the contract. [LORD KINNEAR—But are not the "rules" rather a note of points to which persons are invited to direct their attention in making contracts?] At all events, the rules embodied a custom or usage of trade which must be presumed to be incorporated in the contract unless expressly excluded.—Bell's Comm. i. 465; *Glasgow, &c., Steam Shipping Company v. Watson*, November 19, 1873, 1 R. 189, also referred to.

At advising—

LORD PRESIDENT—The offer upon which the present action is founded was to build a house for £690. No time was specified in the offer as limiting the period of its subsistence. It was accepted within eleven days. The Sheriffs have held that the offer was binding for seven days and no longer. The judgments of both Sheriffs are founded on certain printed "conditions," not expressly referred to either in the offer or the acceptance, which they hold to express a usage or custom of the building trade in Aberdeen, to the effect that offers by builders are only binding for seven days. Both Sheriffs hold that the defenders' offer was made in the knowledge of and in reliance on these conditions, and that they were entitled to assume that the conditions were also in the knowledge of the pursuer or her architects to whom the offer was sent in. The Sheriff holds also that the pursuer was bound to accept within a reasonable time, and that on the question what was a reasonable time there can be no evidence better or so good as the usage of trade as fixed by the conditions. I desire, in passing, to observe that, while I do not agree in the conclusion arrived at, the opinions of both the learned Sheriffs show that care and ability have been applied to the decision of the question at issue, and it is only after full argument that I differ, and I do so on a view of the case which does not seem to have been considered by them.

The Sheriff has justly remarked that "the basis and, so to speak, the text of the evidence in support of the contention of the defenders that an offer must be

accepted within seven days, otherwise the offer is free, is the printed conditions of tendering agreed to by the architects in Aberdeen, and the associations connected with the building trade." It is the 7th of these conditions which is said to govern the present case. Now, on the construction of the conditions two remarks occur, one relating to the conditions as a whole, and the other relating to the 7th. 1st. The conditions do not purport to be, and do not read as if they were intended to be, statements of practice or implied conditions of contracts. Taken as a whole, they are rather rules or maxims for the guidance of architects—statements of what is best to be done in the matters treated of. 2nd. When the 7th condition is examined, it will be found wholly inapplicable to the case before us. It postulates a "date of lodging estimates," that is to say, that a date has been fixed and announced as the last day for offers; and then it says that from that date seven days are to run. It therefore assumes that by a certain day all offers must be in, and that accordingly the architect is from that day in a position to consider and compare the offers and make up his mind. The rule has, on the face of it, no application or applicability to the case where no day is announced for receiving tenders. It gives one and the same period for all offers; it makes that period run, not from the date of each offer, but from the date when, as announced, the architect will take no more offers but will begin finally to consider his decision.

Now, in the present case no such date was announced at all. The pursuer was not committed to any date as that at which the time for offering was over. The pursuer, even on the theory of the rule, was entitled to have her offers all in before she began to consider them; she was entitled to assume that they would not come in simultaneously; and in fact they came dropping in for several days. To be consistent with the principle of the rule, the defenders ought, in the absence of a stated last day for offers, by way of analogy, to run the seven days from the day on which the last offer in fact came in. But their theory, and the theory of the Sheriffs, is that the seven days run from the offer itself, and that must mean that a separate period of seven days runs for each offer from its own date. For this I can find no warrant whatever in the conditions, which, as the Sheriff has said, form the basis of the evidence.

The next point to be observed is, that the same considerations which show that the 7th condition does not apply, show also that it furnishes no evidence at all that the time taken in the present case was unduly or unreasonably long, supposing that to have been the true question for decision. Any bearing which it has is in the other direction. If a punctual architect takes seven days to consider the tenders after they are all in, four days does not seem a very long time to allow for tenders coming in, even supposing (without warrant from the evidence) that the pursuer was com-

mitted to simultaneous delivery of the schedules to expected offerers.

Apart from the conditions, there is nothing in the evidence to show that there was any undue or unreasonable delay; the testimony of the pursuer's husband is that he applied his mind to the offers as soon as he possibly could, and there is no suggestion that he was hindered from doing so by external circumstances.

My opinion, as indicated in these last observations, is that, as matter of fact, it is not proved that there was undue or unreasonable delay in accepting the offer. I must not, however, be understood as asserting that this is the true question in the case. Mr Bell in his Commentaries (i. 343) has laid it down that "where an offer is made simply, the general rule at common law is that it may be accepted at any time till withdrawn." He goes on to say that "the necessary rapidity of mercantile transactions has introduced an exception in the case of commodities offered to sale, or of an offer to purchase commodities in the ordinary course of trade. For any dealer must know that commodities offered are lying in wait for a market; that the price is subject to fluctuation, and that opportunities for disposing of such goods may open and be lost by delay; or that the person who makes an offer may lose by delay some other opportunity of procuring them. Unreasonable delay in the answer being therefore inconsistent with the spirit of trade, it is an implied condition of a mercantile offer to sell or to purchase that it ought to be instantly accepted, or at least without any undue delay."

Now, it is, to say the least, doubtful whether an offer to build a house falls within the exception stated by Mr Bell, or within the principle of the exception as explained by him; and if it does not, then what he calls the general rule at common law would seem to apply. The question in the latter view would thus be, not whether there had been undue delay in accepting the offer, but whether the offer had been withdrawn. But I mention this view of the case for the purpose of saying that it was not presented to us by the appellants; and the case was argued on the assumption (presumably based on more recent though uncited authorities) that the true question was, had there been undue delay? Holding the opinion which I do as to the failure of the defenders' case, I do not require to consider to what extent Mr Bell's doctrine is a complete statement of the law, or which part of it applies to a builder's offer, and this will be entirely open for future consideration. Only, if I were a building contractor, I should, in the meantime, think it prudent to state in each offer the period for which it is to be binding.

It may be well to add that, as the view which I take of the true construction of the conditions brings down with a run all the evidence based upon them, I have no occasion to consider whether there is here any evidence of usage of trade in the proper sense of the term, or how far the sort of evidence which we have here could

avail to establish, as an implied term of this offer, a limitation of its subsistence.

I am for recalling the interlocutors appealed against, and finding in fact that the offer was accepted and had not been withdrawn before acceptance, and that it was accepted without unreasonable delay; and in law that it was binding. As the pursuer's claim is necessarily for damages, we have to consider how much is proved; and I am unable to find evidence of more loss than the difference between the two contracts. For that sum, which, I believe, is £11, 10s., the pursuers are entitled to decree.

LORD ADAM and LORD KINNEAR concurred.

LORD M'LAREN was absent.

The Court recalled the interlocutors reclaimed against, found in fact that the offer was accepted and had not been withdrawn before acceptance, and that it was accepted without unreasonable delay, found in law that the said offer was binding on the defenders, and granted decree in favour of the pursuer for the sum of £11, 10s.

Upon the Auditor's report coming up for approval in the Single Bills on Saturday, July 3, the defenders objected thereto on the ground that the Auditor had taxed the expenses in the Sheriff Court on the higher scale. They relied upon the Act of Sederunt of 4th December 1878, sec. 1. Sec. 1 of the said Act of Sederunt enacts that "there shall be two scales of taxation in the ordinary Sheriff Court, first, for causes where the amount of principal and past interest concluded for does not exceed £25; second, for causes of higher amount." Sec. 3—"(1) The scale for taxation shall in the ordinary case be determined by the amount concluded for, but in all cases it shall be competent to the Sheriff to direct that the expenses shall be taxed according to the scale applicable to the amount decreed for. . . (3) In damages cases the scale for taxation of the account between party and party shall for the pursuer's agent be regulated by the sum decreed for, unless the Sheriff shall otherwise direct."

The pursuer argued that the Auditor was right, mentioned that the Auditor himself stated that he had followed the practice of the Sheriff Court of the Lothians and Peebles, and relied on sec. 4 of the said Act of Sederunt, which, *inter alia*, enacts that "in actions *ad factum præstandum* for exoneration, interdict, and others, where the pecuniary amount or value of the question in dispute cannot be ascertained from the process, the Sheriff, when deciding the case, shall determine according to which scale the amount shall be taxed."

LORD PRESIDENT—I think Mr Salvesen is right. The summons did contain a conclusion for implement, but at the very outset, as appears from the joint-minute of parties and the interlocutor of the Sheriff, the action was converted into an action of dam-

ages pure and simple, and so the section of the Act of Sederunt founded on by Mr Salvesen appears to be applicable, no motion having been made in the Sheriff Court or here to have the higher scale applied.

LORD ADAM—I agree. I think that if it was desired to have the higher scale applied, the matter should have been brought up at the time the action was disposed of. It is not a question of taxation.

LORD M'LAREN—I am of the same opinion. If there had been a real question argued under the conclusions for implement, I should have held that the higher scale ought to be applied.

LORD KINNEAR—I quite agree, and I entirely concur with what Lord Adam has said, that this is a question which ought to be raised at the time when judgment is given, because it is not a question of pure taxation, but a question for the Court as to the construction of the Act of Sederunt and its application to this particular case. But that being so, the question comes to be, under which section of the Act of Sederunt the case falls? And I agree with your Lordship that this is to all intents and purposes an action of damages.

The Court remitted to the Auditor to tax on the lower scale.

Counsel for the Pursuer—Dundas—Abel. Agents—Ronald & Ritchie, S.S.C.

Counsel for the Defenders—Balfour, Q.C.—Salvesen. Agents—Philip, Laing, & Harley, W.S.

Saturday, June 12.

## SECOND DIVISION.

[Lord Low, Ordinary.]

### WHITE v. BERTRAMS, LIMITED.

*Patent—Patentable Invention—Combination of Known Mechanical Arrangements—Anticipation—Infringement.*

In an action for interdict of an alleged infringement of a patent, the specification of the complainers' patent, which was for "improvements in apparatus for straining paper pulp," stated that it "consisted in imparting an oscillating or rocking motion to the vat or vessel in which the straining operation is effected, and in constructive arrangements connected therewith." The respondent in his specification claimed "the means whereby the back of the vat is intermittently lifted and lowered so as to prevent the refuse matter from being carried back over the strainer plates." It was proved that the vat used in each machine was similar (each containing a pulsating diaphragm or strainer inside), and that the difference between the two machines consisted mainly in the different forms of motion imparted to the vat, that of the complainers' machine being continuous through an equal arc on each side of the perpendicular, while that of

the respondent was intermittent, and moved the vat to one side of the perpendicular only. The superiority claimed for the respondents' method of oscillation was that the fibrous matter (which it was the object of the oscillation to remove from the strainer) was sent to one side only, and could thus be more conveniently carried off.

It was proved that a third party, B, had several years before, in a provisional specification which was abandoned, and from which no working machine had ever been constructed, suggested rocking the vat of pulp-straining machines from side to side on an axis placed in the centre of the vat itself, but that the complainer was the first to suggest oscillating the vat from an axis placed some distance below it so as to enable the oscillating motion of the vat to be combined with a pulsating motion of the diaphragm placed in the bottom of the vat by which the straining of the pulp was mainly effected. In B's specification the pulsation of the diaphragm was obtained by steam jets, a method which was inferior to the mechanical method. It was also proved that the combination of the two mechanical motions was a *desideratum* in paper-straining machines, and that the complainers' machine had been a commercial success. The essential feature of the combination consisted in placing the axis of the rotating shaft communicating the pulsating motion in the same vertical plane with and parallel to the axis of oscillation. The mechanical means by which the pulsation of the diaphragm was effected was not a novelty, and was similar in both the complainer's and respondents' machines. *Held* (1) that the complainers' invention had not been anticipated by B's specification; (2) that although simple it exhibited invention sufficient to disclose good subject-matter of a patent right; and (3) that the respondents' machine was an infringement of it.

*Patent—Ambiguity of Specification—Discrepancy between Provisional and Complete Specification—Insufficient Description.*

The specification described the shaft for pulsating the diaphragm as being "in line with and parallel to" the axis on which the vat oscillated. *Held* that the specification and drawings must be read together, and so read there was no ambiguity in the description of the mode in which the invention was to be carried out.

In August 1896 John White, Leith Walk Foundry, Edinburgh, presented a note of suspension and interdict against Bertrams, Limited, engineers, St Katherine's Works, Sciennes, Edinburgh, praying the Court "to suspend the proceedings complained of, and to interdict, prohibit, and discharge the respondents from infringing the letters-patent granted to the complainer for "Improvements in apparatus for straining