

the grounds on which the parties found, the question was purely and entirely fought out between two sets of legatees, and the children had nothing to do with it, though they were very properly represented here by counsel who watched the different stages of the case.

LORD M'LAREN—I agree. I think if the leading conduct of this case had been by trustees seeking for guidance as to what the testamentary instruments consisted of, they might, if unsuccessful in the view maintained by them, have been fairly entitled to charge expenses against the estate. There are cases where trustees are obliged to take up the question, because there is no one else to do so. But where the conduct of the litigation is left purely in the hands of two sets of legatees interested in raising it, I agree that expenses should follow the result.

LORD ADAM and LORD KINNEAR (who was present at the argument on this part of the case) concurred.

The Court pronounced the following interlocutor:—

“The Lords having heard counsel for the parties on the reclaiming-note for the defenders Richard Ballingall Neville as an individual and Miss Jeanette Helena Jenkins, Refuse the said reclaiming-note: Adhere to the interlocutor, dated 30th April 1897, of Lord Kyllachy reclaimed against: Find and declare in terms of the declaratory conclusions of the summons, and decern: Further, find the defenders and reclaimers the said Richard Ballingall Neville as an individual and the said Miss Jeanette Helena Jenkins liable jointly and severally to the pursuers and respondents in the expenses of process incurred by them since the date of the interlocutor reclaimed against: Remit the account of such expenses when lodged to the Auditor to tax and to report: Find the expenses incurred by the trustees of Miss Jessie Shepherd, the testatrix, and by the *curator ad litem* to the pupil children of the defender, the said Richard Ballingall Neville, form a good charge against the trust-estate of the said Jessie Shepherd as the same may be respectively taxed as between agent and client by the Auditor, and *quoad ultra* make no further finding as to expenses.”

Counsel for the Pursuers—Dundas—Wilton. Agent—John Forgan, S.S.C.

Counsel for the Defenders Richard Neville and Miss Jenkins—H. Johnston—J. C. Watt. Agents—William Lennox, S.S.C., and Bell & Bannerman, W.S.

Counsel for the Defenders Miss Shepherd's Trustees—Orr. Agent—Arthur S. Muir, S.S.C.

Counsel for the Curator ad Litem—Cook. Agents—Morton, Smart, & Macdonald, W.S.

Thursday, December 2.

## SECOND DIVISION.

[Dean of Guild Court,  
Paisley.]

M'LELLAND v. MONCUR.

*Police—Street—Width of New Streets—Court forming Common Access—Burgh Police (Scotland) Act 1892 (55 and 56 Vict. cap. 55), secs. 152 and 4, sub-sec. 10.*

By section 152 of the Burgh Police (Scotland) Act 1892 it is enacted that “it shall not be lawful to form or lay out any new street, or part thereof, or court, within the burgh, unless the same shall . . . be at least thirty-six feet wide for the carriageway and foot-pavements.” A court, where by the context it applies to a space contiguous to buildings, is defined by section 4, sub-section 10, as “a court or recess or area forming a common access to lands and premises separately occupied, including any common passage or entrance thereto.” Sub-section 27 provides that a “private court shall mean a court maintained by persons other than the commissioners.”

In an application to a Dean of Guild Court for warrant to erect tenements of dwelling-houses, the plan showed that two of the tenements were entered from an open space of ground 15 feet wide belonging to the petitioner, and connected by a gate for foot-passengers with a proposed new street. This open space was bounded on the north by the tenements, and on the south by a piece of ground which belonged to another proprietor, and was unbuilt on and separated from the open space by a parapet wall and railing.

*Held* (1) that the open space was a court within the meaning of section 4, sub-section 10, and not a private court under sub-section 27; and (2) that in order to comply with section 152 the petitioner must increase its width to 36 feet on his own ground.

*Police—Buildings—Open Space Attached to Dwelling-houses—Burgh Police (Scotland) Act 1892 (55 and 56 Vict. cap. 55), sec. 170.*

By section 170 of the Burgh Police (Scotland) Act 1892 it is enacted that “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.”

An application was made for warrant to erect buildings to be used as dwelling-houses, 41 feet in width, and with rooms lighted and ventilated from an open space of ground 15 feet in width belonging to the petitioner, and bounded on the north by the proposed buildings, and on the south by a piece of ground which belonged to another proprietor,

and was unbuilt on and separated from the open space by a parapet wall and railing.

*Held* that the proposed buildings contravened section 170, as the light and ventilation of the rooms required by the statute might in the future be blocked up by the erections on the ground opposite, and that in order to comply with the terms of the section the petitioner must provide, on his own ground, open space directly attached to the buildings equal to at least three-fourths of the area to be occupied by them.

Thomas M'Lelland, writer in Glasgow, presented a petition to the Dean of Guild Court of the burgh of Paisley for a lining and warrant to erect several tenements intended to be occupied as dwelling-houses and shops on the ground possessed by him at 40 and 41 High Street.

The ground was bounded on the north by the High Street, and on the south by a piece of ground used as a bowling-green, and belonging to the Priorscroft Bowling Club. The proposed entrances to the tenements were to be, on the north from the High Street, on the west from a proposed new street to be formed by the petitioner running north and south between High Street and the bowling-green, and on the south from an open space belonging to the petitioner lying between the tenements and the bowling-green. This space was connected by a gate for foot-passengers with the proposed new street, and the main entrances of two of the proposed buildings abutted on the open space. The plans lodged by the petitioner showed that the open space proposed to be left between the tenements and the bowling-green measured 15 feet in width, while the width of the buildings abutting thereon was 41 feet. The bowling-green was unbuilt on and was separated from the open space by a parapet wall and railing.

John William Moncur, Master of Works of the burgh of Paisley, acting in the public interest, objected to the granting of the lining on the ground (1) that the open space running along the southern boundary of petitioner's property was a "new street or part thereof or court" within the meaning of section 152 of the Act, and as such required to be at least 36 feet in width, and (2) that the rooms facing the south would not be sufficiently lighted and ventilated from an adjoining street or open space directly attached thereto equal to at least three-fourths of the area to be occupied by the intended buildings, as required by section 170.

On 4th August 1897 the Dean of Guild pronounced the following interlocutor:—  
"For the reasons stated in the subjoined note, refuse to grant the warrant and authority craved by the petitioner, and decern."

*Note.*— . . . "With regard, again, to the objection founded on the provisions of sections 152 and 170, and the sub-sections 10 and 31 of section 4, it appears from the plans that whether the open space on the

southern boundary of the petitioner's property is taken to be 'a new street or part thereof, or court,' the requirements of section 172 for 36 feet of width, and the restricted height of dwelling-houses therein have not been complied with.

"Then, again, the rooms facing the south in the building abutting on the last-mentioned open space of 15 feet wide will not, according to the plans, 'be 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,' as required by section 170.

"For the reasons above stated the Magistrates sustain the second objection made by the respondent Moncur, and refuse to grant the lining craved."

The petitioner appealed, and argued—  
The open space in question was not a new street, or part thereof, or court in terms of sec. 152. It was shut off by a gate from the proposed new street, and was a "private court," as defined by sec. 4, sub-sec. 27 of the Act. As regards sec. 170, the bowling-green was still unbuilt upon, and therefore there was at present directly attached to the building an open space equal to three-fourths of the area of the buildings. If it was held that the open space was a "new street, or part thereof, or court" within the meaning of section 152, the petitioner was willing to put back his buildings 3 feet, leaving 18 feet, which would be half of the required space. When the opposite proprietor came to build on his ground he would be bound to provide the remaining 18 feet in order that the street might attain the required width of 36 feet.

Argued for the respondent Moncur—The judgment of the Dean of Guild was right. The open space was a new street, or part thereof, or court" under sec. 152 of the Act, and its proposed width contravened that section. It would not do for the petitioner to provide only 15 or 18 feet of the necessary width of 36 feet. If a man lays out a new street or court with buildings entered therefrom, he must provide for the whole width of the street. Sec. 170 was also contravened by the petitioner's plans. The bowling-green proprietors might at any time place a building on the edge of the property with no windows looking to the north. Such a building would destroy the light and ventilation of the petitioner's tenements if these latter were permitted to be built on land laid down on the plan. A person building dwelling-houses on his property must take such precautions as to make it impossible for the light and ventilation of the rooms being afterwards blocked out by operations on his neighbour's property. This could only be done by his providing sufficient open space on his ground or building beside links or a common on which buildings could not in future be erected.

At advising—

LORD JUSTICE-CLERK—I have come to the conclusion that the judgment of the Dean of Guild is right. I think it is plain

that the open space in question is a court forming a common access to premises in terms of section 4, sub-section 10, of the Act. In accordance with section 152 such a court must be at least 36 feet wide. But it is admitted that the open space laid down on the plan is only 15 feet wide. Again, by section 170 it is provided that 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 area directly attached thereto, equal to at least three-fourths of the area to be occupied by the intended building. The petitioner argues that he is not contravening this section because there is a bowling-green in front, at present unbuilt on, and that there is therefore an open space attached to the building of the area required by the statute. But I do not think that he is entitled to take advantage of the fact that the bowling-green is at present unbuilt upon. The proprietors of the bowling-green would hereafter be entitled to increase the height of their wall, or to build a pavilion, or a granary, or other high building, at the edge of their property, which would block up the light and ventilation of the petitioner's buildings. I therefore think that the space allocated to the buildings in terms of section 170 must either belong wholly to the petitioner or consist, in whole or part, of a public street or other ground, such as links or a common, which no one can hereafter build upon.

It is certainly somewhat of a hardship that the petitioner should be compelled to provide the whole 36 feet, and that the persons on the opposite side of the street, if they hereafter resolve to build on their land, should get the benefit of the open space which the petitioner leaves. But I do not see how the statute can be carried out otherwise, unless people manage to agree to build at the same time and provide the requisite space between them, viz., 36 feet.

I am therefore of opinion that the interlocutor of the Dean of Guild should be affirmed.

**LORD YOUNG**—I am of opinion that the judgment appealed against is right.

**LORD TRAYNER**—I also think that the judgment of the Dean of Guild is right.

**LORD MONCREIFF**—I am of the same opinion, and only add that while not dissenting from what your Lordship in the chair said about section 152, I should prefer to rest my judgment on section 170, which I think plainly applies.

The Court pronounced the following interlocutor:—

“Dismiss the appeal, affirm the interlocutor appealed against, and decern.”

Counsel for the Petitioner—J. B. Morrison. Agent—Marcus J. Brown, S.S.C.

Counsel for the Respondent Moncur—Shaw, Q.C.—Salvesen. Agents—Campbell & Smith, S.S.C.

Friday, December 3.

## FIRST DIVISION.

[Lord Stormonth Darling,  
Ordinary in Exchequer.]

### LORD ADVOCATE v. SAWERS.

*Revenue—Property and Income-Tax—Failure to Deliver True and Correct Statement—Property and Income Tax Act 1842 (5 and 6 Vict. cap. 35), secs. 52 and 55.*

*Held (aff. judgment of Lord Stormonth Darling) that sec. 55 of the Income Tax Act 1842, which imposes a penalty for refusing or neglecting to deliver a statement “as aforesaid,” strikes at failure to deliver “a true and correct statement” as required by sec. 52, and that the penalty is incurred either if no statement be delivered at all or if the statement delivered be untrue or incorrect.*

*Revenue—Property and Income Tax—Prosecution in High Court—Property and Income Tax Act 1842 (5 and 6 Vict. cap. 6), sec. 55.*

*Held that under sec. 55 of the Income Tax Act 1842 it is not necessary that proceedings against an offender should have been taken before the commissioners antecedent to a prosecution in the High Court.*

*Revenue—Recovery of Penalty—Limitation—Taxes Management Act 1880 (43 and 44 Vict. cap. 19), sec. 21 (4)—Inland Revenue Regulation Act 1890 (53 and 54 Vict. cap. 21), sec. 22.*

*Held (aff. judgment of Lord Stormonth Darling) that sec. 21 (4) of the Taxes Management Act 1880 does not impose a limitation of twelve months on the recovery of penalties in any manner of way; and even assuming that it did, it is superseded by the express enactment of sec. 22 of the Inland Revenue Regulation Act 1890.*

This was an information presented at the instance of the Lord Advocate against George Bowie Sawers, Glasgow, for neglecting to deliver to the assessor to the Income Tax Commissioners for the city of Glasgow a true and correct statement in writing of the amount of his profits and gains chargeable with income tax under schedule D of the Act 16 and 17 Vict. cap. 34, for the year ending 5th April 1896, contrary to the provisions of the Act 5 and 6 Vict. cap. 35, secs. 52 and 55. The penalty sought to be recovered was £50.

Sawers lodged answers, in which he denied that he was guilty, and pleaded, *inter alia*, “(1) The pursuer's statements are not relevant to support the penalty sued for. (2) Proceedings for recovery of the penalty sued for being excluded by the limitation of twelve months contained in sub-section (4) of section 21 of the Taxes Management Act of 1880, the proceedings ought to be dismissed.”

The Property and Income-Tax Act 1842 (5 and 6 Vict. cap. 35), sec. 48, enacts that