ledge that the ground shown on the plan as air-space was about to be built upon. But except in that somewhat exceptional case, I am of opinion with your Lordship that it would be a too strict construction of the statute to reject the plans on the ground that the sleeping apartments do not contain the requisite air-space when in point of fact there is unoccupied ground belonging to a different proprietor *ex adverso* of the proposed tenement.

LORD KINNEAR—I am of the same opinion. The Dean of Guild has refused the lining "in respect that the petitioner has not the free space behind his proposed building required by the Glasgow Police Act (sections 367 and 370)," but I understand it to be admitted that that statement is not strictly accurate except on a certain special construction of the Act, and that the petitioner has as a matter of fact at present sufficient free space to satisfy the statute. But it is said that he may be deprived of this by his neighbour building up to his march, and the Dean of Guild appears to base his refusal on this, that the free space is required by the statute to extend over the exclusive property of the builder. If that were so, the Dean of Guild would have no discretion in the matter, nor any power to dispense with this requirement such as is implied in the reservation in his interlocutor. If the Dean of Guild had reason to think that what is now free space would shortly be occupied by buildings, then a different question would arise, but one not touched by our judgment.

The Court sustained the appeal.

Counsel for the Appellant—Ure. Agents—Dove & Lockhart, S.S.C.

Counsel for the Respondent—D.-F. Balfour, Q.C.—Maclaren. Agent—

Thursday, January 8, 1891.

SECOND DIVISION.

OVENS & SONS *v.* BO'NESS COAL GAS-LIGHT COMPANY.

(*Ante* p. 112, November 19th, 1890.)

Expenses—Counsel's Fee for Discussion upon Reclaiming-Note—Auditor's Report.

The Auditor reduced the fees sent to senior and junior counsel for discussion upon a reclaiming-note, from eight guineas and six guineas to six guineas and four guineas respectively. The Court *approved* of the Auditor's report —*dub.* Lord Trayner, who thought that for such a trifling difference the agents' discretion should not be interfered with.

The pursuers and reclaimers in this case were successful in the Inner House. Their agents had sent fees of £8, 8s. and £6, 6s. to senior and junior counsel respectively for the discussion upon the reclaiming-note. These fees the Auditor of Court reduced to £6, 6s. and £4, 4s. respectively.

The reclaimers lodged a note of objections to the Auditor's report, and argued that in such a small matter the Auditor should not have interfered with the agents' discretion, which had been properly exercised. The fees sent were quite reasonable in the circumstances.

At advising—

LORD JUSTICE-CLERK—I do not think that in this case the Auditor's report should be interfered with. I quite concur in the opinion that as a general rule the report of the Auditor should not be interfered with. Determining in what cases fees should be allowed and fixing their amount are the essential duties of the Auditor. I would not lay it down as a universal proposition that in no cases we should interfere with his report. In certain special circumstances the interference of the Court might be rendered necessary. But a much stronger case would require to be shown than a mere difference of opinion as to £2, 2s. or £3, 3s. in the amount of certain fees. I therefore think we should not interfere.

LORD YOUNG and LORD RUTHERFURD CLARK concurred.

LORD TRAYNER—I do not dissent, but I should like to add a word, as I have expressed elsewhere my opinion to a different effect, and I should not like it to be supposed, as it might be supposed if I were silent, that I have seen any reason to alter that opinion. I think it right at all times to pay the greatest respect to the Auditor's opinion on questions of accounting. He is officially appointed for the purpose of deciding such questions, and his duty is discharged exceedingly well. But on such a question as the amount of the fees to be sent to counsel, the agent in my opinion has a great discretion, and in my experience for thirty years this discretion has not been abused. I have come to be of opinion that in a matter of two or three guineas the Auditor should not interfere with that discretion. On the other hand, where—and I am not imagining a case, but putting a case I have known in practice again and again—a fee of forty or fifty guineas had been sent to counsel for a jury trial and the Auditor was of opinion that only one of twenty-five or thirty should have been sent, then in my opinion he would be right in reducing it, but in a case where he thinks six guineas should have been sent instead of eight, I do not think he should interfere with the discretion of the agent; it seems what I have called "cheeseparing" to do so.

The Court approved of the Auditor's report, and allowed £2, 2s. to the respondents as expenses for the discussion.

Counsel for the Objectors—Salvesen. Agents—Smith & Mason, S.S.C.

Counsel for the Respondents—Wilson. Agents—J. & A. Peddie & Ivory, W.S.