

The pursuers averred that the defenders had wrongfully and without any ground presented a petition in March 1902 for the judicial liquidation of the pursuers, in which they had slandered the pursuers by stating that they were "hopelessly insolvent," and that "their business in Queen Street is also unsuccessful and has earned no profit."

They further averred that their business had been greatly injured by these slanderous statements.

The pursuers were granted two issues, of which the second was "Whether the statements," quoted above, "falsely, calumniously, and maliciously state that the pursuers were insolvent," to their damage.

The defenders did not ask for a counter issue of *veritas*.

The defenders moved for a diligence to recover, *inter alia*, "The whole business books of the pursuers, including cash books, cash ledgers, sales books, bank pass books, letter books, and other books for the period from 12th May 1894 to 7th July 1902, that excerpts may be taken therefrom at the sight of the Commissioner of all entries therein relating to the matters referred to in the record."

The pursuers opposed the motion, on the ground that the books would not be relevant to the matter covered by their issue, and that the defenders had taken no counter issue of *veritas*.

The defenders maintained that, as shareholders of the company, they were entitled to recover the books for any purpose, and that in any event they might use them with reference to the amount of damages.

LORD PRESIDENT—We think that this diligence should be granted for recovery of the books specified in article 1 on one ground only, *viz.*, that these books might be material with reference to the question of the amount of damages. If at the trial it is proposed to use them for any other purpose, it will be for the presiding judge to see that they are not so used.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court pronounced this interlocutor—

"The Lords grant diligence against havers at the instance of the defenders for the recovery of the documents in their specification No. 31 of process (as amended at the Bar); grant commission to Mr W. Æ. Mackintosh, advocate, to take the oaths and examinations of the havers and receive their exhibits and productions, to be reported *quam primum*."

Counsel for Pursuers—W. Hunter—Wilton. Agent—W. Marshall Henderson, S.S.C.

Counsel for Defenders—Wilson, K.C.—T. B. Morison. Agents—Adamson, Gulland, & Stuart, S.S.C.

Friday, January 9.

## SECOND DIVISION.

[Dean of Guild Court,  
Glasgow.]

RENWICK v. NEILSON.

*Burgh—Dean of Guild—Street—Powers of Corporation—Alteration of Line of Footpath—Glasgow Building Regulations Act 1900 (63 and 64 Vict. c. cl.), sec. 25—Improvement of Footpath or Street—Compensation.*

By section 25 of the Glasgow Building Regulations Act 1900 it is provided that "in order to secure as far as possible a regular line and satisfactory width and level for the footpaths in any street," the Corporation may, after notice to the person responsible for the maintenance of the footpath, "alter the line and level of the footpath, increase or lessen the width thereof, and carry out such other operations as may be necessary or desirable for the improvement of the footpath or street."

In 1899 a builder purchased a block of buildings extending for 300 feet along one side of a street in Glasgow, made certain alterations on the buildings, and added to the existing footpath of 8 feet in width a plot of ground 10 feet in width in front of the buildings, thus increasing the width of the footpath to 18 feet.

In 1900 the Corporation of Glasgow resolved that the street would be improved by taking a strip of 6 feet in width off this footpath and adding it to the carriageway, thus reducing the width of the pavement to 12 feet and increasing the width of the carriageway from the centre of the road to the edge of the pavement to 18 feet.

Held that in virtue of the provisions of section 25 the Corporation were entitled to lessen the width of the footpath in the manner proposed without paying any compensation to the builder.

By section 25 of the Glasgow Building Regulations Act 1900 it is enacted:—"In order to secure, as far as possible, a regular line and satisfactory width and level for the footpaths in any street, the Corporation may, after notice by the Master of Works to the person responsible for the maintenance of such footpath, or the part thereof affected, alter the line and level of the footpath, increase or lessen the width thereof, and carry out such other operations thereon as may be necessary or desirable for the improvement of the footpath or street; and thereafter such footpath, when so altered or widened, shall be subject to the provisions of the Police Acts. The compensation, if any, to be paid to such person in respect of damage, if any, done to his property by any alteration of level of footpath shall, whatever be the amount claimed, be settled by the Sheriff in manner provided by sections 21 and 22

of the Lands Clauses Consolidation (Scotland) Act 1845."

On 25th November 1901 George Neilson, Procurator-Fiscal of the Dean of Guild Court, Glasgow, presented a petition to the Dean of Guild, stating that in order to secure as far as possible a regular line and satisfactory width for the footpath on the east side of St George's Road, between Renfrew Street and Hill Street, the Corporation on 22nd July 1901 gave notice to the factors for John Renwick, builder, Glasgow, that in virtue of the above section they proposed, "To alter the line of the footpath, increase or lessen the width thereof, as shewn on a plan to be seen at the Office of Public Works, and to carry out such other operations thereon as the said Corporation may think necessary or desirable for the improvement of the said footpath or street." This plan showed that the alteration proposed was to throw into the carriageway a strip 6 feet in width of a footpath 18 feet in width which was on the east side of St George's Road between Renfrew Street and Hill Street, a distance of 300 feet or thereby. If the alteration were carried out, it would reduce the footpath to a uniform width of 12 feet and increase the width of the carriageway to 18 feet between the centre of the road and the edge of the footpath. The petition further stated that written objections had been lodged on behalf of John Renwick, and prayed the Court to inquire into and decide the questions raised by the objections.

In his objections the objector John Renwick stated that he was the proprietor of the whole subjects on the east side of St George's Road between Renfrew Street and Hill Street, including the footpath or pavement, having purchased the property in 1899. At the date of the purchase the buildings fronting St George's Road had in front a plot of ground 10 feet wide enclosed by an iron railing and between that and the carriageway there was a footpath 8 feet wide; that since his acquisition of the property he had converted the buildings into shops and places of business, and added the front plot to the original footpath so as to form a pavement of adequate width in front of the converted buildings; that the subjects up to the line of the original kerb had been possessed by him and his predecessor for upwards of forty years; that by the notice objected to the Corporation proposed to deprive him of 200 square yards of his property without compensation; that section 25 of the Act did not give the Corporation any such power; that the present line of the pavement was not irregular, nor was the width or level unsatisfactory, and the appropriation proposed was neither necessary nor reasonable and would depreciate the remainder of his property; that section 24 of the Act gave the Corporation power to acquire lands and heritages for public purposes, but he had received no notice under that section; that by section 141 of the Act the responsibilities and liabilities at common law in connection with any land or heritage or any operation thereon

were expressly reserved; and that at common law the Corporation were liable to pay him for the part of his property they proposed to appropriate.

The objector pleaded—"The notice is unauthorised and incompetent under the statutes founded on, in order to accomplish the purposes disclosed by it and the relative plan, and ought to be dismissed with costs."

The petitioner in reply explained that it was not proposed to appropriate the strip of ground referred to, but merely to alter the width of the pavement, and that the object was to secure a regular line and satisfactory width of pavement.

A proof was taken before the Dean of Guild. It was proved that the statement of the objector that he had thrown the plot 10 feet in width in front of his buildings into the footpath in 1899 was correct. He could not, however, have brought forward the line of his buildings any nearer to the centre of the street, as he had made it only 30 feet therefrom, and St George's Road was a turnpike road, the building line of which was 30 feet from the centre. The real reason for the Corporation wishing to reduce the width of the footpath was that they were of opinion that the street would be improved without detriment to the footpath if 6 feet were taken off the footpath and added to the roadway.

The Master of Works, who was examined on behalf of the petitioners, deponed—"One of the main elements of this suggested improvement is the great inconvenience caused to private carriage traffic and other traffic in consequence of there not being space between the tramway lines and the border of the pavement. It would be a great public improvement and convenience to narrow the footpath. The result of carrying out these operations would give an extra width in the carriageway."

On 16th April 1902 the Dean of Guild pronounced the following interlocutor:—"Having considered the closed record, proof, and whole productions, and heard parties, and having twice visited the *locus* in question in presence of parties, finds—(First)—[The Dean of Guild quoted section 25]—"(Second) That the objector is responsible for the maintenance of the footpath opposite the lands and heritages situated at 42 to 80 Saint George's Road, Glasgow, referred to in the petition: (Third) That on the narrative that in order to secure, as far as possible, a regular line and satisfactory width for said footpath, the Corporation of Glasgow on 22nd July 1901 gave notice in writing by the Master of Works to the objector's factors that they proposed to execute the following work under and in virtue of the provisions of sec. 25 (above quoted) of the Glasgow Building Regulations Act 1900, viz., 'To alter the line of the footpath, increase or lessen the width thereof as shown on a plan to be seen at the Office of Public Works, and to carry out such operations thereon as the said Corporation may think necessary or desirable for the improvement of the said footpath or street: (Fourth) That the objector

lodged objections to said notice, and that the present action is brought to have the questions raised in said objections with regard to the necessity, reasonableness, or desirability of the work proposed to be executed by the said Corporation inquired into, tried and decided: (*Fifth*) That the said work proposed to be executed is, in the opinion of the Dean of Guild, necessary to secure, as far as possible, a regular line and satisfactory width for the footpath in Saint George's Road *ex adverso* of the objector's property situated at 42 to 80 of said road, and that the proposal of the Corporation is reasonable and desirable for the improvement of the footpath in question: (*Sixth*) That the notice served on the objector is authorised and competent under the statutes founded on in the petition: And (*Seventh*) that in carrying out said work no alteration in the level of the footpath will be necessary: Therefore repels the objections: Authorises the Corporation of Glasgow to alter the line and to lessen the width of the footpath in question, as shown on the plan No. 6/2 of process, by making the kerb or outside of the footpath a uniform distance of 18 feet from the centre of Saint George's Road as delineated on said plan."

The objector appealed, and argued—Section 25 did not apply to the present case. It dealt with the improvement of the pavement and gave power to the Corporation, if the pavement was irregular by reason of sections of it jutting out beyond other sections, to secure a regular line by increasing and lessening the width of the sections. In the present case the pavement was quite regular and satisfactory, but the Magistrates desired to widen the carriageway to the detriment of the pavement. Unless in 1899 he had added 10 feet to the width of the pavement it would have been impossible for the Corporation to take 6 feet off the width, as that would have only left 2 feet of pavement. They were therefore simply attempting to improve the street by confiscating 200 yards of his property. The proper course for them to adopt was to proceed under section 24 and pay him compensation.

Argued for the petitioners and respondents—Section 25 applied. Under that section the improvement of the street as well as the improvement of the part of it called footpath was to be taken into account. In order to improve the street the proportion of vehicular traffic to pedestrian had to be taken into account. If a pavement was very much too wide in proportion to the roadway, that pavement was not of "satisfactory width."

At advising—

LORD JUSTICE-CLERK—The question in this case is, whether at a particular place on one of the streets of Glasgow the Corporation are entitled to alter the line of footpath, and in doing so to diminish the width of the pavement in front of premises belonging to the appellant. The appellant some time ago erected a number of build-

ings with shops, and in doing so set them back from the then existing line of the street, so that he left in front of his premises a wide pavement measuring 18 feet. The Corporation, in the exercise of their powers as defined by their Building Regulations Act of 1900, maintain that they are entitled, in order to make the street more suitable for the existing traffic, to reduce this wide pavement to the extent of several feet, the purpose apparently being to give a wider space between the pavement and the tramway line on the street so as to give room for the ordinary horse traffic to pass between the pavement and the tramway cars upon the rails. They propose to do so without encroaching upon any of that part of the pathway which formerly was within the appellant's lands. The appellant maintains that they have no power to take off from the pavement in front of his premises the part they propose to take, and that any power they may have for narrowing a pavement applies only to bringing the pavement into line with existing pavements on either side. The Corporation on the other hand maintain that this is what they really propose to do, but that they are not absolutely limited in their powers to such an alteration, but are entitled to decide what in their discretion is the best proportion in which to allocate the street between driving space and footpath according to the requirements of the traffic in the particular locality. The question turns principally on the 25th section of the Building Regulations Act, by which it is enacted—[*His Lordship read the section*].

This clause is not very well expressed, but having given careful consideration to it I find myself unable to hold that in carrying it out the Corporation have not the power to do what they propose to do in this case. They do not propose to reduce the pavement to an abnormally narrow strip, but finding an extra wide pavement they propose to readjust the proportions of the street devoted to carriageway and footpath, as they think more suitable for the traffic to be considered, their statement being that they desire to secure as far as possible a regular line of satisfactory width for the footpath. If in doing so they were proposing to make the outer edge of the pavement run closer to the buildings than it does in the continuation of the street on either side of the appellant's buildings, there might be much to be said against such a proceeding, but in fact if the alteration which they propose is made, the outer line of the pavement will run in the same line as the outer line of the continuation of the pavement of the adjoining parts of the street. Now, the clause gives power to the Corporation to "alter the line of the footpath, increase or lessen the width thereof, . . . as may be necessary or desirable for the improvement of the footpath or street." These words seem to me to give very wide powers, and to leave the exercise of these to the discretion of the Corporation, not only as regards the footpaths alone, but also as regards what is desirable for the improvement of the street.

I have felt myself unable to hold that the appellant has shown ground for his contention that in doing what they propose to do their powers will be exceeded. The pleadings of the appellant set forth his case as being one of property. He complains that the Corporation propose to take his property without compensation; that they have failed to give him notice under the 24th section, which relates to purchase by the Corporation under their statutory powers. That, as it appears to me, is a totally false view of his position. The whole pavements are by section 16 vested in the Corporation, subject only to a right where the original property title of a citizen extends past the front of his building, to have cellars or vaults under the pavement, and a space of 30 inches in front of the buildings for lighting the underground premises. And in addition to this the part of the pavement with which the Corporation propose to deal is entirely outside of the space which was added to the street when the appellant's present buildings were erected. Further, the Corporation do not propose to alter levels in any way, and it is only where in altering a footpath an alteration of level is to be made that any compensation for damage can be claimed where the alteration is on a footpath.

It is no doubt somewhat hard that where the front of buildings has been thrown back, and thereby a broad pavement has been left opposite them, that its breadth should be diminished. But I am unable to hold that if the Corporation decide that a different arrangement of the space between buildings is an improvement of the street, they have not the power to make the change. I would therefore move your Lordships to refuse the appeal.

LORD YOUNG—I have arrived at the same conclusion, and, I confess, without any hesitation. The street is made up of the carriageway and the whole of the existing foot-pavements on both sides. The interest of the public in this public street is that it should be of sufficient width. I cannot conceive any ground for suggesting hardship done to the proprietor who is objecting to the proposed proceedings of the Magistrates. He made certain alterations on his property in order that he might have a broad street in front of him. He says a broad pavement, but the pavement, as I have shown, is just part of the street. He did that having reference to no interest but his own, being of opinion that the best use he could make of his property was to build it in such a position that there should be a broad street or pavement in front. Where the building ends the street begins. He might have put a sunk area in front of his building. The street would in that case have begun at the fence of the sunk area. But he did not do so, and by the appellant's own act in his own interest the street comes up to his own buildings. In these circumstances the Magistrates, in discharge of their duty as guardians of the public interest, are of opinion that the public interests require that the breadth of the carriageway

should be widened, and that they are able to widen the carriageway by taking 6 feet off the breadth of the pavement in front of appellant's buildings without detriment to the pavement. They have therefore resolved to carry this out, and I am of opinion that they are acting in accordance with their duty and within their statutory powers. A suggestion was made that the Magistrates were widening the street by reducing the breadth of the pavement in front of the appellant's buildings because they themselves possessed property on the other side of the street and did not wish to decrease the breadth of the pavement in front of their own property. I see no ground for such a suggestion, and think it was an improper suggestion to make. I think with your Lordships that the city authorities have done nothing in excess of their duty and their powers. The judgment of the Dean of Guild ought therefore, in my opinion, to be affirmed.

LORD TRAYNER—I think that the interlocutor of the Dean of Guild is well founded.

LORD MONCREIFF—I agree with your Lordship in the chair.

The Court refused the appeal.

Counsel for the Petitioner and Respondent — Shaw, K.C. — Cooper. Agents — Campbell & Smith, S.S.C.

Counsel for the Objector and Appellant — Clyde, K.C. — Horne. Agents — Carmichael & Miller, W.S.

Tuesday, January, 13.

## FIRST DIVISION.

[Sheriff of Roxburgh.]

TAIT v. LEES.

*Process—Appeal from Sheriff Court—Competency—Value of Cause—Conclusions Restricted after Proof Taken—Sheriff Court Act 1853 (16 and 17 Vict. c. 80), sec. 22.*

The Sheriff Court Act 1853 enacts, sec. 22—“It shall not be competent . . . to remove from a Sheriff Court, or to bring under review of the Court of Session, . . . any cause not exceeding the value of £25 sterling.”

In an action of filiation and aliment the prayer of the Sheriff Court petition was for £2, 2s. of inlying expenses and £6, 10s. per annum for seven years as aliment for the child. The child died before a proof was taken, and after the proof, but before the action had been decided by the Sheriff-Substitute, the pursuer restricted the conclusions of the action to £2, 2s. of inlying expenses and £2, 11s. 8d. of aliment to the date of the child's death, and decree was ultimately granted for these sums.