

of damages against the newspaper.

That is sufficient for the decision of this case, but I think it necessary to indicate my opinion that on the general question of law the views expressed by the Lord Ordinary and by your Lordship in the chair are erroneous. The law is quite clear that where an injury is done to another, whether an injury to his reputation or an injury to his person, it is for the sufferer to decide whether or not he will take proceedings against the wrongdoer, and if he judges that it is not proper and takes no proceedings there can be no action at the instance of any other. But if he died, so that he could express no determination in the matter, I am of opinion (though it is unnecessary for the decision of this case in the special circumstances I have mentioned) that an action would be competent at the instance of his widow or his children not only where the injury affected his person but also where it affected his reputation. The reason why the right to raise such actions is limited to parents or child or husband or wife is obvious, for otherwise it would be open to any friend of the deceased to bring an action on account of the injury done to the dead. It is trite law that a widow or children are entitled to compensation for the death of their husband or father through the fault of another. On the same ground I am of opinion that the widow and children of a dead man whose character has been defamed are not only interested to clear the character of the deceased but it is their duty to take such measures as are necessary to clear his character and to seek *solatium* for the injury done to their own feelings. I am sure I am speaking the common sentiment of all sensible and right feeling people when I say that it is the duty of a man whose character has been assailed to take proceedings to set it up. Nor is it necessary if he takes proceedings that he should establish any pecuniary loss, any injury to his business or property, or anything but injury to character. *Solatium* is a very good ground for awarding damages for injury done to feelings. And where a widow for herself and her pupil children resorts, in the discharge of a reasonable and proper duty, to an action to clear the character of the deceased husband and father I think that *solatium* for injury to the feelings of the pursuer is as proper an element in fixing and awarding damages as it would be in an action brought at the dead man's own instance.

As I have already said, I think that the present action is irrelevant on account of the special circumstances of the case. But the Lord Ordinary has decided the action not on relevancy but on no title to sue. I think he proceeds on an erroneous ground. Where a defender pleads no title to sue, he in effect says, "I assume for the purpose of the argument that you can make out an actionable wrong done by me, for which I am liable in damages to some one, but you are not that person." But here it is not suggested that any other

person had a title to sue except the present pursuer.

On the whole matter, while I am of opinion that this action in the special circumstances should be dismissed as irrelevant, I have thought it proper and according to my duty to indicate my own very strong views on the general question of law against those expressed by the Lord Ordinary and your Lordship in the chair.

LORD TRAYNER—An action of damages for defamation of character appears to me to be a purely personal action, and one to which the maxim applies, *actio personalis moritur cum persona*. It is an action in which it is for the injured person himself to decide whether or not it should be raised. In this case the injured person can take no action because he is dead. The question then arises whether it is possible for the action to be brought by anyone else. I agree with the Lord Ordinary and with your Lordship in the chair that it cannot, and I think the Lord Ordinary has rightly repelled the first plea-in-law for the defenders. I do not dispute that in some cases a widow and children may have a duty, and always have a right, to rebut aspersions on the character of their dead husband and father, but they cannot do so in an action of damages for slander.

LORD MONCREIFF was absent.

The Court adhered.

Counsel for the Pursuer and Reclaimer—Crabb Watt, K.C.—A. M. Anderson. Agents—Clark & Macdonald, S.S.C.

Counsel for the Defenders and Respondents—Jameson, K.C.—Cooper. Agents—Drummond & Reid, S.S.C.

Thursday, July 7.

## FIRST DIVISION.

[Sheriff of Ayrshire.

THE GLENGARNOCK IRON AND STEEL COMPANY, LIMITED, AND ANOTHER *v.* M'GREGOR AND OTHERS.

*Burgh-Formation of Police Burgh-Fixing of Boundaries—Burgh Police (Scotland) Act 1892 (55 and 56 Vict. cap. 55), sec. 9.*

In fixing the boundaries of a new police burgh under section 9 of the Burgh Police (Scotland) Act 1892, the leading consideration in determining whether any particular area should be included or not is the number of dwelling-houses within it and the density of its population, and it is not a sufficient reason for its inclusion that it already forms part of a water supply district, a drainage district, or a lighting and cleansing district, the remainder of which district is to be included.

Circumstances in which the Court recalled the deliverance of a Sheriff in a petition under section 9 of the Burgh Police (Scotland) Act 1892 defining the boundaries of a new police burgh, and excluded from the area of the burgh (1) a mansion-house, offices, and policies, (2) a large tract of waste ground without dwelling-houses, and (3) the foreshore and everything below high-water mark, but included a considerable portion of waste land which included a large public work and a row of workmen's cottages.

*Expenses—Burgh—Formation of Police Burgh—Opposition by Party Interested.*

The proprietor of a mansion-house, offices, and policies, and of a considerable tract of waste land, which subjects had been included within the boundaries of a new police burgh, petitioned against the deliverance of the Sheriff, and was successful in getting the subjects excluded. The Court awarded him his expenses in the Court of Session, but refused expenses to another petitioner who had only been partially successful.

On July 24, 1903, a petition was presented to the Sheriff of Ayrshire (BRAND) under section 9 of the Burgh Police (Scotland) Act 1892 by Alexander M'Gregor, iron-founder, Ardeer Foundry, Stevenston, and others, for the purpose of having the village of Stevenston and an adjoining area formed into a police burgh. This petition was opposed, but after a proof the Sheriff on 16th March 1904 issued a deliverance whereby he found and declared that the area within the boundaries described in the petition, with certain additions thereto, was in substance a town, and was suitable for being formed into a police burgh, and ordained the petitioners to include the additional portions of ground, and to lodge an amended plan and description. Upon the 16th March 1904 he issued another deliverance, whereby he gave effect to his previous one and defined the boundaries.

The note to his deliverance of 22nd February was—"This is an application under the Burgh Police (Scotland) Act 1892 (55 and 56 Vict. c. 55), section 9, to have the town of Stevenston made a burgh. It was hardly disputed that the petitioner's main contention must receive effect, but strenuous opposition was offered to the area proposed. No fewer than four different sets of respondents have appeared against the petitioners, viz.—(1) The Glenarnock Iron and Steel Company, Limited, (2) Patrick Warner, Esq., of Ardeer, (3) Captain Cuninghame, of Auchendarvie, and (4) the County Council of the County of Ayr, and the Northern District Committee of the said County Council, who oppose to a more limited extent.

"Stevenston is a town of upwards of 7000 inhabitants. It is said, and no doubt correctly, to have in twenty years increased its population by 84 per cent., and within the last ten years by 53½ per cent. It is larger than any of the twelve police burghs in Ayrshire except Saltcoats. At present

there is no local authority other than the county authority, and there are plain indications in the evidence that it is greatly in need of being placed under burghal or municipal control. It is said, and not contradicted, that the streets of the town are often in a very bad state. At present there is a water supply district formed in 1881, of which district there have been six extensions. There is also a drainage district formed in 1893, and a lighting and cleansing district formed in 1895. I observe the late Sheriff-Substitute Anderson in the appeal *Patrick Warner, Esq., of Ardeer, and Others v. The Parochial Board of the Parish of Stevenston*, as local authority under the Public Health (Scotland) Act 1867, by his interlocutor of 9th November 1881 included within the special water supply district the whole town of Stevenston, as also the mansion-houses of Mr Warner of Ardeer and of Mr Cuninghame of Auchendarvie. He also included the Ardeer Iron and Chemical Works, and says—"From what the Sheriff-Substitute saw himself and ascertained by inquiry on the spot he is satisfied these works should be included. The present water supply is manifestly deficient in quantity and regularity."

"I further observe that the late Sheriff-Substitute Hall, in the case of *The Glenarnock Iron and Steel Company v. The Northern District Committee of the County Council of Ayr*, by a note to his interlocutor of 15th March 1893, says in dealing with the matter of drainage—"As regards the proposed district, it substantially corresponds with the water supply district formed some years ago, in so far as the latter is not comprised within the burgh of Saltcoats. It is certainly not too large, and to exclude from it the properties of the appellants the Glenarnock Iron and Steel Company because they or some of them, happen to be sufficiently drained already would in my opinion be highly inexpedient."

"I attach much weight to these judicial deliverances. They have a direct bearing on the present application. It is not without significance that some of the respondents who now appear and oppose are not for the first time antagonistic towards efforts undoubtedly meant for the benefit of the county in the locality in question.

"One of the petitioners' witnesses, viz., Mr M'Gregor, chairman of the Parish Council, states distinctly the footing on which the applicants proceeded in their petition. He says—'(Q) what would you say has been their (the petitioners') guiding principle in framing these boundaries?—(A) To take in the water and drainage districts. (Q) Have they made it an endeavour to take in as much as they could grasp or otherwise?—(A) They took a reasonable view of the whole thing. They took in the water, drainage, and lighting districts, and very little beyond it. The promoters regard it as essential and expedient that these districts should be all under one local authority. I know these districts very well. I do not think these districts embrace anything that is not

fairly part of the town and belonging to the community of Stevenston.' With this view I entirely agree. The area included appears to me to have been marked off with care and discrimination; and when the small additional portions mentioned in the above interlocutor are included within the delimited area, that area will include all that is needed.

"Let me now endeavour to deal with certain points referred to in the course of the inquiry. It is provided by the Irvine and District Water Board Order 1903 (3 Ed. VII., Session 1903, sec. 63 (4)) that in the event of the whole area of the special water supply district of Stevenston as now existing being embraced within a burgh to be formed under the Burgh Police (Scotland) Act 1892, the contributions thereinbefore made payable by the County Council in respect of the special water supply district included within such burgh shall thenceforth be payable by the town council of such burgh. Then such town council are authorised to raise the necessary water assessment and to pay the same to the Board constituted under the said Irvine and District Water Board Order. This provision does not appear to me to raise any difficulty whatever. Clearly the said Order of 1903 proceeded on the assumption that one day Stevenston would be a burgh, and it provides accordingly. Much was said as to the applicants desiring to extend their jurisdiction down to the margin of the sea. As we have it proved that notice was given to the Crown, and the Crown has not objected, it is not easy to see what *locus standi* the other respondents have in the matter. To my thinking, it is of the utmost importance that such jurisdiction should exist, both in respect of the large sewer which has recently been led into the sea and for other obvious reasons. I am ready to assume that the authorities will not seek to interfere with any reasonable and legitimate use of the sea-shore.

"The evidence shews that some portions of the roads in or near Stevenston are in a condition which, to put it mildly, leaves much to be desired. Some of them are not on the list of highways, and are not in point of fact under anyone's care. Accordingly, they are neither watched nor lighted as they ought to be. It is out of the question that roads between such populous places as Saltcoats and Stevenston should not be properly watched and lighted throughout their entire course.

"With regard to the estates of Ardeer and Auchenharvie, I am clearly of opinion that they ought both to be included in the burgh as proposed. They are near the town, and would derive benefit from Stevenston being made a burgh and placed under proper management and control.

"Twenty acres of the Auchenharvie estate are already included in the burgh of Saltcoats, and it is not unreasonable that the remaining 47 acres should form part of the burgh of Stevenston. . . .

"Mr William Allan, a witness for Captain Cuninghame, said that he would

not object to the inclusion of the Auchenharvie policies in Saltcoats burgh; but if so, why object to their being included in Stevenston burgh. The proprietor of Auchenharvie forgets that this estate has a considerable frontage to the highway.

"A good deal was said in the course of the inquiry as to the character of certain parts of the lands included as suitable for feuing, but it must be remembered that in an enterprising town like Stevenston, as the need for new dwellings and, in a word, for more elbow-room increases, buildings will come to be erected on ground not perhaps ideally suitable but as suitable as can be got within a reasonable distance, and I must not forget that Stevenston muir has been proved to have been built upon within the last five years. Mr Hugh Thomson, a witness called for the respondent Cuninghame, says—'(Q) Is it correct to state, as has been stated by the other side, that feuing has been going on rapidly on the high road from Stevenston to Ardrossan?—(A) Yes, I would say that there is some truth in it.' Then the same witness further says he hopes that feuing may advance nearer still to Saltcoats burgh, and adds—'There is nothing unlikely about that. The ground is suitable for feuing,'—and there are other passages in the evidence to a similar effect. When it is remembered that Thomson is a respondents' witness such evidence comes with much force.

"It was admitted that thirty of the Ardeer workmen and a hundred and fifty-six of the Auchenharvie workmen live at Stevenston, and of course travel daily. It were easy to imagine circumstances in which very many more had to reside in Stevenston.

"A connection of this sort lends additional support to the proposal to have the limits as proposed.

"In conclusion, it is in the petitioners' favour that the burgh of Saltcoats takes no objection, and the Northern District Committee of the County Council of Ayr only say in the words of their witness David Andrews that 'they wish the whole of the special district included in the burgh or no burgh at all.'

"This attitude, as it seems to me, is not unreasonable. Upon the whole matter I have arrived at the conclusion given effect to in the above interlocutor without hesitation.

"Whenever an amended plan and description are lodged I can give a final deliverance."

Under section 13 of the Burgh Police (Scotland) Act 1892 petitions were presented to the Court of Session against the deliverance of the Sheriff by (1) the Glengarnock Iron and Steel Company, Limited; and (2) Captain Cuninghame of Auchenharvie. Alexander M'Gregor and others, the petitioners in the Sheriff Court, appeared as respondents, as did also the County Council of the county of Ayr and its Northern District Committee. The position adopted by the County Council

and District Committee was that they desired the whole of the water and other districts included if there was to be a burgh at all.

The Glengarnock Iron and Steel Company, Limited, petitioned against the inclusion within the proposed burgh of the following areas, viz., (1) an area which lay between the boundaries of the lighting and cleansing district and the proposed eastern boundary of the burgh, and stretched from a railway in the middle of the proposed eastern boundary southwards up to the company's works, and which included one or two scattered houses, a crescent called Ardoch Crescent, and close to the works a square of workmen's houses called Ardeer Square; (2) a large area chiefly of waste land, but including the company's works and a row of sixteen workmen's cottages called Chemical Row, which lay to the south of area (1), and stretched south to the sea; (3) the foreshore *ex adverso* of area (2), and an extension below low-water mark; and (4) a large area of waste land to the west of area (2) adjoining but divided by the Stevenston Burn from the Auchenharvie Moorlands to the inclusion of which Captain Cuninghame was objecting. The company were the owners of the surface and tenants of the minerals, and stated the following grounds of objection:—“(1) The Ardeer Ironworks and adjuncts are not part of the area, which is in substance a town, but are disjoined therefrom and form a separate and self-contained area. The natural boundaries of the proposed burgh would coincide, or nearly coincide, at this part of the boundary with the existing lighting and scavenging district formed in 1895. The said works lie outside the said lighting and scavenging district. The absence of public roads upon the area in question, and the general unsuitability of the ground for building purposes are circumstances against its inclusion in a burgh. (2) The town of Stevenston has not been dependent upon or aided by the existence of the said Ardeer Ironworks, but has resulted in the main from the proximity of the works of the Nobels Explosives Company, Limited. No benefit will result to the Ardeer Ironworks by reason of their inclusion in the proposed burgh. It is, moreover, unfair, except in the case of absolute necessity or manifest convenience, to impose the restrictions which come with burghal administration and are proper to a residential area upon an area devoted to public works. (3) The portion of the Auchenharvie Moorlands to the south of said Lanarkshire and Ayrshire Railway should be omitted from the proposed burgh as consisting chiefly of waste ground unsuitable for building purposes, which can take no benefit from a system of urban administration. (4) It is contrary to public expediency and unfair that owners and lessees of minerals should be assessed for burgh rates when no benefit is given in exchange. The areas of waste ground are in the same position, and those both on the Auchenharvie side and Ardeer side should accordingly be excluded from

the proposed burgh, and the Auchenharvie Colliery upon the waste ground of Auchenharvie, included by the Sheriff at his own hand, should not be included. No notice of the inclusion of this colliery was given, nor were parties heard with reference thereto. (5) The whole of the undersea minerals should be excluded from the proposed burgh for the same reason. Further, the protection of the foreshore by the burgh authority is amply provided for by statute without the inclusion of the foreshore within the burgh, and the foreshore in question should be excluded from the proposed burgh for the above reason. (6) The inclusion of the petitioners the Glengarnock Iron and Steel Company, Limited's works and property is sought for the sole purpose of obtaining the valuation of the same for assessment purposes. (7) The boundaries of the proposed burgh should be so fixed as to include what is in substance a town, and that without reference to the boundaries of other districts, such as the drainage or water districts. The Local Government Acts provide adequate machinery for the management of water or drainage districts which may lie partly within a burgh. Moreover, in the present instance there is special legislation in regard to water in the Irvine District Water Order 1903, whereby a joint board is formed to administer the water supply within, *inter alia*, the parish of Stevenston. No change of the constituent authority under that Order would be operated by reason of the formation of the town of Stevenston into a burgh.”

Captain Cuninghame petitioned against the inclusion of the following areas lying on the proposed western boundary, viz.—(1) toward the north an area containing the mansion-house, offices, and part of the policies of the entailed estate of Auchenharvie, of which he was heir of entail in possession, and (2) towards the south a large tract of waste land, part of the Auchenharvie Moorlands, which adjoined area (4), objected to by the Glengarnock Company. That company supported Captain Cuninghame's objection to the inclusion of the Auchenharvie Moorlands as the tenants of the minerals. Captain Cuninghame's grounds of objection were as follows:—“(1) That the said mansion-house and policies cannot from their position and circumstances receive the benefits intended to be conferred under the said Burgh Police (Scotland) Act 1892. (2) That the Sheriff, in defining the boundaries of the proposed burgh, did not conform to the conditions of said Police Act of 1892 as regards density of population and otherwise. (3) That the mansion-house and policies are not urban in character, and ought not, on a fair construction of the said Act, to be included in any burgh boundary. (4) That the petitioner has already all the advantages which burgh administration can offer, and inclusion in the proposed burgh will result in an increase of assessment without benefit. (5) That the said proposed boundaries have been fixed solely with a view to obtain for

the new burgh a valuable rating area.”

The remaining facts as admitted or proved are given in the judgment of the Court and the note of the Sheriff.

The Burgh Police (Scotland) Act 1892, sec. 9, after providing for inquiry, &c., enacts that the Sheriff shall “determine whether the area included in the application, or any part thereof, considering the number of dwelling-houses within it and the density of the population, and all the circumstances of the case, is in substance a town and is suitable for being formed into a police burgh, and if the sheriff or sheriffs are satisfied on these points he or they shall define, in a written deliverance on such application, the boundaries of such populous place. . . . In defining the boundaries of a populous place it shall be lawful for the sheriff or sheriffs to include the whole area which in their judgment properly belongs to and forms part of the same town, with a reasonable margin for extension, if they think proper.” . . .

Section 13 enacts—“In any proceeding for fixing . . . the boundaries of a burgh or populous place . . . it shall be lawful for any owner or occupier within the boundaries as fixed by the sheriff or sheriffs who considers himself aggrieved by the deliverance of the sheriff or sheriffs . . . within fourteen days of the date thereof, to present a petition against the deliverance of the sheriff or sheriffs to the Court of Session setting forth the grounds on which they object to such deliverance, and the Court of Session may thereupon order answers, and after answers have been lodged may either pronounce a final order or” . . .

Argued for the petitioners—The sheriff had erred, inasmuch as he had not taken into account the considerations which the statute set forth, viz., number of dwelling-houses, density of population, and what properly belonged to the town, and had taken account of others which ought not to have been considered, e.g., what was rightly included in a water district. None of the areas, the inclusion of which was objected to, answered the requirements of the statute—*White v. Magistrates of Rutherglen*, January 28, 1897, 24 R. 446, 34 S.L.R. 387; *County Council of Dumbartonshire v. Clydebank Burgh Commissioners*, November 14, 1901, 4 F. 111, 39 S.L.R. 57, and it could not be said they were required for future extension, for without them the burgh would have sufficient room for extension, and Auchenharvie mansion-house and policies was not available, being entailed property, and the other areas were not available owing to the nature of the ground. Works would not be included even if surrounded by the town unless they really formed part of it or the site was likely to be used shortly for extension (*Rutherglen case, cit. sup.*) The foreshore, &c., could not be included, for the burgh would have power to regulate its use without inclusion under section 303, and inclusion would subject the under-sea minerals to heavy rating.

Argued for the respondents—The Court should not interfere with the decision of the Sheriff, who had not erred, as in the cases cited, in some essential consideration—*County Council of Lanarkshire v. Govan Burgh Commissioners*, January 28, 1902, 4 F. 479. He had only included what naturally formed part of the town and was required for its good government and reasonable extension. The inclusion of the foreshore was necessary to give full power over it under section 304, for section 303 only gave a very limited power over *ex adverso* foreshore.

At advising, the judgment of the Court (The Lord President, Lord Adam, Lord M'Laren, and Lord Kinnear) was read by

LORD ADAM—The proceedings in this case originated in an application by the present respondents, Alexander M'Gregor and others, to the Sheriff of Ayrshire to have Stevenston, which is a populous place, created a police burgh under the powers conferred by section 9 of the Burgh (Scotland) Act 1892.

After various procedure in this application, which it is unnecessary to detail, the Sheriff was of opinion that Stevenston was suitable for being formed into a police burgh, and in a deliverance dated 16th March 1904 defined its boundaries.

This deliverance is brought under appeal to us, in virtue of the 13th section of the Burgh Police Act, by two petitions, one at the instance of the Glegarnock Iron and Steel Company, Limited, and the other at the instance of Captain Cuninghame, of Auchenharvie, objecting in some respects to the boundaries of the burgh as defined in the foresaid deliverance, and setting forth the grounds of their objections and craving us to recal the said deliverance and to pronounce an order determining the boundaries of the burgh.

Before proceeding to consider the petitioners' objections in detail I desire to say a few words on the jurisdiction conferred on the Court by section 9 of the statute. It appears to me that the first thing which the Court—whether the Sheriff Court or this Court—has to consider is whether the area included in the application, or any part thereof, is in substance a town and is suitable for being formed into a police burgh, and in coming to a conclusion on that point the Court is specially directed to take into consideration the number of dwelling-houses and the density of the population within the area proposed to be included, and generally all the circumstances of the case.

There is a further power given to the Court in defining the area of the burgh to include a reasonable margin for extension if they think proper.

It appears to me, therefore, that the leading consideration in determining whether any particular area should be included within the boundaries of a burgh is the number of dwelling-houses within it and the density of its population. But that was not the leading consideration in the minds of the applicants when they origi-

nally defined the proposed area of the burgh in this case.

There happens to be in Stevenston a water supply district, a drainage district, and a lighting and cleansing district, each embracing separate areas, and it undoubtedly was the desire on the part of the applicants to have all these separate areas included in the area of the burgh, so that they might all be under the administration of the burgh authorities, which led to the boundaries of the proposed burgh being defined as they were in the application—a very legitimate desire, no doubt, and a very desirable result. The considerations, however, which determine the definition of a water supply district or of a drainage district, are not the same as those which determine the definition of the boundaries of a burgh, and the result in this case has been, I think, the inclusion within the boundaries of the burgh as originally proposed and as determined by the Sheriff of areas of land on which there are few or no dwelling-houses, and which are properly rural and form no part of the town.

I shall now consider the objections in detail, and shall deal first with Captain Cuninghame's. His first objection is to the inclusion within the boundaries of the burgh of an area of about 47 acres. This area lies between the road leading from Stevenston to Ardrossan on the north and the road from Stevenston to Saltcoats on the south. It contains the mansion-house, offices, and the greater part of the policies of Auchendarvie. There are no dwelling-houses on it other than the mansion-house and offices of Auchendarvie, and no population other than Captain Cuninghame's family and servants. There are a few houses on the south side of the Saltcoats road nearest to Stevenston, and also a few on the north side of the Ardrossan road, but in no sense can it be said to be so surrounded by houses as to be a part of the burgh. I am therefore of opinion that the area in question ought not to be included in the boundaries of the burgh. It is clear that the main reason why the applicants desire to have the area in question included in the burgh is that it is partly within the water supply district, but that appears to me to be in the circumstances no sufficient reason.

Proceeding southwards Captain Cuninghame does not object to the area lying between the Stevenston and Saltcoats Road on the north and the Lanarkshire and Ayrshire Railway on the south being included in the burgh, so no more need be said about it, but he does object to the land south of the railway being included. As I understand, there are no dwelling-houses at present on this land, and consequently no population resident on it. Having regard to the terms of the 9th section of the Act, I do not see on what ground it ought to be included in the burgh. It consists of rough moorland not suitable for building, and as there will be plenty of unbuilt ground within the burgh for future extension, I do not see that any of it is required for that purpose. I therefore think that

the area in question should not be included within the boundaries of the burgh.

That disposes of Captain Cuninghame's objections, and turning now to the Glenarnock Iron and Steel Company's objections—they object, in the first place, as I understand, to the area to the south of the railway between the boundary of the lighting and cleansing district and the proposed boundary of the burgh to the east, *i.e.*, the area on which Ardoch Crescent, Ardoch Square, and other buildings now stand, being included in the burgh. In my opinion this area is rightly included. It contains in Ardoch Crescent and Ardoch Square many dwelling-houses and a large population, and it appears that a considerable extension of the burgh in this direction may in the near future be expected.

With regard to the area coloured green on the cartoon, which contains the Ardeer ironworks and their adjuncts, I have had more difficulty. That part of them called Ardeer Square I have already said ought in my opinion to be included in the burgh. In the remaining part there is situated Chemical Row, where there are some fifteen or sixteen dwelling-houses, and on the whole I have come to be of opinion that these works are so intimately connected with the burgh that they ought to be treated as part of and properly belonging to it. But I see no reason why the boundaries of the burgh should extend below high-water mark, much less beyond low-water mark as proposed. For the same reasons as in the case of Auchendarvie I think the waste or moorland on the Ardeer side of the Stevenston Burn should not be included within the burgh boundary.

[His Lordship then described the boundaries he proposed.]

Counsel for the petitioner Captain Cuninghame moved for his whole expenses in both Courts, and counsel for the petitioners The Glenarnock Iron and Steel Company, Limited, for half their expenses (*Clydebank* case, *cit. sup.*), and counsel for the respondents resisted any award on the ground that the proceeding was not a litigation (*Rutherglen* case, *cit. sup.*)

The Court pronounced interlocutors recalling the deliverance of the Sheriff, finding that the area thereafter described, considering the number of dwelling-houses within it, and the density of the population, and all the circumstances of the case, formed a populous place within the meaning of the Burgh Police (Scotland) Act 1892, was in substance a town, and was suitable for being formed into a police burgh, and defining the boundaries in accordance with the opinion given, and allowing the petitioner Captain Cuninghame his expenses in the Court of Session.

Counsel for the Petitioners the Glenarnock Iron and Steel Company, Limited—Ure, K.C.—McClure. Agents—Strathern & Blair, W.S.

Counsel for the Petitioner Captain Cuninghame—Ure, K.C.—Hamilton. Agents—Strathern & Blair, W.S.

Counsel for the Respondents M'Gregor & Others—John Wilson, K.C.—Constable. Agents—Mylne & Campbell, W.S.

Counsel for the Respondents the County Council of Ayrshire—Cochran Patrick. Agents—Carment, Wedderburn, & Watson, W.S.

Thursday, July 7.

## FIRST DIVISION.

[Sheriff of Lanarkshire.

### COUNTY COUNCIL OF LANARKSHIRE v. COMMISSIONERS OF MOTHERWELL.

*Burgh—Extension of Boundaries—Burgh Police (Scotland) Act 1892 (55 and 56 Vict. cap. 55), sec. 11.*

Along three main roads, leading at different points from a burgh, houses had been erected, but little building had been done towards the sides. By a deliverance of the Sheriff in a petition under section 11 of the Burgh Police (Scotland) Act 1892, the boundaries of the burgh were extended by the inclusion of three small and separate areas of about 18, 24, and 60 acres at these three points. The county council, out of whose territory the extension came, appealed. *Held* that no case for revision of the boundaries as contemplated by the statute had been made out, and the deliverance recalled.

Prospective extension is not under section 11 of the Burgh Police (Scotland) Act 1892 a ground for revision of the boundaries of a police burgh, but the areas proposed to be added must be certain in character and marked out by extent of building and consequent density of population as properly belonging to the burgh, and in this particular the considerations to be weighed by the Sheriff under this section differ from those under section 9.

*Expenses—Burgh—Extension of Boundaries—Opposition by County Council Interested—Burgh Police (Scotland) Act, 1892 (55 and 56 Vict. cap. 55), sec. 11.*

A county council out of whose territory a Sheriff had granted an extension of the boundaries of a police burgh under section 11 of the Burgh Police (Scotland) Act 1892, petitioned against the deliverance, and being successful in having it recalled, asked for expenses in both Courts. The Court awarded the expenses of the appeal.

The village of Motherwell was formed into a burgh in 1865, and in 1878, in 1890, and again in 1892 its boundaries were revised and extended. In 1903 a petition was presented in the Sheriff Court of Lanarkshire at Glasgow, under the 11th section of the Burgh Police (Scotland) Act 1892, by its provost, magistrates, and councillors, praying that Court to revise, alter, and extend its boundaries. The areas proposed to be

included were at different points where main roads came out of the burgh, and were three in number—viz., (1) An area situated to the north-east of the burgh, extending to 18 acres, called the Coursington Bridge District; (2) an area to the south-west of the burgh, extending to 108 acres, but subsequently restricted to 24 acres, called the Manse Road District; and (3) an area to the south-east of the burgh, extending to 60 acres, called the Flemington District. The petition was opposed by the County Council of Lanarkshire and the Middle Ward District Committee, out of whose territory any extension would come. By a minute of admissions the parties concurred in a statement as to the houses and buildings and the sewers formed and being formed in the various districts, and they renounced probation. The important facts in the admissions are contained in the ground of objection stated by the County Council in the petition in the Court of Session (*infra*).

Upon 10th February 1904 the Sheriff (GUTHRIE) issued an interlocutor making avizandum, with the following notes:—“The Sheriff doubts whether the Burgh Commissioners are well advised in applying at present for extension of their boundaries. Such an application will undoubtedly be required ere long if the burgh increases at the present rate. But it is surely not desirable that the boundaries of a burgh should be always in the course of alteration, and in Motherwell alterations have been tolerably numerous. There may be reasons, however, why an application at the present juncture is expedient rather than the one after the further lapse of three or four years.

“Notwithstanding this doubt, the Sheriff does not propose to refuse the petition. He has, however, some difficulty, arising from the nature of the proposed additions and their involving in some cases what has been called an ‘awkward and arbitrary’ boundary. Although to some extent this is the case with the Manse Road District, and it makes a tongue of burgh extending into the county, it is not open to any serious objection, and in the circumstances the Sheriff thinks that it is a reasonable extension. The proposed extension at Coursington Bridge presents us with a very awkward-looking boundary, and it is desirable to know whether the parties could suggest anything better. At all events, the Sheriff is at present of opinion that the addition to the burgh should not extend beyond the parish boundary.

“The whole boundaries of the Flemington district are rather awkward. The Sheriff, however, thinks that the greater part of this district should be included in the burgh. It appears that streets have been laid out to a certain extent for feuing, and are laid down on the map, also a considerable number of tenements are already built. Looking to the considerations as to boundaries already mentioned, it would probably be better to restrict this additional territory to the ground north of the Whinnyburn Glen. The only reason for