

the trust except the defender, whose duty it is to protect it." It does not appear to me that the claimer's position involves any impeachment of the validity of the trust. His extreme view only suggests a suspension for a time of the respondent's interest under the trust, and the alternative view, which we are upholding, gives full effect to the trust as an alimentary provision. In addition, while the claimer has a duty to protect the trust, he has also a duty, under the trust, to ingather the trust estate.

The LORD JUSTICE-CLERK concurred.

LORD DUNDAS was sitting in the First Division.

The Court recalled the interlocutor of the Lord Ordinary; found the defender entitled to retain until the pursuer's debt to the testator was satisfied the income of the pursuer's share of the residue of the testator's estate to the extent to which that income exceeded a reasonable aliment to the pursuer; and remitted the cause to the Lord Ordinary to determine what in the circumstances was a reasonable aliment.

Counsel for Pursuer—D. F. Scott Dickson, K.C.—J. R. Christie. Agent—Robert H. Paterson, S.S.C.

Counsel for Defender—Horne, K.C.—Black. Agents—Dove, Lockhart, & Smart, S.S.C.

Saturday, January 20.

FIRST DIVISION.

[Dean of Guild Court of the
City of Glasgow.]

PORTER v. NISBET.

Burgh—Police—Dean of Guild—Statute—Building Regulations—"Hollow Square"—"Background"—Glasgow Building Regulations Act 1900 (63 and 64 Vict. cap. cl), sec. 4.

The Glasgow Building Regulations Act 1900, section 4, enacts—"In this Act, unless the context otherwise requires, the following words and expressions shall have the several meanings hereby assigned to them, viz.—... 'Hollow square' means any square, parallelogram, triangle, polygon, circle, or other regular or irregular figure, formed by one or more streets or buildings, or streets and buildings in such a manner as to contemplate the erection or continuance of buildings (other than wash-houses and offices) enclosing or nearly enclosing a space of background, and includes—(1) The buildings enclosing or nearly enclosing such space of background; and (2) the buildings (if any) erected within such space of background. . . ."

Illustration of what constitutes a "hollow square" and "background" within the meaning of section 4 of the

Glasgow Building Regulations Act 1900. *Explanation (per the Lord President) of the meaning of the terms.*

Burgh—Dean of Guild—Jurisdiction—Discretion—Statute—Glasgow Building Regulations Act 1900 (63 and 64 Vict. cap. cl), sec. 38.

The Glasgow Building Regulations Act 1900, section 38, enacts—"No building, other than the usual one-storey wash-houses and offices, shall be erected within the enclosed space of background in any hollow square the buildings of which, or any of them, are or may be used or are intended to be used as dwelling-houses: Provided that in the case of any hollow square in which the enclosed space of background exceeds the dimensions specified in the immediately preceding section, the Dean of Guild may, if satisfied that the arrangements for ingress and egress, drainage, cleansing, lighting, and ventilation are adequate, suitable, and satisfactory, grant decree for the erection in such enclosed space of background of buildings not exceeding two storeys in height, on condition that such buildings shall not be used for purposes which may be injurious or offensive to the inhabitants of the surrounding or adjacent buildings. But no such building shall be authorised by the Dean of Guild unless an entry not less than ten feet in width be provided leading from a street to such building."

Held that even if the requirements as to ingress and egress, drainage, cleansing, lighting, and ventilation were fulfilled, the granting of a lining under the proviso of the section was in the absolute discretion of the Dean of Guild.

The Glasgow Building Regulations Act 1900 (63 and 64 Vict. cap. cl), enacts—Section 4 (*quoted in first rubric*). Section 38 (*quoted in second rubric*). Section 99, sub-section (4)—"The exits from public buildings other than hotels, and from each floor or section thereof, shall when taken together be not less than one foot in width for every seventy persons who can be seated within the building or floor or section thereof, and the minimum width of any exit shall be four feet." Section 134—"Nothing in this Act contained shall affect, alter, or limit any right of review of the decisions, decrees, interlocutors, or orders of the Dean of Guild, and all decisions, decrees, interlocutors, or orders of the Dean of Guild pronounced in virtue of any of the provisions of the Police Acts [*which include the Glasgow Building Regulations Act 1900*], shall be subject to review by the Court of Session, and such review shall not be excluded by reason of the Dean of Guild having pronounced such decision, decree, interlocutor, or order, upon a matter of fact, or in the exercise of any discretionary or administrative power conferred upon him by the Police Acts, or without a written record having been made up, and the Dean of Guild shall in his decision

distinctly specify the several facts material to the case which he finds to be established, and state how far his judgment proceeds on the matter of fact so found, or on matter of law, and the several points of law which he means to decide."

On 23rd August 1911 John Porter, house factor, 577 Dalmarnock Road, Glasgow, presented a petition in the Dean of Guild Court of the City of Glasgow for a warrant and decree of lining, which was served upon, *inter alios*, Thomas Nisbet, Master of Works for the City of Glasgow, for the public interest, who opposed the application.

On 14th September 1911 the Dean of Guild (HENDERSON) refused the lining craved.

Note.—"When this case was called on 31st August the Master of Works stated that the proposed building would be a building within the enclosed space of back-ground in a hollow square. This statement was not called in question by the petitioner, nor did he at the inspection suggest that the site was not an enclosed space of back-ground in a hollow square. When the case was called on this date, however, an agent appeared on his behalf and contended, in the first place, that section 38 of the Glasgow Building Regulations Act 1900 was not applicable, as this site was not an enclosed space of back-ground in a hollow square. If the Dean of Guild comprehended the argument for the non-application of section 38 it was this, that when the tenements erected by the petitioner on the Dalmarnock Road side of this ground were sanctioned by the Court there was no provision made for through ventilation and other things contemplated by sections 34, 35, and 36 of the Act of 1900, and that therefore at that time the Court did not regard the ground behind these tenements, that is, the ground upon which the petitioner now asks for authority to build, as an enclosed space of back-ground in a hollow square. It does not seem to the Dean of Guild that there was any omission on the part of the Court at the time when the tenements were sanctioned, but in any event it seems to him that the point taken is quite irrelevant. In view of the definition given by the Act as to hollow square, the Dean of Guild has no difficulty in holding, both as a matter of fact and law, that the ground in question is an enclosed space of back-ground in a hollow square, of which hollow square some of the buildings are used as dwelling-houses, and that accordingly section 38 of the Act of 1900 applies.

"The second argument seemed to be to this effect—assuming that section 38 applied, the Dean of Guild might nevertheless, under the proviso in that section, sanction this building, and that if he declined to do so it could only be on the ground that he was not satisfied with the arrangements, (a) for ingress and egress, (b) drainage, (c) cleansing, (d) lighting and ventilating, or (e) that the purposes of the building were injurious or offensive to the surrounding inhabitants. Section 38 provides that no building is to be authorised

unless an entry of not less than 10 feet be provided leading from a street to the proposed building. Reference was made to section 99 (4) of the Act, which provides that the exits from public buildings shall be not less than 1 foot in width for every 70 persons who can be seated within the building, and it was pointed out that this building was constructed to seat 660 people, and that an exit of 10 feet as provided by the petitioner was more than the statutory requirement. The Dean of Guild does not think that the contention is sound. The section reads that the Dean of Guild may, if satisfied that certain things are satisfactory, grant certain linings, but the contention would make the section read that the Dean of Guild must, unless satisfied that certain things are not satisfactory, grant certain linings. The proviso in section 38 seems to the Dean to confer a discretion on him. He looked at the ground in question, so as to be able to exercise that discretion. He is not satisfied that the ground in question is a proper place for public halls, and the whole disposition of the ground would not, in his opinion, justify a lining with only an access of the minimum of 10 feet. Having seen the place for himself, the Dean has no hesitation, in saying that in his judgment halls for the accommodation of over six hundred people should not be sanctioned in circumstances like the present."

The petitioner appealed to the First Division of the Court of Session, and on 27th October 1911 the case was argued in the Summar Roll, when the Court continued it and allowed the petitioner to lodge a minute.

On 10th November 1911 the petitioner lodged a minute containing the following statement of *facts* and *submission* following thereon—"1. The appellant is the proprietor of a considerable area of ground in Dalmarnock Road, Glasgow. Upon the front portion of his land he has erected a series of five-storey tenements facing Dalmarnock Road. The ground floor of these tenements is occupied as shops and the upper storeys as dwelling-houses. Behind these tenements there are enclosed spaces of back ground, 40 feet or thereby in depth, which is much more than sufficient to provide the extent of open space required in front of the windows of sleeping apartments by section 40 of the Glasgow Building Regulations Act 1900.

"2. Behind the said enclosed spaces of back ground, in the rear of the appellant's said five-storey tenements, there is a large plot of unbuil-ton ground belonging also to the appellant. On a portion of this ground the appellant proposed to erect buildings to be used as public halls. He applied to the Dean of Guild Court in Glasgow for the necessary lining, which was refused, in consequence of which the present appeal was taken.

"3. The proposed halls, which are much needed in the district, are designed as a building of one storey in height, with suitable internal accommodation. Access from

Dalmarnock Road will be obtained by an entry 10 feet 7 inches in width, and the buildings of the halls will be separated from the back walls of the enclosed back ground behind the appellant's tenements by a passage of the same width, so that the proposed buildings will be 52 feet distant from the said tenements. No objection was taken by the respondent to any of the details of the plans of the proposed buildings lodged by the appellant in the Dean of Guild Court. . . .

"4. The plot of ground belonging to the appellant on which it is proposed to erect the said halls forms part of a large area of ground belonging to the various proprietors and bounded by the following streets, viz., by Dalmarnock Road on the south-west along which it extends 476 feet or thereby, by Dunn Street on the north-west along which it extends 481 feet or thereby, by Baltic Street on the north-east along which it extends 405 feet or thereby, and by Nuneaton Street on the south-east along which it extends 490 feet or thereby. The total area bounded by these streets amounts to 23,720 square yards or thereby. The frontages to Dalmarnock Road and Nuneaton Street are occupied by tenements of three, four, and five storeys, and are continuously built upon. The frontage to Dunn Street is chiefly occupied by one-storey sheds in connection with the works of Messrs Andrew Muirhead & Son, and is not continuously built upon. The frontage to Baltic Street is occupied partly by a range of four-storey tenements and partly by a one-storey shed occupied as a cab-hiring establishment.

"5. The portions of the said area behind the buildings facing the streets are to a large extent occupied by a great variety of buildings, including tenements, stables, offices, and sheds. The one-storey sheds of Messrs Andrew Muirhead & Son extend backwards from Dunn Street more than half-way across to Nuneaton Street. . . .

"6. Since the passing of the Glasgow Building Regulations Act 1900 linings have been granted by the Dean of Guild Court of Glasgow for the construction of various buildings on the said area behind the buildings fronting the streets. In particular, on 24th January 1901 a lining was granted to the Glasgow Eastern Co-operative Society, Limited, for the erection of a new sausage factory of three and a-half storeys in height. This building is situated behind, and is of the same height as a range of four-storey tenements facing Baltic Street, and is distant 50 feet from the back wall thereof. Entrance to this building is obtained by a passage 11 feet wide from Baltic Street. Further, immediately behind the site of the halls proposed to be erected by the appellant there is a large one-storey shed, for which a lining was granted to Mr Henry Muirhead by the Glasgow Dean of Guild Court on 14th April 1910. Further, on 2nd April 1908 a lining was granted to Margaret Todd by the Glasgow Dean of Guild Court for the erection of a back saloon behind four-

storey tenements facing Dalmarnock Road.

"7. A further plan has been prepared by the appellant and is herewith produced, showing (1) the whole of the said area represented as built up with tenements along each street frontage and with an adequate allowance of back ground allocated to the same. Had the ground been so laid out the internal unoccupied space would have extended to 10,611 square yards or thereby; (2) an imaginary area of ground completely built round with tenements and enclosing an area of 1800 square yards or thereby.

"8. The plot of ground on which the appellant proposes to erect the said halls is not part of a hollow square within the meaning of sections 4 and 38 of the Glasgow Building Regulations Act 1900, and has not been so treated by the Dean of Guild Court of Glasgow in the past. The buildings fronting the streets are not so arranged as to effect or contemplate the enclosing of the ground behind, and the space of ground surrounded by said streets has been laid out and built upon, with the sanction of the authorities, in a manner inconsistent with the applicability thereto of section 38 of the said Act. The said section was not intended to and does not apply to an area of the extent and character of the area presently in question, and occupied as that area is. The Dean of Guild Court has not made any provision for ventilating spaces such as should have been done under sections 34 to 36 of said Act if the said area is a hollow square within the meaning of said Act, and has permitted the erection of buildings contrary to said section 38 if the Dean of Guild has correctly interpreted that section in the note to the interlocutor appealed against. There are ample enclosed spaces of back ground behind the appellant's five-storey tenements facing Dalmarnock Road, and it is not proposed in any way to interfere with or encroach thereon by the erection of the said halls.

"9. Assuming, but not admitting, that the said whole area of ground constitutes a hollow square within the meaning of the said Act of 1900, it is submitted that the Dean of Guild has no discretion conferred upon him by section 38 of the said Act except in relation to the arrangements expressly mentioned in said section, and that in any event he has not reasonably exercised his discretion, and has not assigned any adequate or sufficient reasons for refusing the lining craved by the appellant, although he is required by section 134 to specify distinctly the several facts material to the case which he finds to be established, and to state how far his judgment proceeds on the matter of fact so found or on matter of law, and the several points of law which he means to decide. The primary object of the said section 38 is to secure through ventilation in enclosed areas, and it was not intended by it to increase the free space for which provision is made by section 40 of the said Act. The appellant's proposed halls will not in any way obstruct the ventilation

of the backs of the dwelling-houses in the tenements fronting the streets. In point of fact there are no dwelling-houses on the ground-floor of the appellant's five-storey tenements behind which the said halls are proposed to be built, and the same would not obstruct in any way the ventilation of the dwelling-houses situated on the first and higher floors. There are halls elsewhere in Glasgow situated on ground behind dwelling-houses, and such a site is in no way objectionable for the purpose where, as here, there is direct and adequate access from the street. The proposed buildings satisfy in every respect the requirements to which the Dean of Guild is, by section 38 of the said Act, directed to have regard in exercising his discretion. The refusal of the lining craved is tantamount to the confiscation, without compensation, of a valuable area of building ground belonging to the appellant, for the benefit of proprietors who have never suggested that the lining should not be granted, and some of whom have been permitted to erect within the said area other buildings which are contrary to said section 38 as interpreted by the Dean of Guild. The appellant being desirous of meeting the views of the Dean, offered at the bar to consider any suggestions by the Dean, but none were made.

"The appellant accordingly respectfully submits on the whole matter that his appeal should be sustained, and the case remitted to the Dean of Guild with instructions to grant the lining craved, *in respect that*—(1) The said area is not a hollow square within the meaning of the Glasgow Building Regulations Act 1900. (2) The plot of ground on which the said halls are proposed to be erected is not an enclosed space of back ground in a hollow square, or part of such an enclosed space, within the meaning of section 38 of the said Act. (3) *Separatim*, and assuming the said Act to be applicable, the Dean of Guild has not exercised his discretion fairly and reasonably in refusing the lining craved. (4) *Separatim*, the section under which the Dean of Guild has refused the lining being incapable of reasonable interpretation should, as a restrictive section, be disregarded."

The respondent lodged, *inter alia*, the following answers—"1. The spaces referred to as enclosed spaces of background are open spaces required by the provisions of section 40 of the said Act, and as such are sufficient for their purpose. *Quoad ultra* admitted.

"2. Admitted, under reference to answer 1, and subject to the explanation that the proposed buildings would almost entirely cover the portion of unbuilt on ground referred to in statement 2 for the petitioner and appellant. The unbuilt-on ground referred to is comprised within an enclosed space of background in a hollow square within the meaning of sections 4 and 38 of the said Act.

"3. The local need for the halls referred to is not known. *Quoad ultra* admitted.

"4. Admitted subject to the explanations

following. The entire frontage to Dalmarnock Road is occupied by five four-storey tenements, four five-storey tenements, one three-storey tenement, and one one-storey tenement. The entire frontage to Nuneaton Street is occupied by four-storey tenements. The frontage to Dunn Street is occupied as stated under the qualification that it is almost wholly built upon.

"9. Admitted that no suggestions were made by the Dean of Guild at his Court. The sections enumerated are referred to for their terms. *Quoad ultra* denied. The whole area above referred to, that is, the area enclosed by the streets enumerated in statement 4, is a hollow square within the meaning of section 4 of the said Act, and the unbuilt-on ground within it, upon a portion of which the appellant desires to erect the said building, forms part of the enclosed space of background in said hollow square within the meaning of section 38 of the said Act.

"The respondent respectfully submits on the whole matter that the appeal should be refused, *on the ground* (1) that in respect the buildings fronting Dalmarnock Road, and situated between said road and the site of the proposed halls, exceed four storeys in height, the Dean of Guild properly refused the lining craved; (2) that in any event the Dean of Guild reasonably exercised the discretion conferred upon him by section 38 of the Glasgow Building Regulations Act 1900."

The case was again called in the First Division on 21st December 1911.

Argued for the appellant—The expression "continuance of buildings . . . enclosing a space of background" in section 4 of the Glasgow Building Regulations Act 1900 (63 and 64 Vict. cap. cl) did not refer to a question of time. It did not mean a continued erection of buildings. It meant a continuation of the buildings in a physical sense. In this case the streets and buildings were not so formed as to contemplate the continuation of the buildings in a physical sense so as to enclose a space of background. Therefore the ground proposed to be built on was not within a "hollow square" within the meaning of section 4. In any event it was not "background" within the meaning of the section. The word "back" must have some special significance in the section, otherwise the word would be redundant, but there was no speciality attaching to the ground proposed to be built on. Therefore although it might be enclosed ground it was not "background." [The appellant's other arguments appear in the minute, *supra*.]

Argued for the respondent—The expression "continuance of buildings . . . enclosing a space of background" in section 4 of the Glasgow Building Regulations Act 1900 (63 and 64 Vict. cap. cl.) meant the continued erection of buildings, *i.e.* in point of time. In this case the streets and buildings were so formed as to contemplate the continued erection of buildings so as to enclose a space of background. Therefore the ground proposed to be built on was within

a "hollow square" within the meaning of section 4. Moreover, it was "background" within the meaning of the section, because "background" was the opposite of "foreground," which signified the ground within the square on which the houses forming it were themselves built. All the rest of the enclosed space was "background." [The respondent's other arguments appear in the answers to the minute, *supra*.]

LORD PRESIDENT—This appeal is against an interlocutor of the Dean of Guild of Glasgow, in which he refused a lining which was craved by the appellant for the erection of certain proposed halls in a part of Glasgow which is situated upon Dalmar-nock Road.

After the first discussion that was held before your Lordships it became apparent that the appellant wished to raise a general question upon the construction of the Glasgow Building Regulations Act 1900, and that your Lordships were really not in possession of the facts with sufficient clearness to appreciate intelligently the argument that might be raised, and accordingly the appellant was allowed to put in a minute in which he set forth quite clearly the state of affairs under which he asked for the decree of lining. An answer was lodged to that minute, and then the parties came together and furnished your Lordships with a plan which shows very clearly the exact position of the buildings at this place.

The Dean of Guild has refused the lining upon the ground that it is struck at by the enactment contained in section 38 of the Glasgow Building Regulations Act, and that he does not see his way to grant an exemption from that enactment in terms of the proviso to the same section. Section 38 of the Glasgow Building Regulations Act of 1900 is in these terms—"No building other than the usual one-storey wash-houses and offices shall be erected within the enclosed space of background in any hollow square the buildings of which or any of them are or may be used or are intended to be used as dwelling-houses." And then comes the proviso to which I shall afterwards advert.

Now it is no matter of controversy, and it cannot be matter of controversy, that the building for which the lining was craved was a building not of a one-storey washhouse and offices, and therefore it is quite clearly a building which is struck at by the section, assuming it to be true that the place where this building is proposed to be erected is (first) within a hollow square, and (secondly) upon an enclosed space of background, and your Lordships have had an argument upon both of these matters.

The clause that I have just read is obviously of the most drastic character, and one cannot look at this Act, especially at this part of it, without seeing that its provisions generally are of the most drastic character. In many ways they are not perhaps models of draughtmanship, and they have, I think, this peculiar result,

that some are clearly unworkable, and that others (of which this is one) will press with extraordinary hardship upon certain individuals; it will fall on some and practically make them, at their own expense or by confiscation of their ground, subscribe for a general benefit, whereas others who are more fortunate and who have possibly done more to obstruct ventilation and so on than their less fortunate neighbours, will go scot free. But while that is so I am afraid that state of affairs is the fault of the wisdom of Parliament, as that wisdom of Parliament has been embodied in an Act promoted by the Corporation of Glasgow; and if the Corporation of Glasgow, which represents its citizens, choose to have legislation of this sort, it is quite certain that so long as the words are clear, your Lordships, whatever you may think of it, have no option but to apply the words as you find them.

Upon the question whether this is a hollow square one naturally turns to the definition, and the definition certainly begins upon the *lucus a non lucendo* principle, because it describes "hollow square" as meaning "any square, parallelogram, triangle, polygon, circle, or other regular or irregular figure"—that may not be a very good definition, but one can see perfectly what it means; it goes on—"formed by one or more streets or buildings, or streets and buildings in such a manner as to contemplate the erection or continuance of buildings (other than washhouses and offices) enclosing or nearly enclosing a space of background, and includes (1) the buildings enclosing or nearly enclosing such space of background, and (2) the buildings (if any) erected within such space of background."

Now I am not going to exhaust myself upon criticisms of that definition, because it is obviously full of expressions which it is very easy to criticise. But I think one sees that one of the difficulties that assailed the draughtsman was this, that he wished to have an expression which could be applied equally to a completed hollow square and to one which was only in the course of construction, to one of which you could not say that it was a hollow square now, but could only say that in time it would probably become so. He also wished the expression to apply to an actual hollow square, even although that actual hollow square was in many respects not hollow; no wonder he found it rather difficult to frame a definition to cover these rather different states of affairs.

But, again, I say that I do not think that the actual meaning is very difficult to see, and I think that the essence of the hollow square is that it has to be formed by streets, no doubt streets with buildings, the fronts of those buildings being to the streets and the backs of them to the space of what is called background, and the square—which need not be a square at all, but simply means any continuous geometrical figure—a figure the containing line of which is formed by a set of streets which meet without any street piercing

that geometrical figure. (By the latter qualification I mean that I think that as soon as you have a street which goes through what would otherwise be a hollow square, that street prevents it being a hollow square.)

It is probably inconvenient to take illustrations from the particular localities in some one town, with which all those who read the reports may not be familiar. I think the easiest illustration of what I want to express could be taken from what I understand to be the laying out of the new part of New York, where the streets are all parallel and are cut by other sets of streets at right angles. Well, if you have a set of parallel streets, one above the other, which I will denominate 1, 2, 3, 4, and then have another set of streets perpendicular to the former set, which I denominate A, B, C, D, you have a sort of gridiron of streets. If then you take the outside of all those streets, you will have a geometrical figure which, in one sense, would form a hollow square. But I do not think it would form a hollow square in the sense of the Glasgow Act, because I think it would be prevented being a hollow square by these other intersecting streets which are inside the figure.

Accordingly I think that the essence of the Glasgow hollow square is that it must be a closed compartment, so to speak, with this great peculiarity, that it need not as a matter of fact be quite finished, because although it does not in true fact become a hollow square until all the buildings are finished, yet the definition certainly covers a hollow square which is partially constructed.

That being my view, I have really no doubt that, upon the Act, the Dean of Guild was perfectly right when he found that this piece of ground formed a hollow square—that is to say, the piece of ground which is delimited by Baltic Street on the north, Dunn Street on the west, Dalmar-nock Road on the south, and Nuneaton Street on the east (I am not taking the exact points of the compass, but those I quote are near enough).

The second question is whether this ground on which the buildings are to be placed is background. Well, there the provisions of the Act are very vague and difficult to understand, and it is there particularly, I think, that the extraordinary fortuity of the matter comes to light—a fortuity coupled with what, I think, in individual cases becomes great injustice. There is no definition of background, and I think one has in the end to come to the suggestion of Mr Clyde, namely, that all you can say about the background is that it is whatever is not front ground. Well, front ground in a building sense is familiar enough. It is that portion of the ground which is used in connection with buildings—I mean which serves to support the buildings which enter from the front, that is to say, from the street; and accordingly I think front ground means that class of ground. It is an expression which I do not think has any legal meaning, but

it is an expression with which an actual practitioner, if he has had a certain class of business, is not unfamiliar. Certainly I myself very often met it at the bar, and there are several gentlemen facing me who must have often met it too—I mean in valuation trials. It was a very common thing for a valuator to come in and say, “Oh, this ground is worth so much an acre,” or “a yard,” or “a foot,” as the case might be; “I value so much of it as front ground and I value so much of it as back ground.” I think that idea was probably what was in the head of the person who drafted this Act.

The true fact of the matter is that there is absolutely no limit, except the view of the particular individual, as to what should be front ground and what should be back ground; and consequently the result seems to me to come to this, that as soon as the buildings are really put up you have a condition—I will not say a stereotyped condition, because I am not deciding that—you have a condition of occupation which shows that something is front ground and something is back ground. It is perfectly evident that if A puts up a very large building upon his ground—a building which stretches far back from the street—he will not leave upon his portion of the ground very much back ground. B, on the other hand, puts up a small building, and the result, which certainly seems very inequitable, is that A, who has done his best to block the ventilation of the neighbourhood, is not really in any way penalised; whereas B, who has not blocked the ventilation, is penalised by not being allowed to put up any other building. I am not deciding whether B may not, by reconstruction of his buildings, practically use as large a bit of his land as front ground as A has done. But I do decide this, that, in my opinion, when you look at a square, as here, and find it in a certain state of occupation, it is possible to say according as the buildings are there whether a particular piece of ground within that square is front ground or is back ground.

Taken by that test, I think there is no question that the ground of the appellant here is background. He has put up five-storeyed tenements of dwelling-houses facing the street; these buildings have their back greens behind them, and then there is an unoccupied space extending to the boundary of his property. I have no doubt that these backgreens and unoccupied space are the background. It is very hard upon him, because I find that his next-door neighbour in Dunn Street has practically covered the whole of his ground with one-storey sheds, and has, in other words, utilised his ground in such a way as to make it all front ground.

That means, that this class of legislation is, I should not say inappropriate, but extraordinarily hard upon an unfortunate individual who happens to have a house and ground behind it in a square which is partially occupied by industrial buildings. But

there it is, and that is the only way in which I think the Act can be construed. I therefore think that here again the Dean of Guild was perfectly right, and that here again this particular ground is struck at by the prohibition—that is to say, that it is proposed to erect this building “within the enclosed space of background of a hollow square” referred to in section 38.

Well, then, that only leaves the question of the proviso. The proviso goes on to say that “in the case of any hollow square in which the enclosed space of background exceeds the dimensions specified in the immediately preceding section”—I need not go into that as there is no question that the square in question exceeds these dimensions; there is a difficulty about what the dimensions precisely are, because there are two sets of dimensions mentioned, but this exceeds either—“the Dean of Guild may, if satisfied that the arrangements for ingress and egress, drainage, cleansing, lighting, and ventilation are adequate, suitable, and satisfactory, grant decree for the erection in such enclosed space of background of buildings not exceeding two storeys in height, on condition that such buildings shall not be used for purposes which may be injurious or offensive to the inhabitants of the surrounding or adjacent buildings.”

Now, then, the Dean of Guild has refused his lining here, and he has explained quite frankly in his note that the reason he has done so is that he does not think that this is a proper place for a hall. He does not say that the arrangements for “drainage, cleansing, lighting, and ventilation” are inadequate. But I do not think he is bound to. I think that this proviso puts the matter entirely in the discretion, if he choose to exercise it, of the Dean of Guild. If the Glasgow Corporation wish to put this entirely in the hands of the Dean of Guild, I think they are entitled to do so. Of course the Dean of Guild himself cannot get out of the provisions that the statute puts upon him—that is to say, the building cannot exceed two storeys in height, “and shall not be used for purposes which may be injurious or offensive to the inhabitants.” And then again, “no such buildings shall be authorised by the Dean of Guild unless an entry not less than ten feet in width be provided leading from a street to such building.” But provided these two things are done, then I think the Dean of Guild may simply give a decree of lining if he likes. He cannot be forced to give a decree, and here he does not propose to give it, and I do not think we can make him. It is a question very much of one-man government, but there is the Act of Parliament, and I think your Lordships must apply it. On the whole matter, therefore, I am of opinion that the Dean of Guild's interlocutor was right and that we cannot interfere with it to the effect of ordering him to grant a lining which I do not think he was bound to grant.

LORD JOHNSTON — I concur, and have nothing to add, unless it be respectfully to

endorse what your Lordship has said as regards the legislation of which this is an example. It is not that it involves an oppressive invasion of private right at the fiat of a public official that it appears to me to be so objectionable—to that the citizens of Glasgow may be prepared to submit, it is their affair—but that it is so uneven in its operation that it may amount, in the particular case of which this is an example, to confiscation of the property of one individual for the benefit of others, who are greater sinners against the assumed public interest than he is.

LORD MACKENZIE—I agree with your Lordship. It is useless to endeavour to construe the sections to which we were referred with reference to any preconceived ideas of equity; and therefore the only thing that this Court can do is to give effect to the language of the statute, although the result of that is to deprive a man of his property for the public benefit without giving any compensation for it.

The Court dismissed the appeal.

Counsel for the Petitioner and Appellant—Horne, K.C.—Macmillan, Agents—Morton, Smart, Macdonald, & Prosser, W.S.

Counsel for the Respondent—Clyde, K.C.—M. P. Fraser—Crawford. Agents—Campbell & Smith, S.S.C.

Tuesday, February 6.

FIRST DIVISION.

[Dean of Guild, Glasgow.]

MAGUIRE v. SMITH'S TRUSTEES.

Burgh—Police—Dean of Guild—Building Regulations—Title to Plead Statutory Restrictions—Glasgow Building Regulations Act 1900 (63 and 64 Vict. cap. cl), secs. 38 and 60 (3).

The Glasgow Building Regulations Act 1900, section 38, enacts that no building other than the usual one-storey wash-houses and offices shall be erected within the enclosed space of background in a hollow square, but empowers the Dean of Guild, subject to certain conditions, to sanction the erection therein of buildings provided they do not exceed two storeys in height; and section 60 (3) enacts that whenever the corporation consents to the erection of a building higher than the Act prescribes any owner or lessee within one hundred yards deeming himself aggrieved thereby may appeal to the Dean of Guild.

Circumstances in which held that a neighbouring proprietor had no title to plead the statutory restrictions as an objector to a petition for lining, inasmuch as he had no interest, his property not being in any way prejudiced by the building proposed to be erected.

The Glasgow Building Regulations Act 1900 (63 and 64 Vict. cap. cl), sec. 38,