in these cases we have to look to the testing clause only, for it is by it alone that the granter of the deed professes to give authority to what has preceded it. But the present deed belongs to a class of writs to which the law allows great indulgence; and there is hardly any in which the granter is so much held bound by unwritten evidence of consent as in the case of a lease. If there had been no testing clause here, and if at the end of the deed these words had occurred, "period of endurance nineteen years," evidence of possession under the lease would have been all that was required. If, then, this declaration is found in the body of the testing clause, is less weight to be attached to it? I think not. I consider this deed to belong to a class of informal writs which are held to be confirmed by *rei interventus*.

LORD KINNEAR — I am of the same opinion. I do not think it necessary to deal with the point whether this document by itself constitutes a complete and binding contract. If it were necessary to decide that point, it would, in my opinion, require very serious consideration having regard to the observations of Lord Gordon in the House of Lords in the case of *Smith* v. *Chambers' Trustees*. On the other hand, it is very familiar law that although a contract of lease for a period of years may not be constituted except by writing, still all its terms may be proved otherwise by the writ of parties.

If a document such as that now before us has been subscribed by the landlord and the tenant, and has been delivered by the landlord to the tenant, and if possession has followed, I think it is open to the tenant to prove by the landlord's writing that it is a good contract for nineteen years. The fact that the lease itself contains such a declaration is to my mind conclusive evidence of such a term of endurance. If there be any question as to whether this declaration was inserted before or after subscription, I think this should be remitted to probation, but when the tenant produces the lease, and the landlord makes no allegation that the declaration in question was not inserted before subscription, it does not appear to me that there can be any room for doubt.

The Court recalled the interlocutor of the Sheriff-Substitute dated 7th July 1890, and of the Sheriff dated 21st July 1890, and found that the delivery of the lease by the landlord to the tenant in its present state may be competently proved *prout de jure*.

Counsel for the Pursuers — Howden. Agents—Wishart & Macnaughton, W.S.

Counsel for the Defenders—Jameson—Crole. Agent—Edward Nish, Solicitor.

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*Wednesday, March 4.*

## SECOND DIVISION.

[Lord Stormonth Darling, Ordinary.

## BREWIS (CUMMING & COMPANY'S TRUSTEE) *v.* ROBERTSON & BAXTER.

*Sale—Right in Security—Bankruptcy—Act* 1696, *c.* 5.

X, a wholesale wine and spirit dealer, being in need of funds, entered into this arrangement with R. & B., wine and spirit brokers, with whom he had business dealings, viz., (1) X, who had wines and spirits in a licensed store of which he was tenant, sent to R. & B. an invoice for certain of these goods at invoice prices, as if they had bought these goods, and he granted delivery-orders in their favour addressed to the Excise officer. On the other hand, they advanced to him a bill for a certain sum (almost amounting to the invoice price), which they had agreed to advance, and wrote to him a letter stating that they held the stock in security, that they would charge him a certain rate of interest, that after he had granted them the delivery-orders for the stock, they would on receiving his cash for the value of any of the goods he required for his trade grant him delivery-orders therefor.

This arrangement was acted on. Such goods as he required for his customers X got out of store on paying for them to R & B. Subsequently he became bankrupt. Within sixty days of that time R & B had got delivery from him of part of the remaining goods, and put them in another store under their own power, but part remained in his own store.

*Held* (1) that the transaction was not a sale, but an attempt to create a security; (2) that with regard to the goods of which R & B had got actual possession, the delivery to R & B was void and null under the Act 1696, c. 5, not being delivered in pursuance of a prior obligation; (3) that with regard to the goods remaining in X's own store, R & B had no security over them, in respect that X retained possession of them down to the date of sequestration.

Robert Rhind, who had carried on business under the name James Cumming & Company, wholesale wine and spirit merchants, Edinburgh, having become bankrupt, his estates were sequestrated on 11th July 1889. John Brewis, C.A., was appointed trustee in the sequestration. For some time before his bankruptcy Rhind had had certain transactions with Messrs Robertson & Baxter, wine and spirit brokers in Leith and Glasgow.

In January 1890 Mr Brewis raised an action against Robertson & Baxter. The leading conclusions were (1) for reduction,

under the Act 1696, c. 5, and the Bankruptcy Acts, of certain contracts by which certain specified quantities of wines and spirits were alleged to have been conveyed to the defenders within sixty days of bankruptcy, and for restoration of these goods to the pursuer as trustee, or otherwise for damages; (2) for declarator that certain other wines and spirits lying in a bonded warehouse at Candlemaker Row, after referred to, belonged at the date of the sequestration to the sequestrated estate, and therefore to the pursuer; that the defenders had no right by way of security or otherwise over any of the goods.

The circumstances in which the action was brought were as follow:—Rhind acquired the business in 1886, taking over as part of the assets of it a lease of a bonded warehouse in Candlemaker Row. It was what was called by the Excise a general warehouse, *i.e.*, a warehouse primarily intended for the accommodation of the public, but which the keeper of it may fill with his own goods. It was used by Rhind in the latter way (subject to an exception not here material). It was entered only by the use of two keys, of which Rhind kept one and the Excise officer the other. In 1887 Rhind began to get assistance from the defenders, with whom he had dealings. The transactions in question in this action, however, began in July 1888. He then again desired assistance from the defenders. On 26th July 1888 he wrote to Mr Wightman, a partner of their firm, this letter—"Dear Sir—I enclose statement of stock which I would hand to your firm as security for the sum advanced. Neither freights nor interest have been added to the invoice prices. If you can manage this for me I shall be exceedingly obliged." Along with this letter Rhind sent a list of certain specified wines and spirits lying in the warehouse, and the value of which amounted to £564. 2s. 3d., being the cost price. *Inter alia*, all the goods in question in the action were included in this list. At the top of this list he had written—"The undernoted casks lying at Candlemaker Row, Edinburgh, have been transferred to Robertson & Baxter, Glasgow, only removeable on their own warrant." In reply to Rhind's letter the defenders wrote on 27th July 1888—"Dear Sirs—Referring to stock list left with our Mr Wightman, and valued by you at £564, 2s. 3d., we are willing to draw on you to the extent of from £520 to £530, and hold said stock in security for same and any other bills running from time to time. For this accommodation we will charge interest at the rate of 7½ per cent. per annum, and you will pay all store rents and charges, and grant us D/os for stock. Any stock you may require for trade purposes we will grant D/os for on receiving cash for the value as per stock list: Further, you will retire at maturity" a certain bill relating to other transactions. . . . "We will hand you proceeds of bill on hearing that the goods have been transferred to our name. Kindly confirm." By letter of 30th July Rhind agreed to the conditions of defenders' letter of 27th.

On 1st August Rhind sent to the defenders delivery-orders addressed to the officer of Inland Revenue in favour of the defenders. They intimated them to the Excise officer, and he entered the defenders' names in his register as transferees. Similar entries were made in the books kept by Rhind. On 3d August he also sent invoices for the goods exactly as if he had sold them to them. On their part the defenders made the advance to Rhind of the invoice value of the goods. Thereafter when Rhind wished goods for his business (as frequently happened) which formed part of the goods in the list, he wrote sending his cheque for the required goods, and requesting delivery-orders from them for the same. The defenders granted these delivery-orders to enable him to get the goods out of bond for his customers as agreed in their letter of 27th July. In June 1889 the circumstances of Rhind were not good. The defenders obtained from him on 14th and 15th June actual possession of part of the goods, and removed them from Candlemaker Row to a warehouse in Leith kept by Messrs Aitken & Wright. These were the goods to which the conclusion under the Act 1696 referred. Certain creditors of Rhind, however, objected to his removing so much out of the warehouse, and he stopped the delivery. The rest of the goods therefore in the list remained in his possession at the date of the sequestration, and they formed the subject of the declaratory conclusion forming the second question in the case as above explained.

At the time of Rhind's failure the defenders claimed to be creditors for considerably more than the invoice price of all the goods, whether those of what they got delivery or those still in the warehouse.

Both Rhind and Mr Wightman, the defenders' partner, in their evidence stated that the transaction described above was intended as a security.

The pursuer pleaded—"(1) In respect of the Statute 1696, chap. 5, the warrants and deliveries of 14th and 15th June 1889 are null, having been granted to a prior creditor in satisfaction or security of his debt within sixty days of bankruptcy. (2) No valid delivery having been made of the goods mentioned in the reductive conclusion of the summons, the pursuer is entitled to decree in terms of the first set of conclusions in the summons. (3) The goods mentioned in the summons, other than those referred to in the preceding pleas, having remained undelivered at the date of the sequestration, no valid security over them was constituted, and the pursuer is in right of them as trustee on James Cumming & Company's sequestrated estate."

The defenders pleaded—"(3) The invoices and delivery-orders by the bankrupts in favour of the defenders, dated 3rd August 1888, not having been granted within sixty days of bankruptcy, the pursuer has no right or title to call for production and reduction of the same. (5) A valid security having been created over the goods in question, in the circumstances set forth in the defenders' separate statement, the de-

fenders were and are entitled to hold the said goods in security of their advances to the bankrupt, or to realise the same and apply the proceeds to repayment of said advances. (6) The goods in question were, in the circumstances, validly delivered by the bankrupts to the defenders by means of the said delivery-orders and entries in the warehouse register following thereon, and were thereafter in the custody of the officers of Excise for behoof of and subject to the exclusive control of the defenders. (7) The defenders having obtained corporeal possession of the goods in question, so far as removed by them from said warehouse, within sixty days of Cumming & Company's bankruptcy, without the necessity of any act, voluntary or otherwise, on the part of the bankrupts; and, *separatim*, in implement of antecedent obligations undertaken by the bankrupts much more than sixty days before bankruptcy, the defenders are entitled to absolvitor, with expenses."

A proof disclosed the facts which have been above narrated. The defenders led evidence of Excise officers to show that Excise officers refuse delivery except on the order of the person appearing in their books as owner. They founded upon the following General Order of Inland Revenue, dated 18th March 1887:—"British spirits in an Excise general duty free warehouse, belonging to a distiller or dealer in spirits, may be transferred to a purchaser on the production of an order for the delivery of spirits to him signed by the distiller or dealer, but such transfer-order must be countersigned by the proprietor of the warehouse, or his known responsible servant, and a request for the transfer endorsed thereon by the purchaser." This contention and line of evidence sufficiently appear from the interlocutor of the Lord Ordinary, *infra*.

On 13th November 1890 the Lord Ordinary (STORMONTH DARLING) pronounced this interlocutor:—"Finds (1) That the defenders have no right of security over the goods mentioned in the summons which remained in the warehouse at the date of Robert Rhind's sequestration, in respect that the said Robert Rhind retained possession of the said goods down to the date of his sequestration; and (2) That as regards the goods mentioned in the summons, of which actual delivery was obtained by the defenders within sixty days of the said Robert Rhind's bankruptcy, the said delivery was and is void and null under the Act 1696, cap. 5: Therefore finds, declares, and decerns in terms of the declaratory conclusions of the summons; decerns and ordains the defenders to restore and deliver to the pursuer the said last-mentioned goods, &c.

"*Opinion.*—[*After narrating the facts*]—It is with reference to the latter class of goods [*i.e.*, the goods in Rhind's warehouse at the date of sequestration] that the first and most important question arises. The pursuer, as trustee on Rhind's sequestrated estate, maintains that these goods never passed out of Rhind's possession until they passed to him as trustee, and that the attempt to create a valid security over them in favour of the defender was therefore ineffectual. The defenders, on the other hand, maintain that, by means of the various documents and entries above mentioned, the goods were validly delivered by Rhind, and passed into the custody of the officers of Excise for behoof and subject to the exclusive control of the defenders.

"The question is important, and, in one aspect of it, new, for I am not aware that the control exercised by the officers of Excise over goods in a bonded warehouse has ever before been founded on as involving the legal effects now contended for. I am unable to adopt the defenders' view. In the first place, it seems to me that the transaction was an attempt to create a security and not a sale. It is not denied that a security was all that the parties intended to create; but it is said that the transaction took the form of a sale, and that the defenders are entitled to the benefit of that circumstance. But in the face of the letters I think it is impossible to say that it did take the form of a sale. No doubt the invoice was made out as if the defenders had bought the goods. But the invoice was only one of the documents that passed, and the letters on both sides are perfectly explicit in calling the transaction a security. If this be so, it is impossible for the defender to take any benefit from section 1 of the Mercantile Law Amendment Act 1856, or from such a case as *M'Bain* v. *Wallace & Company*, 8 R. (H. of L.) 106. The circumstances of the transaction seem to me much more similar to those of *Stiven* v. *Scott & Simson*, 9 Macph. 923, to which I shall have occasion to refer again in connection with the second question.

"But then it is said that, assuming the transaction to have been only a security, there was constructive delivery of the goods. The defenders do not traverse the well-known passage from the opinion of the Lord President in *Anderson* v. *M'Call*, 4 Macph. 765 (p. 770), to the effect, that 'in order to operate constructive delivery by means of a delivery-order, there must be three independent persons, the vendor, the vendee, and the custodier of the goods; and if the custodier of the goods be identical with the vendor, there ceases to be a third independent person.' But they say that the Excise officer was the 'third independent person;' and that, if he was not in the strict sense of the word custodier of the goods, still he had an effective control over them, and was bound to exercise that control for behoof of the defenders. A good deal of evidence was lead as to the practice of Excise officers in Edinburgh and Glasgow, and it rather appears that their practice varies, some officers considering that they are bound to refuse delivery except on the order of the person appearing in their books as owner of the goods, and others acting on the principle that so long as the duty is paid and the warehousekeeper is satisfied they have no right to refuse delivery. It seems to me that the question is to be solved not by evidence of

that kind but by reference to the statutes and the general orders of Revenue Department, made under statutory authority. Undoubtedly British spirits stored in an Excise warehouse may, by sec. 63 of the Act 43 and 44 Vict. cap. 24, be transferred into the name of a purchaser by means of a delivery-order signed by the proprietor of the spirits, and countersigned by the warehouse-keeper. But the effect of that, as stated in the section, seems only to be that spirits so transferred are discharged from all claim in respect of duties, penalties, or forfeitures to which the transferer is liable. It is also true that by General Order of 18th March 1887 certain directions are given with reference to the mode of transfer. But it is declared by the General Order of 10th August 1888 that 'the provisions of the General Order of the 18th March 1887 are not intended to affect the direct responsibility of the warehouse-keeper for the due security of goods deposited, or for the duties on such goods, as provided for by code, par. 73, nor to impose any responsibility upon the Crown as to the delivery to the proper owner of such goods when cleared from warehouse;' and par. 73 of the code is in these terms—'The warehouse-keeper is alone answerable to the owner of any goods deposited in his warehouse for their safe custody and for their proper delivery. He is also answerable to the Crown for the duties on such goods.' Such being the true position of the warehouse-keeper, it seems to me impossible to hold that the Commissioners of Inland Revenue assume any duty or responsibility towards the transferee of goods (who may or may not be the true owner) merely because, for the sake of convenience, transfers are recognised and entered in the officer's books. Moreover, I think, when it is found that one of the necessary keys of the warehouse remained throughout in the hands of Rhind, enough has been established to show that he never in any real or effective sense parted with the possession of goods. This is brought out very forcibly by the fact that when the defenders obtained actual delivery of some of the goods in June 1889, they did so by the instrumentality of Rhind.

"It was urged for the defenders that formerly at all events goods bonded in the seller's own warehouse could be effectually sold although they remained in the warehouse, by the transfer being entered in a book to be kept for that purpose by the officer in charge; and reference was made to Bell's Prin., secs., 1306 and 1378. It is worthy of note that the Acts of 4 Geo. IV. c. 24, and 6 Geo. IV. c. 112, which contained these provisions, related exclusively to *bona fide* sales; and in any case, these Acts have been repealed. I cannot help thinking that now, at all events, the functions of Excise officers are limited to the securing of the Excise duties, as indicated by the Lord President in the case of the *Distillers' Company*, at p. 486 of the report, in 16 R., and that if the defenders' view of their functions had been correct, it would have formed an argument for the unsuccessful party in that case. It is true that the warehouse in question there was not 'a general warehouse,' but it was what is called a 'distillers' bonded warehouse,' and it is in evidence by Mr Charles F. Watson, and not, I think, disputed, that transfers are allowed in such warehouses.

"The second question between the parties relates to the parcels of wines and spirits which were actually delivered to the defenders on 15th June 1889. That was a date undoubtedly within sixty days of Rhind's bankruptcy, and the pursuer says that the delivery was therefore null under the Act 1696, c. 5. The defenders, on the other hand, maintain that the delivery was unobjectionable, because it was made in implement of an antecedent obligation. I think this agreement really depends on whether the transaction was truly a sale, for if it was not it cannot be said that the agreement provided for the actual delivery of any of the goods. I have already expressed the opinion that the transaction was not a sale. There may have been cases (like *Lindsay* v. *Shield*, 24 D. 821, and *Allan's Trustees* v. *Gunn & Company*, 10 R. 997), in which the transactions though held to be sales had a perilous similarity to securities, but the decisions in these cases proceeded on the footing that they were sales and not securities, and the present case seems to me to resemble much more nearly that of *Stiven* v. *Scott & Simson* already cited, in which the transaction was held to be a security and the delivery to be struck at by the Act 1696. On both questions, therefore, my opinion is in favour of the pursuer."

The defenders reclaimed, and argued—This transaction between Rhind and the defenders was in form at least a sale. The bankrupt gave the invoice of the goods and delivery-orders to the defenders, and that amounted to a sale, as no goods could then be given out of the warehouse except upon a delivery-order signed by the defenders. The goods were therefore held for them—Bell's Prin. sec. 1305. Even though the transaction was only a transaction in security it was a sale in form, and the defenders were entitled to the benefit of the Mercantile Law Amendment Act 1856 (19 and 20 Vict. cap. 60), sec. 1, which enacted that "Where goods have been sold, but the same have not been delivered to the purchaser, and have been allowed to remain in the custody of the seller, it shall not be competent for any creditor of such seller after the date of such sale to attach such goods as belonging to the seller by any diligence or process of law, including sequestration, to the effect of preventing the purchaser or others in his right from enforcing delivery of the same, and the right of the purchaser to demand delivery of such goods shall from and after the date of such sale be attachable by or transferable to the creditors of the purchaser."—*Hamilton* v. *Western Bank of Scotland*, December 13, 1856, 19 D. 152; *Allan & Company's Trustee* v. *Gunn & Company*, June 20, 1883, 10 R. 997; Bell's Comm. i. (5th ed.) 194. It was true that the goods were

declared in the invoice to be at invoice prices, but that only put an obligation upon the defenders to account for any excess obtained over the invoice price when the goods were sold—*M'Bain* v. *Wallace & Company*, January 7, 1881, 8 R. 360. Even if the goods were not sold to the defenders they had acquired a good security over them, which would entitle them to prevail in a question with the trustee on the sequestrated estate. The duty of the Excise officer was to give out the goods only to the proprietor. The duty was exercised under the General Order of Inland Revenue, dated 18th March 1887. In this case the officer had inserted in the register the defenders' names, and he was not entitled to deliver them except upon a delivery-order signed by them. No doubt these goods remained in Rhind's warehouse, but there had been a complete change of character in the ownership, and they were held for the defenders—*Castle and Others* v. *Sworder*, May 15, 1861, 6 H. & N. 828; *Miller's Trustees* v. *Shield*, March 19, 1862, 24 D. 821; *Gibson* v. *Forbes*, July 9, 1833, 11 S. 916. As regards the part of the stock which was delivered to and taken away by the defenders upon 15th June, that was given in performance of a prior obligation, and therefore did not fall under the operation of the Act 1696, c. 5. This case could be distinguished from that of *Stiven*, because there the goods remained part of the bankrupt's stock-in-trade, while here they did not do so as the bankrupt could not get them out without a delivery-order from the defenders. The case of *The Distillers Company, Limited* v. *Russell's Trustee*, February 9, 1889, 16 R. 479, was distinguished from this case as the store in that case was of a different kind, and was dealt with under another section of the Act.

The Court intimated that they wished argument only as to the question of delivery within sixty days of bankruptcy.

The pursuer argued—It was plain from the letters that this transaction was not a sale at all, but merely in security of advances made by the defenders to the pursuer. It had been held that such a transaction did not protect the goods from the creditors' claims—*Stiven* v. *Scott & Simson*, June 30, 1871, 9 Macph. 923. There was no obligation on the bankrupt to give a specific security, merely a promise to hold stock against debt. This might be a moral obligation on the bankrupt, and in fact he had honestly carried out this agreement till 15th June, when the defenders thinking they would be safer if they got actual delivery took out the goods. But this moral obligation did not descend to the trustee.

At advising—

LORD TRAYNER—I think the Lord Ordinary's judgment is right and should be affirmed.

The first question raised in the case is, whether there was a sale by Rhind to the defenders of the goods referred to on record? I am of opinion that there was not. It is impossible to hold that there was a sale, looking to the evidence documentary and parole before us. The letter of 26th July 1888 by Rhind to the defenders, and their reply of the 27th, show what the transaction really was. In the former of these letters Rhind encloses a statement of the stock belonging to him which he was prepared to hand over "as security" for the advances which he was desirous of obtaining, and in their reply the defenders express their willingness to make the advances "and hold said stock in security of the same.' The parole evidence is to the same effect. Rhind says, on being shown the invoice (on which the defenders rely as proving a sale), "That was a loan by the defenders to me as against the security of goods;" while Wightman (a partner in defenders' firm) says that his firm "gave these advances" and that they believed they "were getting a valid security." The transaction plainly therefore was not a sale, but a loan on the security of certain goods. If there was no sale, the defenders cannot take any benefit from the provisions of section 1 of the Mercantile Law (Scotland) Amendment Act of 1856.

The next question is, whether the defenders obtained for their advances a good security, and one which will now prevail in competition with the pursuer? I am clear that they did not. The goods on the security of which the advances were made were in the warehouse of Rhind when the advances were made, and (except the portion thereof to be afterwards adverted to) remained there until his sequestration. They were never delivered to the defenders—either actually or constructively—actual delivery there certainly was none. Nor was there constructive delivery, because the delivery-order in the defenders' favour addressed and handed to the Excise officer had no such effect. The Excise officer was not a warehouseman; the goods were in no sense whatever in his custody at any time either as being held by him for Rhind or anybody else. He had a key of the warehouse where the goods were stored, but that only for the purpose of enabling him to protect the interests of the Excise. In these circumstances there was no valid security created in favour of the defenders, the goods having remained in the possession of the debtor.

A certain part of the goods, however, were actually delivered to the defenders on the 15th June, that is, within sixty days of Rhind's bankruptcy. Such delivery was, I think, a delivery of goods struck at by the Act 1696, c. 5. It was a voluntary delivery of goods in satisfaction of a prior debt. There was no obligation on Rhind to give the defenders any security for their advances beyond that which had been arranged or stipulated for when the advances were made, and that merely amounted to this, that the goods should remain in Rhind's warehouse in the defenders' name and subject to their orders. On this part of the case, therefore, I think the pursuer is also entitled to prevail.

LORD RUTHERFURD CLARK—There is no question here as to the delivery of the goods. The transaction was in security only, and therefore the Act does not apply. As regards the other question, I think we must follow the case of *Stiven* v. *Scott*, which is the latest authority. I think this is even a stronger case.

The LORD JUSTICE-CLERK concurred.

LORD YOUNG was absent.

The Court adhered.

Counsel for the Pursuer — Rhind—Salvesen. Agent—William Officer, W.S.

Counsel for the Defenders—Jameson—W. C. Smith. Agents—Davidson & Syme, W.S.

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*Friday, March* 6.

## SECOND DIVISION.

[Dean of Guild Court, Maryhill.

## COUPER *v.* ELDER.

*Burgh—Dean of Guild—Building in a Court—Access to Court—Police and Improvement (Scotland) Act* 1862 (25 *and* 26 *Vict. cap.* 101), *sec.* 177—*Construction of Act.*

The Police and Improvement (Scotland) Act 1862, sec. 177, provides—"It shall not be lawful to form, lay out, or build any court unless the same shall be of a clear width of 15 feet, measuring from the buildings or intended buildings therein; . . . provided also, that there shall be an entrance to every such court of the full width thereof, and open from the ground upwards."

The proprietor of a court, surrounded by houses, and 124 feet in width, proposed to build across the same a row of tenements, 40 feet distant from one side of the court, and 35 feet from the other. The plans showed an entrance to the court by an open passage about 6 feet wide. *Held* that the plans were not in conformity with the provisions of the statute.

*Opinion* (*per* the Lord Justice-Clerk and Lord Trayner) that the word "house" means a tenement contained within the four walls which constitute the building, and not a separate dwelling-place.

*Opinion* (*per* Lord Trayner) that this clause is applicable to courts already existing as well as to courts to be made of new.

The General Police and Improvement (Scotland) Act 1862 (25 and 26 Vict. cap. 101), sec. 177, provides—"It shall not be lawful to form, lay out, or build any court unless the same shall be of a clear width of 15 feet, measuring from the buildings or intended buildings therein: Provided always, that to any such court in which there shall be more than eight houses there shall be an additional width of 1 foot for every such additional house; provided also, that there shall be an entrance to every such court of the full width thereof, and open from the ground upwards." Clause 3 provides, *inter alia*—"The word 'street' shall mean a public street, and shall extend to and include any road, bridge, quay, lane, square, court, &c., and public passage, or other place within the burgh used either by carts or foot passengers, not being a private street," &c.

George Couper, Glasgow, presented this petition in the Dean of Guild Court, Maryhill, for warrant to erect buildings in a court belonging to him. The petitioner's property consisted of a rectangular block, extending between Main Street and Whitelaw Street, to the former of which it had a frontage of 126 feet 9 inches, and to the latter a frontage of 125 feet 11 inches, while the two sides measured respectively 187 feet 10 inches on the south-east, and 184 feet on the north-west, and were bounded by properties of other parties. The property was in a populous part of the burgh, and the frontages to both streets on each side of the petitioner's property were occupied by buildings. The petitioner's frontage to Main Street was occupied by three tenements of shops and dwelling-houses, two storeys in height, while the Whitelaw Street frontage was occupied by three tenements of dwelling-houses two storeys in height, and in these six tenements there were a considerable number of small houses. The space from the back of the tenements fronting Main Street to the back of the tenements fronting Whitelaw Street formed the existing court for the use of the tenants in these tenements, and measured about 124 feet. The only access thereto was by covered closes through the tenements fronting Main Street and Whitelaw Street.

The plans produced showed—(1) That the petitioner proposed to erect on the existing court, and about midway between and parallel to the two streets, a row of four tenements of three storeys in height, to be occupied as sixteen dwelling-houses of one apartment, and twenty-four dwelling-houses each containing one room and kitchen—in all forty houses. These tenements would front to the back of the Main Street tenements, from which they would be separated by a space 40 feet in width, and they would be separated from the tenements fronting Whitelaw Street by a space about 35 feet in width. The four tenements proposed would occupy the full width of the petitioner's property, excepting that there would be left a passage about 9 feet in breadth at one end, extending from the area behind the Main Street tenements to the area behind the Whitelaw Street tenements. (2) That the present Main Street tenements were to be taken down, and replaced by four tenements four storeys in height, of eight shops and twenty-four dwelling-houses in the flats above, which would occupy the whole of the frontage to Main Street, excepting a space of about 6 feet in width at one end,