weather which would expose his vessel to damage never appears to have occurred to him or to anybody else at that time. And it seems to me that what he did not say, and what he admits he did not say, is much more important here than what he did say, because if anything of the sort that is now suggested had then occurred to him or to anybody else on the vessel, that there was going to be a particularly violent storm, and that the particular berth to which his vessel moved would be exposed to the storm, according to the statistics which at that time had not been fetched from the Glasgow Observatory, it is inevitable that he would have said something to the effect "You know this is a very bad berth for my vessel to lie at: you see what the state of the weather is; the wind is east-south-east, and it is now veering to the west, and in the course of the night it may end in a storm;" or without going through all that catena of possible changes of the weather he would have said something to the effect "It is going to be a storm and I shall be in danger." It would have been almost inevitable that he should have said something like that if the state of his mind had been what he now suggests it was.

All that was done was done in the ordinary and regular course of the harbourmaster's duty, and at the time, so far as I can see, there was no reason why the harbourmaster should not have done what he did. And as regards what happened afterwards, without going into any matter of defence and what might have been an answer if there had been some initial negligence on the part of the harbourmaster, I cannot help saying that the course pursued that night on the part of those who had the care of this vessel was a little singular. But inasmuch as I think that initial step is not reached, that there is to my mind no reasonable evidence that ought to be submitted to a jury or to any tribunal of any breach of duty which the harbourmaster himself was bound to exhibit at that time or any neglect in reasonably looking after the safety of vessels which in one sense were under his charge because they were under his direction, it seems to me one need not inquire further into the matter seeing that the case fails. It would be perfectly monstrous in the case of an extraordinary storm to suggest that because a vessel was not allotted by the harbourmaster to remain in a particular berth, and afterwards by reason of an unusual storm injury was inflicted upon the vessel, therefore the Harbour Trustees are to be held responsible for the injury to that vessel and I suppose to all the vessels in the harbour because they were all more or less injured.

Under those circumstances it appears to me that the judgment of the Court of Appeal ought to be affirmed, and I move your Lordships that this appeal be dismissed with costs.

LORD HERSCHELL—I am of the same opinion. The plaintiff can only recover, as it seems to me, by showing that any reasonable man in the position of the harbourmaster on the night in question would have anticipated that the wind would veer round to the west or north-west and that in that direction it would blow with such force and fury as to cause damage, or be likely to cause damage, to this vessel. I do not think that that case is made out; no such idea seems to have occurred to anybody on the spot, whose experience had been acquired in visiting that harbour. The master and mate of this vessel knew the harbour well, they had been constantly there, they knew the weather as well as the harbourmaster did. To my mind it is proved clearly that no such idea ever occurred to them. Their whole conduct is to my mind absolutely inconsistent with it, and I think the action of the master of the "Mona" makes it also clear that he thought what he says he thought—that there was not that danger to be anticipated which afterwards proved in the result to be the case.

For these reasons I entirely agree with the judgment which has been proposed.

LORD MACNAGHTEN—I concur.

LORD MORRIS—I am of the same opinion.

LORD SHAND—I also am of the same opinion.

Appeal *dismissed* with costs.

Counsel for Appellant—Walton, Q.C.—Aitken. Agents—Downing, Bolam, & Co., for Webster, Will, & Ritchie, S.S.C.

Counsel for Respondents—Balfour, Q.C.—Hunter. Agents—Grahames, Currey, & Spens, for Gordon & Falconer, W.S.

COURT OF SESSION.

Saturday, May 14.

FIRST DIVISION.

[Kilmarnock Dean of Guild Court.

LINDSAY *v.* DUKE AND OTHERS.

Dean of Guild—Petition for Lining Refused without Stating Reasons.

Where the Dean of Guild refuses a petition for lining, upon statutory grounds, it is proper for him to explain the precise nature of the objections to the petitioner's proposals.

The Dean of Guild having refused to grant a lining, without assigning any reasons for doing so, except that he "was not satisfied that the plans provide for the buildings being suitably lighted and ventilated," the petitioner appealed, and no appearance was made to oppose the appeal.

The Court *recalled* the interlocutor appealed against, and *remitted* to the Dean of Guild for further procedure.

Mr Hugh Lindsay, grocer, Boyd Street, Kilmarnock, applied to the Dean of Guild Court there for a warrant to erect dwelling-houses on a piece of ground in Boyd Street and Morris Lane.

On the 31st January 1898 the Court appointed service to be made upon the adjoining proprietors and the burgh surveyor, Mr Robert Blackwood, and allowed the master of works to see the plans of the proposed buildings and to report thereon.

None of the adjoining proprietors appeared to oppose.

The Master of Works presented a report in which he made certain objections, and he also appeared in Court and made a verbal statement in support of them.

On 7th March the Court pronounced the following interlocutor—"Unanimously decline to grant warrant for the erection of the buildings specified in the petition, in respect they are not satisfied that the plans provide for the buildings being suitably lighted and ventilated."

The petitioner appealed.

No appearance was made by any party to oppose the appeal.

Argued for appellant—The procedure in the Dean of Guild Court had been overhasty, and the Dean of Guild had refused the petition without specifying the points in which the proposals did not fulfil the statutory requirements. This put the petitioner at a grave disadvantage, for it would prevent him from either showing that the objections were unfounded, or meeting them by modifying his schemes. If the Magistrates had appeared to oppose the appeal, the Court would have ordered them to lodge answers and remitted the case to the Dean of Guild. No appearance had been made, and the inference was that they knew the judgment was unsound. Accordingly the Court ought to recal the interlocutor and remit to the Dean of Guild to grant the lining. Failing that, the interlocutor should be recalled and the case remitted for further procedure—*Saltoun* v. *Magistrates of Edinburgh*, July 3, 1896, 23 R. 956; Burgh Police (Scotland) Act 1892 (55 and 56 Vict. cap. 55), sec. 167, *et seq.*

LORD PRESIDENT—We must be cautious in dealing with this appeal not to supersede or prevent the application of the discretion of the Dean of Guild to plans submitted to him. I own I think it is to be regretted that the Master of Works has not thought fit to appear and give an account of the somewhat rapid way in which this petition was refused. It seems to me, after the statement which has been made, we cannot allow this final refusal of sanction to stand, and should allow matters to be reconsidered. I propose, therefore, that we should sustain the appeal, recal the interlocutor, and remit to the Dean of Guild to proceed as may be just. The Dean of Guild Court is, I am sure, very willing to give due effect to the rights of persons desirous of altering buildings on their properties, and also to the enforcement of the obligations of the statute; but experience in this Court shows that where objections to plans before the Court are sustained on statutory grounds their precise nature should be put definitely before the petitioner, so that he may judge of their legal validity, and if satisfied of their validity obviate them by modifying his plans. And the Court will not be prepared to sustain a refusal in general terms of plans when the party has not had an opportunity of considering and canvassing the legal validity of the objections on the statute, or if he thinks fit of getting rid of the objections by altering his plans. I hope the consideration now referred to will be kept in view in the Dean of Guild Court, and that the case may thus be brought to a satisfactory conclusion.

LORD ADAM and LORD M'LAREN concurred.

LORD KINNEAR was absent.

Counsel for petitioner moved for expenses and referred to the case of *Saltoun, supra.*

The Court sustained the appeal, recalled the interlocutor of the Dean of Guild dated 7th March 1898, and found the respondent Robert Blackwood liable to the appellant in the expenses of the appeal.

Counsel for Petitioner — Salvesen — M'Clure. Agents — Simpson & Marwick, W.S.

Saturday, May 14.

SECOND DIVISION.

[Lord Pearson, Ordinary.

GILLIGAN'S FACTOR *v.* FRASER.

Judicial Factor — Factor loco tutoris — Minor and Pupil — Petition by Factor loco tutoris for Authority to Sell Pupil's Heritage.

A factor *loco tutoris* applied to the Court for authority to sell part of his ward's heritable property. The subjects were situated in Glasgow, and it was generally anticipated that the site would rise in value. The buildings were old and in such bad condition that they were regarded as practically valueless, the whole value of the property being in the site. The sanitary authorities had required improved sanitary accommodation to be provided, and this necessitated an expenditure of £200. Other £200 were required to put the building in a fair state of repair. The average nett rental hitherto obtained was higher than the return which could be obtained for the sum at which the buildings were valued if realised and invested in trust investments, and it was anticipated that the additional expenditure abovementioned would result in an increased rental equal to about 3 per cent. on the expenditure involved. The factor had funds arising from surplus income of the ward's estate which were sufficient to meet