

reasons I think that the suspension should be refused.

LORD ADAM—I am of the same opinion. On the first point the only difference in the charge is one of the *locus* where the sheep were stolen. Nor do I think there is any ambiguity, because the first and only alternative begins with the words “or otherwise.”

On the second point, part of the evidence led for the Crown was that the marks of the prisoner on the sheep had been superimposed on old marks. All the sheep were free to be observed by the prisoner and his agents, and were brought to a pen near the Court for the convenience of examination if required. The motion was not made to bring the sheep into Court to be examined by expert witnesses as to branding. A motion was made that the jury should examine the sheep. I have always understood that the question whether a document or other production in a case should be placed in the hands of the jury for their own examination or inspection was a question within the province of the presiding judge to decide. Is there any such failure of justice in this case arising out of the refusal of the Sheriff in his discretion to grant the motion? I see none. Upon the statements in the bill of suspension I therefore think there is no foundation for quashing the conviction.

LORD KINNEAR—I agree with your Lordships.

The bill of suspension was dismissed.

Counsel for the Complainer—M'Lennan. Agent—A. Laurie Kennaway, W.S.

Counsel for the Respondent—Solicitor-General (Dickson, K.C.)—A. O. M. Mackenzie, A.-D. Agent—W. J. Dundas, C.S.

COURT OF SESSION.

Thursday, November 14.

FIRST DIVISION.

[Sheriff of Dumbartonshire.

COUNTY COUNCIL OF DUMBARTONSHIRE v. CLYDEBANK BURGH COMMISSIONERS.

Burgh—Extension of Boundaries—Review of Sheriff's Deliverance—Wishes of Inhabitants—Expenses—Burgh Police (Scotland) Act 1892 (55 and 56 Vict. c. 55), secs. 11 and 13.

The Burgh Police (Scotland) Act 1892, section 11, enacts that on the application of the commissioners or council of a burgh it shall be lawful for the sheriff, “after hearing all parties interested,” to revise, alter, extend, or contract the boundaries of such burgh, and further, enacts that the sheriff, “in revising the boundaries of a burgh shall take

into account the number of dwelling-houses within the area proposed to be included, the density of the population, and all the circumstances of the case, whether it properly belongs to and ought to form part of the burgh and should in his judgment be included therein.” Section 13 gives a right to present a petition to the Court of Session against deliverances under section 11.

Held that a sheriff, in an application for the extension of the boundaries of a burgh, was bound to take into account, as one of the circumstances of the case, the wishes of the inhabitants of the locality which it was proposed to include within the burgh.

Circumstances in which the Court, in a petition under section 13 for recal of a deliverance whereby a Sheriff on an application under section 11 had extended the boundaries of a burgh, recalled the deliverance, and found the objectors entitled to expenses both in the Court of Session and Sheriff Court.

The Burgh Police (Scotland) Act 1892, section 11, enacts—“Upon the application of the commissioners or of the council of any burgh, and after publication in the *Edinburgh Gazette*, and in any newspaper published in such burgh, and if no newspaper be published therein, then in a newspaper circulating in such burgh, and such other notice and inquiry as he may deem necessary, it shall be lawful for the sheriff, after hearing all parties interested, from time to time to revise, alter, extend, or contract the boundaries of such burgh for the purposes of this Act, but not so as to encroach on the boundaries of any other burgh.” . . . “The sheriff or sheriffs, in revising the boundaries of a burgh shall take into account the number of dwelling-houses within the area proposed to be included, the density of the population, and all the circumstances of the case, whether it properly belongs to and ought to form part of the burgh and should in their judgment be included therein.”

Section 13 makes provision for parties dissatisfied with the sheriff's deliverance under section 11 presenting a petition against it to the Court of Session.

The Commissioners of the Burgh of Clydebank presented a petition in the Sheriff Court of Dumbartonshire for the revision, alteration, and extension of the boundaries of the said burgh, and for the inclusion therein of certain adjoining places, known as Dalmuir, Kilbowie, Radnor Park, and Third Part,

The following averments were made by the petitioners:—“When the burgh was constituted in 1886 the population was declared to be 5000, and at the census in 1891 it was ascertained to be 9998, and is now estimated to be about 20,000. In consequence of the rapid increase the town has overgrown its present boundaries, and extended into the districts immediately beyond the burgh boundaries known as North Dalmuir, Radnor Park, and Kilbowie, all in the parish of Old Kilpatrick and county

of Dumbarton, with a population of about 2250, and Thirdpart Road, in the parish of New Kilpatrick and county of Dumbarton, with a population of about 40, . . . which districts are now sought to be included within the burgh boundaries, and are defined within the margin coloured blue on the plan herewith produced. The growth of these districts has been very remarkable within the last few years, . . . and there is also the immediate prospect of additional buildings in all the districts referred to. In the public interest it is desirable that all buildings to be erected and roads and streets to be formed in the immediate neighbourhood of a burgh should be subject to the jurisdiction of the Dean of Guild Court and Road Authority of the burgh, and can only be so subjected by the area on which the said buildings may reasonably be expected to be built being included within the burgh boundaries. The drainage of North Dalmuir, Kilbowie, and Radnor Park presently flows into the burgh sewers, which necessitated these sewers being made larger than necessary for the burgh's requirements, and the whole sewage will shortly require to be treated by the Corporation of Glasgow at their purification works at Dalmuir."

Answers were lodged by the County Council of the County of Dumbarton, and the Eastern District Committee thereof, by the Landward Committee of the Parish Council of Old Kilpatrick, and also by certain owners and occupiers in the localities interested, objecting to the proposed extension of Clydebank. The considerations submitted by the respondents will be found fully stated in an excerpt from the petition presented by them to the Court of Session, *infra*.

Proof was allowed and led. The import of the evidence is fully stated in the opinion of the Sheriff.

On 21st February 1901 the Sheriff (LEES) issued the following interlocutor:—"The Sheriff having inspected the ground in presence of parties, and considered the evidence adduced, and whole cause, being of opinion that the ground coloured blue on the plan No. 2 of process, lying to the north of the Glasgow, Dumbarton, and Helensburgh Railway, extending to 291 acres or thereby, and consisting of the districts known as Upper Dalmuir, Radnor Park, and Kilbowie, properly belongs to and ought to form part of the burgh of Clydebank, and should be included therein, and that the said ground should be formed into an additional ward of the said burgh of Clydebank to be known as the Fifth Ward, before issuing a deliverance revising, altering, and extending the boundaries of said burgh to said effect, and before altering the number of its wards in manner above proposed, and before pronouncing further on the petition, appoints the petitioners, in terms of section 19 of the Town Councils (Scotland) Act 1900, to give intimation of the said proposed alteration of the number of the wards within the boundaries of the burgh to be extended as above by advertisement in the *Dumbarton Herald* and

Clydebank Press newspapers in order that any party desiring to object thereto may give notice within seven days after the last of said advertisements by lodging a notice with the Sheriff-Clerk."

Note.—"The Commissioners of the burgh of Clydebank ask for extension of the boundaries of their burgh for the purposes of the Burgh Police Act of 1892, and their application is opposed by (1) the trustees of the late George Paterson, house-factor, Clydebank, who are owners of three villas in Upper Dalmuir; (2) Mr Leslie Kirk, painter, Clydebank, and others, residents in Radnor Park and Kilbowie; (3) the Landward Committee of the Parish Council of Old Kilpatrick; and (4) the County Council, its Eastern District Committee, and the Standing Joint Committee of the County. At earlier stages of the case there were numerous other objectors, but they have withdrawn from further opposition. The petitioners propose to add to the burgh (1) 291 acres, which extend along its northern fringe, and which comprise the districts of Upper Dalmuir, Radnor Park, and Kilbowie, and (2) 38 acres of ground at the north-eastern corner of the burgh, and which are known by the name of Third Part.

"As the two areas proposed to be annexed are quite apart in their situation, and quite different in their circumstances, I shall deal with them separately; and as the area first above mentioned is pretty generally spoken of in the evidence by the name of Radnor Park alone, it may be convenient so to describe it in this judgment.

"The main ground of objection urged by the first two sets of objectors is, that they are well enough off already, and that the majority of them prefer not to come into the burgh, and by the other objectors that the proposed annexation is uncalled for in the public interest, and will, if sanctioned, deprive them of a valuable area for assessment on which they have made considerable outlays; while all the objectors maintain as a second line of defence that Clydebank does not need extension.

"In my opinion this second defence is the main and the important one to be considered. The objectors overlook that this is not an application for the creation from them of a burgh where none before existed, in which case the only matters requiring consideration would be their circumstances and wishes, but is an application for the extension of an important existing burgh on the ground that its extension is competent in law and necessary in fact.

"The question of law depends on the terms of the Burgh Police Act of 1892. Now, in defining the boundaries of a populous place the Sheriff is directed by section 9 to include the whole area which properly belongs to and forms part of the same town, with a reasonable margin for extension. It is obviously not intended that this delineation is to be final, and that though, as years go on, the margin for extension appears no longer to be reasonably sufficient, the boundaries are to remain

unaltered. Section 11 authorises the Sheriff 'from time to time to revise, alter, extend, or contract the boundaries of such burgh for the purposes of this Act.' This shows plainly that, if the population or other circumstances of the burgh change, its boundaries may have to be altered, extended, or contracted to suit the altered circumstances. I do not, however, think that this means that the Sheriff is to be constantly tinkering at the boundaries. The application ought not to be made or granted unless there is a material change of circumstances, and this of necessity implies—just like the leaving a reasonable margin—that the boundaries are not to be adjusted exactly to the existing state of circumstances, but that the parties and the Sheriff are to look ahead and provide for the future as well as the present. Accordingly, it would not be reasonable to refuse extension till all the reasonable margin was used up. Some margin ought probably always to be left alike to allow a choice of sites and to prevent the price of the remaining ground being raised to an excessive amount.

"The question that thus arises is—do the circumstances of Clydebank warrant an extension of the boundaries? The history of Clydebank is perhaps unique in Scottish annals. When it was constituted a burgh in 1886 its population was about 5000. In the intervening fourteen years the population quadrupled. It has three railways, with eight passenger stations within the 1½ square miles in which its population are penned. Every day there are discharged at these stations 10,000 workmen brought chiefly from Glasgow and the Vale of Leven, and certain further works are now in progress which will require the services of 7000 additional workmen. Where are houses to be found for these additional workmen? They may prefer also not to be crowded into Clydebank. But the chief reason assigned for the workmen choosing to live in Glasgow and the Vale of Leven is that in these places work is more easily found for their families. In the nature of things, however, that is a reason which year by year will tend to disappear, and if the railway companies were to raise their charges from their present trifling charge of a penny a journey, this would inevitably drive the workmen to seek accommodation in Clydebank. It is indeed impossible to pass through Clydebank without being struck with the way in which its population is crowded into tenements. In the whole burgh there are only thirty self-contained houses, and this is easily explained.

"The total nominal area of the burgh is 882 acres; of these 607 according to one account, 661 according to another, are occupied by public works, roads, docks, canal, river-bed, &c. It is said some of these, especially the railway parts, are not yet built on. But the ground is not in the market and never may be, and it has been acquired, or is being acquired, for other purposes than building. I do not think therefore that these unbuild-on railway parts can be treated as available building ground. The whole population of the burgh

is confined to 90 or 100 acres. It may be asked why do they not use up the remaining acres? Now Clydebank lies low on the river bank, and the natural tendency is for the population to move inwards to the higher lying land. But, say the objectors, there are, in addition to the 30 or 40 acres admittedly available for building purposes, about 140 acres also available to builders, Why are they not built on? A half of the ground, say these objectors, might be utilised. The petitioners' witnesses say it is unsuitable for residential purposes, and the fact that there is only one cottage on these 140 acres seems to endorse this statement.

"The 140 acres consist of a block of 118 acres at the north-east end of the burgh, and 22 acres separated from it by the canal. An additional deterrent is to be found in the proximity of the chemical works, and the only inquiries for the ground there seem to be for public works. Now every acre taken for public works implies that ground will be required also for the men who are to be employed in the works. Practically there seems to be in the burgh only about 40 acres left suitable for residential purposes, and if house accommodation should be needed for one-third of the workmen to be employed at the works going up, the whole of this acreage would be occupied in a day. Can it be said that Clydebank has thus a reasonable margin for its expansion, and even if every one of these workmen elected to live out of Clydebank the ordinary increase of population would use up the available building ground in seven or eight years at most.

"Now, the commissioners of a burgh must look ahead; they must plan their streets, their sewers, and many other things, having in view probable future requirements. And a peculiarity in Clydebank is that as it is intersected by three railways and a canal some difficulty is caused in the matter of accesses to the ground beyond the canal and railways. To a working-class population such accesses are of material importance, and I think the evidence shows that the inadequacy of the existing accesses has tended to confine the population to the south of the canal and the railways. But so costly a matter as accesses is one that private enterprise can hardly be expected to cope so well with as burghal authorities.

"When Clydebank was constituted a burgh in 1886 it had a population of about 5000. My predecessor could hardly be expected to foresee the immense growth there would be in population and in public works, and it was very natural that he should take so convenient a boundary for the northern limit of the burgh as the Helensburgh railway. But if the application were being made now to create the burgh, would anyone suggest that the same area would be provided for a population of 20,000 with prospects of rapid increase, and that the section of the Clydebank population north of the railway would be left outside the burgh? Ninety per cent. of them earn their living in Clydebank, and have no interests separate from it except to get the

benefits of the proximity of the burgh without bearing an equal share of its burdens. But section 9 of the statute directs Sheriffs in constituting burghs 'to include the whole area which in their judgment properly belongs to and forms part of the same town.' And section 11 similarly directs that 'Sheriffs in revising the boundaries of a burgh shall take into account the number of dwelling-houses within the area proposed to be included, the density of the population, and all the circumstances of the case, whether it properly belongs to and ought to form part of the burgh.' It is plain, therefore, that the sheriff is to be guided by similar principles in constituting a burgh and in revising its boundaries. Now, I do not think any sheriff in constituting a burgh at Clydebank, with a population of 20,000, would have for a moment thought of omitting the population amounting to 2168 living on the north side of the Helensburgh railway.

"Further, it must be kept in view that while the Sheriff in 1886 had in consideration that there would be some increase in public works, it is hardly likely that he foresaw how very large such increase would be. Now, every acre appropriated to public works in excess of what was then anticipated means that there is one acre less for residential purposes. And in effect it would result that a smaller acreage would have to carry a population four times as great as in 1886.

"In 1890 an application was made for the extension of the burgh, and was refused. If the circumstances were the same I should feel myself bound by that judgment, but they are materially different. The population was then only half of what it is now, and it would appear that there were then about 400 acres of ground unbuild on. If this means of ground suitable for residential purposes, there is no similarity whatever in the position of matters. While if it meant that there were 400 acres of ground of all kinds that had no buildings on them, and were in the market, this number would compare with 175 at present, and the case for extension would thus be nearly five times as strong as in 1890. It appears to me that the case for extension is clearly established.

"The next question that arises is, if there is to be extension of the burgh boundaries, in which direction is it to take place? On this point there is no dispute. No doubt a suggestion was made that the extension might be eastwards rather than northwards. To this there are strong objections. The burgh, as presently constituted, is $2\frac{1}{2}$ miles long by half-a-mile broad. This disproportion is a misfortune which would only be intensified if the burgh were extended to the east. It is preferable that the burgh should be compact in shape, both as being able to be more economically managed and as enabling workmen to live near their work, and on high rather than low ground. Besides, the burgh as at present constituted is bounded on the east by Renfrewshire. Any extension, therefore, in that

direction would be into a different county and a different sheriffdom. Now that is not a convenient state of matters for a community, and it will be noticed that the statute forbids such extension without the consent of the Sheriff of that other county. In the present application such extension was proposed by the petitioners as part of their scheme, but the proposition appeared so undesirable and provoked so much opposition that it was abandoned.

"Neither can the burgh be extended to the south, for the Clyde extends along the whole southern side of the burgh. Nor to the west, for it is separated on the west from the open country by 90 acres of land acquired by the Glasgow Corporation for sewage purification. And in any event such extension would not be justified by density of population, as required by the Act, and (in the matter of configuration) would be open to the same practical inconveniences as extension to the east. To the north-east the land is purely agricultural, and not at present marked out by its condition as naturally belonging to the burgh. The only remaining direction is to the north, and that is the direction in which extension is asked. It is in this direction that the population is spreading, and of the population about nine-tenths, or nearly 2000, earn their living in the burgh of Clydebank. Such extension will widen the burgh and allow houses to be provided for the workpeople in proximity to the works at which they are engaged.

"But the majority of these workpeople are, wisely or unwisely, averse to incorporation with the burgh. They say their roads are good enough, they get the same water as the burgh, their lighting is sufficient, most of the district has provisions for scavenging and drainage, and their rates are less than those of the burgh, and they urge that in these circumstances they are justified in preferring to hold aloof from the burgh, and that their refusal of consent settles the matter. If that last argument is sound it is conclusive, but I find no foundation for it in the statute. The only two instances in which the Act recognises a veto are when the extension of the burgh would encroach on another burgh or another county. But, say the objectors, if the proposal was to constitute Radnor Park into a burgh, then under the Act of 1893 the final disposal of the matter would depend on our own votes. That is true. But the question here is not one of constituting a new burgh, but of extending an old one, and if the question were to be viewed, as they urge, under the conditions applicable to the creation of a new burgh, then in a poll of the 22,000 inhabitants of the locality the vote of the 2000 would be overborne by the vote of the 20,000.

"I therefore cannot accept the reluctance of the majority of the inhabitants of Radnor Park to be incorporated with Clydebank as decisive of the question, but I think it is what the statute terms 'one of the circumstances of the case' and that it is an important one.

"The objectors further urge that the

extension of Clydebank is sought under the Act of 1892, and that in subsequent years statutes have been past which allow them to obtain, under county control, many or most of the benefits which were previously attainable only by being constituted a burgh or added to an existing one. I think there is much weight in this argument so far as it supplies one of 'the circumstances of the case' which are to be considered in disposing of such an application as the present one. But it did not weigh sufficiently with the Legislature to make it repeal or modify the provisions of the Act of 1892, and by these provisions therefore I must be mainly guided.

"Now, the district proposed to be added to Clydebank is just a suburb whose existence, maintenance, and amenity depend on Clydebank, and I confess I attach little weight to the argument derived from the fact that the inhabitants of this suburb may have to bear assessments on a somewhat higher scale if they are brought within the burgh. I can recognise no right on their part to build their houses on the outskirts of the burgh and say that this for all time gives them an indefeasible right to bear a less share of the burdens of the community of which they form a part than their neighbours. The weakness of human nature might impel them to take such a course if they could, and not improbably it was just for such a reason that the Legislature expressly provided that the boundaries of burghs might be extended in respect of 'the number of dwelling-houses within the area proposed to be included, the density of the population, and all the circumstances of the case, whether it properly belongs to and ought to form part of the burgh.' The statute it will be seen does not mention the wish of the inhabitants of the area proposed to be added to the burgh as a matter specially to be considered, and it does not by authorising the incorporation to be at their instance imply that their consent is requisite, for the initiative is to be taken by the commissioners or council of the burgh. This, I think, rather indicates that the extension is to take place for the sake of the burgh, and the other part of the clause above quoted shows that the extension is to take place on a consideration of the character of the district rather than on the wishes of its inhabitants.

"But the matter of the rates should not be left wholly out of view. If the burgh seeking extension was inordinately burdened with rates or with an immense capital expenditure it might be oppressive to saddle those presently outside the burgh with such a burden against their will. But there is nothing of that kind here—rather the opposite. According to the statement of rates put in by the objectors, the aggregate rates on owners and occupiers in the Radnor Park district have increased over 50 per cent. in three years, namely, from 1s. 6d. per £ to about 2s. 4d., while in Clydebank the increase from 2s. 10d. per £ to about 3s. 3d. is under 14 per cent. And it will be kept in view that these figures as to Radnor Park do not include its parish

rates. The difficulty in comparing the various tables of rates owing to the different assessments they include and the different areas to which the rates apply, makes them somewhat unsafe to rely upon. The impression left on my mind by the explanations of the witnesses was that the actual difference in the rates at present would be about 7d. in the £ in favour of the suburbs as compared with the burgh. But then, of course, the rate in the burgh will be more uniform, and if the suburb was to be as thoroughly cared for as the burgh the rates of the small community could hardly fail in the end to exceed those of the large community.

"The inhabitants of Radnor Park also object to being saddled with a share of the cost of providing municipal buildings for Clydebank. But if they are incorporated with Clydebank they will get as much use of them as the inhabitants of the existing burgh. On the other hand, the burgh urges that if it is to have a public park, as it wishes, this park will have to be in Radnor Park, and if extension is not granted, the inhabitants of the latter area will get more use of the park—though they will pay nothing for it—than the inhabitants of the burgh; not unreasonably therefore they have deferred going on with the park till they know the fate of this inquiry.

"The statistics as to Radnor Park are given in the useful statement put in by the objectors. The estimate of the population of the burgh is based on the number of inhabited houses, and is, I think, shown to be below the actual number, and in any event it does not include the increase since June 1900. From the statement it will be noticed that the acreage of the district proposed to be added to the burgh is 291, the population 2168, the number of occupied houses 382, and the valuation £8642. This seems to me to be an area answering the requirements of the Act. The Kilbowie part of it is said to have only 35 inhabitants to 74 acres, but this is only the rural part of Kilbowie, the more densely inhabited part being included in Radnor Park proper. But in any event, just as my predecessor in constituting the burgh had to include ground that, as above explained, is unsuitable for residences, so I, in extending the burgh, cannot cut out those parts of an area that naturally accrues to the burgh from the rest of such area.

"From the above statement it will be noticed that in the last ten years the population of Radnor Park has only increased 50 per cent. as against 100 per cent. in the burgh. But on its inclusion in the burgh, with more and better accesses, better roads, pavements, lighting, drainage, &c., and with the public park in its margin, the increase in population will probably become very rapid.

"On the whole case, therefore, I am of opinion that the burgh of Clydebank has presented a strong case for extension of its boundaries, that such extension can only take place at present in the direction of Radnor Park, and that the area proposed to be included properly belongs to and

forms part of the burgh, and should be included therein.

"As regards Third Part district, it is quite different. The population is sparse, and the district is purely agricultural. It is not naturally shaped so as to form part of the burgh, and the people of Clydebank have not as yet shown any wish to resort to it for their homes. It may be that at some future period, when Radnor Park gets crowded, it may be necessary to include the land to the north-east, and in that event Third Part district might fitly fall also to be included. At present I see no call to do so."

On 18th April the Sheriff issued a deliverance giving effect in detail to his interlocutor of 21st February.

Against this deliverance the County Council and the other respondents presented a petition, in which they set forth the following grounds on which they objected thereto—"The burgh of Clydebank came into existence in 1886, and had then a declared population of 5000. The estimated population now is about 19,000. The increase has resulted chiefly from the establishment of shipbuilding and engineering works within the burgh whose inhabitants are almost exclusively of the artisan class. This resident population is housed upon an area of about 90 acres out of a total of 882, and the amount of building land within burgh suitable and available to meet any further increase of population is about 220 acres. While there is thus ample extent of building ground within burgh, the demand for house accommodation is not pressing, and the building trade has of late years not been active. The factors in this result are the maintenance by the railway companies of a system of workmen's trains at cheap fares, and the preference of the working classes for residence in Glasgow, which affords a wider range of employment for their families. The workmen who travel daily to and from Clydebank are over 10,000 in number, and if new works should be established within the burgh it is to be expected (having regard to existing facts) that fully three-fourths of the workmen will travel daily by train. As indicating how little demand there is for house accommodation within burgh at present, it may be observed that for some time there has been in the market an area of 22 acres of ground suitable for tenements, and situated within 200 yards of Messrs Singer's works. It has not been taken up although several thousand hands are employed by Messrs Singer, and ground immediately adjoining is occupied by first-class tenement property. The said area of 220 acres now available and suitable within burgh is unrestricted ground, and would be taken up if a demand existed.

"The present boundaries of the burgh are convenient and well defined, consisting of the river Clyde upon the south, the Duntocher Burn upon the west, the Yoker Burn (for a considerable distance) on the east, and the line of the Glasgow, Dumbar-ton, and Helensburgh Railway on the north.

"On crossing the northern boundary at Kilbowie into the area proposed to be annexed, there are no houses at all for a distance of about 300 yards. At that point there is a terrace of small houses, and the ground then rises sharply towards Radnor Park, which is about half-a-mile beyond the boundary. Radnor Park is the most densely populated part of the 291 acres affected by the Sheriff's deliverance, but its population is only 12·6 per acre. In Kilbowie it is 5 per acre, and in Upper Dal-muir 2·3 per acre. Ten years ago (in 1890-91) the population of Radnor Park was about two-thirds of its present number, but in the last three years there has been little building although the ground is in the market for that purpose, and the proprietors have made sewers, and otherwise endeavoured to develop their properties. In this outlying district, just as in Clydebank, there is a large acreage of unrestricted building land, and the extension of the burgh boundaries cannot have any effect whatever upon its price or the demand for it. Builders have hitherto provided houses both within and without the burgh when they saw their way to a profit, and the same rule will guide them always.

"The reasons which moved the Sheriff to approve of the proposed extension are set forth in a note appended to an interlocutor of 21st February 1901, which interlocutor and note are printed and referred to.

"1. The Sheriff's first point appears to be that only 40 acres (instead of 220) are available within burgh for the building of residential property. This conclusion is contrary to the evidence led, and is reached to some extent by excluding from the category of land so available an area of 140 acres, upon the ground apparently that it is unavailable because it is unbuilt on. The inference is not admissible, and in point of fact the evidence of the estate agents was to the effect that the ground was in the market. They also produced a feuing-plan, upon which the land was shown as laid out for residential property. That chemical works are established in proximity to one corner of the area cannot (as suggested) have a detrimental effect upon it as feuing land, because there is already first-class tenement property equally close to said works and fully occupied. The question of access is one of no difficulty as is suggested. There are already three accesses, and difficulties of finance are inapplicable to the circumstances of this estate. In point of fact the cause of this and other ground being unbuilt on is that the demand for houses in Clydebank and vicinity is not so strong as to make building profitable to either proprietors or builders. Further, a surplus population is not overflowing into the county because of want of accommodation. The rate of increase during ten years has been twice as great within burgh as outside, but the demand in both quarters has decreased. It is submitted, accordingly, that even if lack of building land within burgh were a proper ground for extension (which is denied), the facts raising the point do not exist in the present case.

"2. The Sheriff has given no sufficient weight to a circumstance most material against extension, viz., the preponderance of opinion within the district sought to be annexed. This has been tested by two public meetings within the district, at the latter of which representatives of the burgh attended to explain the alleged benefits of the proposal. Upon a vote being taken there voted for the proposal six only out of 100 at the first meeting, and twelve out of 130 at the next. Counter petitions were taken round the district for signature. For annexation there were 70 inhabitant occupiers, and against were 270 householders and 29 out of 31 resident owners. It is admitted that such a test of local opinion would be conclusive if the question concerned the original adoption of the Police Act, and in the practice of Parliament before its committees no countenance is given to enforced incorporation against the will of a distinct majority.

"3. The views of the majority should have exceptional weight given to them in the present case. It was admitted in evidence by witnesses cited on behalf of the burgh proposal that the conditions of the district proposed to be annexed will be in no way improved by its inclusion. The powers conferred upon county authorities since 1889 to effect local improvement have been taken full advantage of within said district by the county authorities of Dunbartonshire. Special bye-laws under the Public Health (Scotland) Act 1897 have been passed and duly approved by the Local Government Board, securing the regulation of new buildings, the provision of open spaces, &c. The highways, private streets, and footways are subject to the district committee under powers conferred by the Local Government Acts and the Public Health Act. In 1897 the larger and more populous part of the area sought to be annexed was formed into a special district for lighting and scavenging, and further extension may be obtained when required. Similarly a special district for drainage was formed on 29th September 1899, although its final definition was delayed by an appeal to the Sheriff. The Eastern District Committee has also largely extended, and is now further extending, the water supply of the Duntocher and Dalmuir Special Water Supply District, within which the present burgh and the area proposed to be annexed are both included. On this account a loan of £15,000 was necessary, in addition to existing debt for water supply of £29,946. A new hospital for the use of the county is also in course of erection. The proposal of the burgh accordingly is not to extend the benefits of municipal government to a district which is without them and desires them, but to force municipal government upon a district already fully equipped and well administered by the county.

"4. The proposed change of administration, further, will result in an immediate large increase of rates to the district annexed. This is admitted, and the Sheriff is of opinion that the increase will amount to

7d. in the £. It will probably amount to more, but in any case the advance in the rates within the next few years will greatly exceed the sum of 7d. A sum of £30,000 is being expended upon a public hall, library, baths, &c., and a further sum of £25,000 upon pavements within burgh. These two sums alone will involve an addition of 9½d. (falling to 5½d.) on the rates for a period of thirty years, and no equivalent will be obtained by the annexed district. The burgh authorities also propose to buy a public park at a cost of £9000, to erect a refuse destructor at a cost of £6000, to establish electric tramways at a cost of £30,000, and to supply electric light and build workmen's houses at a cost not yet estimated. These projects will result in heavy additions to the rates, without any compensating benefit to the district annexed. That district does not in any proper sense 'form a part' of Clydebank. It has grown up under county management, and although a number of the inhabitants are employed in Clydebank it is distinct in its interests and economy."

Answers were lodged for the Commissioners of Clydebank.

At the hearing the objectors argued that the Sheriff was wrong in his construction of section 11 of the Burgh Police Act 1892 (quoted *supra*), in so far as he had disregarded the evidence relating to the wishes of the inhabitants of the localities which the burgh proposed to annex. These wishes formed one of the "circumstances of the case" on which the Sheriff was directed to base his judgment. They also stated the considerations set forth in the extract quoted from their petition.

The Commissioners of Clydebank argued that the question which the Sheriff had to consider was whether the locality it was proposed to annex properly belonged to and formed part of the burgh. That question had been decided by the Sheriff as a question of fact in the affirmative, and the Court would not disturb his judgment on a question of fact—*White v. Magistrates of Rutherglen*, Jan. 28, 1897, 24 R. 446; 34 S.L.R. 387. Section 11 did not make any reference to, or lay any stress upon, the wishes of the inhabitants of the locality which the burgh proposed to annex.

At advising, the judgment of the Court (The LORD PRESIDENT, LORD ADAM, LORD M'LAREN, and LORD KINNEAR) was read by

The LORD PRESIDENT—The proceedings before us originated in a petition presented by the Commissioners of the burgh of Clydebank to the Sheriff of Dunbartonshire praying for an extension of the boundaries of that burgh.

The burgh was constituted in the year 1886, under the General Police and Improvement (Scotland) Act 1862. It is divided into four wards, and is governed by twelve Commissioners. The boundaries of the burgh were defined in a deliverance by the Sheriff, dated 1st September 1886. The area within the burgh is 882 acres, and it is bounded on the west by the Duntocher or Dalmuir burn, on the north by the Glas-

gow, Dumbarton, and Helensburgh Railway, on the east to a considerable extent by the Yoker burn, and on the south by the river Clyde. The population of the burgh in 1886 was about 5000, and it is now about 19,000. The valuation in 1886 was about £37,000, and it is now £92,607. The burgh was formed into a special police district in 1888, and twenty constables are stationed in it. The highways in the burgh, which extend to upwards of three miles, were taken over by the Commissioners in 1892.

The petition prays for an addition to the burgh of 291 acres in West Kilpatrick parish, and of 38 acres in East Kilpatrick parish. As the Sheriff has declined to annex the last-mentioned area to the burgh, nothing further need be said in regard to it. The number of occupied houses in the area of 291 acres in West Kilpatrick parish was in 1901 382, the population was 2168, and the valuation was £7713. The petition is opposed by (1) the proprietors of villas in Upper Dalmauir, (2) residents in Radnor Park and Kilbowie, (3) the Landward Committee of the Parish Council of Old Kilpatrick, and (4) the County Council, its Eastern District Committee, and the Standing Joint Committee of the County. The Sheriff, by an interlocutor dated 21st February 1901, granted the prayer of the petition for annexation in so far as it relates to the area of 291 acres in West Kilpatrick parish, and the question which we have to decide is whether he acted rightly in so doing.

The question depends upon the true construction and effect of section 11 of the Burgh Police (Scotland) Act 1892 as applied to the circumstances of the case. That section provides, *inter alia*, that it shall be lawful for the Sheriff, "after hearing all parties interested," from time to time to revise, alter, extend, or contract the boundaries of such burghs, but not so as to encroach on the boundaries of any other burgh, and declares that "the Sheriff or Sheriffs in revising the boundaries of a burgh shall take into account the number of dwelling-houses within the area proposed to be included, the density of the population, and all the circumstances of the case, whether it properly belongs to and ought to form part of the burgh, and should in their judgment be included therein." The important question therefore is, whether the area proposed to be added, and which the Sheriff has added, to Clydebank, "properly belongs to and ought to form part of the burgh," in the sense of section 11. The first of these conditions, "properly belongs to," is expressed rather in popular than in strictly legal language, but the meaning of it is sufficiently plain. It, in our judgment, requires that there shall be some such connection between the area proposed to be added and the burgh as to make it proper that that area should form part of the burgh. The leading idea, or at all events one leading idea, of this provision seems to be that the area sought to be annexed must, in so far as built upon, be a continuation of the buildings of the burgh, or in other

words, be an out-growth from the burgh—and this would exclude ground either wholly or mainly rural in its character, or ground which, if or in so far as it is built upon is occupied by a community mainly or to a material extent separate and distinct from the community of the burgh. The requirement that the area should in the judgment of the Sheriff form part of the burgh seems further to show that the area must be built upon to such an extent that rural government and administration are no longer appropriate to it, and that therefore it should be made to form part of an urban community. We do not mean to say that it is necessary that the area proposed to be annexed must all be built upon, or perhaps even nearly all built upon, but we think it is required by section 11 that in so far as it is to be included in a burgh there should be a strong probability that within no great length of time it will be occupied by buildings which will make it distinctly urban in character. Further, the statute does not seem to contemplate that if the ground is already occupied by an urban community different and separate from the community of the burgh, or if it is substantially in rural occupation, or in occupation not in its character urban, as for example by separate houses or villas each having a garden or grounds, it should be added to the burgh. The question, therefore, in our view, comes to be whether the area which the Sheriff finds should be added to the burgh, in a reasonable sense fulfils the conditions now stated.

In this connection it is to be observed that the area proposed to be added to Clydebank is severed from the existing burgh by the Glasgow, Dumbarton, and Helensburgh Railway line—which we understand is upon an embankment about 20 feet high—the communication between the burgh and the area proposed to be added to it being had by two roads passing under the railway and two footpaths passing over it. The interposition of such a considerable physical barrier between the existing burgh and the area proposed to be added would preclude the extension to that area of any streets, roads, or lines, or plans of building already existing, or which may hereafter come to exist, in the area of the present burgh. We do not say that such a physical barrier would be fatal to a claim for extension, but its existence is, like that of a river or other important physical feature, a thing to be considered in forming an opinion as to whether the area proposed to be added in a reasonable sense belongs to the burgh and should form part of it.

The first part of the area proposed to be added is Upper Dalmauir, which consists chiefly of villas with gardens, upon which most of the refuse arising from the occupancy of the villas can be and is utilised. It appears that these villas, or most of them, originally belonged to and were occupied by citizens of Glasgow, and that a majority of them are still so occupied, though others are now inhabited by persons employed in the works at Clydebank. We understand

that the ground at Dalmuir Hill is by the titles under which it is held restricted to villas or cottages, a condition unfavourable to, if not inconsistent with, its becoming part of a proper urban community. It appears to us that it cannot be said in any reasonable sense that Upper Dalmuir "belongs to" Clydebank, and we think that no sufficient reason has been shown for adding it to that burgh against the wish of the persons who own or occupy houses or land in it.

The case against the compulsory extension of the burgh so as to include Radnor Park is not so strong as the case against the annexation of Upper Dalmuir, seeing that there are tenement houses and, in at all events one part, a dense population in Radnor Park. We understand that there are there upwards of 300 occupied houses with a large population, but that these houses cover only a small part of Radnor Park. We further understand that there are some tenement houses in Kilbowie, but that the rest of that locality is far from being densely populated. We do not know whether the petitioners would press for the annexation of Radnor Park if Upper Dalmuir and Kilbowie were not also to be annexed, but it would be plainly inexpedient to sanction fragmentary additions of no great size with awkward and arbitrary boundaries.

The county authorities and others who petition against the Sheriff's judgment allege that the area in question, which comprises the districts of Upper Dalmuir, Radnor Park, and Kilbowie, and is at present administered by the county authorities, forms a valuable part of the county for purposes of assessment. They say that the sole motive for the burgh of Clydebank desiring the extension is to obtain an assessable area of high valuation for the purpose of effecting some reduction of the present excessive burgh rates. They further allege that the resident population within the burgh is housed upon an area of about 90 out of a total of 882 acres, and that the extent of building land within the burgh suitable and available for meeting any further increase in the population is about 220 acres. They add that while there is thus ample extent of building ground within the burgh, the demand for house accommodation there is not pressing, that the building trade has not of late years been active, that some of the witnesses think that Clydebank is already overbuilt, and that the absence of demand for houses is due to the fact that the railway companies, by a system of workmen's trains at cheap fares, meet the wants of the working-classes by enabling them to reside in Glasgow or in the Vale of Leven, where they prefer to reside because better employment can be obtained for their families there than in or near Clydebank. The Sheriff thinks that only about 40 (not 220) acres are available for building within the burgh, and probably the quantity suitable and available for that purpose is somewhere between these figures. We understand that the area available for building dwelling-houses is reduced to 40

acres by deducting from the ground not *de facto* occupied by buildings certain areas which are said to have been dedicated to public works, and areas which are alleged to be unsuitable for dwelling-houses because the ground is marshy and low-lying, but in any view it is not at present occupied by buildings. Whatever the cause or causes may be, the building ground in the burgh is not at present nearly exhausted. There is evidence that over 100 acres of Barnes Estate are available and suitable for building in Clydebank, and that, allowing for a population of 200 per acre, a very large number of persons could still be housed within the existing burgh. There seems to be no reason for supposing that if new works are established within the burgh a large proportion of the workmen employed in them will not live elsewhere than in the burgh, travelling to and from it daily by train, as so many at present working within the burgh prefer to do.

It appears that on crossing the northern boundary of the burgh at Kilbowie into the area proposed to be annexed, no houses are met with for a distance of about 300 yards, where there is a terrace of houses, and that the ground then rises towards Radnor Park, which is about half-a-mile beyond the boundary. Radnor Park is, as already stated, the most densely populated part of the 291 acres affected by the Sheriff's deliverance, but we understand that its population is only 12·6 persons per acre, while in Kilbowie the population is 5 per acre, and in Upper Dalmuir 2·3 per acre. There seems to be in the area proposed to be added a large extent of unrestricted building land, but although it is still in the county, with rates greatly lower than the rates in the burgh, there is not any active demand for it for building purposes. One of the points which under section 11 of the Act of 1892 requires to be considered is the density of the population of the area proposed to be annexed, and we think that the population of the area to which the present question relates could not reasonably be described as being dense.

Although section 11 of the Act of 1892 does not contain any express provision that weight shall be attached to the wishes or opinions of the persons resident in the area proposed to be added to a burgh, the provision for the Sheriff's "hearing all parties interested" shows that all just or legitimate interests are to be considered, and where, as in the present case, annexation to the burgh would lead to a large increase (probably at least 7d. in the £) in the rates payable by the persons in the area annexed, we think that their objections and their wishes, when reasonable in themselves as they appear to be, should not be disregarded. It was the practice of Parliamentary Committees in dealing with extension bills to attribute much importance to the wishes of the inhabitants of the districts proposed to be annexed. Further, the wishes expressed by the persons who in the present case object to the annexation are sustained by

reasons of much weight. If the effect of leaving the territory in question in the county would be to prevent it from having the benefit of the sanitary and other equipments appropriate to its existing condition, this would afford an argument in favour of annexation. But it appears from the evidence that this would not be the result of refusing the petition. Special bye-laws under the Public Health (Scotland) Act 1897 have been passed and approved of by the Local Government Board providing for the regulation of new buildings, the acquisition of open spaces, and other advantages for the locality. The highways, private streets, and footways are managed by the District Committee of the County under powers conferred by the Local Government Acts and the Public Health Act, and it is not, in our judgment, proved that the existing management is inadequate to the requirements of the locality. It further appears that in 1897 the larger and more populous part of the area proposed to be annexed was formed into a special district for lighting and scavenging, and that in like manner a special drainage district was formed in September 1899. The water supply of the Duntocher and Dalmuir Special Water Supply District includes both the existing burgh and the area which it desires to have annexed, and it is being largely extended at a cost (apparently) of nearly £40,000. A new County Hospital is also being built. Although some of the witnesses for Clydebank say that Radnor Park is not adequately lighted, the lighting seems to be sufficient for the purposes of the population by which it is inhabited. It thus appears that although the area proposed to be added to the burgh is not subject to full municipal regulation, it is equipped with such administrative provisions as the persons resident in it consider to be adequate and appropriate to their requirements, and we cannot say that the view which they take in this matter is erroneous or unreasonable. A point is made by Clydebank as to the drainage of the area in question being carried into its sewers, but in the absence of evidence to the contrary it is to be presumed that this is done in the exercise of some legal right or under some lawful authority. It is not an unnatural result, as the burgh is on a lower level than the area sought to be annexed, and we understand that one or more of the channels described as sewers were formerly open water-courses into which the area in question was drained before the burgh of Clydebank came into existence.

A circumstance which seems to have been a potent factor both in prompting the application for the extension of Clydebank and in stimulating the opposition to it is that the municipal authorities of the burgh have embarked, or intend to embark, upon municipal enterprises of a somewhat ambitious kind. We understand that a sum of about £30,000 is being expended by them upon a public hall, library, baths, and similar equipments, while about £25,000 is being expended upon pavements within the

burgh. It appears that the burgh authorities also propose to purchase a public park at a cost of about £9000, to erect a refuse destructor at a cost of about £6000, and to establish electric tramways at a cost of £80,000, as well as to supply electric light, and to build workmen's houses at a cost not as yet ascertained. It is plain that the execution of these municipal works must result in a large addition to the rates, which the residents in the district proposed to be annexed would have to pay if the Sheriff's judgment was adhered to. Whatever view may be taken of the wisdom of the proposed expenditure, it is plain that the inhabitants of the area which the burgh desires to annex have a most legitimate interest to resist an annexation—the effect of which would be to render them liable to contribute to it—if as they think they would not obtain any equivalent or adequate benefit from it.

The question therefore comes to be, whether the conditions which section 11 of the Act of 1892 specifies as conditions-*precedent* to annexation have been satisfied, and for the reasons now given we consider that they have not.

We may add that in 1890 the burgh of Clydebank applied for an extension of its boundaries by taking in 400 acres (including the 291 acres now in question), and that Sheriff Blair refused the application in February 1891. We have not, however, proceeded upon this in arriving at the opinion now expressed, as there have undoubtedly been a great increase in the population, and other changes of circumstances in the burgh and the neighbourhood since that time.

We regret to have to differ from the Sheriff, who, as his full and able note shows, considered the case very carefully; but it appears to us that he has erred in the application of section 11 of the Act of 1892 to the facts—proceeding too much upon speculations as to what is likely to occur in the near future in regard to the development of the burgh and neighbourhood, and anticipating that the extension of the burgh would lead to building within its extended boundaries. It is quite right to look so far to the future, *e.g.*, in regard to the extent of ground which should be added if a case for some annexation is made out, but the decision of the question whether there should be any annexation must depend mainly upon the condition of things existing when it is proposed.

Upon the whole matter, we are of opinion that the Sheriff's interlocutor should be recalled, and that the prayer of the petition should be refused.

Counsel for the County Council and others moved for expenses.

Counsel for the Commissioners of Clydebank submitted that neither party should be found entitled to expenses, on the ground that the case was in substance a question of local administration and not a litigation, and that in such cases it was not the practice to award expenses—*White v. Magistrates of Rutherglen*, January 28, 1897, 24 R. 446, at p. 458.

LORD PRESIDENT—It appears to me that the case of *White v. Magistrates of Rutherglen* (24 R. 446) is not an authority for the proposition that under no circumstances can or should expenses be awarded to the persons who have successfully resisted an application of this kind. A similar application was made by the burgh of Clydebank in 1890, and it was successfully resisted, the petition having been refused by Sheriff Blair in 1891, and the persons (or the interests) who were then successful have had to defend themselves again. I think it is not doubtful that the Court has power to award expenses, and that this is a clear case for awarding them to the successful objectors. Serious oppression might result if suburban owners or rural administrative bodies could be called upon to defend themselves again and again at their own expense from such applications by a wealthy burgh. Whether this is a litigation or an administrative proceeding, the unsuccessful applicants should, in the circumstances of the present case, pay the expenses of the parties whom they convened and who have successfully defended themselves. I propose that the burgh of Clydebank should be found liable in expenses to the objectors both here and before the Sheriff.

LORD ADAM concurred.

LORD M'LAREN—My only doubt is whether, seeing that this is a statutory proceeding, our jurisdiction extends to the awarding of expenses incurred in the inferior Court. That is a question on the terms of the statute, and it is never safe to express an opinion on the construction of a statute without having it read and hearing argument on it. As this point was not taken, I do not need to consider it for the purposes of the case. As to the expenses in this Court, I concur in the most unqualified sense that the objectors should be found entitled to them.

LORD KINNEAR concurred.

The Court pronounced this interlocutor:—

“Recal the deliverance of the Sheriff dated 18th April 1901: Grant the prayer of the petition, and decern: Find the petitioners entitled to the expenses incurred by them in the proceedings before the Sheriff and in this Court, and remit,” &c.

Counsel for the County Council of Dumbartonshire (Respondents and Petitioners)—Jameson, K.C.—Horne. Agent—A. S. Douglas, W.S.

Counsel for the Commissioners of Clydebank (Petitioners and Respondents)—Salvesen, K.C.—Munro. Agents—Douglas & Miller, W.S.

Tuesday, November 5.

FIRST DIVISION.

THE COMMISSIONERS OF THE BURGH OF BLAIRGOWRIE AND OTHERS, PETITIONERS.

Burgh—Burgh of Barony—Town Council—Police Commissioners—General Police and Improvement (Scotland) Act 1862 (25 and 26 Vict. cap. 101), sec. 22—Burgh Police (Scotland) Act 1892 (55 and 56 Vict. cap. 55), secs. 23, 24, and 25—Town Councils (Scotland) Act 1900 (63 and 64 Vict. cap. 49), secs. 8 and 33.

B. was a burgh of barony constituted under charters which provided for the appointment of a town council. The General Police and Improvement (Scotland) Act 1862 (25 and 26 Vict. cap. 101) was adopted in the burgh, and separate commissioners were elected under that Act, the town council under the charters remaining unaffected. After the passing of the Burgh Police (Scotland) Act 1892, one-third of the commissioners elected under the Act of 1862 retired in November 1893, and one-third in each succeeding year, but an entirely new election of commissioners did not take place. On a petition presented under section 17 of the Act of 1892 and section 113 of the Town Councils (Scotland) Act 1900, held (1) that the commissioners under the Act of 1862 became the commissioners under the Act of 1892 in terms of sections 23 and 24 of the latter Act, and that, as the burgh in question was one to which the provisions of section 24 and not the provisions of section 25 were applicable, it was not necessary to hold an entirely new election after the passing of the Act of 1892; (2) that the property held by the town council under the charter passed under section 22 of the Act of 1862 to the commissioners under that Act, and so passed to the commissioners under the Act of 1892; (3) that the commissioners under the Act of 1892 now constituted the town council of the burgh in the sense of the Town Councils (Scotland) Act 1900; (4) that the charters and the town council under them had been superseded by the Act of 1892 or the Act of 1900; (5) that it would not be competent in future to elect any town council under the charters, or otherwise than in accordance with the Act of 1900; and interlocutor pronounced on the petition *finding and declaring* accordingly.

The General Police and Improvement (Scotland) Act 1862, section 22, enacts as follows:—“Notwithstanding anything in this Act in the contrary implied or expressed, and whether this clause be adopted by any burgh or not, it is hereby enacted that in all cases where the management of the police affairs of any burgh is transferred from any existing commissioners of police or other persons to the magistrates and council of such burgh, or to the commissioners