

that there has been no specific possession of the shore as such which would exclude the Crown right of property if it existed. If there be no right of property there is nothing abnormal in a conveyance which expressly includes the shore; and no reason has been suggested for holding that it must be ineffectual. On the contrary, the pursuer's counsel have shown by many examples that in these islands it is a common and familiar form to describe the subjects of a conveyance as extending from the full to the lowest ebb; and as matter of fact, the pursuer's property, if his claim is sustained, will extend no farther to the sea than that of his neighbours. It is suggested that the conveyance is in some respects feudal in form. But that arises only from a misapplication of forms which were probably familiar to the conveyancer who drew the deed to a subject to which they are not properly applicable. This appears to me to be a point of no significance, because it has been decided in *Beaton v. Gaudie* that sasines neither granted by the Crown nor by a subject superior deriving right from the Crown do not indicate that the lands have been feudalised.

The result is that the pursuer and his predecessors have held the subjects in dispute for eighty years upon a title which has been made public by registration in the Register of Sasines; and that no competing right can be alleged except upon the assumption, which I hold to be unsound, that the land in question is held feudally of the Crown. I therefore agree with your Lordship and the Lord Ordinary.

LORD M'LAREN was absent.

The Court adhered.

Counsel for the Pursuer and Respondent
 —Salvesen, K.C.—Galbraith Miller. Agent
 —William Balfour, S.S.C.

Counsel for the Defenders and Reclaimers
 —Johnston, K.C.—Craigie. Agents —
 Mackenzie & Kermack, W.S.

Friday, March 20.

FIRST DIVISION.

[Dean of Guild Court,
 Glasgow.]

NISBET v. FORSYTH.

Burgh—Street—Building Regulations—Rights of Proprietors—Right of Proprietor of Ground to Build under Surface of Street—Glasgow Building Regulations Act 1900 (63 and 64 Vict. c. cl.), sec. 20.

The Glasgow Building Regulations Act 1900 (63 and 64 Vict. c. cl.), sec. 20, enacts as follows:—"The Dean of Guild shall not without the consent of the Corporation grant decree for the erection or re-erection of any building upon ground adjoining any street unless on the condition that one-half of the width of such street, measuring

such half from the centre of such street, towards such ground shall be cleared of all structures, if any existing thereon, and shall, subject to the provisions of the Police Acts, be wholly dedicated to the public for street purposes, and this condition shall be presumed to be made by the Dean of Guild in every decree granted by him."

Held that section 20 of the Glasgow Building Regulations Act 1900 did not prevent the owner of a piece of ground, which extended to the middle of a street, from putting his property under the level of the street to all ordinary and lawful uses, and, in particular, that the dedication of the street to the public for street purposes did not preclude such owner from excavating and building under the street to its centre.

Burgh—Building Regulations—Rights of Proprietors—Buildings of Warehouse Class—Right to Increase Cubic Content of Existing Warehouse already above 350,000 cubic feet—Glasgow Building Regulations Act 1900 (63 and 64 Vict. c. cl.), sec. 65.

The Glasgow Building Regulations Act 1900 (63 and 64 Vict. c. cl.), sec. 65, enacts as follows:—" (1) Except as in this section provided, no building of the warehouse class shall be erected without the consent of the Corporation if such building extend to more than three hundred and fifty thousand cubic feet, unless such building is divided by party walls in such manner that no division of such building shall extend to more than three hundred and fifty thousand cubic feet. No addition shall without such consent be made to any building of the warehouse class or to any division thereof so that the cubical extent of any such building or of any such division shall exceed three hundred and fifty thousand cubic feet."

Held that under section 65 of the Glasgow Building Regulations Act 1900 the owner of an existing building of the warehouse class, the cubic content of which was already above 350,000 cubic feet, was not entitled to make additions increasing the cubic content of the building unless and until the consent of the Corporation had been obtained.

Robert Wallace Forsyth, warehouseman, 1 Renfield Street, Glasgow, presented a petition to the Dean of Guild Court at Glasgow for a lining of his property and for authority and warrant for proposed additions conform to plans produced.

The petitioner was proprietor of a piece of ground bounded on the south by Gordon Street, on the east by Renfield Street, on the north by the property of Mr Stuart Cranston along the centre of Renfield Lane, and on the west by the property of Messrs J. & W. Mackillop. On this piece of ground there was a warehouse occupied by the petitioner, and the plans showed that the petitioner proposed to make altera-

tions on this warehouse and to enlarge the basement flat by digging out the sub-soil and building under the surface of Renfield Lane up to its centre. Further, the petitioner, with the concurrence of Stuart Cranston, the adjoining proprietor on the opposite site of the lane, proposed to erect a mutual wall under the centre of the lane *ex adverso* of their respective properties.

Thomas Nisbet, Master of Works, lodged objections, and craved the Court to refuse the petition.

It appeared from the admissions of the parties that Renfield Lane was a private street within the meaning of the Glasgow Police Act 1866 and the Glasgow Building Regulations Act 1900; that the petitioner's building was of the warehouse class within the meaning of the Glasgow Building Regulations Act 1900; that the cubical content of the building as it stood was 690,000 cubic feet or thereby, and that the proposed operations would have the effect of adding 6700 cubic feet or thereby to the building, giving it a total cubical content of about 696,700 cubic feet; that the building was not divided by party walls into divisions not exceeding 350,000 cubic feet each, and that the consent of the Corporation had not been obtained to the operations or to the cubical content of the building being increased in the manner proposed.

The respondent averred, and the petitioner denied, that the consent of the Corporation was necessary to the operations or to the cubical content of the building being increased as proposed.

The respondent averred — "The proposed building operations include a proposal to enclose and use for private purposes in connection with said property one-half of the width of said lane so far as *ex adverso* of said property, while the other half would be now or ultimately sought to be made available for similar use by the said Stuart Cranston. The portions of said private street so proposed to be appropriated are at present occupied for street purposes by a common sewer, and gas, water, and other pipes."

This averment was denied by the petitioner, who explained that the mutual wall was under the lane; that a space was left in the centre of the lane for gas and water pipes, and that the drains were not to be altered; that the proposed operations would not interfere with the use of the lane for street purposes; that the lane was used as a back entrance for the loading and unloading of goods; that any sewers and pipes in the lane were for the use of the owners fronting the lane, who did not oppose the petition, and that there was already a basement flat extending under the lane.

The petitioner pleaded, *inter alia*—"(2) The petitioner being proprietor of one-half of said private street, and the proposed operations not interfering with the use of the said street for street purposes, and the consent of the Corporation not being required, the lining should be granted as craved and the objector found liable in expenses."

On August 7th 1902 the Dean of Guild (GOURLAY) pronounced the following interlocutor:—"Finds in fact (*first*) that the petitioner is proprietor of a plot or steading of ground situated at the north-west corner of Gordon Street and Renfield Street, Glasgow, the said plot or steading being bounded on the south by Gordon Street, on the east by Renfield Street, on the north by the centre of Renfield Lane, and on the west by the property of Messrs J. & W. M'Killop; (*Second*) that on the said plot or steading of ground there has been erected a warehouse in which the petitioner carries on his business of warehouseman; (*Third*) that the petitioner proposes to make alterations on said warehouse, and to enlarge the basement flat thereof, all as shown on the plans and sections produced: Finds in law that the petitioner is entitled to make the said alterations and enlargement as proposed: Therefore repels the objections stated for the Master of Works, and grants warrant to the petitioner to make the alterations and enlargement specified in the petition and as delineated on the plans signed as relative hereto, but under the condition that the proposed alterations are executed in a tradesmanlike manner: Finds the Master of Works liable to the petitioner in expenses: Allows an account thereof to be given in, and remits the same when lodged to the Clerk of Court, *qua* Auditor, to tax and report, and decerns," &c.

Nisbet appealed.

Argued for the appellant—(1) "Structures" in section 20 of the Glasgow Building Regulations Act 1900, included subterranean structures such as those proposed. Under the provisions of the Glasgow Police Acts the owners even in a private street had not an uncontrolled right to the *solum* under the street. The dedication of the street to the public for street purposes included the right to carry sewers, as well as gas and water pipes along the street under the surface. The rights of the Magistrates under the Police Acts to the subsoil below the surface of a street to such depth as was necessary for the purpose of constructing sewers and laying gas and water pipes were recognised by Lord President Inglis in *Glasgow Coal Exchange Company, Limited v. Glasgow City and District Railway Company*, July 20, 1883, 10 R. 1283, at p. 1291, 20 S.L.R. 855; *cp. Scott v. Legg*, 1882, 10 Q.B.D. 236. In this respect there was no distinction between a public and private street. The words "any street" in section 20 included both. The proposed operations would thus contravene section 20 by preventing the street from being wholly dedicated to street purposes. (2) It was admitted that the petitioner's building was of the warehouse class dealt with in section 65 of the Glasgow Building Regulations Act 1900, and that the present cubical content of the building was 690,000 feet, and that the proposed operation would add 6700 cubic feet to the building. That being so the provision of section 65 applied. The natural reading of section 65 was that

“such building” meant the building with the addition. If effect were given to the contention of the respondent, that existing buildings already above the limit were excluded, the purpose of the restrictions in the section would be defeated.

Argued for the respondent—(1) What was dedicated to public use was the surface of the street only—per Lord Watson in *Magistrates of Glasgow v. Glasgow and South-Western Railway Company*, May 13, 1895, 22 R. (H.L.) 29, at p. 31, 32 S.L.R. 733. The words of section 20 shewed that the intention was merely to prevent the erection of structures “upon” the street, and so prevent interference with the public use of the surface. Section 20 could not be read as setting apart for public use an indefinite space under the surface of the street, simply because it was convenient to lay sewers and pipes in streets. The proposed cellars under the street would not interfere with the public use of the surface, and it would be unreasonable to construe section 20 as precluding an owner in a private street from putting his property to an ordinary use. A provision in a private Act of Parliamentary was to be construed strictly when it involved the infringement of private rights, and it was never contemplated when this Act was passed that the power of an owner to erect cellars in his property under the street should cease. (2) Section 65 of the Act did not apply to additions to existing buildings which were already above the 350,000 cubic feet limit, but only to new structures. The words “shall be erected” shewed the intention to be to make a rule for the future merely. Also the words “so that” in the second sentence of section 65 indicated that where the building already existing, without the addition, exceeded the limit the provision had no application. The intention of the Act was to diminish the risk of fires, but if there already existed a large building, the risk was not materially increased by such a small addition as was here proposed.

At advising—

LORD PRESIDENT—The first question in this case is whether the petitioner is entitled to make certain excavations and execute certain building operations under the street level in Renfield Lane, Glasgow, or whether he is restrained from doing so by the provisions of section 20 of the Glasgow Building Regulations Act 1900.

The petitioner is proprietor of a piece of ground bounded on the south by Gordon Street, on the east by Renfield Street, on the north by the property which formerly belonged to William Govan's trustees, but has now been acquired by Stuart Cranston, along the centre of Renfield Lane, and on the west by the property of Messrs J. & W. M'Killop. Upon this piece of ground there is a warehouse occupied by the petitioner, and he proposes to make alterations upon it, and in particular to enlarge the basement flat, by building under Renfield Lane to its centre, up to which his right of property extends. The petitioner and Stuart Cranston, the adjoining proprietor on the oppo-

site side of the lane, propose to erect a mutual wall under the centre of the lane, *ex adverso* of their respective properties, and it would appear that if the petitioner is entitled to excavate and build under the south half of the lane, Mr Cranston would be entitled to do the same under the north half.

By section 20 of the Glasgow Building Regulations Act 1900 it is provided that “The Dean of Guild shall not, without the consent of the Corporation, grant decree for the erection or re-erection of any building upon ground adjoining any street, unless on the condition that one-half of the width of such street, measuring such half from the centre of such street towards such ground, shall be cleared of all structures, if any, existing thereon, and shall, subject to the provisions of the Police Acts, be wholly dedicated to the public for street purposes, and this condition shall be presumed to be made by the Dean of Guild in every decree granted by him.”

There is no question as to any existing or proposed structure above the level of Renfield Lane, but the Master of Works maintains that the dedication of it to the public for street purposes precludes the petitioner from carrying out the underground works which he proposes to execute. In particular, the Master of Works maintains that the placing of sewage, gas, water, and other pipes or things, by the public authorities in or under streets, are street purposes within the meaning of section 20, and that the excavating of the ground below Renfield Lane with a view to such uses as the petitioner proposes to put it to is inconsistent with the street being kept *in statu quo* to be ready for the reception of any pipes or other things which the municipal authorities may at any time desire to lay in it. I concur, however, with the Dean of Guild in thinking that this is not a sound or reasonable construction of section 20.

It appears to me that the main object of that section is to secure that the street shall be kept clear of all structures upon or above the street level, and that this leading provision is directed to ensure that the street shall be kept free for the primary use of transit. I do not think that it would be reasonable to hold that the dedication of a street to the public for street purposes should place an embargo, or give right to the municipal authorities to place an embargo, upon the construction of cellars or of buildings which do not to any extent interfere with the street as a place of transit. It does not appear from the information before us under what conditions the municipal authorities are entitled to insist (if they can insist) upon laying pipes or other things under a street; but in so far as section 20 is concerned, it does not by its terms, or upon any reasonable construction, place an embargo upon the owner of ground extending to the middle of the street from putting his property under the level of it to all ordinary and lawful uses.

I therefore think that the Dean of Guild was right in rejecting the contention of the

Master of Works in regard to this matter.

The second question arises under section 65 of the Glasgow Building Regulations Act 1900, which provides (1) that "Except as in this section provided, no building of the warehouse class shall be erected without the consent of the Corporation, if such building extend to more than 350,000 cubic feet, unless such building is divided by party walls in such manner that no division of such building shall extend to more than 350,000 cubic feet;" and that no addition shall, without such consent, be made to any building of the warehouse class or to any division thereof, so that the cubical extent of any such building or of any such division shall exceed 350,000 cubic feet."

It is admitted that the petitioner's building is of the warehouse class within the meaning of section 65 of the Act, as also that its cubical extent as it at present stands is 690,000 cubic feet or thereby, and that the effect of the operations now proposed to be carried out would be to add 6700 cubic feet or thereby to the building, so as to make its total cubical extent about 696,700 cubic feet. It is thus clear that if the building which the petitioner desires authority to erect was a new one, he would not be entitled to construct it without first obtaining the consent of the Corporation, as his present building is already nearly of twice the cubical extent authorised by section 65. Upon these provisions the Master of Works maintained that the petitioner is not entitled to execute the works which he proposes without first obtaining the consent of the Corporation. The petitioner, however, argues that section 65 does not apply, because it has reference to new structures, not to additions to existing buildings, which are already above 350,000 cubic feet in extent. It is true that section 65 does not in terms provide for a case like the present, where the building is already 690,000 cubic feet in extent, but I am disposed to think that, looking to the manifest purpose of the restrictions contained in the section, and to the fact that that purpose would be defeated if the construction contended for by the petitioner was accepted, the more reasonable view is to hold that where the building already extends to more than 350,000 cubic feet, no addition to its cubical area or contents can be made without the consent of the Corporation. I am unable to see any reason for imposing the restriction upon original buildings which would not equally apply to proposed additions to existing buildings.

For these reasons, although I am sensible that the question of construction is a very narrow one, I think that the judgment of the Dean of Guild upon the second point should be altered, and that authority to make the proposed additions to the petitioner's building should be refused unless and until the consent of the Corporation is obtained.

LORD M'LAREN and LORD KINNEAR concurred.

LORD ADAM was absent.

The Court pronounced this interlocutor:—

"Affirm the findings of fact in the interlocutor of the Dean of Guild, dated 7th August 1902: *Quoad ultra* recall the said interlocutor, and find in law that the authority to make the proposed additions to the petitioner's building should be refused unless and until the consent of the Corporation is obtained, and decern: Find no expenses due to or by either party, and remit to the Dean of Guild to proceed as may be just."

Counsel for the Appellant—Dundas, K.C.—Cooper. Agents—Campbell & Smith, S.S.C.

Counsel for the Respondent—Salvesen, K.C.—Younger. Agent—J. Gordon Mason, S.S.C.

Tuesday, March 17.

SECOND DIVISION.

[Sheriff Court at Glasgow.]

M'COSH v. GEORGE CROW & COMPANY.

Contract—Implied Contract—Confidentiality—Breach of Faith—Photograph—Rights of Photographer and Customer—Right of Customer to Prevent Photographer Exhibiting in Studio Enlargement of Photograph.

A photographer, who had taken a photograph for a customer, is not entitled to print copies or make enlargements from the negative either for sale or for exhibition in his studio or elsewhere without the consent of the customer.

A photographer, who in 1893 had taken photographs for a customer, subsequently without instructions from the customer made enlargements from the photographs. The business having been sold and resold several times, and the enlargements having passed by purchase to the several successors, *held (diss. Lord Young)* that the customer was now entitled to have the present proprietor of the business interdicted from exposing the enlargements for sale or exhibiting them in his studio or elsewhere, and ordained to remove the enlargements from the walls of his studio.

In August 1901 Thomas M'Cosh, writer, Glasgow, for his own interest and as tutor and administrator-in-law of his pupil daughter Juana Heredia M'Cosh, and Margaret Wyllie Kirkwood M'Cosh, also daughter of and residing with the said Thomas M'Cosh with his consent and concurrence as her curator-at-law, raised an action in the Sheriff Court at Glasgow against George Crow & Company, photographers and art publishers, Queen's Studio, 136 Buchanan Street, Glasgow.

The pursuers prayed the Court to interdict the defenders from printing, publish-