

communings between the parties in a case where the agreement between them had been reduced to writing—*Inglis v. Buttery & Co.*, 12th March 1878, 5 R. (H. of L.) 87; *Largue v. Urquhart and Ors.*, 12th May 1881, 18 Scot. Law Rep. 491.

For the defenders it was argued that the question was competent, because (a) the alleged written contract contained a reference to the prior correspondence, and (b) the writing in question was not a formal document, and did not profess to contain an exhaustive statement of all the conditions of the contract. In answer it was pointed out that both the elements on which the defenders relied had been present in the case of *Urquhart*, where the question was held incompetent.

Objection sustained and question disallowed.

Counsel for Pursuers—Guthrie Smith—Guthrie. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for Defenders—Robertson—Murray. Agents—Smith & Mason, S.S.C.

Friday, October 21.

FIRST DIVISION.

THE BANFF COUNTY ROAD TRUSTEES, PETITIONERS.

Nobile Officium—*Private Act of Parliament—Authority to Road Trustees to make up List of Bridges after Statutory Period for doing so had Elapsed.*

A body of road trustees, incorporated and acting under a Local Act, having omitted to make up a list of the bridges in their county, in the manner and within the period prescribed by that Act, the Court, on their petition and in the exercise of its equitable jurisdiction, authorised them to make up such a list before a certain day.

The Banffshire Road Trustees were incorporated by and act under an Act passed on 11th June 1866, and known as “The Banffshire Roads Act, 1866.”

By section 6 of that Act the expression “the roads” is declared to mean and include all turn-pike roads and bridges vested in, or otherwise belonging to, the trustees of the county; and the expression “highways” is declared to mean and include all statute-labour roads and bridges within the county.

By section 8 the county for the purposes of the Act is divided into two districts, the first called the Banff or Lower District, and the second the Keith or Upper District.

By section 15 it is provided—“The trustees who shall be qualified at the time shall hold a general meeting at Banff within two months after the passing of this Act, to be called by the convener or the clerk of supply of the county, and they shall hold a general meeting, to be called ‘The Annual General Meeting,’ at Banff, on the thirtieth day of April in each year, or if such day be a Sunday, on the day following; and another general meeting, at Banff, to be called ‘The

Michaelmas General Meeting,’ on the day on which the commissioners of supply of the county hold their annual Michaelmas meeting, or on such other days or at such other place as may be resolved on at any annual general meeting of the trustees.”

By section 53 it is enacted that “Within six months after the first general meeting of the trustees, there shall be prepared, under the direction of the district trustees, lists of the roads and highways in each district which are to be maintained in whole or in part out of the assessments hereinafter authorised, with the length of such roads and highways, which lists shall be reported to the Michaelmas general meeting of the trustees to be held in the year One thousand eight hundred and sixty-seven, and after being examined, adjusted, and approved of by them, shall be held to be the lists of roads to be maintained out of the moneys to be raised by the assessments hereinafter authorised, and which roads shall be classified in accordance with instructions and schedules to be framed by the trustees.”

By section 61 it is provided—“That within six months after the first general meeting of the trustees, they shall cause to be made a list of all the bridges within the county, or upon the boundaries between the counties of Banff and Aberdeen and Banff and Elgin, excepting the Bridge of Spey at Boat of Bog, near Fochabers, as aforesaid, and such list shall be settled and approved of at the first general meeting of trustees thereafter, and such bridges shall be denominated county bridges, and at any Michaelmas general meeting of the trustees notice may be given of any proposed alteration on such list of county bridges, which shall be disposed of by the next Michaelmas general meeting of the trustees, and in such list may be included any new bridge which it is proposed to build.”

The first meeting appointed to be held in terms of sec. 15 was held on 4th August 1866, and thereat the trustees, in terms of sec. 20 of the Act, appointed “the first meeting of the first of Banff District trustees to be held at Banff on 14th September 1866, and of the second or Keith District trustees at Keith on 15th September 1866. These meetings were duly held, and at each the various officials were appointed; and the surveyors of the respective districts were directed to make up lists of roads in terms of section 53 of the statute in consultation with trustees of each parish, and to report to next meeting. The first Michaelmas general meeting of the trustees was held at Banff on 27th September 1866, when the district clerks were directed to get the respective surveyors to make up a list of all the bridges in their respective districts to be denominated county bridges in terms of section 61. At a meeting of the first or Banffshire District trustees, held on 26th January 1867, the clerk reported that he had made up a list of the roads in the various parishes. The meeting examined the list, which was finally approved of, signed by the chairman, and ordered to be reported to the next Michaelmas meeting in terms of the 53d section of the Act; and at a meeting of the second or Keith District trustees, held at Duftown on 2d February 1867, the surveyor submitted a classified list of all the roads in the district, as well as lists of bridges in connection there.

with, made up by him after consultation with the different parish trustees, which lists were amended and approved of by the meeting, and after being docketed by the chairman were ordered to be reported to the next Michaelmas general meeting of trustees in 1867, in terms of the 53d section of the Act. Then at the Michaelmas general meeting of the trustees, held at Banff on 27th September 1867, the lists of roads for both districts were submitted to the meeting, and after being examined, adjusted, and approved, each list was signed by the chairman, and the lists were declared to be the lists of roads for the respective districts to be maintained out of the moneys to be raised by assessment under the Act. In point of fact both these lists included all the bridges within the county of Banff, and referred to all the bridges on its boundaries with the counties of Aberdeen and Elgin. At a special meeting of the trustees held on 28th February 1867, and at the annual general meeting of the trustees held on 30th April 1867, lists of the county bridges in each district were submitted and approved as in terms of the 61st section of the Act, but these lists only specified the bridges on the boundaries of the county between it and Aberdeen and Elgin, and none of the bridges wholly situated within the county."

The present petition was presented by the trustees in the view "that although all the bridges a list of which is appointed to be made up under section 61 of the statute are specified in the lists approved of by the trustees as aforesaid, yet there should have been a separate list made up and approved of in terms of the said 61st section, containing the whole bridges within the county and upon its boundaries."

The petitioners prayed the Court to authorise them to have a list of bridges made up in terms of section 61 of the statute, to be approved of at their first general meeting, or at such time and on such conditions as the Court might appoint.

After hearing counsel in support of the petition—

LORD PRESIDENT—It was the duty of this body of road trustees among other things to cause to be made up within six months after their first general meeting a list of all the bridges in the county under section 61 of the Act. They omitted to do that within the six months, and they now ask for authority to do so notwithstanding the lapse of that time. This appears to me to be quite a case for the exercise of our equitable jurisdiction, and I think the illustration suggested by counsel of proceedings under the Bankruptcy Act is quite in point. Where that statute directs a meeting to be held, or a notice given within a certain time, and that is omitted to be done *per incuriam*, we have on most occasions given authority for it to be done notwithstanding the lapse of the prescribed time. I have therefore no difficulty in acceding to the prayer of this petition.

LORDS DEAS, MURE, and SHAND concurred.

The Lords pronounced this interlocutor:—

"Grant the prayer of the petition, and authorise the petitioners to make up a list of bridges in terms of section 61 of the Banffshire Roads Act 1866, referred to in the petition, such list to be settled and approved of at their first general meeting after the

said list shall have been made up, and that notwithstanding of the period allowed by the said statute for making up said list having expired."

Counsel for Petitioners — Trayner — Watt.
Agent—Alex. Morison, S.S.C.

Friday, October 21.

SECOND DIVISION.

[Sheriff of Lanarkshire.

(Before Lords Young, Craighill, and
Rutherford Clark.)

CAMERON v. FRASER AND OTHERS.

Property—Neighbourhood—Liability of Proprietor for Injurious Effects of Operations on his own Property—Liability not discharged if Operations conducted by an Independent Contractor.

One who performs any operations, however reasonable and lawful, on his own property, must so perform them as to cause as little damage as possible to his neighbour; and it is no defence against an action by that neighbour, on the ground that the operations were conducted so as to cause unnecessary injury, that they were conducted by an independent contractor.

William Cameron, brickburner and grocer, was tenant of the shop No. 58 Cavendish Street, Glasgow, the proprietor of which, as well as of the adjoining building, being the corner house of Cavendish Street and Eglinton Street, was William Fraser, spirit merchant. Warrant from the Dean of Guild to take down the corner house and erect a new tenement on its site, and to occupy a portion of the street for building materials, having been obtained by Fraser, operations were begun in June 1880. Fraser entered into a contract with Galbraith & Company, builders, for the removal of the old and the erection of the new buildings. A barricade was erected within the limits prescribed by the Dean of Guild for the purpose of laying down the building material required. In the course of the operations conducted by the contractors damage was caused to Cameron's goods exposed for sale by the dust caused by the destruction of the old building and by the slackening of lime for the new one. In the course of the operations, also, injury was caused to the chimney of Cameron's dwelling-house, which communicated with his shop, and a quantity of stones, soot, and rubbish in consequence fell into his house, breaking a grate, and doing other damage to his property. He raised this action against Fraser, concluding for £100 as damages for the injury done to his goods and his business, which, he averred, had greatly fallen off in consequence of the inconvenience and annoyance to which his customers had been put through the defender's operations. He also averred that by these operations he had been prevented from access to his coal-cellar, and that the plaster in his dwelling-house was broken and destroyed. The defender denied that any serious loss and inconvenience had been caused to the pursuer, but maintained that if any such had been caused he was not responsible therefor, in respect that he had contracted with an independent contractor to do the work.