

were granted no consideration had been given for them. No money had been advanced, and no debt had been incurred by any of the parties. The bonds remained in the hands of Curror & Cowper, to operate as a security to any of their clients whose money they might happen to have in their hands. In fact, not only the debt, but the whole transaction, was future, unless indeed by the conception of the instrument the defenders became bound to advance the money at some indefinite time. I need not point out the hazards of such an arrangement; but if the defenders bound their client to such an undertaking, they acted entirely without authority; and if it be said that they only bound themselves, it might be a question whether any such obligation for the future was personally undertaken by them under the terms of the conveyances. I remark in conclusion that in any view the bonds could only be available for sums actually advanced under them, and that of the whole sums advanced from money of clients credited after Whitsunday 1878, amounting to £4000, not above £1000 seems to have been advanced before Finnie's stoppage in February 1879, of which Mrs Black's proportional share would not exceed £200.

There is no ground for reflecting on the perfect good faith of the defenders. The temptation to incur these risks was for their clients, not for themselves. They got further involved with Finnie than probably they ever intended, but that is an ordinary result of such erratic proceedings.

LORD YOUNG, LORD CRAIGHILL, and LORD RUTHERFURD CLARK concurred.

The Court adhered.

Counsel for Pursuer (Respondent)—Sol.-Gen. Asher, Q.C.—Strachan. Agents—Mack & Grant, S.S.C.

Counsel for Defenders (Reclaimers)—J. P. B. Robertson—M'Kechnie. Agents—Party.

Wednesday, May 27

FIRST DIVISION.

[Dean of Guild of Edinburgh.

JOHNSTON (PROCURATOR-FISCAL OF THE CITY OF EDINBURGH) v. THE EDINBURGH GAS-LIGHT COMPANY.

Burgh—Dean of Guild—Jurisdiction—Edinburgh Municipal and Police Act 1879 (42 and 43 Vict. cap. 132), secs. 5, 154.

The Dean of Guild Court of Edinburgh has jurisdiction over the regality of the Canongate, in respect that the regality of the Canongate is situated within the police boundaries of Edinburgh as defined by the Edinburgh Municipal and Police Act 1879.

The Procurator-Fiscal of the City of Edinburgh presented a petition in the Dean of Guild Court of Edinburgh praying to have the Edinburgh Gas-Light Company interdicted from proceeding with the erection of certain buildings in Gladstone Court, Canongate.

He averred that the Gas Company were about

to erect a building to be used as a meter testing-house, and that in contravention of the Edinburgh Municipal and Police Acts of 1879 and 1882, as no plans had been submitted to or warrant for the erection of these premises obtained from the Dean of Guild Court.

He also alleged that a complaint had been made to him by a proprietor contiguous to the company, and that the present petition had been presented to ensure that the proposed building should not encroach upon the rights of others, or be attended with danger to the public. It was therefore necessary, he averred, that the respondents should submit plans to the Dean of Guild Court and obtain the usual warrant before proceeding with their operations.

The respondents denied that their operations would be attended with danger or inconvenience to the public, or that they would encroach upon the rights of others. They also denied that any Dean of Guild warrant was necessary.

They averred that their Act of Parliament (3 Vict. c. 13) gave them power to execute the works contemplated; that they had executed similar works without the Dean of Guild's authority upon previous occasions; and that in 1875 the then Dean of Guild had pronounced an interlocutor finding that the company's engineering works were not within the cognisance of his Court, or subject to its control. The Act founded on provides by section 11—"That it shall be lawful for the said Committee of Management . . . to make and erect such retort-houses, gasometer-houses, receivers, and other buildings; to construct and erect retorts, gasometers, cisterns, engines, and other apparatus, cuts, drains, sewers, water-courses, reservoirs, and all other works; and to sink and lay pipes of such dimensions and construction, and in such manner, and at and in such parts and places, within the bounds of the said recited Acts and this Act as the said Company or the said Committee of Management shall think necessary or proper for carrying the purposes of said recited Acts and this Act into execution."

The respondents pleaded—"(1) That they were entitled by virtue of this provision to carry through the works complained of without any warrant by the Dean of Guild."

On 11th February 1885 the Dean of Guild pronounced the following interlocutor:—"Finds that the building proposed to be erected by the respondents is, as shown on the plan, on ground immediately adjoining that of several other proprietors: Finds that the respondents proceeded to erect the building without a warrant, and have maintained that the jurisdiction of this Court is excluded by virtue of the Act 3 Vict. c. 13, sec. 11: Finds that the jurisdiction of the Court is not excluded by the Act, either expressly or by implication: Therefore repels the first plea-in-law stated for the respondents: continues the interdict against the respondents proceeding further with the operations complained of until the warrant of Court shall be obtained: Therefore finds them liable to the petitioner in expenses, &c.

"Note.—The respondents maintained that they were entitled to erect all buildings connected with their works by virtue of section 11 of the Act 3 Vict. c. 13, without requiring any warrant from this Court. The petitioner main-

tained that the Act in question does not confer upon the respondents any higher right than others as regards the jurisdiction of this Court, and separately that if such right existed prior to the passing of the Edinburgh Municipal and Police Act 1879, it has been excluded by that Act. It is thought that the section of the Act founded on by the respondents does not fairly admit of the construction put on it by them. They would on that construction be entitled at their own hand and without notice to erect buildings bounded by public streets or passages and by adjoining properties. The object and meaning of the section appears to be to give the company power and authority to make and erect houses, works, &c., necessary for carrying out the purposes of the Act."

The Edinburgh Gas Light Company appealed to the Court of Session.

After hearing counsel, the Court, by interlocutor of 18th March 1885, allowed the appellants to add a statement and plea as to the jurisdiction of the Dean of Guild within the regality of Canongate.

The additional statement was, that the building which they were in the course of erecting was within the regality of the Canongate, and that the said regality had never been, and was not now, within the jurisdiction of the Dean of Guild Court.

They pleaded no jurisdiction.

The Procurator-Fiscal while admitting that the building in question was within what was formerly the regality of Canongate, denied that the Dean of Guild's jurisdiction was excluded.

Argued for the appellants—The jurisdiction of the Dean of Guild was excluded by the Gas Company's Act, and in all their operations carried on under these Acts the company had never, with two exceptions, applied to the Dean of Guild Court for authority to build. The locality of the proposed operations was the regality of the Canongate, and the Dean of Guild never had any jurisdiction in the Canongate, though, no doubt, the regality of the Canongate was within the police boundaries of the burgh of Edinburgh as defined in the Municipal and Police Act 1879. If anyone had jurisdiction it was the Sheriff. When a public body was authorised to erect buildings in terms of their Act of Parliament, the Dean of Guild could not interfere unless there was danger to the lieges in the buildings proposed. From the time of the Edinburgh Municipality Act 1856 (19 and 20 Vict., cap. 53), sec. 3, to the Edinburgh Municipal and Police Act of 1879, the Dean of Guild had no jurisdiction in the Canongate. The Act of 1879 was not an extending but a consolidating Act, and the words in sec. 154, "within the limits of its present jurisdiction," were inserted to prevent the extension of the Dean of Guild's jurisdiction.

Section 5 of the latter Act provides—"The word burgh shall mean and include the whole territory within the police boundaries as defined in the recited Acts [of 1848, 1854, 1856, 1862, 1857, 1876] and this Act."

Section 154 provides . . . "The Dean of Guild Court . . . shall possess and exercise within the burgh all the rights, powers, privileges, functions, and jurisdictions which are possessed and exercised by the existing Dean of Guild

Court by law or usage within the limits of its present jurisdiction." . . .

Authorities—*Dymock v. Edinburgh and Glasgow Railway Company*, Nov. 27, 1847, 10 D. 158; *Speed v. Philip*, March 16, 1883, 10 R. 795.

Counsel for the respondent was not called upon.

At advising—

Lord President—The first of the two questions raised in this appeal is whether the Dean of Guild of the city of Edinburgh has jurisdiction within what was formerly known as the regality of Canongate, within which the works of the appellants are situated. I do not think it is necessary to enter upon any historical investigation regarding the jurisdiction of the Dean of Guild in this district of the city, for I am willing to assume after what has been stated that prior to 1879 he had no jurisdiction within the regality of Canongate, but I think that jurisdiction was conferred by the 154th section of the Edinburgh Municipal and Police Act of 1879. This section provides that—"The Dean of Guild Court . . . shall possess and exercise within the burgh all the rights, powers, privileges, functions, and jurisdictions which are possessed and exercised by the existing Dean of Guild Court by law or usage within the limits of its present jurisdiction."

According to the contention of the appellants, the limits of its present jurisdiction are the burgh of Edinburgh as extended by the various Extension Acts, but not the regality of Canongate. The term burgh is defined by the interpretation clause to mean the whole territory within the police boundaries, and it is admitted in point of fact that the regality of Canongate is within the police boundaries of the city of Edinburgh. Now, looked at in that light, how is this clause to be construed? Surely in this way, that the Court is to possess and exercise within the police boundaries of the city of Edinburgh all the powers, functions, and jurisdiction which are possessed and exercised by the Dean of Guild Court within the less extended limits of its existing jurisdiction which excluded the regality of Canongate. Is there no extension of the jurisdiction then, and are these not two areas—an extended and a limited area quite distinctly defined—one (according to the view of the appellants) excluding the regality of Canongate, and the other including the whole area within the police boundaries of the city, which confessedly embraces the regality of Canongate, both within the jurisdiction of the Dean of Guild? It is impossible to hold that the Dean of Guild has no jurisdiction within the regality of Canongate, and the new plea for the appellants falls therefore to be repelled.

The second question is, whether the Gas Company are entitled to go on under the powers of their Act of Parliament to erect any building within their own ground without obtaining the usual power from the Dean of Guild Court. The statute which incorporated the company undoubtedly gave them the power to erect buildings from time to time, for it provides—[his Lordship here read section 11 of the Act 3 Vict. c. 13, above quoted].

But every proprietor within the burgh has a right to erect buildings on his own ground subject to this limitation, that he must first of

all obtain a warrant from the Dean of Guild Court, and accordingly I can see nothing in the power given to this company which does not belong to other proprietors in Edinburgh. The Dean of Guild has therefore I think quite properly interfered to prevent the building in question going on until a proper warrant has been obtained.

I think, therefore, that the question on the merits is as clear as the question on the jurisdiction, and that this appeal fails to be refused.

LORDS MURE, SHAND, and ADAM concurred.

The Court refused the appeal.

Counsel for Appellants—Pearson—Graham Murray. Agent—Stuart Neilson, W.S.

Counsel for Respondent—Sol. Gen. Asher, Q.C.—Lang. Agents—Graham, Johnston, & Fleming, W.S.

Wednesday, May 27.

## FIRST DIVISION.

[Bill Chamber.

### RIDDELL v. THE CLYDESDALE HORSE SOCIETY AND OTHERS.

*Interdict—Publication—Private Correspondence—Publication of Judicial Proceedings.*

A society incorporated to aid in preserving the purity of a breed of horses proposed to publish and circulate among its members for their information a report of proceedings taken before a Court in America for the extradition of a party charged with forging false pedigrees to be inserted in their stud-book. In these proceedings letters had been read which were the property of a person in Scotland. These letters with the other proceedings had been reported in the American newspapers at the time. He sought interdict against the publication of the letters and the report. *Held* that the letters as well as the proceedings having been published already in reports of what took place in a public court, and it not being averred that the report complained of was unfair or inaccurate, interdict could not be granted.

*Observed* that the publication of the report along with an averment of malice might give rise to an action of damages.

The Clydesdale Horse Society was incorporated under the Companies Acts of 1862 and 1867. Its objects were the preservation of the purity of breed of Clydesdale horses, and the promotion of the interests of breeders and owners of these horses. The Society published a stud book, and took every precaution that the pedigrees registered in it should be accurate. About January 1883 the Society suspected that the names of certain persons affixed to alleged pedigrees given in to be registered by two brothers named David and Joseph Raeside were forged, and after cer-

tain investigations information was lodged with the Procurator-Fiscal of Lanarkshire, who thereafter caused to be apprehended David Raeside and a man named William M'Kinlay, a clerk of the complainer Riddell, on a charge of forging pedigrees.

Joseph Raeside was in America when the charge was made against him, and an application was made for his extradition that he might be brought to this country for trial. In the proceedings for his extradition evidence was led in December 1884 in Chicago before a Commissioner authorised by the District Court to hear extradition cases under the treaty between Britain and the United States. In the course of the proceedings a number of documents were read, and a considerable amount of oral testimony was submitted to the Commissioner.

The Government of the United States ultimately refused extradition, on the ground that the facts brought out in the evidence did not constitute an offence falling within the provisions of the extradition treaty.

At the time when William M'Kinlay was arrested he was a clerk in the employment of the complainer David Riddell, farmer and breeder of Clydesdale horses at Blackhall, Paisley, and he had in his possession a letter addressed by David Riddell to Joseph Raeside, and dated 21st November 1883, but which had not been posted to Joseph Raeside.

This letter was enclosed in a sealed envelope. Along with it there was enclosed in the sealed envelope a letter which had been written and addressed to Riddell by John M'Tier, farmer, Ladyfield, Dumfries, dated 16th November 1883.

At the time of his apprehension these letters were taken from M'Kinlay by the Procurator-Fiscal. Copies of them were sent to America and made use of in the proceedings for the extradition of Joseph Raeside, being read by counsel in the course of the case, and being published in the newspapers which had reported all the case. As the society had incurred large costs without having been able to bring Joseph Raeside to trial, it resolved to print a report of the proceedings in the extradition case, including the two letters referred to, for the use of its members, and a print thereof marked "private and confidential," and "printed for the information of members of the Clydesdale Horse Society of Great Britain and Ireland," was circulated among the members. It contained copies of the letters found on M'Kinlay.

David Riddell presented this note of suspension and interdict against the Clydesdale Horse Society, and against Patrick Stirling, Esq. of Kippendavie, and Sir Michael Robert Shaw Stewart of Greenock and Blackhall, Baronet, two of the council of the society, and against James Neil Hart, Procurator-Fiscal of Lancashire, praying that the respondents should be interdicted from printing and circulating (1) the two letters above referred to; and (2) the extradition proceedings taken against Joseph Raeside, as the report contained false and calumnious statements against the complainer. He averred that in the proceedings taken in America Mr M'Neillage, the secretary of the society, had appeared and given evidence. He was the author of many of the statements made in the proceedings, which the complainer averred