

Counsel for Town and County Bank—D. F. Mackintosh, Q. C.—Graham Murray. Agents—J. & F. Anderson, W. S.

Counsel for Commissioners of Taxes—Sol.-Gen. Robertson, Q. C.—Young. Agent—D. Crole, Solicitor for the Inland Revenue.

Saturday, March 5.

SECOND DIVISION.

GLASS, PETITIONER.

Property—Burgh—Dean of Guild—Glasgow Police Act 1866 (29 and 30 Vict. c. cclxxiii.) sec. 370.

Where the plans of a petitioner for warrant to erect buildings in a street in Glasgow showed an attempt to evade the provisions of the Glasgow Police Act for the existence of a certain free space for light and air in front of windows in buildings to be erected, the Court *affirmed* the decision of the Dean of Guild refusing to pass the plans and to grant warrant to erect the proposed buildings.

The Glasgow Police Act 1866, sec. 370, enacts—“Except as after mentioned, it shall not be lawful for any proprietor to let, or for any person to take in lease, or to use or suffer to be used for the purpose of sleeping in, any apartment . . . unless there be in front of at least one-third of every window in such apartment, including any turnpike road or public or private street or court, a free space equal to at least three-fourths of the height of the wall in which it is placed, measuring such space in a straight line from and at right angles to the plane of the window, and measuring such wall from the floor of the apartment to where the roof of the building rests upon such wall.”

Peter Glass, proprietor of certain subjects on the west side of North Street, Springburn, Glasgow, presented a petition in the Glasgow Dean of Guild Court craving a warrant to erect certain buildings thereon. The ground plan produced showed two kitchens on the ground flat to the back, which the petitioner proposed to use as sleeping apartments, and each of which had a window. A line drawn in terms of the Act from these windows, if placed normally in the line of the back wall, would not pass through the free space required by the Act, but would be interrupted by buildings belonging to another property. To obviate this the petitioner broke up the back-wall into three parts, the centre being withdrawn several feet from the main wall, and placed the two windows at the angles thereby formed at the corners of the rooms, so that a line drawn from them would pass through the requisite amount of free space.

No appearance was made for the conterminous proprietors.

The Dean of Guild pronounced this interlocutor:—“Finds that the petitioner's plans do not show in front of the windows of the sleeping apartments on the ground flat to the back of the proposed tenement the amount of free space required by section 370 of the Glasgow Police Act 1866, and therefore refuses to grant the lining craved until said objection has been removed,

either by an amended plan giving the said required free space in front of said apartments, or by the petitioner undertaking that the same shall not be used as sleeping apartments, and decerns.

“*Note.*—The angling or placing of the windows in the corner of the two kitchens (to be occupied as sleeping apartments) on the plan of the ground floor, instead of normally in the line of the back wall, is clearly an attempt to evade the provision of section 370 of the Police Act, and as the free space in front of one of said kitchens is about a fifth less than that which the Act provides for, while in front of the other of said kitchens the free space is much less, the Court cannot consent to pass the plans in their present state.”

The petitioner appealed, and argued—He was entitled to build to the very verge of his property as long as he did not evade the Act. All he had done here was to adopt an effective mode of utilising the light.

Authorities—*Blakeney v. Rattray's Trustees*, July 10, 1886, 13 R. 1157; *Smellie and Another v. Struthers*, May 12, 1803, M. 7588.

The Court affirmed the judgment of the Dean of Guild.

Counsel for Appellant—Galbraith Miller. Agents—F. J. Martin, W. S.

Wednesday, March 9.

SECOND DIVISION.

MUNRO'S TRUSTEES V. MUNRO AND OTHERS.

Trust—Assumption of New Trustees—Trusts Act 1861 (24 and 25 Vict. cap. 84), sec. 1—Marriage-Contract.

The Trusts Act 1861, sec. 1, confers upon gratuitous trustees, “unless the contrary be expressed” in the trust-deed, power to assume new trustees. In a marriage-contract executed prior to 1861 the spouses (1) reserved to themselves power, by any joint-deed, or to the survivor of them, to appoint new trustees in the place of those dying, resigning, or becoming incapacitated, and (2) they gave power to their trustees, “after the death of the survivor of them” to assume new trustees in similar circumstances. In 1886, during the lifetime of the survivor, the original trustees, with a view to the resignation of two of their number, assumed two additional trustees.

Held that the assumption was invalid, the exercise of the power which the Act conferred being excluded by the marriage-contract as long as one of the spouses survived.

William Prince Munro died at Edinburgh on 8th June 1885, survived by his widow. No children were born of the marriage. By an antenuptial contract of marriage which was entered into between him and his wife, Ann Gray or Munro, on 30th October 1860, he provided that in the event, which happened, of no children being born of the marriage, his estate was, at the death or second marriage of his wife, who was