

all consignations of not less than £5 are directed to be deposited in bank, and the deposit-receipts therefor taken in the name of the Sheriff Clerk and his successors in office. I cannot suppose it was intended that this should be repealed, and the deposit-receipts for all these small sums taken in the name of the Accountant of Court and remitted to him, yet that would be the result of the Accountant's contention, instead of their remaining as at present subject to the orders of the Sheriff, as no doubt they ought to be.

I have no doubt there are numerous other statutes which would be similarly affected.

On the whole matter I am of opinion that the money was properly consigned in this case, and that warrant should be granted to the petitioners to uplift the balance remaining in bank.

**LORD M'LAREN**—I concur, but I reserve my opinion as to the effect of any Act of Parliament directing money to be consigned subject to the orders of the Court. As at present advised, I should rather apprehend that money so consigned would fall under the provisions of the Consignations Act.

**LORD KINNEAR**—I am of the same opinion. I concur, as I understand your Lordships also do, in what Lord M'Laren has said.

The **LORD PRESIDENT** and **LORD ADAM** intimated their concurrence with Lord M'Laren's observation.

The Court granted the prayer of the petition so far as the balance remained consigned, and found the Accountant liable in expenses to the petitioners.

Counsel for the Petitioners—Dundas. Agents—Dundas & Wilson, C.S.

Counsel for the Accountant of Court—Cooper. Agent—W. J. Dundas, C.S., Crown Agent.

Wednesday, July 15.

SECOND DIVISION.

[Dean of Guild Court,  
Portobello.

HOY v. MAGISTRATES AND COUNCIL  
OF PORTOBELLO.

*Burgh—Dean of Guild—Dwelling-House—Open Space Attached to Dwelling-House—Burgh Police (Scotland) Act 1892 (55 and 56 Vict. c. 55), sec. 170.*

By section 170 of the Burgh Police (Scotland) Act 1892 it is enacted—  
“Every building erected for the purpose of being used as a dwelling-house . . . shall have all the rooms sufficiently lighted and ventilated from an adjoining street or other open space directly attached thereto equal to at least three-fourths of the area to be occupied by the intended building, and such space

shall be free from any erections thereon other than water-closet, ashpit, coal-houses, or other conveniences, all which conveniences shall, as to height, position, and dimensions, be subject to the consent and approval of the commissioners.”

Where a proprietor proposed to build in a burgh two tenements of dwelling-houses parallel to one another, both facing public streets, and separated by an open unbuilt-on space belonging to him—held that in calculating the open space required by the above section to be attached to the back of each tenement, the whole area between the tenements was to be taken into account.

Benjamin William Hoy presented a petition to the Dean of Guild Court of Portobello for warrant to pull down certain buildings on ground facing the Promenade, Portobello, and to erect tenements of shops and dwelling-houses thereon facing the Promenade and Straiton Place.

The following statement of the facts is taken from the note to the interlocutor of the Dean of Guild:—“The petitioner is proprietor of buildings fronting the Promenade on the sea-beach occupied as a temperance hotel and baths, with vacant ground at the side and back thereof. He proposes to pull down and remove the buildings so as to have an area of vacant ground on which to erect certain tenements of shops and dwelling-houses. This area is bounded on the north partly by the Promenade and partly by a two-storey building belonging to and occupied by John Grant, publican; on the west partly by said building and partly by Bath Street; on the south by Straiton Place, and on the east by a lane running from Straiton Place to the Promenade. The petitioner claims warrant to build upon the Promenade frontage two tenements of shops and dwelling-houses, three storeys in height above the shops, with attics, containing sixteen separate dwellings, and one tenement of dwelling-houses, four storeys in height, with attics containing ten separate dwellings, and upon the Straiton Place frontage, four tenements of dwelling-houses, three storeys in height, with attics containing thirty-seven separate dwellings. The tenements facing the Promenade and those facing Straiton Place will be built on parallel lines with a vacant piece of ground between them. This ground is not of sufficient size to allow of appropriating to the Promenade tenements a space of three-fourths of the area to be occupied by them, and also of a like space for the Straiton Place tenements although it is much more than sufficient for either of them. The full measurement necessary to meet both of these requirements would be 1,489 square yards or thereby, while the superficial area of the ground in question is only 1072 square yards. The proposed tenements are shown on the block plan to be each 45 feet deep from the street fronts, and the space between the back walls measures 53 feet across. The width of Straiton Place is 30 feet, including footpaths.”

On 3rd July 1896 the Dean of Guild pronounced the following interlocutor:—“Find that the petitioner has not in the preparation of his plans made proper and sufficient provisions for complying with the requirement of section 170 of the Burgh Police (Scotland) Act 1892, to have all the rooms of his intended buildings sufficiently lighted and ventilated from an adjoining street or other open space directly attached thereto equal to at least three-fourths of the area to be occupied by the intended buildings: Therefore refuse to grant the warrant craved.”

*Note.*—[After stating the facts]—“It was contended for the petitioner that, being proprietor of the ground behind both lines of tenements, he was entitled to reckon the whole space as directly attached to each line instead of one-half thereof to each, and that thereby he had made proper provision for complying with the requirement of section 170 of the Police Act. The Court cannot adopt this view, but must find that there should be an open space directly attached to each tenement equal to at least three-fourths of the area thereof. Although the buildings and ground will at first belong to one proprietor, the tenements are being built for the purpose of sale, and may soon be divided among many owners.”

The petitioners appealed, and argued—The Dean of Guild had misinterpreted the statute. In calculating the free open space behind each of the tenements, the petitioner was entitled to measure the whole area between the tenements, and not merely half of that area, just as in the case of a street he was entitled to take into account the whole breadth of the street, and not merely its breadth up to the *medium filium*. The section of the Act was satisfied if all the rooms were ventilated either from a street or from an open space of the requisite area.

Argued for the respondents, the Magistrates and Council of Portobello—Each tenement of dwelling-houses must have a back-green of the area specified in the statute. The private area behind was not in the same position as a public street, for the street in terms of the statute was to “adjoin” the property, while the private area was to be “directly attached” to the tenement, which showed that the private area must appertain solely to one tenement of dwelling-houses.

LORD JUSTICE-CLERK—It appears to me that upon a proper reading of this clause the requirements of the statute have been sufficiently fulfilled, and that the Dean of Guild’s judgment is erroneous.

LORD YOUNG—I am clearly of that opinion. I think the argument for the respondents is not stateable. The words of the statute are “lighted and ventilated from an adjoining street or other open space directly attached thereto.” I read these words “street attached thereto” or “open space attached thereto” as meaning coming up to the dwelling-house or touching it. An adjoining street coming up to

it will be an open space attached thereto, and in calculating the area required you are not to measure up to the *medium filium* of the street, but you are to measure the whole street. In the same way we must read the provision as regards a back-green. The whole free area must be measured, not merely up to the *medium filium*.

LORD TRAYNER and LORD MONCREIFF concurred.

The Court remitted the case back to the Dean of Guild to grant a lining.

Counsel for the Petitioner—Clyde. Agent—A. C. D. Vert, S.S.C.

Counsel for the Respondents—Young. Agent—R. Pasley Stevenson, S.S.C.

Wednesday, July 15.

## SECOND DIVISION.

[Sheriff of Forfarshire.

MACKIE v. STRACHAN, KINMOND,  
& COMPANY.

*Discharge—Reparation—Master and Servant—Receipt.*

In defence to an action of damages raised by a workman against his employer for injuries received through the alleged fault of the defenders, the defenders produced a receipt signed by the pursuer, and bearing that he had received from them £10 as compensation for his injuries, “and this sum I accept in full discharge of all claims I can or may make in respect of said injury, either under the Employers Liability Act 1880 or otherwise.” The pursuer averred that he had been “induced” by the defenders’ manager to grant this receipt within a week after leaving the infirmary, and “when he was in a weak state of body and mind and without advice.”

The Court held that the claim was excluded by the receipt, and dismissed the action.

In October 1895 John Mackie, calender worker, Dundee, raised an action against Strachan, Kinmond, & Company, calendarers, Dundee, for £200 damages in respect of the loss of his left arm, which was so severely injured in the defenders’ works on 24th March 1894 that amputation was rendered necessary.

The defenders, besides pleading that the pursuer had set forth no relevant grounds of action, maintained that the action was excluded in respect of a receipt granted by the pursuer on 5th May 1894 for a payment of £10 made to him “*ex gratia*” and “without admitting liability” by the defenders’ manager Mr Forbes. The receipt was in the following terms:—“Received from Messrs Strachan, Kinmond, & Company, East Port Calender, Dundee, the sum of £10 sterling, as compensation for