to the demand of the Local Government Board that they shall provide water by gravitation is *non possumus*.

Now, the possible answers of the Local Government Board to this position would seem to be two. They might say, Your calculations of the cost of a gravitation supply as compared with the yield of a 2s. 6d. rate over your assessable area are wrong; you overrate the one, or you underrate the other; they might have thought out some gravitation scheme and tabled it in detail, which is within the financial ability of the Local Authority. And they might have challenged the Local Authority to carry out this scheme or be held as contumacious. They have no such case at all.

Or they might say, You are wrong in your law as to your financial ability; your assessing power is not circumscribed by the 2s. 6d. limit. This they have said, and as this is a question about the administration of a statute directly within their province, and as the present application has no other ground to rest on, I listened and read in the confident expectation that there was something to overcome what seemed the clear limitation to 2s. 6d. imposed by the statutes. In this, however, I have been disappointed. The learned counsel for the Local Government Board, so long as they had only the statutes before them, did not offer any analysis or construction which would evade or alter the apparently clear terms of the statutes, and they relied solely on the case of *Tolmie*. Now, I am willing, because I am bound, to treat *Tolmie's* case as having been well decided. But the theory of *Tolmie's* case is, that if money has been borrowed for the construction of a water supply for a district, and if, owing to miscalculation, the actual cost exceeds the 2s. 6d. limit, then a ratepayer outside the district cannot refuse payment of an assessment levied to relieve the Local Authority of a loan which had been made for the purposes of the district supply, but not the less was a debt of the Local Authority. The difference between that case and the present case is so clear that one is not more than tempted to appreciate the difficulty of Lord Rutherfurd Clark or the dissent of Lord Lee. *Tolmie's* case does not throw the smallest doubt on this, that whatever means of extrication may be open for those who outrun it, the legitimate administration of the Local Authority of a special district is bounded by the 2s. 6d. limit, and any Local Authority which announced its intention of undertaking a scheme which avowedly transcended that limit would be liable to interdict at the instance of a ratepayer.

Yet the present complaint against this Local Authority is simply that they decline to take this adventurous course. I say so, because, as already pointed out, the petitioners do not table any gravitation scheme as possible of execution within the 2s. 6d. limit.

Nothing that I have said implies any optimist views of the scheme in which the Local Authority are engaged, and the immense delay which has taken place in getting any amendment of a very defective condition of things makes it natural that some pressure should be thought wholesome. But on the question whether by refusing to introduce a supply of water by gravitation the Local Authority have refused to do what is required by law, I cannot withhold my judgment in their favour, and no other question is before us. I am therefore for refusing the petition. It is unnecessary to say that a decree to this effect would confer no indemnity for any delay for the future in improving the water supply according to the measure of the Local Authority's powers, or debar the Local Government Board from resorting to this Court should the occasion arise. It is fair to say that I add this for greater clearness and for no other reason.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court refused the petition.

Counsel for the Petitioners—Sol.-Gen. Dickson, Q.C.—Pitman. Agents—Macrae, Flett, & Rennie, W.S.

Counsel for the Respondents—Salvesen—Clyde. Agents—John C. Brodie & Sons, W.S.

Thursday, January 28.

SECOND DIVISION.

JOHN & JAMES WHITE AND OTHERS, PETITIONERS (RUTHERGLEN BURGH BOUNDARIES).

Burgh—Extension of Boundaries—Competency of Partial or Conditional Confirmation—Burgh Police (Scotland) Act 1892 (55 *and* 56 *Vict. c.* 56), *sec.* 12.

By section 12 of the Burgh Police (Scotland) Act 1892 it is provided that in the case of a burgh whose police boundary is within its municipal boundary or royalty, or within its parliamentary boundary, it shall be lawful for the council or the commissioners of the burgh, "to resolve to extend such police boundary to the municipal boundary, or the royalty, or the parliamentary boundary respectively, for police purposes. . . . . Upon any such resolution being adopted, the council or the commissioners of the burgh may present a petition to the Sheriff praying him to confirm the same, and the Sheriff, after such intimation and service as he thinks proper, and after hearing all parties interested, shall dispose of the application, and upon any final judgment confirming the resolution being pronounced, it shall be recorded in the Sheriff Court Books, and said resolution shall come into force from the date of such recording or such later date or dates as may be specified in the resolution."

A petition having been presented in

terms of section 12 of the Act to the Sheriff by the council of a burgh, praying him to confirm a resolution adopted by them to extend the police boundary of the burgh to the parliamentary boundary thereof—*held* (1) that the Sheriff was bound to confirm or refuse the resolution as a whole, and could not confirm it in part or under conditions; and (2) that it was the duty of the Sheriff, before disposing of the petition, to consider all reasonable grounds of objection to the confirmation of the resolution stated for his consideration by parties interested, including the number of dwelling-houses within the area proposed to be included, and the density of the population.

Circumstances in which the Court *recalled* the deliverance of the Sheriff, but *refused* to confirm the resolution of the council to extend the police boundary of a burgh to the parliamentary boundary.

By section 11 of the Burgh Police (Scotland) Act 1892 the Sheriff is authorised, on the application of the commissioners or council of any burgh, and on such notice and inquiry as there specified, and after hearing all parties interested, "from time to time to revise, alter, extend, or contract the boundaries of such burgh for the purposes of this Act, but so as not to encroach on the boundaries of any other burgh. . . . The sheriff or sheriffs in revising the boundaries of a burgh shall take into account the number of dwelling-houses within the area proposed to be included, the density of the population, and all the circumstances of the case, whether it properly belongs to or ought to form part of the burgh, and should in their judgment be included therein."

By section 12 of the Act it is enacted—"Where in any burgh the police boundary is wholly or partly within the municipal boundary or royalty, or within the parliamentary boundary, it shall be lawful for the commissioners, at a meeting specially called for the purpose, of which a month's previous notice shall be given, to resolve to extend such police boundary to the municipal boundary, or the royalty or the parliamentary boundary respectively, for police purposes, including the right to vote for commissioners, but so as not to encroach on the boundaries of any other burgh, and to fix the date, not being less than fourteen days from the date of the said resolution, when such resolution shall come into operation. Upon any such resolution being adopted, the council or the commissioners of the burgh may present a petition to the sheriff praying him to confirm the same; and the sheriff, after such intimation and service as he thinks proper, and after hearing all parties interested, shall dispose of the application, and upon any final judgment confirming the resolution being pronounced, it shall be recorded in the Sheriff Court books, and such resolution shall come into force from the date of such recording, or such later date or dates as may be specified in the resolution, and any Act of Parliament conferring police jurisdiction or any other authority within such extended boundary shall, in so far as it is inconsistent with the provisions of this section, be repealed."

On 22nd January 1896 the Magistrates and Councillors of the burgh of Rutherglen, as such, and as Commissioners under the Burgh Police (Scotland) Act 1892, at a meeting specially called for the purpose, of which a month's previous notice had been given, passed the following resolution unanimously—"Resolved that the police boundary of the burgh be extended to the parliamentary boundary thereof for police purposes, including the right to vote for commissioners under the Burgh Police (Scotland) Act 1892." This extension included two areas—area No. 1 extending to about 126 acres, lying at the north-west corner of the parliamentary boundary, and area No. 2 extending to about 36 acres, at the north-east corner of the parliamentary boundary.

In April 1896 a petition was presented by the Magistrates and Councillors to the Sheriff of Lanarkshire praying him to confirm their resolution.

Objections to confirmation of the resolution were lodged by Messrs John & James White, chemical manufacturers, Glasgow, the trustees of the deceased William Dixon, ironmaster, Glasgow, and other proprietors and tenants of the subjects within the area No. 1 sought to be annexed; by Messrs James Menzies & Company, iron tube manufacturers, Dalmarnock Bridge, and other proprietors and tenants of the subjects within area No. 2; by the County Council of the County of Lanark; and by the Landward Committee of the Parish Council of the Parish of Rutherglen.

On 23rd October 1896 the Sheriff (BERRY) pronounced the following interlocutor:—"Having heard counsel for the parties, visited the district in question, and considered the whole process and productions, confirms the resolution of the Magistrates and Councillors of the royal burgh of Rutherglen, of date 22nd January 1894, to the following effect—'That the police boundary of the burgh be extended to the parliamentary boundary thereof for police purposes, including the right to vote for commissioners under the Burgh Police (Scotland) Act 1892.'"

Note.—"Objections to the petition have been lodged on the part of a number of persons who are owners or occupiers of land or premises within the area proposed to be added, and also on the part of the County Council of Lanark and of the Landward Committee of the Parish Council of Rutherglen. The petitioners and objectors were heard by counsel or agents before me on 13th July. I had previously, in presence of representatives of all the parties who wished to attend, made an inspection of the district.

"In considering the application it is proper to have in view the position occupied by the petitioners at the time when it was presented. By the General Police Act of

1862, now superseded by the Act of 1892, it was provided that the boundaries of such royal burghs as contribute to send a member to Parliament (which includes Rutherglen) should for the purposes of the Act include the whole limits of the burgh, as these were defined by or referred to in the Act 3 and 4 Will. IV., c. 76, *i.e.*, the whole area included in the parliamentary boundaries, unless it should be resolved, in adopting the Act, that its operations should be limited to such portion of the burgh, *i.e.*, the royal burgh, as was comprehended within the parliamentary boundaries.

"The royalty of Rutherglen includes a considerable area outside of the police burgh, as well as outside of the parliamentary boundary; and with that outside area belonging to the royalty we are not now concerned. The resolution of which confirmation is asked applies to two areas included within the parliamentary burgh, which lie respectively to the north-west and north-east of the police burgh, but are not within the royalty. The Act of 1862 was adopted by the Magistrates and Council of Rutherglen in 1863 as applicable to the whole of the royal burgh without limitation, and under section 20 of the Act the Sheriff thereupon found and declared that the Act should apply to the whole limits of the royal burgh accordingly. As the Act, however, did not authorise its application to any part of the royal burgh which was outside the parliamentary boundary, the effect of these proceedings was to limit the application to that part of the royal burgh which lay within the parliamentary boundary. There thus remained outside the police burgh both a portion of the royalty and also the district within the parliamentary boundary, but situated beyond the royalty to which this petition relates.

"The Act of 1862 contained a provision in section 11 enabling the magistrates and council of any royal burgh which had adopted the Act to take steps for having the boundaries extended to the parliamentary boundaries of the burgh. Application was to be made to the sheriff, right of objection (section 12) was given to any seven or more householders who were beyond the limits of the royal burgh and within the parliamentary boundaries, and the application was to be disposed of as the Act provided.

"The conditions of an application for extension under the Act of 1892 are different. Sections 7 to 14 relate to the subject of boundaries, and of these, sections 11 and 12 deal with the revision or extension of boundaries. By the 11th section the sheriff is authorised, on application of the commissioners or council of any burgh, and on such notice and inquiry as there specified, and after hearing all parties interested, 'to revise, alter, extend, or contract the boundaries,' but not so as to encroach on the boundaries of any other burgh. The 11th section directs that in revising the boundaries of a burgh the sheriff 'shall take into account the number of dwelling-houses within the area proposed to be included, the density of the population, and all the circumstances of the case, whether it properly belongs to and ought to form part of the burgh, and should in his opinion be included therein.' The present application is not made under the 11th section, but under the 12th, which is directed to the case of a burgh having different boundaries for different purposes, as where the police boundary is wholly or partly within the municipal boundary or the royalty or the parliamentary boundary. It provides that it shall be lawful for the commissioners, *i.e.*, the Magistrates and Council in the present case, at a meeting specially called after a month's notice, 'to resolve to extend such police boundary to the municipal boundary or the royalty or parliamentary boundary respectively, for police purposes, including the right to vote for commissioners, but so as not to encroach on the boundaries of any other burgh, and to fix the date, not being less than fourteen days from the date of the said resolution, when such resolution shall come into operation.' On such a resolution being adopted, provision is made for a petition being presented to the sheriff praying him to confirm it, and the sheriff, 'after such intimation and service as he thinks proper, and after hearing all parties interested,' is to dispose of the application; and upon a final judgment confirming the same being pronounced, it is to be recorded in the Sheriff-Court books, and to come into force from the date of such recording, or such later date or dates as may be specified in the resolution. No provision is contained in this section to indicate the considerations which should weigh with the sheriff in acting under it, and no reference is made to the particular considerations, viz., the number of dwelling-houses and the density of the population, to which he is required to have regard in revising the boundaries of a burgh under the 11th section. The functions of the sheriff in the two cases are different. In dealing with an application under the 11th section it is open to him to grant it in part and to refuse it in part. He is called upon himself to fix the proper boundaries, and has to exercise a discretion as to the limits to which the boundary should be extended, or, it may be, restricted. Under section 12 he has no such discretion, where, for example, as here, application is made by the commissioners of a burgh for confirmation of a resolution passed by them that the police boundary be extended to the parliamentary boundary, he must either grant or refuse the application altogether. He has no discretion in the way of adjusting a boundary as under section 11. In the present case there are two separate areas to which the resolution applies, referred to as areas 1 and 2 respectively; and it may be that the grounds for including one of these are stronger than those for including the other; but the two cannot be separated in disposing of the case. Both are required to bring the extension up to the parliamentary boundary, and confirmation must be

granted as to both if it is to be granted at all.

"It seems to me that the Act places the proceedings under the 11th and 12th sections on different footings; and it would have materially assisted the Sheriff in acting under section 12 if some indication had been given as to the considerations which should weigh with him in acting under it. It is contended for the objectors that he must, equally under section 12 as under section 11, take into account the particular considerations specified in the eleventh section to which I have referred.

"If, however, that had been the intention of the Legislature, it might have been expected that, if not repeated in section 12, they would at all events have been referred to as set forth in section 11. We find that the language of section 11 on this subject is carefully repeated *verbatim* from section 9, where it is used for the guidance of the Sheriff in proceedings for the original formation of a burgh. Why, if it had been intended that the same considerations should govern an application under section 12, should a similar repetition of the language, or at least a reference to it, have been omitted? Further, if the same considerations were to apply equally to a confirmation by the Sheriff of a resolution of the magistrates under section 12 as to an application for a revision of the boundaries under section 11, it is difficult to see any necessity for such an enactment as we find in section 12. Without any such enactment it would be competent for the commissioners of a burgh to apply, under section 11, for an extension to the parliamentary boundary, and in dealing with such an application the Sheriff, while he would be vested with all the discretion given to him by that section as to the proper limits of extension, would, on the other hand, be bound to have careful regard to the particular considerations specified in the section. I am induced to think that in regard to the question whether or not effect should be given to a resolution of the commissioners of a burgh under section 12, such special considerations as the number of dwelling-houses, and the density of the population are not to be treated as of the same importance as they would be were the proceedings under section 11. On the other hand, I am not prepared to accept the argument of the burgh authorities, that in acting under section 12, the functions of the Sheriff are purely ministerial. The language of the statute is not consistent with such a view. It seems to me that the case must be governed by considerations of general expediency, regard being had to the manifest intention of the Legislature, that an extension of the police to the parliamentary boundary should be dealt with in a different way, and treated on a distinct footing from a revision of the bounderies under section 11.

"In dealing with the present case, I think some weight may fairly be given to the fact, that we have a unanimous resolution on the part of the Magistrates and Council that the police boundary should be extended to the parliamentary boundary. Apart, however, from such weight as may be due to that consideration, I am of opinion that the extension on which the burgh authorities have resolved has reasonable grounds to support it. With regard to area No. 1, it is averred by the objectors on record, and it is not denied, that 'it consists to a large extent of coalfields still unwrought, or in course of excavation, which renders it unsuitable for building purposes.' To what extent the minerals may be still unwrought I am not aware. No inquiry was asked under this head, and on the part of Messrs Dixon and other objectors, on whose behalf the averment is made, it was stated, when I asked if inquiry was wished, that the admission on record was considered sufficient. But however unsuitable for building purposes a portion of area No. 1 may be at present, we have on that area large and important industrial works, and in particular those of Messrs White, chemical manufacturers, who are among the opponents of the petition. These works, although not at present within the police boundary, are within the parliamentary boundary, and in close proximity to the burgh, which has a large and increasing residential population. It appears from the statements of these objectors, that 'changes and renewals of buildings within chemical works are frequently necessary,' although they say that these 'in no way affect the public, and need no Dean of Guild supervision.' The petitioners, on the other hand, rely on the importance of a power of supervision on the part of a Dean of Guild Court under the Act in support of their case; and I think that in that view they are right. There may also be other advantages in the possession by burgh authorities of a certain right of interference with large industrial works in their immediate vicinity, with the view, for example, of preventing or lessening possible nuisances to the inhabitants. It is suggested that the action of the burgh comissioners is prompted solely by a desire to profit by the inclusion within their area of valuable rateable subjects. That is denied by them, and although no doubt the proprietors of the subjects in question would prefer to remain free from liability to the burgh rates, it must be kept in view that by section 373 (3) of the Act, the commissioners are empowered to grant exemption or restriction of assessment in favour of any portion of the burgh where sufficient reason exists for such a course. It may be expected that the commissioners will exercise the power so given to them in a spirit of equity.

"What I have said as to the importance of a certain power of control over buildings and works situated on the outskirts of the present police burgh has a bearing on the case in relation not only to area No. 1, but also to area No. 2. On that area there are various industrial works, and at the date of my visit to the locality additional works were in course of being erected. Besides works, there are on area No. 2 a consider-

able number of dwelling-houses; and in my judgment this area (to borrow the language of section 11) properly belongs to, and ought to form part of, the burgh, and should be included therein. It is unfortunate that the parliamentary boundary intersects certain tenements of houses on this area, and is not therefore such a boundary as one would have fixed had the boundary been open for adjustment. But such an awkwardness of boundary does not affect the question whether the area within it ought to be included in the burgh, as in my opinion it ought to be. If this area No. 2 is included, it is impossible to leave out area No. 1, the circumstances of which, if considered by itself, might give rise to greater question.

"The fortunes of the two areas are indissolubly bound up together.

"I have been pressed with the argument that the bulk of the residents in the district proposed to be annexed are opposed to the application. Their objections are founded mainly in apprehension of increased rating; but these are not, in my opinion, sufficient to overcome other considerations of expediency and convenience of administration. I have already referred to the power of granting exemption or a restriction of assessment possessed by the commissioners under the Act. The special provision contained in section 12 points to the conclusion that an assimilation of the police to the parliamentary boundary is regarded by the legislature as in itself generally expedient, and after consideration I think that in the present case the circumstances are sufficient to justify it.

"I have satisfaction in referring to the expression of opinion on the part of the Glasgow Boundaries Commissioners of 1886, which is quoted in the petition, and which favours my conclusion that the resolution of the Magistrates and Council of the burgh should be confirmed. The circumstances of the two areas of ground to which this application relates were specially brought to the notice of those Commissioners; and in their report they say—'Our attention was called to two small portions of ground lying between the royal burgh of Rutherglen and the Clyde. They are within the parliamentary, but beyond the municipal, boundary of that burgh. It seems to us that the proper course would be to annex them to Rutherglen and not to Glasgow.'

"This judgment does not affect any claim of compensation, should such there be, on behalf of any of the parties who have appeared in the case."

Against the deliverance of the Sheriff the objectors presented a petition, in terms of section 13 of the Burgh Police Act 1892, to the Second Division of the Court of Session, for the recal of the Sheriff's interlocutor, and argued—(1) The Sheriff's note showed that he had not given due consideration in arriving at his decision to such important facts as the number of houses, the density of population, and other circumstances of the case. He had looked more at considerations of general expediency. He had thus failed in his duty because he was bound to consider all reasonable grounds put forward by the objectors against the resolution of the magistrates. The statute having been misconstrued by him, the conclusion at which he had arrived could not stand. (2) The Sheriff had also erred in holding that confirmation must be granted in whole or not at all. The Sheriff could refuse to confirm the resolution in whole or in part. The statute prescribes the maximum to which the police boundary may be extended, but it does not require that the whole power to extend should be exercised at one time.

Argued for respondents, the Magistrates and Councillors of Rutherglen—(1) The note attached to the Sheriff's interlocutor showed that he had taken all the facts into consideration. He had visited the ground and was the best judge as to whether the petition for confirmation should be granted. (2) The Sheriff had no alternative under the 12th section of the statute but to confirm or refuse to confirm the resolution. No middle course was open to him.

At advising (on Friday 11th December 1896)—

LORD TRAYNER—I agree with the Sheriff in thinking that in the present case he was precluded by the terms of the 12th section of the Burgh Police Act 1892 from confirming the resolution of the magistrates in part, or from confirming it under conditions. I think the clause of the statute referred to gives the sheriff the alternative of confirming the resolution or refusing to confirm it, but gives him no power to adopt another or a middle course. It is only upon a final judgment "confirming the resolution"—that is, the resolution of the magistrates as presented to the Sheriff for confirmation—being recorded in the Sheriff Court books that "such resolution" comes into force. To confirm it in part or under condition would not be confirming the resolution agreed to and made by the magistrates; it would be confirmation of something other than had been resolved upon. The Sheriff was therefore right, in my opinion, in saying that the two areas in question, comprehended and dealt with in the one resolution, must be kept together so far as his judgment was concerned—that he could not, as the case was presented to him under section 12, confirm the resolution *quoad* the one, and refuse to confirm the resolution *quoad* the other.

But dealing with the resolution as a whole, the sheriff is directed to hear the parties interested, and thereupon to dispose of the case. Now, to hear all parties interested involves that the parties interested shall be entitled to state every consideration which they think has a bearing upon the matter to be decided, and that every such consideration shall be duly weighed by the sheriff. The effect to be given to such consideration lies with him, at all events in the first place, but there are no considerations of the nature I have alluded to which he may not take into account and give such effect to as he may think them entitled to. On the con-

trary, I think the Sheriff in the discharge of his duty not only may but must consider all reasonable grounds of objection to the confirmation of the magistrates' resolution stated for his consideration by parties interested. But I gather from what the Sheriff says in the note to his interlocutor, that he has not done so. He thinks that the density of population and the number of dwelling-houses within the area which he is directed to take into account in any proceeding under section 11 are not to be taken into account in dealing with a magistrates' resolution under section 12—at all events, that they are "not to be treated as of the same importance as they would be were the proceedings under section 11." I cannot judge of their exact importance, but I think they should certainly be taken into account if in the Sheriff's judgment they have any bearing upon the application before him. So far as I can judge, these considerations are very far from being irrelevant, and should be taken account of. The Sheriff evidently thinks that the case presented to him was stronger for the confirmation of the resolution in reference to area No. 2 than in reference to area No. 1. He says the circumstances of area No. 1, if considered apart from area No. 2, might "give rise to greater question," but that their fortunes are "indissolubly bound up together." But there is no reason why the one case should give place to the other. If the case for confirmation is made out as regards area No. 2, but not as regards area No. 1, the result will be that the resolution will not be confirmed; the two being bound together, if confirmation cannot be given of all, then the part that would be confirmed, if standing alone, must follow the fortune of that part confirmation of which cannot be given.

The interests involved in this case are represented by the respondents as being very momentous. I can believe that this is no exaggeration, and being of opinion that the Sheriff has not given full weight to all the considerations that were presented to him—being of opinion that to some extent these were not open for his consideration—I think the interests of all concerned require that we should hear the case further, and give the parties an opportunity of stating to us any grounds upon which they think the resolution of the magistrates should not be confirmed.

LORD YOUNG—I do not think that it is clear that the Sheriff in arriving at his decision has taken into consideration all the facts necessary in connection with this petition. I therefore concur in the Court hearing further statement and argument with reference to the interests here involved, and which very properly require to be taken into consideration. Thus there are here manufacturers upon a large scale who have set down works outside the municipal area, and we can understand manufacturers of this description and on this scale objecting, because it might be very serious to them, and possibly detrimental to their interests, to bring these localities within the municipality. Then, again, it might be shown that municipal expenses were considerably increased by the very fact that these manufactories were in the immediate vicinity of the burgh. I take it to be clear enough that the real desire on the part of the municipal authorities was to bring these areas within the bounds of the municipality in order that the municipal taxes might be extended thereto. These were all matters upon which, in the legitimate interests of all concerned, we might hear further argument and any statements in fact which might bear on these questions.

LORD MONCREIFF—But for one consideration I should not have been disposed to interfere with the deliverance of the Sheriff. I think that he has, with one possible exception, taken a correct view of his duties in a proceeding under the 12th section of the Burgh Police Act 1872. He is the most suitable person to make the necessary inquiry, and decide as to the extension of the police boundaries of the burgh to the parliamentary boundaries thereof for police purposes, and his decision on the merits is not to be lightly set aside.

But in a proceeding under the 12th section I think it is the duty of the Sheriff to take into consideration all the circumstances of the case. Amongst these I think he is bound to consider the number of dwelling-houses and the density of the population in the area between the police boundaries and the parliamentary boundaries to which it is sought to extend them, not because these matters are mentioned in the 11th section and imported by implication into the 12th section, but because they are material matters to be considered in any question as to the extension of boundaries.

What weight and effect is to be given to the density of the population and the number of the dwelling-houses is another matter. As at present advised, I am disposed to think that in deciding as to extension of boundaries under the 12th section, less weight may be given to the number or paucity of dwelling-houses and population than in deciding as to a revision of the boundaries under the 11th section. The object of the 12th section is to square the burgh boundaries, *e.g.*, to make the municipal boundary coincide with the police boundary or the police boundaries with the parliamentary boundaries, and the extension of boundaries under that section is only competent if they are extended as a whole to the outer boundaries which have already been fixed for certain purposes connected with the burgh. It may often happen that part of the intermediate area is so sparsely populated that had the question been one of revision of boundaries under the 11th section the Sheriff might not have been entitled or bound to include that part in the extension. But it would greatly hinder the operation of the 12th section if the same considerations applied with equal force to proceedings under the two sections. While they would merely

limit extension in the one case, they might wholly prevent it in the other.

But in the present case the Sheriff's note leaves some doubt as to whether he has taken into consideration at all the number of dwelling-houses and the density of population in the area in question. I think that probably he did; there are passages in his opinion which indicate as much, but the matter is left in doubt. Personally I should have preferred, had that course been considered open to us, to have remitted to the Sheriff, not for the purpose of holding any fresh inquiry, but simply to ascertain whether he did or did not consider those matters. But as there may be objections to adopting this course, I agree that parties should be further heard before ourselves.

The LORD JUSTICE-CLERK concurred.

The Court therefore restored the case to the roll for further hearing.

The principal objections to the confirmation of the resolution of the Magistrates stated on behalf of the petitioners were as follows—"The areas Nos. 1 and 2 proposed to be included within the extended boundary were not adapted for such extension. They consisted of fields or open ground, brickfields, and to a large extent of coalfields still unwrought or in course of excavation, which render them unsuitable for building purposes. There were no large tenements, and such dwelling-houses as there are consist of a few rows of colliers' houses and one or two old mansion-houses (with ground attached) now either unoccupied or divided and let to several families. The population was small and not increasing, and neither of said areas was in character a populous place within the meaning of the Burgh Police (Scotland) Act 1892. Thus in area No. 2 (apart from the tenements after mentioned, through which the proposed extended boundary would pass) there was only one house to each five acres. The total rental or annual value of the two areas as at the date of the petition to the Sheriff was £11,430. Area No. 1 was occupied by the Shawfield Chemical Works, four old mansion-houses, the mineral field of William Dickson, Limited, and some brickworks. The total rental or annual value of said area was £6526. Area No. 2 extended to thirty-four acres with a rental or annual value of £4904. Three-fourths of the area were occupied by the Phœnix Tube Works of Messrs James Menzies & Company, with a rental or annual value of £1855, the Clydesdale Tube Works of Messrs James Eadie & Sons, with a rental or annual value of £1080, and the Clydesdale Dyeworks of Messrs David Miller & Company, with a rental or annual value of £500. The total area occupied by said three works was twenty-four acres, and the total yearly rent or value thereof was £3435, or five-sevenths of the whole annual value of the area. On the said area No. 2 there were at present 154 small dwelling-houses, which, with the exception of six houses at the above-mentioned works, were all in tenements known as Farme Road, New Farme Place, Union Place, Smith Terrace, and Miller Terrace, and one-half of each of these three last-named tenements lay outside the proposed extended boundary, which would pass through the tenements near the middle thereof. The tenements so far as within said boundary occupied three acres of ground. The remaining seven acres of area No. 2 were destitute of buildings, but upon them was constructed the Farme Railway, which was a single line worked by the Caledonian Railway Company, and running from their Dalmarnock Branch Railway to certain collieries. In 1878 the Magistrates of the burgh of Rutherglen, proceeding under the General Police Act 1862, presented a petition to the Sheriff of Lanarkshire, craving that the police boundaries of the burgh should be extended so as to include the area now proposed to be annexed, but after objections had been lodged and parties heard the Magistrates abandoned the petition. Since 1878 the area proposed to be annexed had not altered in character, and, if anything, there had been a decrease in the number of dwelling-houses. The areas Nos. 1 and 2 would derive no benefit from inclusion within the burgh police boundary. They were at present policed by the county, in common with the burgh, which maintains no police force. They require no additional police force, and were unsuitable for police patrol owing to the large area occupied by the before-mentioned works, within which there were a sufficient number of private watchmen. The said areas had at present a sufficient system of drainage and road management under the County Council administration, and an adequate supply of gas and water from the corporation of the city of Glasgow; and the respondents could not confer any benefit or make any improvement in regard to these matters. The respondents' only apparent motive in promoting the present extension was to acquire an additional area of taxation, irrespective of the suitability of the annexed area for inclusion in the police burgh." Messrs White had also the special objection that in the conduct of their chemical works they had "at very considerable expenditure of time and money invented many methods in the way of the construction of furnaces, liquor tanks, vitriol chambers, &c., and in the way of leading and utilising heat, which are secrets of the trade, and which they have expressly avoided patenting with the view of preserving such secrecy. They mentioned that if on these and similar occasions the warrant of the Dean of Guild Court had to be obtained, and plans and sections submitted before proceeding with the works involved, it would be impossible for them to carry on their works, or at least a considerable number of the processes and operations now carried on in said works within the area in question, thereby necessitating their removal to a locality free from such restrictions and interference."

The County Council of Lanarkshire and the Landward Committee of the Parish Council of Rutherglen maintained that the areas proposed to be transferred were valuable parts of their assessable areas

which, if the resolution of the Magistrates was confirmed, would be taken away from them.

The respondents relied on the arguments on behalf of the union of the areas with the burgh used by the Sheriff in his note, and further stated in support of his judgment that the roads and streets within the areas were lighted at the expense of the burgh of Rutherglen, that it was advisable that the burgh should have control over the works emitting smoke and gases so near its boundaries, and that the two areas being outside the burgh jurisdiction of both Glasgow and Rutherglen had become the haunt of disorderly characters from the city.

At advising—

LORD JUSTICE-CLERK—I agree with the Sheriff in thinking that the resolution must be confirmed as a whole, or must be set aside altogether. But I am of opinion, taking into consideration the circumstances stated in connection with the two areas in question, that this resolution to annex them cannot be confirmed.

There is a great deal to be said for annexation of certain parts of one of the areas, or even the whole of one of the areas, but the whole resolution cannot be confirmed as there are large parts of the districts as to which there is no prospect of these being converted into burghal subjects. There are mineral districts which would make building hazardous, and in point of fact, buildings had been decreasing and the rental had been diminishing for a considerable time. I therefore see no sufficient ground for including the whole of the areas, and I am therefore of opinion that the resolution should not be confirmed.

LORD YOUNG—The duty which the Court has to discharge is one which, I think fortunately, rarely presents itself. I agree with your Lordship that the reasons given for preserving things as they have been hitherto should prevail. In that view I do not think it expedient to enter into details.

LORD TRAYNER—On careful consideration of the arguments presented to us for the several parties, I have come to be of opinion that there is no sufficient ground for confirming the resolution complained of, while very strong and sufficient reasons to the contrary have been stated. I think the interlocutor of the Sheriff petitioned against should be recalled, and confirmation of the resolution refused.

LORD MONCREIFF—I agree that the considerations in favour of the extension of the boundaries of the burgh of Rutherglen are not sufficient to counterbalance those against the extension.

The application is made under the 12th section of the Burgh Police Act of 1892. Under that section the boundaries must be extended as a whole, or not at all. I think it is quite a fair observation that unless that power of extension is to remain a dead letter we cannot apply such a strict test as to density of population and number of dwelling-houses as is required under the 11th section of the statute, when it is proposed to make a partial extension of the municipal boundaries. In an application under the 12th section some of the areas which it is proposed to include may be more sparsely populated than others, and taken by themselves might not justify an extension. But if the other areas proposed to be included were suitable for that purpose, the character of the sparsely populated areas might be disregarded.

In each case, therefore, it is necsssary to balance the considerations which affect the different areas which it is proposed to include, and in particular the proportions in extent which those which are suitable bear to those which are not.

In the present case if area No. 2, which contains 36 acres, were alone to be considered, there might perhaps be sufficient grounds for including it within the municipal boundaries; and if it is hereafter thought desirable to do so, this may still be done under the 11th section of the statute. But No. 1 contains 126 acres, and is thus nearly four times the size of No. 2. It is not urban in character; the residences and population are few; and a great part of the ground is, at present at least, unfitted for building owing to mineral workings. I do not attach much weight, taken by themselves, to the objections made by the manufacturers whose works stand on No 1., on the ground that the proposed extension will interfere with them in the management of their works. But, taken as a whole, I think that that area is not suitable for inclusion, and that the considerations arising from its size and character so much counterbalance the reasons for extension afforded by No. 2, that the application made to us under the 12th section of the statute should be refused.

LORD YOUNG—I wish to avoid saying anything that would give any encouragement to the Town Council to make another resolution applicable to one of the areas. I desire to express no opinion upon that point.

The Court pronounced the following interlocutor:—

> "Recal the deliverence of the Sheriff of Lanark, dated 23rd October 1896: Refuse to confirm the resolution of the said Magistrates and Councillors dated 22nd January 1894, to the following effect—"That the police boundary of the burgh be extended to the parliamentary boundary thereof for police purposes, including the right to vote for Commissioners under the Burgh Police (Scotland) Act; and decern."

Counsel for Petitioners John and James White—Jameson—Clyde. Agent—F. J. Martin, W.S.

Counsel for Petitioners Dixon's Trustees and Others—Ure—C. K. Mackenzie. Agents—Melville & Lindesay, W.S.

Counsel for Petitioners James Menzies & Company and Others—D.-F. Asher, Q.C.—King. Agents—Sturrock & Sturrock, S.S.C.

Counsel for County Council of Lanarkshire—Cullen. Agents—Bruce, Kerr, & Burns, W.S.

Counsel for Landward Committee of Parish Council of Rutherglen—Horne. Agents—H. B. & F. J. Dewar, W.S.

Counsel for Respondents the Magistrates and Councillors of Rutherglen—Balfour, Q.C.—Salvesen. Agents—J. & A. Hastie, Solicitors.

Saturday, February 6.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

WHITSON *v.* EASTERN DISTRICT COMMITTEE OF COUNTY COUNCIL OF PERTHSHIRE.

Road—Turnpike Act 1831 (1 *and* 2 *Will. IV. cap.* 43), *sec.* 80—*Statutory Right of Road Authority to Procure Material for Repair of Roads from Enclosed Lands—Notice—Specification of Locus—Jurisdiction of Sheriff.*

Section 80 of the Turnpike Act 1831, which is incorporated with the Roads and Bridges (Scotland) Act 1878, empowers the trustees of any turnpike road to "search for, dig, and carry away materials" for repairing such road, "provided always that before taking such materials from any enclosed land from which the same shall not previously have been in use to be taken, fourteen days' previous notice in writing . . . shall be given to . . . the proprietor . . . to appear before the sheriff or any two justices of the peace acting for the shire where such lands are situate . . . to show cause why such materials shall not be so taken, and . . . such sheriff or justices shall authorise or prohibit the trustees to take such materials, or make such order as they shall think fit."

In a notice served by the district committee on a proprietor under this provision they notified their intention to search for, dig, and carry away materials at a spot within a specified arable field of eight acres, "which spot so to be entered on will, on application by you" to the road surveyor, "be also specifically pointed out on a map of the locality or on the ground," the proposal being to continue the working of an existing quarry into the arable field at this point. In the procedure before the Sheriff the surveyor pointed out the spot in question. The Sheriff's order, repeating the words of the notice, bore that the "spot so to be entered on will, on application" to the road surveyor "be also specifically pointed out in a map of the locality or on the ground." The order was also qualified by the conditions that if the district committee in their operations penetrated 50 yards into the field they were to build a service bridge, and that blasting was not to take place when agricultural work was being performed within 100 yards.

In an action of reduction of this notice and decree by the owner of the lands in question, *held* (1) that the decree must be read as referring to the place already pointed out in the proceedings before the Sheriff, and as thus sufficiently identifying the place where the operations were authorised; (2) that it was unnecessary to specify any limit of time; (3) that the right to obtain material by blasting was covered by the words of the statute; and (4) that the conditions attached to the order, although they might be inoperative, did not affect its validity."

Section 80 of the Statute 1 and 2 Will. IV., c. 42, incorporated as part of the Roads and Bridges Act 1878 (41 and 42 Vict. c. 51) provides—"And be it enacted that it shall be lawful for the trustees of any turnpike road, or any person authorised by them, to search for, dig, and carry away materials for making or repairing such road and the footpaths thereof . . . in or out of the enclosed land of any person where the same may be found, and to land or carry the same through or over the ground of any person (such material not being required for the private use of the owner or occupier of such land, and such land or ground not being an orchard, garden, lawn, policy, nursery for trees, planted walk, or avenue to any house, nor enclosed ground planted as an ornament or shelter to a house, unless where materials have been previously in use to be taken by the said trustees), making or tendering such satisfaction . . . for the surface damage which shall be done to the lands from which such materials shall be dug and carried away . . . as such trustees shall judge reasonable," or, in the case of difference, as the sheriff or justices of the peace for the shire shall determine, "provided always that before taking such materials from any enclosed land for which the same shall not have been in use to be taken, fourteen days' previous notice in writing, signed by two trustees, shall be given to or left at the usual residence of the proprietor and occupier of the soil or quarry from which it is intended to take the same, or his or her known agent, to appear before the sheriff or any two justices of the peace acting for the shire where the said lands are situated, to show cause why the said material shall not be so taken, and in case such proprietor, occupier, or agent shall attend pursuant to such notice, or shall neglect or refuse to appear, proof on oath in such case being duly made of the service of such notice, such sheriff or justices shall authorise or prohibit the trustees from taking such materials or make such order as they shall think fit."

The Blairgowrie or Eastern District Committee of the County Council of Perthshire, on 28th February 1895, served a