*Saturday, February 27.*

## FIRST DIVISION.

[Sheriff of Renfrew and Bute.

## M'CARTHY *v.* EMERY.

*Process — Reponing — Expenses — Appeal from Sheriff Court—Decree by Default.*

An appellant against a judgment of absolvitor pronounced by default in the Sheriff Court *allowed*, as the condition of being allowed to proceed with the cause, to pay the whole expenses of his opponent in the Sheriff Court and in the Court of Session.

This was an action raised in the Sheriff Court of Renfrew and Bute by Patrick M'Carthy, Glasgow, against John Emery, contractor, Glasgow, concluding for payment of £100 as damages for injuries sustained by the pursuer.

The Sheriff-Substitute of Paisley (COWAN), on 26th December 1896, closed the record and sent the case to the roll for debate on 12th January 1897. On that date he sent the case to the roll of the next Court, and on 19th January, on the defender's motion, because of the absence of the pursuer's agent, again continued the case to the next Court. On 26th January the Sheriff pronounced the following interlocutor:—"In the absence of the pursuer, assoilzies the defender from the conclusions of the petition."

The pursuer appealed to the Court of Session.

Argued for the pursuer—The appeal was competent. A judgment by default in the Sheriff Court was appealable—Mackay's Practice, ii. 448; *Hamilton* v. *Hamilton*, Nov. 13, 1824, 3 S. 199; *Leslie* v. *Edie*, March 1, 1828, 6 S. 674. It was entirely owing to a misunderstanding that the pursuer's agent had failed to appear on the day on which absolvitor was pronounced. The more usual course, no doubt, would be to remit the case to the Sheriff, but it would be better if it were kept in the Court of Session.

Argued for the defender—The appeal was incompetent. The pursuer's agent had full notice of the day fixed for the debate, there had been two continuations, and no adequate excuse had been given for his failure to appear. It was only in very special and exceptional circumstances that a party would be reponed against a decree by default, and no such circumstances were alleged here—*Morrison* v. *Smith*, Oct. 18, 1876, 4 R. 9.

The LORD PRESIDENT pronounced the judgment of the Court to the following effect:—The Court consider that upon payment of all the expenses of process up to the present date, this absolvitor may stand aside and the case be proceeded with. The proper form seems to be, to recal the interlocutor *hoc statu*, and allow the pursuer as a condition of further procedure to make payment of the whole expenses of process. If he does that, we shall send the case to the Sheriff Court; if he does not, we shall of new assoilzie and dismiss the appeal.

The Court pronounced the following interlocutor:—

"Recal, *hoc statu*, the interlocutor of the Sheriff-Substitute of 20th January 1897: Allow the pursuer, as the condition of being allowed to proceed with the cause, to make payment of the whole expenses of the defender in both Courts."

Counsel for the Pursuer—Guy. Agents—Patrick & James, S.S.C.

Counsel for the Defender—Orr. Agents—Inglis & Orr, S.S.C.

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*Thursday, March 4.*

## FIRST DIVISION.

[Lord Low, Ordinary.

## LAWSON *v.* WILKIE.

*Property—Building Restriction—Interpretation—"Vacant Ground or Back-Green," whether Including Part Occupied by Outbuildings.*

In a disposition of certain subjects made in 1866 they were described as consisting of, first, a tenement of four storeys "with the cellars and outhouses attached and belonging to the said tenement, . . . and the area of ground on which the said tenement, cellars, and outhouses stand;" and secondly, "the vacant ground situated to the north of the said area of ground, which vacant ground is at present occupied by said William Thorburn as a back-green." The disposition contained a building restriction, by which the disponee was prohibited from building "on the vacant ground or back-green forming part of the subjects hereby disponed, nearer to the north face of the wall forming the south boundary of said vacant ground or back-green than 10 feet."

An action was raised against the disponee's successor by an adjoining proprietor in whose favour the restriction was constituted, for the purpose of removing a wall which had been built in violation, as was alleged, of the restriction. It was not disputed by the parties that the spot where the wall was built was inside the ground which was occupied by William Thorburn as a back-green, but it was proved that in one corner of it there existed at the time the charter was granted two small buildings, and the defender maintained that the part of the back-green upon which the outhouses stood could not be described as "vacant ground," and that accordingly the building restriction must be limited to the area exclusive of the site of these buildings.

*Held* that the building restriction applied to the entire space contained

within the walls surrounding the back-green.

This was an action at the instance of William Lawson, merchant, Leith, against George Wilkie, stationer, Leith, craving for declarator, (2) "that the defender, by virtue of the provisions contained in disposition by George Lindesay of Feddinch in favour of William Thorburn, baker in Leith, dated 3rd and 11th April 1866, and recorded in the New Particular Register of Sasines for the sheriffdom of Edinburgh, &c., 16th May 1866, and of a disposition by the said George Lindesay, with consents, in favour of Francis Lindesay, wine merchant in Leith, dated 3rd and 11th April 1866, and recorded in said Particular Register of Sasines 16th May 1866, is debarred from building on the vacant ground or back-green forming part of the subjects disponed by said George Lindesay to the said William Thorburn, nearer to the north face of the wall forming the south boundary of said vacant ground or back-green than 10 feet, and that a brick wall of 12 feet or thereby in height, forming part of the buildings recently erected by the defender at the back of the premises belonging to him, facing Constitution Street, Leith, is built to the extent of 5 feet or thereby in length, and of 20 inches or thereby in depth, upon the said vacant ground, and within 10 feet from the north face of the wall forming the south boundary of the said vacant ground, or within 10 feet of the line occupied by the said north face prior to the recent partial removal by the defender of said wall, and thus constitutes a breach of the provisions contained in the said dispositions."

There was in addition a conclusion for interdict against erecting further buildings, for removal of a brick wall already erected, and (5th) for damages in respect of the encroachments.

The pursuer was the owner of subjects entering from 33 Quality Street, Leith, and extending backwards towards Constitution Street, Leith, and the defender was owner of subjects entering by 31 and 32 Quality Street, and also of subjects facing Constitution Street, the subjects extending from one street to the other.

Prior to the year 1866 these properties belonged to Mr Lindesay of Feddinch, who in that year disponed them to Mr Francis Lindesay and to Mr William Thorburn, from whom the pursuer and defender respectively acquired them. The original dispositions were, so far as material to the present case, expressed in identical terms.

The disposition of the defender's property was described as embracing "All and whole that tenement of four storeys, including the sunk storey, formerly number eighteen, now number forty-six, Constitution Street, Leith, with the cellars and outhouses attached and belonging to the said tenement, all as presently occupied by Messrs Cochrane, Paterson, & Company, corn merchants, and the said William Thorburn, and the area of ground on which the said tenements, cellars, and outhouses stand, and also the vacant ground situated to the north of the said area of ground and partly behind the same, and partly behind the area of ground on which the tenement number forty-four Constitution Street stands, which vacant ground is at present occupied by the said William Thorburn as a back-green. . . . But declaring that the subjects hereby disponed are disponed with and under the restrictions, and others underwritten, which are hereby declared to be real burdens affecting the said subjects hereby disponed—that is to say, the said William Thorburn and his foresaids shall not have power to build on the vacant ground or back-green forming part of the subjects hereby disponed nearer to the north face of the wall forming the south boundary of said vacant ground or back-green than ten feet, and any building that may be erected on said vacant ground shall not exceed, as regards the south elevation thereof, eighteen feet in height from the surface of the ground. . . . And further, the wall enclosing the foresaid vacant ground or back-green on the south and south-west, so far as it divides the subjects hereby disponed and the said subjects sold by me to the said Francis Lindesay, shall belong to the proprietors of both subjects mutually, and shall be upheld by them at their mutual expense, and it shall not be in the power of either proprietor, without consent of the other, to raise the said wall above its present height."

In March 1896 the defender began to erect a brick wall on the back-green within 10 feet of the south boundary wall, as described in the summons.

The pursuer, after various procedure and correspondence, raised the present action on 22nd April 1896.

The defender averred—"Explained that the wall referred to in the disposition by George Lindesay in favour of William Thorburn is a division wall between the pursuer's and defender's properties, and that the defender has not built on the vacant ground or back-green forming part of the subjects disponed by Lindesay to Thorburn nearer than 10 feet to the north face of said wall. At the end of said wall there was formerly a gate which led down to an area belonging to the defender, and on the side of said gate there was a pillar erected for the purpose of supporting it. Said pillar formed no part of the wall in question, but was erected entirely on ground belonging to the defender, and had a considerable area of ground forming part of the defender's property on the south and east of it. Further, the ground upon which the brick wall complained of is erected was never vacant ground within the meaning of the clause in the disposition in question. Further, at the time when said disposition was granted, there had been erected, *ex adverso* of the gate at the end of the mutual wall, and within 8½ feet or thereby of part of the north face of the wall, a toolhouse which belonged to the defender's authors. It was not intended by said disposition to affect the right to maintain the

said building, or to erect future buildings on the space occupied by said toolhouse, or upon any space to the south and east of said toolhouse, the sole object of the servitude being to preserve light and air for the yard belonging to the pursuer on the south of the division wall in question."

The Lord Ordinary (Low) allowed the parties a proof, the import of which sufficiently appears in his Lordship's opinion, *infra.*

On 4th December the Lord Ordinary found for the pursuer in terms of the second, third, and fourth conclusions of the summons.

*Opinion.*—"Until the year 1866 the properties now belonging to the pursuer and the defender respectively, belonged to Mr Lindesay of Feddinch, and in that year he disponed the defender's property to Mr William Thorburn, and the pursuer's property to a Mr Lindesay. The question at issue between the parties depends chiefly upon the construction of these dispositions. The dispositions, so far as material to the case, are expressed in identical terms.

"The defender's property is described as consisting of two parts, first, a tenement of four storeys, 'with the cellars and outhouses attached and belonging to the said tenement . . . and the area of ground on which the said tenement, cellars, and outhouses stand;' and secondly, 'the vacant ground situated to the north of the said area of ground,' and partly behind it and partly behind another property, 'which vacant ground is at present occupied by the said William Thorburn as a back-green.'

"Looking at the plans which have been produced, there does not at first sight appear to be much doubt as to what the subjects are which are referred to in the two branches of the description. Take plan No. 46 of process, which is admitted to be a correct representation of the properties before the defender commenced to build. The vacant space or back-green is there shown as a perfectly well-defined space, surrounded on all sides by walls, and it answers the description of being partly behind the area of ground described in the first place in the disposition, and partly behind the other property there referred to. It is further not disputed that it is the ground which was occupied by Mr Thorburn as a back-green.

"The clause in the disposition on which the pursuer founds is in the following terms:—'Declaring that the said William Thorburn and his foresaids shall not have power to build on the vacant ground or back-green forming part of the subjects hereby disponed nearer to the north face of the wall forming the south boundary of said vacant ground or back-green than 10 feet, and any building that may be erected on said vacant ground shall not exceed, as regards the south elevation thereof, 18 feet in height from the surface of the ground.

"Here, again, if the plan only is considered, the area over which the prohibition to build extends does not appear to be doubtful. There is a wall which forms the south boundary of the back-green, and *prima facie* the continuity of the wall as the boundary is not broken by the fact that there is a door through it at the east end. Nor does the fact that at the east end there is a small piece of the defender's ground on the south side of the wall render the wall at that place the less the boundary of the back-green.

"But then the defender says that at the date of the dispositions there were two small buildings in the south-east corner of what is shewn upon the plan as a back-green, and that these buildings did not form part of the back-green but were outhouses 'belonging to the tenement,' and were among the subjects included in the first branch of the description.

"These two little buildings were spoken to by the witnesses Robert and James Thorburn, who are sons of Mr Thorburn, to whom the defender's property was disponed in 1866. Mr Thorburn was tenant of the property for six years before he bought it, and his sons say that for some years after they went there the houses in the back-green were in existence. The elder brother, Robert, although he was only eleven years old when his father bought the property, has a distinct recollection of the houses, and gives a clear, and, I have no doubt, an accurate description of them. They were two little houses standing side by side, about 4 or 5 feet square, and about 10 feet high, built of stone and with a flat stone roof. The door to which I have referred in the south-east end of the boundary wall of the back-green gave entrance directly into one of the houses. At what date the houses were removed is not definitely ascertained. Both the Messrs Thorburn think that they were removed soon after their father bought the property, and when he was making some alterations upon the dwelling-house. I think that that was probably the case, but I cannot hold it to be a proved fact in the case that the houses were not removed until after the disposition to Mr Thorburn. In the view which I take of the case, however, that is not material, and I shall assume that the houses were standing at the date of the disposition. Even upon that assumption, however, I cannot regard them as being 'outhouses attached and belonging to the tenement,' and therefore as falling within the first branch of the description, and not included in the back-green.

"The little buildings might, no doubt, be described correctly enough as outhouses, but they are not attached to the tenement, nor do I think that they could be properly described as belonging to the tenement, even assuming (what is doubtful) that it is competent to read the words 'attached and belonging,' as if they had been 'attached or belonging.'

"The back-green is not only described in the titles as a separate subject from the tenement, but it is physically a separate subject. The tenement has certain outhouses attached to it, and also an open area or courtyard. The back-green in question

is on a higher level than the ground upon which the tenement with its outhouses and courtyard stands, and access is had to it by a flight of steps which lead from the courtyard to the door in the wall to which I have referred. Further, it is difficult to imagine any purpose connected with the tenement which the little buildings could be intended to serve. When, or by whom, or for what purpose they were erected cannot be ascertained, but the description given of them by Mr Robert Thorburn, and their situation, suggest that they had been designed to serve some purpose (such, for example, as tool-houses) in connection with the back-green and not with the tenement. If it had been desired to describe the buildings as belonging to any subject, I think that they would have been described as belonging to the back-green.

"But then the defender argued that if the buildings were on the back-green in 1866 it could not be described as an open space, and that therefore the open space referred to must have been the portion of the back-green on which there were no buildings. Now, no doubt, if the buildings were in existence, it was not strictly accurate to describe the whole back-green as vacant ground, although as the back-green was of considerable extent, and the buildings were very small and of no value, the inaccuracy of the description was not serious. But, further, the subjects are not only described as vacant ground but as vacant ground which 'is at present occupied by the said William Thorburn as a back-green.' Now, what was occupied by Mr Thorburn as a back-green was the whole ground including the little buildings which, if used by him at all, were used as adjuncts to the back-green, and not as offices in connection with the tenement. Further, in other parts of the disposition the ground is referred to as 'said vacant ground or back-green.' I therefore do not think that the criticism upon the wording of the description is of much weight and I cannot doubt that the little buildings were included in the subjects described in the second place in the disposition. . . . .

"I am therefore of opinion that the prohibition extends to the south-east corner of the back-green. The defender has infringed that prohibition by the wall which he has erected. No doubt the infringement is so far very small, but it is admitted that the wall which has been erected is only one side of a proposed porch, which would constitute a substantial infringement of the prohibition. I am therefore of opinion that the pursuer is entitled to decree so far as regards the infringement.

"The first conclusion of the summons is for declarator that a certain cellar belongs to the pursuer. The defender does not now and never has disputed the pursuer's right to the cellar, and to introduce the question into this action was altogether unnecessary.

"The pursuer further concludes for damages. He has put in certain accounts which seem to represent extrajudicial expenses which he has incurred in certain litigations in regard to the properties which he has had with the defender. It is clear that he cannot claim the amount of these accounts as damages in this action. The pursuer further claims damages for the trouble to which he has been put in defending his rights. I never heard of such a claim, which is one which might be put forward by almost every successful litigant. The rule is that every one is entitled to maintain and defend what he believes to be his legal rights, and unless in the case of an action being brought maliciously and without probable cause, an unsuccessful litigant is liable in no further damages than the expenses of process."

The defender reclaimed, and argued—Obviously if the buildings were in existence at the time of the disposition, the ground occupied by them could not be described as vacant ground, and accordingly the prohibition could not apply. The evidence sufficiently established that these buildings did exist, but in any case since the pursuer was claiming a right of servitude, the *onus* lay upon him of showing that these buildings did not exist at that time, and he had failed to produce any evidence to support that view.

Argued for respondent—There was no real evidence as to the existence of the buildings. But even assuming their existence, a true construction of the pursuer's titles warranted his obtaining a prohibition against building now—Bell's Prin., sec. 995, which showed that at most his right would be suspended by the presence of these little buildings, to be revived on the ground being again vacant.

At advising—

LORD M'LAREN—This is an action of declarator, interdict, and damages founded on the fact that the defender, who is proprietor of two buildings on adjacent areas of his property, is in course of making a communication or covered way from the one block to the other, contrary, as is alleged, to a restriction against building constituted in favour of the pursuer.

The case is not free from difficulty, but after giving my best consideration to the defender's argument, I am satisfied of the soundness of the views expressed in the Lord Ordinary's judgment. The Lord Ordinary has very fully discussed the questions arising on the title-deeds and the evidence, and I do not propose to elaborate my opinion at the same length, as I should only be repeating what has already been most clearly expressed, but I shall indicate my view on what I think is the critical part of the case.

The subjects owned by the pursuer and the defender were until the year 1866 one undivided estate, and in that year they were disponed in separate parcels to the pursuer's author Lindesay, and the defender's author Thorburn. The defender's property is described as consisting of two parts—first, a tenement of four storeys "with the cellars and outhouses attached and belonging to the said tenement . . . and the area of ground on which the said

tenement, cellars, and outhouses stand," and secondly, "the vacant ground situated to the north of the said area of ground . . . which vacant ground is at present occupied by the said William Thorburn as a back-green." The building restriction on which the defender founds is in these terms—"Declaring that the said William Thorburn and his foresaids shall not have power to build on the vacant ground or back-green forming part of the subjects hereby disponed nearer to the north face of the wall forming the south boundary of said vacant ground or back-green than ten feet." There is also a restriction as to the height of the building which may be erected on the back-green with which we are not directly concerned.

Whatever may be the true interpretation of the clause of restriction, I think that the expressions "vacant ground" and "back-green" which are used in the dispositive clause, and also in the clause of restriction, must apply to one and the same physical subject. It is, I think, a safe and universally applicable rule of construction that descriptive words must be taken to have the same meaning wherever they are used without qualification in different parts of the same deed. Now, I think there is not much difficulty in ascertaining what was the subject conveyed under the name of "vacant ground" occupied by Thorburn as a back-green. The Lord Ordinary, referring to the plan No. 46 of process, which is admitted to be a correct representation of the properties, observes—"The vacant space or back-green is there shown as a perfectly well-defined space, surrounded on all sides by walls, and it answers the description of being partly behind the area of ground described in the first place in the disposition, and partly behind the other property there referred to. It is further not disputed that it is the ground which was occupied by Mr Thorburn as a back-green." I do not understand that the statement of the Lord Ordinary is disputed. In any case it seems to be perfectly clear that the property conveyed is the entire space enclosed by the walls surrounding the back-green. That being so, I must hold that the prohibition against building within ten feet of the north face of the wall forming the south boundary of the vacant ground also applies to the whole contained area. The argument for the defender on this part of the case depends on the fact that at the date of the disposition there were two small buildings in the south-east corner of the back-green, and that the area occupied by these buildings cannot be properly described as vacant ground. It is suggested that these buildings are covered by the words of the first description, which conveys, *inter alia*, outhouses "belonging to the tenement;" and in any case it is said that the area occupied by these buildings is not "vacant ground," and that their site ought to be taken to be excepted from the building restriction.

Now, it may be that if there was no better title to the land occupied by the two small buildings, these might be covered by the expression "outhouses belonging to the tenement." But this observation does not carry us very far. The buildings are undoubtedly within the area described as the vacant ground in use as a back-green, and the small bnildings are not excepted from the conveyance of the back-green. The argument then comes to this, that, in so far as a fractional part of the back-green is occupied by such buildings, it is not correctly described as vacant ground. But when so put the argument does not impress me, because it only amounts to this, that the description, although sufficient for the purposes of identification, is not strictly accurate. But it is not easy to frame a description of heritable subjects which is not open to criticism from the point of view of strict accuracy, and accordingly it has been recognised that a description of lands is sufficient if it identifies the property as a whole, although there may be features which are not noticed in it. Supposing that the subjects first and second described in Mr Thorburn's title had been sold to separate purchasers, can it be doubted that a conveyance of the vacant ground occupied as a back-green would carry any buildings upon it which were not of sufficient importance to be treated as separate tenements? This consideration, in my opinion, suffices for the disposal of the case so far as the argument depends on the use of the words "vacant ground." Because when it is once ascertained that the words of conveyance include the small buildings, it follows that the building restriction must receive an equivalent interpretation. The descriptive words are the same, and the motive is the same, because I cannot conceive of any reason for a reduction of the right of building which should not apply to the whole length of the proposed building line.

A separate argument was maintained regarding the use of the word "wall" in the building restriction, viz., that "wall" does not include door. I shall not repeat the Lord Ordinary's answer, which to my mind is perfectly convincing, and to which I have really nothing to add.

On both points I would observe, that while in theory restrictions on the use of property are subject to a strict interpretation, this rule, like all sensible rules of law or criticism, has relation to substance rather than to form. For example, a prohibition against erecting shops or warehouses would not be extended so as to apply to dwelling-houses. But when we consider the meaning of descriptive words, these, I think, must receive a true and reasonable interpretation according to the ordinary use of language, whether the description is contained in a disposition or a grant, or in a clause qualifying the grant or restricting the use of the subject. I move your Lordships to adhere to the Lord Ordinary's interlocutor.

LORD PRESIDENT—I am satisfied with Lord M'Laren's judgment.

The difficulty which had presented itself

very strongly to my mind was this—The title in imposing this prohibition seems to make a direct appeal to the state of possession by William Thorburn in 1866, and to apply the prohibition solely to what, according to William Thorburn's occupation, was vacant ground or back green. Now, in point of fact in 1866 I think it is proved that this was not vacant ground, because it was covered by a building of stone not of a temporary character, and the same reason makes it extremely difficult for me, as it does for Lord M'Laren, to apply the words vacant ground or back-green to the inside of a stone building. But Lord M'Laren has, I think, satisfactorily met that difficulty by reasoning in which your Lordships concur, and I accordingly assent to the judgment proposed.

LORD ADAM and LORD KINNEAR concurred.

The Court adhered.

Counsel for the Pursuer—Dundas—Cook. Agents—Beveridge, Sutherland, & Smith, S.S.C.

Counsel for the Defender — Guthrie — Salvesen. Agents — Boyd, Jameson, & Kelly, W.S.

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*Thursday, March* 4.

## FIRST DIVISION.

[Lord Kyllachy, Ordinary.

## GLASGOW TRAMWAY AND OMNIBUS COMPANY, LIMITED *v.* GLASGOW CORPORATION.

*Tramway — Lease — Valuation of Lands (Scotland) Act* 1854 (17 *and* 18 *Vict. c.* 91), *sec.* 6—*Tenant's Right of Relief from Landlord.*

The Corporation of Glasgow, in consideration of certain payments, let to a tramway company for a period of twenty-three years the sole right to use carriages with wheels specially adapted to run on a grooved rail on the whole tramways authorised to be made by them. Among the conditions of the contract it was stipulated that "the company shall pay to the Corporation the expenses of borrowing, management, &c., and this provision shall be so construed as to keep the Corporation free from all expenses whatever in connection with the said tramways."

*Held* (*aff.* judgment of Lord Kyllachy) that the Corporation was bound to relieve the company of the landlords' share of rates and taxes, local and imperial, on the ground (1) that the contract between the parties was one of lease, and (2) that the condition cited did not cover the landlords' share of rates and taxes.

*Lease—Valuation of Lands (Scotland) Act* 1854 (17 *and* 18 *Vict. c.* 91), *sec.* 6—*Tenant's Right of Relief from Landlord—Whether such Right Effectual only by means of Deduction from Rent.*

The Valuation of Lands (Scotland) Act 1854, sec. 6, provides "That if lands are let upon a lease of more than twenty-one years' duration, the lessee shall be deemed to be also the proprietor of such lands under the Act, but shall be entitled to relief from the actual proprietor thereof, and to deduction from the rent payable by him to such actual proprietor" of a certain proportion of all assessments laid on upon the valuations of such lands made under the Act.

*Held* (*aff.* judgment of Lord Kyllachy) that the right of relief conferred by the statute was not limited to the method of deduction from the rent of each year, but might be enforced in an action of repetition.

*Acquiescence — Implied Abandonment of Claim—Right of Tenant to Relief from Landlord in respect of Owner's Share of Rates and Taxes.*

In 1882 a tenant who had previously made a claim against his landlord for repetition of the landlord's proportion of rates and taxes, wrote to the landlord—"It is understood that our rights in connection with landlord's taxes are in no way prejudiced." Till the end of the lease in 1894 nothing more was said of the claim, but thereafter the tenant raised an action to enforce it.

*Held* (*aff.* judgment of Lord Kyllachy) that the tenant had not discharged or abandoned the claim in question.

By lease dated 16th and 17th November 1871 the Corporation of Glasgow let to the Glasgow Tramway and Omnibus Company, Limited, "the sole right to use for the sole purposes of the Glasgow Street Tramways Act 1870, carriages with flange wheels or other wheels specially adapted to run on a grooved rail on the whole tramways authorised to be formed by the said Act, and that for the space of twenty-three years" from 1st July 1871, under certain conditions and provisions:—"(*First*) The Corporation shall make the said tramways out of moneys to be raised or borrowed by them. (*Second*) The company shall pay half-yearly, at Whitsunday and Martinmas, to the Corporation the amount of the interest actually paid or payable by them on (1) the total money from time to time borrowed by them and expended on the tramways and in connection therewith on capital account, and (2) on the expenses of the Glasgow Street Tramways Act 1870, and the expenses incurred by the Corporation and the Board of Police of Glasgow in reference thereto, and others foresaid, or incident to the execution of these presents, which sums shall also be held as expenditure on capital account, declaring the amount on which such interest shall be payable shall not be affected by any payment made to the Corporation through the operation of the sinking fund hereinafter provided for; and