Another example of the kind of policy which appears to have dictated section 91 of the Turnpike Roads Act of 1831 in its application to such a case as the present, is to be found in section 162 of the General Police and Improvement Act of 1862 and section 158 of the General Police Act of 1892, which require that when a house projecting beyond the line of a street is pulled down with a view to its being rebuilt, the proprietor shall set the new building back as specified in that section.

If the views now expressed in regard to the construction and effect of section 91 of the Turnpike Roads Act of 1831 are correct, it follows that section 366 of the Glasgow Police Act 1866 prohibited the Dean of Guild from granting warrant to erect any building except a stone wall not exceeding six feet in height within twenty-five feet from the centre of Rutherglen Road, and that his interlocutor of 7th August 1900 should be recalled, and the cause remitted to him to give effect to the restrictive provision contained in section 91 of the Turnpike Roads Act of 1831. The distance mentioned in section 366 as applicable to the case of turnpike roads is thirty feet, but it concludes with the words "unless the said building could have been erected within a less distance of the centre of such turnpike road without contravention of the Acts relating to the said road," and a building could have been erected twenty-five feet from the centre of the road in question without contravening section 91 of the Turnpike Roads Act 1831, which applied to it.

LORD M'LAREN—I agree with your Lordship, and have very little to add. Looking to the plain and literal meaning of the General Road Act, there is an unqualified prohibition against the erection of buildings within a prescribed distance of the centre of the road unless the consent of the road authority has been previously obtained. That is sought to be qualified upon an enactment to the effect that it is not to apply to the case of a building erected upon a site which has been previously built over. I think it is a safe rule in the construction of statutes that an artificial construction or limitation, not founded on what the statute states, never can be introduced except to avoid some inconsistency or ambiguity which would arise on a comparison of the enactment with some other enactment in the same statute. If that be a sound rule, then it follows that there is no room for the construction of the enactment which we are here considering; it must receive full effect. One other observation occurs to me, although I do not rely very much upon it. If the motive of the enactment be the convenience of giving access of light and air to the road by prohibiting the erection of structures which would exclude light and air, then the reason applies just as much to areas that have been covered with buildings as to those which have never been built over. It would be a very strange way of carrying out the spirit of the Act to pull down a one or two-storey house and erect one of five or six storeys in its place.

LORD KINNEAR—I have had the advantage of reading your Lordship's opinion, and I entirely concur.

LORD PRESIDENT—Lord Adam, who is engaged in another Court, asks me to say that he has also read my opinion, and entirely concurs in it.

The Court sustained the appeal, and remitted the case to the Dean of Guild.

Counsel for the Appellant—Shaw, Q.C.—M. P. Fraser. Agents—Campbell & Smith, S.S.C.

Counsel for the Respondent—W. Campbell, Q.C.—Cooper. Agents—Henry & Scott, W.S.

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*Friday, December* 21.

## SECOND DIVISION.

## CRAWFORD *v.* ADAMS. CRAWFORD *v.* DUNLOP.

(*Ante*, June 12, 1900, vol. 37, p. 767, and 2 F. 987.)

*Expenses—Several Defenders—Joint Trial of Actions against Separate Defenders—Separate Defenders with Same Counsel and Agent—Pursuer Successful against One and not against Other—Reparation—Slander.*

A pursuer, founding upon slanders contained in certain letters written by a law-agent on the instructions of his client, sued both the client and the law-agent in separate actions for damages. Each defender lodged defences, and separate issues were allowed, but the actions were sent for jury trial together, and the defenders were represented by the same counsel and agents at the trial. The verdict in one action was for the pursuer, in the other for the defender, and the successful party in each case was found entitled to expenses.

*Held* (1) that in the action in which the pursuer was successful he was entitled to his whole expenses; and (2) that in the action in which the defender was successful, the defender was entitled to his whole expenses down to the date of the trial, but only to one-half of his expenses after that date.

These cases are reported *ante, ut supra.*

The Court having allowed issues against both defenders, the actions were remitted for jury trial together. Both the defenders were represented at the trial by the same counsel and agents. In the action against Adams the pursuer obtained a verdict with £50 of damages. In the action against Dunlop the jury found for the defender. The Court applied the verdicts, and found the successful party in each case entitled to expenses.

The present question arose upon objections to the Auditor's reports on the accounts of expenses.

The nature of the objections and the arguments of the parties sufficiently appear from the opinion of Lord Trayner *infra*.

LORD TRAYNER—The pursuer raised two actions of damages for slander, one against the defender Adams as having authorised and instructed the other defender (who was his law-agent) to write the letters complained of, and the other against the law-agent on account of statements in one of the letters made as of his own knowledge, and not merely as the agent of Adams. Separate issues were adjusted, but the trials were taken together. In the case against Adams the pursuer was successful; in the other case the verdict was for the defender.

In taxing the account of the pursuer's expenses in the case against Adams the Auditor has allowed the whole expenses; but in taxing the account for Dunlop he has allowed the full expenses down to the trial, but only half of the expenses after that date. The defenders object to this mode of dealing with the accounts, and maintain either that only one-half of the expense of the trial should be allowed to the pursuer, or that the whole expense of the trial should be allowed to Dunlop. I think the Auditor is right in what he has done, and that the objection to his report should be repelled. It is the fact, not disputed, that the expense allowed to the pursuer by the Auditor is just what it would have been had there been only one defender. That expense is what Adams has been found liable for, and for that expense accordingly the pursuer is now entitled to decree. On the other hand, Dunlop, being associated in his defence with Adams, had to pay, and only did pay, one-half of the amount of counsel's fees and other expenses of the trial. If he gets that half of these expenses, he gets all he expended, and all that the pursuer occasioned by his action in which he was unsuccessful. If the whole of Dunlop's account as stated by him was allowed, that would be giving him more by one-half than the expense he has incurred, or if he shared the surplus with Adams, that would be in effect giving decree in favour of Adams for one-half of the expense of the trial, to which he is not and has not been found entitled. The Auditor has given the pursuer the whole expense to which he was put by having to proceed against Adams—nothing more. He has given Dunlop the whole expense to which he was put, and which he disbursed, in the action in which he was successful—nothing less. The result in my opinion is that the Auditor has carried out exactly what we determined in the matter of expenses, and that the principle on which he has proceeded is right.

The LORD JUSTICE-CLERK, LORD YOUNG, and LORD MONCREIFF concurred.

The Court repelled the objections to the Auditor's report.

Counsel for the Pursuer—Ure, Q.C.—Hunter. Agent—Henry Robertson, S.S.C.

Counsel for the Defenders—Salvesen, Q.C.—Guy. Agent—John Veitch, Solicitor.

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*Friday, December* 21.

## SECOND DIVISION.

[Sheriff Court at Duns.

## STEEL *v.* BELL.

*Contract — Building Contract — Penalty if Work Unfinished at Specified Date—Extra Work Partly Ordered after Date Fixed for Completion of Work—Onus—Breach of Contract—Damages — Penalty —Liquidate Damages.*

A builder brought an action against the proprietor of a mansion-house for the balance of the amount averred to be due to him under contract for mason-work in connection with alterations and additions to the mansion-house. The proprietor refused to pay the sum sued for except under deduction of, *inter alia*, a sum limited to £150, which he alleged was due to him under the contract as penalty for delay in the execution of the work.

By the terms of the contract the pursuer undertook to have the whole work "entirely completed" by 1st May 1897 under "a penalty of 10s. per day that the mason-work remained unfinished beyond that date." Further, by the contract the defender had reserved to him power "to make any alterations on and to increase, lessen, or omit any portion of the works," while it was provided that extra work, if any, should form no ground for deviating from the dates above fixed for the completion of the work unless specially certified by the architect at the time.

Proof was led, which showed (1) that the mason-work was not completed till July 1898; (2) that extra work was ordered by the defender during the progress of the operations, and that some of this extra work was ordered after 1st May 1897; (3) that during the whole progress of the operations the architect repeatedly remonstrated with the pursuer for delay, caused by the latter not putting a sufficient working staff on the job, without any excuse being offered by the pursuer; and (4) that no application was made at any time by the pursuer to the architect for a certificate that the extra work formed a ground for delay. The proof did not show clearly what extent of the work was completed by 1st May 1897, what extras were ordered after that date, how far extras ordered before that date hindered the completion of the work at that date, or how much time was occupied after that date by the execution of extras.

*Held* (*dub.* Lord Young) that the fact that some of the extra work had