trustees by their actings to delay or alter the period of vesting.

The question whether the share of residue which fell to and vested in Jessie M'Call was all moveable or was partly heritage is attended with some difficulty. Part of the residue was undoubtedly heritable at the date of the death both of the truster and of the liferentrix. The trustees had a power of sale, but did not exercise it. There was therefore no conversion through the action of the trustees. But there are three considerations which lead me to the conclusion that the share of Jessie M'Call must be treated as all moveable succession. *First*, the direction of the truster to his trustees is to divide the residue and to pay it in certain proportions to the residuary legatees. This in itself is not much, because I recognise that the words "pay," "convey," "transfer," &c., have been regarded in previous cases as practically synonymous. Still it is a direction to pay, which applies more directly to a division of realised estate than to estate which is to be transferred to a legatee *in forma specifica*. *Second*, The fractional division of the residue among the legatees would have been more difficult to accomplish in the way of *pro indiviso* conveyance of heritage than in the payment of money, and I see nothing to suggest that the truster intended to put any such difficulty on the shoulders of his trustees. *Third*, The truster directed his trustees, if they think proper, "in order that the provisions herein conceived in favour of females may be rendered more secure," to invest the shares falling to females in the purchase of heritable property or in heritable securities, so as to exclude the legal rights of any husbands they might marry. Now, I think that direction fairly presupposes that the heritage left by the truster had been or was to be realised before the division of the residue, as otherwise the truster would have directed his trustees to convey the existing heritage to the legatees, so as to exclude their husbands' legal rights, and to invest the balance in such a way as to produce the same effect. This last consideration seems to me to be enough to turn the scale on a balancing of considerations in favour of the view that there was conversion—conversion by reason of the intention of the truster—who intended, as I conclude, from his whole deed, that on the death of the liferentrix his estate should be realised, and in that form paid over to the residuary legatees in the proportions mentioned by him.

LORD MONCREIFF—On the question of vesting I do not entertain any doubt. The "term of payment and division" in the case of the liferentrix Mary M'Call dying without leaving lawful issue was the date of her death. No doubt the deed contains the provision that the trustees are to divide "so soon thereafter as deemed proper," but that is after the term of payment and division in the sense of the deed has arrived, and the direction is only inserted in order that the trustees may take such reasonable time as they may think fit for ingathering and realising the estate.

The question of conversion is perhaps more difficult. The argument *ab inconvenienti* does not carry us very far, because those who are entitled to take may chance to be many or few at the date of division. But in the present case there are sufficient indications in the deed that what the truster anticipated and intended in disposing of his mixed estate was that it should all be converted into cash and then divided. The provisions which have already been referred to with regard to the provisons in favour of females sufficiently indicate this.

I therefore agree that the first and second questions and the first alternative of the third question should be answered in the affirmative.

The Court answered the first and second questions and the first alternative of the third question in the affirmative, and found it unnecessary to answer the fourth question.

Counsel for the First and Second Parties—Jameson, K.C.—Graham Stewart. Agents—T. F. Weir & Robertson, S.S.C.

Counsel for the Third Parties—W. Campbell, K.C.—Cullen. Agent—Henry Robertson, S.S.C.

Counsel for the Fourth Parties—Cook—Spens. Agents—W. & J. Cook, W.S.

Friday, January 25.

FIRST DIVISION.

[Dean of Guild Court, Edinburgh.

SOMERVILLE *v.* MACDONALD'S TRUSTEE.

Burgh—Dean of Guild—Order for Taking Down of Ruinous Buildings—Notice—Refusal to Allow Proof—Order Made on Expert Knowledge of Court—Appeal—Edinburgh Municipal and Police Act 1879 (42 *and* 43 *Vict. cap. cxxxii.*), *sec.* 166 *—Edinburgh Improvement, &c. (Amendment) Act* 1893 (56 *and* 57 *Vict. cap. cliv.*), *sec.* 34 (3).

Section 166 of the Edinburgh Municipal and Police Act 1879, as amended by sec. 34 (3) of the Edinburgh Improvement, &c. (Amendment) Act 1893, provides that if any building "be deemed by the burgh engineer to be in a ruinous or insecure state" he shall cause notice to be given to the owner requiring him to take down such building, and if he does not begin to do so within three days after such notice, the Dean of Guild Court, on the complaint of the Procurator-Fiscal, shall, "if they find it necessary after hearing parties," order the owner of the building to take it down, and failing his doing so cause it to be taken down.

A, the proprietor of the ground floor of a tenement, received a notice from the burgh engineer in the following

terms—"I beg to intimate to you that the slating, roofing, ceilings, joisting, floors, partitions, walls of your property at 89 High Street are in a ruinous or insecure state, and in terms of" the section quoted above, "and the Edinburgh Municipal and Police Acts 1879 to 1896 (for provisions of which see third page), hereby require you as part owner forthwith to take down, secure, or repair the same." Intimation was further given that if the work was not begun within three days further proceedings would be taken. Similar notices were sent to the owners of the other parts of the tenement. Thereafter proceedings were taken by the Procurator-Fiscal in the Dean of Guild Court against A and the other proprietors for an order to enforce the requirements of the notice.

After sundry procedure the Dean of Guild, having visited the premises and heard the parties, in the meantime ordained the proprietors of the upper flats to take them down. This was done, and in consequence of a report by the burgh engineer the Dean of Guild Court again visited the premises and thereafter, having heard parties, the Dean of Guild issued an interlocutor refusing a proof of averments which A had made to the effect that her property was not ruinous, finding that the premises owned by her were ruinous, and ordaining her to take them down.

A appealed to the First Division, and moved either for a proof of her averments or for a remit to a man of practical skill. She maintained that the notice sent to her was not sufficiently specific, and that consequently the Dean of Guild had no jurisdiction to proceed under the Acts libelled; and also that he was not entitled to refuse her motion for a proof.

Held that the procedure in the Dean of Guild Court had been regular, and that no sufficient ground had been alleged for ordering further inquiry, or for disturbing the judgment of the Dean of Guild.

Question whether in a case under the above enactments, where the procedure in the Dean of Guild Court has been regular, the Court has jurisdiction to review the decisions upon facts of the burgh engineer and Dean of Guild Court, either upon a proof as to the facts, or upon a remit to a man of skill.

Section 166 of the Edinburgh Municipal and Police Act (42 and 43 Vict. cap. cxxxii.) as amended by section 34 (3) of the Edinburgh Improvement, &c. (Amendment) Act 1893 (56 and 57 Vict. chap. cliv.) enacts as follows:—"If any house, building, wall, or other erection of whatever form or material, or anything affixed thereon, be deemed by the burgh engineer to be in a ruinous or insecure state, . . . the burgh engineer shall immediately cause the occupiers (if any) to remove from the occupancy of such houses or buildings until the same are put into a safe condition; and shall, if he judge it necessary, cause the same wholly or partially to be taken down . . . and shall cause notice to be given to the owner of such house or building, wall, or other erection . . . requiring such owner forthwith to take down, secure, or repair such house or building, wall, or other erection, as the case may require; and if such owner do not begin to repair, take down, or secure such house, building, wall, or other erection within the space of three days after such notice has been so given . . . and complete such repairs or taking down or securing, as speedily as the nature of the case will admit, the Dean of Guild Court shall, on the complaint of the Procurator-Fiscal of such Court, if they find it necessary after hearing parties, order the owner of such house or building, wall, or other erection, to take down, rebuild, repair, or otherwise secure the same to their satisfaction within a time to be fixed by the Court; and in case the same be not taken down, repaired, rebuilt, or otherwise secured within the time so fixed, the Court shall cause all, or so much of such house or building, wall, or other erection as shall be in a ruinous or insecure or dangerous condition, to be taken down repaired, rebuilt, or otherwise secured, in such manner as shall be requisite." Then follow provisions as to expenses.

The words "if they find it necessary after hearing parties" were introduced by the Amendment Act of 1893.

Mrs Isabella Macdonald or Armour, as trustee of the late Tertius Macdonald, surgeon, Edinburgh, was proprietor of a shop numbered 89 High Street, which was on the street level, and was occupied by Mrs Miller, fruiterer.

On 27th April 1900 a notice was sent by the burgh engineer to Mr John Mathison, a partner of Messrs Nisbet & Mathison, S.S.C., the proprietor's agents, in the following terms:—"Sir,—I beg to intimate to you that the slating, roofing, ceilings, joisting, floors, partitions, walls, of your property at 89 High Street are in a ruinous or insecure state, and in terms of 'The Edinburgh Municipal and Police Act 1879,' section 166 and 'The Edinburgh Municipal and Police Acts, 1879 to 1896' (for provisions of which see third page), hereby require you as part owner forthwith to take down, secure, or repair the same. I beg further to intimate that should you fail to have the work begun within three days from this date, further proceedings will be taken, and all expenses incurred will be levied from you in terms of the statutes."

No steps were taken by Tertius Macdonald's trustee, and on 22nd May 1900 a petition was presented in the Dean of Guild Court by George Somerville, Procurator-Fiscal of Court, in which she and others interested in Nos. 89, 93, and 97 High Street, to whom similar notices had been sent, were called as respondents. The petitioner craved the Court "to cite them to appear in Court to be heard *viva voce* thereon; thereafter to issue from time to time such orders, remits, and others, as the circumstances of the case

may require, and upon your being satisfied that the said houses and buildings or other erections, or any part thereof, are in one or other of the states aforesaid, to decern and ordain the said respondents to take down, rebuild, repair, or otherwise secure the same to the satisfaction of, and within a time to be fixed by, the Court; and failing their doing so within the time to be so fixed, to grant warrant to and authorise the petitioner to employ proper persons to do so at the expense of the respondents; as also, to sell the old materials; as also, to remove tenants and occupants if necessary."

Answers were lodged by the respondent Tertius Macdonald's trustee. She averred —"The upper flats of this tenement are at present unoccupied, the tenants having recently been warned out by the Burgh Engineer. The respondent believes that the upper flats of the tenement, or part of these flats, have been allowed to get into a state of disrepair, but it is denied that the tenement is ruinous or insecure. This respondent had not been informed at any time of the alleged defects in the shop belonging to her. When the case was called in the Dean of Guild Court on the 5th July the respondent through her counsel explained this to the Court, and the Lord Dean of Guild then stated that the respondent's shop was not ruinous or insecure, and that the Court proposed only to remove that portion of the tenement above this respondent's shop. The Lord Dean of Guild then said that a portion of the roof of said shop was defective and required some repair. But the respondent disputed this, and thereupon moved that the complainer should be ordained to lodge a condescendence setting forth in what respects the said respondent's property has become ruinous and insecure. The respondent has been advised by skilled and competent advisers that her property is substantially built and in good condition and is perfectly secure, but she is willing to take all reasonable steps to repair any defects that the Court may hold proved to exist in her property. On the case being again called on the 12th July this respondent stated that if the Court intended to pronounce an interlocutor dealing only with the property above this respondent's shop she had no interest to object; but that if any order was to be pronounced ordering this respondent to execute any work on the tenement, she thought she was entitled to know wherein existed the defect in her said shop, and accordingly renewed the motion for a condescendence. The complainer then intimated that he had no further facts to allege." She further averred that for some months prior to the notice the Burgh Engineer had been negotiating with her for the purchase of the property.

On 18th October 1900 the Dean of Guild, after having visited the premises and heard the Procurator-Fiscal and parties' procurators, pronounced the following interlocutor — "Finds in the meantime that all the flats of the said tenement above the ground or shop flat are ruinous and insecure and must be taken down: Finds also that the joists between the ground flat and the first flat and the stone arching on the ground flat are insecure: Therefore, in the meantime, ordains the respondents . . . the proprietors of the flats above the ground flat of the tenement in question, to take down forthwith the flats belonging to them respectively, and failing their commencing to do so within six days and completing the work within thirty days thereafter, grants warrant to the Procurator-Fiscal to employ proper persons to execute the said work at the expense of the said proprietors, respondents: Appoints the work to be executed at the sight and to the satisfaction of the Burgh Engineer, and him to report when it shall have been completed: Grants warrant to remove tenants and occupants, if necessary, and to sell the old materials: Reserves all questions between the respondents *inter se*, and *quoad ultra* continues the cause."

On 20th December 1900 the Dean of Guild pronounced this interlocutor—"Having of new visited the *locus* and inspected the premises so far as now existing, and having heard the Procurator-Fiscal, counsel for the respondent, the trustee of Tertius Macdonald, and the procurator for the respondent Mrs Henrietta Coldwell or Eckford or Carr, and considered the report by the Burgh Engineer dated 11th December 1900, repels the motion made by counsel for the trustee of Tertius Macdonald, that the Court should allow a proof of the condition of the property owned by the said trustee: Finds, in terms of the said report, that the work ordered by the interlocutor of 18th October last has now been executed: Finds on further inspection now that the upper flats have been taken down, that the premises owned by the respondent the trustee of Tertius Macdonald, and the arching of the close between those premises and the premises owned by the respondent Mrs Carr are not only insecure but are ruinous and must be taken down; Therefore ordains the respondent the trustee of Tertius Macdonald to take down forthwith her said premises, and failing her commencing to do so within six days and completing the work within fourteen days thereafter, grants warrant to the Procurator-Fiscal to employ proper persons to execute the said work at the expense of the said respondent; Further, grants warrant to the Procurator-Fiscal to employ proper persons to take down the said arching, reserving all question of title thereto and liability for the expense of taking down the same: Appoints the work to be executed at the sight and to the satisfaction of the Burgh Engineer, and him to report when it shall have been completed: Grants warrant to remove tenants and occupants if necessary, and to sell the old materials, and decerns: Reserves all questions between the respondents *inter se* and *quoad ultra* continues the cause."

Note.—"In consequence of the report of the Burgh Engineer, dated 11th December 1900, it became necessary for the Court to

again visit the premises, and they did so on 14th December, in the presence of agents for the parties interested. The Court found that the work of pulling down the upper flats had been executed, and the Court were in a better position to judge of the condition of the premises on the ground floor than they were in before the upper flats were taken down. The result of the Court's inspection was that they were unanimously satisfied that the premises of the respondent the trustee of Tertius Macdonald are not only insecure but also ruinous, and that they are in such a condition that they must be taken down. The Court heard counsel for the respondent the trustee of Tertius Macdonald and the procurator for Mrs Carr on 18th December. The counsel for the respondent the trustee of Tertius Macdonald then asked to be allowed to lead proof as to the condition of his premises. The Court repelled this motion, because they consider the matter which was to be the subject of proof is one which they are completely competent to judge of without proof, in respect that the members of the Court are men of skill on this particular matter. Counsel for the respondent the trustee of Tertius Macdonald then urged that no order should be pronounced against his client in respect of the statement in article 1 of his answers to the effect that the said respondent 'is willing to take all reasonable steps to repair any defects that the Court may hold proved to exist in her property.' The Court invited the said respondent to put in a minute stating precisely what she was willing to do, but her counsel refused to do this. The Court has no desire to pronounce orders against parties who are willing to carry out necessary works themselves, but the offer in the answers is only to take all reasonable steps to repair defects, and in the present case the defects are such that the only course open is to pronounce an order on the respondent to take down her ruinous property.

"It is not at present in evidence before the Court who is liable for the removal of the arching over the close between the property of the respondent the trustee of Tertius Macdonald and of the respondent Mrs Carr. As this arching is ruinous and insecure, and must be taken down, the Court therefore orders the Procurator-Fiscal to have this work carried through, leaving it for ascertainment at a subsequent period who is liable for the expense."

The respondent Macdonald's Trustee appealed to the First Division, and argued—The jurisdiction exercised by the Dean of Guild under section 166 was in every way similar to his ordinary jurisdiction, and was in no sense final—*Somerville* v. *Directors of Edinburgh Assembly Rooms*, July 7, 1899, 1 F. 1091, at 1094. Accordingly the appeal was competent, but in any case objections to its competency should have been made in the Single Bills, and not at this stage. The appellant had never been informed from beginning to end in what respect there was any defect in her property. The notice did no more than draw her attention to the section of the statute, and in no way indicated what she was required to do. It was just such a notice as the appellant might have expected had she been a *pro indiviso* proprietor of a share of a ruinous tenement, no part being specified in the notice. But the Dean of Guild's jurisdiction under section 166 depended on the sufficiency of the notice—*Campbell* v. *Magistrates of Edinburgh*, November 24, 1891, 19 R. 159. The Dean of Guild had further refused to grant her motion for a proof. The appellant was entitled either to a proof of her averments that her premises were not ruinous, or to a remit to a man of skill to report on their condition. The latter course had been taken in *Boswell* v. *Magistrates of Edinburgh*, July 19, 1881, 8 R. 986.

Argued for the respondent—He did not dispute the competency of the appeal or the jurisdiction of the Court. But the only power which the Court had under such an appeal was to consider what duty had been put upon the Burgh Engineer and the Dean of Guild by statute, and whether that duty had been properly exercised. There was no allegation that they did not apply their minds to the question whether the building was ruinous, or honestly arrive at the conclusion that it was so. Accordingly, the only question was whether the Court could reverse their decision upon a matter of fact. It was not within the power of the Court to do so, but in any case they would be slow to disturb—either on a proof or a report by a practical man—a judgment arrived at by the Dean of Guild Court, which was composed of practical men—*Saltoun* v. *Magistrates of Edinburgh*, March 19, 1897, 24 R. 832, at 836. It was true that the notice was in general terms, and if nothing had followed upon it the appellant's argument might have had some weight, but a great deal of procedure had followed, in the course of which it was found specifically that the appellant's premises were ruinous and must be taken down. In the case of *Campbell* v. *The Magistrates of Edinburgh, supra*, the proprietor was never given a chance of deciding whether he should himself do the work in question or allow it to be done by the Magistrates, and accordingly the notice was held to be insufficient. Here the appellant had every chance during the subsequent procedure.

At advising—

LORD PRESIDENT—On 27th April 1900 Mr John Cooper, Burgh Engineer of Edinburgh, sent to the appellant's agent a written intimation that the slating, roofing, ceilings, joistings, floors, partitions, walls of her property at 89 High Street were in a ruinous or insecure state, and in terms of the Edinburgh Municipal Act 1879, section 166, and the Edinburgh Municipal and Police Acts 1879 to 1896, he thereby required her as part owner forthwith to take down, secure, or repair the same. He further intimated that should she fail to have the work begun within three days from the said date further proceedings would be taken, and all expenses incurred

would be levied from her in terms of the statutes.

The appellant did not comply with the requirements of this notice, and consequently, on 22nd May 1900, the respondent instituted proceedings in the Dean of Guild Court against her and others, with the view of enforcing the requirements of it, and of similar notices sent to other persons interested in numbers 89, 93, and 97 High Street.

After certain procedure in the action thus taken against the appellant and others, the Dean of Guild on 18th October 1900, after having visited the premises and heard the Procurator-Fiscal and parties' procurators, found in the meantime that all the flats of the tenement above the ground or shop flat were ruinous and insecure, and must be taken down, and also that the joists between the ground flat and the first flat, and the stone arching on the ground flat were insecure, and therefore in the meantime ordained the respondents in that proceeding, other than the present appellant, proprietors of the flats above the ground flat of the tenement, to take down forthwith the flats belonging to them respectively, and failing their doing the work within certain specified periods, he granted warrant to the Procurator-Fiscal to employ proper persons to do it at their expense.

The upper flats were taken down as thus directed, and thereafter the Dean of Guild Court, in consequence of a report by the Burgh Engineer, dated 11th December 1900, visited the premises on 14th December 1900, in the presence of the agents of the parties interested, and the result of their inspection was that they were unanimously satisfied that the appellant's premises were not only insecure but also ruinous, and that they were in such a condition that they must be taken down. The Dean of Guild accordingly, on 20th December 1900, found that the premises owned by the appellant, and the arching of the close between these premises and the premises owned by another person named, were not only insecure but ruinous and must be taken down; and therefore ordained the appellant to take down her premises accordingly, and failing her doing so within a specified period, granted warrant to the Procurator-Fiscal to employ persons to execute the work at her expense.

The present appeal was thereafter brought, and the appellant moved either for a proof of her averments that her premises are not ruinous or insecure, or for a remit to a man of practical skill to be named by this Court, to report as to the condition of these premises. The respondent objects to either of these courses being followed, upon the ground that they are according to his contention precluded by section 166 of the Edinburgh Municipal and Police Act 1879, as amended by section 34, sub-section 3, of the Edinburgh Improvement, &c. Act 1893. [*His Lordship read section* 166 *of the Act of* 1879 *as amended*].

The words, "if they find it necessary after hearing parties," were introduced into sec. 166 by the amending Act, and prior to their introduction it might have been contended with much force that the question whether a building was in a ruinous or insecure state so as to warrant proceedings being taken under it depended solely upon whether the building was or was not "deemed" by the Burgh Engineer (which I take to mean considered by him in the exercise of an honest judgment after proper examination) to be in a ruinous or insecure state. His judgment on this question was not declared to be subject to the review of any Court, and assuming it to have been honestly arrived at it might possibly have been held that it was final, and that the duty of the Dean of Guild Court, after the burgh engineer had reported his opinion as to the condition of the building, was rather executorial than judicial. But the introduction of the words "if they find it necessary after hearing parties," gives them the right (if they had it not before) to exercise a judgment as to the condition of the buildings, and they did so in this case after due examination.

The respondent did not dispute that an appeal to this Court is competent, but he submitted that the only power which the Court has under such an appeal is to ascertain whether the Burgh Engineer has (in the sense already explained) "deemed" the building to be in a ruinous or insecure state, or whether the Dean of Guild Court has arrived at that conclusion in the performance of its duties under sec. 166, and that, as in this case there is no allegation that the Burgh Engineer and the Dean of Guild Court did not apply their minds to the subject, or did not honestly arrive at the conclusion that the building is ruinous, this Court has no power to review their judgments on this matter, either upon a proof as to the condition of the buildings, or upon a report by a man of skill, whose judgment would be substituted for that of the Burgh Engineer and the Dean of Guild Court. There is much force in this contention, but it does not appear to me to be necessary for the decision of the present case to express an opinion upon it, so absolutely put. Not only does the appellant not allege that the Burgh Engineer did not in the sense above explained "deem" the building to be ruinous or insecure, or that the Dean of Guild Court did not, after due examination, arrive at the same conclusion, but there are no other allegations which should, in my view, lead us to order further inquiry, if we have power to do so. Such judgments as we have before us should not be lightly disturbed, especially where they relate to a statutory provision made for the purpose of protecting the lieges from imminent danger.

The appellant states in her pleadings that for some months prior to the date of the notice the Burgh Engineer was negotiating through her agents for the purchase of her property—a statement which might suggest that the appellant meant to allege that the action taken by the Burgh Engineer was not in the proper execution of his duty, but for the purpose of enabling the city authorities to acquire the property

at less than its true value. The appellant's counsel, however, upon the question being put to them, stated that they did not desire to make any allegation, or ask for any proof, to this effect.

For these reasons I am of opinion that the appeal should be dismissed, and that the interlocutors appealed against should be affirmed.

LORD ADAM concurred.

LORD M'LAREN—I concur in your Lordship's opinion. I think the jurisdiction of this Court under the Acts in question was not disputed. It was conceded by the Lord Advocate that to some effect the Court has jurisdiction to review the Dean of Guild's interlocutors, and I should desire to reserve my opinion as to the extent of that jurisdiction, and the manner in which in each case it may be expiscated. I agree that in the present case all the proceedings were regular and fair. According to the constitution of the Dean of Guild Court the Court is entitled to proceed upon its own knowledge after due inspection of the buildings; and there is nothing to suggest that the inspection was not properly and fairly made. I see no ground for disturbing the finding of the Dean of Guild Court.

LORD KINNEAR — I agree. The appellant's counsel pointed out that the competency of this appeal had not been challenged in the Single Bills, and argued that therefore it must be held that the jurisdiction of this Court was not called in question. I confess I think that in saying so he entirely misunderstood the point taken against him by the respondent and the position in which the case stands. Nobody disputes the competency of the appeal, nor the jurisdiction of this Court to consider the grounds upon which it is taken. But it is a totally different matter to say that this Court has jurisdiction to determine upon an inquiry ordered by the Court itself, special questions of fact and discretion which the statute commits first to the Burgh Engineer, and then to the Dean of Guild Court, and to substitute our decision for their decision upon these questions. Your Lordship has thought it unnecessary to decide the general question raised by the argument of the respondent's counsel on the point I have just stated; and I quite agree that the case may be disposed of in the circumstances in which it is brought before us without deciding any more general question than your Lordships are disposed to decide, namely, that there is no sufficient ground for our interference in this case. I agree with what was said by your Lordship in the chair, that if the question had arisen under the first of the two Acts founded on, so long as it stood unamended, it might have been doubtful whether the opinion of the Burgh Engineer was not conclusive, because the statute says that when he deems a building or a wall is ruinous and insecure he shall immediately order the removal of the persons occupying such building; and then there are certainly strong grounds for saying that certain statutory consequences are to follow as a matter of course. But the Lord Advocate conceded, and I think rightly, that it was not very material to determine whether that would have been so or not, because, as the statute is now amended, a power to reconsider the Engineer's determination on its merits is given to the Dean of Guild Court. The Dean of Guild Court, when they are set in motion, after hearing parties, may according to the construction of the statute which the Lord Advocate conceded to be the right one, upon their own judgment, and upon such materials as they think necessary, determine whether the Burgh Engineer's opinion is to be carried into operation or not. Now, the question is whether we in like manner are to consider on its merits the opinion of the Dean of Guild Court. I am not disposed, having regard to the view taken by your Lordship, to consider in what circumstances it might be maintained that we ought to review upon its merits that question of skill and discretion which the Dean of Guild Court has to decide. I have no doubt whatever that if a case could be made to show that the Dean of Guild Court has not properly applied its mind to the question—if it has not proceeded fairly in the exercise of its jurisdiction so as to do justice to the parties before it, or if it has come to a conclusion without having informed itself of the facts according to the ordinary and proper methods of procedure, I think the Court should interfere, and we should recal the Dean of Guild's judgment and remit to him to proceed and do justice, or take some other course which it may be proper to consider when the case arises. But in this case there is really no ground for suggesting that the Dean of Guild Court committed any error of procedure or any injustice. The appellant complained that the notice which was served upon her by the Burgh Engineer was too general, because she was proprietor only of the lower flat of a certain tenement, and his notice referred generally to the property without specifying the particular part of it, and in what respect it was ruinous. Now, I think as it stood at first the notice is certainly open to that criticism; but then in the course of the proceedings the complaint was made perfectly specific. The appellant denied that her house was ruinous, and the question of fact was dealt with very properly. The Dean of Guild Court in the first place ordered an inspection of the premises, and made that inspection themselves. Upon that, as your Lordship has pointed out, they found in the first place with reference to the upper flats, which did not belong to the appellant, that they were ruinous and must be taken down, and then they said as to the ground flat—"We shall postpone coming to any conclusion about that until the upper storeys are down: we shall look at it in the position in which it will be after these operations are completed, and then make up our minds as to what shall be done." But when the upper flats had been taken down, the Dean of Guild Court—that is, the Dean

of Guild and the other practical members of his Court—inspected the premises in the presence of the parties, and came to the conclusion that this lower flat was also ruinous and dangerous and must be removed. Now the question is, whether we are to set aside in the first place the opinion of the Burgh Engineer, made after due inspection, that this building is ruinous and dangerous and must be removed, and secondly, the opinion of the Dean of Guild Court, which is composed as we all know of practical men experienced in this particular matter, that the Burgh Engineer is right and that the building is dangerous, and to substitute for them our own opinion which we are to arrive at either by setting up the opinion of one man of skill of our own selection against the opinion of the men of skill appointed by Parliament, who are public officers responsible for the performance of their duty, or our own opinion founded upon a proof to be taken in this Court. I confess I think neither one course nor the other would—to say the least of it—be at all expedient. The whole proceedings directed by this clause in the statute are intended to be summary. The Burgh Engineer is to proceed immediately, and that arises from the very nature of the case—namely, that the building is ruinous and that the safety of the lieges is endangered by its condition. Now, if that question is not to be determined until after proof is taken in a court of law, and the court have had sufficient opportunity for coming to a conclusion upon the conflicting testimony of experts, it is obviously very probable that in many cases the question would be solved by a high wind before the Court had time to consider it. Then I think it is equally out of the question to set up the opinion of one man whom the Court may select as conclusive against the men of skill selected by Parliament. Without suggesting that these considerations should lead to a different conclusion from that of your Lordships, I think they at least afford sufficient ground for refusing to disturb the determination of the Dean of Guild Court, when nothing can be said against the procedure and nothing against the determination itself, except that the appellant thinks it wrong. I observe that the reason which the Dean of Guild gives for the ultimate course of procedure which he took is a perfectly good one, because he says that after the second inspection which the Court ordered, because they thought they would then be in a better position to judge of the condition of the premises than on the first inspection, it was moved for the appellant that she should be allowed to lead proof as to the condition of her premises. The Dean of Guild says—"The Court repelled this also, because they considered the matter which was to be the subject of proof is one which they are able to judge of without proof, and in respect that the members of the Court are men of skill in this partienlar matter." I think the Dean of Guild Court was perfectly justified in arriving at that conclusion, and that we should not be justified in disturbing it upon any grounds which have been argued to us.

The Court dismissed the appeal and affirmed the interlocutor appealed against.

Counsel for the Appellant--W. Campbell, K.C.—T. B. Morison. Agents—Nisbet & Mathison, S.S.C.

Counsel for the Respondent—Lord Advocate (Murray, K.C.)—Cook. Agents—Graham, Johnston, & Fleming, W.S.

Saturday, January 26.

SECOND DIVISION.

[Sheriff Court at Glasgow.

M'GILVRAY *v.* BERNFIELD.

Reparation — Wrongous Apprehension — Wrongfully and with Unnecessary Force and Violence—Police Constable—Issue.

In an action of damages against, *inter alios*, two police constables, the pursuer averred that the defenders came to her house and apprehended her on a charge of making a disturbance in a shop, that she denied the charge, and signified her willingness to accompany them to the police office, but "before she could put on her hat or jacket or any other thing properly," they seized hold of her and in presence of her neighbours and a large number of people dragged her out of her house down the stairs into the street, and thence to the police office, that throughout she offered no resistance, and said to the defenders that she would go quietly with them if they would release their hold of her, but that they paid no heed to her requests. The pursuer proposed an issue—Whether the defenders "wrongfully and with unnecessary force and violence" apprehended the pursuer in her house and conveyed her to the police office?

The Court *held* that the action was relevant, and approved of the issue as the issue for the trial of the cause.

Isabella Fraser or M'Gilvray, wife of John M'Gilvray, with consent of her husband, raised an action in the Sheriff Court at Glasgow, against William Bernfield, 102 North Woodside Road, Glasgow, Fanny Cohen also residing there, Alexander Main and William Nisbet, both police constables at Camperdown Police Office, Glasgow, and Samuel Glass, Inspector at said office, all jointly and severally or severally. The pursuer prayed the Court to ordain the defenders jointly and severally, or severally, to pay to the pursuer the sum of £500 as damages for slanderous charges, assault, and wrongous and oppressive apprehension.

This case is reported solely upon the points involved in the case made against the police constables for wrongous and oppressive apprehension,