

preceding the passing of this Act, including the site of his dwelling-house and any offices or other conveniences connected therewith," &c. That is the character of the respondent's croft. He may erect a building which is a necessary adjunct to an arable or pastoral subject, but under the Act he is not entitled to turn his croft into a fishing station. That is, however, what the respondent wishes to do.

If neither the Crofters Act nor any of the older Acts entitles the respondent to act as he has done and proposes to do, then he has no right to do so against the wishes of the complainer, the admitted proprietor of the rocks. I therefore am of opinion that the complainer is entitled to interdict.

LORD MONCREIFF was absent.

The Court pronounced this interlocutor:—

"Adhere to the three findings of the Lord Ordinary expressed in said interlocutor: *Quoad ultra* recal the said interlocutor: Interdict, prohibit, and discharge, in terms of the first and second conclusions of the note, but reserving always to the respondent any claim that he may have to use the beaches and rocks *ex adverso* of the respondent's croft, shown on the plan No. 27 of process, and referred to in the record, for the purposes of the white herring fishing, and the complainer's answers thereto, but dismiss the note in so far as it prays for removal of the shed there mentioned, and decern."

Counsel for the Complainer and Respondent — Guthrie, K.C. — Chree. Agents — A. P. Purves & Aitken, W.S.

Counsel for the Respondent and Reclaimant — Kennedy — Morton. Agents — Slater & Rose, W.S.

Friday, February 1.

SECOND DIVISION.

[Dean of Guild Court,
Paisley.]

BARR v. LEE.

Burgh — Burgh Police (Scotland) Act 1892 (55 and 56 Vict. cap. 55), secs. 152, 153 — Dean of Guild — Police Commissioners — Power of Police Commissioners to Authorise New Street less than 36 feet Wide.

The Burgh Police Act 1892, sec. 152, enacts that "it shall not be lawful to form or lay out any new street or part thereof, or court, within the burgh, unless the same shall . . . be at least 36 feet wide." Section 153 enacts that "every person who shall . . . form or lay out . . . any new street or court, or any part thereof, or who shall build, raise, or add to any house or premises . . . contrary to the provisions of this Act, unless the same shall have been formally sanctioned by the commis-

sioners on a consideration of the special circumstances of the case, which sanction they are hereby empowered to give, shall forfeit and pay a sum not exceeding £20."

The owners of certain property presented a petition in the Dean of Guild Court, in which they craved warrant for the erection of certain buildings thereon, and the formation of an "improved entrance" to an adjacent street. Objection was taken by the Master of Works that the petitioners' proposed operations constituted the forming of a "new street" within the meaning of the Burgh Police Act 1892, and that the proposed new street was not at least 36 feet wide as required by that Act. The petitioners thereafter applied to the Commissioners, who, "on a consideration of the special circumstances of the case," sanctioned the formation of the proposed improved entrance of a width varying from 30 feet to 32 feet 3 inches.

The Dean of Guild Court held that the Commissioners' sanction was not binding upon them, and refused to grant the warrant craved by the petitioners, on the ground that as the proposed street was a new street, and was less than 36 feet wide, they had no option but to refuse the lining.

Held that the Commissioners had power under section 153, "on a consideration of the special circumstances of the case," to sanction the formation of a new street of less width than 36 feet, and that as they had given their sanction the Dean of Guild Court was not entitled to refuse the warrant craved upon the ground that the proposed new street was less than 36 feet in width.

Observations on the jurisdiction of the Dean of Guild Court in such matters.

Hugh Barr and James Barr, builders, Paisley, in November 1899 presented a petition in the Dean of Guild Court, Paisley, for warrant to erect certain tenements upon the petitioners' property at Wellmeadow. The petitioners averred—" (Cond. 2) The petitioners propose to erect on their said property four tenements of four storeys, with cellars, to be occupied as shops and houses, and one building of one storey and cellars, to be occupied as shops, with relative offices, and which buildings are to front Wellmeadow Street; and an improved entrance to be formed from Wellmeadow to Walker Street, all as shown in and conform to plans, sections, and elevations thereof, made out by William Randall Quinton, architect, Paisley, and herewith produced."

James Lee, Master of Works for the Burgh of Paisley, lodged objections, in which he opposed the petitioners' application. He averred—" (Stat. 2) The said 'improved entrance' from Wellmeadow Street to Walker Street has not yet been formed or laid out as a new street within the meaning of the Burgh Police (Scotland) Act 1892, sections 146 to 153 inclusive, but the proposed operations of the petitioners

for which they crave the warrant of the Court, will have the effect of forming or laying out a new street, or part thereof, within the meaning of said sections. . . . (Stat. 3) The proposed operations of the petitioners having the effect of forming or laying out a new street within the meaning of said Act, the levels and gradients thereof must be fixed by the Commissioners of the Burgh of Paisley, as required by section 147 of said Act."

The petitioners in their answers admitted that the said improved entrance from Wellmeadow Street to Walker Street had not been formed as a new street within the meaning of the Burgh Police Act 1892, and averred that it did not require to be formed as a new street in respect that it was an existing street or court formed previous to the application of the said Act, and as defined thereby.

The petitioners pleaded—"(1) The proposed operations of the petitioners not having the effect of forming or laying out a new street within the meaning of the said Burgh Police Act, and the fixing by the Commissioners of the levels and gradients of the proposed 'improved entrance' not being therefore necessary, the lining requested by the petitioners should be granted as craved."

The objector James Lee pleaded—"(1) The proposed operations of the petitioners having the effect of forming or laying out a new street within the meaning of the said Burgh Police Act, the lining craved by the petitioners should not be granted until the levels and gradients of said new street have been fixed by the said Commissioners. (2) The said new street not being at least 36 feet wide as required by the said Act, and it not having been proved to the satisfaction of the Commissioners that it was an existing street or court, agreed to or formed previous to the application of said Act, the application for a lining should be refused."

It appeared that the petitioners had in July 1899 made application to the Police Commissioners of the burgh, requesting them to fix the levels and gradients of the said improved entrance, but that the Commissioners had refused to do so in respect that it was not 36 feet wide as required by section 152 of the Burgh Police Act 1892 in the case of new streets. In December 1899 the petitioners renewed their request to the Commissioners, pointing out that the entrance in question was an existing street within the meaning of the Act, and fell to be dealt with under section 153 thereof. The Commissioners adhered to their former deliverance, and the proceedings in the petition, which had meanwhile been sisted, were resumed.

On 26th May 1900 the Dean of Guild Court pronounced an interlocutor in which they found that before the lining craved could be granted it would be necessary to have it determined that the proposed improved entrance from Wellmeadow to Walker Street was an existing street formed previous to the application of the Burgh Police Act 1892, and in respect that

it was outwith the jurisdiction of the Dean of Guild Court to determine that question, sisted the petition *in hoc statu*. The petitioners thereupon again made application to the Police Commissioners. They ultimately offered to make the proposed improved entrance at Wellmeadow 30 feet wide, widening gradually to 32 feet 3 inches at Walker Street. The Commissioners, by minute of meeting dated 10th September 1900, resolved that it had not been proved to their satisfaction that the proposed improved entrance was an existing street formed previous to the application of the Act, but "on a consideration of the special circumstances of the case," agreed to sanction said improved entrance to be formed and laid out as a new street according to the proposal submitted by the petitioners. The petitioners thereafter lodged in the Dean of Guild Court a minute and amended plan, which showed the proposed entrance of the width above mentioned, and the levels and gradients as fixed by the Commissioners, and craved the Court to grant warrant for the erection of the buildings specified in the petition.

The Burgh Police (Scotland) Act 1892, sec. 146, enacts—"Every person who intends to form or lay out any new street shall give notice thereof to the commissioners, and along with such notice he shall lodge a plan of the proposed street, with longitudinal and cross sections, showing the proposed levels and means of drainage thereof, in order that the levels of such street may be fixed by the commissioners." . . .

Section 147 enacts—"The level and gradient of every such new street shall be fixed by the commissioners within one month after the delivery of such notice, and the level and gradient so fixed shall be kept thereafter by every person erecting any house or other building in such street."

Section 152 enacts—"From and after the date when this Act comes into force within the burgh it shall not be lawful to form or lay out any new street, or parts thereof, or court, within the burgh, unless the same shall . . . be at least 36 feet wide for the carriageway and foot-pavements; and no dwelling-house shall be built in any such street or court which shall exceed in height . . . one and a quarter times the width of such street . . . Provided always, that where any road or street fronts any links or common, or other open area, or in other exceptional circumstances, the commissioners may allow buildings of greater height; and provided also, that for the purposes of this enactment a street shall not include a mews or other lane which may be made 12½ feet wide, or such other width according to the use to be made thereof, of which the commissioners shall judge, and shall fix the width accordingly." . . .

Section 153 enacts—"Every person who shall, from and after the date when this Act shall come into operation in the burgh, form or lay out, or permit or suffer to be formed or laid out, any new street or court, or any part thereof, or who shall build,

raise, or add to any house or premises, or permit or suffer the same to be done, contrary to the provisions of this Act, unless the same shall have been formally sanctioned by the commissioners on a consideration of the special circumstances of the case, which sanction they are hereby empowered to give, shall forfeit and pay a sum not exceeding £20 . . . provided always that the provisions of this Act relating to the width and construction of streets or courts shall not extend or apply to any existing streets or courts, which shall be proved to the satisfaction of the commissioners to have been agreed to, or to have been formed previous to the application of this Act."

Section 201 enacts—"In burghs where there is a Dean of Guild Court at the commencement of this Act, or where such court shall be established as hereinafter provided, the Dean of Guild Court shall come in room and place of the commissioners for carrying out the provisions of this Act, in so far as they apply to new buildings or alteration of existing buildings, ventilation, and precautions during the construction, alteration, or repair of buildings and streets, and to old and ruinous buildings, and to the setting up of hoardings; and in that case all the powers and duties of the commissioners in reference to these provisions, and also in reference to the inspection of buildings in process of construction or alteration, or any work connected therewith, and the surveying and certifying of buildings before occupation, shall devolve on and be carried out by the Dean of Guild Court and the officers thereof, as herein provided for, but nothing herein contained shall be taken to restrict or prejudice the jurisdiction or to alter the constitution of any Dean of Guild Court as existing at the commencement of this Act."

On 2nd November 1900 the Dean of Guild Court pronounced an interlocutor refusing the prayer of the petition.

Note.—"When this case was previously before us we sisted it to enable the petitioners to have it determined whether the proposed improved entrance running from Wellmeadow to Walker Street was an existing street or court agreed to or formed previous to the application of the Burgh Police (Scotland) Act 1892. This we indicated could be done in two ways—(1) by proving to the satisfaction of the Commissioners that it was a street prior to the application of the Police Act, as provided for in section 153 of that Act, or (2) by procuring a declarator in any competent court. The petitioners evidently chose the former method, and from the excerpt minute of meeting of the Commissioners lodged in process, it appears that they have failed to prove to the satisfaction of the Commissioners that the said improved entrance was an existing street prior to the application of the Police Act. The Commissioners, however, have accepted a compromise, whereby they agree to the said improved entrance being formed 30 feet wide at Wellmeadow Street and 32 feet 3 inches wide at Walker Street; and it also

appears that they have fixed the levels and gradients of said improved entrance on that basis. This compromise seems to have been made by the Commissioners in virtue of section 153 of the Police Act. It appears to us to be very doubtful whether the Commissioners have power to make such a compromise, but in any case we do not think that it is in any way binding on this Court. It is the peculiar jurisdiction of this Court to line the streets, and for that purpose to carry out the provisions of any Acts of Parliament relating to the width thereof. The compromise made by the Commissioners can, we think, only bind themselves and put it out of their power to exact the penalties provided in the foresaid section of the Police Act.

"If that view of the law is the correct one, it is incumbent upon us as a Dean of Guild Court to consider this application for a lining (as modified by the amended plan) on its merits, leaving out of account the fact that the street, as shown in the amended plan, has been approved by the Commissioners. If we do so, we are at once met by the fact that the proposed improved entrance from Wellmeadow to Walker Street is a new street within the meaning of the Police Act. This seems to follow from the findings of the Commissioners, and also from the fact that the petitioners by entering into the compromise with the Commissioners have apparently abandoned their original contention that it was a street prior to the Police Act, and now found their case on the fact that though it is a new street we are bound to line the buildings, because it has been approved of by the Commissioners, and the levels and gradients have been fixed by them. We cannot, however, agree with this contention. Being a new street, and being less than 36 feet wide, as required by the Police Act, we feel we have no option but to refuse the lining.

The petitioners appealed to the Court of Session, and argued—The Dean of Guild Court had no jurisdiction to refuse the warrant craved by the petitioners. Under the Burgh Police Act 1892, from which alone the Dean of Guild Court derived its authority, the Police Commissioners, and not the Dean of Guild Court, had jurisdiction regarding the width of streets. While section 152 provided that no new street should be of less width than 36 feet, section 153 declared that the Police Commissioners might in exceptional circumstances authorise the construction of a street of less than the statutory width. That was a matter wholly within the discretion of the Commissioners, and as they had exercised that discretion in favour of the appellants, the Dean of Guild Court had no right to disregard their determination. The Dean of Guild Court had misapprehended the scope of its powers. That Court had no concern with the width of streets. Its jurisdiction was confined to the regulation of buildings, to prevent their encroachment on the line of a street already laid down, to regulate their height, and to control

matters affecting their construction and sanitation.

Argued for the objector and respondent—It was within the jurisdiction of the Dean of Guild Court to grant or refuse the warrant craved by the appellants. The prohibition in section 152 against laying down a new street less than 36 feet in width was absolute, and was not qualified by section 153. The discretion given to the Commissioners in the last-named section had reference only to the words immediately preceding, *i.e.*, to the discretion already committed to them by section 152, *viz.*, with respect to mews lanes, or to the height of buildings fronting an open space, and did not empower them to authorise the making of a street less than 36 feet wide. The jurisdiction of the Commissioners was restricted to the fixing of the levels and gradients of a new street, as set forth in sections 146 and 147. By section 201 all the powers of the Commissioners with regard to new buildings were transferred to the Dean of Guild Court; it was therefore within the power of that Court, and was its duty, to refuse warrant for erection of a building which would encroach upon the minimum width of street fixed by the Act.

LORD JUSTICE-CLERK—I do not think this case is attended with any serious difficulty. It comes from the Dean of Guild Court at Paisley. That Court sits solely under the authority of the Burgh Police Act 1892, and therefore whatever jurisdiction or rights that Court has are to be found by reference to that Act. The question before us turns upon whether clause 153 of that Act is to be interpreted as has been maintained by the respondent, namely, that it is merely a clause following upon but not affecting the rights of the Commissioners under clause 152. I am quite unable so to read it. I read section 153 as authorising a party who desires to form a new street to apply to the Commissioners to allow that street to be formed in the special circumstances without the restrictions which are imposed by the Act. It was absolutely essential for Mr Cook's argument that he should maintain that the words "unless the same shall have been formally sanctioned by the commissioners on a consideration of the special circumstances of the case" do not apply to both the cases previously stated, and if his argument is not sound by which he maintains that they only apply to the latter part of the previous part of the clause, then plainly he has no case. Now, the clause itself speaks of two things—"Every person who shall . . . form or lay out . . . any new street or court"—that is one thing—"or who shall build, raise, or add to any house or premises"—that is another thing. Surely it is not to be maintained that both of these cases are not covered by the words "contrary to the provisions of this Act." The person who is to be punished is to be punished because he has done something in the laying out of a new street, or because he has done something in the way of building, raising, or adding to a house or pre-

mises contrary to the Act. Does not the exception which follows apply to both—just as the contravention applies to both—"unless the same"—that is, the thing done which was contrary to the Act—"shall have been formally sanctioned by the commissioners on a consideration of the special circumstances of the case." It seems to me impossible to attach any other meaning to these words. An endeavour was made to show that the commissioners with respect to the laying out of streets have no power except as regards levels and drainage. I cannot so read the Act. Section 146 says that a person who intends to form or lay out a new street must apply to the commissioners, and must supply them first with a plan of the street, which necessarily shows the width and position, and further he must lodge with the plan longitudinal and cross sections showing the proposed levels and means of drainage—that is to say, his plan is to be a complete plan which the commissioners can consider, and in this he is to show not merely where the street is to be, what part of the ground is covered—its width and direction—but also the longitudinal and cross sections, that they may judge of the proposed levels both as regards the surface and the drainage beneath the surface. But that the clause is intended to provide, and in express terms does provide, that the plans are to be laid before the commissioners in order that they may judge of the proposed street, not merely as regards levels and drainage, but also as regards the forming and laying out of the street, I have not the slightest doubt. For confirmation of that it is only necessary to refer to subsequent clauses. Take, for example, clause 150—"It shall be lawful for the commissioners to agree with any person for the making of new streets for the public use through the lands, and at the expense of such person, and to agree that such streets shall become, and the same shall accordingly become on completion, streets to be maintained and repaired at the public expense." Now, that shows that the commissioners have a title to agree that streets shall be laid out and formed according to plans laid before them which the Dean of Guild has never seen. And then clause 151, speaking of opening up and paving, flagging, or otherwise making good to the satisfaction of the commissioners, says—"It shall be lawful for the commissioners to open up and make any such street in whole or in part according to its approved lines and levels." Approved by whom?—Plainly approved by the commissioners. Therefore I think all those arguments which are based upon clause 146 and the following clauses have no weight whatever. A person who wishes to lay out and get causewayed and paved a new street, thereby inducing people to take feus upon it, has to go to the commissioners to get the lines of the road, as well as the levels as regards traffic and drainage, approved by the commissioners, whose right and duty it is to see that roads are so laid down. It would be very extraordinary indeed if, after a street has been formed or otherwise

laid down and completed, another Court were to be entitled to say—"No, that shall not be the line of the street, because the line of the street must give 36 feet of width, and the Commissioners have no power to lay it down at less." The Commissioners have the power to sanction things to be done contrary to the Act in the laying out and forming of new streets, and to sanction these things so that there shall be no penalty exigible from the person who has done them; and, plainly, if they have the power to sanction them, they have the power to insist that they shall be carried out; at least the party who gets their sanction has a right to insist on the use of his property in the ordinary way. In this particular case the Dean of Guild has no other jurisdiction than this, namely, to insist that the party who is going to build shall not encroach upon the line of the street. Beyond that I think he has no power to insist that the owner of property abutting on that street shall not build up to the edge of his property and up to the edge of the street as long as he does not contravene any of those conditions which the Dean of Guild has to enforce as to the buildings being properly executed and the work properly done. On the whole matter, I have come to the conclusion that the judgment of the Dean of Guild Court is wrong, and ought to be set aside.

LORD TRAYNER—I am of the same opinion. Before dealing with sections 152 and 153 of the Burgh Police Act of 1892, upon which the argument generally turned, I should like to make a single observation as to the course the Dean of Guild took in disposing of this case. In May 1900 he sisted the process in order that the applicant should go to the Commissioners to have it decided whether this was a new street or not, or otherwise go to a competent Court to have the matter determined by declarator. I think the Dean of Guild need not have sisted the process or referred the appellant to either of these remedies. The record sets forth that the plans showed that the petitioners "intend to erect certain tenements facing another street or passage called in the petition an 'improved entrance' leading from Wellmeadow Street to Walker Street." Now, the answer was that one of these was not a new street but an old street, and I think the Dean of Guild might have ascertained the fact for himself. It was a matter of fact which could have been established, yea or nay, by probation. However, the appellants seem to have acquiesced so far in the view of the Dean of Guild, and went to the Commissioners with the result that they dealt with this place as a new street, and authorised it to be formed of a width of less than 36 feet. The question comes to be, whether that was in their power. Now, it was argued by Mr Cook that section 153 must be regarded as surplusage or repetition of section 152. I think a consideration of the clauses shows that there is no surplusage, that there is no repetition, but that the two sections are

the complement of each other. Section 152 provides that streets in burghs shall be at least 36 feet wide, and that no building shall be over a certain height. With regard to the height of these houses, the Commissioners may in exceptional circumstances authorise buildings of greater height. It then provides that a mews lane shall not be regarded as a street, because it is otherwise dealt with in the statute. Section 153, with regard to new streets, goes on to say that if any person shall lay out a new street which is "less than 36 feet wide"—I am using these words for the words "contrary to this Act"—shall be liable in a penalty unless the limitation has been specially "sanctioned by the Commissioners on a consideration of the special circumstances of the case, which sanction they are hereby empowered to give." I have no difficulty, reading these two sections together, in coming to the conclusion that it is left to the Commissioners to say whether in special circumstances, of which they are the sole judges, there should be a new street authorised of less width than 36 feet. What is the attitude of the Dean of Guild towards that? He says that what the Commissioners have determined may bind themselves, but does not bind him, and he will take no notice of it. That is to say, that he will not give obedience to what the Commissioners have done under statutory authority, which is in effect disobedience to the statute itself. I think the Dean of Guild is wrong in saying that the Commissioners' determination only binds themselves and is not binding upon him. I think everything they do in the exercise of their statutory powers is binding upon him, as well as upon every citizen, whether in office or not. Therefore, I have come to the conclusion that the Dean of Guild was quite wrong in refusing this lining on the grounds stated. I should like to add, in conclusion, a few words about the Dean of Guild's jurisdiction. I think he has mistaken altogether what his jurisdiction is. He is quite entitled, and bound, to see that proposed buildings do not encroach upon the street which has been fixed, whether it is an old street of 20 feet or a new street of 50 feet wide. He is bound to see that buildings line the street in proper order of height. He is not entitled to say this is not a proper street. It is buildings in which he is primarily concerned, and he has no right and no authority to fix or establish the width of either a new street or an old street. This street having been approved by the Commissioners, his duty is to line the buildings so that they shall be in conformity with the lines laid down by the proper authority, namely the Commissioners of Police. I think the appeal should be sustained and the case remitted back to the Dean of Guild.

LORD MONCREIFF—I agree in the construction and analysis of the clauses which have been referred to by your Lordships. The contention on the part of the respondent in this appeal is, that the enactment

at the beginning of the 152nd section, to the effect that it shall not be lawful to form or lay out any new street in any burgh unless the same shall be at least 36 feet wide, is an imperative and inflexible enactment, and one which it is not within the power of the Commissioners or the Dean of Guild Court to relax. That would be a sound proposition if the enactment was not modified by a subsequent section. But I think it has been modified by the following words in the 153rd section—"Unless the same shall have been formally sanctioned by the Commissioners on a consideration of the special circumstances of the case." It is said that these words do not apply to the width of streets, but only to the building, raising, or adding to buildings contrary to the Act. I think the section will not bear that limited construction. If these words, "unless the same shall have been formally sanctioned," had come before the words "contrary to this Act," there might have been some ground for the argument; but they do not, and the fact that the words "contrary to the provisions of this Act" occur between the provisions about the width of streets and the building or raising of houses and the proviso "unless the same shall be sanctioned by the Commissioners," shows that the latter proviso overrides all that precedes it. I only further add, that it is quite plain that this 153rd section applies to the whole of the previous sections of this group of clauses from 142 down to 153. That is well illustrated by the words with which it concludes—"Provided always, that the provisions of this Act relating to the width and construction of streets or courts shall not extend or apply to any existing streets or courts which shall be proved to the satisfaction of the Commissioners to have been agreed to or to have been formed previous to the application of this Act." That is a proviso which qualifies all the preceding sections in the group. I am satisfied that the Commissioners' sanction to a departure from the statutory width of the street was lawfully given by them under the powers conferred upon them by the 153rd section.

LORD YOUNG was absent.

The Court recalled the interlocutor appealed against, repelled the pleas-in-law for the objector, and remitted to the Dean of Guild Court to proceed.

Counsel for the Petitioners and Appellants—Rankine, K.C.—Clyde. Agent—James Campbell Irons, S.S.C.

Counsel for the Respondent—Jameson, K.C.—Cook. Agent—F. J. Martin, W.S.

Thursday, February 14.

SECOND DIVISION.

[Sheriff Court at Forfar.

CHRISTISON v. KNOWLES.

Prescription—Triennial Prescription—Trading Account—Continuous Account—Closing of Account—Change in Method of Paying Account.

A miller raised an action against an hotel-keeper for payment of the balance due on an account for corn and food stuffs supplied to the defender at various dates between 2nd May 1887 and 30th November 1899. The account sued on was stated as a continuous account between the dates mentioned, with payments to account on various dates. The pursuer averred that in December 1895, when a large balance was due on the account, the defender requested the pursuer thereafter to send a note of the items supplied each month, promising to pay these when rendered, and to pay up the old balance by instalments from time to time; that in accordance with this arrangement a note of the supplies was given to the defender each month, and the latter for some time paid instalments of what he was due the pursuer approximating to the amounts of these monthly notes; that latterly the defender became very irregular in paying the instalments, and that in December 1899 the defender's brother offered to pay the balance admittedly due on these monthly notes, but refused to pay the older items, which offer was accepted without prejudice to any claims which the pursuer might have for supplies given prior to December 1895.

The defender averred that no balance was due by him to the pursuer, and pleaded the triennial prescription. He produced a number of receipted accounts extending from April 1896 to August 1899, which showed that between these dates monthly accounts had been rendered to him by the pursuer, and that these accounts had from time to time been separately received when paid.

Held that the account sued upon was not truly continuous, the part of it relating to the supplies delivered before December 1895 having been closed under the arrangement made in that month, and that the triennial prescription applied to the part of the account which had been so closed.

Alexander Christison, miller, Guthrie, in March 1900, raised an action in the Sheriff Court at Forfar against Keith Knowles, horse-hirer, Panmure Arms Hotel, Edzell, for £754, 9s. 1d., being the balance of an account for corn and food stuffs supplied by the pursuer to the defender on various dates between 2nd May 1887 and 30th November 1899, with the legal interest thereon.

The account sued on was stated as a continuous account, extending between the