

Thursday, May 30.

## SECOND DIVISION.

[Dean of Guild Court  
at Hamilton.]

## M'NEILL'S TRUSTEES v. WATSON.

*Police—Building Regulations—Court—Width of Court—Street—Access to Court—Burgh Police (Scotland) Act 1892 (55 and 56 Vict. c. 55), sec. 4 (10) and (31), and 152.*

A proprietor proposed to form within burgh a "court" within the meaning of the Burgh Police (Scotland) Act 1892, which was to have access from a public street by a passage through his lands.

*Held (dub. Lord Young)* that the passage from the public street to the court must be at least 36 feet wide.

*Hamilton Model Lodging-House Co., Limited v. Watson*, Jan. 23, 1900, 2 F. 431, followed.

*Opinion (per Lord Young)* that the decision in that case should be reconsidered.

The Burgh Police (Scotland) Act 1892 (55 and 56 Vict. c. 55) enacts as follows:—Section 4—"The following words and expressions in this Act shall have the meanings hereby assigned to them unless there be something in the subject or context repugnant to such construction—that is to say, . . . (10) 'Court,' where by the context it applies to a space contiguous to buildings, shall mean a court or recess or area forming a common access to lands and premises separately occupied, including any common passage or entrance thereto. . . (31) 'Street' shall include any road, highway, bridge, quay, lane, square, court, alley, close, wynd, vennel, thoroughfare, and public passage or other place within the burgh used either by carts or foot-passengers, and not being or forming part of any harbour, railway or canal station, depot, wharf, towing-path or bank."

Section 152—"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 part thereof or court within the burgh, unless the same shall (measuring from the buildings or intended buildings therein at the level of the surface of the boundary of such street), be at least 36 feet wide for the carriageway and foot-pavements, . . . 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, but in no case shall the dwelling-houses fronting such lane exceed in height one and a-half times the width of the lane." . . .

The trustees under a deed of trust granted by Mrs Mary Hannah Oliver or M'Neill, dated 20th November 1893, presented a petition to the Dean of Guild of the burgh of Hamilton for warrant to erect two tenements of dwelling-houses on a piece of

ground belonging to them at Bertram Lane, Greenfield, in the burgh of Hamilton, containing 677 square yards or thereby.

Plans were lodged, from which it appeared that the petitioners proposed to erect two tenements of two storeys in height and a single apartment of one storey in height which were to be used as dwelling-houses, and to be situated in a new court to be formed on the petitioners' land off Bertram Street; that the court, including the passage leading to it, would be 211 feet or thereby in length from the entrance from Bertram Street to the boundary of the North British Railway, which bounded the petitioners' property on the east, that it would form a *cul-de-sac*, and that the entrance from Bertram Street was to be about 22 feet in width for a distance of 40 feet or thereby, the court widening to 36 feet in front of the proposed buildings.

Objections were lodged on behalf of Robert Watson as Burgh Master of Works and Burgh Surveyor, in which he objected to the granting of the warrant, *inter alia*, upon the following ground:—"The proposed 'new street or part thereof or court' being only 22 feet wide at its junction with Bertram Street, and widening to 36 feet in width in front of the proposed new tenements, does not comply with section 152 of the Burgh Police (Scotland) Act 1892, which provides, '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 for the carriageway and foot-pavements.'"

On 31st January 1901 the Dean of Guild (POLLOCK) pronounced the following interlocutor:—"Finds (1) that the petitioners intend to erect two tenements of two storeys in height, and a single apartment of one storey in height in a proposed new street or court to be formed off Bertram Street; (2) that the width of the said new street, as shown on the plans, is 22 feet at the entrance from Bertram Street, but widening out to 36 feet in front of the proposed new buildings; (3) that previous attempts had unsuccessfully been made to obtain a warrant for the erection of buildings of a similar kind on the same piece of ground; and (4) that the said 'new street or part thereof or court' does not comply with the provisions of section 152 of the Burgh Police (Scotland) Act 1892: Therefore what is sought being in contravention of the said Act, refuses to grant the warrant craved," &c.

*Note.*— . . . "The Dean of Guild is of opinion that the present case is ruled by the decision in the *Hamilton Model Lodging-House Company, Limited v. Watson*, January 23, 1900, 2 Fraser 431. The probability of buildings on the opposite side of the said new street or court cannot be wholly ignored, and it is also to be noticed that the buildings proposed to be erected are to be separately occupied."

The petitioners appealed, and argued—The position of matters on their ground was this—a court approached by a lane. The houses which they proposed to build were in the court, and the court fulfilled

the conditions of the statute, being 36 feet in width. This court was approached by a lane, and there was nothing in the statute which prevented the access to a court being by means of a lane. Section 152 of the Act showed that it was contemplated by the Legislature that there might be lanes in burghs 12½ feet wide, and that there could be dwelling-houses built in these lanes. The case of the *Hamilton Model Lodging-House Company, Limited v. Watson*, January 23, 1900, 2 F. 431, was very different. In that case the space leading into the court was bounded by dwelling-houses of a great height, and it could not possibly be pleaded that such an access was a lane. In the present case, however, the access was through the petitioners' own property, and they were quite entitled to form a lane on their own property if they chose.

Argued for the respondent—The attempt on the part of the petitioners to form a combination of a lane and a court was not authorised by the statute, and would merely lead to an evasion of the plain provisions of the Act. In terms of section 4, sub-section 10, a "court" included the entrance thereto from the street, and in terms of section 152 every court required to be at least 36 feet wide. Whether the court was formed exclusively on private property or not, the entrance to it must be of the full width prescribed for a court—*Couper v. Surveyor of Maryhill*, March 6, 1891, 18 R. 642; *Hamilton Model Lodging-House Company, Limited, supra*.

LORD JUSTICE-CLERK—In this case I have been unable to see any ground for interfering with the decision of the Dean of Guild Court.

The statutory provision seems to me to be clear to the effect that if buildings are to be erected such as may be erected in a street, the street must be of a certain breadth. Buildings of a certain height and character may not be erected unless the street is of that width. In the present case it is proposed to erect buildings in what is a *cul-de-sac*, and at the place at which they are proposed to be built a sufficient width can be left. But the only access to this space by which traffic can come there is a passage between two buildings, which is only 22 feet wide. Now, is this place to be held a street? As to that I think there can be no doubt. It practically formed a court, as there is no direct passage through it. But under the statutory definition (35 in the definition clause of the Burgh Police Act 1892) street includes, among other things, a court, and after enumerating almost every conceivable inhabited place, the same definition includes any "public passage or other place within the burgh used either by carts or foot-passengers." But further, the clause of the Act of 1892 on which the respondent founds expressly speaks both of a street and a court, and expressly requires that the width shall not be less than 36 feet.

LORD YOUNG—But for the decision referred to by the Dean of Guild, the decision

in the case of *Hamilton Model Lodging-House Company*, I would have been disposed to differ with the judgment of the Dean of Guild. I think that decision is deserving of reconsideration. But understanding that all your Lordships are of opinion that that case was well decided, and that the Dean of Guild could not have acted otherwise than he did upon it, I do not think it would be in any way useful for me to say more on the subject.

LORD TRAYNER—I am not prepared to adopt all the views expressed in the note to the Dean of Guild's interlocutor. But I think he has come to a sound conclusion on the case before him, and indeed I do not think he could have reached any other conclusion without disregarding the decision pronounced in this Court in the case of *The Hamilton Model Lodging-House Company* to which he refers. I think that that decision rules the present case.

LORD MONCREIFF—I have considerable sympathy with the appellants, because the effect of the Dean of Guild's judgment is to prevent them from making a beneficial and what appears to be a harmless use of their ground. But the terms of the 152nd section of the Burgh Police Act of 1892, as it has been interpreted by this Court, are I think fatal to the appellants' proposal. That section declares that it shall not be lawful to form or lay out any new street or court unless the same shall be at least 36 feet wide. Now, the street shown on the plan *ex adverso* of the proposed buildings is 36 feet wide, but the entrance to it from Bertram Street is only 22 feet wide. It was explained to us that in a previous application a builder was allowed to form that entrance of that restricted width on the assurance that it would only be used in connection with a mews lane.

Now, I think we must consider the street and entrance as *unum quid*, and if that is done the requirements of the statute have not been complied with. This is the view which was taken by the First Division of the Court in the recent case of *The Hamilton Model Lodging-House Company, Limited v. Watson*, 2 F. 431, and I think that we should follow that judgment.

The Court dismissed the appeal.

Counsel for the Petitioners and Appellants—Cooper. Agents—Clark & Macdonald, S.S.C.

Counsel for the Respondents—Cullen. Agents—Carmichael & Miller, W.S.