think it clear that the landlord undertakes no obligation whatever as to the continuance of the licence or as to the continuance of the purpose for which the lease is granted. In the first place, the lease is no doubt a lease of a subject which is described as being occupied by a spirit merchant. There is nothing about a public-house or about licensed premises, but I am inclined to think that the argument should be taken on the assumption that what was really intended was that the subject should be occupied as licensed premises. But then the way in which that purpose is expressed is this—that the subject is let to the lessee for the purpose of the second parties—that is, the lessee—carrying on therein the business of wine and spirit merchants. Now, that is no undertaking by the proprietor; from the necessity of the case it is an undertaking by the tenants in favour of the landlord, because it is a stipulation regarding the use and occupation to be made by the tenants. The landlord could not fulfil that—it is the tenants who are to fulfil that. And therefore if they have undertaken to occupy the premises as licensed premises or a public-house, it is for them to perform that obligation and to take all the steps that are necessary to enable them to do so. The landlord could not take the licence; he could not ensure the continuance of a licence. The licence is transferred to the tenant; and if they allowed the licence to lapse, it may be that their obligation has become impracticable, but the landlord is not responsible. And therefore it seems to me clear enough that the loss of the licence has no effect whatever on the continuance of the contract, except that the mere fact of such loss having taken place puts it on the landlord to consider how far he will or ought to insist on the stipulation that his shop is not to be used for any other purpose except that of a public-house. He has considered that and relieves his tenants of that obligation; and how that release of the party should destroy the contract altogether I am unable to understand. I think, therefore, with your Lordships, that the Lord Ordinary's judgment is perfectly right.

The Court adhered.

Counsel for the Pursuers and Respondents—Craigie—C. D. Murray. Agents—Campbell & Smith, S.S.C.

Counsel for the Defender and Reclaimer—Guthrie, K.C.—A. Moncreiff. Agent—Arthur B. Paterson, W.S.

Thursday, November 12.

SECOND DIVISION.

[Lord Low, Ordinary.

COATS *v.* CALEDONIAN RAILWAY COMPANY.

Railway—Compulsory Powers—Deposited Plan—Delineated—Notice to Take Land which not "Delineated"—Notice Bad in Part wholly Bad.

A railway company gave notice to treat for the acquisition under statutory powers of certain lands which lay outside their limits of deviation. One of the plots of ground specified in the notice was marked on the deposited plan as bounded only on three sides, the lines marked on two of the sides ending abruptly, leaving the fourth side open. The company maintained that the plot in question was "delineated," and proposed to draw a a line, which was not on the plan, joining the termini of the lines which ended abruptly. In a note of suspension at the instance of the owner of the plot of ground referred to, whereby he sought to have the company interdicted from proceeding under the notice, *held* that the ground referred to was not "delineated," and so could not be taken, and that the notice being thus bad in part was wholly bad, and interdict *granted*.

Dowling v. *Pontypool Railway Company* (1874), L.R., 18 Eq. 714, *distinguished* and *commented on*.

Railway—Company—Compulsory Powers—Notice to Take Lands Part of which had been Included in Earlier Notice which had been Withdrawn.

A railway company gave notice to treat for the acquisition of certain lands under statutory powers. Having, under a misapprehension, included in the notice a smaller portion of the lands of a certain proprietor than they required, they withdrew the notice and served a second one, including additional lands belonging to that proprietor as well as those belonging to him which were included in the first notice. In a note of suspension at the instance of the proprietor in question, whereby he sought to have the company interdicted from proceeding under their notice on the ground that by the first notice a contract had been concluded which could not be varied except with the consent of both parties thereto, *held* that the second notice was not bad though it included lands with reference to which the previous notice had been served.

This was an action of suspension and interdict at the instance of James Coats junior, of Ferguslie, Paisley, and Sir Thomas Glen Coats, Bart., of Ferguslie Park there, against the Caledonian Railway Company, and the Paisley and Barrhead District Railway Company, whereby the

complainers sought to have the respondents interdicted from prosecuting or following forth two notices to treat for the acquisition of certain lands belonging to the complainers, said entries being Nos. 7 and 6 of process, and both dated 28th July 1902.

The following narrative is quoted from the opinion of the Lord Ordinary (Low):—

"The question in this case is whether the respondents are entitled to acquire from the complainers certain portions of land belonging to the latter in regard to which notices to treat were given by the respondents the Paisley and Barrhead District Railway Company, whose undertaking has now been acquired by the respondents the Caledonian Railway Company. It is unnecessary to distinguish what was done by the one company and by the other, and accordingly I shall use the word respondents as including both companies.

"The railway, for the purposes of which the respondents desire to acquire the lands in question, is a short branch line or siding leading from the main line of the Paisley and Barrhead District Railway to the Ferguslie Fireclay Works, which I understand belonged at the date of the notices to the testamentary trustees of the late Mr Brown of Shortroods, and now belong to Robert Brown and Son, Limited.

"The first notice to treat which was given by the respondents was dated 22nd March 1902, and related to a plot of ground marked No. 83 on the deposited plan. The complainers admit that the respondents were entitled to acquire that piece of land.

"On 30th May 1902 the respondents intimated to the complainers that they withdrew the notice of 22nd March, and in lieu thereof they served a second notice, which included not only No. 83 but also Nos. 87 to 96 both inclusive.

"The reason why the respondents adopted that course was this. The respondents believed (and it was stated in the book of reference) that Nos. 92 to 96, both inclusive, which lie adjacent to No. 83, belonged to Brown's trustees. If that had been the case, the respondents by acquiring No. 83 would have been able to lead their line into the Ferguslie Works, which was the object for which they had obtained powers to make the railway. Upon the other hand, if they could not acquire Nos. 93 to 96, No. 83 would have been of no use to them, because there would have been a gap between the land acquired by them and the works.

"As it is more convenient for all the lands which are to be taken from the same proprietor to be included in one notice, the respondents withdrew the notice of 22nd March and gave the notice of 30th May, which included both No. 83 and Nos. 92 to 96.

"It also included Nos. 87 to 91 both inclusive. I understand that these pieces of ground were correctly described in the book of reference as belonging to the complainers. The respondents do not explain why they were not included in the first notice, but the complainers aver (Statements 19, 20, and 21 of their statement of facts) that the respondents included them in their second and subsequent notices, not because they require them for the purposes of their undertaking, but for the purpose of leasing them to Brown's trustees or to Robert Brown & Son, Limited. That, however, is a matter which I shall deal with afterwards.

"The complainers contend that it was incompetent for the respondents to withdraw the first notice, and that therefore the second notice was altogether bad. There is no doubt that the respondents could not, without the consent of the complainers, withdraw the first notice to the effect of refusing to purchase No. 83, but when the respondents found that they required more land belonging to the complainers, I think that (assuming that the respondents were acting in good faith) it was very reasonable for them, and was also the most convenient course for the complainers, to withdraw the first notice as a separate notice and to give a second notice, which included both No. 83 and the additional ground which was required. I therefore think that so far there was no good objection to the second notice.

"The complainers, however, objected to the notice upon other grounds. They appear to have founded upon the error in the book of reference in regard to the proprietorship of Nos. 92 to 96, and also to have maintained that certain of the plots of additional ground contained in the notice were not delineated on the deposited plan. The complainers therefore brought a suspension and interdict to have the respondents interdicted from proceeding under the second notice. The respondents thereafter applied to the Sheriff to have the book of reference corrected, and that having been done they lodged a minute in the suspension stating that they had withdrawn the second notice, and asking that the suspension should be dismissed, and that the complainers should be found entitled to expenses.

"The second notice therefore is out of the way, because I do not think that the complainers can object to the respondents withdrawing it, the position that they took up being that it was bad. The suspension is still in Court, but I understand that the only question between the parties is whether it should be dismissed, as the respondents desire, or whether an interim interdict, which was granted in the Bill Chamber, should be made perpetual. I do not think that that is a matter which affects the question raised in the present proceedings.

"The next step taken by the respondents was to serve two new notices upon the complainers (dated 28th July 1902). One of the notices (No. 7 of process), the notice first mentioned in the prayer of the note, included No. 83, and Nos. 87 to 96, both inclusive, in so far as the ground represented by these numbers was within the limits of deviation. The other notice (No. 6 of process), the notice mentioned second in the note, included Nos. 92, 93, 94, and 95, in so far as the ground represented by these

numbers was outside the limits of deviation.

"The respondents' reason for giving two notices was, I understand, that the complainers had maintained that the respondents were not entitled to take the ground which was the subject of the notice No. 6 of process, because it was not delineated upon the deposited plan."

Of the plots of ground referred to it is only necessary for the purposes of this report to describe No. 94, which was partly within and partly outside the limits of deviation. That portion of it which was outside the limits of deviation appeared on the deposited plan as being enclosed only on the north, south, and west sides. The northern boundary was marked as a railway siding, and the lines by which it was marked terminated abruptly at a point, to the east of which nothing was marked on the plan. The southern boundary was a road, and the lines by which it was marked also ended abruptly, and were not carried so far to the east as the marking of the railway siding. The northern and southern boundaries were not marked as parallel, but as converging gradually towards the east. The question with regard to this plot of ground was whether it was "delineated," and embraced all the ground within a straight line drawn between the termini of the northern and southern boundaries, though no such line was marked on the plan.

The complainers pleaded—"(2nd) By the notice to treat of 22nd March 1902 a valid contract to take the lands therein specified was concluded between the respondents and the complainers. Said contract cannot competently be rescinded by the respondents, and the subsequent notices, which are based on the pretended rescission thereof, are incompetent and illegal. . . . (6th) The first of the notices complained of is invalid in respect that it embraces the land taken under the contract on 22nd March 1902, and incompetently attempts to substitute for said contract a contract to take said land and an additional piece of land. (7th) The two notices complained of taken together include, *et separatim* the notice second complained of deals exclusively, with land which is outwith the respondents' statutory limits of deviation, and which is not delineated on their deposited plans, and which the respondents have no authority to take. Said notices are therefore entirely invalid."

The respondents pleaded — "(4) The prayer of the note should be refused, in respect that (*a*) the complainers are barred from objecting to the withdrawal of the notice of 30th May 1902, having pleaded in the previous note of suspension and interdict that the said notice was invalid; (*b*) the respondents are entitled to acquire the subjects included in their notices to treat of 28th July 1902; and (*c*) that the said subjects are required by the respondents for the purposes of their undertaking."

On 16th July 1903 the Lord Ordinary (Low) pronounced the following interlocutor:—"Having considered the cause, in regard to the notice first-mentioned in the note, Interdicts, prohibits, and discharges the respondents in terms of the prayer of the note; and in regard to the notice mentioned second in the note, before answer allows to the complainers a proof of their averments in statements on record Nos. 19, 20, and 21, and to the respondents of their answers thereto, and appoints the same to proceed on a day to be afterwards fixed."

In this interlocutor there was a clerical error to correct which for "first mentioned" read *second mentioned*, and for "mentioned second" read *mentioned first.*

Opinion. — [*After the narrative quoted above his Lordship proceeded*]—"The complainers now seek to have the respondents interdicted from proceeding upon the two last notices on four grounds. They contend (1) that the respondents' statutory powers to take land compulsorily had been exhausted by the notices to treat already given; (2) that it was incompetent to divide the land which it was desired to take from one proprietor into two parts and serve a notice in regard to each part; (3) that the notice No. 6 of process was bad because it included land not delineated upon the plan; and (4) that the respondents did not require the whole of the land included in the notices for the purposes of their railway, but gave notice to take part of it with the view of handing it over to Robert Brown & Son, Limited.

"I have already indicated my opinion upon the first of these objections. The respondents having, under a misapprehension as to the proprietorship of certain lands, included in their first notice a smaller portion of the complainers' property than they required, were in my judgment entitled to withdraw that notice and serve a second notice including the additional lands as well as those included in the first notice. To do so was the best course to follow in the interest of the complainers, because it is desirable that all the lands which a railway company wish to take from the same proprietor should be included in one notice, and indeed the inconvenience of any other course is the ground upon which the second objection is rested. In regard to the second notice, I have already pointed out that the complainers maintained on various grounds that it was incompetent, and therefore cannot object to its having been withdrawn.

"The second objection is, I think, also untenable. If a railway company find that they require more land than they at first contemplated, they may give a second notice to treat for the acquisition of additional land. Therefore to serve two notices upon the same proprietor is not necessarily incompetent, and when as here a question has been raised whether a railway company has power to take certain portions of the lands of a proprietor, I think that they are justified in making these portions the subject of a separate notice. If they do not do so they run the risk of the notice being held to be wholly bad.

"The third objection is of a different character, and is, in my opinion, well founded. One of the parcels of land included in the second notice is No. 94, which I understand is described in the book of reference as a yard used in connection with the Ferguslie Works. It seems to me that in so far as it is outside the limits of deviation that parcel is not delineated at all. The respondents contended that the boundaries on each side were shewn, on the one side a road (which is not numbered on the plan), and on the other side an old railway siding which is numbered 95, and that number 94 must be regarded as including the ground between the road and the siding. In short, the respondents propose to delineate No. 94 by drawing a line, which is not on the plan, from the point where the delineation of the road upon the plan ceases to the point where the delineation of the old siding ceases. I am unable to adopt that view. If in order to delineate No. 94 it is necessary to assume a line or boundary which is not shown upon the plan, it follows that No. 94 is not in fact delineated on the plan. Further, it seems to me that the road is not shown on the plan as forming the boundary of any subjects which the respondents are authorised to take except No. 84. The road is no doubt carried a little beyond the limits of No. 84, but that, I think, is simply intended to show that the road in fact continues in that direction. I rather think that the same thing may be said of the old siding in so far as it is outside the limits of deviation, but that is not so clear. Assuming, however, that No. 95 includes the whole of the old siding shown upon the plan and that that siding may be regarded as representing one boundary of 94, the respondents would derive no benefit, because the result would be that two boundaries of No. 94 (represented by two lines practically at right angles) would be shown, but that the extent of No. 94 in other directions would not be in any way limited or defined. I am therefore of opinion that the respondents were not entitled to take the lands outside of the limits of deviation which they claim to be included within No. 94. I may refer to the cases of *Protheroe*, 1891, 3 Ch. 279, and *Place*, 32 S.L.R., p. 145, which seem to me to be directly in point.

"The next question is, what is the result as regards the notice to treat, No. 6 of process, if the respondents are not entitled to take the land which they have there described as No. 94? Is the result that the notice is altogether bad, or that they are entitled to take the other lands described in the notice which are delineated on the plan?

"I should have expected that question to have been settled long ago, but so far as I can find there has only been one decision on the point. That was a judgment by Lord Kyllachy in 1895, in the case of *M'Callum* v. *Glasgow District Subway Company*, which is only reported in the *Scottish Law Times*, vol. iii., No. 310. Lord Kyllachy held that where a notice to treat included land which the company was not entitled to take, it was altogether bad, and the company could take no land at all under that notice.

"I observe also that Mr Deas in his work upon the Law of Railways says (p. 145) that a notice to treat has the effect of determining that the company 'shall in no event take less, nor, without additional notice, take more land than that defined and described by the notice. It fixes in fact one of the essentials of a contract of sale, namely, the precise subject-matter of the contract.'

"I think that that last sentence explains the ground of the conclusion arrived at both by Lord Kyllachy and Mr Deas. It is settled that a notice to treat concludes a contract for the sale and purchase of the land described and referred to in the notice in this sense, that the company are thereby bound to purchase and the proprietor to sell the lands, even although the price, which is in ordinary circumstances an essential term in a contract of sale, cannot be fixed until afterwards. The position of matters was thus stated by the Lord Justice-Clerk (Inglis) in *Forth and Clyde Junction Railway Company* v. *Ewing*, 2 M. 693—'The special Act is substantially an offer of the land by the landowner to the company, and notice by the company of their intention to take the land is an acceptance of that offer.'

"Now, of course, if the notice is an acceptance of a statutory offer to sell the lands which the company are authorised to take, it follows that no contract is concluded by a notice which includes lands which the company are not authorised to take, because in that case the acceptance does not square with the offer.

"But to say that the Special Act and the notice constitute an offer and acceptance is rather to state the legal result of the Act and the notice than the actual fact. I was therefore at first inclined to think that it would be pedantic to carry the analogy of an offer and acceptance so far as to say that if the company in error include in a notice a plot of land which they have not power to take, as well as various plots which they have power to take, they must drop the notice altogether, and cannot take the plots in regard to which there is no question as to their right. If they were allowed to do so the landowner would not be prejudiced, because the company would get what they had statutory authority to take, and no more, and the landowner would be compelled to sell what the statute obliged him to sell, and no more.

"Upon further consideration, however, I have come to see that there is another side to the question. If the company is entitled to take under such a notice as I have figured the part of the lands described which they have authority to take, then the landowner must also be entitled to insist that they shall take that part of the lands. That, I think, would be a very unfortunate position of matters for railway companies. A case might very well occur in which, if a railway company could not

get the whole of the land included in a notice it would be necessary for them to divert the proposed line of the railway to such an extent that they would not require any land at all belonging to the owner to whom the notice had been given. If in such a case the owner was entitled to compel the company to take so much of the lands included in the notice as they had power to take, the result would be that they would be saddled with lands which they did not require.

"I therefore think that as a contract of sale and purchase, although of a somewhat peculiar nature, is undoubtedly concluded by the service of a notice to treat, it is necessary, for the protection of the parties, to apply the ordinary rule that the subject-matter of the contract shall be precisely ascertained, which it cannot be if the notice includes anything more than lands which the company are authorised to acquire.

[*The Lord Ordinary then dealt with the fourth ground of objection, but as this ground was not insisted in when the case came before the Inner House it is not considered necessary to report that part of his opinion, or to refer further to this part of the case.*]

The respondents reclaimed, and argued—(1) with regard to the notice to take lands within the limits of deviation, the objection to this notice that it embraced lands which had been included in an earlier notice that had been withdrawn could not be sustained; the respondents' statutory powers were not exhausted by the earlier notice. (2) With regard to the notice to take lands outside the limits of deviation, all the lands there referred to were delineated; the deposited plan made it clear what lands the notice was intended to embrace; a line might be drawn joining the termini of lines marked on the plan—*Dowling* v. *Pontypool, &c. Railway Company* (1874), L.R. 18 Eq. 714; *Finck* v. *London and South Western Railway Company* (1889), L.R., 44 Ch. D. 330. In any event, assuming that part of No. 94 was not delineated, and that the notice was bad with regard to that part, it remained effectual with regard to the rest of the lands which it embraced; the notice was given to treat for the "said respective areas of land, or any of them."

Argued for the complainers—(1) with regard to the lands within the limit of deviation, this notice embraced lands part of which had been included in an earlier notice that had been withdrawn; the earlier notice constituted a binding contract which could not be varied by one of the parties thereto without the consent of the other. (2) With regard to the notice to take lands outside the limit of deviation, that portion of No. 94 which was outside the limit of deviation was not delineated, and therefore could not be taken by the respondents—*Protheroe* v. *Tottenham and Forest Gate Railway Company*, (1891), 3 Ch. 278; *Place* v. *West Highland Railway Company*, December 12, 1894, 32 S.L.R. 145; the notice was therefore bad with regard to that portion of No. 94, and being bad in part it was wholly bad—*M'Callum* v. *Glasgow and District Subway Company*, December 7, 1895, 3 S.L.T. 310; *Wrigley* v. *Lancashire and Yorkshire Railway Company* (1863), 9 Jur. N.S. 710.

At advising—

LORD JUSTICE-CLERK—The reclaimers in this case, the Caledonian Railway Company, who practically stand in the place of the Paisley and Barrhead District Railway Company, desire, in accordance with notices given by the latter to the complainers, to acquire certain subjects from them under an Act of Parliament of 1897 empowering the making of certain railways or deviation railways, and especially as applicable to this case a line marked No. 6, as shown on the deposited plans and sections. The case has been to some extent complicated by the fact that those promoting the line gave notice to treat and withdrew the notice and served a new notice, and again later withdrew it and served two new notices. The first notice was on 22nd March 1902, and on 30th May that notice was withdrawn and a new notice served, which included the lands contained in the first notice and other lands which the company found it necessary to take for reasons mentioned by the Lord Ordinary in his opinion, and which I do not consider it necessary to recapitulate. The complainers took objection to this new notice, both as to its competency and also on the ground of an error in the book of reference, and they sought to obtain interdict against that notice being proceeded with. But the book of reference being corrected by aid of an application to the Sheriff the railway company withdrew this second notice and served two new notices on 28th July 1902, and these form the subject of the present suspension. The complainers stated objections to these notices on several grounds. They maintained that the previous notices to treat had exhausted the reclaimers powers to take the land, that it was not competent to serve two separate notices as regarded lands held by one proprietor, that the notice No. 6 was bad as including land not delineated as required by statute, and that part of the land was not being *bona fide* given notice of because required for the reclaimers' works, but was being taken with the intention of handing it over to a firm of Robert Brown & Son, Limited.

I agree with the Lord Ordinary in thinking that the two notices in question cannot be set aside because of the previous notices which were withdrawn, and concur in the grounds which he states.

The most serious objection, however, seems to me to be that which has been sustained by the Lord Ordinary, and which applies to No. 94 upon the plan, which is a yard attached to Ferguslie works. The plan shows nothing of the nature of inclosure or delimitation. There are no lines which can in any reasonable sense be said to delineate a piece of ground at the place referred to by the number. The side lines, consisting of the line marking a road, and the lines marking an existing siding, are

nearly parallel. Whether if prolonged mathematically as they exist on the ground they would ever meet may be a question. There is no straight line on the railway siding side of the ground at all. But certainly there is nothing corresponding to what in ordinary language would be called a delineation of a definite piece of ground. It is suggested that the reclaimers are entitled to have the matter considered as if a line were drawn across from the outermost point of the marking of the line of road on the plan to the outermost point of the marking of the siding, and that they are entitled to take that ground under the notice. I cannot assent to that. In my opinion there is no delineation, and the drawing of such a line would be practically the supplying of a defect in delineation which cannot be supplied now. The reclaimers founded strongly upon the case of *Dowling* v. *The Pontypool Railway Company*, L.R., 18 Eq. 714. I confess that looking at the plan shown in the report in that case I should have felt great difficulty had the case come before me in holding that the ground there claimed as under notice was delineated on the plan. But certainly even if that decision could be held to be a binding authority I do not think it would rule the present case. In *Dowling* the lines shewn, although they did not meet were converging so that if extended they would meet in a very short distance, and all that was held there was that the owner had "sufficient notice" although the whole boundaries were not shown. Here I do not think it can reasonably be held that the boundary on one side is indicated at all, and therefore no question of sufficiency of delineation can arise. The case of *Protheroe*, quoted by the Lord Ordinary, is much more like the present case, and completely takes away the possibility of dealing with the present case upon the footing that the decision in *Dowling* can be held to establish any general rule. The most that can be said, on the assumption that *Dowling* was well decided, is that it is not always necessary that boundaries should be completely shown in delineation. But if something less may be held sufficient it must be because there can be no doubt of what the limits are, from a reasonable point of view. I find it impossible to say that that is so in this case.

The objection applies to the delineation of what is intended to be given notice of under No. 94 on the plan, and if that is a bad notice for want of delineation the question remains whether the notice can be held good *quoad ultra*. I am of opinion that it cannot be so held. The notice is a notice to treat for certain lands, and these if properly delineated are the ascertained subject which the company under its statutory powers is accepting as on sale by its notice. The subject-matter of the contract is ascertained and fixed. But where a notice is in part bad, so that the company cannot acquire part of what it intends to give notice to take, then I think the view is sound that the notice fails, and cannot take effect partially.

I am therefore of opinion that in respect of non-delineation the respondents are entitled to interdict.

As regards the other notice, the respondents in their pleadings made the allegation that the railway company were not taking the land for the *bona fide* needs of their undertaking, but were taking it in order to hand it over to a firm of Brown & Company, and of their averment to that effect in Statements 19, 20, and 21 the Lord Ordinary has allowed a proof. But when the case came here on reclaiming note the complainers intimated that they did not insist upon this ground of objection, and therefore these averments are now out of the way, and that ground for asking interdict upon the notice is abandoned. That part of the Lord Ordinary's interlocutor must be recalled, and *quoad* that matter the note of suspension refused.

LORD YOUNG concurred.

LORD TRAYNER—The complainers in this case seek to have the respondents interdicted from prosecuting and following forth two notices served by them upon the complainers under which the respondents propose to take under the powers of their Act, and for the purposes of their railway, certain lands belonging to the complainers. Both notices are of the same date but they may be distinguished as Nos. 6 and 7 of process respectively. The former of these (No. 6) refers to land situated partly within and partly without the limits of deviation shown on the deposited plan. It was maintained for the complainers that this notice was invalid because it referred to lands outwith the limits of deviation, which limits, the complainers maintained, formed the boundary or limit beyond which the respondents had no power of compulsory acquisition. This view is not tenable. The respondents are entitled and empowered by their Act to acquire for the purpose of their railway any land which is delineated on the deposited plan and described in the book of reference, whether within or beyond the limits of deviation. These limits, I need scarcely say, are placed on the plan only to show the limits within which the authorised railway may be constructed. They are not there for the purpose of placing a restriction or limit on the respondent's right to take. But the Lord Ordinary has held that part of the land to which this notice refers is not delineated on the deposited plan and therefore land which the respondents are not authorised to acquire. In this view I concur, for the reasons which the Lord Ordinary has stated. I also concur in the view that the notice to take land which includes lands that the respondents are not entitled to take makes the notice altogether invalid, even as regards that part of the lands to which (if restricted to them) the notice would have been good. On the subject of what amounts to "delineation" we were referred to a decision by Vice-Chancellor Hall in the case of *Dowling*. With all respect for that authority I am not prepared to

concur in the opinion there delivered, an opinion, I think, questioned if not dissented from in the subsequent case of *Protheroe* when before the Court of Appeal. But even accepting the views of the Vice-Chancellor in *Dowling's* case, that decision would form no precedent here, because the circumstances of that case and this appear to me to be materially different. All that was required in *Dowling's* case for complete delineation of the ground was, as your Lordship has pointed out, the prolongation for a short distance of two converging lines shown on the deposited plan. No mere prolongation of lines shown on the plan before us would delineate the lands which the respondents desire to take. To do that requires a new line or lines to be laid down, not at present appearing on that plan at all. I am of opinion, therefore, that the complainers are entitled to interdict as craved in so far as concerns the notice No. 6 of process and lands second mentioned in the prayer of the note—by clerical error called the first in the Lord Ordinary's interlocutor.

The notice No. 7 of process (referring to the lands first mentioned in the prayer of the note), stands in a different position. It relates to land delineated on the deposited plan and (if that were material) within the limits of deviation. One objection stated to that notice was this, that for part of this land (No. 83 on the deposited plan), a previous notice had been given and afterwards withdrawn. The Lord Ordinary has repelled that objection and I agree with him for the reasons which he has stated. The complainers objected farther to this notice that the respondents had not given it in *bona fide*, and averred that they proposed to take the land not for the purpose of their railway but in order to hand it over to a neighbour. Of these averments the Lord Ordinary has allowed a proof. It was stated to us, however, that these averments are not now insisted in, and that no proof in support of them is desired. In these circumstances I think the note should be refused in so far as it relates to the notice and lands first mentioned in the prayer.

LORD MONCREIFF was absent at the hearing.

The Court pronounced this interlocutor:—

"Recal said interlocutor reclaimed against: Interdict, prohibit, and discharge in so far as relates to the lands mentioned second in the note: *Quoad ultra* refuse the note and decern: Find no expenses due to or by either party."

Counsel for the Complainers and Respondents—Salvesen, K.C.—M'Lennan. Agent—J. Murray Lawson, S.S.C.

Counsel for the Respondents and Reclaimers—Cooper. Agents—Hope, Todd, & Kirk, W.S.

Thursday, November 12.

SECOND DIVISION.

[Lord Kyllachy, Ordinary.

BRUCE *v.* CORPORATION OF GLASGOW.

Road—Private Street—Entry on Register of Public Streets—Glasgow Police Act 1866 (29 *and* 30 *Vic. cap. cclxxiii*), *secs.* 282 *and* 286.

The Glasgow Police Act 1866 (29 and 30 Vic. cap. cclxxiii) enacts,—section 282:—"It shall be the duty of the registrar from time to time to enter in the Register of Public Streets, and to describe by a reference to numbers or marks on the Ordnance Map, any street which is declared by the Dean of Guild or by [the Magistrates and Council] to be a public street, and every other particular which he is directed by the Dean of Guild or [the Magistrates and Council] to enter therein or to describe thereon, in pursuance of the provisions hereinafter contained; and the entries and descriptions in the said register, and the relative numbers or marks on the said map, shall be conclusive evidence of what are public streets, and of the said other particulars." . . . Section 286:—The Master of Works by direction of [the Magistrates and Council] jointly with the proprietor of any land or heritage adjoining to and having a right of access by any private street or court . . . may apply at any time to the Dean of Guild to declare the said street or court or any part thereof to be a public street, and the Dean of Guild shall thereupon grant warrant to cite the remaining proprietor or proprietors of lands and heritages adjoining to and having a similar right of access by such street or court, and shall inquire into and decide the question raised in such application, and may direct the Registrar to enter such private street or court in the Register of Public Streets."

Between the properties of the feuars at the corners of two private streets in Glasgow a lane was formed; the solum of the lane was the property of the feuars. At one end of the lane, between the properties referred to, there was a gate which closed the access thereto from the private streets and at right angles to the gate there was a railing which separated the roadways of the private streets, the one from the other. The lane was continued beyond the corner properties, and its other end was open to a public thoroughfare. The Corporation of Glasgow, in 1894, without intimation to the proprietors of the feus referred to, and without describing it by reference to numbers on the Ordnance map, placed the lane on the register of public streets, and thereafter in 1901 removed the gate and