to speak, the heirs of the judicial functions not of the administrative, and I think this power of modifying the penalty, if it existed, was certainly part of the administrative functions, and is represented now by the undoubted power which the Commissioners of Inland Revenue have to modify any penalty they please. Further, with your Lordship I am greatly strengthened in this view by finding what I take to be proved by the authoritative statement at the bar, namely, that the Court of Exchequer in England have never conceived that they had this general power of modifying any penalty. The interlocutor will be therefore to recal the Lord Ordinary's interlocutor and to give decree in terms of the information with expenses.

The Court recalled the Lord Ordinary's interlocutor reclaimed against and gave decree in terms of the information.

Counsel for the Complainer and Reclaimer—H. Johnston, K.C.—A. J. Young. Agent—P. J. Hamilton Grierson (Solicitor of Inland Revenue.)

Counsel for the Defender and Respondent — Campbell, K.C. — Wm. Thomson. Agents—Lister, Shand, & Lindsay, S.S.C.

Tuesday, July 18.

SECOND DIVISION.

[Sheriff Court at Glasgow.

STEVENSON *v.* NORTH BRITISH RAILWAY COMPANY.

Master and Servant—Agent and Principal — Contract — "Shipping-Agent" — Engagement "for One Year Certain" and Services Tacitly Continued for a Number in Employment of an Annual Nature with Salary Paid Once a-Year — Dismissal—Tacit Relocation.

A shipping agent was appointed by a railway company in December 1891 in connection with the export of coal at a specified salary, "for one year certain." The contract was renewed in writing for another year in December 1892. Thereafter the agent continued to discharge his duties until 1900, and received payment of his salary in one sum for each year ending 31st October. The agent's duty was to arrange that the shipments of Scotch coal should be from certain ports in which the railway company were interested. Such arrangements required to be made for each year ending 31st October before the 1st January preceding. On 2nd January 1901 the railway company gave notice to the agent that his services would not be required after three months from that date. In an action at his instance for recovery of salary due from 31st March to 31st October 1901, *held*, on evidence led, that the contract between the pursuer and defenders was a yearly one, and that the defenders were not entitled to terminate it when they chose by three months' notice.

D. M. Stevenson, coal exporter, 12 Waterloo Street, Glasgow, raised an action in the Sheriff Court there against the North British Railway Company for arrears of salary alleged to be due to him as one of the company's shipping agents.

In 1886 the pursuer, an exporter of coal, entered into certain arrangements with the defenders, whereby it was arranged that he, in consideration of certain payments by them, was to endeavour to get coal for Hamburg shipped at ports on the Forth in which the defenders were interested.

These arrangements were acted on until 29th December 1891, when the pursuer was appointed shipping agent for the defenders in terms of the following letter of that date addressed to him by the defenders' manager, viz.—"Dear Sir,—With reference to our interview to-day, I hereby appoint you agent for this company as from 1st ulto. (for the purpose of attending to the Company's interests in connection with their shipping trade to Hamburg at Bo'ness, Burntisland, and Methil), at a salary of £450 per annum, for one year certain. If at the end of that year the services which you have undertaken to render to the company are such as to justify an increase in the salary, the additional value of such services shall be taken into account in fixing any salary which may be attached to a further engagement. In the event of any material reduction taking place in the rates charged by the company, consequent on the revision now being made by Parliament, the company reserve the right to take the effect of such reduction into account as from 1st November 1892."

On 30th December 1891 the pursuer wrote to the defenders' manager in the following terms—"Dear Sir,—I have your letter of y'day, which is in order, and for which I am much obliged."

On 7th December 1892 the pursuer's appointment was renewed in terms of the following letter received by him from the defenders' manager—"Dear Sir,—Confirming the arrangement made at Bo'ness yesterday, I have pleasure in renewing for another year from 1st ultimo your appointment as agent to this Company for the purposes described in my letter of 29th December 1891 on the same terms and conditions. Please acknowledge receipt."

The pursuer acknowledged receipt on 8th December.

The pursuer's salary, which was raised to £550 per annum, was paid in one sum annually for the year ending 31st October, and the arrangement embodied in the letters was acted on by the parties without further stipulation as to the conditions of the appointment down to and including the year ending 31st October 1900.

On 2nd January 1901 the defenders' manager wrote to the pursuer in the following terms—"Dear Sir,—I beg to intimate that we will not require your services as shipping agent for this company after three months

from this date. Kindly acknowledge receipt." On 3rd January the pursuer wrote declining to accept notice of termination of his agreement with the defenders.

On 23rd April 1901 the defenders paid £229, 3s. 4d. to the pursuer, being salary due to 31st March.

In acknowledging this sum as a partial payment the pursuer wrote—"There will be due at the end of October other £320, 16s. 8d." For that sum the present action was raised, the pursuer having failed to obtain any further payment from the defenders towards salary alleged to be due for the year ending 31st October 1901.

The pursuer pleaded — "The defenders being due the pursuer the sum sued for, in terms of their agreement with him, decree should be granted as craved."

The defenders pleaded — "(2) The pursuer's employment by the defenders having been duly terminated at 31st March 1901, the defenders should be assoilzied. (3) The agreement alleged by the pursuer can only be proved by writ."

A proof was allowed. The nature of the evidence is sufficiently disclosed in the Sheriff-Substitute's note and the opinions of the Judges *infra*.

On 6th January 1905 the Sheriff-Substitute (MITCHELL) granted decree for the sum sued for.

Note.—"The Sheriff-Substitute has found this a difficult case although he was helped by an able argument on both sides.

"The defenders' contention, as he understood, is that the relations of parties are fixed by the terms of the letters of 29th and 30th December 1891, and that these letters, with the renewal of the arrangement for another year under the letters of 7th and 8th December 1892, made the relations to be, on the expiry of that year, terminable at pleasure on three months' notice as reasonable notice. Pursuer's contention is that the whole history of the relationship, as proved under the proof before answer allowed by Sheriff Strachan, must be looked at, and that in the circumstances he is entitled to maintain the relationship at least till the end of the year current when notice was given, being 31st October 1901, or to be paid damages till then.

"Considering first the terms of these letters, the Sheriff-Substitute is unable to hold that they can be safely interpreted without reference to what preceded and to what followed. The term 'agent' is of vague import, the 'services' to be rendered are not fully defined, and while 'salary' is spoken of in one paragraph, the other indicates *prima facie* another species of employment. The nature of the service or employment must be thoroughly inquired into. The proof shows an element of confidentiality which demonstrates the need of this inquiry.

"The proof and productions when carefully examined seem to the Sheriff-Substitute to show that the work or employment originally undertaken by pursuer for defenders was the opening up, with co-operation on the part of the Railway Company, of a new trade, first from Bo'ness to Hamburg and later from Fife to Hamburg, with payment by way of a specific sum on so many thousand tons shipped, the arrangement being expressed in letters of 6th January 1886, 27th December 1887, and 19th February 1891. The period of the Bo'ness arrangement was a definite one, three years, but it was being continued at 20th December 1891, and the Fife arrangement was also for 'three years from the first sailing,' but it appears to have been incorporated in the arrangement of 29th December 1891. In the arrangement of 1891 a 'salary' of £450 seems to take the place of, or rather include, the annual £250 of 1886 and 1887 plus the £125 of February of the same year, and to be based on an estimate of traffic, modifiable by increase or decrease, according to circumstances of traffic or rates. The agency or service itself after 1891 seems to have covered practically as before only pursuer's own traffic, he being by trade a coal exporter, and neither securing import trade nor inducing others to compete with himself in this export coal trade, nor in fact being expected to do either. After February 1893 defenders call pursuer shipping agent, but he never himself recognises this name till February 1900. Further, the arrangement of 1891, according to a fair reading of the letter of 29th December, seems to contemplate the probability of its extension or renewal (see especially the words 'one year certain,' 'further engagement,' 'as from 1st November 1892').

"The arrangement was renewed 'for another year' on 7th and 8th December 1892 on the same terms and conditions. It had technically terminated on 31st October 1892, but was carried continuously on. After 31st October 1893, when the second year's employment ran out, the relations of parties continued as they had been, without any written renewal of agreement, for eight successive years—that is, until the notice given in defenders' letter of 2nd January 1901, excepting for a threatened breach, when Mr Jackson had become defenders' manager in January 1900, which, being resisted by pursuer, resulted in a payment, without prejudice, followed, however, in the next year by the usual payment apparently without condition. Even in 1900 the formal receipt does not express this condition. Each year a statement of the extent of the traffic (*i.e.*, tons shipped) was sent, or asked and sent, and payment was expressly given and received, as for each past year, up to each 31st October, the new year having in one case (1894-95) already run on as far as 11th and 19th January of the following year.

"Besides the correspondence, the parole evidence on the whole supports the view above given of the relations of parties, and of the continuous character of the relationship. Before 1901 the pursuer had created and was fostering a new trade through Bo'ness; 'that fostering went on from 1891 to the present date; there was no change.'

"The correspondence, and the pursuer's evidence, uncontradicted by defenders and supported by the probabilities of the case,

show, further, actings and obligations in Hamburg on the part of the pursuer incidental to this trade, viz., that at first, at least, he paid commissions or made allowances there, and that he made arrangements for sales for a year ahead. The difficulty of diverting the traffic, so far as established, to a rival Scottish railway is clearly stated by pursuer, and his statements seem probable, and it is admitted for defenders. That other traders followed his line of business seems also very probable.

"A memorandum made by pursuer at the time of the 29th December 1891 adjustment was ultimately received into process in relation to his letter to Mr Conacher, then defenders' manager, of 31st May 1894. That letter, referring to the memorandum, says—'I objected to your saying one year;' you replied, 'I say here . . . that I wish and intend arrangement to go on from year to year, so long as you can keep up the trade.' This statement which, *inter alia*, regards the arrangement as, at least, annual in duration, was never repudiated in any letter by Mr Conacher, who continued to be manager for over two years longer, and who paid the £550 to pursuer five successive years after 1894. Mr Jackson, who followed as manager, says he never saw that letter. The secretary, who was said to be present, says he does not remember about such an interview, but does not expressly deny it.

"What then, in such circumstances, was the position on 2nd January 1901 with regard to the duration of the contract? The Sheriff-Substitute holds that pursuer had right by way of tacit relocation to a year's tenure (as from 1st November 1900), or in any event that three months' notice was not sufficient.

"The Sheriff-Substitute thinks that in a large sense the relationship between defenders and pursuer may be regarded as that of master and servant, his service partaking also of the character of agent for a principal, with elements in it also of perhaps joint-adventure. The defenders call him 'agent' and 'shipping agent,' but they pay him a 'salary,' and introduce him as 'one of our shipping agents, and a salaried official of our company,' action which at least seems to bar them from denying any legal results of proper service. Pursuer's employment was a special work, but while from 1893 defenders called him 'shipping agent' to the company he was really shipping agent to no one else—only 'to the company,' and his employment was solely in the company's interest and his own as a coal exporter. As between these parties, the relationship, though special, was a simple one, arising naturally out of circumstances. Defenders did not, in fact, direct pursuer in his work for them when he did it as usually to their satisfaction, but they watched results, and once, at least, asked explanations.

"Whether the employment or service of pursuer was most largely as a servant or as an agent, there was in it, the Sheriff-Substitute thinks, an element of continuance, or the contemplation of renewal from year to year for an indefinite time. It may be difficult to say when the original opening up of the trade ceased to weigh with the parties, or would have ceased to weigh had Mr Walker lived longer; but we may take it that after 29th December 1891, opening became rather extension or expansion, represented in tonnage and recognisable by a larger payment, so recognised from 1894 onwards. From that time the main consideration of parties seems to have been the current actual service in traffic (in coals), and it suited both parties to look at it, and they did look at it, from the annual point of view. Year by year things went on as before, and thus each year the annual character of the engagement was established more firmly. In this particular employment it would be difficult at an early stage, and perhaps not less but more difficult as time passed, for the pursuer if called upon to drop this exclusive service, to alter his arrangements with third parties, and create a like monopolist trade elsewhere. As was well argued for him, it would take a full year for one party to see whether the traffic was to be kept up and for the other to make different connections.

"In the whole circumstances, the Sheriff-Substitute thinks the employment (whatever it may be best called) in 1901, as probably at 1892 and 1893, was not of a temporary character and during pleasure, but in its nature continuous—at least from year to year—and that it was subject, under the principle of tacit relocation, when another year (1901) had begun to run, to renewal during that year. No larger question is raised in this record.

"The case of *Brenan* v. *Campbell's Trustees*, 1898, 25 R. 423, was founded on for defenders to show that tacit relocation is not applicable here, because (1) of the absence of the relation of master and servant, and (2) of the limited term and nature of the employment. The Sheriff-Substitute, agreeing with the agent for the pursuer, besides and beyond the argument from personal bar, thinks, on grounds suggested above, that the cases essentially differ in both respects—the tie between the parties—and the absence here of the peculiar conditions affecting also the matter of a precise period or continuity which were present in *Brenan*. He would refer to *Dowling* v. *Henderson & Son*, 1890, 17 R. 921, first, for the application of the doctrine of tacit relocation in circumstances resembling the present in certain respects, treated as a case of principal and agent, and next for the significance of the employers' knowledge of his employee's claim, and for the Lord Ordinary's view about a yearly contract; also to Lord Low in *Houston* v. *The Calico Printers Association, Limited*, 1903, 10 S.L.T., p. 532, for his application there of tacit relocation *quoad* the pursuer's original employers. 'I think that the circumstances show that the intention was to make him a yearly servant, and that neither party contemplated that the service, or the conditions of it, should

terminate at the expiry of the year. In such circumstances I do not see why, upon the principle which is applied in the case of leases and partnership, and which has undoubtedly been extended to certain contracts of service, the agreement should not have been renewed or prolonged by tacit relocation. I should therefore be prepared to hold that so long as the firm of Inglis & Wakefield (the original employers) existed, the agreement of 1887 continued in force.'

"Even should the doctrine of tacit relocation be held inapplicable to this case, the Sheriff-Substitute is inclined to think that, in view of the element of continuity implied in the fostering of a new trade, pursuer's arrangements with third parties, his own thirlage so far to defenders' interests (no doubt for advantage also to himself), the difficulty of finding a sphere for similar enterprise elsewhere, and the length of time during which the arrangement had been acted on, three months' notice was not sufficient. Taken on the defenders' own footing of a servant, pursuer was not like 'any other servant,' as Mr Jackson suggests, and at least needs a special notice. Defenders did not offer more than three months, and it seems difficult to draw the line within the year. The pursuer is still shipping from these ports is a point to be noted, but the whole circumstances were not gone into in proof in this respect."

The defenders appealed to the Court of Session, and argued—The pursuer was a salaried official with whose services the defenders were entitled to dispense on giving reasonable notice; his employment was effectually and reasonably terminated by the notice given on 2nd January 1901. If not a salaried official, the pursuer was an agent whose agency would be terminated at any time—*London, Leith, Edinburgh & Glasgow Shipping Company* v. *Ferguson*, November 13, 1850, 13 D. 51. There could be no tacit relocation; the pursuer's work was incidental to his own business—*Lennox* v. *Allan & Son*, October 26, 1880, 8 R. 38, 18 S.L.R. 13; *Brenan* v. *Campbell's Trustees*, January 14, 1898, 25 R. 423, 35 S.L.R. 341; *Morrison* v. *Abernethy School Board*, July 3, 1876, 3 R. 945, 13 S.L.R. 611; *Forsyth* v. *Heathery Knowe Coal Company*, June 9, 1880, 7 R. 887, 17 S.L.R. 637; *Mollison* v. *Baillie*, January 10, 1885, 22 S.L.R. 595. The cases of *Dowling* v. *Henderson & Son*, June 11, 1890, 17 R. 921, 27 S.L.R, 738, and *Houston* v. *Calico Printers Association*, January 8, 1903, 10 S.L.T. p. 532, referred to by the Sheriff-Substitute, did not apply.

Argued for the respondent—The pursuer's employment continued until 31st October 1901, the defenders up to that date having benefited by the work done by him prior to 1st January in that year. The arrangement made in 1891 and renewed in 1892 had been tacitly renewed thereafter from year to year. The judgment of the Sheriff-Substitute should be affirmed.

At advising—

LORD JUSTICE-CLERK—I agree with the Sheriff-Substitute in thinking that this is a case of a rather difficult character, but giving it the best consideration I have been able to apply to it, I am of opinion that the judgment of the Sheriff-Substitute is right and ought to be adhered to.

There can be no doubt that the arrangement under which the pursuer was employed by the North British Railway was of a somewhat complex character, the purpose of the company being to secure that certain coal traffic should pass over its own line and not that of a rival company. It involved this, as I read the evidence, that the pursuer had to make arrangements, not for the moment, but for a long period ahead, as the contracts he entered into had to cover a period a long way in advance of the time for the transit and shipment of the coal.

The difference between the parties is that the pursuer maintains that if the defenders desired to bring the contract to an end he was entitled at least to his agreed-on payment up to the end of the year current. The company on the other hand maintain that the engagement was terminable whenever they chose, only three months' notice or three months' payment in lieu of notice being given.

The Sheriff-Substitute is, I think, right in holding that in the special circumstances of the case it cannot be decided by looking at the two letters of 7th and 8th December 1892 alone, for these letters do not in any distinct manner define the position. The proof is useful as showing what was the character of work which the pursuer did for the company from the time he first came into relations with them in 1887. There had been a three years' arrangement at first both as regarded Bo'ness and Fife, but it was carried on for some years, and was in operation till 1891, when a "salary" arrangement was made, the basis of which was the expected traffic, and might therefore be varied according to circumstances. It was to be for "one year certain" as expressed, and in view of a further engagement. It was thereafter renewed, and thereafter tacitly continued for many years.

There can be no doubt on the evidence that the pursuer made arrangements a year ahead, and it is not easy to see how, looking to the competition which existed, he could have been successful in bringing on to the defenders' line the traffic which he did, without such arrangements being made in advance. Indeed, this is conceded by Mr Jackson for the defenders.

In doing what he did the pursuer was held out in introductions as being a "salaried official of the company," thus plainly treating him as in their service in the work he was doing, although it might also have the character of an agency. I do not attach much importance to the fact that the expression "agent" is used in the correspondence. It is so done in express relation and juxtaposition to a statement that the pursuer is rendering "services," and as it is expressed in the letter of 29th December

1891 "additional value of services" is a matter to be taken into account in fixing any salary which may be attached to a further engagement. I may also notice in passing that the name "agent" is quite familiar in railway nomenclature as referring to one who is a servant of the company, *e.g.*, the person in charge of a station is called "station agent," and is so announced to the public by placard at the station. There was in this case definite reference to continued engagement. The consideration of the arrangement was made from time to time on a footing referable only to work carried on from year to year, and it was undoubtedly a business of such a nature that the breaking of it off during the currency of a year might be very injurious to the pursuer. Indeed, it is difficult to see how any such business could be taken up by a prudent man if it might be abruptly closed at any time.

The question seems to be whether, as it is expressed in the case of *Houston* v. *The Calico Printers' Association*, there "was an intention to make him a yearly servant, and that neither party contemplated that the service or the conditions of it should terminate" without the pursuer having a claim as under a yearly contract.

On the whole matter I agree with the findings of the Sheriff-Substitute and the grounds he has given for them, and would move your Lordships to affirm his judgment, a modification being made as to the running of interest.

LORD KINCAIRNEY concurred.

LORD STORMONTH DARLING—When a contract of service or quasi-service, originally for a definite period, has been continued from year to year, and then has been terminated on three months' notice, it is always a question of circumstances, depending on the nature of the service and the conduct of parties, whether tacit relocation has taken place. I know of no rule of law which affords a certain guide to the solution of such a question, and prior cases are only useful where they correspond very closely in their circumstances with the case in hand.

The written contract between the pursuer and defenders took formal shape in December 1891, when a letter was addressed to the pursuer by Mr Conacher, the defenders' then manager, appointing him agent for the company as from 1st November of that year, for the purpose of attending to the company's interests in connection with their shipping trade to Hamburg, at Bo'ness, Burntisland, and Methil, at a salary of £450 per annum for one year certain. Some prospect of an increase of salary at the end of the year was held out in the letter if the value of his services should be such as to justify it. The letter was acknowledged by the pursuer, who declared it to be in order. He was some months later declared in a circular letter of introduction granted by the company as "one of our shipping agents and a salaried official of our company." The appointment was renewed for another year as from 1st November 1892, "on the same terms and conditions," and this letter was also declared by the pursuer to be in order. The salary of £450 was raised to £550 for the year to 31st October 1893; and at this rate it continued down to 31st October 1900, without formal reappointment and without any change being made in the terms and conditions of the service, though there were attempts by the pursuer in 1894 and again in 1899 to have these modified in his own favour. Payment of salary was usually made in one sum some months after the expiry of the year for which it was due. On 2nd January 1901 the defenders intimated that they would not require the pursuer's services as their shipping agent after three months from that date. This notice the pursuer declined to accept, and sometime thereafter he raised this action for £320, 16s. 8d., being the balance of his salary from 31st March 1901 (the date down to which time he had in the meantime been paid) to 31st October 1901.

The nature of the services rendered is not very well defined, and perhaps is not capable of exact definition. They apparently consisted in the pursuer (who was himself a large exporter of coal) giving his assistance in getting Scotch coal for Hamburg shipped at ports in which the defenders were interested. This system began so far back as 1886, and at first the payments, which were calculated on the amount of shipments, were described as a "bonus." But after a few years it seems to have occurred to the railway officials that it would be more regular to appoint the pursuer one of the company's shipping agents, though the nature of the services did not suffer any change. The pursuer in his evidence complains of his having been appointed a shipping agent, and put as he calls it "on the pay-sheet." He protests that he was not a servant of the company, and had no communication with them beyond once a year getting his cheque for the "bonus or commission" on the annual traffic. But he accepted the appointment of shipping agent, and regularly granted receipts in which the payment was described as "salary" in that capacity. The curious result is that the pursuer, whose interest it is to make out the contract was one of service and not terminable till the expiry of a year, loudly protests that he was *not* a servant, while the defenders, whose interest is the opposite, have declared by every writing under their hand that he was. In this state of matters I think it is safest to rely on the written documents, and certainly the defenders cannot complain of being taken at their word.

Dealing then with the case on the footing that the pursuer was a "salaried official" of the defenders, the question comes to be whether his employment was in each year after 31st October 1892 renewed by tacit relocation for the full period of one year, or was terminable at any time on three months' notice. I agree with the Sheriff-Substitute that the former is the true view of the relations between the parties. The length of time during which

the engagement has lasted, the fact that the salary was paid in a lump annual sum only after returns of shipments for the year had been made, and especially the circumstance (spoken to by the pursuer and not traversed by the defenders) that in the Hamburg trade "contracts must be fixed before the 1st of January," and that when the defenders gave their notice on 2nd January 1901 "they had already secured the business for a year," all point, I think very clearly, to the conclusion that when the 31st October 1900 passed without the defenders making any sign of terminating the contract, the pursuer was entitled to rely on its being renewed for another year. I therefore think that the Sheriff-Substitute's conclusion is right and ought to be affirmed, subject to the variation that interest should run from 31st October instead of 1st April 1901.

LORD KYLLACHY delivered no opinion, not having been present at the hearing.

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

Counsel for the Pursuer and Respondent —Clyde, K.C.—Hunter. Agents—Dove, Lockhart, & Smart, S.S.C.

Counsel for the Defenders and Appellants —Guthrie, K.C.—Cooper, K.C.—Grierson. Agent—James Watson, S.S.C.

Wednesday, July 19.

FIRST DIVISION.

(Before Seven Judges.)

[Case reported to Inner House by Lord Low, Ordinary.

CALEDONIAN RAILWAY COMPANY *v.* CORPORATION OF GLASGOW.

(This case was heard and argued along with the immediately following case of *Hamilton and Others* v. *Nisbet and Others.*)

Burgh — Street — Building Regulations—Register of Streets—Entries in Register—"Width"—Glasgow Building Regulations Act 1900 (63 *and* 64 *Vict. cap. cl*), *secs.* 9, 18, 20, *and* 21.

Opinion per curiam that "width," as used in sections 9, 18, 20, and 21 of the Glasgow Building Regulations Act 1900 meant, in the case of existing public streets, the actual width, and that the Corporation was not entitled to insert in the register of streets (prepared in terms of the Act) as the width of such streets any other width than that actually existing. (*M'Dougall* v. *Nisbet*, November 17, 1904, 7 F. 55, 42 S.L.R. 108; and *Neilson* v. *Wilson & Co.*, November 17, 1904, 7 F. 60, 42 S.L.R. 111, impliedly *overruled.*)

Process—Statutory Appeal to Sheriff with Finality Clause—Action of Declarator and Reduction in Court of Session—Competency—Glasgow Building Regulations Act 1900 (63 *and* 64 *Vict. cap. cl*), *sec.* 9 (2) (*c*).

A statute providing, *inter alia*, for the preparation of a register of streets which was to give certain particulars with regard to the streets, *e.g.*, the width, contained a provision that any person aggrieved might within a specified time appeal to the Sheriff, whose decision should be final. A company, thinking it would be injured by certain of the proposed entries which had not been made strictly on the basis of the actually existing state of matters, raised in the Court of Session an action of declarator and reduction while the register was in course of preparation and before the statutory procedure had been exhausted. *Held* that the action was competent, inasmuch as the entries sought to be reduced were *ultra vires* and outwith the provisions of the statute, but that in that it was premature it fell to be dismissed.

The Glasgow Building Regulations Act 1900 (63 and 64 Vict. cap. cl) enacts—sec. 4—"*Interpretation.*—. . . . 'Width' in relation to street or lane means the width of the carriageway and foot-pavements taken together." Section 9 (2)—"*Register and Map of Streets.*—(*a*) The Corporation shall on or before the first day of January in the year One thousand nine hundred and two, or as soon as conveniently may be thereafter, cause a register (hereinafter referred to as "the register") to be prepared of all the public streets then in existence in the city, in which may be entered with regard to each such street. . . . (iv) The width . . . (*b*) [This subsection provided for the publication of the register and map.] (*c*) Any proprietor who may be aggrieved by any entry in the register or omission therefrom, or by any relative marking on the map, may within the said period of two months appeal to the Sheriff against the same. The Sheriff shall, after the expiry of the said period of two months, deal with any such appeal in a summary manner, and may order any entry in the register or relative marking on the map to be deleted or altered, or direct such other or further entry to be made in the register or marking to be made on the map as he shall think fit, and his decision shall be final. Where any appeal is taken, or where within the said period of two months any representation is made to the Corporation with regard to any entry, omission, or marking, the Corporation may, with the consent of the Sheriff, make any alteration on the register and map which may appear necessary." Section 18—"*Grounds for Refusal to Sanction Plans of Streets.*—The Dean of Guild shall not, except with the consent of the Corporation, and subject to such conditions, if any, as the Corporation may prescribe, grant decree for the formation or laying out of any street—(1) Where the width of such street proposed to be formed or laid out (*a*) is less than 50 feet, or (*b*) where the width in case of a street the distance of the building lines whereof is at least 30 feet