fere. But looking to what has taken place in this case, and the short notice which has been given, I agree with your Lordship in thinking that the trial ought to take place before the Lord Ordinary.

The defender's counsel says that he has no sufficient time for the proper preparation of the case, and perhaps eight or nine days is too short a time looking to the nature of the case. I am in favour of despatch in all cases, but there must be some discretion, and looking to what has been stated by the defender's counsel I think that this is a case which ought to be tried before the Lord Ordinary.

LORD ADAM concurred with the Lord President.

The Court fixed the trial to take place before the Lord Ordinary in the month of June following.

Counsel for Pursuer (Reclaimer)—J. P. B. Robertson—Graham Murray. Agents—Mitchell & Baxter, W.S.

Counsel for Defender (Respondent)—Mackintosh—Darling. Agents—Pearson, Robertson, & Finlay, W.S.

Wednesday, March 18.

SECOND DIVISION.

[Dean of Guild Court, Edinburgh.

MITCHELL *v.* GOWANS (DEAN OF GUILD OF EDINBURGH).

Burgh—Dean of Guild Court—Edinburgh Municipal and Police Act 1879 (42 *and* 43 *Vict. cap. cxxxii*), *secs.* 159 *and* 160—*Appeal—Competency.*

Held that an appeal to the Court of Session from a deliverance of the Dean of Guild, acting under secs. 159 and 160 of the Edinburgh Municipal and Police Act 1879, was competent.

Burgh — Dean of Guild—Jurisdiction—Appeal from Deliverance in regard to Ventilation and Sanitary Arrangements.

The Dean of Guild, acting under sections 159 and 160 of the Edinburgh Municipal and Police Act 1879, refused to approve plans of new houses about to be erected, because the plans did not provide sufficiently for ventilation, in respect that the water-closets were not shown thereon next to the outer wall. *Held* (*dub.* Lord Young) that the deliverance was within the powers conferred by the Act, and that cause for disturbing it had not been shown.

The Edinburgh Municipal and Police Act 1879 (42 and 43 Vict. cap. cxxxii.) provides by section 159—"Every person who proposes to erect any new house or building . . . . within the burgh, shall lodge with the Clerk of the Dean of Guild Court a petition for warrant so to do, and such petition shall set forth a description of the intended house or building . . . and shall be accompanied by a plan of the site, showing the immediately conterminous properties, and also the position and width of any street, court, foot-pavement, or footpath from which the property has access, or on which it abuts; and also plans, sections, and such detailed drawings as are necessary to show the mode of structure and arrangement of the intended house or building or alteration, and the lines of the intended drainage thereof, and the levels thereof relatively to the street, court, foot-pavement, or footpath, and to the sewer or drain with which the soil-pipes and drains of the property to be built . . . are intended to be connected; and in regard to any building erected as a place of public resort, such plans shall show the arrangements for ventilation, and the provisions intended to be made for ingress or egress." Section 160 provides—"The clerk of the Dean of Guild Court shall forthwith, on receiving such petition, give notice thereof to the burgh engineer, who shall, before such petition is heard, report to the Court whether in his opinion the plans sufficiently provide for ventilation or other sanitary objects, and the Dean of Guild may decline to grant warrant for the erection of any new house or building . . . until satisfied that the plans provide suitably for such ventilation and other sanitary objects."

This was an appeal by Alexander Mitchell, builder, 32 Dundee Terrace, Edinburgh, against a deliverance of the Dean of Guild of Edinburgh, finding that the plans of tenements which he proposed to erect on his property at the corner of Tay Street and Dundee Terrace, Edinburgh, "do not provide suitably for ventilation and other sanitary objects, in respect that the water-closets are not shown thereon next to the outside walls of the petitioner's proposed tenements," and refusing to approve of the plans.

The burgh engineer had reported to the Dean of Guild Court — "(1) The sanitary arrangements are here very skilfully planned, the only defect being that they are not located next the outer wall, but are lighted and ventilated on what might be termed the 'intersol' method; that is, light and ventilation are carried over an enclosed scullery closet which intervenes between the W.C. and bath and the outer wall. This arrangement might very justly be allowed for the corner block; as regards the others, there cannot be any practical difficulty in having these appliances next the outer wall, whereby the disadvantages of the "intersol" method would be removed."

The appellant argued—That the burgh engineer while he reported against the sanitary arrangements of the houses in question, was just acting up to the views of the present Dean of Guild, because previous to the appointment of the latter to that office he had sanctioned and approved of similar arrangements. A remit should be made to some other man of skill. The provisions as to ventilation contained in sections 159 and 160 of the Edinburgh Municipal and Police Act 1879, under which the deliverance complained of was pronounced, applied only to places of public resort, and could not be extended to private houses.—*Pitman, &c.* v. *Burnett's Trustees*, Jan. 26, 1882, 9 R. 444; *Boswell* v. *Magistrates of Edinburgh*, July 19, 1881, 8 R. 986.

Replied for respondent—The appeal was incompetent since the matter in question was en-

tirely committed to the Dean of Guild by the statute. There was special jurisdiction conferred on the Dean of Guild in this matter by the Legislature. [LORD YOUNG—Erskine says only as to the Dean's jurisdiction (i. 4, 24)—"It belongs to the Dean of Guild to take care that buildings within burgh be agreeable to law, neither encroaching on private property nor on public streets or passages, and that houses in danger of falling be thrown down"]. There was a presumption of intelligence and capacity on the part of the Dean of Guild Court in exercising its jurisdiction, and there was no averment made by the appellant that there was any irregularity in the proceedings before the Court.—*Small & Co.* v. *Dundee Police Commissioners*, Nov. 14, 1884, 12 R. 123.

At advising—

LORD CRAIGHILL—In this case the plans according to which the appellant proposed to build his houses had to be submitted to the Dean of Guild, and when they came before him for his consideration and decision it was also necessary that they should have been also laid before the burgh engineer for his report, with reference particularly to the provision which had been made for sanitary arrangements. That was a thing that was expressly provided for by section 160 of the Edinburgh Municipal and Police Act of 1879, which enacts:—"The Clerk of the Dean of Guild Court shall forthwith, on receiving such petition, give notice thereof to the burgh engineer, who shall, before such petition is heard, report to the Court whether in his opinion the plans sufficiently provide for ventilation and other sanitary objects." The burgh engineer made a report, and the report which he presented to the Dean of Guild Court is now before us. After consideration of the application in connection with that report, the Dean of Guild Court pronounced an interlocutor in the following terms—"Having considered this petition, with the plans therewith produced, finds that the plans do not provide suitably for ventilation, and other sanitary objects, in respect that the water-closets are not shown thereon next to the outside walls of the petitioner's proposed tenements, therefore refuses the prayer of the petition, and decerns." The Dean of Guild Court thought it right to give this judgment for the reasons for which it was pronounced, and therefore an appeal has been presented in which complaint is made of the judgment, and in which the Court is asked to recal that judgment, and to remit to a person of skill for the purpose of ascertaining his opinion on the subject, or to take whatever course may appear to be necessary to enable this Court to come to a just conclusion with regard to what has been done by the Dean of Guild Court.

I understand that there is no dispute between the parties as to the jurisdiction of the Dean of Guild in this matter. In former days he had purely a common law jurisdiction. He could not, in considering whether he should approve of any plans that were laid before him with reference to the erection of new buildings, have taken into consideration the question as to whether the internal sanitary arrangments of the proposed buildings were such as were suitable or not. But by the Edinburgh Municipal Act of 1879 express power is conferred on the Dean of Guild Court of Edinburgh to take this into consideration, so that while the jurisdiction of that Dean of Guild Court generally is the same as that which previously existed, that Court is now entitled to exercise that jurisdiction with reference to this additional question which has been, so to speak, by the statute laid upon it for consideration. Whether therefore the Dean of Guild Court has erred or has not erred in the deliverance which it has pronounced, it is admitted that the subject-matter of the deliverance at issue is one on which it is entitled, or rather upon which by the terms of the statute it is called upon to pronounce judgment.

The first matter for consideration is, whether or not looking at the duty imposed on the Dean of Guild by the statute, and he having exercised the function, his deliverances can be made matter of review by this Court. Now, I do not know that it is necessary to come to decision upon this subject in order that we may decide the merits of the question which is in controversy between the parties here. All I shall say is that the jurisdiction of the Dean of Guild, though enlarged in reference to matters in which he can deal, is not enlarged, so far as I can see, so as to make his Court a Court from whose decisions no appeal can competently be taken to this Court. Section 160, as I have explained, enlarges the jurisdiction, but the question whether the jurisdiction has been well or ill exercised in the judgment given by him is still one, so far as I can see, which is subject to the same condition as that which affects his decision in other matters which by this statute are submitted to his decision.

Assuming, therefore, that there is jurisdiction, the first question which we have to consider is, whether the appellant has shown cause why this deliverance of the Dean of Guild Court should be referred to a man of skill, or any other measure adopted for the purpose of enabling this Court to judge whether the Dean of Guild's deliverance being put beside the opinions of other persons ought or ought not to be sustained? Now, I do not think it would be expedient—indeed it would be matter of great regret—if we were called on to express an opinion or enter on an inquiry in reference to the matters on which the Dean of Guild has given his decision. The Dean of Guild and his Court have been specially selected, so to speak, by the Legislature for the determination of such questions as the present, and it would require a very strong case—something which would leave no doubt or hesitation in the mind of anyone that there has been a miscarriage of justice—before we could do anything the effect of which would be to remit the decision of this question from the Dean of Guild Court and put it to the determination of other men of skill who are not more able to come to a decision on the subject than the Dean of Guild and his Court. If the matter were one on which we ourselves could give a judgment by merely looking at the plans, there might be some effect given to the contention that is maintained on the part of the appellant, but we cannot judge of the plans. We have no information that would enable us to come to what would be a just decision, and therefore we must trust to others for that guidance which we ourselves have no information upon. In the present case I do not think that anything has been shown to establish that

to remit the case to obtain the opinion of others is a necessary course, and therefore as the conclusion of the matter I am of opinion that cause not having been shown upon which the deliverance of the Dean of Guild Court should be recalled or the assistance of others invoked, that deliverance should be affirmed.

LORD RUTHERFURD CLARK—The appellant proposed to erect certain houses in Edinburgh, and in accordance with the Statute of 1879 he lodged certain plans in the Dean of Guild Court with the view of obtaining the approval of that Court. These plans were laid before the Dean of Guild Court, and I must now assume were fully and deliberately considered by the Court after the appellant had an opportunity of urging before the Court anything that he thought might be useful with the view of obtaining the approval which he desired. The result was that the Dean of Guild refused to sustain the plans because the Court were not satisfied that they provided suitably for ventilation and other sanitary objects.

In doing so the Court was acting within what has been admitted to be its jurisdiction—so much so that it was bound to make up its mind, as it is not entitled to sanction plans unless they are satisfactory in the respects to which I have referred. That judgment has been appealed to this Court, and I do not in the least doubt that the decisions of the Dean of Guild Court may be revised by this Court. I do not think that there is anything whatever in the recent Act to take away from this Court the ordinary appellate jurisdiction which it used to exercise as regards Dean of Guild Courts before the Act was passed. I therefore think that there can be no doubt that the appeal is competent, but then the question arises as to whether, when the Dean of Guild Court has expressed itself not satisfied with the provision that is proposed for ventilation and other sanitary objects, it is possible for us to make any inquiry into that subject, or whether we must blindly follow the opinion which the Dean of Guild Court has expressed.

Now, I do not think it necessary to decide that question. The Dean of Guild Court is certainly a Court which is within the control of this Court as the supreme tribunal of this country, and I do not say that with respect to any act the Dean of Guild Court can be considered to be supreme. But I see very plainly that the statute contemplates that a discretion—a very large discretion—should be placed in the Dean of Guild Court with respect to the sufficiency of ventilation and other sanitary purposes; and when that Court, which is very well capable of deciding whether plans do or do not provide suitably for ventilation and other sanitary purposes, says that a certain plan does not sufficiently provide for them, I should be very slow indeed to interfere with that judgment. I will not say that it is impossible. I reserve my opinion on that point, and I have not proceeded on the view that it is impossible to decide otherwise. I only say that I should have great hesitation in overturning a judgment pronounced by a Court so competent on such a matter. But what I do say in this case is, that nothing has been made out sufficient to show that there has been any miscarriage or any reason for interfering with this judgment. I certainly would be very unwilling indeed to enter on any inquiry which after all might have the effect of merely substituting the opinion of men less competent for the opinion of those to whom the statute has given a very important discretion in a very important matter. I think, therefore, that the appeal should be dismissed.

LORD YOUNG—I do not differ from the conclusion at which your Lordships have arrived, but I have had, and I confess I still have, some difficulty in the case. As Lord Craighill has observed, the common law jurisdiction of the Dean of Guild is of another order—is very much more primitive—than that which the Act of 1879 confers. I read a very short passage from Erskine which really exhausts the jurisdiction which the Dean of Guild is entitled to exercise at common law, and the title given by the recent statute, which authorises him to interfere with the internal arrangements of houses which are being built or are intended to be built according to the design of a competent architect, is certainly a strange and to me a somewhat surprising statutory provision. A man may be building a house for himself, regardless of expense, according to the plans of the most accomplished architect in the kingdom, and if the Dean of Guild for the time being happens to differ from the architect as to the position of a water-closet or a sink in the kitchen or the scullery or the butler's pantry, or indeed as to anything connected with the internal structure of the house, he is entitled to set the plan of the architect aside and to insist on his own views being carried out. I do not doubt, however, that the large power given—I should have almost thought without due consideration—to the Dean of Guild Court will be discreetly and judiciously exercised, and that the members of the Court will confine their interference to buildings of a class which are to be inhabited by large numbers of people crowded into small spaces, and that they will not exercise their powers by interfering with the plans of architects really thoroughly competent to advise those who resort to them as to the plans on which their houses ought to be constructed, and may with the greatest advantage be constructed.

The provisions of the statute are to my mind far from being clear. The word "ventilation," which is the principal word used in the judgment here, occurs first in clause 159, which provides that "in regard to any buildings intended to be used as a place of public resort, such plans shall show the arrangements for ventilation." There is no provision in that clause that the plans of dwelling-houses should show any of the arrangements for ventilation, and the contrast is striking. That a public municipal body like the Dean of Guild Court should be entitled to interfere and to order particular arrangements for ventilation in the plans of buildings intended for public resort is intelligible, but it is to my mind somewhat novel that they should have the power of saying with reference to private dwelling-houses, "This room requires three windows, two are not enough for the ventilation; the dining-room or the drawing-room is too large for two only,"—that, I say, is a novel matter, yet the position of the fire-place and the position of the window are the only arrangements for ventilation is ordinary rooms.

The words of the statute are confused and confusing. "Every person who proposes to erect any new house or building, or to alter the structure of any existing house or building, within the burgh shall lodge with the clerk of the Dean of Guild Court a petition for warrant to do so, and such petition shall set forth a description of the intended house or building or alteration, and shall be accompanied by a plan of the site, showing the immediately conterminous properties, and also the position and width of any street, court, foot-pavement, or footpath from which the property has access, or upon which it abuts"—all that is connected with his established jurisdiction, with which we were familiar before this Act—"and also plans, sections, and such detailed drawings as are necessary to show the mode of structure and arrangement of the intended house or building or alteration, and the lines of the intended drainage thereof"—we are coming nearer the matter now—"and the levels thereof, relatively to the street, court, foot-pavement, or foot-path, and to the sewer or drain with which the soil-pipes and drains of the property to be built or altered are intended to be connected"—that is, connected with the public drainage. Then comes the provision which I have already read about ventilation:—"And in regard to any building intended as a place of public resort, such plans shall show the arrangements for ventilation, and the provisions intended to be made for ingress and egress." Then comes section 160, which mixes the whole matter up:—"The clerk of the Dean of Guild Court shall forthwith, on receiving such petition, give notice thereof to the burgh engineer, who shall, before such petition is heard, report to the Court whether in his opinion the plans sufficiently provide for ventilation and other sanitary objects." Now, that must be limited to places of public resort, for the plans of other buildings are not required to show any provision for ventilation and other sanitary objects. I say as I did when I came to that part of clause 159, which says the lines of the drainage are to be shown, that we are nearer the matter—"and the Dean of Guild Court may decline to grant warrant for the erection of any new house or building, or the alteration of the structure of any existing house or building until satisfied that the plans provide suitably for such ventilation and other sanitary objects."

Now I cannot regard all this as clear. I think there must be some confusion in the wording. But the building here is, I suppose, a tenement of houses of a very few apartments, really answering to the description of a large building in which large numbers of persons are to dwell in comparatively small space, and the question with the Dean of Guild seems to be the choice of two evils—and you do come to the choice of two evils almost necessarily where your space is so limited as it is in such houses as this, the kitchen being a room for living in; and the choice of evils which has given rise to the difficulties between the architect of the house and the Dean of Guild is whether it is a greater evil to have a water-closet, and consequently the soil-pipe, something like six feet from the outer wall or to have a sink in the kitchen. The architect—I do not doubt for a moment a perfectly competent man—thinks that to avoid the sink in the kitchen is the most desirable alternative, and that to have it there would be the greater of two evils. The Dean of Guild, who is an architect and builder, and has special qualifications, as was urged on us, thinks otherwise. Now, I confess I am not very favourably disposed towards the provision which enables such rules and interference, and should gladly have interpreted the statute, had I been able to do so, so as to avoid it, but as your Lordships have pointed out, it would only result in referring the matter to some other body. The Dean of Guild is one architect and builder, and I assume that he is assisted by competent persons—not necessarily exactly professional men, but men of standing and judgment. The architect, who has designed this house very skilfully, as the burgh engineer reports, is another, and we should have to resort to a third or a fourth to make up our minds whether it is the greater of two evils to have a sink in the kitchen or a water-closet six feet from the wall, and in my difficulties I am disposed on the whole matter to assent to the judgment which your Lordships are prepared to pronounce. But I should wish to say that I have no doubt as to the jurisdiction of this Court. I think that upon any matter which the Dean of Guild may competently exercise his jurisdiction we may competently exercise our power of review. Agreeing with your Lordships, however, that the statements here are not of such a character as to call upon us to do so by making a remit—which would be the only course, and might place us in a position of considerable perplexity if the result was at variance with the Dean of Guild's opinion—I am prepared to concur in the judgment, which will be that the appeal be dismissed.

The LORD JUSTICE-CLERK was absent.

The Court adhered to the deliverance appealed against.

Counsel for Appellant—Dickson—Ure. Agents—Gordon, Pringle, Dallas, & Co., W.S.

Counsel for Respondents—Comrie Thomson. Agents—Millar, Robson, & Innes, S.S.C.

HIGH COURT OF JUSTICIARY.

Thursday, March 19.

(Before Lords Young, Craighill, and M'Laren.)

MATHESON AND OTHERS *v.* ROSS.

Justiciary Cases—Indictment—Amendment after Proof—Summary Procedure Act 1864 (27 *and* 28 *Vict. c.* 53), *sec.* 5—*Alternative Conviction.*

By a clerical error in an indictment under the Summary Jurisdiction Acts 1864 and 1881, the date of the alleged offence was said to be 8th November instead of 8th December. After part of the evidence had been led the Magistrate allowed the libel to be amended. No prejudice arose to the accused thereby. In a suspension by them of a conviction pronounced on the evidence, *held* that the amendment was competent.