

The statute requires that the Sheriff-Substitute shall be satisfied that the debtor's absence is wilful, but does not require in terms that he shall say so. But if the Sheriff pronounces a decree in absence of the debtor I should hold that he had satisfied himself of what was antecedently necessary before he could pronounce decree, viz., that the debtor's absence was wilful.

The difficulty here arises not from silence on the part of the Sheriff-Substitute as to the debtor's absence being wilful, but from the fact that what is said on that subject by the Sheriff-Substitute leaves it open to doubt whether he was satisfied that the absence was wilful, or was not satisfied that it was not.

I agree with the Lord Ordinary in thinking that the interlocutor is open to criticism, but I also think with him that the fair reading of the interlocutor is that the debtor's absence was held to be wilful because he had not explained his absence so as to satisfy the Sheriff-Substitute that it was other than wilful. I should on these grounds be prepared to hold that the Sheriff's proceedings were in accordance with the statutory requirements, and that the decree of *cessio* should not be set aside. But assuming I am wrong on this point I concur in thinking that the pursuer has failed to set forth any relevant ground on which he can maintain the conclusion for damages.

The Court reduced the decree of *cessio*, but assolized the defenders.

Counsel for the Pursuer and Reclaimer—M'Kechnie—Crabb Watt. Agents—A. P. Purves & Aitken, W.S.

Counsel for the Defenders and Respondents—Dickson—Salvesen. Agent—Alexander Ross, S.S.C.

Saturday, June 13.

FIRST DIVISION.

[Dean of Guild, Glasgow.]

LANG v. WALKER.

Property—Dean of Guild—Appeal—Competency—Glasgow Police Act 1866 (29 and 30 Vict. c. 273), secs. 384 and 277.

Held that it was incompetent under section 277 of the Glasgow Police Act of 1866, no record having been made up, to appeal an interlocutor of the Dean of Guild of Glasgow granting warrant under the statute to the Procurator-Fiscal to execute operations on property which the proprietor, after notice given in terms of section 384, had failed to execute.

Opinions by the Lord President and Lord Kinnear that the Dean of Guild would be exceeding his jurisdiction if he refused to allow a record to be made up.

Cf. Allan v. Whyte, December 20, 1890, 18 R. 332.

John Lang, the Procurator-Fiscal of the Dean of Guild Court of Glasgow, presented this petition to the Dean of Guild against James K. Walker, setting forth that the respondent was proprietor, in the sense of the Glasgow Police Act 1866, of lands and heritages situated at or near Nos. 5 to 17 Palm Street, and 92 and 94 Cedar Street, Glasgow, and that there was no fence protecting the back court adjoining area in connection with said property; that the Master of Works had given him due intimation in terms of section 384 of the Act; that there was no fence for protecting the back court area, and requiring him to erect an iron fence railing, &c., within ten days, to the satisfaction of the Master of Works, and that the defender had failed to comply with the said requisition, and praying for a warrant to execute the said work; thereafter to ascertain and fix the cost, and decern against the defender therefor, all in terms of the statute, particularly sections 325 and 384.

By section 384 it is enacted that the "Master of Works may, by notice given in manner hereinafter provided, require any proprietor or occupier of a land or heritage to fence the same, or repair any chimney, &c., which appears to be dangerous, to his entire satisfaction."

Sections 392-394 provide for the form and services of notices.

Section 321 enacts that "The Master of Works shall, in every notice given by him to any proprietor of a land or heritage, . . . describe the work required to be executed, either directly, or by a reference to plans, sections, or specifications, or to a specimen stated as deposited in the head-office of the Board for inspection, and shall specify the period allowed for the execution of such work."

By section 322 any proprietor aggrieved by such notice may deliver written objections, the procedure in disposing of which is described.

Section 325 provides that "If the proprietor or proprietors to whom notice has been given fail to comply as aforesaid with the requisition contained in such notice, it shall be lawful for the Procurator-Fiscal to enforce the same at any time by applying to the Dean of Guild for a warrant to execute the work therein specified, in so far as not altered or varied by the magistrate or Dean of Guild; and the Dean of Guild may grant a warrant to execute such work, and shall thereafter ascertain and fix the cost thereof, and decern against the said proprietor or proprietors to whom notice was given for the proportions of such cost due by them, and may award expenses to or against any of the parties to such application, but no such application shall operate as a relief to any proprietor or proprietors from liability for any penalties which had been incurred by him or them previous to the date hereof."

Section 277 provides that "Where a record is not made up, the decision given by the Dean of Guild shall be final, and not subject to suspension, advocacy, or appeal, or to any other form of review."

On 15th May 1891 the Dean of Guild pronounced the following interlocutor:—“Finds that the objections now stated to the notice by the Master of Works ought to have been intimated, in terms of the Act, within six days from the date when the notice was served upon the defender; therefore repels the same: Finds that the back court referred to in the petition is surrounded by an area about 10 feet in width and from 3 feet 6 inches to 4 feet 9 inches in depth without any fence or protection, and is consequently dangerous to those requiring to use said court: Grants warrant to the petitioner to execute the operations specified in the notice by the Master of Works as craved, and *quoad ultra* continues the case.”

Mr Walker appealed.

The respondent objected to the competency of the appeal, and argued—The appeal was incompetent under section 277, as no record was made up. In *Lang v. Bruce*, February 5, 1873, 11 Macph. 377, the 384th section of the Act was under consideration, but in that case a record had been made up. In *Kerr, Anderson, & Company v. Lang*, June 1, 1877, 4 R. 779, *affd.* February 27, 1878, L.R. 3 App. Cas. 529, the 277th section was held not to exclude review, but there the Court held that the Dean of Guild had exceeded his jurisdiction.

Argued for the appellant—The Dean of Guild had exceeded his jurisdiction, and if so, an appeal was competent—*Miller v. Crawford*, January 15, 1881, 8 R. 385. The feuing which the Dean of Guild ordered was that of private property, *i.e.*, the public had no right of access, therefore section 384 did not apply.

At advising—

LORD PRESIDENT—I think we are bound to sustain the objection to the competency of this appeal. The Glasgow Police Act of 1866 in section 277 provides that “where a record is not made up the decision given by the Dean of Guild shall be final, and not subject to suspension, advocacy, or appeal, or to any other form of review.” Now, these words are quite plain in their meaning, and not susceptible of construction. The only difficulty suggested by our sustaining the objection to competency is that it may entitle the Dean of Guild to refuse to allow a record to be made up. Now, I am not moved by this suggestion, for if the Dean of Guild took that course he would exceed his jurisdiction, and there would certainly be a remedy in this Court notwithstanding the 277th section. I am therefore for sustaining the objection to the competency of this appeal.

LORD ADAM—The 384th section of the Glasgow Police Act provides that “the Master of Works may, by notice given in manner hereinafter provided, require any proprietor or occupier of a land or heritage to fence the same or repair any chimney-stalk or flue, or any chimney-head or can, or any rhone, signboard, or other thing connected with or appertaining to any

building thereon, which appears to be dangerous, to his entire satisfaction.” Now, the form of notice is provided for by section 392. The particulars to be stated in the notice are to be found in section 321. Then by section 322 any proprietor who has received such notice and considers himself aggrieved may within six days lodge objections; and then follows the procedure, *viz.*, that the Procurator-Fiscal shall apply to the Dean of Guild for a warrant to cite the objecting proprietor, and the Dean of Guild is thereupon to inquire into and decide the question raised.

Now, what took place in this case was this. The Master of Works served a notice under the 384th section setting forth the particulars required by section 321. Thereafter it was the duty of the present appellant to appear, lodge objections if he so desired, and have the case tried on a record. He did not take this course. Then the Procurator-Fiscal applied to the Dean of Guild under the 322nd section to have the work done as specified, and the prayer was granted in the interlocutor now under review. That brings us to the question whether under the 277th section the said interlocutor can be appealed against. It is quite plain that, if the proceeding under the 384th section was a competent one—and I have heard nothing to the contrary suggested—then in my opinion the 277th section excludes the present appeal. I therefore concur with your Lordship in sustaining the objection to the competency of this appeal.

LORD M'LAREN concurred.

LORD KINNEAR—I am of the same opinion. The decision appealed from is one in which the Dean of Guild exercised his jurisdiction in disposing of an application made in pursuance of the Glasgow Police Act of 1866. No record was made up, and I am therefore of opinion that an appeal is excluded by section 277.

I quite agree with your Lordship that the statute does not give the Dean of Guild a discretionary power to refuse to allow a record to be made up. The statute gives that right which the Dean of Guild cannot deprive a party from exercising. I therefore concur with your Lordships.

The Court refused the appeal on the ground of incompetency.

Counsel for the Appellant—M'Kechnie—Maclaren. Agent—W. Henry Curr, W.S.

Counsel for the Respondent—Ure—Craigie. Agents—Campbell & Smith, S.S.C.