worthless character of the company and the pursuer's knowledge thereof, to recover by diligence the business books, letter books, and balance-sheets of the company since its formation, for the purpose of making excerpts.

Held (*rev.* Lord Kyllachy—*diss.* Lord Trayner) that he was not entitled to obtain access to these documents.

In this case of slander the defender Marshall was allowed the counter issues given upon p. 630, *ante*, with a view to showing that he was justified in calling the pursuer the names he had used, inasmuch he had been induced by his misrepresentations to take shares in a worthless company. The specification of documents called for by Marshall included, *inter alia*, "13. The business books, letter books, and balance sheets of the Val d'Elsa Copper Company, that excerpts may be taken therefrom of all entries therein relative to the output from its mines, and the income and expenditure in connection therewith since said company was formed, also all reports or statements made to said company relative thereto down to 28th February 1888."

This article was allowed by the Lord Ordinary.

The pursuer reclaimed to the Second Division, and argued—The diligence sought was too wide. The documents called for in this article were not documents to which the pursuer was in any sense a party. The defender, because he alleged two points in justification of the slander, was not entitled to see all the documents connected with this company. *Tulloch's* case relied on by the defender was not in point. There the company's books were allowed to be seen with the view to an investigation as to the state of the company at a particular date.

The defender argued—The Lord Ordinary's judgment should not be disturbed. Counter issues alleging fraud had been allowed, and the defender was entitled to the fullest investigation into the affairs of the company with the view of showing its worthless character and the pursuer's knowledge thereof. There was authority for the diligence asked in the cases of *M'Cowan* v. *Wright*, December 14, 1852, 15 D. 229; and *Tulloch* v. *Davidson's Executors*, July 17, 1858, 20 D. 1319.

The majority of the Court (The Lord Justice-Clerk, Lord Young, and Lord Rutherfurd Clark) disallowed the article.

Lord Trayner—The question raised by this reclaiming-note is, whether the defenders are entitled to a diligence for the recovery of the documents set forth in the specification which they have lodged. It is objected on the part of the pursuer that the diligence sought is too wide, and your Lordships' giving effect to this contention, and differing to some extent from the view adopted by the Lord Ordinary, have limited the diligence. For my own part, I think we should not have interfered with what the Lord Ordinary has done. It appears to me that the defenders are entitled to recover the whole documents specified, as tending to support the counter issue which has been allowed. It is quite possible that the call made for production of the whole business books, balance-sheets, &c., of the Val d'Elsa Copper Company might have been open to an objection on the part of the company, whose objection, if taken, would have been dealt with by the Commissioner or the Lord Ordinary. But the pursuer does not appear to me to have any right to state or insist in such an objection. The real question to be tried in the case is whether the Val d'Elsa Company at its inception and since has not been more or less a swindle, in the knowledge of the pursuer, who was inducing the defenders to become shareholders thereof to his pecuniary advantage and their detriment. In such a case I would have allowed the fullest investigation into the affairs of the company not inconsistent with the interests of innocent shareholders. Such interests would, I think, have been perfectly safe in the hands of the Commissioner or Lord Ordinary if at any time they were threatened by the execution of the defenders' diligence.

Counsel for Pursuer and Reclaimer—Asher, Q.C.—H. Johnston. Agents—Smith & Mason, S.S.C.

Counsel for Defender—Graham Murray—M'Clure. Agents—J. & J. Ross, W.S.

Friday, June 26.

FIRST DIVISION.

[Dean of Guild, Edinburgh.

LAWRIE *v.* JACKSON.

Process—Appeal—Dean of Guild—Refusal to Sist Party to a Petition.

Held that an interlocutor of the Dean of Guild refusing to sist as a respondent to a petition a person alleging a material interest to appear, was a final interlocutor *quoad* that person, and therefore appealable.

Property—Building Restrictions—Application to Dean of Guild for Authority to Erect New Buildings—Right of Neighbouring Proprietor to be Sisted as Party to the Process.

A proprietor applied to the Dean of Guild for authority to take down a villa, and erect on the site thereof tenements of shops and dwelling-houses. The petition was served on the proprietors of the immediately adjoining properties, and, among others, upon the proprietor of the nearer half of a semi-detached villa which adjoined the petitioner's property on the south, and answers were lodged objecting to the proposed erections on the ground that they would violate conditions as to building contained in the titles both

of the petitioner and respondents. Before the record was closed the proprietor of the further half of the semi-detached villa lodged a minute craving to be sisted as a party to the process.

Held (*diss.* Lord M'Laren) that the minuter had a sufficient interest to entitle him to be sisted.

Andrew Lawrie, residing at Linkvale Lodge, Viewforth, Edinburgh, presented a petition in the Dean of Guild Court for authority to take down his existing house and erect on the site thereof three tenements of shops and dwelling-houses. He called as respondents the proprietors of the adjoining properties, and, among others, the proprietor of the nearer half of a semi-detached villa adjoining his property to the south.

Three of the immediately adjoining proprietors lodged answers, in which they objected to the proposed erections, on the ground that they would violate the conditions as to building contained in feu-charters granted by the same superior under which both they and the petitioner held their properties. They further stated that William Jackson was also a proprietor of the semi-detached villa to the south, and that as the proposed alterations would affect his interests he ought to be called as a respondent.

Jackson also lodged a minute before the record was closed, in which he craved leave to sist himself as a party to the process, "he having not been called as a party, although he is the proprietor of the one half of the double villa immediately adjoining on the south the ground on which the petitioner proposed to erect said tenements."

It appeared that Jackson's half of the semi-detached villa was not contiguous to the petitioner's property, although only 10 feet distant from it.

The Dean of Guild having considered the minute and heard parties thereon, refused the prayer thereof.

The minuter appealed to the First Division of the Court of Session.

Upon the motion to have the case sent to the roll, counsel for the petitioner objected, and argued that the appeal was incompetent, as the decree appealed against did not dispose of the merits of the cause, and was not an interlocutory judgment subject to review—50 Geo. III. (1810), c. 112, sec. 36; Act of Sederunt, 12th November 1825, part iii., cap. 1 (Dean of Guild), sec. 1; Court of Session Act 1868 (31 and 32 Vict. c. 100), sec. 65.

Counsel for the appellant argued—There was nothing in any Act of Parliament excluding this judgment from review. The Acts cited were in his favour, this being a final interlocutor, for if sustained, the appellant would be completely shut out of this process, in which he had a material interest to appear.

At advising—

LORD PRESIDENT—I am quite unable to see any objection to this appeal. The appellant alleges that he has an interest to be sisted. Are we to decide that he has no interest without hearing him, as the Dean of Guild appears to have done? I apprehend not. I have heard no objection to the competency of the appeal that I can give effect to. I am for refusing the objection.

LORD ADAM—The Dean of Guild's jurisdiction is a somewhat peculiar jurisdiction. This is a process of lining I suppose, and the Dean of Guild may have thought himself entitled to decide that this gentleman had no real interest to intervene in this process. That this is a final interlocutor I have no doubt. The appellant can never be heard again in the Dean of Guild Court so long as that interlocutor stands. I think, therefore, that being final *quoad* the appellant it is appealable. I only wish to add that if this had been an ordinary Sheriff Court process I should not necessarily have decided the competency of a similar appeal in the same way. I desire to reserve my opinion on that point.

LORD M'LAREN—The competency of this appeal depends upon whether it is an interlocutory judgment, for the 36th section of the Act 50 Geo. III. c. 112, discharges the right of appeal only in the case of interlocutory judgments. It appears to me that this is not an interlocutory judgment, because it determines finally that this party is not entitled to be sisted as a party to this process.

LORD KINNEAR concurred.

The Court repelled the objection to the competency of the appeal and sent the case to the summar roll.

When the case was heard on the question of sist, the appellant argued—The appellant had a substantial interest to protest, for if these buildings were erected his property might be injured. He had at any rate a right to state his case in the Court below, and the Dean of Guild had acted oppressively in refusing to admit him to the process. The rule of the Dean of Guild Court was only to exclude those parties who had no possible right. The appellant and the respondent held of the same superior, and being a real action, this gave the appellant a right to be sisted. His object was not to obstruct but to be heard.

Argued for the respondent—The appellant's interests were fully represented by those who were called as respondents to the petition. He had no argument to submit or plea to urge which was not common to them, and the Dean of Guild exercised a wise discretion in refusing to admit the appellant, whose only object was to cause delay and swell the process. Others of the adjoining proprietors had at different times been in the process, and after being in for some time, had either dropped out or had their answers dismissed—*Turner* v. *Hamilton*, February 21, 1890, 17 R. 494.

At advising—

LORD PRESIDENT—The prayer of the petition in the Dean of Guild Court asked

for a warrant to the petitioner to take down his present villa, and on the site of it, and of the garden attached, to erect three tenements of shops and dwelling-houses, all as set forth in the prayer. Now, the ground upon which all this was to be done was small, and the buildings were extensive.

The only parties called to answer the petition were a Mr James Barclay, a Mrs Mary Inglis, and a Mrs Reid, and the two last-named lodged defences along with a Mr Currie, but before the record was closed Mr Jackson put in a minute for leave to sist himself as a party. The minute was in these terms—[*His Lordship here read the minute quoted above*]. Now, as I have observed, this minute was lodged before the record was closed, and I really cannot see any reason why the Dean of Guild should not have allowed this party to sist himself and put in defences. It ought to be the object of the Dean of Guild to hear all parties who have any interest in the proposed erection. But he has taken his own course, and has thought fit to put the case in such a shape that he should only hear the petitioner and some of the parties interested whom the petitioner has chosen to call, and who, I think, are by no means the only parties who have an interest in this question.

I cannot say that I think the Dean of Guild has acted wisely in this respect. On the contrary, he has been too much in a hurry to get this process carried through. It was urged that the minute did not disclose the grounds upon which the respondent sought to be heard in the Court below, or his right or title to be heard, but I think the minute discloses enough to show that the respondent has a substantial interest in the determination of this question. It was further urged that if the minuter was not allowed to be sisted in the inferior Court he had a remedy open to him by interdict or declarator, but I do not think it is at all desirable that we should encourage proceedings of that kind. On the contrary, it appears to me that this is a case perfectly competent to be finally determined in the Dean of Guild Court, and I do not think that parties should be left to a remedy so expensive and unnecessary. As I have already observed, I think that the Dean of Guild has acted too summarily in this case, and I am for remitting to him to allow this party to be sisted.

LORD ADAM—I concur with your Lordship, but at the same time I sympathise with a great deal of what was said by Mr Kennedy. On the other hand, while the immediately adjoining proprietors are the parties who ought in the first instance to be called, those adjoining, but whose ground may not actually touch the land which is to be built upon, have no doubt a deep interest also. In the present case the minuter Jackson's land comes within ten yards of where it is proposed to erect these tenements on ground previously occupied by a villa and garden.

The Dean of Guild has a discretion no doubt to exclude parties whose sole object is to obstruct the operations, but here the minuter's interest is substantial. But what the Dean of Guild seems to have thought was, that the minuter was represented by somebody whose interests were identical with his, and therefore he refused to sist him. This is to me a somewhat novel ground for refusing to sist, and therefore I concur in what your Lordship has proposed.

LORD M'LAREN—I regret that I am unable to agree with your Lordships. I think that the petitioner has complied with the Burgh Court Act of Sederunt in calling the immediately adjoining proprietors, and that no one else has a right to appear.

It was in the discretion of the Dean of Guild to admit other parties, but it must be a condition of the exercise of that discretion that the party shall be able to show that he has some interest of a nature fitted for trial in that Court. The exclusion of the appellant does not in any way prejudice his rights, for the superior courts are open to him, and if he thinks his rights are infringed, his proper remedy is by interdict. It does not appear to me that any object can be gained by having questions of this kind tried in the Dean of Guild Court.

Questions of restriction involve delicate questions of law, and the Dean of Guild Court is a tribunal which, in my opinion, is by constitution and mode of procedure utterly unfit to deal with such questions, and I think that this opinion is generally shared in the profession. The Dean of Guild is not a lawyer, but a mechanic, and I cannot see any advantage in encouraging the conversion of the Dean of Guild Court into a Court for determining questions of servitude and heritable rights,

I think therefore that the Dean of Guild acted rightly in refusing this sist.

LORD KINNEAR—I agree with your Lordship and Lord Adam. My only difficulty was whether the admitting into the process of an adjoining proprietor was not a matter for the discretion of the Dean of Guild, but my doubt upon that matter has been removed by what your Lordship observed, that the minuter here claimed to be sisted before the record was closed. He was not therefore the cause of any delay in the proceedings, and I think that he should have been made a party to the process.

If the question was one for the discretion of the Dean of Guild, so it is a matter for our discretion also; and I therefore agree with your Lordship that we should remit the case to the Dean of Guild in order that he may sist the minuter.

The Court recalled the Dean of Guild's interlocutor, and remitted to him to sist the appellant and proceed in the cause.

Counsel for the Appellant—Shaw. Agents—Curror, Cowper, & Curror, S.S.C.

Counsel for the Petitioner—D.-F. Balfour, Q.C.—Kennedy. Agents—T. J. Gordon & Falconer, W.S.