Mr Hugh Lindsay, grocer, Boyd Street, Kilmarnock, applied to the Dean of Guild Court there for a warrant to erect dwelling-houses on a piece of ground in Boyd Street and Morris Lane.

On the 31st January 1898 the Court appointed service to be made upon the adjoining proprietors and the burgh surveyor, Mr Robert Blackwood, and allowed the master of works to see the plans of the proposed buildings and to report thereon.

None of the adjoining proprietors appeared to oppose.

The Master of Works presented a report in which he made certain objections, and he also appeared in Court and made a verbal statement in support of them.

On 7th March the Court pronounced the following interlocutor—"Unanimously decline to grant warrant for the erection of the buildings specified in the petition, in respect they are not satisfied that the plans provide for the buildings being suitably lighted and ventilated."

The petitioner appealed.

No appearance was made by any party to oppose the appeal.

Argued for appellant—The procedure in the Dean of Guild Court had been overhasty, and the Dean of Guild had refused the petition without specifying the points in which the proposals did not fulfil the statutory requirements. This put the petitioner at a grave disadvantage, for it would prevent him from either showing that the objections were unfounded, or meeting them by modifying his schemes. If the Magistrates had appeared to oppose the appeal, the Court would have ordered them to lodge answers and remitted the case to the Dean of Guild. No appearance had been made, and the inference was that they knew the judgment was unsound. Accordingly the Court ought to recal the interlocutor and remit to the Dean of Guild to grant the lining. Failing that, the interlocutor should be recalled and the case remitted for further procedure—*Saltoun* v. *Magistrates of Edinburgh*, July 3, 1896, 23 R. 956; Burgh Police (Scotland) Act 1892 (55 and 56 Vict. cap. 55), sec. 167, *et seq.*

LORD PRESIDENT—We must be cautious in dealing with this appeal not to supersede or prevent the application of the discretion of the Dean of Guild to plans submitted to him. I own I think it is to be regretted that the Master of Works has not thought fit to appear and give an account of the somewhat rapid way in which this petition was refused. It seems to me, after the statement which has been made, we cannot allow this final refusal of sanction to stand, and should allow matters to be reconsidered. I propose, therefore, that we should sustain the appeal, recal the interlocutor, and remit to the Dean of Guild to proceed as may be just. The Dean of Guild Court is, I am sure, very willing to give due effect to the rights of persons desirous of altering buildings on their properties, and also to the enforcement of the obligations of the statute; but experience in this Court shows that where objections to plans before the Court are sustained on statutory grounds their precise nature should be put definitely before the petitioner, so that he may judge of their legal validity, and if satisfied of their validity obviate them by modifying his plans. And the Court will not be prepared to sustain a refusal in general terms of plans when the party has not had an opportunity of considering and canvassing the legal validity of the objections on the statute, or if he thinks fit of getting rid of the objections by altering his plans. I hope the consideration now referred to will be kept in view in the Dean of Guild Court, and that the case may thus be brought to a satisfactory conclusion.

LORD ADAM and LORD M'LAREN concurred.

LORD KINNEAR was absent.

Counsel for petitioner moved for expenses and referred to the case of *Saltoun, supra.*

The Court sustained the appeal, recalled the interlocutor of the Dean of Guild dated 7th March 1898, and found the respondent Robert Blackwood liable to the appellant in the expenses of the appeal.

Counsel for Petitioner — Salvesen — M'Clure. Agents — Simpson & Marwick, W.S.

Saturday, May 14.

SECOND DIVISION.

[Lord Pearson, Ordinary.

GILLIGAN'S FACTOR *v.* FRASER.

Judicial Factor — Factor loco tutoris — Minor and Pupil — Petition by Factor loco tutoris for Authority to Sell Pupil's Heritage.

A factor *loco tutoris* applied to the Court for authority to sell part of his ward's heritable property. The subjects were situated in Glasgow, and it was generally anticipated that the site would rise in value. The buildings were old and in such bad condition that they were regarded as practically valueless, the whole value of the property being in the site. The sanitary authorities had required improved sanitary accommodation to be provided, and this necessitated an expenditure of £200. Other £200 were required to put the building in a fair state of repair. The average nett rental hitherto obtained was higher than the return which could be obtained for the sum at which the buildings were valued if realised and invested in trust investments, and it was anticipated that the additional expenditure abovementioned would result in an increased rental equal to about 3 per cent. on the expenditure involved. The factor had funds arising from surplus income of the ward's estate which were sufficient to meet

the expense of the repairs and improvements required. The Court, reversing the Lord Ordinary, who had approved of a report by the Accountant of Court recommending that the sale should be allowed, *refused* the authority craved by the factor.

George Gillespie, writer, Glasgow, as factor *loco tutoris* to Wilhelmina Gilligan, only child of William Robert Gilligan, cab and carriage hirer in Glasgow, presented a note to the Court, in which he craved power to sell part of the heritable estate of the ward.

The property in question was situated in a central position in Glasgow surrounded by public works, where little ground was available for building purposes, but the principal frontage was on a considerable gradient. Part of it consisted of two four-storey tenements of one and two roomed houses; the remainder was a large stable with dwelling-house attached. The buildings, which were brick, were both old and very much dilapidated. The class of occupants was such that the wear and tear and the consequent cost of repair was excessive. The nett average annual return from the property was about £108.

The annual income of the factorial estate was £410, which, deducting the cost of the ward's maintenance and education, and allowing for expenses of management, left an annual surplus income of about £245.

By requisition dated 15th April 1897, the Sanitary Inspector of Glasgow, had called upon the factor to provide additional sanitary accommodation involving an outlay of about £200, and had intimated that if this was not done the matter would be reported to the Corporation of Glasgow with a view to proceedings being taken.

The factor, thinking that it was open to grave doubt whether he would be justified in incurring the necessary expenditure, consulted a house factor and property agent in Glasgow, who reported that the property was "hardly worth the outlay," and that "the ground from its central position and surrounded as it is by public works would be more valuable for many purposes." The factor thereupon obtained a valuation from Mr W. G. Rowan, architect and valuator, Glasgow, who valued the property, if sold as one subject, at £3082, 10s.

It appeared that the price paid by the ward's father when he acquired the property in 1887 was £5100.

In these circumstances the factor presented a report to the Accountant of Court in which he narrated the facts above set forth, and stated that in his opinion any assumed value of the subjects was somewhat speculative, but that probably as a site, apart from questions of revenue, the ground would increase in value, and reported that in his opinion it would be prudent to realise the properties in question by public roup.

The Accountant of Court upon this report gave an opinion that the factor might be authorised to expose the subjects for sale by public roup at the upset price of £3000.

In these circumstances the present note was presented to the Court.

Answers were lodged by Mrs Margaret Riddell or Fraser, the ward's grandmother, with whom the ward resided, as tutor and guardian duly appointed to the ward, and also as an individual.

Mrs Fraser objected to the property being sold, on the ground that there was no necessity for a sale, and that it would not be prudent to sell it at present, but that the better course would be to retain it for the benefit of the pupil. A report upon the property by Mr Frank Burnet, F.S.I., surveyor and valuator, Glasgow was produced, in which the reporter valued the subjects at £3300, and stated that in his opinion there was no occasion for selling meantime, as the property was yielding a return and would improve in value. He further stated that if the necessary sanitary improvements were made the rental of the tenements would be increased to such an extent as to give a good return for the money expended, and also that the stable property had been allowed to fall into disrepair, and consequently yielded a very low rental for the extent of the premises, but that if a moderate sum was expended upon it the rental might be greatly increased.

By interlocutor dated 22nd December 1897 the Lord Ordinary (KINNEAR) remitted the answers to the Accountant of Court in order that he might inquire and report thereon.

The Accountant of Court remitted to Mr J. M. Monro, architect, Glasgow, to value and report upon the subjects, and he reported that the buildings were in a very bad state of disrepair, that in addition to the sum of £200, which would be required to provide the sanitary accommodation demanded by the authorities, £70 would require to be spent to make the dwelling-house property in a fair state of order, and that to put the stable property into a proper state of repair so as to realise a better rent would involve an outlay of £125. He stated in his report that the ground floor apartments of the dwelling-house property, which were 1 foot 9 inches to 3 feet 5 inches below the level of the street, and only 7 feet from floor to ceiling, were so dark and damp and so infested with rats that they were liable to be shut up at any moment by the authorities as uninhabitable.

The Accountant of Court reported that "in the whole circumstances, looking to the expenditure required to put the buildings into a state of repair, and comply with the requirements of the sanitary authorities, to the class of tenants who would occupy them, and to the large annual expenditure on repairs always necessary, and further, that it is not for the factor to utilise the ground to the full extent by building upon it, the Accountant is of opinion that it is in the interest of the ward that the subjects be sold, as craved in the note for the factor."

In reply to a subsequent communication from the Accountant of Court, Mr Monro gave it as his opinion—"1st. That the out-

lay of £400 would not yield a rise in the nett rental equal to 5 per cent. thereon. The outlay on the stable buildings would yield that return, but I fear it will be impossible to raise the rents of the dwelling-houses to yield more than 2½ per cent. 2nd. The value of the property would not be correspondingly increased with the outlay, as the real value is in the ground. 3rd. The site of this property is likely to increase in value, and seeing the judicial factory is able to bear the expense of repairs, it might therefore be advisable to retain the property."

From the various reports produced it appeared that the buildings were so far through, and the situation so favourable for other purposes, that the property would admit of being reconstructed to advantage. It also appeared that the value of the property was entirely in the site, and that the prevailing opinion was that the site would rise in value.

By interlocutor dated 9th March 1898 the Lord Ordinary (PEARSON) approved of the Accountant's report, and in terms thereof authorised the petitioner to expose the property for sale by public roup in one lot at the upset price of £3000, and if not sold at or above that upset price, to re-expose the same for sale, and sell the same by public roup at such upset price as the Accountant of Court might fix; and also granted warrant to the factor to complete a title in the person of the ward to the whole of the heritable subjects specified in the prayer of the note; and found the petitioner and respondent entitled to their expenses out of the estate.

"*Opinion.—[After stating the circumstances as above narrated]*—The question is, whether in these circumstances a case is presented for granting the power of sale, having regard to the principles which have governed similar cases in the past. There is no doubt that the rule is not quite so stringent as it once was. It is not incumbent on the factor to make out a case of necessity, even in the wider sense of the term, before he can obtain power to alienate a pupil's heritage. But he must make out a case of clear expediency, and the expediency must not be merely the hope of gain but rather the avoidance of loss.

"On the other hand, it is clear that the question of expediency must be determined with some regard to the other possible courses which are open. Thus, in the present case, if the owner were *sui juris* and of ample means, he would probably be advised either (1) to reconstruct the whole premises so as to utilise the ground to its full extent and value, or (2) to keep the subjects as they are for a year or two, even untenanted, so as to avoid useless expenditure on the one hand and a sale in a rising market on the other. But both of these alternatives are ruled out when we are dealing with a factorial estate, for, however prudent such courses might be in the case I have supposed, they involve elements of speculation which are not appropriate to factorial management.

"Therefore the question of expediency must be determined with reference to the remaining alternatives. These are (1) to sell by public roup, and (2) to keep an old and much dilapidated property, with the immediate necessity of spending £400, or at least £200, upon it in order to maintain the rental, such expenditure possibly, though not certainly, raising the return from the property, but not adding anything to its market value, which is in the site. The fact that the sale is said to be in a rising market is not of course to be left out of account, but that involves an element of conjecture, and so far as it does not, the estate will get the benefit of it in an enhanced price.

"I hold that, upon the case as so stated, the factor has made out a case of expediency so strong as to warrant me in granting the powers craved."

The respondent reclaimed, and argued—Authority to sell should not be granted. The Court was not in use to grant such applications unless the sale was "urgently necessary," or at least "highly expedient." Here there was no necessity, for the factor had funds arising from surplus income to meet the necessary expenditure. Nor could it be said that the sale would be highly expedient, for it was probable that the property would rise in value, and meantime it appeared that if repaired it would yield an annual return upon its present estimated value *plus* the cost of the repairs, greater than could be obtained for that amount if invested in trust securities.

Argued for the petitioner—The buildings were at present valueless, and therefore not worth repairing. This was not a property which anyone would think of buying with a view to repairing and holding it as an investment. The course which a buyer would take would be to pull down the buildings and utilise the site for some other purpose. It was therefore highly inexpedient to waste money in repairs, and as the tenements could not be let unless repaired, the sale should be allowed. Authorities referred to — *Lord Clinton*, October 30, 1875, 3 R. 62; *Campbell*, June 26, 1880, 7 R. 1032; *Sinclair-Wemyss*, July 18, 1882, 9 R. 1131; *Logan*, November 9, 1897, 25 R. 51.

LORD JUSTICE-CLERK — To justify our granting the prayer of this petition there must at the least be "high expediency" for our doing so. I think no case of "high expediency" has been made out. The factor very properly took steps to have the judgment of some-one else than himself upon the case, but I do not think that in the circumstances we should do what he asks. The property is at present yielding a substantial rental. The result of the reports which have been made upon it is that if it is repaired it will for some time yield a fair return upon the expenditure involved as compared with other property at the present time. The ward has ample means both for her support and also for the repairs suggested. Now, if out of funds which are in hand the property can be so repaired that the factor can obtain a good

rental for it for a number of years there can be no high expediency in its being sold. There is the further consideration that so far as can be ascertained at present the retention and repair of the property will not lead to loss, and it will probably lead to gain, as the value of property situated in this busy locality is certain to rise. On the whole matter, I think no case is made out for authorising the sale of the pupil's heritable property.

LORD YOUNG—I think so also. I am very much disinclined in these cases to go against any view which has been expressed by the factor and the Accountant of Court. But in this case neither the factor nor the Accountant of Court expresses a very strong or clear opinion. They rather leave the matter to the decision of the Court, indicating the inclination of their own opinion. I think, therefore, that it will not be any violation of the general rule, which is to follow the opinion of the Accountant of Court, if we refuse in this case to grant leave to sell.

I should only like to add that as it seems to be necessary that there should be repairs it would be desirable if to save expense the factor could be authorised to make these repairs without presenting a new petition to the Court.

LORD TRAYNER—I agree. It was a proper course for the factor to bring this application before the Court upon the advice which he had. But now that the matter has been further inquired into I think it appears that here there is neither a case of "urgent necessity" nor of "high expediency" for granting leave to sell, and unless one or other of these is made out the rule is that leave should not be granted. On the contrary, it rather appears that the better course will be to retain and repair the property. The ward is not in necessitous circumstances, and there will be no difficulty in finding money for the repairs without encroaching upon what is required for the ward herself.

With reference to Lord Young's observation as to saving expense, I think it might be sufficient if the factor put in a minute in this process stating that in view of the decision of the Court he desired powers to make the necessary expenditure for the repairs out of the ward's funds.

LORD MONCREIFF — I am of the same opinion.

The Court pronounced the following interlocutor:—

"Recal the said interlocutor [of 9th March 1898] except in so far as it relates to the factor *loco tutoris* completing the ward's title to the whole heritable subjects, and to expenses: Find the parties entitled to additional expenses," &c.

Counsel for the Petitioner — A. S. D. Thomson. Agent — Marcus J. Brown, S.S.C.

Counsel for the Respondent — Sym. Agents—Sibbald & Mackenzie, W.S.

Tuesday, May 17.

FIRST DIVISION.

[Sheriff-Substitute at Dunfermline.

WARDLAW *v.* DRYSDALE.

Slander — Issues — Innuendo — Slander against Individuals as Members of a Class.

Terms of a letter, published in a burgh newspaper, and directed against a magistrate and the Dean of Guild of the burgh, which *held* not actionable, in respect that although it alluded to individuals, it alluded to them as members of a class (viz., those connected with the liquor traffic), no one of whom the writer represented was capable of acting honestly or with a proper regard to the public interest as a magistrate.

Expenses—Action of Slander.

Circumstances in which expenses were not allowed to the defender of an action for slander although the action was dismissed as irrelevant.

William Wallace Drysdale, law clerk, Dunfermline, wrote the following letter to the editor of the *Dunfermline Journal* —"Dunfermline, 18th November 1897.—Sir,—Where is the temperance party, and what is it doing, is a question which must needs arise in the mind of every thinking and thoughtful person. Is the party extinct, or is it asleep, or is it lying awake and shirking its duty? If not altogether extinct, the temperance party must, I think, be neglecting its duty with its eyes open. Surely at the present juncture, and in present circumstances, it has shown itself to be in a rather nerveless and comatose state. Publicans have of late been exulting and raising a shout of triumph over what rather appears to be a 'publican cabinet' in connection with our Town Council. For instance, we have a publican as a magistrate, which, I consider, is an insult to Dunfermline. Publicans as the manufacturers of criminals are not wanted, and should not be allowed to occupy a seat on our magisterial bench. We want there not vice but virtue, and the last place where virtue will be found is the drink shop. Strong drink has ever been the curse of our country. There is certainly, then, a nauseous touch of inconsistency in the fact that one who is manufacturing criminals at the one end, should be appointed to punish them at the other. In fact, the incompatibility of such an appointment with reason and common sense is only too apparent. Then, again, we have had a publican recently elected as Dean of Guild. What is the reason for this? Is it intended that he should bring grist to the publicans' mill? A flood of applications for extension of premises may now be expected. It is both disgraceful and deplorable that licensed poisoners, along with their allies, should be allowed