concur in the opinion there delivered, an opinion, I think, questioned if not dissented from in the subsequent case of *Protheroe* when before the Court of Appeal. But even accepting the views of the Vice-Chancellor in *Dowling's* case, that decision would form no precedent here, because the circumstances of that case and this appear to me to be materially different. All that was required in *Dowling's* case for complete delineation of the ground was, as your Lordship has pointed out, the prolongation for a short distance of two converging lines shown on the deposited plan. No mere prolongation of lines shown on the plan before us would delineate the lands which the respondents desire to take. To do that requires a new line or lines to be laid down, not at present appearing on that plan at all. I am of opinion, therefore, that the complainers are entitled to interdict as craved in so far as concerns the notice No. 6 of process and lands second mentioned in the prayer of the note—by clerical error called the first in the Lord Ordinary's interlocutor.

The notice No. 7 of process (referring to the lands first mentioned in the prayer of the note), stands in a different position. It relates to land delineated on the deposited plan and (if that were material) within the limits of deviation. One objection stated to that notice was this, that for part of this land (No. 83 on the deposited plan), a previous notice had been given and afterwards withdrawn. The Lord Ordinary has repelled that objection and I agree with him for the reasons which he has stated. The complainers objected farther to this notice that the respondents had not given it in *bona fide*, and averred that they proposed to take the land not for the purpose of their railway but in order to hand it over to a neighbour. Of these averments the Lord Ordinary has allowed a proof. It was stated to us, however, that these averments are not now insisted in, and that no proof in support of them is desired. In these circumstances I think the note should be refused in so far as it relates to the notice and lands first mentioned in the prayer.

LORD MONCREIFF was absent at the hearing.

The Court pronounced this interlocutor:—

"Recal said interlocutor reclaimed against: Interdict, prohibit, and discharge in so far as relates to the lands mentioned second in the note: *Quoad ultra* refuse the note and decern: Find no expenses due to or by either party."

Counsel for the Complainers and Respondents—Salvesen, K.C.—M'Lennan. Agent—J. Murray Lawson, S.S.C.

Counsel for the Respondents and Reclaimers—Cooper. Agents—Hope, Todd, & Kirk, W.S.

Thursday, November 12.

SECOND DIVISION.

[Lord Kyllachy, Ordinary.

BRUCE *v.* CORPORATION OF GLASGOW.

Road—Private Street—Entry on Register of Public Streets—Glasgow Police Act 1866 (29 *and* 30 *Vic. cap. cclxxiii*), *secs.* 282 *and* 286.

The Glasgow Police Act 1866 (29 and 30 Vic. cap. cclxxiii) enacts,—section 282:—"It shall be the duty of the registrar from time to time to enter in the Register of Public Streets, and to describe by a reference to numbers or marks on the Ordnance Map, any street which is declared by the Dean of Guild or by [the Magistrates and Council] to be a public street, and every other particular which he is directed by the Dean of Guild or [the Magistrates and Council] to enter therein or to describe thereon, in pursuance of the provisions hereinafter contained; and the entries and descriptions in the said register, and the relative numbers or marks on the said map, shall be conclusive evidence of what are public streets, and of the said other particulars." . . . Section 286:—The Master of Works by direction of [the Magistrates and Council] jointly with the proprietor of any land or heritage adjoining to and having a right of access by any private street or court . . . may apply at any time to the Dean of Guild to declare the said street or court or any part thereof to be a public street, and the Dean of Guild shall thereupon grant warrant to cite the remaining proprietor or proprietors of lands and heritages adjoining to and having a similar right of access by such street or court, and shall inquire into and decide the question raised in such application, and may direct the Registrar to enter such private street or court in the Register of Public Streets."

Between the properties of the feuars at the corners of two private streets in Glasgow a lane was formed; the solum of the lane was the property of the feuars. At one end of the lane, between the properties referred to, there was a gate which closed the access thereto from the private streets and at right angles to the gate there was a railing which separated the roadways of the private streets, the one from the other. The lane was continued beyond the corner properties, and its other end was open to a public thoroughfare. The Corporation of Glasgow, in 1894, without intimation to the proprietors of the feus referred to, and without describing it by reference to numbers on the Ordnance map, placed the lane on the register of public streets, and thereafter in 1901 removed the gate and

railing described. In an action of declarator and interdict at the instance of the proprietors of the feus, *held* that, the lane having been originally a private lane, the mere placing of it on the register of public streets without notice and without observation of the procedure prescribed in the Act of 1866 as quoted above, could not deprive the pursuers of their rights and convert the lane into a public street; and decree of declarator of the pursuers' rights, and interdict against the defenders from interfering therewith *granted*.

This was an action at the instance of John Wilson Bruce, Accountant in Glasgow, and Mrs Ada Maud Davis or Bruce, against the Corporation of the City of Glasgow, whereby the pursuers sought declarator—(1) and (2) that the pursuers were proprietors of certain subjects situated in Glasgow; (3) that in virtue of their titles the pursuers were vested in the full property in the lane separating their respective properties, each to the extent of one-half thereof; (4) that the said lane was a private lane, and that the defenders had no right to interfere therewith; and (5) that the pursuers were entitled to erect a gate across said lane; and further for interdict against the defenders from removing said gate, or from using the lane for the passage of carts, or in any other way interfering with the defenders in their right of property in the lane.

The defence was that the lane in question was a public street.

The following narrative of the facts as ascertained after a proof is quoted from the opinion of the Lord Ordinary (KYLLACHY):—"The pursuers are proprietors of two corner properties forming respectively the western and eastern ends of two private streets in the Hillhead district of Glasgow, known the one as Hamilton Park Quadrant, and the other as Lacrosse Terrace. Between the two properties runs a lane upon which the pursuers' respective gables and back premises abut, and which belongs in property one half of it to each of the pursuers. This lane was originally formed under an obligation in the titles, and so far as the titles go is subject only to a servitude of access in favour of certain neighbouring properties in Hamilton Park Quadrant. After leaving the pursuers' properties the lane was, originally or at a later date, continued southwards, having off it a branch to the east (called 'the spur') made for the service of Lacrosse Terrace and Belmont Crescent, and at the southern end it now opens into the thoroughfare known as the Great Western Road. From the Great Western Road northwards to the pursuers' properties, and indeed up to the line of their back walls, it has at one time or another been causewayed with rubble by or at the expense of the different proprietors. But between the pursuers' gables it is not causewayed at all. It bears generally the name of Belmont Lane. But how far that name applies to the portion between the pursuers' properties it is not necessary to determine. The important fact is that up to the recent operations of the defenders it was closed from the earliest period (certainly from about 1881) by a double wooden gate, which stretched between the front walls of the pursuers' properties, and closed all access between the lane and Hamilton Park Quadrant and Lacrosse Terrace. The lane was in short a *cul de sac*, having nothing of the character of a thoroughfare, and having *per se*, and apart from statutory procedure, none of the characteristics of a public street.

"In these circumstances the pursuers' complaint is this. They say (1) that, as they have now discovered, the defenders or their officials in the year 1894, without statutory authority, without intimation to the pursuers, and without reference to private rights, placed Belmont Lane, or at least the part of it southward of the pursuers' properties, on the register of public streets in the city of Glasgow: (2) that acting on the assumption that this had been legally done, and also on the assumption that the lane so declared public included the space between the pursuers' properties and particularly the pursuers' gables, the same authorities in October 1901 removed, *brevi manu* and without notice, the double gate which had stood, as I have said, since 1881, and also removed a line of iron railing which ran northwards from the centre of the double gate and formed part of a continuous iron fence which separated the roadway of Lacrosse Terrace from the roadway of Hamilton Park Quadrant: that on the pursuers replacing the double gate and railing the defenders again removed them, and indeed did so more than once. In short the pursuers say that in order apparently to oblige certain people who desired to turn Lacrosse Terrace and Hamilton Park Quadrant into a public thoroughfare, and in order also to give the municipal dust carts a short cut from the thoroughfare so opened to the Great Western Road, the Corporation officials simply removed all erections on the pursuers' properties which interfered with that object, and repeated the operation after the gate and railing were restored, thus necessitating the present action.

"The defenders' answer to all this consisted, so far as the Lord Ordinary understood it, in an attempt to show that the whole lane, and in particular the part of it between the pursuers' gables, to which part it may be noted the dispute is practically confined, is simply one of the public streets of Glasgow. Their case seemed to be (1) that the street had been taken over or agreed to be taken over as a public street by the Hillhead Commissioners, and was therefore a public street by virtue of the Annexation Act of 1891 (sect. 35, sub-sect. 2); (2) that it had been at least to some extent and for some time maintained by the Police and Statute Labour Committee of Glasgow, and was therefore a public street under the interpretation clause (sect. 4) of the Glasgow Police Act of 1866; (3) that in any view it had been placed in 1894—rightly

or wrongly—on the register of public streets, and was therefore fixed with that character in virtue of section 282 of the said Act of 1866; and (4) that although the procedure for this last purpose had been irregular the pursuers were barred by acquiescence from objecting to the irregularity."

The pursuer's properties were erected about 1877, and they were then outwith the boundaries of the city of Glasgow. They were subsequently included in the burgh of Hillhead, and being so included they were embraced within the city and royal burgh of Glasgow by the City of Glasgow Act 1891 (54 and 55 Vict. c. cxxx.).

Sections 282 and 286 of the Glasgow Police Act 1866 (29 and 30 Vict. c. cclxxiii.) are quoted in the rubric.

By section 4 (the interpretation clause) of that Act "public street" is defined to mean "any road, street, lane, vennel, wynd, bridge, quay, passage, square, or other place within the city used either by carts or foot-passengers which has been maintained by the Police and Statute Labour Committee, or which is by this Act, or shall hereafter in pursuance thereof, be declared to be a public street."

On 10th April 1903 the Lord Ordinary (KYLLACHY) pronounced an interlocutor in the following terms—"Finds, decerns, and declares in terms of the declaratory conclusions of the summons: Interdicts, prohibits, and discharges in terms of the conclusion for interdict: Finds the defenders liable in damages to the extent of ten pounds (£10), for which sum decerns: Finds the pursuers entitled to expenses, and remits," &c.

Opinion.—"The Lord Ordinary has considered this case with all the attention in his power, and he has done so particularly because he has been to the last unwilling to believe that proceedings apparently so high-handed and unjustifiable as those of which the pursuers complain should have been taken by officials of the Corporation of Glasgow. Down to the close of the proof and of the hearing the Lord Ordinary was under the expectation that some undisclosed defence was to be developed. But in the end he was forced to the conclusion—a conclusion which subsequent consideration has confirmed—that there is really no defence to the action, and that the pursuers are entitled to judgment.

"The facts generally are these—[*After the narrative quoted above his Lordship proceeded*]—The Lord Ordinary has not found it possible to give effect to any of those contentions. There is no evidence that the lane was taken over or agreed to be taken over as a public street by the Hillhead Commissioners. The evidence is entirely the other way, and on record and in the earlier discussion the defenders maintained no such proposition. As to the interpretation clause, the Lord Ordinary does not quite see how the interpretation clause can help the argument except when applied to some enacting clause. Neither does he see where the defenders get their proof of maintenance, at all events as regards the part of the lane in controversy. But besides, he thinks it quite plain that it is the second and not the first alternative of the definition in the interpretation clause which applies to a street of this description, originally private and maintained as such, but said to have become public by virtue of the statutory enactments. Again, as to section 282, there are, it seems to the Lord Ordinary, two answers. In the first place, that section assumes as a condition compliance with the provisions of section 286, and these provisions were not observed. And in the next place, the registration was not complete and effectual because the lane or part of the lane in question was not defined, as required by section 282, by having its position marked on the appropriate sheet of the Ordnance Survey Map then in force. Lastly, the suggestion of acquiescence is, the Lord Ordinary thinks, absolutely excluded by the terms of the correspondence. That correspondence shows that when in 1892 or 1893, the idea of turning the lane into a public street was first mooted the pursuer Mr Bruce and his predecessor in title Mr Crawford at once protested, and intimated that they would oppose, and desired to be heard. It also shows that this intimation was in the end met, and properly met, by the counter intimation—made no doubt in view of the threatened opposition—that it was proposed to apply to the Dean of Guild Court under section 286. Of course if this had been done all parties would have been called and heard. But in fact, for a reason explained in the proof, but which it is unnecessary to consider, no application was made. No procedure took place, the matter being apparently allowed to drop. And nothing more—so far as the pursuers were concerned—occurred until in 1901 the interference with their property took place which gave rise to the present action.

"On the whole, the Lord Ordinary sees no reason why the pursuers should not have decree in terms of their summons, the damages sued for being assessed at £10, which sum the Lord Ordinary thinks will cover the direct results of the defenders' operations. The pursuers will also have their expenses."

The defenders reclaimed. They relied on the statutory enactments referred to in the Lord Ordinary's opinion, and argued—The evidence established the fact that Belmont Lane was a public street, and in any event the entry in the register of public streets was final until reduced. The cases relied on by the pursuers did not apply.

Argued for the respondents—The evidence did not support the defenders' contention, the statutory procedure not having been observed—*Kinning Park Police Commissioners* v. *Thomson & Co.*, February 22, 1877, 4 R. 528, 14 S.L.R. 372; *Wallace* v. *Police Commissioners of Dundee*, March 9, 1875, 2 R. 565, 12 S.L.R. 361; *Magistrates of Edinburgh* v. *Paterson*, December 3, 1880, 8 R. 197, 18 S.L.R. 156.

At advising—

LORD JUSTICE-CLERK—In the formation of certain streets and terraces in what was formerly a part of the burgh of Hillhead, and is now in the city of Glasgow, the feus were laid off so as to leave a lane between the two houses forming the end houses of Hamilton Park Quadrant and Lacrosse Terrace, as shown on the plan produced, the lane being continued behind a street called St James Street, and carried on to the Great Western Road. When the lane was formed it was undoubtedly a private lane to which the public and the municipality as representing the public had no right. It belonged to the proprietors of the houses abutting upon it, each having the property up to the *medium filum*. According to the titles the only right over it is a right of access in favour of the feuars in Hamilton Park Quadrant.

The fact is established that for a great many years, certainly for twenty years, this lane was fenced by a gate which closed all access into it from the quadrant and the terrace, the gate being kept locked, so that the lane was only available as such to those who were supplied with keys. As the Lord Ordinary puts it, "it had none of the characteristics of a public street."

It appears that in 1901 the defenders, without any notice to the pursuers or any process of law to give sanction to their proceeding, took down the gate and an iron railing which crossed the road opposite the gate at right angles and shut off the quadrant from the crescent, and that on the pursuers replacing the obstruction the defenders again removed it.

To justify their proceedings the defenders founded on their having some time before entered this lane on the register of public streets in Glasgow under section 282 of the Glasgow Police Act of 1866, and that it thus became a public street, and that they had maintained it as such. I agree with the Lord Ordinary in holding that none of these contentions are sound, and that there is no evidence to prove that the lane between the pursuer's properties was ever taken over by the Hillhead Commissioners or was properly constituted into a public street or lane of Glasgow. It is true that in 1894 this lane was placed on the register of streets professedly under section 282 of the Act of 1866, but it is to me plain that the mere act of placing a lane on a particular register without any notice to the private proprietors, and without any opportunity afforded to them of being heard on the matter, could never deprive the proprietors of rights which they possessed before the entry was made. Procedure is prescribed for such a case by section 286, and it must, I think, be held that the right to enter upon the register depends upon the statutory procedure for the protection of the rights of owners of private property being first observed. But even were it otherwise, section 282 was not complied with, as the lane in question was not defined by reference to markings or numbers on the Ordnance Survey sheet as required by section 282.

The suggestion that there was acquiescence on the part of the pursuers is quite without support. On the contrary, when the proposal was first mooted about ten years ago protest was at once made by the proprietors and an application made to be heard on objections, which was met by intimation that procedure would be taken under section 286, which was never done, the only procedure taken being the violent removal of the gate in 1901.

I would move your Lordships to adhere to the interlocutor of the Lord Ordinary.

LORD YOUNG concurred.

LORD TRAYNER—I concur in the conclusion at which the Lord Ordinary has arrived, and have nothing to add to what his Lordship has said.

LORD MONCREIFF was absent at the hearing.

The Court adhered.

Counsel for the Pursuers and Respondents — Wilson, K.C. — M. P. Fraser. Agent—L. M'Intosh, S.S.C.

Counsel for the Defenders and Reclaimers — Lord Advocate Dickson, K.C. — Lees, K.C.—Cooper. Agents—Campbell & Smith, S.S.C.

Tuesday, November 17.

FIRST DIVISION.

[Sheriff Court at Glasgow.

DICKIE *v.* SCOTTISH CO-OPERATIVE WHOLESALE SOCIETY, LIMITED.

Process—Proof—Jury Trial—Proof or Jury Trial — Appeal for Jury Trial — Action of Damages for Personal Injury—Remit to Sheriff—Court of Session Act 1825 (6 *Geo. IV. c.* 120) (*Judicature Act*), *sec.* 40.

In an appeal for jury trial under section 40 of the Judicature Act in an action concluding for £50 damages for personal injury caused by an accident in Glasgow, the respondents moved that the case should be remitted back to the Sheriff for proof on the ground of its local character and trifling nature. *Held* that the appellant was entitled to a jury trial.

George Dickie, message boy, Govan, brought this action in the Sheriff Court at Glasgow against the Scottish Co-operative Wholesale Society, Limited, concluding for payment of £50.

Dickie averred that he had been run over by a lorry belonging to the defenders. As to the nature of the injury sustained he made the following averment:—"(Cond. 5) The pursuer having been carried into the consulting-rooms of Dr Barras, 563 Govan Road, Govan, was taken home, on the injury (a severe crushing of the toes of the right foot) being dressed. After being attended thereafter by Dr Campbell, 987 Govan Road, he was sent to the Western Infirmary for further attention. After a