LORD PRESIDENT—It seems to me to be clear that the applicant is entitled to the decree for which he here asks. His just claim to be admitted a member of the incorporation has been obstructed and baffled for a considerable time; but now that we have given our decision as to the invalidity of the alterations which were made upon the conditions of entry, we should not allow the applicant to be any longer hindered from enjoying his just rights.

LORD ADAM—I concur.

LORD M'LAREN—I am of the same opinion, and for the reasons stated by your Lordship, namely, that Mr Allan's right to be admitted a member of the incorporation has been judicially affirmed, and that the applicant is not to be deprived of his right to become a member of the incorporation by the refusal or delay on their part to entertain his application.

But what I say now does not apply to the case of any other applicant who may apply pending the determination of the petition for our sanction to new regulations. This would raise a very different question.

LORD KINNEAR—I agree. I also agree with Lord M'Laren that the case of future applicants is not before the Court, and with regard to it I express no opinion. As to the present applicant, his rights are determined in the action at his instance.

The Court pronounced this interlocutor:—

"(First) Find that the pursuer was on 24th June 1903 entitled to be admitted a member of the said Incorporation of Cordiners of the city of Edinburgh in the character of an intrant at the far hand, upon payment of the entry-money fixed in the bye-laws and regulations of the defenders' incorporation sanctioned in 1850: (Second) Find that the defenders are not entitled to exact as a condition of admitting the pursuer as a member to the said incorporation any higher dues of entry than those prescribed by the bye-laws and regulations: and (Third) Ordain the defenders forthwith to admit the pursuer as a member of the said incorporation on payment of the sum of £160."

Counsel for the Pursuer and Respondent — Campbell, K.C. — Constable. Agent — Thomas Liddle, S.S.C.

Counsel for the Defenders and Reclaimers — Ure, K.C. — Clyde, K.C. — M'Lennan. Agents—Cumming & Duff, S.S.C.

Thursday, November 17.

FIRST DIVISION.

[Lord Kincairney, Ordinary.

JOSEPH EVANS & SONS *v.* JOHN G. STEIN & COMPANY.

Reparation—Slander—Conflict of Laws—Lex loci delicti—Defamatory Letters and Telegram Sent from Scotland to England — Publication of Slander — Actionable Wrong.

A firm of engineers carrying on business in England brought an action of damages against a firm carrying on business in Scotland for defamation contained in two letters and a telegram sent by the defenders from Scotland to the pursuers in England. The pursuers averred that the letters and telegram were "published" in the sense of English law, in respect that the letters were dictated by the defenders to and typewritten by clerks in the employment of the defenders, and that the telegram passed through the hands of the telegraph officials in telegraph offices both on its despatch from Scotland and on its arrival in England.

Held (*rev.* the judgment of Lord Kincairney) (1) that the *locus delicti* was in England; (2) that the *locus delicti* being in England, no action lay in a Scots court unless there was an actionable wrong by English law as well as by Scots law; and (3) that there was no actionable wrong under English law, in respect that there was no publication of the slander, and action *dismissed.*

On 13th January 1904 Joseph Evans & Sons, hydraulic and general engineers, Culwell Works, Wolverhampton, brought this action against John G. Stein & Company, Ganister and Fireclay Works, Bonnybridge, concluding for £1000 damages for defamation.

On 16th May 1903 the pursuers, in answer to an inquiry made by the defenders, forwarded to the defenders two complete estimates for pumping plant. On 28th May 1903 the defenders, by telegram addressed to the pursuers' agents in Glasgow, Messrs W. B. & J. Bain, accepted one of these estimates, and requested the pursuers to send them the pump specified therein with appurtenances, all as quoted for.

The pursuers averred that owing to the defenders delaying to accept the estimate till 28th May, the acceptance was received by the pursuers just at the time when their works were about to close for the Whitsuntide holidays, and the works were not reopened until 8th June. They further averred that the works of other manufacturers, who supplied the pursuers with chains and other appurtenances of pumping machines, were also closed during that period.

The defenders, on the other hand, averred that the pursuers' agents had represented, contrary to fact, that the pump was in stock and ready for delivery.

On 18th June 1903 a letter and telegram, and on 19th June a letter, were despatched by the defenders from Scotland to the pursuers in England. The said letters and telegram were alleged by the pursuers to be defamatory.

The pursuers averred—"(Cond. 10) . . . The question whether the contents of said letters and telegram are actionable falls to be determined according to the law and practice of Scotland. . . . Explained and averred further that the letters complained of were dictated by the defenders to and typewritten by a clerk or clerks, and were also copied into a letter-book by a clerk or clerks in the employment of the defenders in Scotland. The letters and telegram of the defenders dated 18th and 19th June 1903, addressed to the pursuers, were in the ordinary course of the business opened by and read by members of the staff of pursuers' firm on delivery at the pursuers' place of business. None of said letters or telegram were in fact opened by or read by partners of the pursuers' firm in the first instance. The said letters and telegram were thus published to third parties in the sense of English law both in Scotland and in England. The said telegram, despatched by the defenders on 18th June 1903, passed through the hands of clerks in telegraph offices as an open message both on its despatch from Scotland and on its arrival in England, and was thus published to third parties in both countries in the sense of English law."

The defenders denied these averments, and "explained that the pursuers carry on business in England, and that the letters complained of were addressed and delivered to the pursuers at their place of business in Wolverhampton. Said letters were not published in Scotland, and the question whether or not the contents of said letters are libellous falls to be determined according to English law and practice. By the law of England, in order to constitute a libel it is necessary for the alleged libellous writing to be published to a third party, and the despatch by the defenders to the pursuers of said letters was not publication in the sense of English law."

The pursuers pleaded, *inter alia*—"The defenders having slandered the pursuers as condescended on, the pursuers are entitled to reparation as concluded for, with expenses."

The defenders pleaded, *inter alia*—"(1) No relevant case. (4) The defenders, not having slandered the pursuers, are entitled to absolvitor."

On 21st June 1904 the Lord Ordinary (KINCAIRNEY) approved of certain issues and counter issues for the trial of the cause.

Opinion.—"This is an action of damages for defamation. The pursuers Evans & Sons carry on business in England, and the defenders Stein & Company in Scotland. The libel is said to be contained in certain letters and a telegram passing from the defenders in Scotland to the pursuers in England.

"I think the letters are undoubtedly slanderous, and I am of opinion that the issue proposed fairly enough expresses their meaning.

"But the defenders stated at the debate an argument of considerable importance and difficulty, contending that the pursuers were not entitled to any issue. Their argument was that the action was founded on a delict committed in England, and that therefore the pursuers' right depended on the law of England, that according to the law of England there could be no libel unless the alleged libellous writings had been published to a third party; and they aver that the despatch 'by the defenders to the pursuers of the said letters was not publication in the sense of English law.' They do not aver on record that the telegram was not published. They argued that the pursuers were not entitled to any issue. But I do not think that the defenders have stated any pleas which can cover that argument, and I could not have given effect to it without an amendment of the record. But although the argument was ingeniously and forcibly stated, I am not prepared to assent to it. In the first place, I am not convinced that the case should be determined by the law of England. I think it should be determined by the law of Scotland. The defenders maintained that the place where the letters and telegram were delivered to the pursuers was the *locus delicti*, and that the law applicable was the *lex loci delicti*. They founded chiefly on *Kendrick* v. *Burnett*, November 17, 1897, 25 R. 82, 35 S.L.R. 62, and *Goodman* v. *London and North-Western Railway Co.*, March 6, 1877, 14 S.L.R. 449. These were cases of injuries inflicted or suffered either on the high seas or in England. But although they are important cases, their bearing on the present case is not nearly so close as that of *M'Larty* v. *Steele*, January 22, 1881, 8 R. 435, 18 S.L.R. 266. They were cases in which there was no doubt about the *locus delicti*. *M'Larty* v. *Steele* was an action raised by one Scotsman against another on account of defamation uttered in Penang, in which it was contended that the law of Penang (I understand, the law of England) should be applied, but where the case was decided in accordance with the law of Scotland. That case appears to me to be closely applicable when examined, and to warrant or necessitate the conclusion that this case falls to be decided in accordance with the law of Scotland.

"Further, I do not think it established that England was the *locus delicti* in this case. No authority was cited to that effect. I am disposed to think that Scotland was the *locus delicti*, because the letters were written and posted and the telegram despatched in Scotland. It was in Scotland that the defenders did all that they did. They launched the slanders complained of there, leaving them to be taken up and carried forward by the ordinary postal machinery of the country. Now, according to the law of Scotland, publication is not essential to the completion of a libel—*Mackay* v. *M'Cankie*, 1883, 10 R. 537, 20 S.L.R. 357. It may be that no damages could have been claimed had the letters not reached the pursuers at all. But when the defenders had done all they could to ensure delivery,

the utmost that could be said is that their liability might be suspended while the letters were in transit.

"Still further, there was, in my opinion, sufficient publication in this case, and it is to be noticed that the defenders do not venture to aver that the telegram which went through the hands of the telegraph clerks was not published, and it seems to me that there is a sufficient averment of publication of the letters also. At least I think there is no sufficient reason for refusing an issue on the ground of want of publication. What the result may be if it should appear in the end that the letters had not been published need not now be determined."

The defenders reclaimed, and argued—The *locus delicti* was in England, where the wrong was done. As long as the letters were in Scotland no injury was done. It was only when the letters and telegram were delivered in England that the damage was done, and therefore English law must determine the question of remedy—The *M. Moxham*, 1876, 1 Prob. Div. 107. But in English law no action lay for the damage, because there was no publication of the letters or telegram. The defamatory words were, as in this case, communicated only to the person defamed. There was consequently, in the view of English law, no injury for which damages could be got—Odgers on Libel and Slander, 3rd ed., pp. 170 *et seq.* Sending a letter through the post to a person properly addressed to him was not publication—*Barrow* v. *Lewellin*, Hob. 62. There was thus no sufficient averment of publication. In the case of an act done in a foreign country, no action would lie in the courts of this country unless the act was actionable both in the foreign country and in this country—*Kendrick* v. *Burnett*, November 17, 1897, 25 R. 82, 35 S.L.R. 62; *Goodman* v. *London and North-Western Railway Company*, March 6, 1877, 14 S.L.R. 449; *Horn* v. *North British Railway Company*, July 13, 1878, 5 R. 1055, 15 S.L.R. 707.

Argued for the respondents—The *locus delicti* was in Scotland, for it was in Scotland that the defenders did all the acts complained of, viz., the writing and posting of the letters. Therefore the question whether there was an actionable wrong fell to be determined by the *lex loci delicti, i.e.*, solely by the law of Scotland — Gillespie's edn. of Barr's International Law, p. 922. In Scotland publication was not necessary to ground an action for defamation—*Mackay* v. *M'Cankie*, January 27, 1883, 10 R. 537, 20 S.L.R. 357. The delict was complete on the letters being posted, just as a contract might be completed by the posting of a letter—the Post Office being the mere machinery of delivery. So in criminal law the place where letters are posted is the *locus* of a crime carried out through the agency of the Post Office—*The Queen* v. *Holmes*, 1883, 12 Q.B.D. 23. Also in England a letter was held to be published as soon as posted, and in the place where it was posted if it was ever opened anywhere by third parties—Odgers on Libel, 3rd ed., p. 175. (2) Even if it were held that the *locus delicti* was in England, the slander was "published" in the sense of English law, and there was therefore an actionable wrong by English law as well as by Scots law. It was settled in England that communication to clerks or typewriters in the employment of the person sending the letter was "publication"—*Pullman* v. *Hill & Company* [1891], 1 Q.B. 524. The sending of the telegram was "publication" to the telegraph officials—*Williamson* v. *Freer*, 1874, L.R., 9 C.P. 393. These decisions were binding on a Scots court in deciding what constituted "publication" in English law. The defamation being written, it was unnecessary to specify the names of the persons to whom it was published. The present case came within the principle recognised in *Machado* v. *Forster* [1897], 2 Q.B. 231; *M'Larty* v. *Steele*, January 22, 1881, 8 R. 435, 18 S.L.R. 266.

Lord M'Laren — The defenders in this case, who are described as fireclay makers, Bonnybridge, Scotland, in May 1903 gave an order to the pursuers, who are hydraulic engineers at Wolverhampton, England, for the supply of a pump for their works at Bonnybridge. The pump was wanted immediately, and the defenders say, whether rightly or wrongly it is unnecessary for the purposes of this action to consider, that the pursuers professed to have the pump required in stock and ready for immediate delivery. Some delay ensued in the execution of the order, and the defenders, who, I assume, were put to inconvenience by the delay, were very angry, and addressed to the pursuers certain letters and a telegram, which, to say the least, were very intemperate in expression, and which in my judgment were defamatory. If these communications had been addressed to a third party they would according to our law, and I do not doubt according to the law of England, have been proper to be submitted to a jury under an action of libel. The present action has been instituted for the recovery of damages for libel or defamation.

The peculiarity of the case is that while the law of Scotland awards reparation for defamatory statements made to the party accused on the ground of injury to feelings, the law of England, which does not take account of injury to feelings, gives no action for statements addressed to the party defamed himself. As counsel are agreed as to the doctrine of the law of England on this subject, it is unnecessary that it should be proved.

The Lord Ordinary has allowed an issue on the ground, as he states, "that Scotland was the *locus delicti*, because the letters were written and posted and the telegram despatched in Scotland."

On the best consideration I have been able to give to the Lord Ordinary's reasoning on this subject I am not able to concur in his opinion. It appears to me that it is of the essence of an injury of the nature of defamation that the defamatory charge should reach its destination or should at least become known to someone. While the letters complained of were in transit through Scot-

land they could not injure the pursuers, because their contents were as secret and as completely protected from disclosure as if they had been locked up in the defenders' desk. It was only when the letters were delivered at Wolverhampton that damage was done, but then the damage was of a kind that the law of England does not consider actionable. In my opinion the case is exactly the same as if the defenders had taken the letters to Carlisle and posted them there, because in their transit through Scotland the letters could do no harm.

I do not overlook the consideration that a contract may be completed by the posting of a letter, on the principle that the Post Office is an agency for the transmission of a completed contract. But, as I think, there is no real analogy between the cases. In cases of contract it is considered that the offerer by sending his offer through the Post Office invites a reply through the same medium, and thus the Post Office, with the assent of the two parties to the proposed contract, is made the agent for the delivery of the reply. This is the principle of the law on the subject, because the Post Office does not hold itself out as an agent for anyone except for the delivery of the material packets that are entrusted to it.

In the present case I cannot hold that the Post Office was the agent for the publication of a libel, and there was certainly no preliminary assent on the part of the pursuers to the use of the Post Office for the transmission of a libel upon themselves. I therefore come to the conclusion that no wrong was committed by the defenders within the jurisdiction.

It is proper to notice that the pursuers make a point (Art. 10) of the fact (as they aver) that the letters complained of were dictated by the defenders to and typewritten by a clerk or clerks in their employment, and were copied into the defenders' letter-book.

Now, I am not prepared to hold that the employment of an amanuensis in the ordinary course of business to write letters on business amounts to publication of a libel should such letters be found to contain defamatory matter.

The work of an amanuensis to whom letters are dictated is confidential employment, and in the general case the amanuensis knows nothing of the parties or the subject in controversy. His duties are purely mechanical, and he cannot without a breach of confidence make any use of the information which he may pick up in writing a letter to dictation. It may be that if the person employed to write the letter knew the party to whom the letter was addressed, and the letter conveyed to his mind a defamatory imputation, an action would lie. But in this record we have not even a statement of the name of the clerk to whom the letters were dictated, and there is no suggestion that the letters conveyed any meaning to his mind. In such circumstances I cannot hold that there is a relevant statement of a defamatory libel addressed or uttered to a known person within the jurisdiction.

I may add that the difficulty as to formulating a relevant averment in such a case is not removed by the insertion of the word "maliciously." This word when applied to the act of dictating a letter is obviously a mere expletive, conveying no meaning distinct from that of the averment without the word maliciously.

What I have said regarding the dictation of letters applies with if possible greater force to the transmission of telegrams. The duties of the clerks in the telegraphic department of the Post Office are strictly confidential, and I think it would be a new departure in the law of libel to hold that a telegraphic message which is not otherwise actionable becomes so because it is read by the Post Office clerks who are engaged in its transmission. In this case also it would in my opinion be necessary to make a circumstantial averment of publication to an individual. It would then depend on the evidence of the person named whether the words complained of conveyed any defamatory meaning to his mind.

On the whole matter I am of opinion that no relevant case has been made, and that the defenders are entitled to be assoilzied from the action.

LORD KINNEAR—I am of the same opinion. I quite agree with Lord M'Laren that the injury which the pursuer alleges must be held to have been done at Wolverhampton when he opened and read the letter which contains injurious imputations. So long as the letter was not opened and read by anybody except the person who wrote it no harm was done, and apart from the question whether it was published to the clerks in the pursuer's office or to the telegraph clerk, the injury, if there was injury, was done only when the pursuer opened and read the letter. In these circumstances it appears to me that the argument as to the *locus delicti* is fallacious, because it proposes the question in the form of a *petitio principii*. The first question is not where was the *locus delicti*, but whether there was a *delictum* or not, and the whole of the somewhat metaphysical discussion as to whether the wrongful act of which the pursuer says he is entitled to complain was done in Glasgow or Wolverhampton seems to me altogether beside the question.

The first question is, was there a *delictum* or actionable wrong. Nobody disputes that the defenders' conduct was blameworthy. But the question is whether it is an actionable wrong, and it is only after we have ascertained that that we can go on to ascertain whether the *locus* was one or other of the places mentioned on record. The law on that question, as I think it is settled by modern decisions, is that in order to maintain an action *ex delicto* in the courts of this country, when the wrong is committed in another country, the wrong must be one for which an action can be maintained both by the law of this country and by the law of the country in which it is said to have been done.

The first question therefore is, whether it is an actionable wrong according to our

law to address language such as that complained of to the pursuer himself, even although it is not communicated to a third person. I agree with Lord M'Laren that there would be an actionable wrong. But before an action can be maintained here we must next go on to see whether there is a wrong by the law of England also, and we are not put to ascertain that law by the ordinary course of procedure, because it is admitted that by the law of England the communication of language of this kind to the person of whom it is spoken and to nobody else is not an actionable wrong. As I understand it, the admission which was made as to the law of England amounts to this—that the cause of action in a case of slander or libel is not mere insult but injury to reputation, and inasmuch as there is no injury to reputation in saying things to a man himself which nobody else hears or knows anything about, no action will lie according to the law of England in respect of such statement. That being so, the law applicable to the present case is laid down in a judgment of great authority by Mr Justice Willes in the case of *Philips* v. *Eyre*, 1870, L.R., 6 Q.B. 1, at p. 30. The learned Judge says—"Where an obligation by contract to pay a debt or damages is discharged and avoided by the law of the place where it was made, the accessory right of action in every court open to the creditor unquestionably falls to the ground. And by strict parity of reasoning, where an obligation *ex delicto* to pay damages is discharged and avoided by the law of the country where it was made, the accessory right of action is in like manner discharged and avoided." The question considered in that case was whether liability for an Act assumed to have been an actionable wrong, according to the law of the colony where it was committed, had been discharged by a subsequent act of indemnity in that colony; and the question which the learned judge was considering was whether the discharge or avoidance of the obligation according to the law of the *locus delicti* excluded an action in England. But his Lordship's reasoning is directly applicable, because the doctrine, as I understand it, is that the accessory right of action in any court which may be open to the person complaining depends upon the recognition of an obligation, *ex delicto* or *ex contractu* as the case may be, by the law of his own country under which he is living, and its coincidence in that particular with the law of the country in which he sues. If there is an obligation *ex delicto* it may be enforced in any court having jurisdiction. If there is no obligation *ex delicto* by the law of the place where the alleged wrong is done, and under which the complainer is living, there is no action anywhere.

I think that principle also goes to meet the pursuer's argument that the defence in this case was founded upon the law of remedy and not upon the law of obligation. Mr Salvesen argued that if the law of England affords no remedy, the defence on that ground raises a question of remedy which must always be determined by the law of the country in which action is brought. That appears to me to be a confusion of things which ought to be distinguished. The method by which a right may be enforced is a question of procedure; but whether there is any remedy at all, or in other words whether there is a right of action, is not a question of procedure but a question of legal right depending on the existence of an obligation *ex contractu* or *ex delicto*, and the question of obligation must be determined first before we can consider what the remedy is.

This appears to me to be in accordance with the doctrine explained by Lord Brougham in *Don* v. *Lippmann*, 1837, 2 Sh. & M'L. 682. The distinction taken is between the law which governs the constitution of an obligation and the law of procedure which regulates the remedy. Lord Brougham points out that personal rights and obligations must be fixed by the law of the country in which the parties in whom they inhere are living. But they do not necessarily look to the courts of that country alone as the only tribunals by which the performance of obligations may be enforced or damages may be recovered, because the party complaining is entitled to follow the wrongdoer to the courts of his own country or of any other country to the jurisdiction of which he may be subject. If he does so, he must submit himself to the modes of procedure which are adopted by the court to which he resorts.

This arises from the necessity of the case, because no court of justice can invent new forms of procedure and new rules of evidence in order to meet the case of any particular pursuer who comes into court complaining of wrong done or right infringed in some other country. The rules of evidence and procedure must be applicable to all alike, and therefore when a pursuer comes here he is bound to submit himself to the rules of this Court as to the methods by which his remedy is to be obtained, but he is bound in the first place to show that according to the law of his own country he has a right under which he is entitled to a remedy. In the present case it has been conceded by the pursuer's counsel that he has no right by the law of his own country which will support an action in the courts of that country or in any other.

The question then remains, whether there is a relevant averment of publication or communication to somebody other than the pursuer. I agree with Lord M'Laren that there is not. I think there may or may not be publication of the language contained in a letter if the letter is dictated to a clerk, or if the words in a telegram are communicated as they must be to telegraph clerks. But whether there has been such communication or not is a question of fact; and if a pursuer complains of publication as a wrong he is bound to state specifically to whom the language complained of was made known. Here the averments on that subject are, as I agree with Lord M'Laren, too vague and too entirely wanting in

specification to be sent to proof. I therefore consider that there is no issuable matter in this record.

The LORD PRESIDENT and LORD ADAM concurred.

The Court sustained the reclaiming-note and dismissed the action.

Counsel for the Pursuers and Respondents—Salvesen, K.C. — Irvine. Agents—Dove, Lockhart, & Smart, S.S.C.

Counsel for the Defenders and Reclaimers—Jameson, K.C.—T. B. Morison. Agent—John Morton, Solicitor.

Thursday, November 17.

FIRST DIVISION.

[Dean of Guild Court, Glasgow.

M'DOUGALL *v.* NISBET.

Burgh — Street — Building Regulations — Fixing Width of Street by Master of Works —Glasgow Police Act 1866 (29 *and* 30 *Vict. c. cclxxiii*), *sec.* 366 — *Glasgow Building Regulations Act* 1900 (63 *and* 64 *Vict. c. cl*), *secs.* 20 *and* 21.

Held that under section 20 of the Glasgow Building Regulations Act 1900 when a proprietor proposes to erect buildings on ground adjoining a public street, of which the dimensions are not set forth in the register, the Master of Works may fix the width of the street in front of the ground at what seems to him, on a consideration of the whole circumstances of the case, to be a proper width, even if the result of his determination is that the width of the street is increased and a strip of ground which is the private property of the proprietor proposing to build becomes dedicated to the public for street purposes.

The Glasgow Police Act 1866 (29 and 30 Vict. cap. cclxxiii) enacts:—Sec. 366—"The Dean of Guild shall not grant a warrant to erect any building, except a stone wall not exceeding six feet in height, within twenty feet of the centre of any portion of a statute labour road within the city, or within thirty feet of the centre of any portion of a turnpike road within the city which is relinquished by the trustees and is assumed by [the Magistrates and Council] as a public street under the powers of this Act."

The Glasgow Building Regulations Act 1900 (63 and 64 Vict. cap. cl) enacts:—Sec. 20—"The Dean of Guild shall not, without the consent of the corporation, grant decree for the erection or re-erection of any building upon ground adjoining any street unless on the condition that one half of the width of such street, measuring such half from the centre of such street towards such ground, shall be cleared of all structures, if any, existing thereon, and shall, subject to the provisions of the Police Acts, be wholly dedicated to the public for street purposes, and this condition shall be presumed to be made by the Dean of Guild in every decree granted by him. . . . For the purposes of this section the width of a public street shall be the width set forth in the register where such width is entered therein . . . And the width of any public street of which the dimensions are not set forth in the register . . . shall be fixed by the Master of Works. And the position of the centre of any such street shall be defined by the Master of Works with reference to any application which may be made to the Dean of Guild for a lining to erect or re-erect any such building." Section 21—"Any person deeming himself aggrieved by any determination of the Master of Works under the immediately preceding section may appeal to the Dean of Guild within fourteen days thereafter, and the Dean of Guild shall thereupon have power to fix such width and define such centre of such street." . . .

In a petition to the Dean of Guild Court, Glasgow, at the instance of Thomas M'Dougall, builder, Glasgow, for warrant to erect buildings on the petitioner's ground fronting Springburn Road, the Dean of Guild, by interlocutor dated 9th June 1904, sustained a determination of Thomas Nisbet, Master of Works of the City of Glasgow, and fixed the width of Springburn Road opposite the petitioner's proposed building at 60 feet. Against this interlocutor the petitioner appealed to the Court of Session.

Springburn Road was a turnpike road when by the extension of the city under the City of Glasgow Act 1891 the district was included in Glasgow, and in terms of the statute the road became one of the public streets of the city, and the question at issue was whether section 20 of the Glasgow Building Regulations Act 1900 conferred any power on the Master of Works, in fixing the width of a street adjoining ground on which a building was about to be erected, to increase the width of the street, with the result that ground in front of the proposed building, which was private property, became part of the street without any compensation being granted to the proprietor.

The facts of the case, the contentions of parties, the reasons assigned by the Master of Works for his determination, and by the Dean of Guild for his interlocutor confirming that determination, are set forth in the opinion of the Lord President.

Argued for the appellant — Springburn Road prior to the City of Glasgow Act 1891 was a rural turnpike road of a well-defined width of 40 feet. On being included in the city under that Act it became a public street, and the register of streets referred to in section 20 of the Glasgow Building Regulations Act 1900, if it had been completed (as it should have been), would have set forth its width at 40 feet, and that would have fixed its width for the purposes of that section. The claim of the Master of Works, under the guise of "fixing" the width of the street to include in the street a large slice of private property which was outside the street was not contemplated by section 20 of the Act. The existing street was what was in view of the