

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. cclxxviii), 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. cclxxviii) 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

Act. The centre of the street was the centre of the existing street, and the width of the street was 20 feet on either side of this centre. From this centre the building line would be distant 30 feet, the building line here being 10 feet back from the existing street. The words "cleared of all structures" and "wholly dedicated to the public for street purposes" were to be interpreted in view of the provisions of the Glasgow Police Act 1866, secs. 299, 300, and 366. If the street was to be widened in the public interest, the proper course was to proceed under section 300 of the Act of 1866 or under section 25 of the Act of 1900—*Magistrates of Galashiels v. Schultze*, March 16, 1894, 21 R. 682, 31 S.L.R. 585, and May 14, 1895, 22 R. (H.L.) 70, 33 S.L.R. 94.

Argued for by the respondent—The occasion to fix the width of a street did not arise until an application for a lining was presented. Thereupon the Dean of Guild could not grant decree for the erection of the proposed buildings except on the conditions set forth in section 20 of the Glasgow Building Regulations Act. The provisions of sections 20 and 21 with regard to fixing the width of the street and defining the centre could not be read as referring to the mechanical operation of measuring with a tape the existing street. They had in view the determination of what was to be for future and practical purposes the width of the projected street, even though the effect might be, as in the present case, that part of the ground belonging to the proprietor, who was applying for a lining, might thereby be dedicated to public uses. Under the 1866 Act the Corporation in acquiring ground became proprietors of such ground. Under the 1900 Act the proprietor did not lose the ground but only the use of the surface. The Legislature had doubtless *Schultze's* case in view in passing the 1900 Act, the object of which was mainly to improve and regulate the line of the street.

At advising—

LORD PRESIDENT—The question in this case is whether a judgment of the Dean of Guild of Glasgow, by which he fixed the width of Springburn Road, Glasgow, *ex adverso* of property belonging to the appellant at 60 feet, and defined the centre of that road to be along a red ink line marked upon a plan produced, is right.

The proceedings originated in a petition by the appellant, lodged in the Dean of Guild Court on 22nd March 1904, for authority to erect certain buildings on the property belonging to him fronting Springburn Road. Upon this petition the Dean of Guild, on 31st March 1904, pronounced an interlocutor by which he, *ante omnia*, remitted to the Master of Works to hear parties, and thereafter to fix the width and define the position of the centre of Springburn Road *ex adverso* of the petitioner's property specified in the petition, all in terms of section 20 of the Glasgow Building Regulations Act 1900.

By that section it is declared that 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 that this condition shall be presumed to be made by the Dean of Guild in every decree granted by him.

It is further declared by section 20 that for the purposes of it the width of a public street shall be the width set forth in the register, where such width is entered therein, and that the width of any public street of which the dimensions are not set forth in the register, and of any private street of which the dimensions are not specified or shown as thereinbefore mentioned, shall be fixed by the Master of Works. The section further provides that 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 as therein mentioned.

On 19th April 1904 the Master of Works, in execution of the remit thus made to him, reported to the Court that having heard parties, and having due regard to (1) the history and character of Springburn Road, which was a turnpike road, and was also a public street of the city; (2) the provisions of the Glasgow Police Act 1866, sec. 366, and the Glasgow Building Regulations Act 1900, sec. 20; and (3) the width of the street where tenements or permanent buildings had already been erected, he fixed the width of Springburn Road at the place in question at 60 feet, and on a plan prepared by him as relative thereto he defined the position of the centre of the street by marking thereon a red line on which there are marked the words "centre line of road" that line being situated midway between the old walls on each side of the road. The appellant alleges that the width of the road at the place in question was previously only forty feet.

The appellant, deeming himself aggrieved by the determination of the Master of Works, appealed to the Dean of Guild against it, and craved to be heard in support of his appeal. In particular he maintained that the purposes of section 20 of the Glasgow Building Regulations Act 1900, viz., that the streets should be cleared of structures, and dedicated to street purposes, having been fulfilled, he (the appellant) did not desire to propose any interference with it, except the temporary interference incident to his building, and proposed that his building line should be 30 feet from the centre of the street in terms of section 366 of the Glasgow Police Act of 1866, which declares that 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 turnpike road within the city which is relinquished by the trustees thereof and is assumed by the magistrates and council as a public street under the powers of this Act, unless the said building could have been erected within a less distance of the centre of such turnpike road without contravention of the Acts relating to the said road. To this the Master of Works replied that the purposes of section 20 of the Glasgow Building Regulations Act 1900 had not been fulfilled, and that the fixing of the width of the street was necessary, and I think that this reply was well founded. The appellant complained that the Master of Works had erroneously assumed that by the removal of the building line to 30 feet from the centre of the street he could extend the width of the street to the same line, thus attempting to appropriate for street purposes, and to subject to the provisions of the Glasgow Police Act 1866, ten feet of ground belonging to the appellant, which he alleges was truly subject only to the restriction imposed by section 366 of that Act prohibiting buildings thereon exceeding six feet in height. He maintained that the power claimed by the Master of Works was not warranted by section 20 of the Act of 1900, or by any other enactment or law, and he pleaded that if the Master of Works considered that it would be to the public advantage to have the street widened, his proper course was to proceed under section 300 of the Act of 1866, and purchase the additional ground which he desired on behalf of the Magistrates and Council, or under section 25 of the Act of 1900, which provides that in order to secure as far as possible a regular line and satisfactory width and level for the footpaths in any street the Corporation may, after notice by the Master of Works to the person responsible for the maintenance of such footpath, or the part thereof affected, alter the line and level of the footpath, increase or lessen the width thereof, and carry out such other operations thereon as may be necessary or desirable for the improvement of the footpath or street, and thereafter such footpath when so altered or widened shall be subject to the provisions of the Police Acts. The Master of Works alleged that other tenements besides those of the appellant had been erected since 1891 in Springburn Road within the portion added to the city in 1891, that these tenements were 30 feet from the centre of the road, and that the width of the street there was in fact 60 feet. It appears to me that the position taken up by the Master of Works and sustained by the Dean of Guild is well founded, and in particular I think that the city did not require, in order to effect the widening of the Springburn Road at the place in question, to purchase or take under compulsory powers any of the land belonging to the appellant.

On 9th June 1904 the Dean of Guild, having considered the pleadings, documents, and plans lodged, refused the appeal and sustained the determination of the Master of Works contained in the report and plan

mentioned, fixed the width of Springburn Road at the part in question at 60 feet, and defined the centre of the road to be along the red ink line marked on the plan.

In a note to his interlocutor the Dean of Guild says that the building of the appellant's proposed tenements was not placed on the line of an old boundary wall mentioned in the pleadings but ten feet further back, and this was done to meet the requirements of the Glasgow Police Act of 1866, section 366, which declares that the Dean shall not grant a warrant to erect any building within 30 feet of the centre of any portion of a turnpike road within the city, that this keeping back of the building line left a strip of ground of ten feet between the old boundary wall and the new building line, and that the dispute between the parties was ultimately limited to this strip of ten feet; that the Master of Works having fixed the width at sixty feet, his determination was brought under review of the Dean of Guild under section 21 of the Act of 1900, and that he (the Dean), in accordance with the determination which he had made in a previous case, decided that the Master of Works was right.

I am of opinion that the conclusion thus arrived at by the Dean of Guild is correct. I concur with him in thinking that, keeping in view the terms of section 21 of the Act of 1900, the Master of Works was entitled and bound to apply his mind to the whole circumstances of the case, and to fix what he, in view of these, considered to be the proper width. I also concur with the Dean of Guild in thinking that for the reasons assigned by the Master of Works he rightly determined the width of the road in question at sixty feet, and accordingly that his decision to that effect should be upheld.

LORD ADAM concurred.

LORD M'LAREN—I am of the same opinion. This case and the one which follows it raise the same question though in different forms; it is a question on the construction of the Glasgow Buildings Act.

Now, the effect of this Act seems to be, first, that the local authorities when a new building is proposed to be put up may fix the width of the street to be anything they please, and may then make it a condition of the building order that nothing shall be erected on the space which has been thrown into the street for the purpose of increasing its width. I confess I see nothing in this legislation that calls for special construction. The provision of the Act of Parliament is perfectly plain that the Master of Works (who, as I consider, is merely a servant of the Corporation) is to provisionally fix, subject, of course, to the review of the Dean of Guild, the width of the street. That cannot mean merely measuring the existing street; it must mean determining what is to be for future and practical purposes the width of the projected street. It has been represented to us that this is a hardship on proprietors, but after all the Corporation is only doing for the proprietor whose property adjoins the street what every sensible proprietor who lays out his

land for feuing would do for himself—that is, making roads and passages of sufficient width for the accommodation of tenants and passengers. That being settled, I do not think the facts of the case present any difficulty. I agree with your Lordships that, the width of the street being fixed in accordance with the statutory requirements, whenever an owner adjacent to the street comes for an order requiring the sanction of the Dean of Guild, he is entitled to require that the ground thrown into the street shall be cleared of buildings and levelled, and then the street is to be available for the purposes of traffic.

LORD KINNEAR concurred.

The Court dismissed the appeal.

Counsel for the Petitioner and Appellant—Campbell, K.C.—T. B. Morison. Agents—Webster, Will, & Co., S.S.C.

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

Thursday, November 17.

FIRST DIVISION.

[Dean of Guild Court, Glasgow.]

NEILSON v. R. B. WILSON & COMPANY.

Burgh—Street—Building Regulations—Implied Condition of Lining—Repairs of Street—Glasgow Police Act 1866 (29 and 30 Vict. cap. cclxxiii), secs. 316 and 366—Glasgow Building Regulations Act 1900 (63 and 64 Vict. cap. cl), secs. 20 and 21.

Held (1) that in view of the provisions of section 20 of the Glasgow Building Regulations Act 1900 it is to be presumed that in a decree of lining granted by the Dean of Guild of Glasgow for a new building subsequent to the date of the said Act, it was a condition that one half of the street opposite the new building should be cleared of all structures and dedicated to the public for street purposes; and (2) that where the width of a street has been duly fixed by the determination of the Master of Works in terms of the Act, the proprietor of ground which by reason of such determination has become dedicated to street purposes is bound to put such ground into a condition proper for use by the public for street purposes.

Section 317 of the Glasgow Police Act 1866 enacts—“The Master of Works may by notice given in manner hereinafter provided require . . . any proprietor of a land or heritage adjoining any turnpike road within the city or any public street, so far as not already done, to form in a suitable manner with openings at convenient distances for fire-plugs, and from time to time to alter, repair, or renew to his entire satisfaction foot pavements . . . in such road or street opposite to such land or heritage . . . except

where the foot pavements have been taken over by” the magistrates and council.

Section 366 of the Glasgow Police Act 1866 and sections 20 and 21 of the Glasgow Building Regulation Act 1900 are quoted *supra* p. 108.

This case dealt with a question similar to that which was decided in the immediately preceding report of *M'Dougall v. Nisbet*. But the circumstances in which the case arose were different and involved one or two new points.

On 1st November 1900 Thomas M'Dougall obtained a warrant from the Dean of Guild to erect buildings on part of his ground fronting Springburn Road, Glasgow. The plans showed that the buildings were to be 30 feet from the centre of the road in accordance with section 366 of the Glasgow Police Act 1866. Before the lining was granted the boundary of Mr M'Dougall's property was a low wall 20 feet from the centre of the road, so that there was a space of 10 feet between the wall and the proposed buildings. The plan gave no indication that the wall was to be retained, and in fact before the buildings were erected the wall was cleared away and the 10 feet of ground was left unenclosed and open to foot-passengers.

Previous to October 1902 R. B. Wilson & Company became the proprietors of No. 1176 Springburn Road, and John Howie the proprietor of Nos. 1180 to 1216 Springburn Road, all portions of the buildings erected under the lining granted to M'Dougall in 1900.

On 7th October 1902 George Neilson, Procurator-Fiscal of the Glasgow Dean of Guild Court, presented a petition to the Dean of Guild Court stating that notices had been served by the Master of Works, in terms of the Glasgow Police Act 1866, sec. 317, on R. B. Wilson & Company and John Howie, representing Thomas M'Dougall, as proprietors of lands and heritages in Springburn Road, requiring them within ten days thereafter to form a foot-pavement by putting in at a width of 10 feet from their building lines a whin kerb and paving the footpath with Caithness pavement to the satisfaction of the Master of Works, that the defenders had lodged written objections to the requisition, and that the cost of the work would in the opinion of the Master of Works exceed £5. The petitioner therefore prayed the Dean of Guild Court to decide the question raised as to the reasonableness of the work and the liability of the defenders for the cost.

The defenders in their objections stated that the 10 feet next their building lines was private property and not part of the street, that the road authority were not entitled to cause it to be formed into a footpath till they had acquired it under section 299 of the Glasgow Police Act 1866, that beyond the 10 feet of ground there existed a footpath 7 feet wide which was an inseparable part of the public street and which the road authority were bound to maintain. The defenders, however, stated that they and Mr M'Dougall were willing to allow the 10 feet strip of ground next