

certain offences were appropriate to certain *fora*, i.e., it referred to the differentiation between *fora*. Accordingly, even in a burgh to which the Burgh Police (Scotland) Act 1892 applied the offences specified in section 70 were offences under the Licensing Act, and by section 90 the fees for prosecuting such offences fell to be paid by the county. *Rowland v. Deas*, July 10, 1906, 8 F. (J.) 86, 43 S.L.R. 859, and especially the opinion of Lord M'Laren therein, implied that section 91 applied to such offences, and accordingly the fees therefor must be paid by the county. Reference was also made to *Tasker v. Simpson*, December 21, 1904, 4 Adam 495, 7 F. (J.) 33, 42 S.L.R. 228.

Argued for the second party—Section 70 was, so far as concerned the burghs to which the general or local Police Acts specified in part 2 of the twelfth Schedule applied, put back into such Acts, i.e., in the present case was put back into the Burgh Police (Scotland) Act 1892. Section 91 dealt with licensing offences such as breaches of certificate; there was nothing in it which would apply to police offences. The exception clause in section 91 safeguarded the operation of sub-section 4 of section 70. The result of the argument of the first party would be that the burgh might, under section 461 of the Burgh Police (Scotland) Act 1892, fix the salary of the prosecutor at what they chose, and that the county would have to pay for it. Sub-section (3) of section 70 was enacted to ensure that there should be a complaint; it was enacted in consequence of *Gray v. Dewar*, July 18, 1889, 2 White 290, 16 R. (J) 97, 26 S.L.R. 685. The decision in *Rowland v. Deas* (*cit. supra*) was not opposed to their contention, and regarding the opinion of Lord M'Laren it was to be observed that sub-sec. 4 of section 70 was not brought before the notice of the Court.

LORD JUSTICE-CLERK—I am of opinion that this question must be answered in the negative. No doubt this clause in the Act of Parliament, like those in most Acts of Parliament having a very wide range, is somewhat less particularly expressed than would be the case in an Act of Parliament relating to much more minute matters. But I have come to be of opinion that these offences which are detailed to us in this case, and which are set forth in the 70th section of the Licensing Act of 1903, are by the terms of the Act not licensing offences in any true sense of the Licensing Act, but are imported by this Act into the jurisdiction of the Burgh Courts. That being so, the simple answer to the question is that as they are Burgh Court offences all questions of expenses of prosecution must be met by those who have to provide for Burgh Court prosecutions.

LORD STORMONTH DARLING—I entirely agree. The claim of the first party to be remunerated by the County Council of Ayrshire, the second parties, in respect of certain prosecutions, is entirely founded on section 91 of the Licensing Act of 1903. He can only obtain an affirmative answer

to the question (which admittedly would make a change in the practice hitherto existing) if he can show that the offences in question, being, speaking generally, offences involving drunkenness, are offences under the Licensing Act alone. I am of opinion, for the reasons stated by your Lordship in the chair, that they are brought by sub-section 4 of section 70 of the Licensing Act back into the position of offences under the Police Acts, whether special or general. If so, they are not offences under the Licensing Act, and accordingly do not fall under the provisions of section 91.

LORD LOW—I am of the same opinion.

LORD ARDWALL—I am of opinion that the effect of sub-section 4 of section 70 of the Licensing (Scotland) Act 1903, although not happily expressed, is practically this, that it substitutes the provisions of sub-sections (1) and (2) of section 70 for sub-section (1) of section 380 and sub-section (24) of section 381 of the Burgh Police Act 1892, just as much as if it expressly said so. Accordingly, section 91 of the Licensing (Scotland) Act 1903 does not apply to the offences mentioned in said sub-sections (1) and (2) so far as regards the burgh of Saltcoats and other Police Burghs to which the provisions of the General Police Act of 1892 apply.

The Court answered the question of law in the negative.

Counsel for the First Party—The Dean of Faculty (Campbell, K.C.)—A. M. Anderson. Agent—Alexander Ramsay, S.S.C.

Counsel for the Second Party—Morison, K.C. — Leadbetter. Agents — Webster, Will, & Company, S.S.C.

Wednesday, March 13.

## FIRST DIVISION.

[Dean of Guild Court,  
Gourock.

### CRAWFORD v. DARROCH AND ANOTHER.

*Superior and Vassal—Feu-Contract—Condition of Feu Right—Building Restriction—Construction—Building Line Fixed by Superior—Continuance of Obligation to Observe Original Building Line.*

By a feu-contract several pieces of ground were disposed to a vassal. The vassal was taken bound to build a dwelling-house on each piece of ground "and to maintain the same in sufficient repair." The vassal further bound himself to build the houses "on the exact line to be fixed by" the superior or his agent. Held that a singular successor in one of the pieces of ground was not entitled to alter the building line without the consent of the superior.

By feu-contract dated 19th April and 11th June 1845, the factor and commissioner for General Duncan Darroch of Gourock

disposed to John Knox Stuart, surgeon in Glasgow, *inter alia*, a piece of ground marked number one on the plan annexed to the feu-contract. The said piece of ground was situated on the north side of the turnpike road mentioned in the feu-contract, afterwards known as Cardwell Road.

The feu-contract contained the following provisions:—"For which causes and on the other part the said John Knox Stuart binds and obliges himself and his heirs and successors in so far as not already done to build fronting to the said turnpike road upon each of the said pieces of ground marked numbers one . . . in the fore-said sketch, within twelve months from the date of these presents, a good and substantial dwelling-house of not less and not more than two stories in height, roofed with slates, and of the value of three hundred pounds sterling at least, and to maintain the same in sufficient repair . . . and the said John Knox Stuart further engages and binds and obliges himself and his fore-saids to keep the said houses to be built fronting to the said turnpike road at least twenty-five feet back from the centre thereof . . . and to build the whole of the said houses in the exact line to be fixed by the said General Duncan Darroch or his agent . . ."

At the date of the feu-contract Cardwell Road was thirty-three feet wide. Subsequently it became fifty feet wide, a strip of seventeen feet having been added to the road on the side furthest away from the piece of ground in question. The existing buildings on the said piece of ground were twenty-five feet from the centre of the road as it existed at the date of the feu-contract.

On 7th February 1906 John Wilson Crawford, solicitor, Greenock, who was in right of the piece of ground marked number one on the plan annexed to the feu-contract of 1845, presented a petition to the Dean of Guild Court of Gourrock for warrant to alter the said buildings in conformity with plans produced. The plans showed that the petitioner proposed to bring forward the front wall of his buildings to the line of the Cardwell Road. Objections to the proposed alterations were lodged by Duncan Darroch, Esq., of Gourrock, the superior, and also by Alexander Duthie, the Master of Works of the Burgh of Gourrock. The superior maintained that the proposed alterations were in contravention of the feu-contract. The Master of Works stated further objections which it is not necessary to particularise.

On 19th April 1906 the Dean of Guild refused the prayer of the petitioner so far as relating to buildings proposed to be erected by him within twenty-five feet from the centre of the turnpike road (as existing in 1845).

Note.—"Objections to the warrant craved by the petitioner have been lodged by the superior and the Master of Works. In each case the objections relate to the petitioner's building line in . . . Cardwell Road. . ."

" . . . The difficulty has arisen through the recent widening of that road, and the petitioner seeking to take advantage of such widening to bring forward his building line to the edge of his property. It is admitted by the parties that when the feu was given off and the existing buildings erected Cardwell Road was a turnpike road 33 feet or thereby in width, and that the recent widening of the road to 50 feet was due to the superior allowing a strip of ground on the opposite side of the road to be thrown into the street. In my opinion the turnpike road *ex adverso* of the petitioner's ground still remains 33 feet wide, being its width when taken over by the Council under the Roads and Bridges Act, and the petitioner is bound to keep his building line 25 feet back from the centre of the 33 feet road. Before the superior's generous gift, the width between the buildings on the two sides of Cardwell Road was by the Turnpike Acts fixed at 50 feet. If the petitioner were now entitled to bring forward his building line as he proposes, the width would still be 50 feet, and the superior's gift would thus be practically of no avail. In any question dependent upon the distance of buildings on the south side of Cardwell Road from the centre line of the turnpike road it would be manifestly unfair that the superior or his successors should suffer by the centre line of the turnpike road being laid down nearer his ground than it was before the superior gave up ground to improve the street. Had the strip of ground gifted by the superior been, say, 10 feet less in breadth than it actually was, the street would have been 40 feet wide, and the petitioner—if his contention is correct—would have been entitled to bring his building forward to 5 feet from the north line of Cardwell Road, and the superior would have been entitled to build 18 inches or thereby from the south line of the street as widened. In this way the distance between the buildings would be less than 47 feet, whereas, had the superior not given ground for the widening, that distance would have been 3 feet greater. . ."

The petitioner appealed, and argued—The petitioner's obligation was not to build within 25 feet of the centre of the turnpike road, and the turnpike road must be taken as it now existed. A singular successor on inspecting the record would find that he was restricted from building within 25 feet of the centre of a turnpike road. He was entitled to go to the subjects in order to identify the point from which the 25 feet were to be calculated. He was not bound to look at the plan, which did not enter the record. (2) As to the obligation to build on the line fixed by the superior, it did not appear that any line had been fixed. In any event, that obligation was not continuous and applied only to the original buildings.

Argued for the respondent Darroch—(1) It was impossible to fix a building line with reference to a moveable boundary. The centre of the road must therefore be taken

as at the date of the feu-contract. (2) The vassal was bound not only to build the houses on the line to be fixed by the superior, but also to maintain them in good and sufficient repair. That showed that the obligation was continuous and not limited to the original building—*Forrest v. Governors of George Watson's Hospital*, December 15, 1905, 8 F. 341, 43 S.L.R. 183. It was to be presumed that the line had been duly fixed by the superior—*Sutherland v. Barbour*, November 17, 1887, 15 R. 62, 25 S.L.R. 68.

At advising—

LORD PRESIDENT—By feu-contract dated 19th April and 11th June 1845 the factor and commissioner of General Duncan Darroch of Gourrock feued out to John Knox Stuart, surgeon in Glasgow, certain pieces of ground marked Nos. 1, 2, 13, and 12 on a plan annexed to the feu-contract. By the said feu-contract the vassal bound himself to build a dwelling-house of a certain description and value on each piece of ground feued. The feu-contract further provided—“And the said John Knox Stuart further engages and binds and obliges himself and his foresaids to keep the said houses to be built fronting to the said turnpike road at least twenty-five feet from the centre thereof . . . and to build the whole of the said houses in the exact line to be fixed by the said General Duncan Darroch or his agent.”

Following upon the feu-contract the houses were built, and were built upon a line which is admittedly twenty-five feet from the centre of the road as it then existed. Since the date of the feu-contract, however, the width of the road has been increased by the addition of a strip of ground on the side away from the houses, and the successor in the feu of one of the houses, which is No. 1 on the plan, now wishes to extend the buildings on his feu up to the edge of the road as it at present exists, maintaining that, in view of the additional breadth which has been added to the road, the front wall of his house will not be less than twenty-five feet from the middle of the road.

We had an interesting argument from Mr Moncrieff on the clause “twenty-five feet back from the centre thereof,” the question being whether, in view of the centre of the road being a relative term, the stipulation must not always be read in the light of the facts existing at the time of its application. This raises a question of some difficulty which I do not think it necessary to decide, because the matter is really ruled by the following clause—that the buildings are to be erected on the exact line to be fixed by the superior. That clause is obviously not meant to apply to one time alone. I think its effect was to make it a rule of the feu that the line once settled was to be thereafter maintained, and that the only person who could release the vassal from the restriction was the superior. Now, here it is the superior who is objecting to the vassal's proposed altera-

tion, and there is no doubt of his title to do so. Accordingly, I am clearly of opinion that the practical result arrived at by the Dean of Guild was right, and that the appeal should be dismissed.

LORD M'LAREN, LORD KINNEAR, and LORD PEARSON concurred.

The Court refused the appeal.

Counsel for the Petitioner (Appellant)—Graham Stewart, K.C.—Moncrieff. Agents—Simpson & Marwick, W.S.

Counsel for the Respondent Darroch—Sandeman. Agents—Skene, Edwards, & Garson, W.S.

Counsel for the Respondent the Master of Works—G. Watt, K.C.—Munro. Agents—Paterson & Salmon, W.S.

Saturday, March 2.

## FIRST DIVISION.

[Lord Ardwall, Ordinary.]

BROWNLIE, WATSON, & BECKETT  
v. CALEDONIAN RAILWAY COMPANY.

*Agent and Client—Transfer of Railway Company's Undertaking—Remuneration of Transferring Company's Solicitors—Basis for Fixing Remuneration—Applicability of Table of Fees.*

A railway undertaking was transferred under Act of Parliament from one company to another. The solicitors of the transferring company claimed (1) an *ad valorem* fee of £1410, 3s. for revising the Amalgamation Bill, treating it as a disposition following a sale; and (2) an *ad valorem* fee of £2683, 1s. for agency in negotiating the sale. On a remit the Auditor reported that the revising fee should be disallowed, the solicitors being remunerated by proper charges for work done, but that a commission for agency in negotiating was chargeable, which, as allowed by him, came to £435, 10s. The Lord Ordinary gave effect to this report.

*Held*, on a reclaiming-note, (1) that the revising fee was rightly disallowed, there having been no disposition, and the charge therefor in the table of fees being inapplicable; but (2), that a commission for agency in negotiating the sale had been wrongly allowed, there having been no negotiations for a sale in the proper sense of the term, and that the proper basis for fixing the remuneration was a fee for trouble, in this case £315.

On 9th May 1905 Brownlie, Watson, & Beckett, law agents and conveyancers, 225 West George Street, Glasgow, raised an action against the Caledonian Railway Company to recover £4095, 13s. 7d., the amount of a part of their business account, relating to the sale and transfer to the