Friday, January 18.

SECOND DIVISION.

(Before Seven Judges.)

[Dean of Guild Court at Glasgow.

GIULIANI *v.* SMITH.

Burgh—Dean of Guild—Dangerous Tenement—Danger Due to Condition of Upper Flats—Compulsory Partial Demolition—Allocation of Cost Among All the Proprietors of Tenement — Competency — Liability of Owners of Ground Floor for Share of Cost of Operations—Glasgow Police Act 1866 (29 *and* 30 *Vict. cap. cclxxiii), sec.* 381.

By the Glasgow Police Act the Dean of Guild may order any building which is dangerous in whole or in part to be taken down or secured, and may award the expenses of executing the operations "against the proprietor."

A tenement having, owing to the condition of its upper flats, become dangerous, the Dean of Guild, on the application of the Procurator-Fiscal of the Dean of Guild Court, ordered the tenement to be taken down to the level of the ceiling of the ground floor. After the operations had been executed, the Dean of Guild, proceeding under the powers conferred upon him by section 381 of the Glasgow Police Act 1866, allocated the expense of the demolition among all the owners of the different portions of the building. The proprietors of the ground floor objected to any portion of the expenses being allocated upon them, on the grounds (*a*) that it had been established that the dangerous condition of the upper flats was due solely to the improper use made of them by the proprietors thereof, and (*b*) that the ground floor was intact and required no operations at the instance of the public authorities. *Held* (by a Court of Seven Judges, *diss.* the Lord Justice-Clerk, Lord Ormidale, and Lord Anderson) that the provisions of section 381 of the Glasgow Police Act 1866 entitled the Dean of Guild to allocate amongst all the proprietors of the tenement, including the owners of the ground floor, the cost of the operations.

The Glasgow Police Act 1866 (29 and 30 Vict. cap. cclxxiii) enacts—"Section 381—The Procurator-Fiscal of the Dean of Guild Court appointed by the Corporation may at any time apply to the Dean of Guild for a remit to one or more competent persons to inspect and report on the state of any building or part of a building which appears to be dangerous, and for a warrant to take down or to secure or repair such building or part of a building if reported to be so, and the Dean of Guild shall thereupon proceed as follows:— . . . He shall after receiving the report of the inspectors proceed to inquire into and decide the questions raised in the application, and may order the building or part of a building referred to in it to be taken down or secured by the proprietor or by the Procurator-Fiscal of the Dean of Guild Court appointed by the Corporation. He may ascertain and award the expenses of executing the operations against the proprietor, and may also award the expenses of all proceedings in the application to any of the parties thereto."

A petition was presented in the Dean of Guild Court of Glasgow by George Smith, Procurator-Fiscal of Court, in which he craved a remit to one or more competent persons to inspect and report on the state of a building situated at Nos. 56 to 68 Argyle Street, Glasgow, and to grant warrant to take down or to secure the building, or part thereof, if reported to be dangerous.

The following narrative is taken from the opinion (*infra*) of the Lord Justice-Clerk:—"This is an appeal from the Dean of Guild Court in Glasgow. It arises in this way. As far back as October 1919 the Procurator-Fiscal of that Court presented a petition under the Glasgow Police Act 1866 to the Dean of Guild in which he averred that certain buildings, or parts of buildings, situated at 56 to 68, both inclusive, Argyle Street, Glasgow, were in a dangerous state, that it was necessary that they or parts of them should be taken down or secured or repaired, and craving that after the appropriate statutory procedure had been carried out a decree should be pronounced to that end. To that petition the appellants, who are proprietors of certain shops on the ground floor of the buildings in question, were convened as respondents, along with the proprietors of the upper flats. In the course of the procedure which followed, the Dean of Guild remitted to two reporters to inspect and report to him upon the state of the property. Their report was duly presented to the Dean of Guild, and it makes two things clear, viz.—(1) that the building as a whole, *i.e.*, 56-68 Argyle Street, was in a dangerous condition, (2) that its dangerous state was solely due to the condition of the upper flats. The reporters recommended that the building should be taken down to the level of the first floor. The Dean of Guild thereupon pronounced an order in terms of that recommendation. Certain procedure followed, which it is unnecessary to detail, and on 10th June 1920 the Dean of Guild remitted to the same reporters to make a further inspection of and report upon the property. They presented a second report to him, which so far as this case is concerned does not appear to me to add anything material to the first report. The Dean of Guild then of new ordered the building to be taken down to the level of the first floor, and this work was done at the instance of the Procurator-Fiscal. The Master of Works thereafter lodged an allocation of the cost of the work among the various proprietors of the building, and in that allocation he included the appellants. Their share in the cost amounted to £368, 11s. 6d. The Dean of Guild pronounced an order approving of the allocation, and finding the various proprietors, including the appellants, liable in

terms of it. Against that order the present appeal is taken."

The objections lodged by the appellants to the proposed allocation and the answers thereto by the Master of Works contained, *inter alia*, the following averments:—"(Objection 2) The objector denies liability not only for the sum allocated on him in the proposed allocation, but also for any proportion of the cost of the demolition of the said portion of the building; and further, he reserves all claims against the proprietors of the upper storeys of the said property for any expense to which he may have been or may be put or damage suffered in consequence of the demolition of the said portion of the building. (*Ans.* 2) Reference is made to the terms of section 398 of the Glasgow Police Act 1866. (Objection 3) The title of the objector to his shop is separate and distinct, and the said objector is in no way jointly interested in the other portions of the building beyond the extent stated in his title, to which reference is made for the terms thereof. (Objection 4) The objector is in a position to dispose of his premises without reference to, or consent or concurrence of, any of the other proprietors of the property. (*Ans.* to objections 3 and 4) Not known and not admitted, and reference is again made to section 398 of the Glasgow Police Act 1866. (Objection 5) It is averred that the dangerous condition of the upper portion of said property was brought about through its misuse by the proprietors thereof, and that the order by the Dean of Guild Court for the demolition of the said upper portion proceeded upon the ascertained fact of such misuse by the proprietors of the upper portion of the said property. Averred further, that the proprietors of the upper portions are alone responsible for the cost of the said demolition. (*Ans.* 5) Not known and not admitted, and in any event this objection is irrelevant to the question at issue. (Objection 6) It is further averred that the objector has not been called upon by the public authorities to strengthen his property, not even when the demolition order was made for the upper portions of the property, and at the present time the property of the objector is believed to be in such a state as to give the support to the proprietors of the storey immediately above which at common law the proprietors thereof could be called upon to provide. (*Ans.* 6) This objection is irrelevant. The operations were carried out by order of the Dean of Guild Court dated 21st November 1919 in terms of the Glasgow Police Act 1866, section 381. (Objection 7) The Master of Works and the Procurator-Fiscal are called upon to state in writing under what authority they have based the said allocation of the cost of demolition. (*Ans.* 7) The allocation of the cost of the operations carried out under order of Court is made in terms of the Glasgow Police Act 1866, particularly section 381 and 398 thereof. (Objection 8) For the reasons above stated the objector should be excluded from the allocation of the cost. (*Ans.* 8) Denied."

Similar objections were lodged on behalf of the owners of three other shops on the ground floor of the building.

On 7th June 1923 the Dean of Guild repelled the objections, approved the allocation, and granted decree in terms thereof with expenses.

Note.—"... The objections of the respondents Giuliani and Dows turn upon the question that as they are proprietors of the ground floor, which was intact and required no operation at the instance of the public authorities, they should not be liable for any part of the expense caused through the condition of the flats above the street flat. It is, of course, in some respects a hard case for the proprietors of the shops in question. The shop proprietors may hold separate titles, and it may be that the dangerous condition of the upper portion of the property was brought about through its misuse by the upper proprietors, but that is a question among the proprietors themselves. The shop proprietors were interested at anyrate to this extent, that if any portions of the dangerous building had fallen there might and very likely would have been injury caused to their premises. It may be that they are entitled to be relieved by the upper proprietors. That is not a matter for the Dean of Guild Court. It is one for another tribunal. The Dean of Guild has inserted an ample reservation of any such right of relief in his interlocutor. The building as a whole was a dangerous one, and the Dean after having given fair and sympathetic consideration to the matter, has come to the conclusion that the allocation of the Master of Works is a fair and reasonable one and the only one possible in this process. There may be questions between the proprietors themselves, but these must be decided elsewhere."

The objector appealed, and after hearing counsel and making avizandum the Second Division on 20th October 1923 appointed the cause to be argued by one counsel on each side before a Court of Seven Judges.

Argued for the appellant—The portion of the building belonging to the appellant was not affected by the operations on the tenement, and accordingly he was not liable for any proportion of the cost of demolishing the dangerous part of the building. The burden of payment ought to fall upon the owners of the properties taken down, especially as they were the cause of their demolition by reason of having put the upper floors to uses for which they were never intended. The upper floors were not designed to bear the weight of the heavy machinery placed upon them. The costs of taking down premises which did not belong to the appellant did not lie upon him. Each of these premises in question was separately owned, and in law all were separate properties. No "building or part of a building" belonging to the appellant had been ordered to be taken down, and accordingly the appellant did not come within the scope of section 381 of the Glasgow Police Act 1866. The order ought to have been limited to the owners of the upper floors. The appellant could not be held liable to participate in the cost of taking down walls and floors for the

upkeep of which he was neither in the titles nor by common law responsible.

Argued for the respondent—The question depended on the construction of section 381 of the Act of 1866, and in this connection it fell to be observed that, whereas the word "buildings" was used, nowhere in the fasciculus in which the section appeared were the words "land" or "heritage" to be found. The terms "building" and "proprietor" ought to be construed in their ordinary meanings. It had been found that the building was in a dangerous condition, and accordingly there was no reason why a lower proprietor should escape payment of his allocation of the cost of alterations which would save and benefit the building as a whole. In section 381 the word "proprietor" meant all the proprietors of a building. The whole building having here been condemned as dangerous, far from there being any hardship in equity, the lower proprietor was in law bound to pay his share of the expense of the necessary operations thereon.

At advising—

Lord President (Clyde)—Section 381 is the second of five consecutive sections in the Glasgow Police Act 1866 (29 and 30 Vict. cap. cclxxiii), which regulate the Dean of Guild's administrative functions with regard to the compulsory repair, demolition, reconstruction, and sale of ruinous buildings. The question in this appeal relates to the exercise by the Dean of Guild of the statutory power given to him in the final subparagraph of section 381 to "ascertain and award the expenses of executing the operations" (connected with the demolition of the upper four storeys of a building in Argyle Street) "against the '*proprietor*'" (as defined by section 4). The Dean of Guild's statutory power in this respect presents a close analogy to—but must be construed altogether apart from—the ancient common law jurisdiction exercised by judge and warrant.

The powers of the Dean of Guild under section 381 (other than the emergency powers competent to him under the second and third sub-paragraphs of the section) are exerciseable on application by the procurator-fiscal of his Court "for a remit to one or more competent persons to inspect and report on the state of any building or part of a building which appears to be dangerous, and for a warrant to take down or to secure or repair such building or part of a building if reported to be so." The Dean of Guild is directed by the fourth sub-paragraph to "grant warrant to cite the proprietor of the building or part of a building referred to in the application." "Proprietor" of course includes the plural, but it is worth while to notice that if only a part of a building is alleged to be dangerous, the Dean of Guild is not required to cite the "proprietor" of any other part of it. Further, it is necessary to keep in mind that the "proprietor"—whether of a building the whole of which is alleged to be dangerous, or of a part only of a building where only such part is alleged to be dangerous—is defined in section 4 of the Act to mean indifferently owners, liferenters, lessees not in actual occupation, legal administrators, the persons in actual enjoyment of the rents, and factors.

By the fifth sub-paragraph of section 381 the Dean of Guild is directed after receiving the report "to inquire into and decide the questions raised in the application." In the present case the inquiry was by inspection on the part of the Dean of Guild himself with his lyners and in the presence of the parties.

The next step under the fifth sub-paragraph is that as the result of the decision so arrived at the Dean of Guild "may order the building or part of a building referred to in *it* to be taken down or secured by the *proprietor* or by the Procurator-Fiscal." "*It*" here means the application, and the building or part of a building which may be "taken down or secured" is therefore the building or part of a building "referred to in the application" as dangerous and "reported to be so." It necessarily follows that as matter of strict construction the *proprietor* mentioned is the "proprietor" or "proprietors" of the building which was referred to in the application as being dangerous and which has been reported to be so, or of the part so referred to and reported. It is, no doubt, true that while the Dean of Guild's powers to "take down or secure" may be exercised so as to destroy or to interfere directly with the whole of the dangerous building or of the dangerous part thereof, they may not require to be so extensively employed for the purpose of avoiding danger pending reconstruction. There is nothing in the section to prevent the Dean of Guild from using his powers in this less extensive manner. But neither is there anything in the strict construction of the section to warrant the view that if he makes such less extensive use of them the "proprietor" or "proprietors" referred to are limited to those interested in the particular parts of the building which are made the subject of direct physical interference.

As will appear hereafter, this is not favourable to the view contended for by the appellants. But it is always possible that a strict construction may be fallacious, and the appellants found on the circumstance that the Dean of Guild did not in the present case order the whole of the dangerous building to be taken down. However that may be, it is not unimportant meanwhile to observe with regard to the provisions of the section—especially when viewed in the light of the definition of the word "proprietor"—how independent they are of the operation of common law rights and responsibilities. The section says nothing about these. It merely prescribes a code regulating the exercise of an administrative power for the expeditious removal of an impending danger to life and property.

So far, then, it is clear (1) that the basis of the Dean of Guild's powers under the section is the ascertained existence of a dangerous building in the one case or of a dangerous part of a building in the other;

(2) that the "proprietor" or "proprietors" of the dangerous building or of the dangerous part, as the case may be, are necessary parties to the proceedings; (3) that those "proprietors" may (if the Dean of Guild directs his order and warrant to them and not to the procurator-fiscal) be ordered to "take down or secure"; and (4) that (if the Dean of Guild's order and warrant is directed to the procurator-fiscal and not to them) they may have the expense of executing the operations carried out by the procurator-fiscal awarded against them. It is nothing to the point that some "proprietors" might be originally convened in respect of parts of a building, which parts were alleged in the application to be dangerous but which turned out on report not to be so, nor that, as appears from the concluding words of the section, there may be parties to an application of this sort other than the "proprietors" of a dangerous building or of a dangerous part of a building, or even other than "proprietors" of any part of it whatsoever. It is natural in itself, and it appears, at first sight at least, to be the natural meaning of the section that the burden and expense of removing the danger should be borne by the persons interested in the property which is ascertained to be dangerous in fact, and —in the case of a building consisting of parts in which different persons are interested—that the burden and expense should be borne by the persons interested in those parts which are ascertained to be dangerous. This is not only a natural but a perfectly unmistakeable criterion of liability. It is, moreover, from an administrative point of view a just one. As has already been pointed out, the whole purposes of the section are administrative, and in no way regulative or dependent on common law rights and responsibilities.

In the present case the whole building, which consists of basements and five storeys and attics, occupied as shops on the ground floor (the appellants were respectively proprietors of the four shops Nos. 60, 64, 66, and 68 Argyle Street) and as warehouses, factories, and workshops on the upper floors, was ascertained to be dangerous from top to bottom, including part of the foundations. According to the report, confirmed by the Dean of Guild's inspection, the building was an old one originally built for residential occupation, which had come to be used for industrial purposes involving the assemblage of machinery and the storage of heavy weights. "When carrying out the consequent alterations no attempt," so the report says, "has apparently been made to increase the strength of the floors to meet the extra loads, and the haphazard manner in which the work has been done has affected the general stability of the structure." The floors, from the level of and including the first floor (which constituted the division between, *inter alia*, the appellants' property and the storey immediately above) were reported to be "sagged to a very dangerous extent," while the walls were "very dilapidated, badly racked, and generally in a dangerous condition, the back wall being worse than the front one, as it has been seriously affected by a settlement at the north-west corner of the cart entrance and is bulged outwards in places." The report went on to say that "the building is in such a condition that a serious collapse involving *the whole* or part of the property might take place at any moment." We recommend therefore that the *strain on the upper floors be relieved* at once by the removal of the machinery and materials stored in them, and the building thereafter taken down to the level of the first floor, when failing a thorough reconstruction being overtaken, it could be roofed in and made watertight. . . . In the event of the reconstruction of the upper floors the work will require to be carried out in such a manner as not to put any weight on the existing founds or in the portions of the main walls allowed to remain. This could be done by carrying these floors and the new walls on steel stanchions and beams, the stanchions coming from the level of the basement." As the Dean of Guild found in his opinion, "the building as a whole was a dangerous one." As a whole and in every part it was in danger of crumbling to the ground. In referring to the problem of reconstruction the reporters, no doubt, had in view the provisions of the fourth of the sections of the Act dealing with dangerous buildings, according to which in the event of the proprietors failing to agree about reconstruction the property has to be put to the hammer by the Dean of Guild. It is evident that in the view of the reporters the condition of the ground floor and its foundations made the agreement of the appellants with the other "proprietors" an indispensable condition of any reconstruction as an alternative to sale. In fact the ground storey, as the ground storey of a five-storey building, was in itself so dangerous as to be incapable of performing its function as such.

The recommendations of the reporters were carried out by order and warrant of the Dean of Guild to the Procurator-Fiscal, and the building was taken down to the level of the first floor. After the operations had been executed the Dean of Guild, proceeding under the sixth sub-paragraph of section 381, ascertained the expense and awarded it against the "proprietors" of the whole building in accordance with a scheme of allocation based on rental.

The appellants object to any part of the expense being awarded against them. The grounds of their objections are set forth in articles 5 and 6 of their respectives notes of objections.

They say in objection 5 that "the dangerous condition of the upper portion of said property was brought about through its misuse by the proprietors thereof," and contend that these proprietors alone are "responsible for the cost of the said demolition." But there is no warrant in the section for the view that the Dean of Guild Court is to proceed by entertaining and deciding questions of liability for relief, or for damages arising out of the civil relations of persons interested in properties

which adjoin each other either vertically or laterally. Besides, the definition of the word "proprietor" must be kept in mind in this connection, for the "proprietors" concerned under section 381 are not necessarily the persons between whom alone such questions could be decided. The fact that it was the overloading or misuse of the upper floors (by the present "proprietors" of those floors, or — what is just as probable — by predecessors of theirs) which had so damaged the walls of the ground floor as to make them unfit safely to perform their proper function of support for the upper floors (even though the latter on reconstruction were used with every care and propriety) is thus irrelevant to any question which the Dean of Guild had to decide.

In the next place the appellants say in objection 6 that they "have not been called upon by the public authorities to strengthen their property, not even when the demolition order was made for the upper portions of the property," and they contend that therefore they ought not to have any part of the expense of executing the operations awarded against them. It is quite true that they were not called upon to execute any operation, but neither were any of the "proprietors" of the building so called upon, except, indeed, to remove themselves and their property from it, and this order was equally made upon the appellants as upon the other "proprietors," or rather occupiers. The order and warrant for demolition was given to the Procurator-Fiscal, and it is difficult to see how any other procedure would be practicable in any case of a plurality of "proprietors" other than joint owners. If a building which is dangerous (as a whole and in every part of it) is to be made the subject of operations with a view to safety, and if the carrying out of these operations is to be committed to the persons defined in the Act as "proprietors," some agreement or concert among all of them must (in most if not in all cases) be an indispensable condition of the execution of those operations, even although they are not designed to involve direct physical interference with the whole of the dangerous structure. Suppose the building in the present case had consisted of only two storeys, and that the two storeys were owned and occupied by two separate owners. The supposition is designed to exclude the complications arising from the definition of "proprietor" in section 4 of the Act. In that case—apart from considerations arising from the dangerous condition of the whole building—the owner of the upper storey might have taken down and reconstructed it to suit his own convenience by operations conducted *in suo* and independently of any agreement or concert with the owner of the ground storey. But if in the general interest the safety of the whole building requires that the upper storey should be removed—on the one hand to anticipate its own collapse and on the other hand to prevent the ground storey from being crushed under a superincumbent weight which it is its proper function to support—a very different set of considerations comes into view—considerations of general hazard or even peril which, in a practical aspect of the matter such as that upon which section 381 proceeds might well require the Dean of Guild (in the event of his electing to direct his order and warrant not to the procurator-fiscal, but to the "proprietor") to direct such warrant and order to the owners of both storeys. No doubt such a case is exceedingly unlikely to occur, for, especially in the case of operations so hazardous as those required in dealing with a structure which has been allowed to become dangerous as a whole, an order and warrant to the procurator-fiscal is obviously preferable to an order on a plurality of owners or of "proprietors." The successful execution of such an order must be dependent on the sufficiency of extraordinary precautions concerted between people whose interests might not coincide.

Broadly stated, the contention of the appellants is that the liability for the expense of operations ordered to be executed under section 381 upon a building the whole of which was (as in the present case) dangerous, should be restricted to the "proprietors" of such part or parts of it as may be directly interfered with by those operations It is a powerful objection to this contention that if well founded it would put the incidence of liability in such cases at haphazard. For circumstances are infinite in their variety, and there must be a great number of cases in which the operations—whether by way of demolition or otherwise—necessary to ensure safety, in the case of a building the whole of which is dangerous, do not extend to the whole building. The present case presents an example of one class of such cases. The walls of the ground floor were too weak to support the upper floors, and in these circumstances the ground floor was a danger to itself as well as to the upper floors, which were also dangerous in themselves. The demolition of the upper floors not merely avoided the danger of their own collapse, but (by relieving the walls of the ground floor from the weight they were bound, but were not able, safely to support) enabled them to stand meanwhile in security pending reconstruction. Another class of cases may be illustrated by figuring the case of a building whose founds were insecure to the effect of rendering the whole building reared upon them dangerous. Underpinning might make the founds (and consequently the whole building) secure, and thus remedy a condition of imminent danger shared by every part of the building. If the appellants' contention were well founded only the "proprietors" of the upper floors would be liable in the first class of cases; only the "proprietors" of the ground floor would be liable in the second. The incidence of liability, in short, would fall not on the "proprietor" or "proprietors," the dangerous condition of whose properties made the operations necessary, but on those of them whose properties were—by the mere accident of the particular circumstances which defined the limits of the operations

required for the safety of the whole building—the subject of direct interference. It is, no doubt, true that, legally regarded, a flatted tenement whereof the various storeys are held in several ownership consists of *independent* strata of property with vertical as well as lateral boundaries, yet practically considered (and partly also legally considered) the security of any building erected within the boundaries of any of the upper strata is *entirely dependent* upon the support upon which it rests—if that support is dangerous the building which rests upon it is dangerous also, be it never so carefully built, managed, and used. It is no new discovery that the disadvantages of vertical contiguity are in some respects more acute than those of lateral neighbourhood. To correlate the incidence of liability with the "proprietorship" of any part of a building which is dangerous, as a whole and in every part, provides a much more intelligible and a perfectly definite rule which is in accord not only with the strict construction of section 381 but also with the the general scheme and purpose of that enactment.

The appellants also say in objection 6 that "at the present time the property of the objectors is believed to be in such a state as to give the support to the proprietors of the storey immediately above which at common law the proprietors thereof could be called upon to provide.' As printed this is unintelligible. If what is meant is that the walls of the ground floor are strong enough to support one upper storey but not five, the statement is neither relevant nor consistent with the fact, ascertained by the Dean of Guild on remit, that it is not possible to put "any weight" on the founds or on the walls of the ground floor allowed, pending reconstruction, to remain *in situ*.

These were the only objections to the Dean of Guild's award urged at the hearing before Seven Judges, and if the opinions above expressed are sound the objections fail.

LORD JUSTICE-CLERK (ALNESS)—[*After narrative quoted supra*]—The question which we have to decide is—Were the appellants properly included in the allocation referred to? They maintain that they were not. They say that as their property was not touched by the order made by the Dean of Guild they are exempt from liability. They protest against being called on to share the cost of repairing a building which is not theirs. I may add that I think it clear that in fact the walls and roof of the appellants' property were untouched by the order pronounced, and that these were not interfered with in the course of its execution. I may add also that the appellants could not desire a better credential regarding the state of their property than that it was expressly exempted from the holocaust which the Dean of Guild's order involved.

Now the liability of the appellants to pay a part of the cost of the operations ordered by the Dean of Guild depends on the construction to be placed by the Court on section 381 of the Glasgow Police Act 1866. That section is the measure at once of the rights of the Dean of Guild and of the liability of the proprietors. Unless it authorises the Dean of Guild to saddle the appellants with a share of the cost referred to he can invoke no other authority. There was a faint attempt made by the respondent at one stage of the argument to pray in aid the provisions of section 398 of the Act of 1866, but in the course of debate the contention was abandoned and it was admitted that that section relates only to the working out of rights of relief after the original liability of parties has been determined. That, indeed, is clear from the heading of the fasciculus of clauses among which section 398 appears.

It becomes necessary then to examine with care the provisions of section 381. Do they or do they not authorise the Dean of Guild to mulct the appellants in part of the cost of taking down a building which does not belong to them but which rests upon their property? The liability for such costs is dealt with in the last paragraph of section 381. The Dean of Guild is there authorised to "award the expense of executing the operations against *the proprietor*." Are the appellants "proprietors" in the sense of that provision? If they are they may competently be made liable by the Dean of Guild in a share of the cost referred to. If they are not they are free from liability.

Now the words "the proprietor" in the context in which they appear are not, to say the least of it, self-explanatory. They are subject to construction. On the best consideration which I can give to the matter, and having listened attentively to two debates on the subject, I am of opinion that "the proprietor" referred to in the last paragraph of section 381 is the proprietor upon whom in point of fact an order to take down or secure property has been pronounced by the Dean of Guild. I think that the clue to the riddle is to be found in the penultimate paragraph of section 381. It empowers the Dean of Guild to "order the building referred to in it (the application) to be taken down or secured by the proprietor or by the procurator-fiscal." Now, leaving the procurator-fiscal out of consideration for a moment, it is plain that one proprietor cannot be called upon to take down or secure the building of another proprietor. That must be done by the proprietor of the building himself and the order must therefore be against him. On the other hand, when the work is done by the procurator-fiscal, it is done by him as representing, and on behalf of, the proprietor or proprietors concerned. That variation in procedure, in my view, is fortuitous and the criterion of liability is not thereby affected. So much for the penultimate paragraph of the section. Then we come to the last paragraph which provides for awarding the expense of executing "the operations" against the proprietor. I inquire — what operations? Surely those referred to in the penultimate paragraph of the section. In other words, the words

"*such* proprietor" might with advantage to the clarity of the provision have been substituted in the last paragraph for the words "*the* proprietor." I do not think that the statute provides or even contemplates the imposition of liability for expenses upon a proprietor whose property like that of the appellants remains intact, is not the cause of the mischief, is not in itself unsafe, but is rendered unsafe merely by the condition of the upper floors of the building. The opposite view would involve that innocence equally with guilt may be penalised. I should hesitate long before reaching such a conclusion. But it is not necessary to reach it. The appellants' contention appears to me to be in accord both with common sense and equity. Indeed I should require to find very clear statutory sanction for the opposite contention and I can find none.

It was suggested in argument for the respondent that the words "the proprietor" in the last paragraph of the section refer back to the words "the proprietor" in the fourth paragraph, which provides "he shall grant warrant to cite '*the proprietor*' of the building or part of the building referred to in the application." The suggestion is I think inadmissible. To equiparate liability to citation with liability for expenses at the end of the day appears to me illogical and unmaintainable. In the fuller knowledge possessed by the tribunal, after the appropriate investigation has been pursued and completed, it is I think obvious that some of the proprietors who have been convened in the process originally may ultimately be exempted from liability for the cost of the operations.

It was further suggested by the respondent that inasmuch as the appellants' property has been benefited by the operations referred to, it is reasonable that they should bear a share of the cost. That the appellants' property has been rendered safer by the demolition of the upper floors of the building I do not for a moment doubt. But I can find no statutory warrant for the view that for that reason alone they are liable to bear a part of the cost. Such a criterion of liability is not suggested, far less expressed. The argument might be maintained with just as much or just as little force by a proprietor in the adjoining building. The argument may be tested in this way. Let us suppose that the outer wall of the appellants' shops had been partially destroyed by fire or by some other agency; let us further suppose that the security of the upper floors of the building had been thereby affected; let us also suppose that an order had been made by the Dean of Guild on the appellants to repair their property—Could it be said that the proprietors of the upper flats would be liable to share in the expense of that operation? To that question the respondent's answer must surely be "yes," for the contention is not materially different from his own. The view seems to me to be extravagant and unwarranted by section 381.

It is true that section 398 provides a right of relief *inter se* of the proprietors in certain circumstances and that the Dean of Guild in his interlocutor has reserved this right of relief to the proprietors affected by his order. But so far as the appellants are concerned that appears to me to be an empty right. The value of the right of relief conferred upon them depends I think upon their establishing that the danger which led up to the operations referred to was created by the misuse by the upper proprietors of their premises. It may be difficult, if not impossible, for the appellants to establish this. If that be so, the right of relief conferred by the statute and reserved to the appellants by the Dean of Guild is quite illusory. In short, if the contention of the appellants is sound, it must, if it is to avail them anything, be sustained here and now.

Let me reiterate that we are concerned only with the interpretation of section 381. The jurisdiction which the respondent invokes is purely statutory. The section may not be, nay, is not, a model of lucidity. But I think it lays down with sufficient clearness a working rule which it is our duty to apply. The rule may in conceivable circumstances bear hardly on individuals. Section 398 was I think designed to alleviate, if not altogether to avoid, that hardship. But even if that section fails in its purpose the rule I think being clear must receive effect. If equity is affronted thereby, although I may say that I am unable to see why in the present case it should be, then the remedy must be sought not in the Law Courts but in Parliament.

For the reasons which I have stated I am of opinion that the Dean of Guild possessed no statutory authority for the order which he pronounced against the appellants, and I accordingly think that their appeal should be sustained.

LORD SKERRINGTON and LORD CULLEN concurred in the opinion of the LORD PRESIDENT.

LORD ORMIDALE — This appeal is taken against an interlocutor of the Dean of Guild, Glasgow, approving of an allocation by the Master of Works of the cost of taking down to the level of the first floor a building situated at 56 to 68 Argyle Street. The appellants are proprietors of shops on the street floor of the building, and no operations were executed on their premises. The total cost of the work was £3193, 6s. 2d., and under the allocation the appellants are liable to contribute—each of them—£368, 11s. 6d., in all £1474, 6s. As the premises of the appellants are not said to have presented in themselves any elements of a dangerous nature, and at the conclusion of the demolition will remain *in statu quo*, it is difficult to understand on what ground this liability for a share of the cost should be imposed upon them by the Dean of Guild. The warrant for so doing is said to be found in section 381 of the Glasgow Police Act 1866.

The proceedings in the Dean of Guild Court were initiated by an application at the instance of the Procurator-Fiscal, in which he avers that "buildings or parts of

buildings situated at 56 to 68 Argyle Street, consisting of basements and five storeys and attics in height, occupied as shops on the ground floor and warehouses, factories, and workshops on the upper floors, appear to be in a dangerous state, and that it is necessary that the said buildings or parts thereof should be taken down or at least secured and repaired." A remit is then craved to men of skill to inspect and report on the state of "the building or parts thereof which appear to be dangerous, and to grant warrant to take down or secure the said buildings or parts of said buildings if reported to be dangerous." A remit was made to an architect and engineer. A report was lodged by these gentlemen on 11th November 1919 to the effect that the general stability of the structure, originally erected for dwelling-houses, had been affected by the assemblage in the upper storeys of machinery and the storage of heavy weights, without any attempt being made to strengthen the floors to meet the extra loads and by the haphazard manner in which the work had been done. The reporters therefore recommended that the strain on the upper floors be relieved at once by the removal of the machinery and materials stored in them, and the buildings thereafter taken down to the level of the first floor. The report does not indicate that the street floor is in any way defective. It is not suggested that it should be taken down, secured, or repaired. All that appears from the report is that if the upper floors collapsed the street floor might become involved in the consequent disaster. It is not in terms reported to be dangerous.

Following on this report the Dean of Guild by interlocutor of the 21st November ordered the removal of the machinery, &c., from all the floors above the street or shop floor, and further ordered the building to be taken down to the level of the first floor, and granted warrant to the Procurator-Fiscal in terms of the statute. After the machinery, &c., were removed a second report was obtained on a remit which the reporters understood was to inspect the whole premises and report upon (1) the best means of taking down the building—and I take that to mean to the level of the first floor as ordered by the Dean of Guild—and (2) when it would be necessary for the occupants to remove during the taking down of the property. They recommend that the occupation of the ground floor be stopped at once but, again, this not because of any inherent vice in these premises, but only because of the very dangerous condition of the upper floors and, as I understand the report, the delicate and difficult nature of the work of demolition. Thereafter, on 1st July 1920, the Dean of Guild of new ordered the building to be taken down to the level of the first floor, and further ordered, *inter alios*, the occupants of the shop floor to remove. In my opinion it is important to note that this order of removal is the first and only order which affected the appellants or their property, and it was made not because of anything defective in their property which was calculated to endanger either themselves or the public, but solely because of the unsafe condition of the upper part of the building. A similar order of removal might have been pronounced in very slightly different circumstances against the proprietors of adjoining buildings. The inference which I draw from the reports and the interlocutors of the Dean of Guild is that the Dean, adopting the alternative view presented by the Master of Works in his application, came to the conclusion that —as was the fact—not the whole building but only parts of the building 56 to 68 Argyle Street were dangerous, viz., the upper storeys, and that the shop floor required neither to be taken down nor secured nor repaired in order to make it safe for the lieges. The proprietors of the shop floor may have derived an indirect and incidental benefit by the removal of a danger evoked by the misuse of their premises by the upper proprietors, but I venture to think that this consideration is not relevant to the issue. Their property may have been rendered more secure, but it was not secured in the statutory sense or by any order made under the statute to secure it, and it could not be, as it had not been reported dangerous. The Dean of Guild says that the building as a whole was dangerous. In a popular sense that may have been so, but not in the sense of the statute. As the Dean of Guild himself indicates very clearly the danger to the whole building was to be found in the dangerous condition of the upper portion of the property. In other words a part of the building was dangerous and required to be taken down, and the danger vanished when it was taken down. A part was not dangerous. It was not reported to be so. It did not require to be taken down or secured or even repaired. This appears to me of vital importance when one comes to consider the paragraph or clause of section 381 which ascertains the proprietor who may be found liable for the cost of the work which has been ordered to be executed by the Dean of Guild. Reference was made to section 398, but any argument founded on it was abandoned in the Second Division, and very little weight was attached to it by counsel in the hearing before this Court. In my opinion it has no bearing at all on the construction of section 381. It may have been in the mind of the Dean of Guild. His opinion suggests this, and I should be inclined to surmise that it was also in the mind of the Master of Works when he framed his allocation. Otherwise I cannot understand how, without reference at all to what in any view was the very peculiar condition of this building and the real evidence of the source of danger, he could have come to select the valuation roll as the basis of calculation and so mulct the innocent owners of the shop floor premises, including the appellants, in more than two-thirds of the whole costs.

The words in section 381 in which the Dean of Guild finds his warrant for holding the appellants liable in a share of the cost of the work ordered by him are these—"He" (*i.e.*, the Dean of Guild) "may ascertain and award the expense of executing the opera-

tions against the proprietor." I think the word "proprietor" means the proprietor of the building or the part of the building, as the case may be, on which the operations were executed because of its dangerous condition. The word, as was pointed out by your Lordship, is used three times in the section. I respectfully think, however, that it has the same meaning every time, viz., the proprietor of "the building or part of a building." The first time it is used it is clearly so for the words are there. The Dean shall grant warrant to cite the proprietor of the building or part of a building referred to in the application. In the penultimate clause the Dean may order the building or part of a building referred to in the application to be taken down or secured by the proprietor. That seems, to me equally clearly to mean the proprietor of the building or part of a building which is referred to in the order. Why should it have a less definite or wider or more general meaning in the last clause? The word "operations" can only refer to the taking down or securing the building or part of a building provided for by the penultimate clause. It seems to me to follow necessarily that the identical proprietor who was ordered to execute the operations is to pay for their execution.

No doubt in the present case under the citing clause all the proprietors interested in the building would fall to be called as defenders, because on the averments in the application the whole building might have been ordered by the Dean of Guild to be taken down. The prayer of the application was alternative, either to order the whole buildings or part of the buildings to be taken down or secured or repaired. This was one of the questions which the Dean *ante omnia* had to decide. He decided, after inquiry, against the prayer to take down the whole building and restricted his order to certain parts only. That being so, the class of proprietors became restricted to those owning the parts affected by the order, for I cannot think that the penultimate clause can fairly be read as entitling the Dean of Guild to order the owner of a part not within the ambit of the demolition to take down other parts of the building which were. If that be so, then there does not appear to me to be any justification for extending the meaning of "the proprietor" in the last clause so as to include indifferently the whole proprietors of the building. There is nothing in the section to suggest such a construction. On the contrary, the last clause is directly linked up with the penultimate clause and is not intended to do more than give effect to the general principle that a party who has himself occasioned expense should be liable to liquidate it. It is true that the order to take down was not made on the defenders or any of them but on the Procurator-Fiscal. That may have been a discreet course to follow so as to keep the remedial operations under single control, but it does not seem to me to affect or vary the construction of the clause in question.

In my opinion no part of the cost of the work is chargeable against the appellants and their appeal should therefore be sustained.

LORD HUNTER—The only question raised by this appeal is whether it was competent for the Dean of Guild in Glasgow to apportion against the appellants any part of the expense incurred in the partial taking down of the buildings situated at 56 to 68 Argyle Street, Glasgow. On the assumption that this question falls to be answered in the affirmative the actual apportionment was not challenged. The appellants are owners of shops on the ground floor of the building in question. There are other proprietors of ground floor tenements who have not appeared. The upper portion of the buildings which consisted of several storeys are separately owned. The answer to the question depends on the effect and construction of certain sections, particularly section 381, of the Glasgow Police Act 1866.

On 15th October 1919 a petition was presented to the Dean of Guild Court of Glasgow by the Procurator-Fiscal of that Court in which it was set forth that the buildings or parts of the buildings situated at 56 to 68, both inclusive, Argyle Street, Glasgow, appeared to be in a dangerous state within the meaning of the Glasgow Police Act 1866, or were in such a state as to cause reasonable apprehension of immediate danger to the inhabitants, and that it was necessary that the buildings or parts thereof should be taken down or at least secured and repaired. The prayer of the petition asked that a remit should be made to one or more competent persons to inspect and report upon the state of the buildings, that service should be made upon the appellants and the other owners of separate tenements in the buildings, that the operations necessary to render the buildings safe should be ordered to be executed by the owners or by the petitioner, and in the latter case that the expense of executing the operations should be ascertained and awarded against the appellants and the other owners of the property. Following upon this petition a remit was made to Mr Bell, architect, Glasgow, and Mr Brodie, C.E., Glasgow, to inspect and report. In terms of their report they find "that from the level of and including the first floor the upper floors are sagged to a very dangerous extent . . . that the outside walls are very dilapidated, badly racked, and generally in a dangerous condition—the back wall being worse than the front one as it has been seriously affected by a settlement at the north-west corner of the cart entrance and is bulged outwards in places." After certain precautions are at once taken in the shape of removal of machinery and materials stored in the upper floors they recommend that the buildings should be taken down to the level of the first floor, and failing a thorough reconstruction being overtaken they suggest that the tenements on the ground floor might be roofed in and made water tight. They add that "In the event of the reconstruction of the upper floors the work will require to be carried out in such a manner

as not to put any weight on the existing founds or in the portions of the main walls allowed to remain." At a later date, 21st June 1920, the same gentlemen made a further report in which they say—"Owing to the very dangerous condition of the building we are of opinion that the use of any part of it constitutes a serious risk both to the occupants and to the general public frequenting their premises, and recommend that the *occupation of the ground floor be stopped at once.*" On 1st July 1920 the Dean of Guild ordered the building in question to be taken down to the level of the first floor and the two turnpike stairs to the level of the back court, and for that purpose granted warrant to the Procurator-Fiscal in terms of the statute. On the completion of the work so ordered by the Dean of Guild an allocation of the expenses incurred was made by the Master of Works. The appellants objected to the allocation on the ground that as the ground floor was intact and required no operation at the instance of the public authorities they should not be liable for any part of the expense caused through the condition of the flats above the street flat.

Section 381 of the Glasgow Police Act 1866, under which the present application was brought by the Procurator-Fiscal of the Dean of Guild Court, Glasgow, contains, *inter alia*, the following provisions as to the procedure to be followed by the Dean of Guild:—"He shall grant warrant to cite the proprietor of the building or part of a building referred to in the application. . . . He shall, after receiving the report of the inspectors, proceed to inquire into and decide the questions raised in the application, and may order the building or part of a building referred to in it to be taken down or secured by the proprietor or by the procurator-fiscal of the Dean of Guild Court. . . . He may ascertain and award the expense of executing the operations against the proprietor, and may also award the expenses of all proceedings in the application to any of the parties thereto."

For the appellants it was maintained that the word "proprietor" as used in the last clause referred to is restricted to the proprietor of the tenement or tenements ordered to be taken down. In my opinion this construction is too narrow and is therefore unsound. The words "building" and "proprietor" appear to me to be used in their natural and not in any artificial or restricted sense. The application was brought on the ground that the whole building was in a dangerous state, and the owners of the ground floor tenements of a flatted building are, along with the owners of the upper flats, the proprietor of the building. The result of taking down the upper parts of such a building may be to render secure the ground floor flats. It would not, however, appear to one to be equitable that in such a case the upper proprietors should not only be deprived of their properties but that they should have to pay the whole expense of giving security to the property of those who own the lowest flats. The dangerous state of the upper tenements might even arise solely from the insufficiency of the lower part of the building to bear the weight of the upper part. In themselves they might be quite secure. If an order were pronounced against such upper proprietors to take down their buildings because of their unstable and dangerous state, why should the whole expense of the work be borne by them alone, or why should it be considered anomalous that the Legislature has given power to the Dean of Guild to apportion any part of such expense upon the owners of the ground floor tenements. In the present case the Dean of Guild had to deal with an application as to the necessity for securing the whole building in the interests of public safety, and the reports obtained by him pointed to the insecurity of the building as a whole. In such circumstances I see no reason for construing the words of the clause in such a way as to make it *ultra vires* of the Dean of Guild to apportion any part of the expense incurred in the operations mentioned against the appellants.

It was suggested in argument for the appellants that the insecurity of the building was caused solely by the actings of the upper proprietors. There is, however, no material in the case which would justify us in coming to such a conclusion. The facts bearing upon the question as to the causes of the building being in the dangerous state in which it was at the time of the application are not before us, and we are not therefore in a position to make any finding as to those causes or to apportion blame among the different proprietors of the building. The Dean of Guild who was in a much better position than we are to determine such a question of fact, inasmuch as he had a right of inspection, refrained from pronouncing any finding of fact upon this point, but inserted in his interlocutor a clause reserving to the proprietors any right of relief competent to them *inter se*. Perhaps I should notice that the contention of the appellants on this question of fact to which I have referred is apparently based upon one of the sentences in the first report as to the state of the building. That sentence is in these terms:—"The property which is old was evidently erected for dwelling-houses, but is now being used for an entirely different purpose, involving the assemblage of machinery and the storage of heavy weights, while when carrying out the consequent alterations no attempt has apparently been made to increase the strength of the floors to meet the extra loads, and the haphazard manner in which the work has been done has affected the general stability of the structure." This is, however, only one of the causes of the building being in a dangerous state. There are other passages in the reports, and particularly in the excerpts which I have already quoted, which indicate the existence of such other causes.

Reference was also made to the terms of section 398 of the Act of 1866, but that section deals with the right of relief *inter se* of proprietors where the whole expense of operations under the Act has been recovered

from one of several proprietors jointly interested in the work involved. It has no bearing upon the question of the competence of the Dean of Guild to make an apportionment under section 381. On the whole matter I agree with the opinion expressed by the consulted Judges, and think that the appeal should be refused.

LORD ANDERSON—The total cost of the operations ordered by the Dean of Guild was £3193, 6s. 2d. Of this amount the Dean has ordered each of the four appellants to pay £368, 11s. 6d.—in all, £1474, 6d., or nearly half of the total cost. The appellants allege—and I do not understand that this contention is disputed—that they have done nothing in connection with the use or management of their property to occasion the mischief which fell to be remedied. They therefore maintain that they are not bound to pay any of the expense incurred in remedying that mischief. They contend that the whole of that expense ought to be borne by those who caused it. *Prima facie* this argument appears to me to be unanswerable.

The local Acts of the city of Glasgow confer on the Dean of Guild considerable powers as to the expenses incurred in fulfilling orders issued by him for operations on buildings. Thus by section 125 of the Glasgow Buildings Regulations Act 1900 it is provided that certain costs may be decerned for by the Dean of Guild against such party to the process as he may determine. This enactment would seem to give the Dean an absolutely free hand in the matter of expenses, but it was conceded by the respondent's counsel that the power conferred must be exercised judicially. In the present case it is common ground that the matter in dispute falls to be decided on the terms of section 381 of the Glasgow Police Act 1866, and in particular of the last clause or proviso of that section. Section 398 of the Act of 1866 founded on by the respondent has no bearing on the case. It seems to me that under the Act of 1866 just as under that of 1900, the Dean of Guild in disposing of the matter of expenses must act judicially. He must, that is to say, award expenses against those who have occasioned expense, and find those entitled to expenses who have been put to expense by the fault or remissness of others. All this is fundamental, and there is nothing in the language of section 381 to sanction an award of expenses on any other basis. On the contrary, it seems to me that it is just in accordance with those principles of equity and fair dealing that the section must be operated.

The Dean of Guild's order was for demolition of the building to the level of the first floor. It is plain from the proceedings and productions that the reason for the issue of the order was the condition of the upper flats. These upper flats had been allowed by their owners to get into a dangerous condition—partly owing to the presence of heavy machinery without compensating strengthening of the floor, partly owing to failure to keep the structure in proper repair. The prospective danger was that these upper flats would collapse and crush the ground flat. It is to be noted that no order was pronounced by the Dean with reference to the ground flat. There is no evidence that that flat had deteriorated or that it would not have been sufficient to support the superincumbent structure had that been properly used and maintained. The appellants make this averment in their pleadings—"It is further averred that the objector has not been called upon by the public authorities to strengthen his property, not even when the demolition order was made for the upper portions of the property, and at the present time the property of the objector is believed to be in such a state as to give the support to the proprietors of the storey immediately above, which at common law the proprietors thereof could be called upon to provide." The respondent does not deny these averments. He pleads that they are irrelevant. It is plain therefore that the mischief calling for remedy was occasioned solely by reason of the action and inaction of the upper proprietors with reference to their properties. Why then should not they alone bear the cost of remedying the mischief which they occasioned? Why should any part of the cost be thrown upon the innocent appellants? These are considerations of equity which I think should have been taken into account by the Dean of Guild in exercising the power conferred on him by section 381. If they are applied the appellants must succeed.

Turning now to the actual terms of section 381, it is to be noted that the word "proprietor" occurs in each of the three last clauses. In my opinion this term has or may have a different signification in each clause. In the antepenultimate clause the term applies to every proprietor whose property may be affected by the proposed operations. In the penultimate clause the term applies to each owner who has been ordained by the Dean of Guild to do something with reference to his property. What is the signification of the term in the last clause? It has been suggested that it is the same as in the penultimate clause. This may be so, but I have some difficulty in agreeing with the suggestion. It is conceivable that an order may be issued calling on an innocent proprietor to do something. It would in that case be improper for the Dean of Guild to mulct this proprietor in expenses although he had been the subject of an order. Suppose, for example, that the top storey is all right and the storey immediately beneath all wrong, necessitating demolition of the top storey to allow the lower to be repaired. The top-storey owner would be ordered to demolish, but the lower proprietor would, in my opinion, have to bear the cost. "Proprietor" in the last clause means, in my judgment, every proprietor whose property has been so used or misused as to occasion the expense incurred in carrying out the orders of the Dean of Guild.

The respondent's counsel attempted to support the interlocutor appealed against

on these grounds—(1) The reporters and the Dean of Guild evidently considered that the *whole* building, including the appellants' properties, was dangerous. There is no doubt that the whole structure was dangerous, but not by reason of anything done or omitted to be done by the appellants. It was the upper proprietors alone who had made the building dangerous, and it is, in my opinion, for them to remove the danger at their own charges. (2) It was suggested that the appellants' properties would benefit by what the Dean of Guild had ordered to be done. Their properties, it was urged, would be made more secure. This seems to me to be an irrelevant consideration. The appellants' properties would never have been insecure but for the negligent way in which the upper properties were used and maintained. (3) It was also suggested that the Dean's award was merely a temporary adjustment or assessment of expenses, and that the appellants had a right of relief open to them. I do not think, however, that parties who are not plainly liable in costs ought to be put to the trouble and expense of recovering, in a process of relief, expenses which had been improperly imposed upon them.

I therefore am of opinion that the contentions of the respondent's counsel were not well founded. I am accordingly for sustaining the appeal and recalling the interlocutor appealed against.

The Court (*diss.* the Lord Justice-Clerk, Lord Ormidale, and Lord Anderson) affirmed the judgment appealed against.

Counsel for the Objector (Appellant)—Chree, K.C.—MacLean. Agents—Cumming & Duff, W.S.

Counsel for the Respondent—Fraser, K.C.—Russell. Agents—Campbell & Smith, S.S.C.

Saturday, January 19.

FIRST DIVISION.

(SINGLE BILLS.)

THE CAR MART, LIMITED, PETITIONERS.

Bankruptcy — Sequestration — Nobile Officium—Meeting of Creditors—Failure to Give Due Notice of Meeting — Gazette Notices not Inserted in Time to Allow of the Statutory Advertisement—Warrant to Hold New Meeting—Bankruptcy (Scotland) Act 1913 (3 *and* 4 *Geo. V, cap.* 20), *secs.* 44 *and* 63.

Where, in a sequestration, the *Gazette* notices were *per incuriam* of the petitioners' agent inserted too late to allow of the statutory advertisement of the meeting of creditors, the Court, on the application of the petitioners for an order holding the notices equivalent to notices at least six days prior to the said meeting, or otherwise to hold that sufficient intimation of the meeting had been given, or alternatively for warrant to hold a new meeting, *ordered* a new meeting to be held, and *granted warrant* for the statutory advertisement thereof.

On January 18, 1924, the Car Mart, Limited, Euston Road, London, presented a petition for the rectification of a notice in the *Edinburgh* and *London Gazettes* in the sequestration of Henry Randolph Christie, Edinburgh.

The petition which appealed in terms to the *nobile officium* of the Court set forth, *inter alia* — "That of this date (January 8, 1924) the estates of Henry Randolph Christie, now or lately carrying on business at 37 York Place, Edinburgh, residing at the Anchorage, Port Seton, in the county of East Lothian, were sequestrated by the Lord Ordinary officiating on the bills in terms of the Bankruptcy (Scotland) Act 1913. The deliverance awarding sequestration ordered a meeting of creditors to elect a trustee and commissioners to be held in Dowell's Rooms, Edinburgh, on 16th January 1924. Under the circumstances after stated the said interlocutor dated 8th January 1924 was issued. Of this date (January 11, 1924) notices advertising the said meeting appeared in the *Edinburgh* and *London Gazettes*. Of this date (January 16, 1924) the meeting of creditors so ordered and advertised was held. Objection was stated by Mr Robert Archibald Craig, C.A., Edinburgh, presumably representing a creditor, to the competency of proceeding with the meeting in respect that the *Gazette* notices did not give timeous notice of the meeting by failing to comply with the terms of section 44 of the Bankruptcy Act 1913. It was resolved that the meeting should proceed. . . . The failure timeously to insert the *Gazette* notice occurred in the following circumstances:—The respondent did not enter appearance or lodge answers within the *inducice* fixed in the first deliverance on the petition for sequestration. The commission granted in said deliverance for recovery of evidence of notour bankruptcy and jurisdiction was executed, and when the usual minute craving sequestration was lodged it was found that appearance had then been entered for the respondent by Mr John Robertson, solicitor, Edinburgh. The minute craving sequestration proposed a meeting of creditors to elect a trustee and commissioners on 8th January. The case was enrolled for hearing and appeared in the Bill Chamber Roll of the Junior Lord Ordinary (Lord Murray) of this date, January 8, 1924. On the morning of 8th January William Officer Gilchrist, Parliament House clerk to the petitioners' agents, approached the respondent's agent to ascertain whether there was to be any opposition to the motion. Mr Robertson replied that there would be no opposition and he agreed that decree of sequestration should then be taken. He undertook to delete his notice of appearance and thereby save trouble. The said arrangement was reported to the Bill Chamber clerk, and the date of the meeting of creditors suggested for 8th January, on the understanding that