stances, such as how much the claimant's services were worth, and so on—*Brown* v. *Ferguson*, November 6, 1885, 13 R. 160 (see 23 S.L.R. 111). The whole question was one of fact on which the Sheriff had come to a conclusion. The grounds on which he had reached this conclusion might be erroneous, but his decision on the facts should stand. [LORD KINNEAR—If the facts were such that a judge in a jury trial would have had the duty to direct the jury that there was no legal evidence, can we not do the same?] That was not the case here, as there was considerable evidence of value before the Sheriff.

LORD TRAYNER—These two cases present practically the same question, and that question does not appear to me to be attended with difficulty. In each case there is a claim to be registered as a lodger, and the claim sets forth that the claimant is the occupant of a bedroom and sitting-room, and that these rooms are of a clear yearly value, if let unfurnished, of £10 or upwards. According to the statute that declaration is *prima facie* evidence of the statements it contains. In the usual case, therefore, such a claim comes to be considered with *prima facie* evidence in support of it — evidence which may be rebutted, but which if not rebutted is sufficient to support the claim. Here, however, the claimant has not the benefit of the statutory presumption. He describes himself as the occupant of a sitting-room and bedroom, the letting value of which is £10 or upwards. He now admits this to be incorrect in so far as he is the occupant of a bedroom only. No declaration of letting value is made with regard to the bedroom, and there can be no presumption in favour of the truth of a statement which has not been made. There is therefore no *prima facie* evidence of the letting value of the bedroom. Is there any other evidence of value? I think not.

The Sheriff in each case gives details as to the rent of the house in which the claimant lodges and the wages he is paid, but there is no evidence whatever of the one thing which required to be established, viz., the letting value of the room occupied by the claimant. The Sheriff speculates as to the letting value by considering how much the claimant pays or may be supposed to pay for his lodging. But even were such speculations supported by the figures given by the Sheriff (which I more than doubt), they would not be anything to the purpose. To prove what a lodger pays for his room does not *per se* prove the letting value, although no doubt an important enough item of proof. But what has to be established is a matter of fact which could and should be established by evidence in the ordinary way, and not left (when disputed) on speculation or theory. In the cases before us it appears that no evidence of letting value was laid before the Sheriff, and I think therefore the claims should have been refused.

I offer no opinion on the question whether when the claims were before him the Sheriff could competently have altered the claim so as to bring the erroneous description of his qualification made by the claimant into bearing with the real fact. It is not necessary to decide that, because no motion appears to have been made by the claimant for leave to alter, and no alteration in fact was made before judgment was given.

LORD KINNEAR and LORD KINCAIRNEY concurred.

The Court sustained the appeal.

Counsel for the Appellant—Ure, K.C.—Hunter. Agents—Emslie & Guthrie, S.S.C.

Counsel for the Respondent — Dundas, K.C.—R. S. Horne. Agents — Russell & Dunlop, W.S.

COURT OF SESSION.

Friday, December 6.

SECOND DIVISION.

[Lord Low, Ordinary.

CARMICHAEL, MACLEAN, & COMPANY'S TRUSTEE *v.* MACBETH & GRAY.

Sale—Ship—Ship to be Constructed—Right of Purchaser to Materials Intended for Ship on Bankruptcy of Shipbuilder—Special Stipulation as to Passing of Property—Sale of Goods Act 1893 (56 *and* 57 *Vict. c.* 71), *secs.* 17 *and* 18—"*Ascertained Goods.*"

A contract between a shipbuilder and a shipowner for the construction of a vessel according to certain specifications and under the superintendence of the shipowner, provided that "the vessel as she is constructed, and all materials from time to time intended for her, whether in the building-yard, workshop, river, or elsewhere, shall, immediately as the same proceeds, become the property of the purchasers, and shall not be within the ownership, control, or disposition of the builders, but the builders shall at all times have a lien thereon for their unpaid purchase money." The contract empowered the purchasers, in the event of the builders making default in delivery, to take possession of the vessel and all materials intended for her, and to complete the vessel. No delivery was to be considered as complete until after a trial satisfactory to the purchasers' surveyor.

During the construction of the vessel the builders became bankrupt. Questions thereupon arose between the trustee in the sequestration and the purchasers as to the right to a quantity of steel plates which were in the builders' shipbuilding yard for use in the construction of the vessel. These plates had been passed by Lloyds' Surveyor, but had not been inspected by

the purchasers' inspector. Each plate was marked with the position which it was to occupy in the vessel. The purchasers having by agreement got possession of the plates in order to complete the vessel, the trustee in the sequestration raised an action against them for the agreed-on value thereof.

Held (*rev.* judgment of Lord Low, Ordinary) that the purchasers were entitled to absolvitor, *per* Lord Justice-Clerk and Lord Trayner on the ground that on the terms of the contract above quoted, the property in the plates in question had passed to the purchasers in respect that they were "ascertained goods" within the meaning of section 17 (1) of the Sale of Goods Act 1893, and that it was the intention of the parties that the property should pass to the purchasers; *per* Lord Moncreiff, on the ground that the property had passed to the purchasers in respect that being "unascertained goods" they had been unconditionally appropriated to the contract by assent of both parties within the meaning of sec. 18, Rule V. (1), of the said Act; and *per* Lord Young, on the ground that the shipbuilders having failed to implement their contract, and the purchasers having consequently an admitted claim of damages against them for a sum exceeding the value of the materials in qusetion, the clause founded on by the purchasers gave them a security over these materials for this claim of damages.

By contract dated 27th October 1898, Messrs Carmichael, Maclean, & Company, shipbuilders, Greenock, agreed to build for Messrs Macbeth & Gray, shipowners, Glasgow, a vessel and engines according to certain specifications therein set forth. It was provided that the vessel should be built under the superintendence of the purchasers, and should be ready for delivery by 19th August 1899. No delivery was to be considered as complete until after a trial satisfactory to the purchasers' surveyor. Until handed over to the purchasers the vessel was to be at the risk of the builders. The price (£34,200) was to be paid half in cash on delivery, and the balance by the purchasers' six months' acceptances. The builders, however, were to have the "option of drawing on the purchasers during construction as follows:—For one-eighth when framed, for one-eighth when plated, and for one-fourth when launched. These acceptances to fall due on delivery of steamer, and to be retired by the builders, who shall pay the cost of discounting and retiring same." The fourth and fifth articles of the agreement were in the following terms:—"(4) The vessel as she is constructed, and all her engines, boilers, and machinery, and all materials from time to time intended for her or them, whether in the building-yard, workshop, river, or elsewhere, shall, immediately as the same proceeds, become the property of the purchasers, and shall not be within the ownership, control, or disposition of the builders, but the builders shall at all times have a lien thereon for their unpaid purchase money. (5) In the event of the builders making default in the prosecution of the construction of the vessel, engines, boilers and machinery, or making default in her delivery by the date stipulated, it shall be competent for (but not incumbent upon) the purchasers to take possession of the vessel in her then state, and of all her engines, boilers, and machinery, and all materials intended for her or them, as before mentioned, and to complete the vessel, engines, boilers, and machinery, and for this purpose with power to enter into any contract with other builders, and to use the yard, workshop, machinery, and tools of the builders, and the cost incurred by the exercise of any of the powers of this clause shall be deducted from the purchase money then unpaid, if sufficient, and if not sufficient, shall be made good by the builders. Any exercise of the powers of this clause shall be without prejudice to any claim for delay under clause 2."

During the construction of the vessel Carmichael, Maclean, & Company, on 24th September 1889, granted a trust-deed for behoof of their creditors. Their estates were subsequently sequestrated, and Robert Reid, C.A., Glasgow, was appointed trustee. When the trust-deed was granted the keel of the vessel was laid, and also the doubling-plate on the keel. There was also in the yard a large quantity of material consisting chiefly of steel plates, which Messrs Carmichael had ordered from a firm of steel manufacturers, with whom they had a running contract, for the purpose of being used in the construction of the vessel.

The trustee claimed these plates as falling under the conveyance in his favour, while Macbeth & Gray claimed them in respect of article 4 of the contract above quoted. It was ultimately agreed that Macbeth & Gray should obtain possession of the plates for the purpose of completing the vessel, and that in the event of its being found that the plates were not their property they should pay to the trustee the value thereof, which it was agreed amounted to £2231, 19s. 9d.

The trustee thereafter raised the present action against Macbeth & Gray, in which he concluded for payment of this sum.

The pursuer pleaded—"(1) The material referred to having been the property of the shipbuilders, the defenders are liable under said agreement, and decree should be pronounced as concluded for."

The defenders pleaded—"(3) The defenders are entitled to absolvitor in respect that the materials in question are their property."

It was admitted that the defenders had a good claim of damages for £7000 on account of the pursuer's failure to implement the contract.

Proof was allowed and led.

The import of the evidence was to the effect that the plates in question were all marked with the number of the vessel, and the position which each plate was to occupy in the vessel was also marked upon

it; that the plates had been ordered for the purpose of being used, and Messrs Carmichael intended to use them, in the construction of the vessel; that the steel before being sent out to the shipbuilders' yard had to be passed by Lloyds' inspector; and that members of the defenders' firm had seen the plates in the yard, but that they had not inspected them with the view of satisfying themselves as to their sufficiency.

The Sale of Goods Act 1893 enacts — Sec. 17 (1)—"Where there is a contract for the sale of specified or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred."

Section 18.—"Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer— . . . Rule V. (1), Where there is a contract for the sale of unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied, and may be given either before or after the appropriation is made."

The Lord Ordinary (Low), by interlocutor dated 26th April 1901, decerned against the defenders in terms of the conclusions of the summons.

Opinion.—[*After stating the facts*]—"The pursuer contends that the plates were the property of the bankrupts, because there was no contract for the sale of the plates to the defenders; there was no delivery of them, actual or constructive, to the defenders; and no price was paid by the defenders.

"The defenders, on the other hand, found upon the fourth article of the agreement and the 17th section of the Sale of Goods Act.

"That section provides that 'Where there is a contract for the sale of specific or ascertained goods the property of them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.'

"Whether that section is or is not applicable depends upon whether, as regarded the plates in the yard, there was a contract for the sale of specific or ascertained goods.

"I am of opinion that that question must be answered in the negative. In the first place, there is no contract for the sale of anything except a ship. In the second place, I do not think that the plates can be regarded as 'specific' or 'ascertained' goods. 'Specific goods' are defined to mean 'goods identified and agreed upon at the time a contract of sale is made.' Clearly the plates do not fall within that definition. There is no definition of 'ascertained goods,' but I apprehend that the expression means goods which the parties have agreed upon as the goods to be appropriated to the contract. If that view be sound, then the plates were not ascertained goods. No doubt the bankrupts had ordered the plates for the purposes of the contract, and intended to use them for the construction of the ship. But there was no inspection or passing of the plates by the defenders, nor was there any agreement between them and the bankrupts that the plates should be used in the construction of the ship. The bankrupts might have used the plates for any other purpose they chose and the defenders could not have complained, their right being only to demand that the ship should be built in terms of the contract.

"Further, it seems to me very difficult to say at what time the parties intended the property of the goods to pass. That depends upon the meaning of the words in the fourth article of the agreement, 'immediately as the same proceeds.' I think that the natural, and indeed the only intelligible, meaning of the words is, 'immediately as the construction of the ship proceeds.' But if that is what is meant, at what precise point of time was it intended that materials intended for the ship in the building-yard, workshop or river should become the property of the defenders? The passing of the property was to depend not only upon the intention to use the materials for the ship, but upon the progress of the construction of the ship, because materials intended for the ship were to become the property of the defenders 'immediately as the same proceeds.' I am inclined to think that the true construction of the clause is that materials intended for the ship should become the property of the defenders immediately they were made part of the ship, but not sooner, and, if that is a sound view, then it is plain that the defenders have no right to plates lying in the yard, and which, although intended for the ship, were never in fact used for the construction of the ship.

"I am therefore of opinion that the plates and other materials used in the builders' yard were not the property of the defenders, and that the pursuer is accordingly entitled to decree."

The defenders reclaimed, and argued—The meaning of Article 4 of the contract was that all materials in the building-yard intended for the vessel should become the property of the purchasers. Section 17 (1) of the Sale of Goods Act 1893 provided that the property in "specific or ascertained" goods passed to the buyer at such time as the parties intended that it should pass. The plates in question were "ascertained goods" in the sense of the Act, having been passed by Lloyds' Surveyor and specifically appropriated to the vessel by markings which showed the exact position which each plate should occupy. And looking to Article 4 of the contract, it was clear that the parties intended that all such materials should become the property of the purchasers as soon as they were brought into the building yard. That construction received support from the terms of Article 5, which empowered the purchasers, in the event of the builders' de-

fault, to take possession of all the materials intended for the vessel and to complete it. The same result would follow even if the plates were held to be "unascertained or future goods" within the meaning of sec. 18, rule V (1) of the Act, for here the plates were unconditionally appropriated to the contract, with the assent of both parties—Blackburn on Sale, 29, 30; Abbott on Shipping, 5, 6; Hudson on Building Contracts, 412; *Ex parte* Barter (1884), 26 Ch. D. 510; *Clarke* v. *Spence* (1836), 4 Ad. and El. 448; *Woods* v. *Russell* (1822), 5 Barn. and Ald. 942. The law laid down in *Seath* v. *Moore*, March 8, 1886, 13 R. (H.L) 57, 23 S.L.R. 495, cited by the respondent, was altered by the Sale of Goods Act 1893, and was no longer applicable.

Argued for the pursuer and respondent—The Lord Ordinary was right. The plates in question were not "ascertained" goods. There was no agreement between the parties that these particular plates should be used in the construction of the ship, and the defenders could not have insisted on their being so used. The contract was for a ship to be constructed according to specification, not for the sale of plates. Moreover, the plates in question had not been inspected by the defenders, and their right of rejection under article 9 remained till delivery of the ship, after trial satisfactory to their surveyor. Similarly, if the plates fell within the category of "unascertained goods," in the sense of section 18, rule V (1), there was here no such "unconditional appropriation to the contract" as was necessary to pass the property to the buyer. The law laid down in *Seath* v. *Moore*, *supra*, was unaltered by the Sale of Goods Act, and was directly applicable to the present case. There as here there had been no inspection by the buyers, and no instalments had been paid, and upon these grounds it was held that the property had not passed. The meaning of article 4 of the contract was, that as the construction of the ship proceeded, and the materials were incorporated in the structure, they should then, but not sooner, become the property of the defenders—*Wood* v. *Bell* (1856), 6 El. and Black. 355; *Clarke* v. *Spence*, *cit. supra*.

At advising—

LORD JUSTICE-CLERK—The clause of the contract upon which the question in this case depends for its answer is very badly expressed, and therefore is not so clear as it might have been, and I am not surprised that the Lord Ordinary should have read it as he did. Indeed, I will confess that my view of it has wavered, and that I have had difficulty in making up my mind upon it. But in the end, and after having the aid of your Lordships' views, I have come to the conclusion that the defence stated in this case is sound, and that the decree pronounced by the Lord Ordinary is erroneous. The words of the clause are special and are very broad, and the true reading is, I think, that two things are to become the property of the purchaser—first, the ship as it proceeds, and second, certain things and all materials intended for the ship or for the things named, being for the ship, "shall immediately as the same proceeds become the property of the purchasers." The error in the Lord Ordinary's view, and the error into which I will admit I had a tendency to fall myself, was to read the words "as the same proceeds" as if they meant "as the building-up of the ship proceeds." That would appear in grammatical reading to be the meaning for the words "as the same proceeds," for it is difficult on grammatical construction to find any antecedent to "the same proceeds," except the ship. But when the clause is closely examined I think it must be read as applying not only to things and materials actually used in construction but to things and materials ascertained as intended for the vessel. For the clause applies to such "whether in the building yard, workshop, river, or elsewhere." This is very wide, and makes it plain that things and materials may become the property of the purchasers at a time and place inconsistent with these being already added to the structure.

If that is a true reading, then the only question is whether the plates in question were materials "intended for" the ship. Of this I think there can be no doubt. The plates had been made to measurements for this ship, and marked and numbered for their places in the ship by the order of the builders, and had been laid down in their yard to be used in the structure. I have no doubt that the plates were then under the contract the property of the purchasers. In my opinion the goods were ascertained goods in the sense of the Sale of Goods Act, and that under the contract they became the property of the purchasers.

LORD YOUNG—I am of that opinion also. But I think it not only proper but absolutely essential to state that the case was argued to us upon the footing that parties were agreed upon two things—in the first place, that the value of the material in question was about £2000, and that they were also agreed that the defenders here had a good claim of damages for breach of contract to the amount, I think it was said, of £7000. Now, the case of the defenders (that is to say, the customers of the ship's builder for whom the ship was being built) was this—that the purpose of the clause to which your Lordship has referred giving them the absolute property of the materials destined for the use of the ship and brought to the premises for that purpose, was as a security to them when the ship was being built for just such a claim as the £7000 admitted to exist now. Now, I think it was a perfectly good clause in the contract under which the ship was built that that right of property should for that end be stipulated—a good clause in the contract, which must be given effect to. I do not regard it as a separate sale of the materials. It is a clause in the building contract of the ship. It is a legitimate clause for a legitimate purpose, to give them security not only over the ship, but over the material destined

for the ship—to give them security over that for just such a claim as admittedly now exists to the extent of £7000. But in this action, which is by the trustee in bankruptcy of the shipbuilder for payment of £2231, which is the value fixed by agreement of the material in question, I think it is sufficient to reject it, although I do so upon the ground which I have stated, that the clause founded upon by the defenders is a legitimate clause in the contract giving security to one of the parties to it against exactly such an event as has occurred, viz., the liability of the shipbuilder to him in a sum of money.

LORD TRAYNER—The Lord Ordinary has given decree in this case on the ground that the plates in question never passed in property to the defenders, and that having taken possession of what was the property of the bankrupts they must now pay the price thereof. I cannot concur in this view. By the 17th section of the Sale of Goods Act to which the Lord Ordinary refers, it is provided that under a contract of sale of specific or ascertained goods the property shall pass to the buyer "at such time as the parties to the contract intend it to be transferred." I think the contract before us makes it very clear when the parties intended the property to pass. It is not left to conjecture when it should do so, but is matter of express and unambiguous statement. I refer to the 4th article of the contract, which provides that "the vessel as she is constructed . . . and all materials from time to time intended for" the construction of the ship, "whether in the building-yard, workshop, river, or elsewhere, shall, immediately as the same proceeds, become the property of the purchasers," &c. The Lord Ordinary refuses effect to what I regard as the plain meaning of this clause on two grounds—(1) that the words "as the same proceeds" mean that the material was only to become the property of the purchaser as the same was incorporated with the ship in the course of construction, and (2) that while there was a sale of a ship, there was no sale of the separate material here in question. I think the first of these grounds proceeds upon an erroneous construction of the contract. It appears to me that the words "as the same proceeds," used as they are in connection with the loose material and not the ship, mean this, that as in the course of the construction of the ship, and as that construction proceeded, material to be used in that construction would from time to time be laid down in the workshop, building-yard, &c., such material should immediately become the property of the purchaser. The second of the Lord Ordinary's grounds appears to me also unsound. The sale no doubt was a sale of a completed ship. But the clause in the contract I have referred to says that the material laid down and intended for the ship becomes immediately the property of the "purchaser." That recognises the purchaser of the ship as purchaser of the material intended for the ship, to whom as such the property was immediately to pass. Nor can I agree with the Lord Ordinary in thinking that the goods were not "ascertained goods." They were in my opinion "ascertained" when, separated from others of the same class or kind, they were laid down as intended for or dedicated to the completion of this ship. They might be open to objection on the part of the purchaser as not conform to contract, but they were the ascertained subject of the sale.

I am of opinion, therefore, that the interlocutor of the Lord Ordinary cannot be maintained on the grounds stated. It was suggested to the pursuers' counsel that although the property in the plates had passed to the defenders the pursuers might notwithstanding claim the right of an unpaid seller and hold the plates for the price. He declined, however (no doubt for good reasons, which were not disclosed), to plead this, and therefore as the case stands I think the defenders must be assoilzied.

LORD MONCREIFF—The only question raised on record and dealt with by the Lord Ordinary, and the only question which was argued before us, was whether the property of the materials which had been ordered by Messrs Carmichael & Co., and intended by them to be used in the construction of the vessel, passed to the defenders Macbeth & Gray, for whom the ship was being built. Even if the property passed under the contract, it might have been open to the present pursuer, the trustee upon the sequestrated estates of Carmichael & Company to plead under section 39 of the Sale of Goods Act 1893 (and under the contract) that he had a lien on the goods for their price; and if that plea had been stated and argued we should have had to decide whether it was open to the defenders to set off against the pursuers' claim an admitted claim of damages amounting to £7000 due to them in respect of Carmichael & Co.'s failure to implement their contract. Although more than once invited (I may almost say pressed) to put such a plea on record, the pursuer's senior counsel declined to do so, and the point was not argued. I therefore propose to deal only with the question whether the right of property passed or not.

The agreement, which is fully set forth in the record, is exceptional if not unique, and I think that the Lord Ordinary has been misled by failing to observe this, and by his recollection of the usual form of contract in such cases, which provides for property in material passing only when it has been actually used in the construction of the vessel and incorporated in it. The fourth and fifth heads of the agreement must be read together. I think that, as was suggested from the Bench in the course of the discussion, the fourth head of the agreement is ancillary to and intended to give legal effect to the fifth, and the two heads were introduced to meet the case of the builders being unable to complete the vessel, and to prevent questions with creditors of the builders as to the property of the materials required and

intended for the completion of the vessel, such as arose in the case of *Ex parte Barter*, L.R., 26 Ch. D. 510.

The Lord Ordinary's judgment is to a great extent based upon the words in the fourth head, "*immediately as the same proceeds.*" Those words are not happily selected, and are more appropriate to the case of materials being actually incorporated in the vessel, especially as the fourth head begins—"The vessel as she is constructed," &c. But I think it is impossible to explain away the remainder of the language used in that head, viz., "All materials from time to time intended for her or them, whether in the building yard, workshop, river, or elsewhere, shall immediately as the same proceeds become the property of the purchasers, and shall not be within the ownership, disposition, or control of the builders." These words seem sufficiently distinct to cover materials which have not yet been incorporated in the ship, but any doubt that might have existed as to their meaning is removed by the fifth head, which provides for the case of the builders making default in the prosecution of the construction of the vessel, &c. In that case it is declared that it should be competent for the purchasers to take possession of the vessel in her then state, "and all materials intended for her or them as before mentioned," and to complete the vessel. Then follow some words which may explain why the right of lien was not claimed:—"And the cost incurred by the exercise of any of the powers of this clause shall be deducted from the purchase money then unpaid, if sufficient, and if not sufficient, shall be made good by the builders."

It may be admitted that some of the heads of the agreement seem to be more appropriate to the case of the property not having passed, but none of the criticisms founded on those clauses seem to me to be sufficient to overcome the plain and unambiguous meaning of the fourth and fifth heads.

Therefore I am of opinion that the meaning and effect of the agreement was that the materials selected and set apart for the construction of the ship should become the property of the purchasers, and in point of fact I hold it proved that the materials in question were sufficiently marked and identified. They were passed by Lloyds' Surveyor for the purpose of being used in the construction of the vessel, and marked so as to indicate their position when incorporated in the vessel, and not objected to on behalf of the purchasers.

Thus the meaning of parties being plain that the property should pass, we find that by section 18, rule V (1) of the Sale of Goods Act 1893, it is provided that "Where there is a contract for the sale of unascertained or future goods by description, and goods of that description and in a deliverable state, are unconditionally appropriated to the contract, either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied, and may be given either before or after the appropriation is made."

Therefore upon the only question before us I am of opinion that the Lord Ordinary has come to a wrong conclusion, and that the defenders should be assoilzied.

The Court recalled the interlocutor of the Lord Ordinary and assoilzied the defenders.

Counsel for the Pursuer and Respondent—Ure, K.C.—M'Clure. Agents—Drummond & Reid, W.S.

Counsel for the Defenders and Reclaimers—Solicitor-General (Dickson, K.C.)—Spens. Agents—J. & J. Ross, W.S.

Saturday, December 7.

SECOND DIVISION.

[Dean of Guild Court, Glasgow.

INGLIS *v.* CLARK.

Servitude — Negative Servitude — Light — Implied Grant—Adjoining Building Lots Derived from Common Author.

Held (*diss.* Lord Moncreiff) that a negative servitude of light cannot be established by implied grant.

So *held* (*diss.* Lord Moncreiff) in the case of contiguous plots situated in a town and derived from a common author, although the building for which a servitude of light was claimed had been erected prior to the severance of ownership.

The proprietors of four contiguous plots of ground in a town, held upon one title, but described separately therein, and granted for payment of separate annual payments, in 1850 disponed one of these plots and part of a second to one person, and the remainder of the second to another. Prior to the date of these dispositions a building had been erected upon the first mentioned of the two plots so disponed, which had windows looking on to an unbuilt-on part of the second. Neither in these dispositions nor in any other deed was any right to a servitude of light conferred upon the first or imposed upon the second plot. There was no restriction in the original title as to building on any part of the plots. *Held* (*diss.* Lord Moncreiff) that in the absence of such a grant of a servitude of light, the successors of the disponee of the second plot were entitled to erect thereon buildings which would deprive the building upon the first plot of the light and air which since before the date of the severance of the properties it had derived from the second plot.

Dundas v. *Blair*, March 12, 1886, 13 R. 759, 23 S.L.R. 526, *followed*.

Heron v. *Gray*, November 27, 1880, 8 R. 155, 18 S.L.R. 113, *distinguished*.