LORD MACNAGHTEN—I am of the same opinion. I think that the judgment of Farwell, J., affirmed by the Court of Appeal, perfectly correct. With regard to the criticism which Williams, L.J., passed on some words of mine in *Government Stock Investment Co.* v. *Manila Railway Co.*, December 10, 1896, L.R. (1897), App. Cas. 81, I only wish to observe that what I said was intended as a description, not as a definition, of a floating security. I should have thought that there was not much difficulty in defining what a floating charge is in contrast to what is called a specific charge. A specific charge is, I think, one that, without more, fastens on ascertained and definite property, or property capable of being ascertained and defined; a floating charge, on the other hand, is ambulatory and shifting in its nature, hovering over and, so to speak, floating with the property which it is intended to affect until some event occurs, or some act is done which causes it to settle and fasten on the subject of the charge within its reach and grasp. I agree that this is a clear case, and that the appeal should be dismissed with costs.

LORD JAMES OF HEREFORD and LORD LINDLEY concurred.

Appeal dismissed.

Counsel for the Plaintiffs and Respondents—Upjohn, K.C.—Montgomery. Agent—George Frenam.

Counsel for the Appellant—Neville, K.C.—E. P. Hewitt. Agents—Leslie & Hardy.

HOUSE OF LORDS.

Friday, July 15.

(Before the Lord Chancellor (Halsbury), Lords Macnaghten and Lindley.)

MERCER *v.* LIVERPOOL, ST HELENS, AND SOUTH LANCASHIRE RAILWAY COMPANY.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Railway—Compensation—Land Injuriously Affected — Claim for Compensation by Lessee who has Acquired his Holding Subsequent to the Notice to Treat Given to Owner.

A railway company in virtue of its statutory powers served on a proprietor notice to treat for the purchase of a part of his lands and for compensation for damage by the execution of their works. Subsequent to the notice and the sending in of the particulars of his claim, the proprietor granted a building lease of a part of his lands adjoining the land proposed to be acquired by the railway company. The proprietor's claim was settled by the payment of a sum of money. *Held* that the sum of money paid to the proprietor must be held to cover damage done to the lessee's holding in the execution of the works, and that the lessee could not claim compensation therefor from the railway company.

Lord Gerard was the proprietor of land near St Helens. Under their statutory powers the Liverpool, St Helens, and South Lancashire Railway Company, on 23rd October 1891, served on him a notice to treat for the purchase of a part of his land, and for compensation for damage by the execution of their works. On the 12th January 1892 Lord Gerard served on the Railway Company particulars of his claim. In February he made a verbal agreement with one Gleave to grant a building lease to the latter of a part of his land for 999 years from January 1, 1892. The land to be let adjoined the land proposed to be acquired by the Railway Company, but no claim for compensation for damage to it had been included in the particulars of claim. Gleave obtained possession, received a formal lease dated 14th June 1892, built some houses, and subsequently assigned the lease to Mercer.

Lord Gerard's claim against the Railway Company was by agreement of 14th October 1892 settled, and by deed of 27th February 1894, in consideration of the sum of £24,209 paid to him, he conveyed to the Railway Company the lands included in that agreement, and some others. The lessee had no knowledge of the notice to treat, agreement, and conveyance.

During the year 1895 the Railway Company in the execution of their works injuriously affected, by interfering with the access, and in other ways, the land held by Mercer. For this damage, in an arbitration under the Lands Clauses Consolidation Act, Mercer obtained an award of compensation, which with the expenses of the arbitration amounted to £371, 10s.

Mercer brought an action to enforce the award. The Judge (LORD ALVERSTONE, C.J.) gave judgment for the plantiff, but on appeal this decision was reversed by the Court of Appeal (VAUGHAN WILLIAMS, STIRLING, and MATHEW, L.JJ.)

The plaintiff appealed.

At delivering judgement—

LORD CHANCELLOR—In this case I cannot entertain any doubt that the judgment of the Lords Justices of Appeal was right. The position of things which is here disclosed upon the facts is that at the time when the notice to treat was given Lord Gerard was the owner not only of the land intended to be taken under the powers of the Act but of other land which might or might not be injuriously affected, without any communication to the Railway Company of the possibility of his sub-letting the land, or rather letting the land for building purposes on a building speculation, and without any communication to the Railway Company that he had done so. The compensation was ascertained not by the ordinary course of an inquiry by an assessment jury but by a bargain between the parties. Of course, inasmuch as we have nothing at all before us as to what

passed when that amount of £24,000 was agreed upon between the parties, all that we have to do is to look at the situation of the parties and see what they were assessing at that time. What they were assessing at that time is to be ascertained by the notice to treat and the claim made in pursuance of that notice to treat by Lord Gerard. Looking at those documents, it is impossible to doubt that what it was competent to the claimant Lord Gerard to claim, and unless it had been withdrawn from the power of the assessment jury it would have been competent to him to claim before the jury, was compensation in addition to the purchase money of his land for all injurious affecting of his other land. For my own part I cannot entertain the least doubt that any compensation that he might have claimed he was bound to claim then and there, taking it upon the hypothesis that it was tried before a compensation tribunal. Whether it was tried in that form or not, the theory of the bargain between the parties must be that the amount which was settled is that which would have been settled by a compensation jury. Then what is the bargain? £24,000 is given for all that he could have claimed at that time, and all that he could have claimed at that time included the amount of compensation to which he would have been entitled for any injurious affecting of his lands. As, therefore, between the Railway Company on the one side and Lord Gerard on the other, it seems to me that that question is finally and absolutely determined by the bargain they agreed to instead of its being settled for them by the compensation tribunal. What happened between the parties to the building speculation and the claimant against the Railway Company does not affect the position of the Railway Company at all. That which they have agreed to, which was the foundation of their bargain, was everything that once and for all could have been obtained if they had gone before the compensation tribunal. No question is before us now, and no question can be before us, as to the relation that the settlement between the Railway Company and Lord Gerard bears to the relations between Lord Gerard and his lessee. I do not enter into the question as to whether he did or did not communicate the facts to the person to whom he was letting his land for 999 years on a building lease. It might be that he might be regarded as having, unknown to the lessee, done something in the nature of a breach of covenant for quiet enjoyment by having placed a disability on that part of the land which he had let for this long term, or it might be that in recovering that amount of money which he did recover he might be considered to be a trustee for so much of the compensation as was appropriate to the deterioration of the land which he had so let. That is another point of view from which it might be regarded. I hesitate to make any suggestion, because I do not think it would be to the advantage of these parties to encourage the idea of further litigation between them. The only matter with which we are concerned, the question between the Railway Company on the one side and Lord Gerard on the other, seems to me to be absolutely concluded according to the judgment of the Court of Appeal. That question, I think, has been finally and rightly determined between the parties. It would be a most monstrous thing to suppose that after the Railway Company had given compensation not only for the land that was taken but for all injurious affecting of the land at the time that the notice to treat was served, without any notice to them of any further relation between the claimant against them and anyone else, they should be called upon to pay further and other compensation to some-one else, although they had paid and satisfied the demand of the claimant, whose claim in the first instance was a claim including all this very compensation which it is now sought to recover against them. The absolute merits between the parties we have not before us. The suggestion that this compensation could be recovered again, and by a person to whom Lord Gerard had transmitted his rights of compensation without notice to the Railway Company certainly would introduce a confusion in the settlement of such matters which I should be very loth indeed to encourage. In these circumstances it appears to me that the judgment of Stirling, L.J., is absolutely right, and I move that this appeal be dismissed with costs.

LORD MACNAGHTEN—I am of the same opinion. As regards the question between the plaintiff and the Railway Company I am unable to see any answer to the argument of Stirling, L.J. I am quite content with his judgment, and I am unable to add anything to it.

LORD LINDLEY—This case is one of novelty and of great importance, not only to railway companies but to landowners. I agree entirely in the judgment of the Court of Appeal, and I can add really nothing to the judgment of Stirling, L.J. The broad principle appears to me to be that it is not competent for an owner of land who has received notice to treat to deal with any of his land either taken or injuriously affected by the company so as to increase the burden of the company as regards the compensation to be made in respect of such land or any of it. In this case it would be most unjust to the company to depart from this principle, as the company settled with the owner without notice of his dealings with his land after the notice to treat was given and after his claim was sent in, and he insisted all along on his right to have the streets lowered (see sec. 13, clause 7 of the Special Act 1886).

Judgment appealed from affirmed, and appeal dismissed.

Counsel for the Plaintiff and Appellant—Cripps, K.C.—Haldane, K.C.—MacConkey. Agents—Bell, Brodrick, & Gray.

Counsel for the Defendants and Respondents—M'Call, K.C.—Horridge, K.C.—W. H. Loraine. Agents — Maples, Teesdale, & Co.