him which they thus chose voluntarily to give up.

The case of the *Mexican Santa Barbara Mining Company*, 1890, 24 Q.B.D. 613, quoted by the first party, is instructive, although it is not directly in point. The Mexican Company sought a bankruptcy order against their debtor Perkins. He had obtained judgment against Dickey, a registered holder of the company, to the effect that he (Dickey) was a trustee of some of the shares registered in his name for Perkins. The company founded on one of their articles of association giving them "a first and paramount lien on all shares for all moneys due to the company from the registered holder thereof or other the persons for the time being entitled thereto as against the company." The Court held that the company had no title to petition for Perkins' sequestration, in virtue of their lien over the shares belonging to him but registered in Dickey's name. They negatived the contention that Perkins being in equity the owner of the share of which Dickey, the registered holder, had been declared to be a trustee for him, the articles gave the company a lien over that equitable interest for the debt which Perkins owed them. But in that case the expression "registered holder" made impossible the argument which the second parties maintained before us. The company had to found on the later phrase "or other the persons for the time being entitled thereto as against the company"—words which seemed to lend some colour to their contention. I think the reluctance which the Court showed to give these words the meaning contended for by the company shows that, had the clause before them been expressed in the terms of article 27 in this case, they would have required much stronger grounds than any that have been stated to us for holding that Mr Paul, who had only the radical right, was in the sense of that article the holder of the shares.

I therefore think the question should be answered in the negative.

LORD DUNDAS—I am of the same opinion. It was, I think, conceded—it is at all events, in my judgment, clear—that if "holder" in article 27 means "registered holder," and that the case for the second parties is gone. The registered holders of the shares owe them no debt in respect of which a lien could be asserted. I do not know whether Mr Paul was in fact indebted to the second parties when the transfers were taken in favour of the nominees of the banks. But it is immaterial to inquire into that, for if the relation of debtor and creditor did then subsist between Mr Paul and the second parties, the latter missed the opportunity, which they had, of refusing to register the nominees, and thereby lost their lien in a question with Mr Paul; and if the relation did not subsist, the second parties cannot plead that any advances they subsequently made to Mr Paul were made upon the faith or on the security of shares held by him in their company. Now it seems to me to be quite plain that "holder" in article 27 does mean "registered holder," and that the word cannot, in any reasonable sense, or upon any stateable ground, be held to apply to or include a person who may have the radical right to shares, but whose name does not appear upon the company's register as holding them. I think the question must be answered in the negative.

Something was suggested during the argument as to possible future difficulties, if the result of our decision should be adverse to the second parties. I do not see that any difficulty need necessarily arise, and there is no occasion to anticipate or speculate upon anything of the sort. I apprehend that the second parties' power under their articles to refuse to register transferees of shares is one which must be exercised by them in a reasonable manner.

The LORD JUSTICE-CLERK and LORD SALVESEN concurred.

The Court answered the question in the negative.

Counsel for the First Party—D. Anderson—W. L. Mitchell. Agents—Macpherson & Mackay, S.S.C.

Counsel for the Second Parties—Horne, K.C.—W. T. Watson. Agents—Wallace & Begg, W.S.

Friday, July 12.

FIRST DIVISION.

BUTTER *v.* FOSTER.

Sale—Sale of Heritage—Assignation of Rents—Legal and Conventional Terms—Pastoral Farm—Titles to Land Consolidation (Scotland) Act 1863 (31 *and* 32 *Vict. cap.* 101), *sec.* 8.

The Titles to Land Consolidation (Scotland) Act 1868, sec. 8, enacts that a clause of assignation of rents in the statutory form, viz., "And I assign the rents," "shall, unless specially qualified, be held to import an assignation to the rents to become due for the possession following the term of entry, according to the legal and not the conventional terms, unless in the case of forehand rents, in which case it shall be held to import an assignation to the rents payable at the conventional terms subsequent to the date of entry."

A pastoral farm on the estate of F. was let with entry to the houses and grass at Whitsunday 1895. The first half-year's rent was payable at Whitsunday 1896, and the second half at Martinmas thereafter. The estate was sold with entry at Martinmas 1910 under a disposition containing an assignation of rents in the statutory form. The seller having claimed that he was entitled to the rent conventionally payable at Martinmas 1911, the purchaser disputed his right thereto

on the ground that the rent in question effeired to the six months' possession following the date of his entry, viz., from Martinmas 1910 to Whitsunday 1911.

Held that the rent conventionally payable at Martinmas 1911 was legally due at Martinmas 1910, that it effeired to the six months' possession from Whitsunday 1910 to Martinmas 1910, and that, accordingly, it was not carried to the purchaser by the assignation of rents.

Mackenzie's Trustees v. *Somerville*, July 17, 1900, 2 F. 1278, 37 S.L.R. 953, *followed*. *Wigan* v. *Cripps*, 1908 S.C. 394, 45 S.L.R. 295 *commented on*.

Sale—Sale of Heritage—Assignation of Rents—Shooting Rent—Apportionment.

The shootings on an estate were let for a yearly rent, payable in equal portions half yearly on 1st January and 1st July. The estate was sold with entry at Martinmas 1910, while the lease was still current, under a disposition containing an assignation of rents in the statutory form.

Held that the rent payable on 1st July 1910 effeired to the possession for the last six months of 1910, that it must be regarded as running *de die in diem*, and that, accordingly, the purchaser was entitled to the proportion thereof effeiring to the possession from Martinmas 1910, the date of his entry, to 31st December following.

Sale—Sale of Heritage—Articles of Roup Providing for Right to Rents—Disposition Containing Statutory Clause of Assignation of Rents—Competency of Referring to Articles of Roup.

An estate was sold with entry at Martinmas 1910. The articles of roup provided that the purchaser should have right to the rents for the period following the term of Martinmas 1910, the date of his entry. The disposition following thereon contained a clause of assignation of rents in statutory form. In a special case between the purchaser and the seller as to the right to the rent of a pastoral farm and of the shootings on the estate, the seller contended that the articles of roup had been superseded by the disposition, and that, accordingly, they could no longer be looked at.

Held that the rights of parties depended on the disposition, and that it was incompetent to refer to the articles of roup.

Archibald Edward Butter, late of Faskally, C.M.G., *first party*, and Frederick Charles Foster, now of Faskally, *second party*, presented a Special Case for the opinion and judgment of the Court as to whether the first or second party was entitled to the half-year's rent of the farm of Old Faskally payable at Martinmas 1911, and secondly, whether Foster was entitled to a proportion of the half-year's rent of Faskally House and shootings which had been paid to the first party on 1st July 1910.

The Case stated—"1. On 15th July 1910 the first party sold by private bargain to the second party the estate of Faskally, in the parish of Moulin, Perthshire, under articles and conditions of sale, to which an agreement for the purchase was appended and signed by the second party. . . .

"2. The third article of the said articles and conditions of sale provides, *inter alia*, 'The purchaser or respective purchasers shall have right to the rents for the possession following the term of Martinmas 1910, which it is hereby declared shall be the term of entry to the estates.' . . .

"6. By disposition, dated 9th and recorded 11th November 1910, the first party conveyed to the second party the said estate of Faskally, with entry at Martinmas 1910. . . .

"7. The said disposition contains an assignation by the first party of the rents of the said estate in the following terms:—'And I assign the rents.' . . .

"9. On delivery of the said disposition the second party entered into possession of the estate of Faskally, and questions have arisen as to the rents to which the first and second parties are respectively entitled under the circumstances set forth in this case.

"10. The rents in question are certain rents payable in terms of leases granted by the first party of (1) the farm of Old Faskally, and (2) Faskally House and shootings.

"11. By lease, dated 13th May and 16th June 1896, the first party let to certain tenants the farm of Old Faskally for a period of fifteen years from and after Whitsunday 1895 as to the houses, yards, hill pasture, and natural grass, and at the separation of crop of 1895 from the ground as to the arable land, and the said lease, by minute endorsed thereon, dated 31st October and 2nd November 1903, was extended for a further period of five years from and after the expiry stated in the lease, and that as if the expiry therein had been Whitsunday 1915. . . . In terms of the said lease the tenants bound themselves to pay to the first party the sum of £250 sterling (which rent was reduced to £225 in terms of the said minute) 'of yearly rent payable at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment thereof at Whitsunday 1896, and the next term's payment thereof at Martinmas thereafter, and that for the grass crop 1895 and corn crop 1896, and so forth half-yearly and termly during all the years of this lease.' The parties are agreed that the farm of Old Faskally, which extends to over 3700 acres, of which 67 acres are arable and the remainder grazing, is a grazing farm.

"12. By lease, dated 31st October and 4th November 1903 . . . the first party let to the tenant therein designed (1st) 'all and whole the furnished mansion-house of Faskally, with the offices, stabling, coach-house, and coachman's house thereto pertaining, and the garden, lawn, and policies; and also all and whole the exclusive privilege of shooting and sporting over' certain

parts of the estate of Faskally; and also the fishings of Faskally as therein described from the opening of the season till the close in each year. In terms of the said lease the tenant bound himself to pay to the first party 'the sum of £1325 sterling yearly in name of rent, and that in equal portions on the first day of January and the first day of July in each year, beginning the first payment of the said rent, being £662, 10s., on the first day of January 1905, and the next payment of a similar sum on the first day of July 1905, and so forth half-yearly thereafter on the first day of January and first day of July during the currency of this lease.' The said lease was granted for the term of ten years from 1st January 1905, with power to either party to terminate it at 1st January 1910; by agreement this option to terminate the lease was extended, and subsequently the tenant gave notice to the first party of her intention to terminate the lease on 1st January 1911. On 1st July 1910 the last half-yearly instalment of the rent payable in terms of the said lease was paid to the first party by the tenant.

"13. The salmon fishing contained in the lease closed on 31st October 1910. The wages of the keepers, gardeners, and housekeeper, and the expenses of firing the mansion-house up to 31st December 1910, payable by the proprietor in terms of the said lease, were paid by the first party. The second party has agreed to relieve the first party of the proportion of these expenses effeiring to the period from Martinmas 1910 to 1st January 1911 in the event of the contentions of the second party with regard to the rent of Faskally House and shootings being sustained in this case.

"14. (1) As regards the rents of the farm of Old Faskally, the first party *contends* that the rents received or to be received from the tenant of the farm at Whitsunday and Martinmas 1911, in terms of the lease, are the rents legally payable at Whitsunday and Martinmas 1910, payment of these rents having been conventionally postponed for a year in terms of the said lease, and that he is entitled to receive payment of these two half-yearly instalments of rent because they are not rents due, according to the legal terms, for the possession following the second party's term of entry under the foresaid disposition in his favour, namely, Martinmas 1910. (2) As regards the rent of Faskally House and shootings, the first party contends that he is entitled to retain the whole rent paid by the tenant on 1st July 1910, for the period of six months up to 31st December 1910, when the tenant gave up possession, and that the said rent is not apportionable between the first and second parties. The first party contends that as the said rent was paid forehand in terms of the said lease, and in accordance with the usual practice in such cases, and was actually received by the first party before the date of the sale to the second party, it is not covered by the assignation of rents contained in the said disposition in favour of the second party, which assignation in the case of forehand rents conveys to the second party only rents payable at conventional terms subsequent to Martinmas 1910. The first party further contends as regards the rents both of the farm of Old Faskally and of Faskally House and shootings that the rights of the parties to the said rents must be determined in accordance with the terms of the said disposition in favour of the second party, and that if there is any difference in effect between the clause of assignation of rents in that disposition and the provision as to rent in the third article of the foresaid articles and conditions of sale (which the first party does not admit), the said articles and conditions must be held to have been superseded by the disposition.

"15. (1) As regards the rents of the farm of Old Faskally, the second party admits that the first party is entitled to receive the half-year's rent payable at Whitsunday 1911, but he disputes the first party's right to receive payment of their half-year's rent payable at Martinmas 1911, and contends that the half-year's rent to be received from the tenant of the farm at Martinmas 1911, in terms of the lease, is the rent legally payable at Martinmas 1910, payment of that rent having been conventionally postponed in terms of said lease; that said half-year's rent is for the possession for the period from Martinmas 1910 to Whitsunday 1911; that said half-year's rent vested in the first party on 11th November 1910, and being moveable property, was not carried by the assignation of rents clause in the disposition, and that the second party is, under the contract of sale, entitled to the said half-year's rent legally payable at Martinmas 1910; (2) as regards the rent of Faskally House and shootings, the second party contends that in terms of the contract between the first party and the second party, and the provisions of the Apportionment Act 1870 (33 and 34 Vict. cap. 35), said rent falls to be apportioned between the first party and the second party, and the latter is entitled to the proportion thereof effeiring to the period from 11th November 1910 to 31st December 1910."

The *questions of law* were—"1. Is the first or is the second party entitled to the half-year's rent of Old Faskally farm payable in terms of the lease thereof at Martinmas 1911. 2. Is the second party entitled to receive payment from the first party of a proportion applicable to the period from 11th November 1910 to 31st December 1910 of the half-year's rent of Faskally House and shootings received by the first party on 1st July 1910."

Argued for the first party—(1) *As regards the Farm.*—The rights of parties depended upon the disposition which had superseded the articles and conditions of roup—*Maxwell's Trustees* v. *Scott*, November 5, 1873, 1 R. 122, 11 S.L.R. 57; *Lee* v. *Alexander*, August 3, 1883, 10 R. (H.L.) 91, *per* Lord Watson at p. 96, 20 S.L.R. 877; *Orr* v. *Mitchell*, March 20, 1893, 20 R. (H.L.) 27, *per* Lord Watson at p. 29, 30 S.L.R. 591. The

case of *Jamieson* v. *Welsh*, November 30, 1900, 3 F. 176, 38 S.L.R. 96, was distinguishable, for the disposition in question there dealt with two distinct classes of things—heritage and corporeal moveables—and it was with regard to the latter that reference to the missives was allowed. The first party was entitled to the rents in question, for the clause "and I assign the rents" imported an assignation to the rents to become due for the possession following the term of entry according to the legal and not the conventional terms—Titles to Land Consolidation (Scotland) Act 1868 (31 and 32 Vict. cap. 101), sec. 8. The rent payable at Martinmas 1911 was legally due at Martinmas 1910, and effeired to the period from Whitsunday 1910 to Martinmas 1910, and not for the possession subsequent to the term of entry. The rent was paid for the crop and year, not for the possession. Where, as here, the farm was a pastoral one, the tenant paid on entry for the grass crop which was then ready for use, though by custom the outgoing tenant was allowed to pasture it till the date of his outgoing. That being so, the rent in question belonged to the seller—Bell's Lectures, i, 631; *Mackenzie's Trustees* v. *Somerville*, July 17, 1900, 2 F. 1278, 37 S.L.R. 953. The case of *Wigan* v. *Cripps*, 1908 S.C. 394, 45 S.L.R. 295, was wrongly decided and should be reconsidered. (2) *As regards the Rent of the House and Shootings.*—The rent of the shootings also belonged to the first party. It became *in bonis* of him on 1st July and before the date of the sale. Being paid beforehand, it was not covered by the assignation of rents, for the statutory assignation in the case of forehand rents imported an assignation to such as were payable subsequent to the date of entry. The case of *Lord Glasgow's Trustees* v. *Clark*, February 27, 1889, 16 R. 545, 26 S.L.R. 402, was distinguishable, for whereas the date of the purchaser's entry there was Martinmas 1886, the rent was not due till 31st March 1887.

Argued for the second party—(1) *As to the Farm Rent.*—The articles and conditions of roup provided (article 3) that the purchaser should have right to the rents for the possession following his entry. The rent conventionally payable at Martinmas 1911, but which was legally due at Martinmas 1910, effeired to the possession from Martinmas 1910 to Whitsunday 1911, and it therefore fell to the buyer, *i.e.*, the second party. *Esto*, however, that the disposition alone could be looked at, the result was the same, for the clause "and I assign the rents" imported an assignation of the rents for the possession following the term of entry. That being so, the rent fell to the second party—*Wigan* v. *Cripps* (*cit. sup.*). Alternatively the clause of assignation of rents was inapplicable where, as here, the rent in question had vested in the first party on 11th November 1910. Being so vested, it was moveable property, and was therefore conveyed to the second party by the contract of sale. (2) *As regards the Rent of the House and Shootings.*—The shooting rent, though paid in advance, was in part for the possession following the purchaser's entry. He was therefore clearly entitled to such portion thereof as effeired to the period from Martinmas 1910, the date of his entry, to 31st December following. It ought therefore to be apportioned between the parties according to their respective periods of ownership—*Lord Glasgow's Trustees* v. *Clark* (*cit. sup.*), *per* the Lord President at p. 549, 26 S.L.R. 404.

At advising—

LORD JOHNSTON—By disposition of 11th November 1910 Mr Butter of Faskally sold to Mr F. C. Foster the estate of Faskally with entry at Martinmas 1910, and the disposition, which was in short statutory form, proceeded—"And I assign the rents, feu-duties, and casualties, and I bind myself to free and relieve the said Frederic Charles Foster and his foresaids of all feu-duties, casualties, and public burdens."

This short statutory form of assignation of rents is declared by the Titles Act 1868, section 8, to "be held to import an assignation to the rents to become due for the possession following the term of entry according to the legal . . . terms," &c.

The farm of Old Faskally was let at the date of the sale for a term of years. The tenant's entry to the farm had been at "Whitsunday 1895 as to the houses, yards, hill pasture, and natural grass, and at the separation of crop 1895 from the ground as to the arable land." The rent was "payable at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment thereof at Whitsunday 1896, and the next term's payment thereof at Martinmas thereafter, and that for grass crop 1895 and corn crop 1896, and so forth, half-yearly and termly thereafter during all the years of this lease."

The farm of Old Faskally was admittedly a hill or sheep farm, the arable land being purely an adjunct. Hence there is no doubt that the legal terms for payment of the rent of the first crop and year were Whitsunday and Martinmas 1895, and that the conventional terms being Whitsunday and Martinmas 1896, the rent was payable twelve months backhand.

The purchaser having collected the rents due at Whitsunday and Martinmas 1911, admitted his obligation to account to the seller for that payable at Whitsunday, but claimed right to retain that payable at Martinmas 1911, and this case has been brought to determine, *inter alia*, his right so to do.

The point at issue—for the conventional terms of payment may be disregarded—really is whether the half-year's rent legally payable at Martinmas 1910 is for the last half of crop and year 1910, or for the possession from Martinmas 1910 to Whitsunday 1911.

To solve this question it is I think necessary to determine the reason or principle upon which in grass farms where possession is by custom given at Whitsunday the rent is "legally"—that is, by custom—payable at the term of entry and at

Martinmas thereafter, and is therefore, if possession only is regarded, apparently payable forehand.

The first difficulty in concluding that it is payable for the possession is that forehand rent is alien to the general conception of agricultural leasing, and is only resorted to as an indirect means of obtaining partial security for rent. I conceive that none of the customary or legal provisions regarding entry and payment of rent can be reduced to a principle or system absolutely logical in all its incidents and results, and yet at the same time that there is an intelligible and fairly logical idea running through the whole when a broad view of the situation is taken and incidental inconsistencies are disregarded. That idea is, I think, that rent is payable not for occupation in point of time, but for beneficial occupation, and that the beneficial occupation is regarded from the point of view of the predominant character of the farm, discarding its minor accessories. Hence when the farm is predominantly arable, the rent is by custom or legally payable for the crop, or for the crop and year, as it is usually stated; the crop and year is naturally counted from Martinmas, when the land is ready to be prepared for sowing, to the Martinmas after the crop is cleared, and the rent is accurately legally payable at Whitsunday after sowing, and at Martinmas after reaping, in equal portions. The rent is thus payable for the beneficial use or cropping, and the terms of payment are adapted to that beneficial use or cropping. Further, the corn crop is the criterion, and it is not allowed to affect the arrangement that possession of houses and grass is customarily given at the Whitsunday before the first crop and year begins, or that the comparatively modern introduction of green crop requires, unless by arrangement, retention of some portion of the land after the last crop and year is technically closed.

In the case of a farm predominantly grazing, the crop is mainly a summer one, but being of natural grass it has begun to grow with the commencement of spring, and it is, so to speak, ready to be reaped or enjoyed, roughly speaking, from the Whitsunday of entry to the Martinmas following. Hence it is no great stretch to conceive of the crop and year of a pasture farm being from the Martinmas prior to entry to the Martinmas after entry, thus accounting for the rent being payable for the first half of the crop and year at the Whitsunday of entry, and the last half at the Martinmas six months after entry, and so on during the currency of the lease, notwithstanding the apparent inconsistency of the former tenant remaining in physical possession for the first half of the first crop and year of the lease, and the new tenant remaining in physical possession for six months after the last crop and year is closed. The reason of this apparent inconsistency in possession is doubtless the practical inconvenience of either transferring to the new tenant or removing to other ground—a thing rarely if ever done—a sheep stock at Martinmas term.

I think that the conclusion at which I have arrived is in accordance with the judgment of this Division in the *Portmore* case (2 F. 1278), which I think presents the sound view of the law on the subject, though I am aware that it is counter to that of the Second Division in the *Glendaruel* case (1908 S.C. 394), to which I am unable to subscribe.

There is an additional question with reference to the rent of the house and shootings. From the information that we have I think it is clear that the residential element in Faskally is the predominant one, and therefore, as there is a slump rent payable for the house and shootings, that in any division of the rent the shootings as a separate subject, and the period of time during which they are enjoyed, must be entirely disregarded. The rent in this case is something like £1300, payable the first half on the first day of the year, and the second half in the middle of the year; but as there are no legal terms in connection with the letting of such premises I think that the rules of apportionment referring to farms do not apply, and that the rent must be regarded as running *de die in diem*. Consequently the small portion of it from Martinmas to 31st December will have to be paid by the seller, who has received it, to the purchaser, who entered at Martinmas.

LORD PRESIDENT—I agree. I think the main question is really settled by the case of *Portmore* (2 F. 1278). Upon the question of the shootings as a separate subject I agree with what Lord Johnston has said.

LORD KINNEAR—I also agree. I only add that having reconsidered the question with the attention which is certainly called for by the criticism of Lord Low, I still adhere to the opinion of Lord Adam, with which I concurred, in the case of *Portmore* (2 F. 1278).

LORD MACKENZIE—There is a preliminary question here as to whether the articles of roup may be referred to, but I think on the cases of *Lee* v. *Alexander* (10 R. (H.L.) 91) and of *Orr* v. *Mitchell* (20 R. (H.L.) 27) there can only be one answer on that point. The case of *Jamieson* v. *Welsh* (3 F. 176), which was founded upon, was plainly a different case, because there the terms of the disposition did not exhaust the contract between the parties. Accordingly I think there is no question that it is upon the disposition that the rights of the parties must depend. That being so, I agree that the first question should be answered in the manner proposed, and I do so because of the decision in *Portmore* (2 F. 1278). I agree that the second question should be answered in the manner proposed for the reasons explained by your Lordships.

The LORD PRESIDENT and LORD KINNEAR concurred in the opinion of LORD MACKENZIE on the preliminary point referred to by his Lordship.

The Court found in answer to the first question of law in the case that the rent referred to was payable to the first party, answered the second question in the affirmative, and decerned.

Counsel for First Party—Macphail, K.C. — Hon. W. Watson. Agents — Tods, Murray, & Jamieson, W.S.

Counsel for Second Party—Cooper, K.C. Dallas. Agents—Forbes, Dallas, & Co., W.S.

Tuesday, July 9.

FIRST DIVISION.

[Dean of Guild Court at Glasgow.

SOCIETY OF PROPRIETORS OF ROYAL EXCHANGE BUILDINGS, GLASGOW, LIMITED *v.* COTTON.

Property—Servitude—Non altius tollendi—Title to Enforce—Interest.

Proprietors of a large piece of ground disponed a portion of it to A. By the disposition a servitude *non altius tollendi* was constituted over A's portion in favour of the remainder. They subsequently disponed to B a portion of the remainder immediately *ex adverso* of A's portion. The distance between the buildings on these two portions was 60 feet.

Held that singular successors of B, as owners of their property, had a title to enforce the servitude; that the relative situation of the two properties was in itself sufficient to qualify an interest in B's successors to do so; and that it was not necessary for them to show that any special damage or injury would be done to their property by a proposed contravention of the servitude by successors of A.

On 22nd March 1911 the Society of Proprietors of the Royal Exchange Buildings, Glasgow, Limited, *petitioners*, presented a petition to the Dean of Guild, Glasgow, for authority to make certain alterations and additions on their property situated in Royal Exchange Square, Glasgow. The petition was opposed by Miss Mary Smythe Cotton and Miss Eliza Cotton, *objectors*, as proprietrices of property situated immediately *ex adverso* to the north of the petitioners' property.

The following statement of *facts* is taken from the interlocutor of the Dean of Guild, dated 25th April 1912—". . . The Dean of Guild *finds in fact* (first) that the petitioners are proprietors of the property situated in Royal Exchange Square, Glasgow, bounded on the north by the property of the Royal Bank of Scotland and the property of the objectors the Misses Cotton, on the east by Queen Street, and on the south and west by the property of proprietors called as respondents but not appearing: (Second) That the petitioners ask authority to make certain alterations on and additions to their property . . .: (Third) That the granting of authority is opposed by the objectors the Misses Cotton on the ground that the property of the petitioners is subject to the servitude *non altius tollendi*, under which the petitioners are not entitled to raise their buildings as they are proposing to do without the consent of the objectors, and also on the ground that in respect of the restrictions contained in the titles of the petitioners and objectors the petitioners are not entitled to make the proposed alterations on or additions to their buildings without the consent of the objectors: (Fourth) That in 1827 the properties of the petitioners and the objectors belonged to the Royal Bank of Scotland: (Fifth) That by contract of sale in that year entered into between the Royal Bank of the first part and the predecessors of the petitioners of the second part, the first party thereto undertook to deliver to the second party thereto a valid disposition of the subjects now belonging to the petitioners, and that in the said contract of sale it was provided that for the mutual accommodation of both parties in securing light, air, access, and amenity to their respective properties, the second party thereto should be bound to lay off certain spaces on the north and south boundaries of the subjects to be disponed to remain vacant and unbuilt upon in all time coming for the use, benefit, and advantage of the respective properties, the parties being bound at mutual expense to convert the vacant spaces into a carriageway and pavement, all as therein mentioned, it being declared that the tenement then existing on the said ground and then occupied by the Royal Bank as an office, which tenement and ground formed the subject of sale, should not thereafter be raised to a greater height than it was at that time unless for the sake of a centre cupola or ornament to be approved of by the Royal Bank, and that the side walls and west-end front of any building to be erected on the west of the then existing tenement should not exceed 40 feet in height, excepting a space in the centre thereof not exceeding 35 feet in width, which might be raised to the height of the then existing bank, unless it should be deemed advisable to carry the new erections 2 feet higher for the sake of architectural effect or ornament, and unless the same should be first approved of by the Royal Bank; and it was also, by the said contract of sale, declared that in like manner the buildings to be erected by the said Royal Bank or their successors upon their property fronting, *inter alia*, the north of the area which formed the subject of sale should form a handsome range of buildings not exceeding three storeys in height above the sunk storey, unless where it might be deemed expedient and proper to carry the said buildings higher for ornament or architectural effect, all as more fully set forth in the said contract of sale: (Sixth) That by the said contract of sale