

Thursday, October 15.

DUNLOP v. SMITH AND OTHERS.

Property — Ground-Annual — Condition — Dean of Guild. A petition in the Dean of Guild Court for warrant to erect certain buildings, *dismissed*, in respect that the buildings proposed to be erected were contrary to the provisions in the contract of ground-annual comprehending the land forming the site of the proposed buildings.

Thomas Dunlop, provision merchant in Glasgow, presented a petition in the Dean of Guild Court in Glasgow, setting forth that he was about to proceed with the erection of certain buildings on ground belonging to him at the corner of New City Road and St George's Road, and craving authority in the usual way.

The petition was opposed by the proprietors of an adjoining feu, on the ground that the buildings proposed to be erected were contrary to the restrictions imposed on the ground.

After various procedure, M'Hardy's Trustees, feudal proprietors of the ground, having sisted themselves as parties to the petition, the Dean of Guild, on 31st January 1868, pronounced an interlocutor finding that "by the contract of ground-annual between James M'Hardy and Thomas Kennedy in 1838, No. 7-1 of process, Mr M'Hardy disposed to Thomas Kennedy that plot or area of ground, containing 3813, 31-36 square yards, bounded on the south-east-by-east by the central line of St George's Road, on the south-west-by-south by the central line of Woodside Street, and on the east-north-east by the central line of the New City Road, all as more particularly specified in the said contract of ground-annual, and conform to a plan subscribed by the contracting parties as relative thereto: Find it admitted that the said James M'Hardy was, at the date of granting said contract of ground-annual, the proprietor of the four pieces of ground specifically therein described, of which the plot or area disposed to Thomas Kennedy in the said contract is said to be a part, and that said four pieces of ground are all parts of the lands of Southpark: Find, that by said contract of ground-annual it is 'provided and declared that the houses to be erected upon that compartment of the lands of Southpark, of which the plot hereby disposed is part, fronting Woodside Street and New City Road respectively, shall be erected and formed in strict conformity to the ground-plan of the said lands of Southpark, and to the elevation plans of the said compartment thereof,' specifically referred to in the said contract; and it is provided, 'that the corner tenements towards St George's Road shall be each ornamented with a projected portico,' and that 'the fronts towards St George's Road shall be thirty feet long,' and the fronts of all the other tenements shall be of the dimensions and architectural design specified and contained in the said contract; and it is further declared, 'that the said Thomas Kennedy and his forefathers, and the said Robert Knox and his heirs and successors, and the said first contracting party hereto (James M'Hardy), and their successors in the remaining portions of the said compartment, shall be bound to adhere to the said ground and elevation plans, and to the said provisions, restrictions, and others, and the same are hereby created real liens, burdens, and servitudes on all and each of the said pieces of ground belonging to the said Thomas Kennedy and

Robert Knox, and the remaining parts of the said compartment of the said lands vested in the said James M'Hardy;' the said contract also conferring a right of action upon the said Thomas Kennedy and each of the other proprietors against each other 'to enforce implement and observance of the said plans, and of the conditions, provisions, and others' contained in the said contract: Find that the said provisions and restrictions still subsist and affect the lands on which, by said contract of ground-annual, they are made real liens and burdens: And it being admitted that the defenders are the proprietors of a portion of the foresaid 3813, 31-36 square yards of ground, that they are therefore entitled to sue for implement and observance of the foresaid provisions contained in the said contract of ground-annual: Find that the parties have failed to produce either the ground-plan of the lands of Southpark, or elevation plans referred to in the said contract of ground-annual, or authenticated copies thereof, but that the elevation of the buildings to be erected on the compartment of the lands of Southpark, referred to in the contract of ground-annual, is sufficiently and distinctly instructed by the description or specification thereof given in the contract itself: Find, that whether the expression, 'compartment of the lands of Southpark,' was meant to include the whole, or less or more than the four pieces of ground, of which the plot disposed to Kennedy is described as part—there is evidence in the contract to show that it included the plot of ground for which the lining is now sought, as the deed expressly comprehends tenements 'fronting New City Road,' which means fronting it either on the north or south, and provides for the erection of more than one corner tenement fronting St George's Road, and stipulates for the erection of only one by Kennedy: Find also that the plot of ground for which lining is now sought is a corner steading fronting St George's Road and New City Road, and therefore that the buildings proposed to be erected thereon are subject to the provisions and restrictions affecting such corner tenements contained in the contract of ground-annual: Find that the buildings proposed to be erected by the pursuer, conform to the plans produced by him, and founded on in his original petition for lining, are not in accordance with these provisions: Therefore recal the interlocutor of the 13th September last; and refuse the lining in the terms sought; and dismiss the petition at the pursuer's instance; but reserve to the pursuer to present another petition for lining, at his instance, of all competent erections, and decern:"

The petitioner advocated.

The Lord Ordinary (JERVISWOODE) refused the note of advocacy.

The petitioner reclaimed.

CLARK and SHAND for reclaimer.

YOUNG and WATSON for respondents.

The Court adhered.

Agents for Reclaimer—J. & R. D. Ross, W.S.

Agent for Respondents—James Webster, S.S.C.

Saturday, October 17.

MANN v. TURNER.

Bankrupt—Bankruptcy Act 1856, section 103—Discharge—Hamilton's Estate Act 1866—Husband and Wife—Succession reverting to Bankrupt—Reduction—Agreement—Compromise. A bank-