

they are most expedient, affording as they do both light and air to the house. That point, therefore, introduces no element of difficulty.

I think we should remit to the Dean of Guild, with instructions to grant the prayer of the petition if no other objections are stated to it.

LORD DEAS—I have no doubt as to the title of the superior to interfere in a case of this kind; but the question regards the merits of the application, which is to prevent the portion of this building above the square storeys from being laid out in the way shown on the plans. The question is, whether the house, which is in the course of erection, consists of not "more than three nor less than two square storeys?" It is not said that any objection lies against the square portion of this building. The square portion stops at the height of the walls, and it is not said they are raised higher than they ought to be. Above the walls there must be a roof of some sort, and again it is not said that this is not to be a sloping roof, nor that the roof shall not be made with the slope of a right angle at the rigging, which is the best form both for throwing off water and for endurance. It is not the most ordinary way for roofs to be constructed, for it is more expensive than a roof with a less angle, and therefore builders do not often construct them so where a less slope will do, but no one objects to the slope being at a right angle. There stand, then, three square storeys covered by an unobjectionable roof, and the question is, what the proprietor may do under this roof? That he may leave it as it is, with the inside space vacant, is undoubted; the question is, whether he may make apartments within it? If it was so meant, it is argued it should have been so said in the contract. Access to the square storeys and to the roof above is got by an outside stair built on at the back of the house, by which separate access is obtained to each flat. No objection is taken to that; the whole objection is to the attic above, and the Dean of Guild says—"The prohibition in the petitioner's title does not seem to have been meant to preserve the amenity of the locality or the ornamentation of the buildings to be erected, but would rather appear to have been inserted on sanitary grounds, and to prevent overcrowding in Bruce Street, which is a comparatively narrow street;" and he goes on to say that the addition of attics to the houses there would be unfavourable to health. But if there be no objection under the title, then objection on sanitary grounds is purely one, not to the kind of building, but to its occupation in this way—it is not to structure but to mode of occupancy. Now, the general rule is that the right of property implies the right to use the property in the way most beneficial to the subject, so long as the proprietor does not go against any express condition of the title. The whole objection here is to the mode of occupancy, and nothing else.

As to the storm windows, restrictions against them are very common in this city on the ground of amenity, but there are none such in this contract; and supposing the space in the roof to be used for dwelling purposes, I see nothing to prevent the adoption of storm windows. The whole objection is that the feuar is utilising part of what belongs to him in a particular way, against which there is no restriction in his title at all.

I agree in the opinion pronounced by your Lordship.

LORD MURE concurred.

LORD SHAND—I have come to the same conclusion.

I agree with Lord Deas in thinking that the Dean of Guild is entitled to deal with the question here raised. Questions of this kind have more commonly arisen between neighbouring feuars, and the Dean of Guild has decided these. That being so, I think there is no material distinction between such cases and one like the present between superior and vassal. The question is, whether there is an interest in the superior or in the feuar to give him jurisdiction?

In questions of this kind, where the superior gives out the property and retains merely a money payment, the conditions of the contract ought to be strictly construed. The purchaser who gets the subject, gets it for his own, except so far as restrictions are imposed by his title. On the construction of this contract I agree with your Lordships. Even if the word "square" had been absent, I do not think there would have been any difficulty. It is simply the case of a three-storied building in which the proprietor utilises the attic within a roof of ordinary construction. The Dean of Guild in his note indicates that buildings of this height would be objectionable from a sanitary point of view if continued through this street. The Master of Works, however, was called, and no such objection was stated by him. If on further consideration objections shall arise on public grounds in the same view, the matter will be quite open under this decision; but in a question between superior and vassal under this deed, I am of opinion that the restriction is not such as to prohibit the feuar from doing what he proposes to do.

The Court sustained the appeal and remitted to the Dean of Guild to grant the prayer of the petition.

Counsel for Petitioner (Appellant)—Kinnear—Pearson. Agents—Mason & Smith, S.S.C.

Counsel for Objector (Respondent)—Asher—Mackintosh. Agents—Carment, Wedderburn, & Watson, W.S.

Wednesday, March 10.

SECOND DIVISION.

SPECIAL CASE—THE PERTHSHIRE COUNTY ROAD TRUSTEES AND OTHERS *v.* THE COMMITTEE FOR THE PERTH DISTRICT, *ETC.*

Roads and Bridges Act 1878 (41 and 42 Vict. c. 51)—Disposal of Funds formerly specially applied under Private Act—Repeal of Private Acts.

The Roads and Bridges (Scotland) Act 1878 (sec. 4) abolished all Local Acts then in force for regulating and maintaining the turnpike or statute-labour roads in the counties of Scotland, and provided (sec. 11)

that from the date when it came into operation, which it had done in Perthshire, "the management and maintenance of the highways and bridges should be vested in and incumbent on the county road trustees." Sec. 32 provided that "the whole turnpike roads, statute-labour roads, highways, and bridges within each county respectively should form one general trust, . . . and all the roads, bridges, . . . rights, interests, moneys, property, and effects, rights of action, claims and demands, powers, immunities, and privileges whatever, except as thereafter provided, vested in or belonging to the trustees of any such turnpike roads . . . and bridges within the county, shall be by virtue of this Act transferred to and vested in the county road trustees appointed under this Act, who, subject to the qualifications hereinafter expressed, shall be liable in all the debts, liabilities, claims, and demands in which the trustees of such turnpike roads and bridges are or were liable under any general or Local Act then in force, except in so far as such debts, liabilities, claims, and demands may under the provisions of this Act be discharged, reduced, or extinguished."

The Act further provided (sec. 52) that the management and maintenance of the highways and bridges should be vested in and incumbent on the county road trustees, and that the amount required for the maintenance, &c., of the highways (including bridges) "within each district respectively, or, in the option of the trustees, within the several parishes constituting such district, . . . shall be levied by the trustees by an assessment to be imposed at a uniform rate on all lands and heritages within such district, or, in the option of the trustees, within each of the parishes constituting such district as aforesaid."

Sec. 108 provided that persons acting as trustees under the Local Acts in force should pay and deliver over to the county road trustees any "moneys collected by virtue of such Acts, or any books, deeds, papers," &c., belonging to the turnpike or statute-labour trusts.

Sec. 119 provided that "All moneys received by the trustees on account of assessments or penalties, or otherwise, for the application of which no special provision is made in this Act, shall be applied as follows:—(1) In payment of the salaries and allowances of officers and servants, and the general expenses of management of the trust; (2) In payment of the expense of maintaining and repairing the several highways; (3) In payment of interest on the debts affecting the highways, valued and allocated as hereinbefore provided, and thereafter towards payment of the principal of such debts."

Held (dub. Lord Justice-Clerk Moncreiff), upon a construction of the Act in question, that where funds which had been accumulated from pontages under an old Local Act for the purpose of maintaining a bridge across the river Earn, had, in terms of the 108th section of the Act cited above, been handed over to the County Road Trustees, they were

entitled to apply them to the general purposes of the road trust, and were not bound to set them apart for the maintenance and upholding of the bridge in question.

Observed that by the provisions contained in the 119th section of the Act, relating to the disposal of the assessments by the trustees, it was not intended that there should be any priority or order of application.

Counsel for First Parties—Kinnear—Dundas.
Agents—Dundas & Wilson, C.S.

Counsel for Second Parties—Asher—A. G. Murray. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for Third Parties—Mackay. Agents—Thomson, Dickson, & Shaw, W.S.

Tuesday, March 16.

FIRST DIVISION.

[Sheriff of Perthshire.

CHRISTIE v. HUNTER.

Proof — Parole and Written — Roup — Where Auctioneer reads Conditions from a Paper Signed by Exposer only, and is alleged to have added other Conditions not on the Paper.

A written agreement for the sale of turnips by public roup was signed by the seller, and read by the auctioneer previous to the roup. *Held* that this agreement did not constitute a written contract to the effect of excluding parole proof that the auctioneer on behalf of the seller had added other obligations than those contained in the agreement; but *observed* that it would not readily be assumed that such other obligations had been so undertaken.

On 10th October 1877 Charles Christie, a fruit and potato merchant in Dundee, and the pursuer in this action, purchased from Patrick Hunter, the defender, at a public sale upon his farm of Ardgath, Perthshire, a quantity of turnips for £135, 3s. 11d. The pursuer averred that "it was a condition of said sale and purchase, verbally stated by the auctioneer at the time of the sale, and shortly after the sale had commenced, and evidently in consequence of the sale being likely to prove a flat one, that whatever turnips were wished to be pitted should be so pitted on the ground by the defender free of expense, and that the defender would drive, free of expense, any turnips purchased to the station, or any similar distance, provided the tops or shaws were left with the defender; and relying upon these conditions, the pursuer was induced to bid more for the turnips than he otherwise would have done." The turnips were not pitted, and in consequence of this neglect they were, as the pursuer averred, so damaged by frost as to bring when sold £70 less than the price paid for them. After certain correspondence this action was brought for recovery of that sum. The defender averred that "the sole conditions on which the sale took place are embraced in a written agreement of sale signed by the pursuer, dated the said 10th day of October 1877. This document was read to the public