Friday, November 29.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

VON MEHREN & COMPANY *v.* EDINBURGH ROPERIE AND SAILCLOTH COMPANY, LIMITED.

Contract — Construction — Extrinsic Evidence — Ambiguous Term — "Requirements"—Circumstances and Actings of Parties—Antecedent Course of Dealing.

A firm of rope manufacturers agreed to supply a firm of brokers and merchants with all their "requirements" of rope for one year at a certain price. The manufacturers refused to implement certain orders for rope given to them by the merchants. The price of rope having risen after the date of the contract, the merchants sued the manufacturers for damages for breach of contract.

Held (1) that the term "requirements" was an ambiguous one, the meaning of which might competently be determined by proof *prout de jure* of the circumstances of the parties, the character of their business, and the previous course of dealing between them; and (2) that as the proof showed that the contract applied only to what was required by the pursuers in a particular branch of trade for which the orders in question were not required, the defenders were entitled to absolvitor.

This was an action at the instance of J. Von Mehren & Company, brokers and merchants, Leith, against the Edinburgh Roperie and Sailcloth Company, Leith, in which the pursuers concluded for payment of two sums of £434 and £1500 as damages for breach of contract.

The contract (damages for the alleged breach of which were claimed in this action) was contained in the following letters which passed between the pursuers and defenders:—"Regarding our Mr Frew's interview with you to-day, we agree to take all our requirements from you of the different goods mentioned below at prices and terms stipulated for one year from 28th January this year to the 28th January 1900. The fishing lines to be at last year's cut rates, less 10 per cent. The canvas to be at last year's rates less 11¾ per cent. And the Manila rope to be at 31s. per cwt., less 11¾ per cent. All the above-mentioned goods to be of the same quality as supplied to us previously. Kindly confirm this contract and oblige."

"We are in receipt of your favour of yesterday's date, and hereby confirm contract to supply from the 28th curt. to the 28th January 1900 all your requirements in Manila hemp rope at 31s. per cwt.; sailcloth at the rates we charged you last year; Italian hemp lines at the rates we charged you last year. Discount rates to be—On Manila, 11¾ per cent.; on sailcloth, 11¾ per cent.; on lines, 10 per cent.; two months' current account; the above goods delivered free, Leith. You may be assured that our endeavour will be by prompt and careful attention to your commands to give you thorough satisfaction in the fulfilment of this contract."

The pursuers averred that in October 1899 they intimated to the defenders that they would require 30 tons more of Manila rope, and that the defenders accepted the intimation; that on 15th December 1899 they ordered under the contract a quantity of 11 tons 1 cwt. 1 qr. 2 lbs. of Manila rope, and that the defenders refused to supply the same, maintaining that they were not bound to do so under their contract, and stating that they would not supply any further quantity than 2 tons at contract rates during the contract year. The pursuers averred further that the price of Manila rope had advanced greatly during the period of the contract; that as they required the rope for the purposes of their business they agreed to accept the quantity thus ordered by them from the defenders at the market rate of the day, reserving their claim to repayment of the excess over the contract price, which amounted to the sum first concluded for, and that "the said goods were necessary for the pursuers' requirements for the year from 28th January 1899 to 28th January 1900."

The pursuers further averred that owing to the refusal of the defenders to supply any further quantity at the nett price of £27, 7s. 2d. per ton in terms of the contract they had suffered serious loss; that the market price of Manila rope fibre for the period during which the defenders refused to supply any further quantity under the contract was not less than £66 per ton; that they purchased the rope for re-sale, as was well known to the defenders; and that they were unable, owing to the defenders' refusal, to execute orders for rope which they had received, and in particular an order for 15 tons received on 10th January 1900, which they passed on to the defenders, and which they refused to execute. They also stated that their trade was not confined to the Faroe Islands and Iceland, as alleged by the defenders. They assessed the damages thus suffered by them at the amount set out in the second conclusion.

The defenders averred—"(Stat. 2) In or about the beginning of 1893 the pursuers entered into negotiations with the defenders for the supply by the defenders of their requirements in these articles [fishing lines, sailcloth, and Manila rope] for their trade with Faroe and Iceland, and the defenders entered into a contract with them for the supply of their requirements in fishing lines for the said trade at fixed certain rates. The rates were based upon those allowed to the defenders' own Iceland agent, and the pursuers were prohibited from selling below a certain price to preclude them underselling the said agent. The contract was at first confined to fishing lines, but was subsequently extended to embrace the pursuers' requirements for said trade in sailcloth and

Manila rope. It has been periodically renewed with certain variations in prices. Under these contracts the defenders have continued over a period of years to supply the pursuers with their requirements in these articles for the Faroe and Iceland trade. The annual average amount of Manila rope ordered and supplied under these contracts up to the end of the year 1898 was 2 tons 9 cwt., and did not in any year prior to 1898 exceed 1 ton 6 cwt." They further averred that the contract was confined to the pursuers' requirements for the Faroe and Iceland trade; that through the whole course of dealings between the parties they had dealt with each other with reference to the requirements of that trade only; that the expressions in the contract letters were understood by both parties in that sense; and that the rope in respect of which the present action was raised was not required by the pursuers for that trade. They accordingly maintained that it was therefore outwith the contract.

The Lord Ordinary (LOW) on 5th July 1900 allowed a proof before answer.

Opinion.—"It has been very properly admitted in this case that the words 'all your requirements' cannot be read as meaning any amount you may ask to be supplied, and that 'requirements' must necessarily refer to a certain standard . . . I have no doubt that the pursuers' averment is perfectly relevant. They say that they are merchants, and that their 'requirements' were meant to supply any customers who in the course of trade might ask for rope, and that they have been unable to carry out at least one order of that kind. But, then, what is the defenders' case? The defenders aver, as I read it, that the trade which the pursuers carry on is a trade with the Faroe Islands and Iceland. On the one hand they import from these countries certain produce, and on the other hand export fishing lines, &c., and they say that the standard which the parties had in view in making the contract was that trade. Now, suppose it is proved to be the fact that the only trade carried on has been a trade with the Faroe Islands and Iceland, and that it was in view of that fact that this contract was entered into, it seems to me that that was a matter of fact to be taken into consideration. In a contract either side is always entitled to show the circumstances with reference to which the contract is made. I am not going to express any opinion as to the competency of this class of proof or that class of proof. I think the pursuers have stated a relevant case in their condescendence, and I think the defenders have also stated a relevant case; so it seems to me that the proper course is to allow proof before answer."

The import of the proof and of the correspondence bearing upon the question appears fully in the opinion of the Lord President *infra*.

On 23rd February 1901 the Lord Ordinary (KYLLACHY) decerned against the defenders for payment of the sum of £953, 15s. 10d.

Opinion.—"In this case the pursuers are a firm who describe themselves, and are described in the Leith Directory, as brokers and merchants in Leith. The defenders, the Edinburgh Roperie Company, are manufacturers on a large scale of ropes, cordage, sailcloth, and similar articles. The pursuers claim damages for an alleged breach by the defenders of a certain contract contained in letters dated 13th and 14th January 1899, whereby the pursuers agreed to take from the defenders, and the defenders agreed to supply the pursuers, with 'all their requirements' of the different goods mentioned, at the prices and terms stipulated, for one year from 28th January 1899.

"Among other goods, the contract applied to Manila rope, of which the price was to be 31s. per cwt., less a certain discount; and the alleged breach consists in this, that the price of Manila rope having greatly risen towards the close of the year, the defenders refused to execute—or at least to execute at the contract price—certain orders of the pursuers, and in particular two orders, viz., one for 11 tons odds Manila rope sent on 15th December 1899, and another for 15 tons Manila rope which the pursuers received and passed on to the defenders on 10th January 1900.

"The ground of the defenders' refusal was that the orders in question were outwith the contract, in respect that the rope ordered was not required for the pursuers' Faroe and Iceland trade, to which trade the contract was (as the defenders say) confined. In point of fact, the orders were given in the one case to meet a sale which the pursuers had made to Mr Dines Petersen, Iceland merchant, Copenhagen, and in the other to meet an order (or firm offer) which the pursuers had received from Mr Zollner, merchant in Newcastle, who, it is said, required the rope partly for his Iceland trade and partly for his Iceland trawlers. The defenders' view was that in these circumstances neither order was in connection with the pursuers' own trade —that is, their own direct trade—with Iceland and Faroe; and accordingly they refused implement, taking up the position (which they still maintain) that the contract was limited to the supply of the pursuers' requirements for their direct trade with Iceland and Faroe.

"The question in controversy is thus plainly a question on the construction of the contract—that is to say, the contract contained in the two letters to which I have referred. But the defenders having made certain averments as to the nature of the pursuers' business and the course of dealing between the parties, under a series of previous contracts said to be expressed in the same terms, a proof before answer was allowed in the Procedure Roll. The proof has now been taken, and I have to construe the contract with such help, if any, as may be legitimately obtained from the proof.

"Taking the contract by itself, and considering simply its terms as used between parties who were respectively manufacturers and merchants, I do not, I own, think that there is much doubt as to its

scope. Two points at least are I think fairly clear.

"In the first place, the contract obligations were mutual and correlative. On the one hand, the defenders obtained the right of supplying the pursuers' whole requirements. On the other hand, the pursuers obtained the right of having their whole requirements supplied by the defenders. The requirements contemplated were therefore the same with respect to the rights of both parties. And, accordingly, they could not, I apprehend, be measured simply by the pursuers' *demands*. The pursuers could not escape from what I may call their 'thirl' to the defenders merely by demanding nothing. On the other hand, the defenders could not be bound to supply the pursuers' demands without reference to their needs. In short, the term 'requirements,' as used in the contract, did not simply mean the pursuers' *demands*.

"In the next place, it has to be observed that the pursuers were not shipowners or shipbuilders, or other persons who used ropes and similar articles. They were not, so to speak, consumers, but brokers and merchants, whose professed business was to buy and sell. This is common ground. Accordingly, it seems plain that the contract had reference to the pursuers' *sales*. There is no suggestion that it covered, *e.g.*, accumulations of stock. At all events, for present purposes, that may be assumed; and therefore it may be taken that the measure of the pursuers' requirements, in the sense of the contract, had reference to their sales, such sales, of course, including not only actual sales, but orders or firm offers which they in ordinary course received.

"So far I am disposed to think that the parties are not really at issue. And I may observe also that I do not understand the defenders to suggest, with respect to the pursuers' sales, a limitation to what may be called retail sales—sales, that is to say, to actual users as distinguished from dealers, such as ship chandlers or other middlemen. Questions of that kind may, of course, be figured, but I think I am right in saying that they are not here raised. They are certainly not raised upon record, the defenders contending only for one definite limitation, viz., to sales made by the pursuers in Iceland and the Faroe Islands. That is, I conceive, the issue—whether there is within this contract, or can be properly read into it, a limitation to sales made by the pursuers to customers in Iceland and Faroe?

"Now it must be acknowledged that the onus here rests upon the defenders, and is somewhat difficult. *Prima facie*, there is nothing in the language of the contract to support the limitations suggested. Nor can it be deduced from the pursuers' professed trade. They (the pursuers) do not trade exclusively with Iceland and Faroe. They say (and there is no contrary evidence) that they deal with Denmark, Spain, Ireland, Belgium, and Holland; and there is, of course, no reason why they should not extend their business as occasion offers. The whole case therefore depends on the alleged previous course of dealing; and no doubt facts might be figured which might make an appeal to that course of dealing useful and also legitimate. For instance, if under previous annual contracts expressed in the same terms, the defenders had declined to supply goods except for the Iceland and Faroe trade, and the pursuers had acquiesced in that declinature, that circumstance might go a long way to construe, for all future dealings, the sense in which the term 'requirements' was used by the parties. But although an attempt was made to prove that in one instance something of this kind occurred, it cannot I think be said that the proof succeeded. And accordingly the defenders' case came in the end really to rest on this—that there having been a series of contracts from 1893 downwards, couched in language not dissimilar to the present, the pursuers never in fact asked for goods except for export to Iceland or Faroe, or for use in ships trading to these places. That is certainly proved, and is indeed not disputed. But the question is whether, because the pursuers' requirements have been *de facto* so limited under previous contracts, that made it an implied term of the contract of 1899 that they (the pursuers) should in no circumstances extend their business or enlarge its field.

"I have given every attention to the defenders' argument on this point. But I have not, I must say, been able to accept the construction for which they contend. It may be that, on the pursuers' construction, the contract put, or might have put, the defenders in an awkward position; and put, or might have put, the pursuers in a position of undue advantage. But it is not, I am afraid, legitimate to strain the construction of a contract in order to make it conform to what one may conjecture the parties meant. Besides, I am not convinced that this contract was after all so improvident as might at first appear. It was, as I have said, limited to the pursuers' *bona fide* sales; and although upon a sharp rise in the market, such as here occurred, it gave a considerable opportunity to the pursuers, yet the latitude of that opportunity was by no means unlimited. Buyers, as a rule, know that a sharp rise may be shortly followed by a sharp fall, and are not therefore likely to buy much beyond their immediate requirements, even if tempted by a considerable discount off the existing price. This was, in fact, illustrated by what here occurred. The pursuers did not after all succeed in making a great number of firm transactions, or obtaining any great number of firm offers. There are only two which, being of that character, enter into the case, and in respect of which the pursuers' counsel, as I understood, ask damages. They do, however, ask damages in respect of those two transactions—damages measured by the loss of profit which the pursuers have suffered. That profit, it appears, amounts to £953, 15s. 10d., and what I have to decide is whether the pursuers are entitled to that sum. On the whole, I am of opinion that they are; and

I propose accordingly so to find, and also to find the pursuers entitled to expenses."

The defenders reclaimed, and argued—The term "all your requirements" was an ambiguous one, which might have more than one meaning in a mercantile contract, and it was accordingly competent to prove the circumstances surrounding the parties, the character of their business, and their previous course of dealing in order to interpret the term—*Bank of New Zealand* v. *Simpson*, App. Cas. [1900], 182; *Smith* v. *Thompson*, 1849, 8 C.B. 44; *Macdonald* v. *Longbottom*, 1859, 1 E. & E. 977; Addison on Contracts (9th ed.) 44. "Requirements" had been held not to be equivalent to "demands," but to what was needed for the purposes of an ordinary trade—*North British Oil and Candle Company* v. *Swann*, May 27, 1868, 6 M. 835, 5 S.L.R. 541. See also *Pillans* v. *Reid & Company*, December 17, 1889, 17 R. 259, 27 S.L.R. 211. If that were so, the evidence clearly showed that the pursuers' ordinary business in Manila rope was confined to the Faroe and Iceland trade, and that it alone was in the minds of the parties in making this contract. It was equally clear that the contracts which the pursuers had made and called upon the defenders to execute for them did not fall within their ordinary business requirements in this sense.

Argued for the pursuers—The contract contained no restriction, and there was nothing in it to support the limitations suggested. Was it legitimate to go outside it to show that the defenders did not intend to satisfy all the pursuers' requirements? It was legitimate to explain ambiguities, but here there were none. The pursuers did not ask the Court to construe requirements as "demands" in the widest sense of the word, but as demands for trade purposes. In the cases of *Macdonald* and the *Bank of New Zealand*, cited by the defenders, all that was done was to admit evidence to show what the thing sold actually was, the words of the contract being ambiguous, but that was not the case here. Even if on the analogy of the case of *North British Oil and Candle Company* v. *Swann*, *supra*, the word "requirements" was to be limited to "requirements for the purpose of their business as general traders," the judgment of the Lord Ordinary was still sound. If the result of the proof was to show that the rope ordered under former contracts was in fact ordered for the purposes of the pursuers' Faroe and Iceland trade, that in no way proved that their ordinary business was limited to that trade. There was nothing to import such a limitation into any subsequent contract which did not expressly contain it. The transaction was merely one of the pursuers' ordinary business transactions, and the defenders took their chance of a rise or fall in the market price.

At advising—

LORD PRESIDENT—This is an action of damages at the instance of J. Von Mehren & Company, merchants in Leith, against the Edinburgh Roperie and Sailcloth Company, Limited, in respect of an alleged breach by that company of a contract for the purchase and sale of certain goods entered into between the pursuers and them by two letters dated 13th and 14th January 1899. The former of these letters is from the pursuers to the defenders, and it begins—"Regarding our Mr Frew's interview with you to-day, we agree to take all our requirements from you of the different goods mentioned below, at prices and terms stipulated, for one year from 28th January this year to the 28th January 1900." The goods mentioned are fishing lines, canvas, and Manila rope, of which the pursuers are manufacturers, and the rates and discounts at which they were to be supplied are mentioned in the letter, which then continues—"All the above-mentioned goods to be of the same quality as supplied to us previously." The letter of 14th January 1899 is from the defenders to the pursuers, and it commences—"We are in receipt of your favour of yesterday, and hereby confirm contract to supply from the 28th current to the 28th January 1900 all your requirements in" Manila hemp rope, sailcloth, and Italian hemp lines, the prices and discounts for which are mentioned; and the letter further bears, "The above goods delivered free, Leith."

The question which we have to decide is, what is the proper construction to be placed upon the word "requirements" as used in these letters. The word is ambiguous, and, in particular, it may mean either all that the purchasers may demand, or all that they need in the prosecution of their business or some department of it. The pursuers in their argument before us did not go the length of contending that the words mean all that they might demand for any purpose, *e.g.*, for the purpose of storing to meet a possible rise in the market, although the pursuer Mr Von Mehren said in his evidence, "I thought I was entitled to have as much as I demanded," but they maintained that the words comprehend all that they could sell in any part of the world, or in any class of business, whether carried on by them previously or not, with or without solicitation, either to wholesale merchants like themselves or to middlemen or retail dealers, or to shipbuilders or shipowners who would use the rope or sailcloth, or fishermen who would use the lines. The defenders, on the other hand, allege that the only trade in which they knew the pursuers to be engaged, or in which they believe them to have been engaged, at the date of the contract or at any other time, was the importation to this country of the products of the Faroe Islands and Iceland, and the exportation to these islands of, *inter alia*, fishing lines, sailcloth, and Manila rope.

The contract in question was entered into in continuation of a course of dealing which had existed between the parties for about six years previously. In or about the beginning of 1893 the pursuers had entered into negotiations with the defenders for the supply by the defenders to them of what they might require in fishing lines for their trade with Iceland, and the defenders, in their letter confirming the

agreement as to fishing lines, expressed the hope that the pursuers would give them at least a share of what they might require in ropes and canvas. The subsequent agreements included all the three articles. It appears that between 1893 and the date of the contract in question, at least five contracts were entered into between the pursuers and the defenders for a supply of the three articles mentioned. The defenders allege that throughout their dealings with the pursuers the words "all your requirements" were intended and understood by both parties to mean, and did mean, the pursuers' requirements for the Faroe and Iceland trade, and for no other trade or purpose. It seems to be clear from the letters which passed between the parties—at all events down to the letters upon which the present question arises—that the Faroe and Iceland trade was the only one which was *in intuitu* of either the pursuers or the defenders. The goods sold by the defenders to the pursuers were sent in Iceland steamers, with port marks upon them, except small quantities, which were taken in Faroe and Iceland smacks.

The Lord Ordinary (LOW) allowed a proof, with the view of ascertaining what the parties meant by the term "requirements," saying, *inter alia*, in the note appended to his interlocutor of 5th July 1900:—"Suppose it is proved to be the fact that the only trade carried on has been a trade with the Faroe Islands and Iceland, and that it was in view of that fact that this contract was entered into, it seems to me that that was a matter of fact to be taken into consideration. In a contract either side is always entitled to show the circumstances with reference to which the contract is made." It does not appear to me to be doubtful that where, as in the present case, a term which might have two or more meanings is used in a mercantile contract, it is competent to prove the circumstances surrounding the parties, the character of their business, and the previous course of dealing (if any) between them, for the purpose of determining the true construction of the language used.

I think that the result of the proof is to establish that all the supplies of fishing lines, sailcloth, and Manila rope, furnished by the defenders to the pursuers under the five contracts which immediately preceded that under which the present question arises, were exclusively for the Faroe Islands and Iceland. It appears to me that it is also proved that these supplies were obtained by the pursuers for the purpose of meeting the requirements of retail dealers in the Faroe Islands or Iceland, or the owners of vessels or boats in which the articles supplied were actually used. None of the supplies were for wholesale merchants of the same class as the pursuers, or for supplying dealers or customers in any other places than the Faroe Islands or Iceland—in other words, the trade carried on between them from 1893 was exclusively a Faroe and Iceland trade. The quantities of the different articles were not specified in any of the contracts, apparently because the trade with the Faroe Islands and Iceland was, in the knowledge of both parties, of a comparatively small and manageable volume.

It appears that in consequence of the war with Spain the price of Manila rope, which under the contract of January 1899 between the pursuers and the defenders was £27, 7s. 2d. per ton net, had in November 1899 risen to £72 per ton, and it seems to have occurred to the pursuers that they might take advantage of this rise to extend their business in Manila rope to wholesale dealings on the continent of Europe and in England. They on 15th November 1899 wrote to Dines Petersen, Copenhagen, stating that he would no doubt be aware that Manila had risen considerably in value, and that the Edinburgh Roperie Company, who were considered one of the best, if not the best, manufacturers of ropes in this country, had risen their price to £70 per ton, but that they made a contract with them some nine months previously, whereby they were able now to undersell everybody, and were willing to give him a share in this business, if he would be able within a month from the 27th curt. to place an order for from 15 to 20 tons, adding that they would then invoice same to him at £45 per ton net cash. To this Mr Petersen replied on 20th November by a letter, in which he said—"Thanks for offers of Manila ropes. The Iceland merchants are difficult to get to buy on this time of the year. I will try and inform you." From this it appears that the only place in which he thought he might be able to find a market for such ropes was Iceland, which would have been a trade in competition with that already carried on by the pursuers and the defenders with that island. To this letter the pursuers replied on 23rd November by a letter, in which they said—"With reference to the Manila rope we are offering you, it is not so much the Iceland merchants we are to depend upon to do business with at this time of the year, as their orders are comparatively small, but we think that you should call upon the wholesale men in the trade in Denmark, and a good business should be then done, as the price we are quoting you is £25 per ton under to-day's price. If you can succeed in getting an order for 15 tons, or at least not less than 10 tons, we may even reduce the price a little, but the order must be within the time stated by us. Kindly take this matter in hand as soon as possible, and oblige." It is plain that this was an attempt to enter upon dealings of a kind wholly different from that which had down to that time existed between the parties, and which had never previously been in the contemplation of either of them. Even if the contract might have authorised the extension of the pursuers' trade, so as to include supplying retail dealers and shipowners or fishermen in the north of Europe, it would not, in my judgment, have warranted sales to wholesale dealers who would be competitors with the defenders in their own line of business. It is also to be observed that if the attempt had succeeded, the trade

might have been of indefinite magnitude, inferring demands upon the defenders for quantities of Manila rope which had never been in the contemplation of either of the parties when the contract was entered into. Although the quantities were not specified in the previous contracts, they were, as I have previously pointed out, defined and limited by the known volume of the Faroe and Iceland trade. Mr Petersen on 7th December 1899 telegraphed to the pursuers that he had sold 15 tons of Manila at £48 per ton, and in a letter to him, dated 11th December 1899, the pursuers said, *inter alia* — "As we now are not in a position to offer more Manila at £45 per ton f.o.b., Leith, and as we should not care to have any trouble with the Edinburgh Roperie and Sailcloth Company, Limited, we shall have to make it a condition that this transaction is kept secret, at all events until it is squared off." This, taken along with the other correspondence, seems to me to show that the pursuers were conscious that they were doing a thing entirely contrary to the good faith of the contract between the defenders and them, and which could not be justified if it came to the knowledge of the defenders.

The second demand for Manila rope which the defenders refused to supply was to meet a request of Louis Zollner, Newcastle-on-Tyne, who on 10th January 1900 had written to the pursuers—"I am informed that you have lately supplied your Faroe customers with Manila ropes at a very low figure, and therefore presume that you have contracted for this article before the big rise took place. For my Iceland trade I require, say, about 15 tons, and if you will accept £62 per ton f.o.b., Leith, net cash, please book the order, and let me know per return of post if prompt delivery can be given, or how long it will take you to make the ropes, and I shall then send you specification. As I last year gave you the benefit for your Faroe trade of my contract for Royal Daylight oil, I expect the same from you in this instance." As Mr Zollner wrote that it was for his Iceland trade that he wished the Manila, he was, like Petersen, making the requirement as a wholesale merchant, and he would have gone into direct competition with the defenders in their own business of supplying the retail dealers and other customers in Faroe and Iceland. The pursuer says in his evidence that he intimated Zollner's order to the defenders; that he did not tell them who he was, but told them that he wanted 15 tons. The defenders, had, however, found out the nature of this demand and refused to supply it.

It appears to me that the demands made by the pursuers for the purpose of supplying Petersen and Zollner were not to meet their "requirements" in the sense of the contract between the defenders and them, and that the defenders were therefore justified in declining to supply the Manila rope for either of these persons.

For these reasons I am of opinion that the Lord Ordinary's interlocutor should be recalled, and that the defenders should be assoilzied from the conclusions of the summons.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

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

Counsel for the Pursuers — Sol.-Gen. (Dickson K.C.) — Cullen. Agents — Beveridge, Sutherland, & Smith, S.S.C.

Counsel for the Defenders—Ure, K.C.—Younger. Agents — Morton, Smart, & Macdonald, W.S.

REGISTRATION APPEAL COURT.

Friday, November 29.

(Before Lord Kinnear, Lord Trayner, and Lord Kincairney.)

GREEN *v.* DONALDSON.

GREEN *v.* STEWART.

Election Law—Lodger Franchise—Declaration Admitted to be Erroneous—Evidence of Value of Lodging Apart from Declaration—Representation of the People (Scotland) Act 1868 (31 *and* 32 *Vict. c.* 48), *sec.* 4 *—Registration Amendment (Scotland) Act* 1885 (48 *and* 49 *Vict. c.* 16), *sec.* 14.

A person who was engaged in the work of a farm claimed to be registered as a lodger in respect of the occupancy of a parlour and bedroom of the annual value of £10 unfurnished in the farmhouse. The claim was admitted to be incorrect in respect that the claimant was occupant of a bedroom only. The Sheriff, having regard to the rent of the farmhouse, the wages paid to the claimant, and similar facts, found that the value unfurnished of the lodging of the claimant was £10, and sustained the claim.

In an appeal, *held* (1) that as there was no declaration as to the yearly value of the bedroom, there was no *prima facie* evidence of its yearly value; and (2) that the rent of the farmhouse and the wages paid to the claimant not being evidence of the yearly value of the bedroom, there was no evidence of the yearly value of the bedroom before the Sheriff, and appeal *sustained.*

The Representation of the People (Scotland) Act 1868 (31 and 32 Vict. c. 48), sec. 4, enacts as follows:—"Every man shall . . . be entitled to be registered as a voter . . . who . . . (2) as a lodger has occupied in the same burgh separately and as sole tenant, for the twelve months preceding the last day of July in any year, lodgings of a clear yearly value, if let unfurnished, of ten pounds or upwards."

This section was extended to counties by the Representation of the People Act 1884 (48 and 49 Vict. c. 3), sec. 7 (5).