in the decree. But in the case of a parent the liability continues as long as the child remains in the school, and accordingly section 40 provides for a prospective decree. In fact, the provisions of sections 39 and 40 have no application whatever to the case dealt with in section 38. They are outside the region of pauperism altogether. The father is not contemplated as receiving parochial relief at all; he is merely paying for the maintenance of his child at the industrial school. The language of section 40 makes it clear that it has nothing to do with a claim against a parochial board. For instance, would it be possible to "examine into the ability" of a parochial board "to maintain the child?" or would "arrestment of the wages" of a parochial board be feasible? Thus the whole provisions of section 40 show that it has no application to the case of a parochial board, and accordingly, neither under section 38 nor section 40 is there any authority for the Sheriff's order so far as it relates to future outlays, and to this extent the answer to the first question must be in the negative.

It is not, as I understand, disputed that the second question must, in the case of James Monaghan, be answered in the affirmative.

As regards the case of Peter and Francis this was disputed, but I can see no distinction. The position as regards these two children is this:—They were deserted by their father on the 21st May 1901, and were sent to the Industrial School. They were thus destitute and paupers at the time of their admission and were thus "chargeable" upon the Parish of Leith, the parish of their settlement. Accordingly, in their case also the second question must be answered in the affirmative.

The LORD PRESIDENT and LORD KINNEAR concurred.

LORD M'LAREN was absent.

The Court pronounced this interlocutor:—

"In answer to the first question in the case, find that the decree of the Sheriff-Substitute, dated 23rd November 1901, is not warranted by the terms of the Statute 29 and 30 Vict. cap. 118, in so far as the same contains a decerniture for future payments, but is so warranted in so far as it decerns for a principal sum: Answer the second question in the case in the affirmative: Recal the said decree to the extent foresaid, and remit to the Sheriff-Substitute to proceed as shall be just, and to decern against the appellants for payment to the respondent of such further sum, if any, as he may find to be due by them to him: Find no expenses due to or by either party."

Counsel for the Appellants—C. N. Johnston—C. D. Murray. Agents—Snody & Asher, S.S.C.

Counsel for the Respondent—Dundas, K.C.—Blackburn. Agent—George Inglis, S.S.C.

Thursday, March 20.

FIRST DIVISION.

CAMPBELL'S TRUSTEES *v.* CORPORATION OF GLASGOW.

Property—Real Burden—Servitude—Obligation not to Build on Land—Transmission of Obligation against Singular Successors—Agreement Registered in Register of Sasines but not Forming Part of Title—Importation of Real Burden by General Reference in Instrument of Sasine.

By an onerous agreement entered into in 1853 between the proprietors of a piece of ground and the committee of a town council having charge of the public streets, the proprietors, in consideration of the payment of a sum of money, agreed to keep a certain strip of ground unbuilt upon in front of a row of proposed buildings. The committee and their successors were to be "entitled at any time they think proper to throw the said unbuilt-upon ground into and to form and constitute the same part of the public street." It was further declared that the proprietors "conferred and declared a right of servitude on and in favour of the committee as representing the public" over the ground in question. The agreement was recorded in the Register of Sasines.

In 1854 a contract of ground-annual was entered into by the proprietors whereby they disponed the subjects "with and under the whole conditions, provisions, and stipulations specified in" the above minute of agreement. The date of the minute was not stated. The instrument of sasine following upon this contract narrated the clause of reference in the same terms without specifying the date of the agreement or the fact of its having been recorded. The property thereafter passed by several transmissions, which contained no specific reference to the minute of agreement, but which were declared to be subject to the conditions and obligations specified in the instrument of sasine following upon the contract of ground annual.

The corporation who succeeded the committee claimed that they were entitled to take the strip of unbuilt land for widening the street from the singular successors of the original proprietors without making any payment therefor.

Held (1) that the original agreement, although recorded in the Register of Sasines, did not by itself constitute a servitude or real burden upon the property effectual as against singular successors, and (2) that the provisions of the agreement were not validly imported into the titles, so as to bind singular successors, by the reference contained in the instrument of sasine following upon the contract of ground-annual.

In August 1853 a minute of agreement was entered into between the Clerk to the Police and Statute-Labour Committee of the Town Council of Glasgow on behalf of the said Committee, and William Henderson and others, trustees feudally vested in the steadings of ground on which the tenements 18 to 25 Westminster Terrace, Glasgow, were thereafter built.

The agreement, upon the narrative, *inter alia*, that the second parties proposed to erect certain houses on this ground, and that the first party had paid to the second parties the sum of £370, provided as follows:—"In consideration of this payment the said second parties consent and agree and hereby bind and oblige themselves, as trustees foresaid, and their successors, that their said heritable subjects shall be held as lined back, and the same are hereby lined back for building purposes according to a building boundary-line drawn straight westward from the plane of the front wall of the houses in Fitzroy Place, except in so far as applicable to the tenement at the west end and at the north corner of Kelvingrove Road, as after mentioned; and further, that their ground to the north of said new building line shall remain unbuilt upon in all time coming, with power, however, to the said second parties to form an area in front of 10 feet wide, and to form the necessary enclosing walls and railing; and the said Police and Statute-Labour Committee, and their successors in office, shall be enitled, at any time they think proper, to throw the said unbuilt-upon ground into and to form and constitute the same part of the public roadway or street, provided the roadway or street and foot-pavements along the whole of Fitzroy Place shall at the same time be widened to the same extent, the said committee being at the expense of all the necessary operations: Declaring, however, as it is hereby provided and declared, that it shall be optional to the second parties to retain and enclose an area not exceeding 10 feet wide from said new building line along the whole line of their property fronting Sauchiehall Street for ornament or utility; and in the event of their so exercising this option, the street or roadway shall only be formed to the north of that area, and the expense of preserving which area and walls, and railing enclosing the same, shall be paid by the said Police and Statute-Labour Committee or their successors: *Third*, The houses to be erected by the said second parties fronting Sauchiehall Road, as aforesaid, shall not exceed in height three square stories and attics and a half-sunk storey, excepting only the tenement to be erected at the corner of Kelvingrove Road and Sauchiehall Road to extend 90 feet eastward from Kelvingrove Road, which may be erected one storey higher, and with a projecting break not exceeding 2 feet; and the said William Henderson, Robert Towers, and William Towers, as trustees foresaid, on the foresaid terms and conditions, hereby limit and restrict their right of property in the heritable subjects above described accordingly, and have conferred and hereby confer and declare a right of servitude on and in favour of the said Police and Statute-Labour Committee, and their foresaids, as representing the public, to and over that part of the foresaid heritable subjects to the north of the said new building line hereby fixed and agreed on to the extent and effect foresaid; and the said William Henderson, Robert Towers, and William Towers bind and oblige themselves and their foresaids to warrant these presents at all hands, and against all mortals, and all parties consent to the registration hereof in the General or Particular Register of Sasines for publication." The agreement was recorded in the Register of Sasines on 16th September 1853.

In 1854 a contract of ground-annual was entered into between the trustees and William Henderson, as an individual, under which the steadings of ground in question were disponed to William Henderson, subject to various conditions and, *inter alia*, the following:—"The said steadings, in so far as fronting the said Sandyford Road, are generally disponed with and under the whole conditions, provisions, and stipulations specified in a minute of agreement between John Burnet, clerk to and on behalf of the Police and Statute-Labour Committee of the Town Council of Glasgow, of the one part, and the first parties hereto, of the second part, dated : *Third*, The said William Henderson and his foresaids shall be bound to form a sunk area in front of the buildings along the said Sandyford Road, of a width not exceeding 10 feet, and to lay off the ground between the said area and road in an ornamental manner, and conform to the provisions contained in the said minute of agreement between the said John Burnet, on behalf of the said Police and Statute-Labour Committee, and the first parties hereto."

The contract also provided as follows:—"The whole declarations, conditions, obligations, and others before written shall be and are hereby created and declared real liens and burdens upon and affecting the respective steadings and plot of ground above disponed, and are appointed to be inserted in the instrument of sasine to follow hereon, and in all the future conveyances and investitures of the said steadings and plot, otherwise these presents and all following thereon shall be void and null."

In the clause of resignation for new infeftment, the contract provided that the subjects were so resigned under "the burdens, conditions, restrictions and reservations, provisions, declarations, obligations, and others above written or referred to."

The precept of sasine desired sasine to be given, "but always with and under the several and respective real liens and burdens of the said ground-annuals, duplications and interest, and consequents thereto effeiring, and also with and under, in so far as applicable thereto respectively, the burdens, conditions, restrictions, reservations, provisions, declarations, obligations, and others above written or referred to."

The instrument of sasine following on this contract, which was recorded in the Register of Sasines on 15th May 1854, contained a narration that the contract of ground-annual was granted with and under the following conditions:—"The said steadings, in so far as fronting the said Sandyford Road, are by the said contract of ground-annual generally disponed with and under the whole conditions, provisions, and stipulations specified in a minute of agreement between John Burnet, clerk to and on behalf of the Police and Statute-Labour Committee of the Town Council of Glasgow, of the one part, and the said first-mentioned trustees, of the second part, dated : *Third*, The said William Henderson and his foresaids should be bound to form a sunk area in front of the buildings along the said Sandyford Road, of a width not exceeding 10 feet, and to lay off the ground between the said area and road in an ornamental manner, and conform to the provisions contained in the said minute of agreement between the said John Burnet, on behalf of the said Police and Statute-Labour Committee, and the said first-mentioned trustees."

The said contract of ground-annual and instrument of sasine were duly confirmed by the superior.

The houses erected by William Henderson in or about the year 1854 on the subjects facing Sandyford Road were erected on the building line and of the heights specified in the agreement of 1853, but the area formed by him was only 7 feet 11 inches in breadth, and the ground to the north thereof was left unbuilt on and was used as a pleasure ground. The street called Sauchiehall Street or Road and Sandyford Road was one and the same, and was now known as Sauchiehall Street. Fitzroy Place and Westminster Terrace formed contiguous compartments of that street.

The subjects in question after a long series of transmissions passed part to the marriage-contract trustees of Mr and Mrs James Campbell, and part to the testamentary trustees of Dr Thomas Drysdale Buchanan, who in 1902 were respectively the proprietors of Nos. 18 to 23 and of Nos. 24 and 25 Westminster Terrace, as singular successors to the original proprietors.

No specific reference to the minute of agreement appeared in any of the titles, except in the contract of ground-annual and instrument of sasine mentioned above, but in all the other transmissions the lands disponed were declared to be so disponed with and under the whole real liens, burdens, conditions, restrictions, reservations, provisions, declarations, obligations, and others specified and contained in that instrument of sasine.

The Corporation of the City of Glasgow, who were successors of the Police and Statute-Labour Committee, in the course of widening that part of Sauchiehall Street opposite Westminster Terrace and Fitzroy Place, by petition to the Sheriff under the Glasgow Buildings Regulation Act and the Burgh Police (Scotland) Act 1892, obtained compulsory powers to acquire, *inter alia*, the unbuilt-on ground fronting the property of the trustees. In the book of reference and on the plan lodged with the Sheriff in the course of the proceedings before him, a note was inserted stating that this ground was understood to be burdened with a right of servitude or other real right empowering the Corporation to act as they had done in forming and constituting it part of the public street, and they claimed to take it without making any further payment therefor.

Questions having arisen as to the right so claimed by the Corporation, a special case was presented for the opinion and judgment of the Court.

The parties to the special case were (1) the marriage-contract trustees of Mr and Mrs James Campbell, and the testamentary trustees of Dr Thomas Drysdale Buchanan; and (2) the Corporation of the City of Glasgow.

The contentions of the parties as set out in the case were—"The first parties maintain (1) that as singular successors they are not bound by said minute of agreement; and (2) that they have acquired an indefeasible right to the said ground by infeftment and possession for over forty years. The second parties maintain (1) that the said minute of agreement is an onerous deed, duly recorded, and that in terms thereof they were empowered on the condition therein contained (which has been purified) to form and constitute the first parties' said unbuilt-on ground north of the building-line and area part of the public roadway or street, and that they have validly exercised such power, and are entitled to do so without further payment, valuable consideration having already been given therefor; or alternatively (2) that said minute of agreement constitutes a valid right of servitude or other real right in favour of the second parties, and in restriction of the right of property of the first parties, and is effectual against the first parties to the effect of negativing any claim for further payment by them."

The question submitted for the judgment of the Court was—"1. Were the second parties entitled to form and constitute said unbuilt-on ground part of the public roadway or street without making further payment to the first parties therefor?"

Argued for the first parties—(1) The right of servitude which the second parties were endeavouring to set up was one of an entirely novel character. The Police and Statute-Labour Committee were not vested in any heritable property which could form a dominant tenement, but were a mere administrative body for certain purposes. But if there was no dominant tenement how could a servitude be constituted as they claimed? The registration of the agreement in the Register of Sasines did not advance their claim since it was a mere personal contract. It was in short an attempt to create a personal servitude. But if it were not a well-known servitude such as could be seen in operation, but merely some indefinite real burden affecting the lands, in order to be made effectual

against a singular successor it must enter the title—*North British Railway Company* v. *Park Yard Company* June 20, 1898, 25 R. (H.L.) 47, 35 S.L.R. 950. To obtain such a right there should have been in the deed a distinct reference to the fact that the burden was to run with the land, which must appear thereafter on the record—*Tailors of Aberdeen* v. *Coutts*, December 20, 1834, 13 S. 226. (2) All the second parties could point to was the reference in the instrument of sasine following upon the contract of ground-annual to this minute of agreement. It was quite incompetent to impose burdens on land by a general reference such as this to a deed which did not enter the title, which this agreement did not. To make the burden effectual it was necessary either that it should have been inserted *ad longum* in the instrument of sasine, or that there should have been a reference to an instrument of sasine containing it *ad longum*—*Allan* v. *Robertson*, 1780, M. 10,265, 1781, 2 Pat. Ap. 572; Lands Transference Act 1847 (10 and 11 Vict. cap. 48), sec. 5. Here the reference did not even state the date of the agreement, so it was clearly of no validity.

Argued for the second parties—(1) The minute of agreement was an onerous deed duly recorded, and its effect was to create a servitude in favour of the community, who were in the position of the dominant tenement. The right thus constituted was not to take the unbuilt-upon ground, but a right of servitude to use it as a road for the public behoof. That was nothing more or less than a servitude of road, which might be either to use an existing road or to make a new road. If the right were not a servitude—though it was expressly declared to be so in the agreement—it was a real burden which affected the lands into whatever hands they came. In order to defeat this right the first parties would have to prove possession of the ground adverse thereto—*Smith* v. *Stewart*, June 13, 1884, 11 R. 921, 21 S.L.R. 623. (2) The burden had in fact been placed on record in the only method open by recording the agreement, and by the distinct reference to it contained in the instrument of sasine following upon the contract of ground annual. That reference should have put the singular successor on his guard, and it was his duty to search the register, when he would have found the agreement—*Urquhart* v. *Halden*, June 2, 1835, 13 S. 844; *Inglis* v. *Boswall*, May 1, 1849, 6 Bell 427. In any view it was the duty of the first parties' authors to have seen that this burden entered the record, and their successors were not entitled to profit by their omission to do so.

At advising—

LORD KINNEAR—The question is whether the Corporation of Glasgow, who are the second parties to this case, are entitled to take a strip of ground belonging in property to the first parties and to throw it into a public street without making compensation to the proprietors. The Corporation have obtained compulsory powers to acquire lands under the provisions of the Lands Clauses Act for the purpose of carrying out certain public improvements. But they say that as regards the ground in dispute, which is admittedly included in the lands to which these powers relate, they do not stand in need of any statutory powers, and are under no obligation to make compensation, because they have already right to take the land from its present proprietors for the purpose in question by virtue of a contract with a former owner. This contract is said to be embodied in a minute of agreement executed in 1853 between the Police and Statute Labour Committee of the Town Council of Glasgow and William Henderson and others, trustees then vested in the lands; and the question is whether the first parties, who are singular successors of these trustees, after a long series of transmissions, are bound by its stipulations. The Corporation as their case is stated found upon this minute of agreement, which they say is "an onerous deed duly recorded," as in itself sufficient for their purpose, but they maintained in argument as a second point that if it is not in itself effectual to bind the first parties and their land its conditions have been imported into the titles to the land and are therefore binding upon the first parties.

These two points must be separately considered. (1) The agreement is no doubt an onerous deed, and it is not disputed that as a matter of fact it has been recorded in the Register of Sasines. But the term "duly recorded" which is used by the parties seems to me to be singularly inappropriate, inasmuch as it had no claim to a place on that register, since it is a mere personal contract containing no conveyance of land and no feudal clauses of any kind, and can therefore neither warrant infeftment nor affect in any way an existing infeftment. The second parties do not found upon the authority given by recent statutes to record certain instruments in the Register of Sasines which could hardly have been so recorded under the former law; and it is plain enough that they could not do so, because if it be assumed—and perhaps it is rather a violent assumption—that some of their provisions apply to the case in hand, the statutes are not retrospective. Under the law in force at the time an agreement of this kind could acquire no kind of efficacy from being recorded in the Register of Sasines which it did not possess in the hands of the parties themselves. The agreement sets out that the first party, the clerk to the Police Committee, has paid to the second parties the sum of £370, and that in consideration of this payment "the second parties bind and oblige themselves as trustees and their successors that their heritable subjects" described shall be lined back for building purposes according to a certain boundary line, and further "that their ground to the north of the said boundary line shall remain unbuilt upon in all time coming, with power however to the said second parties to form an area in front of ten feet wide, and the said Police and Statute Labour Committee and their successors in office

shall be entitled at any time they think proper to throw the said unbuilt upon ground into and to form and constitute the same part of the public roadway or street." This is the stipulation upon which the second parties rest their case. The contract contains other provisions which it is unnecessary to quote, and in particular it contains a restriction against building above a certain height, as to which no question arises at present. This may or may not be a good servitude *non ædificandi.* I express no opinion upon that point since it cannot be decided in this case, except that I do not think it doubtful that a document of the kind we are considering may be sufficient to constitute a servitude *non ædificandi* without the servitude entering the titles. But I am just as clearly of opinion that such a document is utterly ineffectual to bind singular successors in so far as it purports to confer a right on the Police Committee to take their unbuilt on land and throw it into a roadway or street. It is said that this also is a known servitude—a servitude of way—and therefore that it has the benefit of the rule that servitudes may be constituted by writing without infeftment. But, in the first place, it is settled law that positive servitudes such as the use of a road are not effectual by mere force of the grant, but in order to be good against singular successors must be followed by possession, if they are not constituted by disposition and sasine; and, in the second place, the right alleged by the Corporation is not merely a servitude of way, but a right to take from the proprietors infeft land not already so occupied for the purpose of making a public road. I know of no authority for holding that land may be taken from its owners for this purpose by virtue of any right which would not be valid if the land were to be taken for any other purpose; and at all events it is clear that a right to take land for any such purpose without its owners' consent is not a known and recognised servitude.

But then it is said that if the right of the Corporation is not a servitude it is a real burden which affects the lands into whatever hands they come. In this argument the term real burden must be used in its strictest sense as meaning a burden affecting the land itself irrespective of any personal obligation. It cannot mean a real burden in the secondary sense of a condition inherent in the grant and therefore running with the lands, because there is no grant to which any condition could be attached. There is nothing but an agreement that the one party who has no antecedent interest in the land shall have right to take part of the land of the other. Now, if the question were whether a right of this kind could be effectually made a real burden it might perhaps require some consideration. But it is enough to say that if so it cannot be valid unless it is made real by entering the infeftment. This is the doctrine laid down by all our writers, and it is expressed nowhere more clearly than in the opinion of Lord Corehouse in the *Tailors of Aberdeen* v. *Coutts,* 1 Rob. App. 296, at 306—"To constitute a real burden or condition either in feudal or burgage rights which is effectual against singular successors words must be used in the conveyance which clearly express or plainly imply that the subject itself is to be affected, and not the grantee and his heirs alone, and those words must be inserted in the sasine which follows on the conveyance, and of consequence must appear on the record." In the present case there is neither conveyance nor sasine, nor in any reasonable sense record. The notion that these deficiencies can be supplied by putting a minute of agreement into the Register of Sasines is altogether without foundation. There is nothing whatever to affect the infeftment of the trustees themselves or of their disponees.

2. If the Corporation cannot maintain their right by force of the agreement alone, the second question is whether its conditions have been imported into the subsequent titles. This depends upon a contract of ground annual dated in May 1854 between William Henderson and others as trustees and William Henderson himself as an individual, by which certain steadings forming the ground in question are conveyed to Henderson. This deed imposes a variety of conditions and obligations upon the disponee, some of which are obviously personal while others may or may not be intended to affect his singular successors also, and among these there is a declaration that "the said steadings in so far as fronting Sandyford Road are generally disponed with and under the whole conditions, provisions, and stipulations specified in a minute of agreement between John Burnet, clerk to and on behalf of the Police and Statute-labour Committee of the Town Council of Glasgow of the one part and the first parties hereto of the second part, dated " and there follows a blank, and the instrument referred to is not defined either by its date or by the date of registration. If it were possible in a conveyance of land to impose burdens or conditions by a reference of this kind so as to make them effectual against singular successors, we should have to consider whether the particular condition now sought to be enforced is one of those that would run with the lands, or whether it would be good against the contracting party only and his representatives, on the principle laid down in *Small* v. *Millar,* 1 Macq. 345, and *Gardyne* v. *The Royal Bank,* 13 D. 912, and if that question were to be decided, I am disposed to think that it would require a more careful examination both of the deed itself and of the authorities than seemed to be thought necessary at the discussion. But I think counsel were justified in treating it as lightly as they did, because if it is not a real burden there is no case against the first parties, and if it is, I agree with Mr Younger that the first question is, whether it is competent to impose burdens upon land by a general reference to a document which does not enter the titles, and I am clearly of opinion that such a reference is altogether ineffectual to affect

the land itself, or the singular successors into whose hands it may come. This is perfectly well settled law. It follows, indeed, of necessity from the rule laid down in the case of *Coutts* "that words must be used in the conveyance which express or plainly imply that the subject itself is to be affected, and not the grantee and his heirs alone, and that these words must be inserted in the sasine which follows on the conveyance." Accordingly, it has been so held in a variety of cases, of which perhaps the *Duke of Argyle* v. *The Creditors of Barbreck*, 1730, M. 10,306, is one of the best examples, where a superior had granted a feu-right with certain prohibitory clauses which were engrossed at full length in the charter, but not in the precept of sasine nor in the sasine itself otherwise than by a general reference, viz., "with and under the provisions and conditions particularly mentioned in the charter." It was found that this general reference was not sufficient against creditors or singular successors. It is unnecessary to cite other cases. The soundness of the comment made by Professor Menzies on that of the *Duke of Argyle* cannot be disputed when he says—"It is quite certain that nothing but full insertion in the sasine will suffice." But there cannot be a better illustration nor a clearer recognition of this rule of our law than the provisions of the recent statutes for relaxing its severity. Under the Lands Transference Act the necessity for full insertion is limited to the first sasine, and if the conditions have once entered the record in an instrument of sasine or of resignation *ad remanentiam*, it is made sufficient to refer to them as contained in such instrument, which, however, must be described by the name of the party in whose favour it was passed, the record in which it was registered, and the date of the registration. There are similar provisions in more recent statutes, including the Acts of 1868 and 1874, but by all these statutes prior to 23 and 24 Vict. c. 143, it is required that the reference shall be made to the real burdens as set forth at full length in a duly recorded instrument of sasine forming part of the progress of titles. By the last-mentioned Act, which provided that a conveyance recorded in the Register of Sasines should be equivalent to sasine, such reference is allowed to be made to a duly recorded conveyance, but it is still indispensable that the burden shall be expressed in a deed, that enters the infeftment, and that the deed from which conditions are imported by reference into subsequent titles shall be sufficiently identified, and that the register in which it is recorded and the date of registration shall be specified. All the conditions therefore upon which real burdens are now allowed to be imported into dispositions by reference are disregarded in this contract of ground-annual. Mr Lees observed quite justly that these recent statutes do not apply to the present case. But that is only saying in other words that at the time when the contract of ground-annual was executed there was no authority for importing real burdens by reference from another deed, instead of engrossing them at full length in the disposition and the instrument of sasine, and it seems to me that the terms of the enactments for amending the older rule suggest a very forcible argument against the contention that before any of these were passed it was competent to impose burdens upon lands by general reference to the conditions of a deed which did not form part of the progress of titles at all, and without even identifying that deed in such a manner that it could be traced on the register in which it happened to be recorded.

It was urged in an argument, which I confess I was unable to follow, that the agreement was made by the Magistrates of Glasgow for the benefit of the community. I cannot see that that makes any difference. It is not more competent for the magistrates of a burgh than for anybody else to impose restrictions upon property by documents which do not satisfy the rules of conveyancing. The conclusive answer to every argument about the purpose and intention of the agreement is to be found in the Lord President's opinion in the *Magistrates of Arbroath* v. *Dickson*, 10 Macph. 630—"A burden upon lands . . . is not a thing to be spelt out of a deed; it must be distinctly found there. We are not to construe a deed of this kind as we construe a will for the purpose of arriving by all means, and even by something like conjectural means, at what the intention of the testator is. We must have something a great deal more than that."

For these reasons I am of opinion that the first question should be answered in the negative, and if so I presume that the second question does not require an answer.

The LORD PRESIDENT and LORD M'LAREN concurred.

LORD ADAM was absent

The Court answered the first question in the negative.

Counsel for the First Parties—Guthrie, K.C.—Younger. Agents—R. & R. Denholm & Kerr, S.S.C.

Counsel for the Second Parties — Lees, K.C.—M. P. Fraser. Agents—Campbell & Smith, S.S.C.

Tuesday, March 18.

SECOND DIVISION.

[Lord Pearson, Ordinary.

DOWNIE'S EXECUTRIX *v.* DOWNIE.

Succession—Jus Relictæ—Heritable Securities—Debt Due to Wife out of Deceased Husband's Estate not Payable out of Heritable Securities until Moveables Exhausted—Titles to Land Consolidation Act 1868 (31 *and* 32 *Vict. cap.* 101), *sec.* 117.

A husband died leaving estate amounting to £2100, whereof £1600 was invested in heritable securities, and the remain-