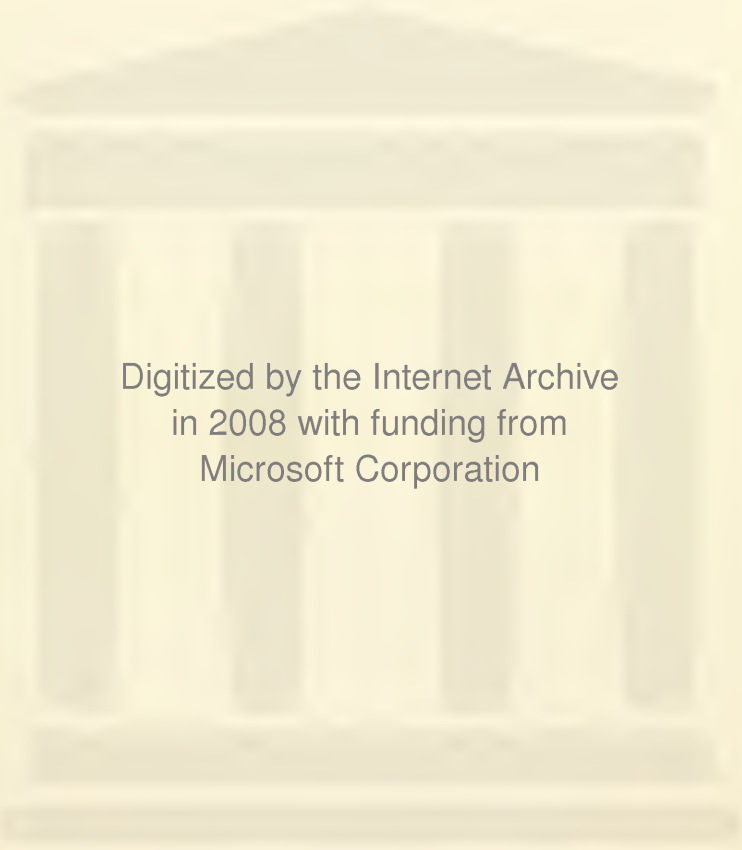

BUILDING CASES

IN PREPARATION

EMDEN'S LAW RELATING TO BUILDINGS

With Precedents of Building Leases and Contracts, and Other Forms connected with Building. With Notes and Cases under the Various Sections

By HIS HONOUR JUDGE EMDEN

FOURTH EDITION

By J. B. MATTHEWS, Esq., and W. VALENTINE BALL, Esq., Barristers-at-Law

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BUILDING CASES

BEING

A DIGEST OF REPORTED DECISIONS AFFECTING ARCHITECTS, SURVEYORS, BUILDERS, AND BUILDING-OWNERS

BY

F. ST. JOHN MORROW, LL.D. (DUB.)

OF INNER TEMPLE AND THE SOUTH-EASTERN CIRCUIT.
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To

THE RIGHT HONOURABLE

SIR EDWARD CARSON, Knt., K.C., M.P.

HIS MAJESTY'S SOLICITOR-GENERAL 1900–1905

THIS VOLUME IS INSCRIBED

BY HIS FRIEND

THE AUTHOR

PREFACE

In preparing this Digest of Reported Decisions affecting Architects, Surveyors, Builders, and Building-Owners, and with a view to making it as comprehensive as possible, I have included all decided cases of importance up to date, whether reported in the *Law Reports* or elsewhere. Among them will be found some decisions which have been overruled by subsequent judgments of the High Court, because, although they can no longer be relied on in courts of justice, they frequently furnish valuable assistance to those whose duty it is to advise parties as to their legal position.

The cases will be found arranged as far as possible in alphabetical order of the subjects dealt with, but a rigid classification has not been attempted, because frequently more than one subject is adjudicated upon in a particular case. In order, therefore, to obviate the necessity for such classification, I have prepared, at the cost of no little labour, an exhaustive index, which I believe will be of considerable assistance to those who shall have occasion to refer to the book.

A *Form of Agreement and Schedule of Conditions* for Building Contracts, *The Professional Practice as to the Charges of Architects*, approved by the Royal Institute of British Architects, together with *Ryde's Scale* of Surveyors' Fees, will be found in the Appendix.

I venture to express the hope that this work will prove useful not only to members of both branches of the legal profession and to the parties whose rights and liabilities are therein defined, but also to the large body of officials who are engaged in the administration of local government throughout the country.

I desire to express my thanks to the Incorporated Council of Law Reporting for their courtesy in according me permission to make use of certain parts of the head-notes to some of the cases published in the *Law Reports;* to the Royal Institute of British Architects for their kind permission to print the *Form of Agreement and Schedule of Conditions for Building Contracts*, and the *Professional Practice as to the Charges of Architects*, published by them; and to the Messrs. Ryde, 29, Great George Street, Westminster, for kindly permitting me to print *Ryde's Scale.*

F. ST. JOHN MORROW.

3, Dr. Johnson's Buildings,
Temple, E.C.
May, 1906.

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TABLE OF ABBREVIATIONS

(1891) A. C.	Law Reports Appeal Cases (1891 onwards).
A. & E.	Adolphus & Ellis, Queen's Bench.
Addams, Ecc.	Addams, Ecclesiastical.
Aleyn	Aleyn, King's Bench.
Amb.	Ambler, Chancery.
And.	Anderson, Common Pleas.
Andr.	Andrews, King's Bench.
Anst.	Anstruther, King's Bench.
App. Cas.	Law Reports Appeal Cases (1876–1890).
Arn.	Arnold, Common Pleas.
Arn. & H.	Arnold & Hodges, Queen's Bench.
Asp. M. C.	Aspinal, Maritime Cases.
Atk.	Atkyns, Chancery.
B. & Ad.	Barnewall & Adolphus.
B. & Ald.	Barnewall & Alderson.
B. & C.	Barnewall & Cresswell.
B. & S.	Best & Smith.
B. C. C.	Lowndes & Maxwell, Bail Court.
B. C. Rep.	Saunders & Cole, Bail Court.
Ball. & B.	Ball & Beatty, Chancery (Ireland).
Bar. & Arn.	Barron & Arnold, Election.
Bar. & Au.	Barron & Austin, Election.
Barnard. Ch.	Barnardiston, Chancery.
Barnard. K. B.	Barnardiston, King's Bench.
Batty.	Batty King's Bench (Ireland).
Beat.	Beatty Chancery (Ireland).
Beav.	Beavan.
Bell, C. C.	Bell, Crown Cases.
Bing.	Bingham.
Bing. (N.C.)	Bingham, New Cases.
Bligh.	Bligh, House of Lords.
Bligh (N.S.)	Bligh, New Series, House of Lords.
Bos. & P.	Bosanquet & Puller, Common Pleas.
Bos. & P. (N.R.)	Bosanquet & Puller, New Reports, Common Pleas.
Bott. P. L.	Bott's Poor Laws.
Br. & B.	Broderip & Bingham, Common Pleas.
Br. & Lush.	Browning & Lushington, Adm.
Bro. C. C.	Brown, Chancery Cases.
Bro. P. C.	Brown, Cases in Parliament.
Buck.	Buck, Bankruptcy.
Bull. N. P.	Buller's Nisi Prius.
Bulst.	Bulstrode, King's Bench.

Bunb.	Bunbury, Exchequer.
Burr.	Burrows, King's Bench.
Burr. S. C.	Burrows, Settlement Cases.
(1891) Ch.	Law Reports, Chancery (1891 onwards).
C. B.	Common Bench Reports.
C. B. (N.S.)	Common Bench Reports, New Series.
C. L. R.	Common Law Reports.
C. P. D.	Law Reports, Common Pleas Division.
Cab. & E.	Cababe & Ellis.
Cald. S. C.	Caldecott, Settlement Cases.
Camp.	Campbell.
Car. & K.	Carrington and Kirwan.
Car. & M.	Carrington & Marshman.
Car. & P.	Carrington & Payne.
Carter	Carter, Common Pleas.
Carth.	Carthew, King's Bench.
Cary	Cary, Chancery.
Cas. t. Hardwicke	Cases *temp.*, Hardwicke, King's Bench.
Cas. t. Talbot	Cases *temp.*, Talbot, Chancery.
Ch. Cas.	Chancery Cases.
Ch. Cas. Ch.	Choice Cases in Chancery.
Ch. D.	Law Reports, Chancery.
Ch. Pre.	Chancery Precedents.
Ch. Rep.	Chancery Reports.
Chitty	Chitty, Bail Court.
Cl. & F.	Clark & Finnelly, House of Lords.
Co. Rep.	Coke, King Bench.
Coll. C. C.	Collyer, Chancery.
Colles	Colles, Cases in Parliament.
Colt.	Coltman Registration.
Comb.	Comberbach, King's Bench.
Comyns	Comyns, King's Bench.
Coop. t. Brough.	Cooper, Cases *temp.* Brougham.
Coop. t. Cott.	Cooper, Cases Chancery *temp.* Cottenham.
G. Cooper.	Chancery.
C. P. Cooper	C. P. Cooper, Chancery.
C. & J.	Crompton & Jervis.
C. & M.	Crompton & Meeson.
C. M. & R.	Crompton, Meeson, & Roscoe.
Con. & L.	Connor & Lawson, Chancery (Ireland).
Cooper	Cooper, Chancery.
Ct. of Sess. Cas.	Court of Sessions Cases (Scotland).
Cowper	Cowper, King's Bench.
Cox.	Cox, Chancery.
Cox C. C.	Cox, Crown Cases.
Cr. & Ph.	Craig & Phillips, Chancery.
Craw. & D.	Crawford & Dix (Ireland).
Curt.	Curteis, Ecclesiastical.
D. P. C.	Dowling, Practice Cases.
D. (N.S.)	Dowling, Practice Cases, new series.
D. & L.	Dowling & Lowndes, Practice Cases.
D. & R.	Dowling & Ryland, King's Bench.

Dan.	Daniell, Exchequer.
Dans. & Ll.	Danson & Lloyd, Mercantile.
Dav. & M.	Davison & Merivale, Queen's Bench.
Deac.	Deacon, Bankruptcy.
Deac. & C.	Deacon & Chitty, Bankruptcy.
Dears. & B.	Dearsley & Bell, Crown Cases.
Dears. C. C.	Dearsley, Crown Cases.
De G.	De Gex, Bankruptcy.
De G. F. & J.	De Gex, Fisher & Jones.
De G. & J.	De Gex & Jones.
De G. J. & S.	De Gex, Jones & Smith.
De G. M. & G.	De Gex, Macnaghten & Gordon.
De G. & Sm.	De Gex & Smale.
Den. C. C.	Denison, Crown Cases.
Dick.	Dickens, Chancery.
Dod.	Dodson, Admiralty.
Dougl.	Douglas, King's Bench.
Dow	Dow, House of Lords.
Dow & Cl.	Dow & Clark, House of Lords.
Dr.	Drury, Chancery (Ireland).
Dr. & Sm.	Drewry & Smale, Chancery.
Dr. & W.	Drury & Walsh, Chancery (Ireland).
Dr. & War.	Drury & Warren, Chancery (Ireland).
Drew.	Drewry, Chancery.
Drink.	Drinkwater, Common Pleas.
Dyer	Dyer, King's Bench.
East	East, King's Bench.
East P. C.	East, Pleas of the Crown.
Eden	Eden, Chancery.
Edw.	Edwards, Admiralty.
El. & Bl.	Ellis & Blackburn.
El. Bl. & El.	Ellis, Blackburn & Ellis.
El. & El.	Ellis & Ellis, Queen's Bench.
Eq. Ca. Abr.	Equity Cases Abridged.
Eq. R.	Equity Reports.
Esp.	Espinasse.
Ex.	Exchequer Reports.
Ex. D.	Law Reports, Exchequer Division.
F. & F.	Foster & Finlayson.
Fl. & K.	Flanagan & Kelly, Rolls Court (Ireland).
Falc. & F.	Falconer & Fitzherbert, Elections.
Fitzg.	Fitzgibbon, King's Bench.
Fonb. (N.R.)	Fonblanque, Bankruptcy.
Forrest	Forrest, Exchequer.
Fort.	Fortescue, King's Bench.
Foster	Foster, Crown Cases.
Fox	Fox, Registration.
Free. C. C.	Freeman, Chancery Cases.
Free. K. B.	Freeman, King's Bench.
G. & D.	Gale & Davison, Queen's Bench.
Gale	Gale, Exchequer.

G. Cooper	G. Cooper, Chancery.
Giff.	Giffard, Chancery.
Gilb.	Gilbert, Chancery.
Glyn & J.	Glyn & Jameson, Bankruptcy.
Godb.	Godbolt, King's Bench.
Gow	Gow, Nisi Prius.
H. Bl.	H. Blackstone.
H. B. C.	Hudson's Building Contracts, Vol. II.
H. L. Cas.	House of Lords Cases.
H. & C.	Hurlstone & Coltman.
H. & H.	Horn & Hurlstone, Exchequer.
H. & M.	Hemming & Miller, Chancery.
H. & N.	Hurlstone & Norman.
H. & R.	Harrison & Rutherford, Common Pleas.
H. & W.	Harrison & Wollaston, Bail Court.
Hag. Adm.	Haggard, Admiralty.
Hag. Cons.	Haggard, Consistory.
Hag. Ecc.	Haggard, Ecclesiastical.
Hall & Tw.	Hall & Twells, Chancery.
Hardr.	Hardress, Exchequer.
Hare	Hare, Chancery.
Hawk. P. C.	Hawkins, Pleas of the Crown.
Hay. & J.	Hayes & Jones, Irish Exchequer.
Hayes	Hayes, Irish Exchequer.
Hob.	Hobart, King's Bench.
Hodges	Hodges, Common Pleas.
Hog.	Hogan, Irish Rolls Court.
Holt	Holt, King's Bench.
Holt Eq.	Holt, Equity.
Holt N. P.	Holt, Nisi Prius.
Hopw. & C.	Hopwood & Coltman, Registration.
Hopw. & P.	Hopwood & Philbrick, Registration.
Hurl. & W.	Hurlstone & Walmsley, Exchequer.
Ir. C. L. R.	Irish Common Law.
Ir. Ch. R.	Irish Chancery.
Ir. Eq. R.	Irish Equity Reports.
(1894) Ir. R.	Irish Law Reports (from 1894).
Ir. R. C. L.	Irish Common Law.
Ir. R. Eq.	Irish Equity.
J. & H.	Johnson & Hemming, Chancery.
J. & W.	Jacob & Walker, Chancery.
J. Kelyng	Sir J. Kelyng, Crown Cases.
J. P.	The Justice of the Peace.
Jacob	Jacob, Chancery.
Jenk	Jenkins, Exchequer.
Jo. & Lat.	Jones & La Touche, Irish Chancery.
Johns.	Johnson, Chancery.
Jones	Jones, Irish Exchequer.
Jones (T.)	Sir T. Jones, King's Bench.
Jones (W.)	Sir W. Jones, King's Bench.
Jones & C.	Jones & Carey, Irish Exchequer.

Jur	The Jurist (new series).
Jur (o.s.)	The Jurist (old series).
K. & G.	Keane & Grant, Registration.
K. & J.	Kay & Johnson, Chancery.
Kay	Kay, Chancery.
Keb.	Keble, King's Bench.
Keen	Keen, Rolls Court.
Keilw.	Keilway, King's Bench.
Kel.	Kelyng, Sir J., King's Bench.
Ken	Kenyon, King's Bench.
Knapp	Knapp, Privy Council.
Knapp & O.	Knapp & Ombler, Elections.
L. & C.	Leigh & Cave, Crown Cases.
L. J. (o.s.)	Law Journal from 1822–1831.
L. J.	Law Journal from 1831.
L. & M.	Lowndes & Maxwell, Bail Court.
L. M. & P.	Lowndes, Maxwell & Pollock, Bail Court.
L. T.	Law Times, New Series.
L. T. J.	Law Times Journal.
L. R. Ir.	Irish Law Reports.
Latch	Latch, King's Bench.
Leach, C. C.	Leach, Crown Cases.
Ld. Raym.	Lord Raymond, King's Bench.
Lev.	Levinz, King's Bench.
Lewin, C. C.	Lewin, Crown Cases.
Lit. Rep.	Littleton, Common Pleas.
Ll. & G.	Lloyd & Goold, Irish Chancery.
Lofft.	Lofft., King's Bench.
Longf. & T.	Longfield & Townsend, Irish Exchequer.
Lush.	Lushington, Admiralty.
Lutw.	Lutwyche, Common Pleas.
Lutw. Reg. Cas.	Lutwyche, Registration.
M. C. C.	Moody, Crown Cases.
M. & H.	Murphy & Hurlstone, Exchequer.
M. & M.	Moody & Malkin.
M. & P.	Moore & Payne, Common Pleas.
M. & Rob.	Moody & Robinson.
M. & S.	Maule & Selwyn.
M. & Sc.	Moore & Scott, Common Pleas.
M. & W.	Melson & Welsby.
Macl. & R.	Maclean & Robinson, Scotch Appeals.
Mac. & G.	Macnaghton & Gordon.
McCle.	McClelland, Exchequer.
McCle. & Y.	McClelland & Young, Exchequer.
Macq. H. L.	Macqueen, House of Lords.
Madd.	Maddock, Chancery.
Man. & G.	Manning & Granger.
Man. & Ry.	Manning & Ryland, King's Bench.
Mans.	Manson, Bankruptcy.
Marshall	Marshall, Common Pleas.
Meg.	Megone, Company Cases.

Mer.	Merrivale, Chancery.
Mod.	Modern Reports.
Moll.	Molloy, Irish Chancery.
Mont.	Montagu, Bankruptcy.
Mont. & Ayr.	Montagu & Ayrton, Bankruptcy.
Mont. & B.	Montagu & Bligh, Bankruptcy.
Mont. & C.	Montagu and Chitty, Bankruptcy.
Mont. & McAr.	Montagu and McArthur, Bankruptcy.
Mont. D. & D.	Montagu Deacon & De Gex, Bankruptcy.
Moo.	Moore, Common Pleas.
Moo. Ind. App.	Moore, Indian Appeals.
Moo. P. C.	Moore, Privy Council.
Morr.	Morrell, Bankruptcy.
Mos.	Moseley, Chancery.
Myl. & Cr.	Mylne & Craig, Chancery.
Myl. & K.	Mylne & Keen, Chancery.
N. & M.	Neville & Manning, King's Bench.
N. & P.	Neville & Parry, King's Bench.
N. R.	New Reports.
Nels.	Nelson, Chancery.
New Sess. Cas.	New Sessions Cases.
O'M. & H.	O'Malley & Hardcastle, Election.
(1891) P.	Law Reports, Probate from 1891.
P. D.	Law Reports, Probate Division.
P. & D.	Perry & Davison, King's Bench.
P. & K.	Perry & Knapp, Election.
Peake, Add. Ca.	Peake, Additional Cases, Nisi Prius.
P. Wms.	Peere Williams, Chancery.
Phill.	Phillimore, Ecclesiastical.
Ph.	Phillips, Chancery.
Pol.	Pollexfen, King's Bench.
Pop.	Popham, King's Bench.
Price	Price, Exchequer.
Q. B.	Queen's Bench Reports (1841 to 1852).
Q. B. D.	Law Reports, Queen's Bench Division (from 1875).
(1891) Q. B.	Law Reports, Queen's Bench (from 1891).
R.	The Reports.
R. R.	Revised Reports.
R. & R.	Russell & Ryan, Crown Cases.
R. B. C.	Roscoe's Digest of Building Cases.
Rail. Cas.	Railway and Canal Cases.
Raym., Ld.	Lord Raymond, King's Bench.
Ridg. L. & S.	Ridgway, Lapp & Schoales, Irish King's Bench.
Ridg.	Ridgway, Parliamentary Cases.
Rep. Ch.	Reports in Chancery.
C. Rob.	Sir Charles Robinson, Admiralty.
W. Rob.	W. Robinson, Admiralty.
Rol. Abr.	Rolle's Abridgment.
Rol.	Rolle, King's Bench.
Rose	Rose, Bankruptcy.

Russ.	Russell, Chancery.
Rus. & M.	Russell & Mylne, Chancery.
Ry. & Can. Tr. Cas.	Railway & Canal Traffic Cases (from 1874).
Ry. & M.	Ryan & Moody, Nisi Prius.
Salk.	Salkeld, King's Bench.
Sau. & Sc.	Sausse & Scally, Irish Rolls Court.
Saund.	Saunders, King's Bench.
Saund. & C.	Saunders & Cole, Bail Court.
Say.	Sayers, King's Bench.
Sch. & Lef.	Schoales & Lefroy, Irish Chancery.
Sco.	Scott, Common Pleas.
Sco. (N.R.)	Scott, New Report, Common Pleas.
Sel. Ca. Ch.	Select Cases in Chancery.
Selw. N. P.	Selwyn, Nisi Prius.
Show.	Shower, King's Bench.
Show. P. C.	Shower, Parliamentary Cases.
Sid.	Siderfin, King's Bench.
Sim.	Simons, Chancery.
Sim. & S.	Simons & Stuart, Chancery.
Sm. & G.	Smale & Giffard, Chancery.
Sm. K. B.	Smith, King's Bench.
Sm. Reg.	Smith, Registration.
Spinks	Spinks, Admiralty.
St. Tri.	State Trials.
Stark.	Starkie, Nisi Prius.
Str.	Strange, King's Bench.
Sty.	Styles, King's Bench.
Sw.	Swabey, Admiralty.
Sw. & Tr.	Swabey & Tristram, Probate.
Swanst.	Swanston, Chancery.
T. Jones	Sir T. Jones, King's Bench.
T. & M.	Temple & Mew, Crown Cases.
T. Raym.	Sir T. Raymond, King's Bench.
Tam.	Tamlyn, Rolls Court.
Taunt.	Taunton, Common Pleas.
Term. Rep.	Durnford & East, King's Bench.
Tothill	Tothill, Chancery.
Tur. & R.	Turner & Russell, Chancery.
Tyrw.	Tyrwhitt, Exchequer.
Tyrw. & G.	Tyrwhitt & Granger, Exchequer.
Vent.	Ventris, King's Bench.
Vern.	Vernon, Chancery.
Vern. & S.	Vernon & Scriven, King's Bench.
Ves. Sen.	Vesey, Senior, Chancery.
Ves.	Vesey, Junior, Chancery.
V. & B.	Vesey & Beames, Chancery.
W. Bl.	Sir Wm. Blackstone, King's Bench.
W. Jones	Sir. W. Jones, King's Bench.
W. Kelynge	Sir. W. Kelynge, Chancery.
W. R.	Weekly Reporter.

W. W. & D.	Wilmore, Wollaston & Davison, King's Bench.
W. W. & H.	Wilmore, Wollaston & Hodges, King's Bench.
West	West, House of Lords.
Wightw.	Wightwick, Exchequer.
Willes	Willes, Common Pleas.
Wil.	Wilmot's Notes, King's Bench.
Wils. Ch.	Wilson, Chancery.
Wils. Ex.	Wilson, Exchequer.
Wils. K. B.	Wilson, King's Bench.
Wms.' Saund.	Williams' Saunders, King's Bench.
Y. & C.	Younge & Collyer, Exchequer & Equity.
Y. & C. C. C.	Younge & Collyer, Chancery Cases.
Y. & J.	Younge & Jervis, Exchequer.
Yelv.	Yelverton, King's Bench.
Younge	Younge, Exchequer & Equity.

DIGEST OF BUILDING CASES

ABANDONMENT

——**Contract.**—A builder contracted with a corporation to execute certain sewerage work according to plan, specification, and working drawings. In the course of the work it was found that certain tunnelling specified was impracticable, owing to the quantity of water in the soil; and the contractor suggested certain modifications of the scheme. These proposals were rejected, whereupon the builder threw up the contract. In an action by the builder to recover the balance due to him on the contract so far as it had been performed, *Pollock, B.*, found for the defendants, and *held*, that the builder could not throw up the contract because the nature of the soil makes performance according to plan and specification difficult or impossible. Where the engineer's certificate is a condition precedent to payment, the contractor on abandonment of the contract is not entitled to payment for work done without the engineer's certificate, unless he can show collusion.

McDONALD v. *WORKINGTON CORPORATION.*
(1892) H. B. C. 222.

——**Contract.**—The plaintiff contracted to build a house for the defendant, according to a certain plan, for an agreed sum. After proceeding with the work and making a payment of £15 on account of the contract, the defendant, it was alleged, had abandoned the contract. In an action by the builder to recover the balance of the contract, *Coleridge, J.*, *held*, that if the defendant had not hindered the plaintiff from completing the work, the plaintiff could not recover except for extra work, which was not in the contract; the fact that the defendant, when asked for money, stated that he would not pay a farthing, was not proof that he had abandoned the contract, for he was not then liable to pay anything, as the work was not completed.

REES v. *LINES.*
(1837) 8 C. & P. 126.

——**Not justified by Difficulty encountered.**—A contractor agreed with the defendants to execute certain building works according to plans and specifications, under the superintendence of the defendants' engineer, within a period of eighteen months. During the progress of the works the plans were deviated from, and difficulties arose with certain landowners affected. In an action by the contractor for work and labour done and money paid to the use of the defendants, *Wills, J.*, found for the defendants, and *held*, that a contractor to execute sewerage works for a sanitary authority under the *Public Health Acts*, is not entitled to abandon the contract because of difficulties created by the landowners affected.

DICKINSON v. *RICHMOND SEWERAGE BOARD.*
(1893) H. B. C. 199.

ACCEPTANCE

——**Of Tender.**—The plaintiff, through his architect, invited tenders for certain alterations to his premises, sending to certain builders bills of quantities. A builder submitted a tender to execute the work, and it was accepted by a letter from the architect to the builder in these terms: "I am instructed by my client . . . to accept your tender of £4193 for works as above referred to. The contract will be prepared by . . . solicitors, and I have no doubt it will be ready for signature in the course of a few days." Subsequently the builder found that, by a mistake in his calculations, he had tendered at too low a price, and he withdrew his tender. The plaintiff then contracted with another builder at a much larger price, and brought an action against the builder first-named for damages. The action was tried by *Hawkins, J.*, who left it to the jury to say whether by the tender and acceptance the parties intended to enter into a contract; and, on the jury finding in the affirmative, he entered judgment for the plaintiff. A motion in the Queen's Bench Division for a new trial was refused, and the defendant appealed. The Court (*Bramwell, Brett, and Cotton, L.JJ.*), in a considered judgment, *affirmed* the decision of *Hawkins, J.*, and *held*, that an intimation in the written acceptance of a tender that a contract will be afterwards prepared does not prevent the parties from becoming bound to perform the terms in the tender and acceptance, if the intention of the parties was thereby to enter into an agreement.

LEWIS v. *BRASS.*
(1877) 3 Q. B. D. 667; 37 L. T. 738; 26 W. R. 152.

ACCIDENT

——**To Works.**—A firm of contractors covenanted to build a certain bridge in a substantial manner, and to keep it in repair for seven years. Within seven years, by reason of extraordinary floods, the bridge was broken down. In an action on the covenant by the Bridge Trustees, *Lord Kenyon, C.J., held,* that the contractors were bound to rebuild the bridge.

BRECKNOCK NAVIGATION CO. v. *PRITCHARD.*
(1796) 6 T. R. 750; 3 R. R. 335.

——**To Works.**—By a clause in a contract with a Local Board to build a sea-wall, the contractor undertook to be answerable for all accidents and damages "*from or by seas, winds, drift of craft, fire, or any other cause whatsoever,*" which should happen to the works during their construction, and was bound to make good any such damages, should they occur. An action by the Local Board for breach of contract to build and complete the sea-wall was referred, and the contractor urged that it was the statutory duty of the Board to maintain certain groynes to preserve the shingle at the level shown on the plans, and so rendered it possible for him to execute the contract. On hearing a special case stated by the arbitrator, the Court (*Mathew and Day, JJ.*) *held,* that the duty to prevent the encroachment of the sea was upon the Local Board. The latter appealed, and the Court (*Lord Esher, M.R., Cotton and Lindley, L.JJ.*) *reversed* the decision of the Divisional Court, and *held,* that the contractor was liable on his contract for all damages. The contractor appealed, and the *House of Lords* (*Earl of Selborne, L.C., Lords Watson, Bramwell, Fitz-Gerald, Halsbury, and Ashbourne*) *affirmed* the judgment of the Court of Appeal.

JACKSON v. *EASTBOURNE LOCAL BOARD.*
(1886) H. B. C. 231.

——**To Works.**—The plaintiff agreed to build part of a bridge, and when the work was nearly completed an employe of the defendants ordered the wooden centres and supports of the arch to be prematurely removed, with the consent of one of the contractor's workmen, but without the knowledge of the contractor. In an action by the contractors for the value of the work actually done, the *Sheriff-Substitute* found for the defendants. On appeal, the Court (*the Lord Justice Clerk, and Lords Young, Rutherford, Clark, and Lee*) *held,* that the defendants were liable, as the work had been executed according to contract, and the accident had not been caused by any fault on the contractor's part.

RICHARDSON v. *DUMFRIESSHIRE TRUSTEES.*
(1890) 17 Ct. of Sess. Cas. (4th Ser.) R. 805.

ACQUIESCENCE

——**Breach of Covenant.**—A railway company conveyed certain land to a purchaser who covenanted not to build within ten feet of the roadway or viaduct of the company, without their permission in writing. The purchaser conveyed the property to the first defendant's testator, who took without any, except constructive, knowledge of the covenant, and he built, in 1869, premises in breach of the covenant, and assigned the lease to the second defendant's predecessor in title. The lessee covenanted not to make any alterations in the premises without the lessor's consent. The second defendant increased the height of the premises, having paid a sum to the first defendant (as executor) for his consent. The company had no knowledge of either the erection, or the alteration, until 1881. On a special case, the Court (*Field and Stephen, JJ.*) *held*, that the plaintiffs were entitled to a mandatory injunction against both defendants, and that the second was not entitled to be indemnified by the first defendant.

LONDON, C. & D. RY. v. *BULL & FRANCIS.*
(1882) 47 L. T. 413.

——**Breach of Covenant.**—The owners of a building estate sold it in lots to certain purchasers, each of whom covenanted, with the owners and other purchasers, not to build a shop thereon, or carry on any trade in his house. The plaintiff, who had purchased in fee a house standing on one of these lots, which he occupied as a private residence, brought an action, in March, 1882, for an injunction to restrain the defendant from carrying on the business of a public-house in a certain house and premises which he purchased, with notice of the restrictive covenant. The evidence showed that other houses on the estate were used for the purposes of trade; that the house in question was built, to all appearance for use as a public-house, in April, 1879, when the defendant purchased it; that the latter obtained an "off" licence in May, 1879; and that the plaintiff knew that the house was used as a public-house in 1879, and had then remonstrated, but had taken no further action. *Pearson, J.* (24 Ch. Dn. 180), dismissed the action with costs against the plaintiff, who appealed. The Court (*Baggallay, Bowen, and Fry, L.JJ.*) *held*, that the change in the character of the neighbourhood was not in itself a ground for refusing relief to the plaintiff; but that he had lost his rights to an injunction or damages by reason of his acquiescence: *Lord Cairns' Act* applies where the damage sustained is only nominal, as well as to cases where the plaintiff is entitled to substantial damages, and its repeal, by 46 & 47 *Vict. c.* 49, has not affected

the jurisdiction of the Court. Acquiescence, although not sufficient to bar an action, may induce the Court to grant only damages instead of an injunction (*per Fry, L.J.*).

SAYERS v. *COLLYER.*

(1885) 49 J. P. 244; 28 Ch. D. 103; 54 L. J. Ch. 1; 51 L. T. 723; 33 W. R. 91.

——**Breach of Covenant.**—The plaintiff and the defendant were adjoining owners, and the plaintiff sought an injunction to restrain the defendant from erecting a certain building in the rear of his house. Both premises had been a part of one estate, and a covenant in the head lease provided *inter alia* that houses to be built thereon were to be in accordance with a particular plan. *Lord Romilly, M.R., held,* that a covenant against building entered into by a purchaser of land with the vendor, who was also adjoining owner, his heirs, etc., runs with the land, and may be enforced by a subsequent purchaser of part of such adjoining lands. A person seeking to enforce it must show that substantial damage will be caused by the breach. A person who has acquiesced in breaches of such a covenant is not debarred of his remedy in equity, provided the breach has caused substantial damage. All persons entitled to the benefit of the covenant need not be parties in a suit to enforce it.

WESTERN v. *MACDERMOTT.*

(1865) L. R. 1 Eq. 499; 2 Ch. 72; 12 Jur. 366; 36 L. J. Ch. 76; 15 L. T. 641; 15 W. R. 265.

——**Building Works.**—A railway company, having constructed a tunnel, disposed of the ground above, subject to the condition that the purchaser was to erect no buildings, etc., but according to a specification in writing approved by the company's *principal* engineer. The purchaser submitted plans, etc., in June to the *resident* engineer, who omitted to lay them before the *principal* engineer, but informed the purchaser verbally that the works might proceed, which the latter acted on. In October, when the *principal* engineer saw the plans for the first time, he condemned them as dangerous to the tunnel. The purchaser persisted in building, and the company caused an information to be laid to restrain him from proceeding. *Wood, V.C., held,* that the approval of their *resident* engineer did not bind the company, and that the fact that the defendant was permitted to go on with the work from June until October, under the circumstances, was not such

an acquiescence on the part of the company, as to exempt the purchaser from being restrained.

A.-G. v. *BRIGGS.*
(1855) 1 Jur. 1084.

——**Building Works.**—An agent of the East India Co. was in treaty with the owner for the purchase of certain land. The latter insisted upon certain terms. The agent made no reply, but the company began to build. *Lord Hardwicke, L.C., held,* that the silence of the agent was construed as assenting to the terms so as to bind his principals. When a man suffers another to build on his ground, without setting up a right until afterwards, the Court will oblige the owner to permit the person building to enjoy it quietly.

EAST INDIAN CO. v. *VINCENT.*
(1740) 2 Atk. 83.

——**Delay.**—A tender submitted by the defendant for the supply of granite to the plaintiffs, contained the words "*weather and other circumstances permitting.*" These words were struck out by the plaintiff's clerk, and the defendant informed accordingly. No reply having been received from the defendant for several days, the contract was duly sealed. Delays occurred in supplying the granite owing to bad weather, etc. In an action by the plaintiffs to recover damages for breach of contract, *Pollock, B.,* gave judgment for the plaintiffs. On appeal, the Court (*Lord Esher, M.R., Lindley and Bowen, L.JJ.*) dismissed the appeal.

DARTFORD GUARDIANS v. *TRICKETT.*
(1889) 53 J. P. 277; 5 T. L. R. 619; 59 L. T. 754.

——**False Representations.**—An adjoining owner, in rebuilding, removed certain portions of his premises, and thus withdrew their support from the plaintiff's buildings, and erected buildings above the level of the plaintiff's house, whereby he darkened the plaintiff's lights, and prevented the plaintiff's chimneys from drawing properly. In an action for damages against the adjoining owner, the defendant pleaded that the plaintiff had acquiesced in his pulling down and erecting the premises in the manner complained of. The plaintiff replied that such acquiescence was induced by the false representations made by the adjoining owner that the grievances complained of would not result from the building operations. On demurrer the Court (*Erle, C.J., Williams, Willes, and Byles, JJ.*) *held,* that the plea was a

good equitable defence, but that it was well answered by the reply.

DAVIES v. *MARSHALL.*

(1861) 31 L. J. C. P. 61; 10 C. B. (N.S.) 697; 1 Dr. & Sm. 557; 7 Jur. 1247; 9 W. R. 866; 4 L. T. 581.

——**Minor Breaches.**—The plaintiff sold land to the predecessor in title of the defendant, who entered into a covenant that he would erect only private residences thereon. The plaintiff afterwards either himself built, or permitted to be built, a number of shops on the adjoining plots, and acquiesced in some slight breaches of covenant in respect of the defendant's land. The defendant, who had notice of the covenants made by his predecessor in title, began to alter two houses erected on the plot into shops, and the plaintiff brought an action to restrain him.

Farwell, J., held, that no building scheme had been proved to exist, and, in the absence of such a scheme and of proof that the covenant was entered into merely for the protection of the plaintiff's property, the change in the character of the neighbourhood, though caused by his own acts, and his acquiescence in minor breaches, did not disentitle him to an injunction.

OSBORNE v. *BRADLEY.*

(1903) 2 Ch. 446; 73 L. J. Ch. 49; 89 L. T. 11.

ACTION

——**No cause of, disclosed.**—Under a building agreement the defendant agreed to let to the plaintiff land for the purpose of erecting thereon certain houses. In an action for specific performance of the agreement, the statement of claim set out the agreement, and alleged that owing to the defendant entering into possession of the land and plaintiff's material thereon, the plaintiff was unable to carry out his agreement, and thereby suffered loss. On hearing a motion under Order XXV. to strike out the statement of claim, on the ground that it disclosed no cause of action, *Bacon, V.C.,* dismissed the motion.

BODDINGTON v. *REES.*

(1885) 52 L. T. 209.

——**Notice of.**—The defendant, under notice from the local authority, laid a drain-pipe through a part of the plaintiff's premises. In an action for trespass tried by Cockburn, C.J., the defendant contended that he was entitled to notice of action under § 106 of 25 & 26 *Vict. c.* 102, as a person acting under the direction

of the local board. The plaintiff obtained a verdict. On a rule, the Court (*Cockburn, C.J., Lush and Hayes, J.J.*) *held*, that a person who has received notice from a local board to drain his house, and in doing so commits a trespass, is not entitled to notice of action under § 106 if proceedings be taken against him in respect of such trespass.

DOUST v. *SLATER.*

(1869) 38 L. J. Q. B. 159; 10 B. & S. 400; 20 L. T. 525.

——Second.—A builder improperly performed a building contract to which he and the plaintiff were parties, and at the hearing of an action by the plaintiff to recover damages, the defendant alleged that he had sued the plaintiff in another action for the price of the work improperly done, and that the plaintiff had settled that action by payment of the claim in full, and that therefore the plaintiff was precluded from bringing this action, as he might have given the alleged non-performance and the defective performance in evidence in reduction of the damages. The Court (*Hannen and Lush, JJ.*) *held*, in a considered judgment, that although the plaintiff might have used the causes of action for which he sued in reduction of the claim in the former action, yet he was not bound to do so, but might maintain a separate action for them.

DAVIS v. *HEDGES.*

(1871) L. R. 6 Q. B. 687; 40 L. J. Q. B. 276; 25 L. T. 155; 20 W. R. 60.

ADVERTISING STATION

The defendant agreed to permit the plaintiff to erect a hoarding for a bill-posting and advertising station in the forecourt of a cottage, together with the gable-wall of another cottage in the neighbourhood for the same purpose, at a rent of £10 per ann. The agreement was dated January 9, 1895.

On September 29, 1900, the defendant gave notice in writing to the plaintiff to quit and deliver up the forecourt and all other premises held by him under the agreement, and required him to remove all boards, hoardings, etc., on or before December 25, 1900.

On December 22, 1900, the plaintiff issued the writ in this action, which was not served on the defendant until December 27, 1900. On the morning of December 27, 1900, the defendant removed the hoarding and wall, for the purpose of rebuilding the cottages.

On January 11, 1901, an interlocutory injunction was refused, but the action was ordered to be set down for trial without pleadings. The claim for an injunction was abandoned at the

trial, and *Joyce, J., held,* that the agreement did not constitute a tenancy from year to year, but merely a licence revocable on reasonable notice, and that a quarter's notice, terminating at the end of a year of the currency of the agreement, was a reasonable notice.

WILSON v. *TAVENER.*
(1901) 1 Ch. 578; 70 L. J. Ch. 263; 84 L. T. 48.

AGREEMENT

——**Not to Compete.**—A corporation invited tenders for the supply of a large quantity of stone. Four quarry owners agreed among themselves, that one of them was to tender at a low price, two were to tender at higher prices than the first-named, and the fourth was not to send in any tender; and that the owner whose tender was the lowest, and which would be accepted, was to buy the stone from the other three owners at a fixed price. The last-named owner, in breach of the agreement, sent in a tender which was accepted. The plaintiff, the owner first named, sought an injunction to restrain the other two owners from supplying the corporation, directly or indirectly, with stone, and *Bacon, V.C., held,* that the agreement not to contract was not void, and that the injunction might be granted without making the corporation parties.

JONES v. *NORTH.*
(1875) L. R. 19 Eq. 426; 44 L. J. Ch. 388; 32 L. T. 149; 23 W. R. 468

AIR

The plaintiff sought an *interim* injunction against a building owner in respect of the stoppage of, or interference with, the free current of air to the plaintiff's premises by the erection of certain buildings in Drury Lane, and *Fry, J.,* granted an injunction.

DICKEY v. *PFEIL.*
Fletcher's *Light and Air,* p. 14.

——**To Chimneys.**—The plaintiff and the defendants occupied adjoining houses. The occupiers of the plaintiff's house had for more than twenty years enjoyed access of air to the chimneys thereof. The defendants, in rebuilding a wall on their premises, raised it to such a height as to cause the chimneys of the plaintiff's house to smoke. The jury found for plaintiff in his action against the defendants in respect of the easement of air claimed, and on the ground of nuisance, and *Lord Coleridge, C.J.,* ordered judgment to

be entered for the plaintiff. On appeal by the defendants, the Court (*Bramwell, Brett, and Cotton, L.JJ.*) *reversed* the judgment of *Lord Coleridge*, and *held*, that no action was maintainable by the plaintiff against the defendants, either on the ground of easement, or of nuisance.

BRYANT v. *LEFEVER.*

(1879) 4 C. P. D. 172; 48 L. J. C. P. 380; 40 L. T. 579; 27 W. R. 592.

——**Drying Sheds.**—The plaintiff was lessee of certain land and buildings thereon, and sought to restrain the defendants, the owners of adjoining land, from interference with the access of air to his premises, by the erection of buildings upon their property. Both parties derived their title from a person who had carried on the business of a mason and timber merchant on premises of which he was owner in fee. He demised two pieces of ground and certain buildings to the plaintiff, who covenanted to carry on the owner's timber business upon the premises. The owner covenanted for quiet enjoyment, and that he would not be interested in any timber business within twenty miles of the plaintiff's premises. Some years later the owner demised to the plaintiff, at a certain rent, a shed. The owner remained in occupation of the adjoining property until his death, when the whole of his estate was sold to the defendants by his devisees, including that demised to the plaintiff. The defendants erected an extensive electric light generating station, which interfered with the access of air to the plaintiff's drying sheds. The plaintiff brought an action to enforce his rights, and *Stirling, J., held*, that the defendants were not entitled to build so as to interrupt the access of air to the sheds of the plaintiff, and interfere with the carrying on of the business in ordinary course; and that as the licence from the owner to the plaintiff to construct certain ventilators in one of the walls was revocable, the plaintiff was not entitled to an injunction, but to damages, in respect of the ventilators being obstructed without reasonable notice.

ALDIN v. *LATIMER CLARK, MUIRHEAD & CO.*

(1894) 2 Ch. 427; 63 L. J. Ch. 601; 8 R. 352; 71 L. T. 119; 42 W. R. 453.

——**Drying Sheds.**—A firm of timber merchants, holding under a lease granted in 1833, stored and seasoned their timber in certain structures, erected before 1843, substantially constructed and roofed, but open at the sides for the purpose of admitting light and air. A "traveller" for handling the timber, supported upon

solid brick piers, was erected in the same year, and projected nine inches over the back yard of the defendant, who held under a lease granted in 1831.

In 1885 the defendant agreed with the freeholder to rebuild the premises at a certain cost, in consideration of which he was to surrender the existing lease, and receive a new lease of the premises for ninety-nine years. Pursuant to the said agreement, the defendant commenced to build, and cut away so much of the plaintiff's "traveller" and premises as overhung the defendant's premises. The plaintiff then sought an injunction restraining the defendant from building so as to obstruct the free passage of light and air, both of which were necessary to the plaintiff's business, and from interference with the overhanging premises.

Chitty, J., held, that the structure was not a "building" within the meaning of § 3 of the *Prescription Act*, 1832, that the plaintiff was not entitled to an easement of air, and he refused any relief. The plaintiff appealed, and fresh evidence was given by consent, and the hearing of the appeal treated as the trial of the action. The Court (*Cotton, Bowen, and Fry, L.JJ.*) *held*, that an easement of air, not coming by any definite channel, but over the general surface of an alleged servient tenement, cannot be acquired under § 2 of the *Prescription Act*, 1832, by mere enjoyment for the statutory period; that in order to acquire an easement of light under § 3, it must be shown that the light has reached the building in respect of which the easement is claimed uninterruptedly, by one and the same definite channel, for the statutory period; and that, in the circumstances, the plaintiff could not show that they were entitled to an injunction.

HARRIS v. *DE PINNA*.

(1886) 50 J. P. 486; 33 Ch. D. 238; 54 L. T. 770; 56 L. J. Ch. 344.

——**Through adjoining Cellar.**—The cellar of a public-house had been for forty years uninterruptedly ventilated, by means of a hole cut through a certain rock into an old well, situate in a yard occupied by the defendant. The latter removed a grating from the hole, and prevented the free passage of air from the cellar upwards through the well. The occupiers of the yard had knowledge of the easement enjoyed by the plaintiff.

Pollock, B., held, that the plaintiff, as against the defendant, could claim the easement of the free passage of air from the cellar, and that the lost grant claimed by the plaintiff ought to be inferred.

BASS v. *GREGORY*.

(1890) 55 J. P. 119; 25 Q. B. D. 481; 59 L. J. Q. B. 574.

——**Windmill.**—The plaintiff owned a windmill, and the defendant erected a house within two feet of the same, so as to obstruct the access of air thereto. The jury found that the house was a nuisance, and the Court ordered that that part of the house which was a nuisance should be abated.

TRAHERN'S CASE.

(1613) Godb. 221.

——**Windmill.**—The owner of a windmill sued a School Board for erecting school premises so near to the mill as to obstruct the free passage of air enjoyed thereto for more than twenty years, and he obtained damages, subject to an award. On a case stated, however, the Court (*Erle, C.J., Willes, Byles, and O'Malley, JJ.*) *held*, that the owner of a windmill cannot claim, either by prescription or presumption of a grant from twenty years' acquiescence, to be entitled to currents of wind and air to his mill. Such is not within § 2 of the *Prescription Act*, 1832. On error, this decision was *affirmed* in the Exchequer Chamber (*Wightman and Blackburn, J.J., and Bramwell, Channell, and Wilde, B.B.*).

WEBB v. *BIRD.*

(1861) 10 C. B. (N.S.) 268; 13 C. B. (N.S.) 841; 30 L. J. C. P. 384; 31 L. J. C. P. 335; 9 W. R. 899; 4 L. T. 445; 8 Jur. 621.

ALTERATIONS

——**Old Building.**—A firm of builders were employed to make certain openings in a wall dividing two houses, and the work was completed in August, 1862. In the following December notice was served on the builders that the work was not conformable to the *Metropolitan Building Act*, 1855, which required any opening made in a party-wall between two buildings, which taken together contain more than 216,000 cubic feet, to have floor-jamb and head formed of brick, stone, or iron, and the opening closed by wrought-iron doors, etc., and they were required to make the same comformable thereto. In default a summons was taken out, and the defendants urged that it was not a new building, and, therefore, that the *Act* did not apply, that the work was not an "alteration," and that the wall was a cross-wall, and not a party-wall. The magistrates convicted the defendants. On hearing a case stated, the Court (*Cockburn, C.J., and others*) affirmed the conviction.

ASHBY v. *WOODTHORP.*

(1863) 33 L. J. M. C. 68; 9 L. T. 409; 12 W. R. 209.

ANCIENT AND OTHER LIGHTS

——**Abandonment of.**—An old wooden three-storey toll-house stood out, so that its frontage was at an angle to the rest of the buildings in the street. The ground floor was used as a shop, the window of which was about the width of the shop, and situate 3 feet above the ground. This house was demolished, the projecting part of the site being acquired by the vestry for the purpose of straightening the street, and the owner built a one-storey building on the remaining ground, carrying back the frontage several feet to the line of the buildings in the street, and fixing in the front wall a window corresponding, practically, to that in the old house. The owner brought an action to restrain an alleged interference with the access of light to this window, and the defendant alleged that, owing to the above-mentioned facts, the plaintiff had lost or abandoned his right to the ancient light. *Kay, J., held,* that the right to the ancient light had not been lost.

BULLERS v. *DICKINSON.*

(1885) 29 Ch. D. 155; 54 L. J. Ch. 776; 52 L. T. 400; 33 W. R. 540.

——**Accruing and Inchoate Rights.**—The plaintiff's house was built in 1867. Ten years later the corporation purchased land under the provisions of the *Artizans' and Labourers' Dwellings Improvement Act,* 1875, and sub-let a portion thereof, opposite the plaintiff's house, for a term of years, to the defendant. In 1888 the defendant, pursuant to the conditions of his lease, cleared the site, and erected buildings thereon, higher than the previously existing buildings, which obstructed the access of light to the windows of the plaintiff's house. *Hawkins, J.,* gave judgment for the defendants. The plaintiff appealed, and the Court (*Lord Coleridge, C.J., Lord Esher, M.R., and Fry, L.J.*) *held,* that § 20 of the *Act* applies to the easement of light, and applies to rights accruing under the *Prescription Act,* 1832, and had the effect of extinguishing inchoate rights and rights of easement already acquired over the lands purchased under the Act; and that, therefore, the plaintiff did not gain an easement by reason of such twenty years' enjoyment.

BARLOW v. *ROSS.*

(1890) 54 J. P. 660; 24 Q. B. D. 381; 59 L. J. Q. B. 183; 62 L. T. 552; 38 W. R. 372.

——**Acquiescence.**—The sub-tenant of a workshop had enjoyed the access of light through a window therein for twenty-six years. The adjoining owner erected, in May, 1872, a shed within 1 foot

7 inches of the window, and obstructed the access of light thereto. The sub-tenant complained to the tenant, who complained to the adjoining owner's son. The latter alleged the occupier's right to erect the shed, and refused to remove it. The tenant ultimately wrote on January 3, 1873, to the lessor, who then, for the first time, learned of the obstruction. An action for an injunction was commenced on July 3, 1873, and *Lord Coleridge, C.J.*, entered judgment for the plaintiff. On hearing a rule, the Court (*Brett and Grove, JJ.*) discharged the rule, but *held*, that whether or not there had been submission to or acquiescence in the interruption so as to deprive the plaintiff of his right to light, was a proper question for the jury. In order to negative acquiescence, it is not necessary to have brought an action; it is enough to show that the plaintiff has in a reasonable manner intimated to the party that he did not acquiesce.

GLOVER v. *COLEMAN.*

(1874) L. R. 10 C. P. 108; 44 L. J. C. P. 66; 31 L. T. 684; 23 W. R. 163.

——**Acquiescence and Delay.**—A cabinet-maker had used for many years a workshop at the rear of his premises in which were ancient lights. The owner of certain out-buildings, separated by a party wall distant from the workshop 8 feet, began to pull them down in February, 1875. The plaintiff wrote, complaining of the party wall being raised on March 11, and on March 15 his solicitor demanded that the wall should be pulled down, and served formal notice to that effect. The defendant, however, continued to build, and on March 17 the wall stood 26 feet high. On March 19 the cabinet-maker filed a bill, asking a mandatory injunction, and *Jessel, M.R., held*, that the plaintiff had not lost his right to relief by delay or acquiescence, and granted a mandatory injunction for the removal of the additional building.

SMITH v. *SMITH.*

(1875) 20 Eq. 500; 44 L. J. Ch. 630; 32 L. T. 787; 23 W. R. 771.

——**Acquisition of Easement.**—The plaintiff owned a house standing within 4 feet of the boundary of his premises, and for thirty-eight years certain windows which it contained overlooked the adjoining premises. Two years before the date of the writ, the purchaser of the adjoining premises built a house within 5 feet of the plaintiff's boundary, and thus interfered with the access of light and air to the plaintiff's windows. In an action against the purchaser for the obstruction, *Holroyd, J.*, directed a verdict for

the plaintiff, and *held*, that the windows were ancient lights. On motion for a new trial, the Court (*Abbott, C.J., Bayley, Littledale, and Holroyd, JJ.*) *held*, that the question was not affected by the fact that the plaintiff's house was not at the extremity of the boundary, and that thirty-eight years' enjoyment, in the absence of evidence to the contrary, constituted the windows ancient lights.

CROSS v. *LEWIS.*

(1824) 2 B. & C. 686; 4 D. & R. 234; L. J. (o.s.) K. B. 136.

——**Action by Executors.**—The plaintiff owned two freehold houses in respect of which he claimed ancient lights. The defendant's predecessor in title, who owned certain houses directly opposite to those of the plaintiff, altered them so as to interfere with the plaintiff's ancient lights. More than six months after the completion of the works the predecessor in title died, and some months later the plaintiff brought an action against the defendants, to whom letters of administration had been granted. They in their defence pleaded and relied on § 2 of the *Statute* 3 & 4 *Will. IV. c.* 42.

Kekewich, J., held, that the continuance of an obstruction to ancient lights is an "injury committed" in respect of property within the meaning of § 2 of 3 & 4 *Will. IV. c.* 42, giving rise to a cause of action *de die in diem*, and, therefore, an action in respect of the continuance of the obstruction in the lifetime of the person who caused it, may be maintained against his executors or administrators, notwithstanding that the obstructing building was completed more than six calendar months before his death.

JENKS v. *CLIFDEN, VISCOUNT.*

(1897) 1 Ch. 694; 66 L. J. Ch. 338; 76 L. T. 382; 45 W. R. 424.

——**Action by Executors.**—The owner of certain freehold premises claimed an injunction and damages against the defendant for obstructing the access of light thereto. About ten months after the writ was issued the owner died. The plaintiff, the sole executor of the owner, obtained the common order to carry on the proceedings. The defendant moved to discharge the order, on the ground that the cause of action did not survive, and *Chitty, J.*, dismissed the motion, and *held*, that though by the *Act* 3 & 4 *Will. IV. c.* 42, § 2, an executor's right of action in respect of injury to the real estate was limited, the right to have the obstruction to light

removed was an equitable right, subsisting in the plaintiff at the time of death, which devolved to the plaintiff as devisee.

JONES v. *SIMES.*

(1890) 43 Ch. D. 607; 59 L. J. Ch. 351; 62 L. T. 447.

——**Action lies by Owner *v.* Lessee.**—Upon a rule *nisi*, to show cause why judgment should not be arrested, it appeared that the action was an action on the case, and was brought by the owner of a house against his own lessee, for stopping up divers windows therein; the Court (*Lee, C.J., Wright, Denison, and Foster, JJ.*) *held*, that an action on the case will lie by the owner of a house against his lessee for stopping up windows.

THOMLINSON v. *BROWN.*

(1755) Say. 215.

——**Action in Lieu of Arbitration.**—A railway company's *Act* provided that they could not take, injure, etc., any house erected before November 30, 1835, without the owner's permission signified in writing, and that compensation should be paid to the owners. The company erected a railway station and obstructed the lights of, and did other damage to, certain premises built before that date, the reversioner of which brought an action for damages against the company. The Court (*Parke, B., and others*) *held*, in a considered judgment, that the company were liable in an action on the case, and that the plaintiff was not bound to come in under the arbitration clause.

TURNER v. *SHEFFIELD, &c., RAILWAY CO.*

(1842) 10 M. & W. 425; 62 R. R. 656; 3 Rail. Cas. 222.

——**Addition to Dimensions of.**—A number of cottages had windows which were ancient lights. On inquiry it was found that certain of the cottages projected into the land of the defendant, at whose request they were set back, the windows in the new walls being of the same size as those in the old walls, and in the same relative position. In the case of one cottage, however, an addition had been made, involving the erection of a wall with a window in it outside, and at a different angle to, the old wall and window; but the old window still remained inside the addition, and continued to have access of light over the defendant's land. On a special case settled by an arbitrator, the Court (*Cockburn, C.J., and Lopes, J.*) *held*, in a considered judgment, (1) That the easement of light was not destroyed by setting back the windows, and (2) that the

right to the access of light to the old window within the addition was not lost.

BARNES v. *LOACH.*

(1879) 4 Q. B. D. 494; 48 L. J. Q. B. 756; 41 L. T. 278; 28 W. R. 32.

——**Alteration and Enlargement of.**—The owner of certain premises erected a wall 60 feet high and 50 feet long, and thereby obstructed the access of light and air to the adjoining premises. The windows of the latter had been altered and enlarged more than twenty years previously. On a rule *nisi*, obtained by the defendant, for an injunction, the Court (*Lord Ellenborough, C.J., Grose, Le Blanc, and Bayley, JJ.*) *held*, that where lights had been put out and enjoyed without interruption for twenty years during the occupation of the opposite premises by a tenant, the rights of the landlord of the opposite premises to light and air are not barred thereby, without evidence of his knowledge of the fact, which is the foundation of the presumption of a grant; and consequently will not bar a future tenant from building up against such encroaching lights.

DANIEL v. *NORTH.*

(1809) 11 East 373.

——**Altered Position and Increased Number of.**—The owner of a certain house enlarged it, inserting a window at one end of the addition, and at the other, where there were two windows, he formed two bow-windows. The former owner of the building estate on which the house stood, and after the enlargement of the house, had joined in the assignment of the premises to the purchaser who carried out the enlargement. In an action by the successor in title to the occupier who had enlarged the house, against the defendant who claimed under the owner of the building estate, for an injunction to restrain interference with the lights of the enlarged house, *Bosanquet, J.*, entered judgment for the plaintiff. On a rule, the Court (*Patterson, Williams, and Coleridge, JJ.*) *held*, that whatever privilege against the obstruction of light the old house possessed, this privilege did not apply to the three new windows; and that neither the owner of the estate nor his assigns were precluded from obstructing the light to the three windows by building on the adjoining land, because the owner joined in the conveyance of the house.

BLANCHARD v. *BRIDGES.*

(1835) 5 L. J. K. B. 78; 5 N. & M. 567; 4 A. & E. 176; 1 H. & W. 630.

——**Altered Position and Number Increased.**—The lessees of certain premises in the City of London had power to rebuild. The lessees were the defendant's tenants of the adjoining premises, but as negotiations for purchase fell through, they remained on as tenants on condition that they would pull down and rebuild the party wall. In the course of re-erecting their premises and the party wall, the agreed plan, to the knowledge of the defendant, was considerably deviated from, the position of the lights altered, and new lights opened. The defendant gave notice to the lessees, under the *Metropolitan Building Act*, 1855, of his intention to raise the party wall 20 feet higher than it had previously stood, so as to form the wall of two new storeys, and thus interfere with the lessees' new lights. The lessees filed a bill to restrain the defendant from building as he proposed, and *Romilly, M.R., held*, that as the defendant knowingly permitted the premises to be rebuilt of an increased size and height, with altered and new lights, he cannot object to them after they are erected, or assert a right to raise a party wall on his own premises to interfere with the access of light and air to the new buildings.

COTCHING v. *BASSETT.*

(1862) 32 L. J. Ch. 286; 9 Jur. 590; 32 Beav. 101; 11 W. R. 197.

——**Altered Position and Increased Size.**—The plaintiffs and the defendants possessed premises opposite to each other in the city of London. The plaintiffs' premises, which had ancient lights, were burned down, and, in the building erected on the site thereof, windows were placed in different positions, of different sizes, and occupying a greater space, than the ancient lights. Parts of the new corresponded with parts of the old lights, but the greater portion of the old and new windows did not coincide. In an action against the defendants for obstructing the access of light to the new windows, the Court (*Crompton, Bramwell, Channell, Hill, and Blackburn, JJ.*) *held*, in a considered judgment, that as none of the new windows occupied the same position as any one of the ancient windows did, no rights were acquired in respect of any of them, and affirmed the judgment of the Court of Common Pleas in favour of the defendants.

HUTCHINSON v. *COPESTAKE.*

(1861) 9 C. B. (N.S.) 863; 31 L. J. C. P. 19; 8 Jur. 54; 5 L. T. 178; 9 W. R. 896.

——**Altered Position of.**—The plaintiffs were the lessees of certain premises on a long lease, and the defendants were the

owners of premises to the east and the north of the plaintiffs' premises. The plaintiffs rebuilt their premises in 1870, setting back the upper floors of their east front 5 feet 8 inches, the plane of the new building being parallel to, and the windows of the new building nearly corresponding with those of, the old building. In substitution for an old dormer window in the ground floor, the plaintiffs put in the new building a skylight, partially coextensive with the old window, but of a different shape, in order to comply with requirements of the *Metropolitan Building Acts*. In 1876 the defendants began to rebuild so as to obstruct the access of light to the windows in the east face of the plaintiffs' building and the skylight, and the plaintiffs sought an injunction to restrain the interference. *Jessel, M.R., held*, that any substantial alteration in the plane of the windows destroys the right to light, and refused an application for an interlocutory injunction. On trial of the action, *Fry, J., held*, that the right to access of light to the dormer window was not lost; the right remains where any portion of the light which would have passed over the servient tenement through the old windows passes also through the new windows. He, however, refused a mandatory injunction and granted damages.

NATIONAL PROVINCIAL PLATE GLASS INSURANCE CO. v. *PRUDENTIAL INSURANCE CO.*
(1877) 6 Ch. D. 757; 46 L. J. Ch. 871; 37 L. T. 91; 26 W. R. 26.

——**Altered Position of.**—The plaintiffs were owners of a large block of buildings in the City of London, one front of which was in a street only 12 feet wide. The defendants proposed to erect, on the opposite side of the street, a pile of lofty buildings, which would obstruct the access of light to certain ancient lights in the plaintiffs' premises. The plaintiffs brought an action for an injunction to restrain the defendants from causing the threatened obstruction.

The plaintiffs' block had only been erected in 1867, but it was erected on the site of a building which had forty-four windows looking into this street, the plaintiffs' block having forty-two windows. Photographs, taken before the old building was pulled down, and of the new building, showed that a few of the new windows on the ground floor were in substantially the same position as those in the old building, but the greater number of the new windows occupied only part of the spaces of the old windows, and extended beyond them, on one side or the other; while some of the new windows were in different positions from any of

the old windows, and some of the latter were closed up. *Bacon, V.C.*, granted an injunction, and the defendants appealed. The Court (*Baggallay, Cotton, and Lindley, L.JJ.*) *held*, that the plaintiffs had shown an intention to preserve and not to abandon their ancient lights, and, on the balance of convenience, granted the injunction until the hearing, affirming the order of *Bacon, V.C.*

NEWSON v. *PENDER.*

(1885) 27 Ch. D. 43; 52 L. T. 9; 33 W. R. 243.

——**Altered Position of.**—The plaintiffs were ground landlords of certain premises built on the site of a public-house and other premises, in 1876, and the line of frontage was then rectified. The premises consisted of three floors, and on each floor there were six windows or doors, 8 feet 8 inches wide and 2 feet 3 inches apart. The plaintiffs brought an action for an injunction to restrain the defendants from erecting new buildings on the opposite side of the street, so as to obstruct the access of light to the plaintiffs' premises, as such light had been enjoyed before the erection of the present buildings. The strongest evidence that the access of light to the existing building of the plaintiffs coincided with the access of light to the old buildings, was contained in an affidavit, but it was not shown which parts of the new windows coincided with the old lights.

North, J., held, that where a new building has been erected upon the site of an ancient building, in order to entitle the owner of the new building to access of light, it is necessary to show that some definite part of an ancient window admitted access of light through the space occupied by a definite part of an existing window.

PENDARVES v. *MUNRO.*

(1892) 1 Ch. 611; 61 L. J. Ch. 494.

——**Alteration of Mode of Enjoyment.**—The owner of a barn converted it into a malt-house, and formed windows in certain apertures by which chiefly the barn had been lighted. In an action for an injunction against the adjoining owner, who had erected a high fence obstructing the access of light to the windows of the malt-house, evidence was offered by the defendant to show that the mode of enjoyment had been essentially altered by the plaintiff to the prejudice of the defendant. *Tindal, C.J.*, rejected the evidence, and the jury found for the plaintiff. On hearing a rule for a new trial, the Court (*Lord Denman, C.J., Littledale and Coleridge, JJ.*) *held*, that the evidence was admissible, as it might

have proved that the plaintiff had altogether lost his right to the easement, and a new trial was ordered.

GARRITT v. *SHARP.*

(1835) 3 A. & E. 325; 4 N. & M. 834; 1 H. & W. 220.

——**Alteration not Abandonment.**—The plaintiff was lessee, for a term of years, of certain workshops erected in 1872, and so designed as to preserve the ancient lights of the buildings which previously stood on the site. The workshops were a storey higher and projected into a certain yard 2 feet further than the old buildings. On the opposite side of the yard there was a wall, and in certain building operations the owner thereof raised the said wall, making it part of the new buildings, and obstructing the access of light and air to the plaintiff's premises. The plaintiff, thereupon, brought an action for an injunction against the defendant, and *Bacon, V.C., held,* that the lights were ancient, and that the defendant's wall interfered substantially therewith; the mere alteration of a building with ancient lights, without evidence of abandonment, does not imply abandonment of rights acquired under the *Prescription Act,* 1832, to the access of light to a building, substituted for the original building; the discretion given by § 2 of *Lord Cairns' Act* to award damages in lieu of an injunction, must be exercised according to the facts of the particular case; the Court will not compel a plaintiff to accept compensation instead of an injunction, in a case where the defendant has erected a building causing substantial interference.

GREENWOOD v. *HORNSEY.*

(1886) 33 Ch. D. 471; 55 L. J. Ch. 917; 55 L. T. 135; 35 W. R. 163.

——**Alteration not an Abandonment.**—The owner of certain old buildings, lighted by a number of ancient lights, pulled down the same in 1872, and erected new ones of greater elevation, lighted by larger and more numerous windows looking into an adjoining lane. The east wall of the new building was advanced so as to reduce, to a uniform width of 4 feet, the lane of a previous width varying from 7 feet 5 inches to 5 feet 7 inches. In 1883 the defendant pulled down, and re-erected at a greater elevation, certain premises on the side of the lane immediately opposite, which obstructed the access of light to the plaintiff's premises. No record was kept of the exact position of the windows of the plaintiff's old buildings, but their position had to some extent been ascertained. The plaintiff claimed an injunction to restrain the defendant from interfering with certain of the lights of the new

building, and *North, J., held,* that the plaintiff was entitled to an injunction in respect of the ancient lights "which were enjoyed by means of those portions of the windows on the first floor of the plaintiff's old buildings, which have not been blocked up in the re-building of the plaintiff's premises." The defendant appealed, and the Court (*Cotton, Bowen, and Fry, L.JJ.*) *held,* that the alterations did not amount to an abandonment of the plaintiff's rights, and they granted an injunction in respect of so much of six new windows as corresponded with the three ancient lights.

SCOTT v. *PAPE.*

(1886) 50 J. P. 645; 31 Ch. D. 554; 55 L. J Ch. 426; 54 L. T. 399; 34 W. R. 465.

——**Angle of 45°.**—A dwelling-house had windows on the first and second floors at the rear which were ancient lights, the light to which entered at an angle of 45° with the horizon. The adjoining owner had commenced to build a wall, designed to stand 42 feet in height, or 12 feet higher than the existing wall, and to be the external wall of a large block of buildings, so as to interfere with the access of light to the plaintiff's premises. In an action for an injunction, *Stuart, V.C., held,* that the Court will not, in an ordinary case, restrain the erection of a building, the height of which above an ancient light is not greater than the distance from the light, but in the circumstances he granted a mandatory injunction.

BEADEL v. *PERRY.*

(1866) 3 Eq. 465; 17 W. R. 185; 19 L. T. 760.

——**Angle of 45°.**—The plaintiff was the owner of certain premises in the City of London, and carried on the business of furniture manufacturer in two of the houses, the remaining premises being let for business purposes. The street was from 34 to 38½ feet wide; the foot of the plaintiff's ground-floor windows was 5 feet above the street level, and the centre of the window 3 feet higher, the foot of his first-floor windows being 16 feet from the ground. The height of the houses was 45 feet. The defendant proposed to erect a warehouse opposite 52 feet high, part of which only subtended an angle of 38°, and part an angle of 27°, above the horizon at the centre point of the plaintiff's ground-floor windows. In an action for an injunction, *Jessel, M.R., held,* that the plaintiff was entitled to restrain the erection of buildings which would obstruct the access of light below an angle of 45°.

HACKETT v. *BAISS.*

(1875) 20 Eq. 494; 45 L. J. Ch. 13.

——**Angle of 45°.**—A photographer used the upper part of certain premises for taking photographs in, and had a prescriptive right to light through two windows looking west. A company proposed to erect, upon the adjoining premises, a large building which, the plans showed, would materially affect the light to these two windows. The photographer sought an injunction to restrain the company from so building, and *North, J.*, granted an injunction to restrain the company from raising their building to a greater height than 3 feet above the sill of the two windows in question, but the company were not to be restrained from putting on a sloping roof of greater height, so long as the angle of incidence of light over such sloping roof to the centre part of the photographer's windows be not less than 45° from the perpendicular above the point of incidence, etc. The plaintiff appealed, and the Court (*Cotton, Brett, and Bowen, L.JJ.*) *held*, that the plaintiff was entitled to judgment in general terms, unless there is some special evidence justifying the insertion of a clause referring to the angle of incidence; there is no conclusion of law that a building will not obstruct the light coming to a window, if it permits the light to fall on the window at an angle of not less than 45° from the vertical.

PARKER v. *FIRST AVENUE HOTEL CO.*
(1883) 24 Ch. D. 282; 49 L. T. 318; 32 W. R. 105.

——**Blocking up not Abandonment.**—The plaintiff was owner of certain ancient windows which had been blocked up by his predecessor and remained blocked up for nearly twenty years. He opened them again to assert his rights, and the owner of the land adjoining obstructed them. On trial of an action for this obstruction, *Martin, B.*, directed the jury that the right to light once acquired continued, unless lost, and that if they thought the right had been acquired, they should find for the plaintiff, unless they thought his predecessor, in blocking them up, manifested an intention to permanently abandon his right to light, or that the lights, being kept closed, led the defendant to believe the lights had been abandoned. The jury found for the plaintiff, and a rule *nisi* for a new trial, on the ground of misdirection, was discharged by the Court (*Lord Campbell, C.J., and Erle, J.*).

STOKOLE v. *SINGERS.*
(1857) 3 Jur. 1256; 8 E. & B. 31; 26 L. J. Q. B. 257; 5 W. R. 756.

——**Borrowed Light.**—A grocer occupied a certain house for the purposes of his trade, and used a building at the rear 15 feet

beyond the main wall of the house as a counting-house. The counting-house looked towards a narrow court, and was lighted by a single window 9 feet by 4 feet 5 inches, and separated from the shop by a glass partition which admitted borrowed light to the back of the shop. There was a window in the basement under the counting-house, and on top a greenhouse, through which borrowed light was admitted to the back room on the first floor of the house. In an action by the grocer, *Lord Romilly, M.R.*, after inspection, granted an injunction, restraining the defendant from building to a greater height than that of the buildings which had been on the site, so as to interfere with the lights of the plaintiff. On appeal, *Lord Westbury, L.C.*, after inspection, *dissolved* the injunction, and gave damages, and *held*, that to justify the Court granting an injunction the obstruction should be such as to render the premises to a material extent less suitable for the trade carried on therein, and diminish their value for the purposes for which they are used at the time. Speculative injury cannot be taken into account.

JACKSON v. *DUKE OF NEWCASTLE.*

(1864) 33 L. J. Ch. 698; 3 De G. J. & S. 275; 10 Jur. 810; 12 W. R. 1066; 10 L. T. 802.

——**Builder under Building Agreement cannot grant Easement.**—A builder entered into a building agreement with the Ecclesiastical Commissioners under which he was entitled to a lease of each of a number of building plots as soon as he had erected thereon a house according to an approved design. By a term in each lease the Commissioners reserved to themselves the right to erect any buildings whatever on the land adjoining the demised premises, whether or not such should interfere with the lights of the defendant's houses. The purchaser of one of these houses brought an action against the builder for erecting upon the adjoining plot a house which obstructed the lights of the plaintiff's house, and *Kekewich, J.*, assessed the damages at £33. The defendant appealed, and the Court (*Collins, M.R., Romer and Cozens-Hardy, L.JJ.*) *reversed* the decision below, and *held*, that the defendant, at the time when he sold the house to the plaintiff, had not under the building agreement such an interest in the adjoining plot as would enable him to make an express grant of an easement of light over it, and that, therefore, no such grant could be implied.

QUICKE v. *CHAPMAN.*

(1903) 1 Ch. 659; 72 L. J. Ch. 373; 88 L. T. 610; 51 W. R. 452.

——**Builder Indemnified.**—Certain premises were conveyed in fee simple to a purchaser, who subsequently mortgaged them. The mortgagee sold them, conveying part thereof in fee simple to the plaintiff's predecessor in title, and the remainder in fee-simple to the defendant. In an action for trespass, and for an injunction to restrain the defendant and his builder from building so as to interfere with the access of light to the plaintiff's vinery, the builder severed his defence and appeared by separate counsel at the trial, and *Byrne, J.*, granted the injunction, with costs against the adjoining owner, and *held*, that in the circumstances, the builder was entitled to complete indemnity, and to an order for payment of his solicitor and client costs by his co-defendant.

BORN v. *TURNER.*

(1900) 2 Ch. 211; 69 L. J. Ch. 593; 83 L. T. 148; 48 W. R. 697.

——**Building Estate.**—By a building agreement between the owner of a building estate and a builder, it was agreed that for twenty-seven calendar months, from January 19, 1884, the latter might enter upon certain plots of land, numbered 1–44 on plan, for the purpose only of building and executing the works therein mentioned. Pursuant to the agreement a block of mansions was erected by the builder, with the concurrence of the owner of the building estate, upon plots 10, 11, 12, and part of 30. To the west of the mansions were the rest of plot 30, plot 29, and plots 28, 27, and 26, referred to hereafter collectively as the adjoining land. The builder contemplated erecting a corresponding block on the adjoining land mentioned, and laid the foundations of same with the concurrence of the owner, after commencing the first block. The western wall of the first block was built as a party wall for half its length, the remainder being set back from the western boundary so as to leave unbuilt upon an area of 4 feet in width next to the adjoining land. The foundations on the adjoining land were similarly laid so that the two areas together would form a court with no buildings thereon. In exercise of an option the builder took a conveyance in fee instead of a lease of the first block when built, dated May 5, 1886. The plan showed clearly the court referred to, and the conveyance by virtue of § 6 (2) of the *Conveyancing Act*, 1881, operated as conveying together with the mansions all lights appertaining thereto or enjoyed therewith at that date. In May, 1886, the builder mortgaged the premises, the mortgagees having full notice of the building agreement. In September, 1886, this mortgage was conveyed to other mortgagees. In 1891 the premises were bought by

the owner of the building estate and settled by him, the plaintiffs in the action being the trustees of the settlement. The defendants in possession of the adjoining land as successors in title to the builder and the owner, commenced to erect buildings at a distance of 13 feet from the west wall of the block of mansions so as to obstruct the light coming to the windows of the mansions. The plaintiffs claimed an injunction, and *Joyce, J., held,* that having regard to the circumstances existing at the date of the conveyance of May 5, 1886, it did not as against the owner pass to the builder any right to have the access of light unobstructed by any future building on the adjoining ground.

Birmingham, &c., Banking Co. v. *Ross* (38 Ch. D. 295) followed.

GODWIN v. *SCHWEPPES, LTD.*

(1902) 1 Ch. 926; 71 L. J. Ch. 438; 86 L. T. 377; 50 W. R. 409.

——**Building Scheme.**—The plaintiffs were assignees, for value, of the lease of a piece of land and recently erected buildings thereon, "with the rights, members, and appurtenants, to the said premises belonging," granted by the Birmingham Corporation, who covenanted to maintain open a passage adjoining, 20 feet in width. On the opposite side of the passage the buildings then existing were only 25 feet high. The defendant demolished the last-mentioned buildings, and commenced to erect a block of buildings, 80 feet in height, upon the site pursuant to a building agreement entered into by him with the Birmingham Corporation. Both premises formed part of a larger plot of land laid out under a building scheme. The plaintiffs brought an action for an injunction to restrain the defendant from interference with the access of light to their premises, and *Kekewich, J., held,* that the grantee of the plaintiffs' premises knew that the grantor intended to use the land on the opposite side of the passage for the particular purpose of building houses for business purposes, and gave judgment for the defendants, who appealed.

The Court (*Cotton, Lindley, and Bowen, L.JJ.*) *affirmed* the judgment of *Kekewich, J.,* and *held,* that there was no expressed or implied grant, in the plaintiffs' lease, of a right to uninterrupted light to the new buildings.

BIRMINGHAM, DUDLEY & DISTRICT BANKING CO. v. *ROSS.*

(1888) 38 Ch. D. 295; 57 L. J. Ch. 601; 59 L. T. 609; 36 W. R. 914.

——**Building Scheme.**—A lessee commenced to erect a block

of business premises upon separate plots, each plot held on a separate lease from the same lessor. The buildings, although part of a general scheme, were divided into blocks, each standing on one or more of the plots, but were dependent on each other for light, means of access, etc. The lessee before completion mortgaged one block, and the mortgagee stipulated that the lessee should complete the premises according to the building scheme of which he had notice. Subsequently the lessee mortgaged other blocks, and eventually became bankrupt. The mortgagee first mentioned, and the mortgagee of the adjoining block, each obtained foreclosure orders against the trustee in bankruptcy. The openings between these two blocks were stopped up, and the buildings were separately occupied. The defendants purchased, *inter alia*, the block adjoining that leased by the plaintiff, and blocked up sixteen windows, thereby interfering with the access of light to the plaintiff's block. The plaintiff brought an action for an injunction to restrain the defendants from that obstruction, and to determine the rights of the plaintiff to free access of light, etc. *Bacon, V.C.*, granted an injunction as to light, and the defendants appealed. The Court (*Cotton and Fry, L.JJ.; Lindley, L.J., dissenting*) *held*, in a considered judgment, that there was no implied reservation of light to the plaintiff's block from the adjoining blocks, and that the plaintiff could not maintain an action to restrain the defendants from the obstruction complained of. *Wheeldon* v. *Burrrows* (12 Ch. D. 31) followed. *Lindley, L.J.*, was of opinion that the several blocks were one transaction, and that there was an implied grant of light to the plaintiff's block from the adjoining blocks (25 Ch. D. 559). The plaintiff appealed and the House of Lords (*Earl of Selborne and Lord FitzGerald; Lord Blackburn dissenting*) *held*, in a considered judgment, that, although there was no express reservation of the right to light, yet looking at the plans, the covenants in the original leases, and the mortgage deeds, the mortgagees under whom the defendants held were precluded from interfering with the plaintiff's lights, and might be restrained by injunction. *Held*, also, that the plaintiff could maintain such an action, although the mortgagee of his block had surrendered the lease and taken a fresh lease from the lessor; because, whenever that lease was determined, whether by surrender, forfeiture, or otherwise, the original lessor would have the same rights to light as the mortgagee would have had if the original lease had subsisted.

RUSSELL v. *WATT.*

(1886) 50 J. P. 68; 10 App. Cas. 590; 55 L. J. Ch. 158; 53 L. T. 876; 34 W. R. 277.

——**Burden of Proof.**—The purchaser of a house from the defendant, who was also the owner of an adjoining plot of land, knew that the defendant intended to build on the plot. The map on the plaintiff's conveyance showed the plot as building land, but the document did not reserve to the vendor the right to build, so as to interfere with the lights in the house. In an action for an injunction by the purchaser, *Kekewich, J.*, gave judgment for the defendant. The plaintiff appealed, and the Court (*Lindley, A. L. Smith, and Rigby, L.JJ.*) *held*, that the plaintiff's conveyance did not show a contrary intention, within § 6 (4) of the *Conveyancing Act*, 1881, so as to exclude his right to light under § 6 (2) of the *Act*, and that the burden of showing that the plaintiff's right is limited or restricted, lies on the grantor.

BROOMFIELD v. *WILLIAMS.*

(1897) 1 Ch. 602; 66 L. J. Ch. 305; 76 L. T. 243; 45 W. R. 469.

——**Collateral Damage.**—The owner of certain premises raised a party wall which divided his premises from those adjoining, and built a workshop upon the wall, which interfered with the ancient lights in the adjoining premises. In an action by the adjoining owner, a verdict was entered for the plaintiff by *Parke, B.* On hearing a rule *nisi* for a non-suit, the Court (*Lord Abinger, C.B., Parke and Bolland, BB.*), discharged the rule, and *held*, that the *Building Act*, 14 *Geo. III. c.* 78, § 43, which authorizes the raising or building of a party wall, does not protect a party from liability for any collateral damage resulting therefrom, and that an adjoining occupier can maintain an action for building so as to darken his windows.

WELLS v. *ODY.*

(1836) 1 M. & W. 452; 46 R. R. 358; Tyr. & G. 715; 5 L. J. Ex. 199; 7 C. & P. 410; 5 D. P. C. 95.

——**Contiguous Gable.**—The plaintiff was owner of a house built in 1829, the principal windows of which looked north, having a garden to the north, bounded on the east by a 6-foot wall. The adjoining owner, in 1870, began to build on his garden, to the east of the plaintiff's premises, a row of houses, one of which stood obliquely to the east side of the plaintiff's house, almost touching it, and which would show a dead wall 40 feet high when finished. The plaintiff sought, and *Bacon, V.C.*, granted, an injunction; and the adjoining owner appealed. The Court (*James and Mellish, L.JJ.*) *held*, that the owner of an ancient light is entitled to prevent his neighbour from obstructing the access of light, so as to render the house possessing the ancient light substantially less fit for occupation.

KELK v. *PEARSON.*

(1871) L. R. 6 Ch. 809; 24 L. T. 890; 19 W. R. 665.

——**Crown Rights.**—In February, 1886, the site of a building, used since 1820 as the Bankruptcy Court in the City of London, was sold to the corporation, who, in 1890, demised it to the defendant under a building agreement, pursuant to which he proceeded to erect certain buildings.

The plaintiffs brought actions for an injunction to restrain the defendant from erecting any buildings of a greater height than the height of the old buildings, so as to interfere with the ancient lights of the plaintiffs' premises. The old Bankruptcy Court had been the property of the Crown until 1886, and the question was whether the plaintiffs could claim any prescriptive right to light.

Chitty, J., held, that § 2 of the *Prescription Act,* 1832, did not apply to light, and the Crown were not bound by § 3, not being named therein. The prerogative of the Crown prevented the acquisition of a right to light over the site of the defendant's buildings, and, therefore, the actions were dismissed.

PERRY v. *EAMES.*
(1891) 1 Ch. 658; 60 L. J. Ch. 345; 64 L. T. 438; 39 W. R. 602.

——**Custom of London.**—Three windows in a house in London, existing from time immemorial, looked out on a vacant plot of ground, on part of which the defendant's premises stood. In rebuilding his house the latter raised it to a greater height than formerly, and thereby interfered with the access of light and air to the three windows. In an action on the case by the owner of the house first mentioned, the defendant pleaded the Custom of London to build to any height on the old foundations. The Court *held,* that the plea was no answer to the action, as it had been decided, *per totam curiam,* that the custom of a city which enables a person to build on void land or new foundations, and thereby interfere with his neighbour's lights, was void (*Mosely* v. *Ball,* 9 Coke 58*a*).

HUGHES v. *KEME.*
(1612) Yel. 215.

——**Damages in Lieu of Injunction.**—The plaintiff was the owner of certain cottages, about 20 feet in height, let to weekly tenants, each cottage having certain ancient lights. The defendant proposed to erect houses 46 feet in height upon certain land, separated by a fence from the cottages. Part of the site had been a yard, and upon the remainder of the site houses, of from 30 to 35 feet in height, stood formerly. The new buildings obstructed the

access of light to the windows of the plaintiff's cottages, and the plaintiff sought an injunction to restrain the interference complained of. *Pearson, J., held*, that there was an interference with the access of light, but considered that, on the facts, it was a case for damages, and not an injunction, and he awarded the plaintiff £150 damages and his costs. In exercising the discretion given by § 2 of *Lord Cairns' Act*, the Court will not, when the result of the defendant's buildings would be, if allowed to continue, to render the plaintiff's property absolutely useless to him, compel the plaintiff to sell the property out and out to the defendant. But if the injury to the property be less serious, and it remains substantially useful to the plaintiff, if the obstruction be permitted to remain, the Court may award damages instead of an injunction, and will take into consideration the nature and situation of the property, &c.

HOLLAND v. *WORLEY.*
(1884) 49 J. P. 7; 26 Ch. D. 578; 54 L. J. Ch. 268; 50 L. T. 526; 32 W. R. 749.

——**Defendant an Assignee.**—The plaintiff and the defendant held under leases from the same landlord. The plaintiff had enjoyed access of light to his premises through the same windows on the south side of his houses, over a certain house, B, for more than twenty years. The defendant was assignee of a new lease of the house B, which was also subject to an agreement for the building of a theatre on the site thereof. On a motion for an interlocutory injunction to restrain interference with the ancient lights of the plaintiff, by the defendant building the back wall of the theatre, *North, J., held*, that the tenant of the first tenement had a right to access of light over the second tenement B, and granted the injunction with some modification.

ROBSON v. *EDWARDS.*
(1893) 2 Ch. 146; 62 L. J. Ch. 378; 68 L. T. 195; 41 W. R. 569.

——**Deviation from Plan.**—A public library was erected on land, demised subject to a covenant that the lessees would not make any alteration in the general form of the building without the lessors' consent. Certain deviations were made from the plans, it was alleged with the lessors' architect's consent, so that the lights of the library were not in the position shown on the plans. In an action by the trustees against an insurance company who erected a lofty building on the adjoining land purchased from the lessors, and interfered with the lights of the library, the defendants

pleaded that the easement of light to the windows was not granted by the lease. *Wood, V.C.*, granted an injunction, and the defendants appealed. *Lord Chelmsford, L.C., held*, that the plaintiffs had not been guilty of a breach of covenant, and that the defendants had sufficient notice of the deviations to put them on inquiry. If the acts or acquiescence of the lessors had imposed the servitude claimed, the defendants could only take what the grantors could give, and could not shake off the burden because they had no notice of it.

MILES v. *TOBIN.*
(1867) 17 L. T. 432; 16 W. R. 465.

——**Dimensions enlarged.**—The defendant began to build a workshop in the rear of his premises about 10 feet distant from the plaintiff's workshop and show-room, thereby obstructing the access of light to certain of the plaintiff's ancient and other lights. Ten years before the action was brought the plaintiff had enlarged the windows on the first floor and opened an additional window. An obstruction of the new window would have been lawful, but no obstruction of the new part would have been effectual which did not obstruct both the old part and also the windows on the ground floor, which were found to have been obstructed. *Erle, C.J.*, entered judgment for the plaintiff on the finding of the jury, subject to a rule. On hearing the rule, the Court (*Erle, C.J., Keating, Byles, and Williams, JJ.*) *held*, that the plaintiff had not lost his right by enlarging the windows, but the opening of an additional window justifies the servient owner in obstructing the ancient lights, if he does so unavoidably in the exercise of his right to obstruct the new light.

BINCKES v. *PASH.*
(1861) 11 C. B. (N.S.) 324; 8 Jur. 360; 31 L. J. C. P. 121; 10 W. R. 424; 6 L. T. 125.

——**Dimensions and Number increased.**—An old house which contained six ancient lights was pulled down and rebuilt. In the new house eight windows were opened. The adjoining owner built a coach-house which interfered with the access of light to some of the new windows. In an action for an injunction to restrain the interference, the Court *held*, that the lights in the new house must be in the same place, and of the same dimensions, and not more in number, than the lights in the old house.

CHERRINGTON v. *ABNEY.*
(1709) 2 Vern. 645.

——**Diminished, but still Sufficient.**—The plaintiff was the owner of certain premises, and was entitled by prescription to the access of light to certain windows therein. The defendant erected a large building on the opposite side of the street, whereby the access of light to the plaintiff's bedroom windows was appreciably diminished, the access of light remaining, however, being still sufficient for the purposes of the pastry-cook and coffee-shop business carried on by the plaintiff. In an action by the plaintiff for damages in respect of obstruction, *Cockburn, C.J.*, left it to the jury to say whether any sensible diminution of light to the plaintiff's premises had been occasioned by the defendant's buildings, so as to make them less available either for the purposes of occupation, or for the business carried on therein, or in which they might be occupied in future. If so the plaintiff was entitled to damages. The jury found in the affirmative, and awarded the plaintiff £50 damages. On motion for a new trial, on the grounds of misdirection, the Court (*Cockburn, C.J., Manisty and Mellor, JJ.*) *held*, that the above direction was right, as the purposes for which the premises had actually been used while the light had been enjoyed were not the proper measure of damages.

Martin v. *Goble* (1 Campbell 320) dissented from.

MOORE v. *HALL.*

(1877) 3 Q. B. D. 178; 47 L. J. Q. B. 334; 38 L. T. 419; 26 W. R. 401.

——**Diminution not Sufficient to prove.**—The defendant erected certain buildings which obstructed the ancient lights in the adjoining tenement. In an issue directed by the Lord Chancellor, it was proved that the light coming to the adjoining tenement had been diminished. *Best, C.J., held*, that to constitute an illegal obstruction by building, it is not sufficient to show that the plaintiff has less light than he had before; there must be such a privation of light as will render the occupation of his house uncomfortable, and prevent him, if in trade, from carrying on his business as beneficially as he had done previously.

BACK v. *STACEY.*

(1826) 2 C. & P. 465; 31 R. R. 679.

——**Easement extinguished by Statute.**—The plaintiffs were owners of certain houses in the city of Birmingham with ancient windows having rights of light over the adjacent land. The local authority acquired and cleared the adjacent land under the *Artisans' and Labourers' Dwellings Improvement Act*, 1875, and their lessees proposed to build thereon so as to interfere with the

plaintiffs' right to light. On a case stated, *Hall, V.C., held,* that the right to light over lands is an easement, within the meaning of § 20 of the *Act,* and that that section extinguished the right, subject to the provisions for compensating the owner.

BADHAM v. *MARRIS.*

(1882) 52 L. J. Ch. 237; 45 L. T. 579.

——**Easement of Necessity.**—The defendant conveyed one of two adjoining houses to the plaintiff in fee-simple. In a wall of the other house retained by the defendant were two windows overlooking the yard of the plaintiff's house. Neither window was an ancient light, nor did the conveyance to the plaintiff reserve any right to light, in respect of them, to the defendant. The defendant twice knocked down from his own premises a wall built in the plaintiff's yard blocking the access of light to the two windows.

In an action for a declaration that the plaintiff was entitled to build so as to obstruct the light to the two windows, and for an injunction to restrain the defendant from knocking down the wall, and for damages, *Kekewich, J., held,* that there was no implied reservation to the defendant of the right to the access of light to the two windows in question, not being an easement of necessity within the exception to the rule in *Wheeldon* v. *Burrows* (1879), 12 Ch. D. 31.

The principal of *Union Lighterage Co.* v. *London Graving Dock Co.* (1902), 2 Ch. 557, applied.

RAY v. *HAZELDINE.*

(1904) 2 Ch. 17; 73 L. J. Ch. 537; 90 L. T. 703.

——**Easements reserved.**—A lessee of certain premises in a court in the City of London only about 6 feet wide, surrendered his unexpired term to the Goldsmiths' Company for a lease to be granted for sixty years as soon as the premises should be rebuilt. The agreement provided that it should not give to the lessee a right to any easement which did not belong to the premises as they then existed, nor to any right to light and air derived from over the houses opposite. The lease granted the land and house thereon and "all lights, easements, and appurtenances thereto belonging." The defendant, under a building agreement with the Goldsmiths' Company, subsequently erected buildings in the same court, and proposed to carry them to a height of 60 feet, and thus darken, and render useless for their present purpose, the plaintiff's premises. The plaintiff moved for an injunction, and *Bacon, V.C., held,* that the grant by the lease of lights, etc.,

was controlled by the antecedent agreement, which must be read as part of the lease, and he dismissed the motion.

SALAMAN v. *GLOVER.*

(1875) L. R. 20 Eq. 444; 44 L. J. Ch. 551; 32 L. T. 792; 23 W. R. 722.

——**Easement by Tenant for Life.**—The purchaser of glebe-land under 55 *Geo. III. c.* 147, erected thereon certain buildings which obstructed the access of light to some of the windows in the adjoining house, which light had been enjoyed for more than twenty years. In an action by the owner of the adjoining house, for an injunction to restrain the purchaser from maintaining the buildings which he had erected, *Abbott, C.J.*, non-suited the plaintiff, and *held*, that, inasmuch as the rector, who was tenant for life, could not grant the easement, no valid grant could be presumed.

BARKER v. *RICHARDSON.*

(1821) 4 B. & Ald. 579; 23 R. R. 795.

——**Enlarged.**—The plaintiff enlarged an ancient window, and the owner of the adjoining ground erected a building which completely covered several inches of the space occupied by the old window, although more light passed through the window than before. In an action on the case, *Le Blanc, J.*, was of opinion that the whole space occupied by the old window was privileged, and gave judgment for the plaintiff.

CHANDLER v. *THOMPSON.*

(1811) 3 Camp. 80; 13 R. R. 756.

——**Enlarged.**—The whole of the windows of a certain old building were ancient lights, and the trustees of certain schools demolished the old buildings and erected a schoolhouse and premises. Some of the new windows were larger in area than the corresponding windows of the old building, and coincided therewith, and some of the windows did not coincide with any of the ancient lights. A railway company built a warehouse that obstructed certain of the new windows, and the trustees claimed compensation, in respect of the whole number of the windows thus obstructed, whether they coincided with any of the ancient lights or not. The arbitrator to whom the claim was referred assessed the compensation at £1450, or alternatively £725, if compensation was only to be given in respect of the obstructed windows which coincided with the ancient lights.

The Court (*Mathew and Wills, JJ.*) *held*, that compensation

should be paid in respect of the whole of the windows so obstructed.

IN RE LONDON, TILBURY & SOUTHEND RAILWAY CO. AND THE TRUSTEES OF THE GOWER'S WALK SCHOOLS.

(1890) 24 Q. B. D. 326; 59 L. J. Q. B. 162; 62 L. T. 306; 38 W. R. 343.

NOTE.—This judgment was *affirmed* by the Court of Appeal (*Lord Esher, M.R., Lindley and Lopes, L.JJ.*) on appeal (24 Q. B. D. 326).

——**Enlarged and Altered.**—The reversioner of a house having ancient windows adjoining the defendant's premises, rebuilt the house, added a storey with windows, and enlarged and altered the position of the ancient windows, within twenty years of the commencement of the action. The defendant subsequently so rebuilt his premises as to darken the windows in both the upper and lower storeys of the house of the reversioner, who sought an injunction. On trial before *Coleridge, J.*, the plaintiff was awarded damages. On a special case, the Court (*Lord Campbell, C.J., Patteson, Coleridge, and Wightman, JJ.*) *held*, that the reversioner, by his alterations, having exceeded his right, and such alterations rendering it impossible for the defendant to obstruct, as was his lawful right, such excess without obstructing the plaintiff's right, the plaintiff must be considered as losing his former right, at all events until he restored the house to its original condition.

RENSHAW v. *BEAN.*

(1852) 18 Q. B. 112.

——**Enlarged and Altered Skylights included.**—Certain premises were erected in 1891 on the site of five small houses. Parts of a skylight and windows in the rear thereof corresponded with the skylights and windows in three of the old houses. The skylight was larger in area than, and situated in a plane parallel to, the old skylights, but was 1½ feet higher. Substantial portions of the windows coincided with the windows of the old houses. The total area of the windows in the old houses was 95 square feet, 22 square feet of which were preserved in the new windows. Two of the windows had been boarded up for more than twelve months, and the third covered with shelves, which, however, admitted light. The defendants, with a view to testing their right, erected a hoarding, which interfered with the access of light to the skylight and the windows, and the plaintiffs, who were under-lessees, brought an action for a mandatory injunction. *Stirling, J.*, *held*, in a considered judgment, that there had been such a discontinuance of

user in the case of two of the windows as to prevent the plaintiffs acquiring any right, and he made a declaration of the plaintiffs' right, in lieu of granting an injunction, the defendants undertaking to submit their plans to the plaintiffs.

SMITH v. *BAXTER.*

(1900) 2 Ch. 138; 69 L. J. Ch. 437; 82 L. T. 650; 48 W. R. 458.

——**Enlarged and Position altered.**—A certain house had ancient lights. The owner in rebuilding it, within twenty years of the date of the writ, had enlarged the lights, altered their position, and opened new lights. The adjoining owner in rebuilding proposed to obstruct the access of light to some of the windows, and the owner of the ancient lights sought an injunction. The jury found that none of the windows had been enlarged, that two were in their old position and were ancient lights, that one was not ancient, and that the position of the remaining two had been altered. *Page-Wood, V.C.*, granted an injunction on the plaintiff's undertaking to block up the new, and restore the old, windows to their old position, and to pay the cost of the suit, other than those of the issue.

WEATHERLEY v. *ROSS.*

(1862) 1 H. & M. 349; 32 L. J. Ch. 128.

——**Extra Amount of Light required for Special Business.**—A firm of silk merchants used the front room of the ground floor of their premises, in a certain court in the City of London, as a sample-room where their customers examined samples of raw silk. The owners of a house in the same court, 37 feet distant from the window in question, pulled it down, and rebuilt it to the height of the old building, intending to raise it much higher. A motion for an *interim* injunction by the silk merchants was ordered to stand over, and the defendants were put on no terms. They proceeded at their own risk to complete the building, which stood almost 10 feet higher than the old house. *Malins, V.C.*, dismissed the motion, and *held*, that in order to establish the right to the access of an extraordinary amount of light necessary for a particular purpose or business to an ancient window, open, uninterrupted, and known enjoyment of such light in the manner in which it is at present enjoyed and claimed, must be shown for a period of twenty years.

LANFRANCHI v. *MACKENZIE.*

(1867) L. R. 4 Eq. 421; 36 L. J. Ch. 518; 15 W. R. 614; 16 L. T. 114.

——**Fanlight.**—The owner and occupier of a freehold detached dwelling-house brought an action against the defendant for building a house obstructing the access of light to two windows, admitted to be ancient lights. The windows in question were one small window in the drawing-room facing west, and one French window in the morning-room, 8 feet 8 inches in height and 4 feet wide, facing west. *Kekewich, J.*, granted a mandatory injunction in respect of both windows, but suspended it pending an appeal. Meantime the House of Lords delivered judgment in *Colls* v. *Home & Colonial Stores* (1904), A. C. 179, and at the hearing the Court of Appeal remitted the action for retrial. At the second trial the plaintiff amended the claim by asking for relief in respect of the glazed panels of the hall-door and the fanlight above it.

When the plaintiff bought the house it was bounded on the west by open fields, but as it was built between twenty or thirty years before on one of a series of building plots, they were likely to be built on. In October, 1902, the defendant bought the adjoining plot, and built on it a house similar to the plaintiff's house, from the west wall of which the east wall of the defendant's house was about 27 feet distant. Part of the morning-room window was not obstructed, and, as regards the part directly obstructed, there was still left to the plaintiff 45 per cent. of unobstructed light. *Kekewich, J., held*, that there was no cause of action in respect of the obstruction of light to the drawing-room and hall; but he held that a nuisance had been created by the obstruction of light to the morning-room *plus* that to the hall, and, as damages would be inadequate, he ordered the demolition of so much of the defendant's house as caused a nuisance to the plaintiff by the obstruction of light to the windows of the morning-room and hall, and he gave the plaintiff the costs in the action. The defendant appealed.

The Court (*Vaughan-Williams and Cozens-Hardy, L.JJ.; Romer, L.J., dissenting*) *held*, that the plaintiff had a cause of action, and that the remedy ought to be damages.

KINE v. *JOLLY.*

(1905) 1 Ch. 480; 74 L. J. Ch. 174; 92 L. T. 209; 53 W. R. 462; 21 T. L. R. 128.

——**Fluted Glass.**—The trustees of a religious community obtained land for the purpose of erecting thereon a chapel, the windows of which, overlooking the adjoining land, also the property of the grantor, were agreed to be glazed with fluted glass. The grantor did not require the trustees to submit the plans of the chapel which they subsequently built. The purchasers of the adjoining

land began to build thereon in such a way as to interfere with the light coming to the windows of the chapel, and the trustees sought an injunction. *Kekewich, J., held,* that in effect the grantor had given permission for the erection of such a chapel as the trustees thought fit to build, and as they had acted in a reasonable manner, neither the grantor nor those claiming under him could now complain of the position of the chapel, or the way in which it was lighted; and that the grantor and his assigns were under an obligation not to do anything to obstruct the chapel windows.

BAILEY v. *ICKE.*
(1891) 64 L. T. 789.

——**Greenhouse.**—The plaintiff was the occupier of a detached house and garden, holding under a lease, of which fourteen years were unexpired, at an annual rent of £230. The garden was divided from the garden of the adjoining house by an 8-foot party wall. There was a greenhouse at the further end of the plaintiff's garden, built with the house twenty-five years previously, and all the windows therein were admitted to be ancient lights. The defendant purchased the adjoining house and premises, and, without notice under the *London Building Act,* 1894, began to raise the party wall so as to form one side of a racquet court, and thereby obstructed the access of light to the greenhouse. The plaintiff brought an action for an injunction to restrain, &c., and *Kekewich, J., held,* that the greenhouse was a "building" within the meaning of § 3 of the *Prescription Act,* 1832, and, therefore, if it had ancient lights, the access of light thereto may be protected by injunction.

CLIFFORD v. *HOLT.*
(1899) 63 J. P. 22; 1 Ch. 698; 68 L. J. Ch. 332; 80 L. T. 48.

——**Identical Servitude.**—A house with ancient lights was destroyed by fire, and when the owner was rebuilding, he proposed to carry it to a greater height than that of the old building, and by so doing obstruct the lights of the premises belonging to the plaintiff, from whom the owner of the ancient lights had purchased. In an action for an injunction by the vendor, *Kindersley, V.C., held,* that the question whether or not the character of ancient lights attached to the new windows, depended on the question whether or not the servitude they would impose on the servient tenement is substantially the same as that which previously existed, and, in the circumstances, the new windows were ancient lights. Where

the owner of a house sells land adjoining, the purchaser may build on it as he pleases, even so as to interfere with the vendor's ancient lights. Inquiry ordered as to damages resulting from that part of the building not on the site sold by the plaintiff to the defendant.

CURRIERS' CO. v. *CORBETT.*

(1865) 2 Dr. & Sm. 355; 4 De G. J. & S. 764; 12 L. T. 169; 11 Jur. 719; 13 W. R. 538; 13 L. T. 154.

——**Inchoate Title.**—The plaintiffs were lessees for a term of eighty-two years from June 24, 1856, of Weavers' Hall in the City of London. The defendants proposed to erect certain buildings immediately opposite the hall, on a site upon which four houses had stood, one having been demolished in May, 1875, and three in October, 1875, since when it had been occupied only by buildings of low elevation. The plaintiffs issued a writ, on July 16, 1895, claiming an injunction to restrain the defendants from erecting buildings that would interfere with the access of light to the plaintiffs' windows, which were more than twenty years old.

North, J., held, that an inchoate title under the *Prescription Act* cannot be treated as complete, even if effectual interruption before the title becomes absolute is impossible. He granted an injunction restraining the defendants from building higher than the buildings existing in July, 1875, so as to obscure the plaintiffs' windows.

BATTERSEA (LORD) v. *COMMISSIONERS OF SEWERS FOR THE CITY OF LONDON.*

(1895) 59 J. P. 728; 2 Ch. 708; 65 L. J. Ch. 81; 13 R. 795; 73 L. T. 116; 44 W. R. 124.

——**Inchoate Right.**—The plaintiffs were owners of certain premises having windows, the access of light to which over adjoining land was enjoyed for more than nineteen, and less than twenty, years. The adjoining owners erected buildings which, if and when completed, would obstruct the plaintiffs' lights. In an action for an injunction and damages, *Kekewich, J., held,* that where the access of light has been enjoyed for nineteen years and a fraction, and then interrupted, the Court will not interfere to protect the right by injunction before the lapse of twenty years.

BRIDEWELL HOSPITAL v. *WARD.*

(1893) 62 L. J. Ch. 270; 68 L. T. 212.

——**Indefeasible Right of One Tenant against Other Tenant of Same Landlord.**—The plaintiff and the defendant occupied adjoining houses under leases of even date, granted by the same lessor, for

the same period. The defendant built so as to obstruct the plaintiff's ancient lights. In an action for an injunction, *Erle, C.J.*, directed the jury that the plaintiff was entitled. On a rule obtained by the defendant, the Court (*Pollock, C.B., Crompton, Bramwell, Blackburn, and Wilde, BB.*) *held*, that the fact of the two premises being held of the same landlord, for the same term, did not prevent one tenant from acquiring an indefeasible right to light as against the other.

FREWEN v. *PHILLIPS.*

(1861) 11 C. B. (N.S.) 449; 7 Jur. 1246; 30 L. J. C. P. 356; 9 W. R. 786.

——**Injunction and Damages.**—Certain premises, in an alley 11 feet wide and 120 feet long, approached by a passage running underneath a low building, had ancient lights, and had for more than twenty years enjoyed access of air and light over a certain house. In 1882 the premises were put back in line with the wall of the adjoining houses. The owner of adjoining premises, including the house over which light and air passed to the first-named premises, rebuilt, increasing the height of the new buildings by nearly 30 feet, and bringing them 10 feet nearer the said premises than the old buildings had been. The defendants had widened and raised the covered passage to the alley. The owner of the first-named premises sought a perpetual injunction, and *Kekewich, J.*, *held*, that in an action to restrain the obstruction of ancient lights where the right to relief rests mainly on damage likely to accrue within a reasonable time, the Court will, nevertheless, grant an injunction, and not merely damages.

DICKER v. *POPHAM.*

(1890) 63 L. T. 379.

——**Injunction and Damages.**—The plaintiff was lessee, for an unexpired term of twenty-nine years, of a house which he sub-let. The defendant was lessee, for ninety-nine years, of a house, opposite that of the plaintiff, which the defendant has pulled down; and he proposed to erect in its place a building, 25 feet higher than before, with the consent of the lessor, who was also the plaintiff's lessor. The street was from 35 to 37 feet wide, and the plaintiff's house stood on rising ground within a few yards of a large open space, so that loss of light was not of serious importance.

The plaintiff sought an injunction to restrain the defendant from building higher than the height of the old house, and for damages.

Kekewich, J., gave judgment for damages, for actual and possible

interference, instead of an injunction. The plaintiff appealed, and the Court (*Lindley, A. L. Smith, and Davey, L.JJ.*) *held*, that the plaintiff, having proved his right to the light, and that it would be interfered with by the proposed buildings, was entitled to an injunction as to the threatened buildings, and damages only as to the completed buildings.

MARTIN v. *PRICE.*

(1894) 1 Ch. 276; 63 L. J. Ch. 209; 7 R. 90; 70 L. T. 202; 42 W. R. 262.

——**Injunction refused through Laches.**—The plaintiff was owner of certain premises possessing ancient lights, and the defendant was adjoining owner. The defendant erected certain new buildings interfering with the ancient lights claimed by the plaintiff, who filed a bill for an injunction when the works were almost completed. It appeared that the plaintiff had information that some buildings were to be erected, but was abroad during their erection, and had done nothing that could be construed as acquiescence. *Hall, V.C., held*, that a mandatory injunction could not be granted, but directed an inquiry as to damages, although not asked for in the bill.

STANLEY OF ALDERLEY (LADY) v. *SHREWSBURY (EARL OF).*

(1875) L. R. 19 Eq. 616; 44 L. J. Ch. 389; 32 L. T. 248; 23 W. R. 678.

——**Inspection before Defence.**—The plaintiffs sought a mandatory injunction in respect of a stone staircase erected by the defendant, partly on their land, so as to obstruct the access of light and air to their basement. Before the defence was delivered the defendant demanded, and the plaintiff refused, inspection of a certain document of title. At the trial the plaintiff sought to put in evidence the document, and the defendant objected; and *Denman, J., held*, that it was admissible, and that the plaintiff had a "*sufficient cause*" for not granting inspection of the document before the defence was delivered. The question whether a mandatory injunction will be granted to compel the removal of an obstruction to ancient lights, depends upon whether or not the damages which would be granted in lieu of an injunction, would be substantial. Where less than £20 was recovered in respect of obstruction to light and two other causes of action, it was *held*, that the damages were not substantial.

WEBSTER v. *WHEWALL.*

(1880) 42 L. T. 868; 15 Ch. D. 120; 49 L. J. Ch. 704; 28 W. R. 951.

——**Interference after Notice.**—The defendant proposed to build on a plot of land adjoining the plaintiff's premises. The plaintiff having inspected the plans of the proposed buildings, came to the conclusion that they would interfere with the access of light and air to his premises, and after some correspondence, brought his action for an injunction against the defendant. On the date of service of the writ, and subsequent thereto, the defendant began to build an adjoining wall which was 39 feet high by the next day or two, when operations were stopped by an *interim* injunction. On hearing the motion, *Stirling, J.*, granted a mandatory injunction. On appeal, the Court (*Lindley and Kay, L.JJ.*) *dismissed* the appeal, and *held*, that the order was right, as the defendant had endeavoured to anticipate the action of the Court by hurrying on the building, and that what had been erected ought to be at once pulled down, whatever the result of the action.

DANIEL v. *FERGUSON.*
(1891) 2 Ch. 27; 39 W. R. 599.

——**Lateral.**—The owner of certain premises containing ancient lights, in rebuilding the same carried up a party wall containing some of the ancient lights therein, contrary to the provisions of the *London Building Act*, 1774 (14 *Geo. III. c.* 78). The adjoining owner in carrying out building operations on his premises, erected a certain wall which interfered with the plaintiff's ancient lights in the party wall. The owner of the ancient lights, in an action tried by *Dallas, J.*, obtained a verdict. On a rule, the Court (*Gibbs, C.J., Chambre and Dallas, JJ.*) *held*, that the *Act* in question did not destroy the right to lateral windows which existed before that Act, and they discharged the rule.

TITTERTON v. *CONYERS.*
(1813) 5 Taunt. 465; 1 Marsh, 140.

——**Leave and Licence.**—The owner in fee of a certain house formed four new windows in 1814 overlooking the adjoining premises, and signed and gave a document to the adjoining owner, stating that the said four windows were lately formed, and declaring that the windows were formed and remained subject to the leave and licence of the adjoining owner, and that at the request of the adjoining owner or his heirs or assigns, made at any time, the windows would be blocked up, and that sixpence a year, consideration for the leave, would be paid. The adjoining owner did not sign the document, but it was not disputed that sixpence a year had been paid to him under the document down

to 1854; but there was no evidence of any payments later than 1859. In 1877 the adjoining owner's successor in title called upon the owner's successor in title, who had bought the property with notice of the document, to block up the four windows, and he proceeded to obstruct the light thereto. In an action by the plaintiff for an injunction to restrain him from so doing on the ground of having acquired a prescriptive right, *Hall, V.C., dismissed* the action. The plaintiff appealed, and the Court (*James, Baggallay, and Thesiger, L.JJ.*) *held*, that the enjoyment of the light was only by virtue of the document of 1814, expressly given for the purpose of such enjoyment within the meaning of § 3 of the *Prescription Act*, 1832, to prevent any rights being acquired; and that the agreement, having been acted upon by payment of rent thereunder, within twenty years from the date of the writ, was enforceable in equity, irrespective of the statute.

BEWLEY v. *ATKINSON.*

(1880) 13 Ch. D. 283; 49 L. J. Ch. 153; 41 L. T. 603; 28 W. R. 638.

——**Leave and Licence.**—In 1816 M., the owner of two cottages and land adjoining, conveyed the cottages in fee to the plaintiff's predecessor in title. A tablet was at that time built into the wall and inscribed—"1816. This stone is placed by A." (the plaintiff's predecessor) "to perpetuate M.'s right to build within nine inches of this and any other building." In 1901 the defendant, who had become possessed of the land which up to that time had been an open yard, built a large shed thereon, interfering with the access of light to the windows of the two cottages, which they had enjoyed continuously from 1816. *Lawrance, J.*, tried an action brought for damages and an injunction, and gave judgment for the defendant. On appeal, the Court (*Lord Halsbury, L.C., Lord Alverstone, C.J., and Cozens-Hardy, L.J.*) *held*, that the inscription could not be construed as a consent "*expressly made or given for the purpose*" within the meaning of § 3 of the *Prescription Act*, 1832, and they allowed the appeal.

RUSCOE v. *GROUNSELL.*

(1903) 89 L. T. 426; 20 T. L. R. 5.

——**Lessee of Lights not Ancient.**—The owner of two adjoining houses granted a lease of one of them to a tenant. The owner subsequently leased the other, in which were certain windows, to a second tenant. After this the tenant first-named accepted a new lease from the owner, and in rebuilding so altered his premises as to interfere with the access of light to the windows in the second tenant's house. In an action brought for this obstruction

of light, the plaintiff recovered a verdict, and *Tindal, C.J., held*, that even though the plaintiff's windows were not twenty years old at the time they were obstructed, the adjoining tenant could not so alter his premises as to obstruct the light thereto.

COUTTS v. *GORHAM.*
(1829) M. & M. 396.

——**Lessor and Lessee.**—A railway company began to erect warehouses intended to be 100 feet high. The lessee of an adjoining warehouse gave them notice that his lights would be interfered with when the building would be completed, and required the company to decide whether they would take over, or determine his lease of the warehouse. The company declined to interfere, and the lessee gave six months' notice to determine the lease, and claimed compensation of the company for injuriously affecting his land. There was no evidence that the building had yet interfered with the lights. A sheriff's jury found for the plaintiff, and a rule *nisi* was *discharged* in the Queen's Bench Division. The company appealed, and the Court (*Lord Esher, M.R., Fry and Bowen, L.JJ.*) *held*, that the act of the lessee in determining the lease was not the natural result of the acts of the company, but the free exercise of the plaintiff's will, and therefore, he could not recover on the footing that he was entitled to a fourteen-years' lease; and that he could not recover compensation in respect of a prospective injury, which did not exist at the time of making the claim.

R. v. *POULTER.*
(1887) 52 J. P. 244; 20 Q. B. D. 132; 57 L. J. Q. B. 138; 36 W. R. 117; 58 L. T. 534.

——**"Low" Light, Angle of 45°.**—The plaintiff, a sculptor, was the lessee of certain studios which were entered from a street 31 feet wide. The defendants proposed to raise their premises on the opposite side of the street to a certain height, which would diminish the access of light to the plaintiff's premises. The plaintiff alleged that he required not only a direct light, but also what is known as a "low" or "under" light, and had enjoyed it for his work. The plaintiff's lights were all ancient, but had been enlarged within twenty years from the time the action was brought. The defendants claimed to have a statutory right to raise their buildings to a height which would subtend an angle of 45°, measured from a base line level with the centre of the plaintiff's light. The plaintiff sought an injunction, and *Bacon, V.C.*, granted it, and *held*, that the statutory regulation,

as to the height of buildings in streets, is not to be taken as limiting prescriptive rights to ancient lights, but that such rights depend upon the degree and amount of obscuration in each particular case.

THEED v. *DEBENHAM.*
(1875) 2 Ch. D. 165; 24 W. R. 775.

——**Mandatory Injunction.**—The defendants were proceeding to erect certain buildings opposite the plaintiff's premises in a narrow street in the City of London, and thus darkening the plaintiff's ancient lights and windows. The plaintiff sought a mandatory injunction, and at the trial it appeared that the street was 27½ feet wide, the east wall of the defendants' old premises 45 feet high, and it was proposed to raise it by 15 feet, but also to set back the building so as to widen the street. *Romilly, M.R.*, inspected the premises and granted an injunction, restraining the defendants from building to a greater height than that of the old buildings. The defendants appealed, and *Lord Westbury, L.C.*, suspended the injunction, and ordered an inquiry, and *held*, that it is the duty of the Court, where the damage done is not such as to justify a mandatory injunction, to order an inquiry to ascertain the damage sustained.

ISENBERG v. *EAST INDIA CO.*
(1863) 33 L. J. Ch. 392; 10 Jur. 221; 9 L. T. 625; 12 W. R. 450.

——**Mandatory Injunction.**—In 1889 the defendants re-erected their warehouse, carrying it 14 feet higher than it had previously been, and thus seriously interfered with the access of light and air to certain cottages 18 feet high, of which the plaintiffs were owners in fee. The plaintiffs requested the defendants to stop the work on May 23, 1889, and on May 28 the writ was issued, and was served on June 1, 1889. In the interval the building had been roofed in. *Chitty, J.*, granted a mandatory injunction in the form of that issued in *Yates* v. *Jack* (L. R. 1 Ch. 295), and *held*, that the fact that the obstruction is completed before writ issued will not prevent the issue of a mandatory injunction for its removal. The material point for consideration is the state of the new building when the plaintiff first complains.

LAWRENCE v. *HORTON.*
(1890) 59 L. J. Ch. 440; 62 L. T. 749; 38 W. R. 555; 6 T. L. R. 317.

——**Mandatory Injunction refused.**—The owners of certain premises increased the height thereof, so as to interfere with the

access of light to the house adjoining. The adjoining owners were colonial brokers, and required a certain amount of light for the purposes of their business. The bill was not filed until after the works were completed. An application for a mandatory injunction was dismissed by *Lord Romilly, M.R.*, following the decision in *Durell* v. *Pritchard* (14 W. R. 212). The plaintiffs appealed, and *Lord Chelmsford, L.C.*, dismissed the appeal, as it was not proved that "extreme" or "very serious" damage might ensue.

CALCRAFT v. *THOMPSON.*
(1867) 15 W. R. 387.

——**Mandatory Injunction on Interlocutory Application.** — The plaintiff owned three houses, each having one or more ancient lights, in a narrow lane only 13 to 14 feet wide. The defendant was the owner of property immediately opposite the plaintiff's houses, consisting of a house and shop 40 to 45 feet in height, and other low buildings varying from 19 to 24 feet high. In 1871 the defendant pulled down the shop, house, and adjoining low buildings, and early in the following year began to erect on the site thereof a large hotel, which, when built, would vary in height from 65 to 76 feet, and would seriously diminish the light and air formerly enjoyed by the plaintiff's houses. In October, 1872, the plaintiff sought an injunction, and at that time the defendant's wall was already several feet higher than the old buildings. *Malin, V.C.*, granted a mandatory injunction on an interlocutory application, the defendant having failed to show that the proposed building would not materially interfere with the plaintiff's lights.

YOUNGE v. *SHAPER.*
(1872) 27 L. T. 643; 21 W. R. 135.

——**Mandatory Injunction refused through Delay.**—The plaintiff's house was 31 feet high with a street frontage of 36 feet. The defendant, in March, 1865, purchased, and in May, 1865, began to pull down, premises opposite having a frontage of 40 feet, and varying in height from 30 feet to 8 feet, and with a view to erect lofty buildings, setting them back 5 feet, thus making the street 21 feet wide. The plaintiff complained in May, but a bill for an injunction was not filed until December 5, 1865, when the buildings had reached the third storey, but the motion stood over until the trial. Meantime the defendants pushed on the work, and built to the full height at their own peril. Evidence was given of the necessity to light up the plaintiff's premises earlier every evening than formerly, and that certain millers could no longer use the

premises to show samples of corn to their customers. Owing to the plaintiff's delay, *Wood, V.C.*, refused a mandatory injunction, but ordered an inquiry as to damages.

SENIOR v. *PAWSON.*

(1866) 3 Eq. 330; 15 W. R. 220.

——**Material Inconvenience not proved.**—The plaintiff was the owner but not the occupier of certain premises in a court 18 feet wide and a parallelogram in shape in the city; the defendants were the owner of a house at the end of the court 36 feet in height, and a certain builder. Opposite the plaintiff's house there was a wall 60 feet in height which prevented direct access of light to the plaintiff's house from that quarter. The first defendant employed the builder to rebuild his house, and when the new building had reached a height of over 42 feet, the plaintiff sought an injunction to restrain the defendants from interfering with the access of light to his premises by erecting a building of a greater height than the old building. At the trial it was proved that the new building would diminish the light in the court and in the plaintiff's house, but no evidence was given of material inconvenience to the plaintiff's tenant, or of substantial damage to the reversion. *Fry, J., held*, that a plaintiff in an action to restrain an alleged obstruction to ancient lights cannot obtain an injunction unless he prove substantial damage; an inquiry as to damages will not be ordered where the plaintiff has opened a case of substantial damage, and failed to prove it. The action was accordingly dismissed.

KINO v. *RUDKIN.*

(1877) 6 Ch. D. 160; 46 L. J. Ch. 807.

——**Material Injury amounting to a Nuisance.**—The defendant, by increasing the height of a certain wall on his premises, at right angles to the adjoining premises, from 12 feet to 16 feet, darkened the ancient lights in the adjoining premises. An injunction was obtained, without notice on affidavits, by the adjoining owners, but no subpœna was served. On hearing a motion to dissolve the injunction, *Lord Eldon, L.C., held*, that the defendant was put to dissolve on merits, and that the plaintiff should be permitted to show cause by affidavit. The effect of the damage, to justify an injunction, must be that material injury amounting to a nuisance, which should not only be redressed by damages, but prevented upon equitable principles.

A.-G. v. *NICHOL.*

(1809) 16 Ves. 338; 10 R. R. 186.

——**Material Injury not proved.**—A tenant from year to year sought an injunction to restrain the adjoining tenant from building so as to interfere with the free access of light and air to his house. At the time of the hearing of an action brought by the tenant for an injunction against the adjoining tenant, only eight months of his tenancy was unexpired. *Lord Romilly, M.R.*, granted a mandatory injunction, and *held*, that the fact that the plaintiff's interest in the premises was small, was no ground upon which to refuse him protection. On appeal, the Court (*Knight Bruce and Turner, L.JJ.*) *held*, that the small interest of the plaintiff, although not disentitling him to relief, was an important element for consideration, and they dismissed the bill as no material injury had been sustained.

JACOMB v. *KNIGHT.*

(1863) 32 L. J. Ch. 601; 3 De G. J. & S. 533; 8 L. T. 621; 11 W. R. 812.

——**Mistake as to Position.**—One of two adjoining owners under a misapprehension made no objection to the other adjoining owner erecting a glass studio at the rear of his own premises. About a week after the work had been started, the first-named adjoining owner discovered the mistake as to the position of the studio which he had made, and that the building would darken the lights of his house; four days later he objected in writing, and eight days afterwards, when the studio was almost completed, he filed a bill for an injunction. *Wood, V.C.*, dismissed the bill, and the plaintiff appealed. The Court (*Turner and Knight Bruce, L.JJ.*) *dissented* from the decision of the Vice-Chancellor, and *held*, that there was no such acquiescence as would deprive the plaintiff of his right, but that in the circumstances the bill ought to be dismissed, on the ground of no nuisance.

JOHNSON v. *WYATT.*

(1863) 33 L. J. Ch. 394; 9 Jur. 1333; 9 L. T. 618; 12 W. R. 233.

——**Mutual Vindictiveness of Plaintiff and Defendant.**—The defendant, in the course of rebuilding his premises, proposed to erect a block of buildings five storeys high. Upon the site thereof there had recently existed for more than twenty years, a one-storey building, less than 12 feet high, a two-storey building, and a four-storey building. The last-named building formed the side of a passage leading to a certain court, through which light and air passed to the adjoining owner's premises. It was proposed to build over the court and alley also, giving the adjoining owner access to his rear by a covered passage. The adjoining

owner sought an injunction, and a motion for a decree was made nearly three years after the bill was filed. It appeared that by various acts both the plaintiff and the defendant had to a considerable extent injured the other, and *Lord Romilly, M.R., held,* that although the defendant was to some extent to blame, the proper course was simply to dismiss the bill without costs.

COCKS v. *ROMAINE.*
(1866) 14 L. T. 390.

——**Non-existing Windows not a bar to Action.**—In 1878 the Ecclesiastical Commissioners pulled down a certain church, built in 1674, and having disposed of the materials, endeavoured unsuccessfully to sell the site. The defendants, who had become owners of what had been part of the glebe or the churchyard of the church, commenced to erect thereon certain buildings, which, when completed, would have materially obstructed the access of light to windows occupying the same position as those of the old church. The Ecclesiastical Commissioners, therefore, sought an injunction, which was refused with costs by *Hall, V.C.* The plaintiffs appealed, and the Court (*James, Brett, and Cotton, L.JJ.*) *reversed* the judgment of *Hall, V.C.*, and granted an *interim* injunction, and *held,* that the fact that there were no existing windows the access of light to which would be interfered with, was no bar to the injunction, if the right to light had not been abandoned; that the Commissioners had power to sell the site with all the easements possessed by the church; and that, although vested in the rector, there was no such manifest impossibility for the church to have a title by prescription or grant to access of light over the glebe, as to induce the court to refuse an *interim* injunction.

ECCLESIASTICAL COMMISSIONERS v. *KINO.*
(1880) 14 Ch. D. 213; 49 L. T. Ch. 529; 42 L. T. 201; 28 W. R. 544.

——**Nuisance.**—The plaintiff was the lessee of a house, the kitchen of which had been lighted for more than twenty years by a grated area situated in an adjoining yard. In May, 1860, the defendant converted the yard into a larder, covering the upper part with a skylight. After correspondence, the defendant promised, in October, 1860, that he would make certain alterations, and not having done so, the plaintiff filed a bill for relief in May, 1861. *Kindersley, V.C., held,* that converting the yard into a larder was such a nuisance as the Court will interfere to prevent, and that the plaintiff's delay in filing his bill, from

October, 1860, to May, 1861, was not a sufficient ground for refusing relief, the delay not having occasioned mischief to the defendant.

GALE v. *ABBOTT.*
(1861) 8 Jur. 987; 10 W. R. 748; 6 L. T. 852.

——**No Nuisance proved.**—The defendants erected a wall in the City of London, close to the plaintiffs' premises, so as to interfere with the ancient lights therein. In an action for an injunction, the defendants contended that there was a space of 17 feet between their wall and the plaintiffs' premises, and that there were many streets and lanes in London not so wide. They admitted that the lights were interfered with in some degree, but claimed a right to build on their own ground. *Lord Hardwicke, L.C.*, refused the injunction, and *held*, that no nuisance had been proved.

FISHMONGERS' CO. v. *EAST INDIA CO.*
(1752) 1 Dick. 163.

——**Not reserved by Conveyance.**—The plaintiff purchased a block of eighteen cottages, which overlooked the rear of a block of nine cottages, also his property, the two blocks being divided by a road. The defendants were purchasers of the block of eighteen cottages, which the plaintiff had sold some years before without reserving in the conveyance thereof the ancient lights in his block of nine cottages. In an action to restrain the defendants from erecting on the site of the block of eighteen cottages, large buildings which would interfere with the access of light to the plaintiff's cottages, a *Commissioner of Assize* entered judgment for the defendants. The plaintiff moved to enter judgment for him, and the Court (*Grove and Denman, JJ.*) dismissed the motion, and *held*, that notwithstanding the plaintiff's cottages had acquired an absolute and indefeasible right to light at the date of the conveyance of the block of eighteen cottages, inasmuch as that conveyance was without reservation, the defendants were guilty of no wrongful obstruction of the plaintiff's lights.

ELLIS v. *MANCHESTER CARRIAGE CO.*
(1876) 2 C. P. D. 13; 35 L. T. 476; 25 W. R. 229.

——**Obstructed by "Party Structure."**—The plaintiff and the defendant were adjoining owners. The defendant, who was a building owner within the meaning of the *Metropolitan Building Act*, 1855, erected a party structure which interfered with the access of light to the plaintiff's premises. In an action for an injunction by the plaintiff, the Court (*Cockburn, C.J., Blackburn*

and Lush, JJ.) *held*, on demurrer, that § 83 (6) of the *Act*, which gives a right to the building owner to raise any party structure permitted by the *Act* to be raised, upon condition of making good all damage to the adjoining premises occasioned thereby, does not authorize the erection of a structure so as to obstruct ancient lights in the adjoining premises, and they granted the injunction.

CROFTS v. *HALDANE.*
(1867) L. R. 2 Q. B. 194; 36 L. J. Q. B. 85; 16 L. T. 116; 8 B. & S. 194; 15 W. R. 444.

——**Obstructed by Pile of Timber.**—The owner of certain land erected a house thereon. Subsequently he sold the house to one, and the rest of the land to another, purchaser. The purchaser of the land obstructed the lights of the house by erecting piles of timber on the land. In an action by the purchaser of the house, the Court (*Twysden and Wyndham, JJ.; Kelynge, J., doubting*) *held*, that the vendor could not derogate from his own grant, and that neither he nor any purchaser claiming under him could obstruct the lights of the house.

PALMER v. *FLETCHER.*
(1615) 1 Lev. 122.

——**Obstruction after Notice.**—The owner and the occupier of a certain house, after written notice, brought an action against the defendant to restrain him from rebuilding his premises, on the opposite side of the street, to such a height as to obstruct the plaintiffs' ancient lights. On May 24, 1885, the writ was issued, but the defendant evaded service until May 28, when the plaintiffs obtained an order for substituted service. Meantime the defendant pushed on the works, and on May 30 the gable was built to its full height, and materially interfered with the lights in question. *Kekewich, J., held*, that the defendant's evasion of the service of the writ brought the case within the principle of *Daniel* v. *Ferguson* (1881), 2 Ch. 27, and that the plaintiff was entitled to an interlocutory mandatory injunction, ordering the defendant to pull down as much of the building as had been erected after the plaintiff had warned the defendant that he intended to bring an action. The Court (*Lindley, Lopes, and Rigby, L.JJ.*) *affirmed* this decision.

VON JOEL v. *HORNSEY.*
(1895) 2 Ch. 774; 65 L. J. Ch. 102; 73 L. T. 372.

——**Obstruction of New if it involves Obstruction of Old is Illegal.**—A silk-mercer, carrying on business in the City of London, pulled

down the premises he occupied and erected on the site a new warehouse, altering the position, enlarging the dimensions of windows previously existing, increasing the height of the buildings, and setting the rear of them so as to be nearer to the defendant's premises. The new windows were so situated that the defendant could not obstruct them without obstructing that portion of the new windows which occupied the site of the ancient windows. In an action for obstructing the plaintiff's lights tried by *Cockburn, C.J.*, verdict and judgment were given for the plaintiff. On hearing a case, the Court of Common Pleas affirmed the judgment of *Cockburn, C.J.* Upon error in the Exchequer Chamber, the Court *affirmed* the decision in the Common Pleas. On appeal in error, the House of Lords (*Lords Westbury, L.C., Cranworth, and Chelmsford*) *held*, that the right to light depends now on statute, which cannot be lost by a temporary intermission not amounting to abandonment, nor forfeited by any attempt to extend the right; and that where there was an ancient light and others were added, which from their position could not be obstructed without obstructing the ancient light, such obstruction was illegal.

TAPLING v. *JONES.*

(1865) 11 H. L. C. 290; 20 C. B. (N.S.) 166; 11 Jur. 309; 34 L. J. C. P. 342; 13 W. R. 617; 12 L. T. 555.

——**Obstruction by Paling.**—The defendant erected a large paling, and thereby completely darkened certain ancient lights of the adjoining owner. In an action on the case, the defence stated that there had been blinds fastened to the window-frames of the ancient lights which prevented the plaintiff from seeing into the defendant's garden, the blinds sloping upwards, and only serving to admit light; and that the plaintiff, by removing those blinds, had deprived the defendant of the privacy of his garden. It being proved that the paling had in fact rendered the rooms darker than they had been when the blinds were up, *Lord Kenyon* entered judgment for the plaintiff.

COTTERELL v. *GRIFFITHS.*

(1801) 4 Esp. 69.

——**Obstruction removed.**—In 1807 a window was opened in certain premises under circumstances from which, in view of subsequent user, the jury might presume a grant. The adjoining owner erected certain boards which obstructed the access of light to the window, and the defendant entered the premises and broke down the boards. *Tindal, C.J., held*, that the question was not whether the window was ancient, but whether it was such as the

law, in indulgence to rights, has in modern times so called, and to which the defendant has a right: the jury found for the plaintiff.

PENWARDEN v. *CHING.*

(1829) M. & M. 400.

——**Opaque Glass.**—By an agreement in writing, but not under seal, the defendant's predecessor in title agreed with the plaintiff that the latter should have an indefeasible right to the access of light and air to a certain window, about which a dispute as to whether it was an ancient light or not had arisen, on condition that the plaintiff should make, and his heirs, &c., should keep, the glass thereof opaque, and that the window-frame should be made to open to admit air without allowing any person to look out through it from the plaintiff's house.

The defendant purchased the premises without any actual notice of the above-named agreement, and he proceeded to pull down a certain wall and erect a building of greater height, and slightly nearer to the window than the old wall. The plaintiff threatened proceedings, and negotiations ensued, but without result; and after the building had been carried to its full height, the plaintiff sought an injunction. *Hall, V.C., held*, that the defendant was affected with constructive notice, having seen the window when he purchased, and he was restrained from interfering with the access of light to the window. The defendant appealed, and the Court (*James, Brett, and Cotton, JJ.*) *reversed* the decision of *Hall, V.C.*, and *held*, that the mere fact of there being windows in an adjoining house which overlooks a purchased property is not constructive notice of any agreement giving a right to the access of light to them.

ALLEN v. *SECKHAM.*

(1879) 11 Ch. D. 790; 48 L. J. Ch. 611; 41 L. T. 260; 28 W. R. 26.

——**For the Purpose of Ordinary Business.**—The company were lessees of business premises in the City. Colls proposed to erect on land opposite a building 42 feet high, the street being 41 feet wide. On action brought, *Joyce, J.*, found that the proposed buildings would not interfere with any of the company's windows but two on the ground floor, in which it had been necessary to use electric light in the daytime, that the letting or selling value of the company's premises would not be affected, and that they would still be sufficiently lighted for all ordinary purposes of occupancy as a place of business. He therefore dismissed the action with costs.

The Court of Appeal (*Vaughan-Williams, Romer, and Cozens-*

Hardy, L.JJ.) *reversed* the above decision, and granted an injunction restraining Colls from building so as to injure, darken, or obstruct the company's windows, and ordered certain buildings erected by Colls after the decision of *Joyce, J.*, to be pulled down ((1902) 1 Ch. 302).

The House of Lords (*The Earl of Halsbury, L.C., Lords Macnaghten, Davey, Robinson, and Lindley*) *reversed* the judgment of the Court of Appeal, and *held*, that to constitute an actionable obstruction of ancient lights it is not enough that the light is less than before. The diminution of light must be substantial; the interference must render the occupation of the house uncomfortable according to ordinary notions of mankind; if business premises, it must prevent the plaintiff from carrying on his accustomed business as beneficially as before.

Warren v. *Brown* (1902), 1 K. B. 15, overruled.

Cf. *Ambler* v. *Gordon* (1905), 1 K. B. 417.

COLLS v. *THE HOME & COLONIAL STORES, LTD.* (1904) App. Cas. 179; 73 L. J. Ch. 484; 90 L. T. 687; 53 W. R. 30; 20 T. L. R. 475.

——**Overlooking a Public Open Space.**—The owner of a plot of ground abutting on a churchyard erected thereon buildings with windows overlooking the churchyard. The churchyard was an "*open space*" within the *Metropolitan Open Spaces Acts*, 1877, 1881, and 1887, and the *Disused Burial Grounds Act*, 1884. In order to prevent the acquisition of an easement of light over the churchyard, the local authority erected a screen or hoarding to obstruct the windows in question. The owner sought an injunction, and *Buckley, J.*, *held*, that as the plaintiff was suing either in respect of a private right to the access of light, or in respect of an alleged interference with a public right from which he personally had sustained special damage, he could sue without joining the Attorney-General as plaintiff. The Acts, however, did not create any easement for the benefit of adjoining owners, or any right other than a right in the public to enjoy the churchyard as an open space. The hoarding was not a building within the meaning of § 5 of the *Act* of 1881, or of § 3 of the *Act* of 1884. Action dismissed. On appeal, the Court (*Vaughan-Williams, Romer, and Cozens-Hardy, L.JJ.*) *reversed* this decision ((1903) 2 Ch. 557).

BOYCE v. *PADDINGTON BOROUGH COUNCIL.* (1903) 67 J. P. 23; 1 Ch. 109; 72 L. J. Ch. 28; 87 L. T. 564; 51 W. R. 109; 1 L. G. R. 98.

NOTE.—The House of Lords (*Earl of Halsbury, L.C., and Lords Robertson and Lindley*) *reversed* the judgment of the Court of Appeal, and *restored* the decision of *Buckley, J.*, on appeal ((1905) *Times, Standard*, November 15).

——**Partial Acquiescence.**—The defendants, who were boiler-makers, had acquired land, behind a chapel, previously used as a timber-yard, and erected thereon boiler works, and a large shed with corrugated iron roof. The shed was completed in 1871, but no complaint made by the chapel trustees until June, 1871, when their solicitor complained of noise and interference with the lights at the back of the chapel, built in 1840, the lights having been diminished by the trustees in 1868. Various communications passed between the parties from that date to January, 1874, when the trustees brought their action for a mandatory injunction, and also an injunction in respect of the noise. *Bacon, V.C.*, granted injunctions as prayed. On appeal, the Court (*James and Mellish, L.JJ.*) *affirmed* the decision of the *Vice-Chancellor*, and *held*, that having regard to the nature of the building, relief should be granted, although the shed was completed, and the works carried on for some time, without complaint. A partial interference with light by the owner is no bar to a suit to prevent a subsequent interference by others. "Air" should not be coupled with "light" in an injunction as a matter of common form.

BAXTER v. *BOWER.*

(1875) 44 L. J. Ch. 625; 33 L. T. 41; 23 W. R. 805.

——**In a 9-foot Passage.**—The back return-windows of the plaintiff's house were ancient lights, and looked into a passage 9 feet wide. The defendant proposed to pull down his house 30 feet high opposite, and rebuild it to a height of 60 feet with a recess of 8 feet in the wall directly opposite one half of the frontage of the plaintiff's premises. The rooms were low and small, and the defendant's buildings when completed would obstruct the access of light thereto and diminish the value thereof. In an action to prevent the threatened obstruction, *Walsh, M.R.*, granted a prohibitory injunction, but refused a mandatory injunction.

MAGUIRE v. *GRATTAN.*

(1868) 2 Ir. Rep. Eq. 246; 16 W. R. 1189.

——**Photographic Studio.**—Two adjoining premises were divided by a wall 11 feet high, 4 feet distant from a large window in one of the houses, occupied by the plaintiff, and running in a direction nearly perpendicular to the window. The adjoining owner erected in his garden buildings for photographic purposes, running parallel to the wall, about 3 feet from it, and from 4½ feet to 11 feet above the wall, and so obstructed the access of light and of the sun's rays to the plaintiff's window. In an action for an injunction against the adjoining owner, *Lord Cranworth, L.C.*, dismissed the bill, but

held, that the Court will restrain the erection of a building when the obstruction is such as to interfere with the ordinary occupations of life, and that a *lateral* obstruction may be restrained.

CLARKE v. *CLARK.*

(1865) L. R. 1 Ch. 16; 35 L. J. Ch. 151; 11 Jur. 914; 13 W. R. 115; 13 L. T. 482.

——**Photographic Studio.**—The plaintiff, a photographer, had occupied a studio at the back of his premises for twenty-three years, running north and south, and entirely lighted by a low side east or north-east light. Until 1887 it was used by the plaintiff as a jeweller's showroom, and since 1887 for the purpose of developing photographic portraits. In February, 1897, the defendants, who were photographers and occupied the adjoining premises, proceeded to erect, on a flat at the rear of their premises, a photographic studio, distant, from that of the plaintiff, about 12 feet. The plaintiff brought an action, and served notice of motion for an *interim* injunction to restrain the defendants from erecting the building.

Kekewich, J., held, that a person who is in the present enjoyment of an access of light to his premises for a special or extraordinary purpose, such as taking photographs, may obtain an injunction against interference with that access of light, even though he may not have been in the enjoyment of it for that special or extraordinary purpose for the full statutory period of twenty years.

Lanfranchi v. *Mackenzie*, L. R. 4 Eq. 421, not followed.

LAZARUS v. *ARTISTIC PHOTOGRAPHIC CO.*

(1897) 2 Ch. 214; 66 L. J. Ch. 522; 76 L. T. 457; 45 W. R. 614.

——**Plaintiff contributing to Diminution.**—The purchasers of certain premises rebuilt and enlarged them, and left a certain wall standing, in order to preserve the ancient lights therein. The purchasers of the adjoining premises built a wall within 3 feet of the ancient lights referred to, and had raised it to a height of 30 feet, intending to build it 20 feet higher. The alleged object of this wall was to protect the adjoining premises from fire in the plaintiffs' premises, where wood-cutting was carried on. The defendants alleged that the plaintiffs had by their extensive building reduced the light coming to their premises. *Stuart, V.C.*, refused a motion for a mandatory injunction, and the plaintiffs appealed. *Giffard, L.J., reversed* the decision of *Stuart, V.C.*, and *held*, that the fact that the owner of ancient lights has himself contributed to the

diminution of light, will not in itself preclude him from obtaining an injunction against the person causing an obstruction.

STAIGHT v. *BURN.*

(1869) 5 Ch. 163; 39 L. J. Ch. 289; 22 L. T. 831; 18 W. R. 243.

——**Plaintiff need not be the Occupier.**—The defendant commenced to erect at the rear of his house, in a certain terrace, an addition 26 feet from the back wall, intending to carry it to within 5 feet of the height of the house. The houses in the terrace were only 29 feet wide, so that the new structure would, if erected, be very close to the windows of the adjoining houses, the respective owners of which sought to restrain the defendant from building as proposed. It appeared that some of the windows claimed by the plaintiffs as ancient lights had been enlarged recently, and some new windows had been opened. *Kindersley, V.C.*, gave the plaintiff leave to bring an action at law, and allowed the defendant to proceed at his own risk, to a certain height, with the building, and *held*, that the plaintiff seeking an injunction need not be in occupation of the premises the light to which is obstructed.

WILSON v. *TOWNEND.*

(1860) 30 L. J. Ch. 25; 6 Jur. 1109; 1 Dr. & Sm. 324; 3 L. T. 352; 9 W. R. 30.

——**Plan of House altered in Rebuilding.**—A lease contained a covenant to "rebuild" a new house on the site of the demised premises, and it was also covenanted that such of the lights in the new house as occupied the site of ancient lights should have all the rights of ancient lights. In an action by the lessors for an injunction to restrain the lessees from building on a different plan to that of the old premises, *Page-Wood, V.C.*, granted an injunction. On appeal, *Lord Westbury, L.C.*, *held*, that the covenant did not oblige the lessees to build the new house in the same style, and shape, and with the same elevation as the old building, and even if he did, the fact that the covenant stipulated that the new building should be suitable for a purpose which the old building would not have suited, would rebut the inference that the houses were to be similar, and that the agreement as to the lights amounted only to an engagement that as far as the lessees were owners of adjoining property, the lights of the new house would have the character of ancient lights.

LOW v. *INNES.*

(1864) 4 De J. J. & S. 286; 10 Jur. 1037.

——**Position not Ascertainable.**—In 1868 the owners of certain cottages with ancient lights pulled them down, and upon the site thereof erected a warehouse, the western side of which was on the same plane as the western side of the cottages, and which was lighted by three large windows. At the trial of an action by the owners to prevent the adjoining owners from raising their premises beyond their former height and so obstructing the access of light to the three windows, there was no reliable evidence as to the position of the lights in the old cottages, and *Bacon, V.C.*, *dismissed* the action. On appeal, the Court (*James, Baggallay, and Lush, L.JJ.*) *held*, that in the absence of evidence as to the position of the ancient lights, the easement could not be maintained as to the new building.

FOWLERS v. *WALKER.*
(1880) 51 L. J. Ch. 443; 42 L. T. 356; 28 W. R. 579.

——**Presumptive Bar.**—In an action on the case for the obstruction of certain lights, the plaintiff proved twenty-five years' uninterrupted enjoyment thereof. The defendant relied on possession previous to these twenty-five years, but *Gould, J.*, entered judgment for the plaintiff. On a rule for a new trial on the grounds of misdirection, the Court (*Lord Mansfield, C.J., Willes, Ashurst, and Buller, JJ.*) *held*, that length of enjoyment was not an *absolute* bar, like a statute of limitations, but was a *presumptive* bar, which ought to go to the jury, and the rule was made absolute. It was, however, subsequently discharged.

DARWIN v. *UPTON.*
(1786) 2 Wms. Saund. 175, *c.*

——**Prior Sale by Auction.**—Certain freehold premises, consisting of a workshop and a plot of building land, were offered for sale by public auction. The land was then sold; and a month later the workshop was sold by private treaty to another purchaser. The successor in title of the purchaser of the land erected a hoarding near the edge of the land facing certain windows in the workshop, in order to assert the right to the uncontrolled user of the land. The owner of the workshop knocked down the hoarding, in order to assert his right to an easement of light in respect of the windows referred to. The plaintiff sought an injunction to restrain him from trespassing, and *Bacon, V.C.*, granted an injunction and damages. The defendant appealed, and the Court (*Thesiger, James, and Baggallay, L.JJ.*) *held*, that as the vendor had not, when he conveyed the plot of land, reserved the right of access of light to the windows, no such right passed to the

purchaser of the workshop, and that the purchaser of the plot of land could obstruct the light to the windows; whatever might have been the case had both been sold by auction, there was, under the circumstances, no implied reservation of any right over the piece of land first sold.

The decision in *Pyer* v. *Carter* (1 H. & N. 916) was *dissented* from.

WHEELDON v. *BURROWS.*
(1879) 12 Ch. D. 31; 41 L. T. 327; 48 L. J. Ch. 853; 28 W. R. 196.

——**Purchasers of Same Vendor.**—The plaintiff purchased a house, and the defendant the adjoining land, from the same vendor. A one-storey building had formerly stood on the land. The plaintiff's conveyance described the land as "*building ground.*" In an action for a nuisance committed by the defendant in erecting a house which obstructed the plaintiff's ancient lights, *Tindal, C.J.*, ordered a verdict to be entered for the plaintiff for damages subject to a rule. On hearing a rule *nisi*, the Court (*Tindal, C.J., and others*) *held*, in a considered judgment, that the defendant was not entitled to build to a greater height than one storey, if by so doing he obstructed the plaintiff's lights.

SWANSBOROUGH v. *COVENTRY.*
(1832) 9 Bing. 305; 2 Moo. & Sco. 362; 35 R. R. 660; 2 L. J. C. P. 11.

——**Reservation by Lessors.**—The plaintiffs, as trustees, were lessees of certain premises, 44 feet in height, held under four leases from the Ecclesiastical Commissioners, in a street in London, 31 feet wide, for a term of sixty years, from December, 1867. The lessors reserved power, by a clause in each lease, to deal with the adjoining or contiguous premises as they thought fit, to permit the erection of any buildings whatsoever thereon, &c., without obtaining the consent of, or compensating, the lessees. The word "lessors" was to include all persons holding title under the Commissioners.

The defendant proposed to erect opposite to the plaintiffs' premises, also the property of the Ecclesiastical Commissioners, certain buildings, which admittedly would interfere with the plaintiffs' ancient lights, in lieu of four old houses standing unaltered on that site for a period of more than twenty years, and but 30½ feet in height.

In an action for an injunction, *North, J.*, *held*, that the above clause prevented the plaintiffs from a right to light under § 3 of the *Prescription Act*, 1832, that the plaintiffs' leases and the defendant's agreement, respectively, passed by implication the subsoil of the

street *usque ad medium filum viæ*, and that, therefore, the respective premises were "*adjoining or contiguous*," and that the defendant was an assign of the benefit of the agreement between the Commissioners and the plaintiffs, and that, consequently, the defendant was entitled to build so as to obstruct the plaintiffs' lights.

HAYNES v. *KING.*

(1893) 3 Ch. 439; 63 L. J. Ch. 21; 3 R. 715; 69 L. T. 855; 42 W. R. 56.

——**Restored Lights.**—The former owner of the plaintiff's premises had, when rebuilding about seventeen years before the action was brought, substituted a blank wall for a wall, adjoining the defendant's premises, which had contained an ancient light. Three years prior to the date of the action, the defendant erected a building next to the blank wall, whereupon the plaintiff opened a window in the blank wall, in the same position as the ancient window had been in the old building. In an action for an injunction, *Hullock, B.*, directed a verdict for the plaintiff. The defendant moved for a nonsuit, and the Court (*Abbott, C.J., Bayley, Holroyd, and Littledale, JJ.*) *held*, that the plaintiff could not maintain the action, because, by erecting the blank wall, he not only ceased to enjoy the light, but had evinced an intention never to resume the enjoyment.

MOORE v. *RAWSON.*

(1824) 3 B. & C. 332; 27 R. R. 375; 5 D. & R. 234; 3 L. J. (o.s.) K. B. 32.

——**Reversioner as Plaintiff.**—In an action by the reversioner against an adjoining owner for obstructing the access of light to certain premises, a verdict and general damages were given for the plaintiff. On hearing a rule the defendant objected that the action could not be maintained by the reversioner, being only an injury to the person in possession; the Court (*Lord Mansfield, C.J., and Aston, J.*) discharged the rule.

JESSER v. *GIFFORD.*

(1767) 4 Burr. 2141.

——**Right to All Light previously had.**—The owner of certain premises rebuilt them in 1837 with a frontage of 29 feet. The width of the street was about 25 feet. The owner of certain premises, with a frontage of 90 feet on the opposite side of the street, some of which were 32 feet and some 20 feet high, pulled them down, and proposed to rebuild them 67 feet in height, but set back 6 feet. The owner first named sought an injunction to restrain the proposed interference, and *Wood, V.C.*, granted a

decree declaring the plaintiff to be entitled to the access of light and air to such an extent as would enable him to enjoy his warehouse for the purpose of his business without any material diminution of their former use and enjoyment. On appeal, *Lord Cranworth, L.C., held,* that the plaintiff was entitled not only to sufficient light for the purpose of his then business, but to all the light which he had enjoyed previously to the interruption sought to be restrained. The Court gave the defendant leave to apply in order to ascertain whether any building which he might propose to erect would cause such an interruption.

YATES v. *JACK.*

(1866) 1 Ch. 295; 12 Jur. 305; 14 L. T. 151; 14 W. R. 618.

——**Rights of the Crown.**—The defendants, who were lessees of the Crown, entered into an agreement with their lessors, that they would erect new buildings in place of the old, in consideration of which the Crown agreed to grant to the defendants a new lease. Pursuant to this agreement, the defendants proceeded to pull down the old and erect the proposed new buildings, which, the plaintiff complained, would interfere with ancient lights in a house which he had built on his own freehold in 1852.

In an action by the plaintiff for an injunction to restrain the defendants from building so as to interfere with his ancient lights, he contended that he had acquired an indefeasible right to light as against lessees and reversioners. *Kekewich, J., held,* that § 2 of the *Prescription Act,* 1832, does not apply to the easement of light, and that § 3, which applies to light, does not bind the Crown, and that, in the circumstances, no lost grant of light could be presumed as against the Crown or its lessees. The learned Judge further *held,* that the prerogative of the Crown prevented the plaintiff acquiring any right to the access of light over the site of the defendants' buildings. The Court of Appeal (*Lindley, Lopes, and A. L. Smith, L.JJ.*) *affirmed* the above decision of *Kekewich, J.,* except the last paragraph, which they *reversed,* and *held,* that as the plaintiff could not establish a right against the Crown as reversioner, he could not establish a right against their lessees, inasmuch as an easement, if acquired by prescription, either at common law or under the statute, must be absolute, and not for a term of years.

Perry v. *Eames* (1891), 1 Ch. 658, and *Bright* v. *Walker,* 1 C. M. & R. 211, approved.

WHEATON v. *MAPLE & CO.*

(1893) 3 Ch. 48; 62 L. J. Ch. 963; 69 L. T. 203; 41 W. R. 677.

——**Rights of Lessor.**—A lessor granted a lease for a term of years of a house and premises in which lights were specified. At the time of the grant he held the house adjoining for a term, and subsequently acquired the reversion thereof. On the expiration of the term he began to build on the site of the adjoining house so as to interfere with the lights of the demised premises, which lights were not ancient lights. In an action for an injunction by the lessee, *Malins, V.C.*, granted the injunction applied for. On appeal, the Court (*James and Mellish, L.JJ.*) *reversed* the decision of the *Vice-Chancellor*, and *held*, that the lessor was not by his grant prevented from so building.

BOOTH v. *ALCOCK.*

(1873) L. R. 8 Ch. 663; 42 L. J. Ch. 557; 29 L. T. 231; 21 W. R. 743.

——**Scientific Report by Order of the Court.**—The owners of certain premises brought an action against the adjoining owners for obstructing the access of light and air to their premises. The defendants moved for the appointment, under 15 & 16 *Vict. c.* 80, § 42, of a competent and independent architect to view the premises, make plans thereof, and report to the Court, as to the injury to the plaintiffs. *Jessel, M.R., held*, that the Court ought not under that statute to make an order, before the trial, appointing a scientific person to report upon a question of fact.

BALTIC COMPANY v. *SIMPSON.*

(1876) 24 W. R. 390.

——**Not sensibly diminished.**—The back rooms of a certain house were lighted solely by the light passing through the windows thereof, over a yard 27 feet deep. Formerly the adjoining house was in line therewith, but the adjoining occupier proposed to erect a building 10 feet in advance of that line, and so interfere with the access of light to the windows as to prevent the occupier from enjoying the same amount of light as formerly. At the trial of an action by the occupier for an injunction evidence was called by the adjoining occupier who was erecting the building, that the light to the windows was not sensibly diminished, and that the plaintiff had erected a flue which created the same obstruction. *Stuart, V.C., held*, that the plaintiff was not thereby disentitled to an injunction to restrain the erection of a building which will seriously diminish the supply of light and air. Nothing short of an act by the plaintiff which will produce the same injury as that complained of will deprive him of his right to relief.

ARCEDECKNE v. *KELK.*

(1858) 2 Giff. 683; 5 Jur. 114; 7 W. R. 194.

——**Shop Window.**—The owner of a house divided it into two tenements, and let one of them to a bookseller, who put a movable bookcase in the street doorway every day, so close to the window of the other portion of the house occupied by the owner as to interfere with the light coming to his side window. In an action by the owner to restrain his lessee from putting the bookcase in the position complained of, *Lord Abbott, C.J., held,* that the lessee was liable for obstructing those windows in the house which existed at the time of the demise though of recent construction, and though no stipulation was made against obstruction.

RIVIERE v. *BOWER.*

(1824) Ry. & M. 24; 27 R. R. 726.

——**Shop Windows.**—A shopkeeper, in rebuilding his premises, had projected them more into the street than the windows of the adjoining shop, so that it was alleged that the access of light and air to the adjoining premises was obstructed, and the adjoining shop window could not be seen from so great a distance down the street as formerly. The plaintiff sought, but *Wood, V.C.,* refused, an injunction, and *held,* that if there be no interference with the access of light and air, the fact that a shop window is obstructed so that it cannot be seen from so far off as formerly, affords no grounds for an injunction.

SMITH v. *OWEN.*

(1866) 35 L. J. Ch. 317; 14 W. R. 422.

——**Shutters seldom removed.**—In 1887 the defendants cleared certain land with the object of erecting buildings thereon, of a greater elevation than those previously existing. They, from time to time, submitted plans of the proposed buildings to the plaintiffs, the owners of a wool warehouse adjoining, who refused to approve of the plans, because the proposed buildings would obstruct the access of light to the plaintiffs' warehouse.

On the trial of an action by the plaintiffs, for an injunction, it was not disputed that the plaintiffs' windows were ancient, but the defendants argued *inter alia* that as the windows were fitted with movable shutters, and these shutters were only removed upon comparatively rare occasions, the user of the windows was not such as entitled the plaintiffs to a right to light. On a reference to arbitration the umpire found that the access of light to certain of the windows would be interfered with by the proposed buildings.

Kay, J., held, that if the owner of the building has the amenity or advantage of using the access of light, it is "enjoyed" within

the meaning of the *Prescription Act*, 1832, § 3. A continuous user is not necessary. If window-openings have remained unchanged for twenty years, and the shutters thereof, so formed, as to be opened and closed at pleasure, the *onus probandi* is on the owner of the adjoining land, to show that the right has not been acquired.

COOPER v. *STRAKER.*

(1889) 40 Ch. D. 21; 58 L. J. Ch. 26; 59 L. T. 849; 37 W. R. 137.

——**Skylights.**—The plaintiffs were the owner in fee-simple and the tenant of a cottage, which they alleged contained ancient lights, viz. a window on the ground floor, another in the room above, both looking into a passage, and a skylight in the roof. The defendant was the owner of the adjoining premises, and proposed to erect buildings thereon which the plaintiffs alleged would materially diminish the amount of light coming to their windows and skylight. The defendant alleged that the plaintiffs had bought their house merely in order to extort money from any person who would propose to build on the defendant's land, that the action was, therefore, oppressive; and that it was not a case for an injunction but for damages.

Buckley, J., held, that the windows in question were ancient lights, and would be materially interfered with by the proposed buildings, that it was not extortion or oppression on the part of the owner of an easement to ask a price which the property for exceptional reasons in fact commanded; and granted an injunction.

The principle upon which the Court will give damages instead of an injunction discussed.

COWPER & ANOTHER v. *LAIDLER.*

(1903) 2 Ch. 337; 72 L. J. Ch. 578; 89 L. T. 469; 51 W. R. 539.

——**Skylight.**—In 1901 the defendant erected certain buildings at the back of his premises, and obstructed the access of light to a skylight, which formerly had formed the sloping roof of a conservatory built in 1873, but at the time when the obstruction took place it covered a passage. The side window of the conservatory opened on to and overlooked the defendant's land, and the plaintiff paid one shilling a year by way of acknowledgment for permission for this easement until 1888, when the conservatory was removed and the side window was closed up. In an action for an injunction, *Joyce, J., held,* that the skylight was a "window overlooking" the defendant's property within the terms of the agreement, consequently the access of light had been enjoyment

by "consent or agreement" in writing within § 3 of the *Prescription Act*, 1832, and the action failed. On appeal, the Court (*Vaughan-Williams, Stirling, and Cozens-Hardy, L.JJ.*) *affirmed* this decision.

EASTON v. *ISTED.*
(1903) 1 Ch. 405; 72 L. J. Ch. 189; 51 W. R. 245; 87 L. T. 705.

——**Skylights.**—The defendants were about to erect lofty buildings which would materially obstruct both the lateral and vertical light coming to and through the skylights, which were ancient lights, of the top storey of the adjoining premises used as a builder's lumber-room, but capable of being used as a carpenter's shop. In an action by the owner thereof to restrain the defendants from so building, *Kekewich, J.*, *held*, that the plaintiff was entitled to have the uninterrupted access of light through the ancient skylights for any purpose, and granted a perpetual injunction with costs.

HARRIS v. *KINLOCK & CO.*
(1895) W. N. 60.

——**Skylight.**—Certain premises were demised by the Skinners' Company in 1866, for a term of eighty years, "with all lights, easements, &c., thereto appertaining," and with a covenant for quiet enjoyment. Two years later they were demised to the plaintiffs for a term of twenty-one years, the conveyance having the same general words. The principal rooms in the premises were lighted by a skylight in the roof, and a well in the first and the ground floors. The building which stood on the site previously was lighted in the same way, and the enjoyment had been uninterrupted for forty years. The lessees of the land adjoining, whose lessors were also the Skinners' Company, commenced to build according to plans approved by the lessors, so as to raise the party wall 30 feet higher than that to which the plaintiffs had built it. A perpetual injunction was granted by *Jessel, M.R.* On appeal the Court (*Mellish and James, L.JJ.*) *held*, that there was no difference in the right to the ordinary easement of light whether acquired by prescription or grant; if the latter be accompanied by a covenant for quiet enjoyment, such covenant does not enlarge the right of the covenantee, so as to entitle him to an injunction in equity to restrain an obstruction where the damage is not sufficient to enable him to maintain an action at law. But where an easement is created by a covenant, the

Court of Equity will grant an injunction without regard to damage.

LEECH v. *SCHWEDER.*

(1874) L. R. 9 Ch. 463; 43 L. J. Ch. 487; 30 L. T. 586; 22 W. R. 633.

——**Skylights.**—The plaintiff and the defendant were respective owners of two adjoining houses. At the rear was a party wall which supported the ends of two lean-to skylights, lighting the ground floors of the respective premises, the upper portions resting against the walls of the respective houses. Both parties, being desirous to rebuild, agreed verbally that the plaintiff should at their joint expense pull down and rebuild the party wall, and that each should be at liberty to make a lean-to skylight resting upon the wall, and running up to the first-floor window-sill. The plaintiff built the party wall, paying half the cost, and erected a lean-to skylight, as agreed. The defendant, however, instead of building a lean-to, shaped his skylight so as to obstruct the access of light to the plaintiff's premises. The plaintiff brought an action for a mandatory injunction, and *Kay, J., held,* that the effect of the parol agreement was to give each party an easement of light over the land of the other, and as the plaintiff had performed the agreement on his part, he was entitled to have it enforced on the part of the defendant. Mandatory injunction granted.

McMANUS v. *COOKE.*

(1887) 51 J. P. 708; 35 Ch. D. 681; 56 L. J. Ch. 662; 56 L. T. 900; 35 W. R. 754.

——**Skylight and Dark Room.**—In 1890 the plaintiffs, who were photographers, rented certain premises with ancient lights, viz.:—a skylight in the studio, and another in a dark room. Subsequently the skylight in the studio was removed, and the whole roof glazed. In 1900 the defendants began to erect a building which interfered with the access of light to the plaintiffs' premises. A building had formerly, until 1884, stood on the site, but the new buildings interrupted the access of light to the plaintiffs' premises more than the old building. The plaintiffs claimed a mandatory injunction, and the defendants pleaded that as to the light in the dark room it had been abandoned. *Farwell, J., held,* that the light, so far as it was ancient, must not be substantially interfered with, and that the Court would take into consideration the nature of the business carried on, and that there was no abandonment.

PARKER v. *STANLEY & CO.*

(1902) 50 W. R. 282.

——**Skylights and Glass Doors.**—The lessees of certain premises carried on their business in a workshop at the rear, the light to which was furnished by two skylights and a glass side-door, which were claimed as ancient lights. The adjoining premises were separated from the workshop by a party wall, 8 feet high, and the adjoining owner pulled down and rebuilt the wall, raising it to a height of 23 feet, contrary to the warnings of the plaintiff, who claimed a mandatory injunction to restrain the defendant from maintaining the wall, so as to obstruct the plaintiff's ancient lights. The defendant alleged that from time to time he had maintained for many years previously a pile of boxes and packing-cases to a height exceeding 23 feet, and denied the alleged obstruction. It was, however, proved that the pile was from time to time removed. *North, J., held,* that there had been an interruption in the plaintiff's enjoyment of the easement, and dismissed the action without costs. The plaintiff appealed, and the Court (*Cotton, Lindley, and Lopes, L.JJ.*) *held,* that there had been no interruption of the plaintiff's enjoyment, and that he was entitled to an inquiry as to damages.

PRESLAND v. *BINGHAM.*

(1889) 53 J. P. 583; 41 Ch. D. 268; 60 L. T. 433; 37 W. R. 385.

——**Skylights.**—The plaintiff was lessee for a long unexpired term of a certain house, the south side of which adjoined land owned by the defendants. One of the windows in that side of the house lighted a staircase, and there were two skylights lighting a workshop on the plaintiff's premises. The defendants erected a wooden hoarding, 16 feet in height, to obstruct the access of light to the window and skylights, it being the defendants' intention to build to that height on the land. The plaintiff brought an action claiming an injunction to restrain the defendants from building as proposed, so as to interfere with his ancient lights. *Fry, J.,* granted an injunction in reference to the skylights, but refused an injunction as to the staircase window, and *held,* that a plaintiff who claims ancient lights must prove affirmatively a *primâ facie* case of enjoyment, which the defendant, however, may displace by proving interruption of the enjoyment at some time, or by showing otherwise that the plaintiff's evidence cannot be relied upon.

SEDDON v. *BANK OF BOLTON.*

(1882) 19 Ch. D. 462; 51 L. J. Ch. 542; 46 L. T. 225; 30 W. R. 362.

——**Skylight.**—The occupier of certain premises in the City of London placed a skylight over an area into which an ancient window in the adjoining premises looked. The window had been blocked up once with boards for seven years, and subsequently with brick for sixteen months, by direction of an under-lessee, without the knowledge of the reversioner. It was proved that only two of the walls upon which the skylight rested were the property of the defendant. In an action by the owner of the window for obstructing the access of light and air to the window, *Lord Tenterden, C.J., held*, that a reversioner might maintain an action for a nuisance which does not at present injure the reversion beyond that of right, and that the *Custom of London* does not allow the erection of buildings to any height upon old foundations unless the whole of the old foundations are the property of the building owner.

SHADWELL v. *HUTCHINSON.*

(1829) M. & M. 350; 2 B. & Ad. 97; 36 R. R. 497; 4 C. & P. 333; 9 L. J. (o.s.) K. B. 142.

——**Sorting-room.**—A seed merchant had used a certain room, with an ancient light, in his premises, for sorting seed, for a period of seventeen years. The adjoining owners erected premises interfering with the access of light to the room. *Chatterton, V.C.*, dismissed a bill for an injunction filed by the seed merchant, and the latter appealed. The Court (*Ball, L.C., and Christian, L.J.*) *reversed* the decision of the *Vice-Chancellor*, and *held*, that the defendants having caused such a diminution of light as, notwithstanding certain compensative illumination afforded by them, prevented the plaintiff from carrying on the delicate operation of sifting seeds in the room, he was entitled to relief, although the user was less than twenty years, and sufficient light remained in it for the ordinary purposes of a dwelling-house, and a mandatory injunction was granted in respect of part of the buildings.

MACKEY v. *SCOTTISH WIDOW'S FUND.*

(1877) 11 Ir. Rep. Eq. 541.

——**Special Amount of Light required.**—The plaintiffs, who owned certain premises in Leeds opposite to which the defendant was erecting a cathedral, contended that the buildings when erected would interfere with the light to which they were entitled and which they had hitherto enjoyed in their premises. On threat of legal proceedings the defendant agreed with the plaintiffs to refer the matter to the decision of two arbitrators. They appointed an umpire, who found and awarded that there remained sufficient light to the plaintiffs' premises for ordinary user, but he awarded

£600 damages to the plaintiffs if the Court should decide that he was entitled to take into account damages which the plaintiffs had sustained in respect of loss of light to those parts of the premises used for occupation in respect of which a special amount of light was required.

Bray, J., held, that a right to a special amount of light necessary for a particular business cannot be acquired by twenty years' enjoyment to the knowledge of the owner of the servient tenement. It is a question of fact whether the user of the premises is one which requires an ordinary or a special amount of light. It cannot be laid down as a matter of law that any particular business, as, for example, that of an architect (one of the plaintiffs' business), is an ordinary business requiring only an ordinary amount of light.

AMBLER & FAWCETT v. *GORDON.*

(1905) 1 K. B. 417; 74 L. J. K. B. 185; 92 L. T. 96; 53 W. R. 300; 21 T. L. R. 205.

——**Special Amount of Light required.**—The plaintiff company were wool-brokers, and the lessees and occupiers of certain premises in the City of London, granted on a building lease, to their predecessors in title, who also conveyed, subsequently, other and adjoining premises to the defendant. To test his right to erect a house higher than the existing house by 13 feet, the defendant erected a screen, extending the whole length of his house, and 15 feet higher, divided into 15 panels, each of which was covered with an opaque material. The plaintiffs claimed an injunction to restrain the defendant from maintaining the screen or otherwise derogating from the plaintiffs' rights under the leases. One of the plaintiffs' rooms was used for the purpose of sorting and valuing wool, for which a strong light was required, but otherwise the premises would enjoy light sufficient for business as carried on in the City.

Kekewich, J., held, that it could not impute to the parties to the lease an intention that the demised building should be used for wool-broking, or other business requiring an extraordinary degree of light, but that only a grant of sufficient light for ordinary business purposes in the City of London could be implied, and refused to grant an injunction.

CORBETT v. *JONAS.*

(1892) 3 Ch. 137; 62 L. J. Ch. 43; 3 R. 25; 67 L. T. 191.

——**Special Amount of Light required.**—Two of the plaintiffs owned a hosiery factory, and the third was the lessee and occupier. The factory was built in 1860, and contained windows which,

down to the time of obstruction, had enjoyed the access of light in greater quantity than was necessary for ordinary purposes. From 1860 to 1884, it had been used as a boot factory, and from 1884, with a few short intervals, as a hosiery manufactory, requiring an unusual degree of light. In 1899 the defendant erected a building which diminished the plaintiffs' light, but still allowed the passage through the windows of enough light for all ordinary purposes. The plaintiffs claimed an injunction and damages.

Wright, J., in a considered judgment, *held*, that the plaintiffs had no cause of action.

WARREN & OTHERS v. *BROWN.*

(1900) 2 Q. B. 722; 69 L. J. Q. B. 842; 83 L. T. 318; 50 W. R. 97.

NOTE.—This case was *reversed* in the Court of Appeal (1902), 1 K. B. 15, and *restored* by the House of Lords in *Colls* v. *Home & Colonial Stores* (1904), A. C. 179.

——**Stained Glass.**—The interior of the Guard's chapel is richly decorated, and lighted by windows which were ancient lights, but the stained glass had been only placed therein ten years previously. The defendants proposed to erect a large and lofty block of flats, which would have the effect of restricting the limit of time within which service could be held in the chapel without artificial light, and render less visible the works of art, and internal decorations, carried out at a cost of £32,000, subscribed by the public. In an action for an injunction brought by the War Office, *Kekewich, J., held*, that the chapel was a "building," within the meaning of the *Prescription Act*, 1832, § 3, and was entitled to protection in respect of the light necessary for conducting the services, and also for the illumination of the works of art.

A.-G. v. *QUEEN ANNE, &c., MANSIONS CO.*

(1889) 60 L. T. 759; 37 W. R. 572; 5 T. L. R. 430.

——**Statutory Powers to Extinguish.**—The *Railway Clearing House Extension Act* (37 *Vict. c.* 16) empowers the Railway Clearing Committee to take lands and erect buildings thereon for the purposes of the Act. The owner of certain workshops adjoining the premises of the committee sought an injunction to restrain them from erecting certain buildings interfering with his ancient lights, and *Jessel, M.R., held*, that the Clearing Committee could not be restrained by injunction, and that the plaintiff's remedy was under § 68 of the *Lands Clauses Act*, 1845, which was incorporated with the *Clearing House Act.*

BEDFORD (DUKE OF) v. *DAWSON.*

(1875) L. R. 20 Eq. 353; 44 L. J. Ch. 549; 33 L. T. 156.

——**Sufficient Light left for Comfortable Enjoyment.**—A public-house, situate at the corner of two streets, had a frontage of 67 feet in one of the streets which was but 13 feet wide. The windows of the public bar, the private bar, and the saloon bar, looked on to this street, as also the windows of the upper storeys, which were used for residential purposes. All these windows were ancient lights. On the other side of the street there was a building 32 feet high, with a frontage of 31 feet, opposite the private bar; there was then opposite the saloon bar a low gateway and wall with a frontage of 20 feet, above which the wall rose to a height of only 20 feet, and next to that a building of 30 feet in height. The owner of these buildings on the other side of the street, pulled them down and proposed to erect buildings to a uniform height of 38 feet, and thus close up the gap of 20 feet between the two old buildings referred to. In an action by the lessors and lessee of the public-house for an injunction, *Farwell, J., held*, that the test whether the interference complained of amounted to an actionable nuisance or not, is not whether so much light has been taken as materially to lessen the former enjoyment and use of the house, but whether so much is left as is enough for the comfortable use and enjoyment of the house according to the ordinary requirements of mankind. Injunction granted in the form of *Yates* v. *Jack* (L. R. 1 Ch. 295).

HIGGINS v. *BETTS.*

(1905) 2 Ch. 210; 74 L. J. Ch. 621; 92 L. T. 850; 53 W. R. 549; 21 T. L. R. 552; W. N. 104.

——**Tailor's Workshop.**—A tailor used certain premises, of which he was lessee, for the purposes of his business, the ground floor as a shop, and the basement as a workshop. The rear of the premises was separated by 18 feet from a three-storey house, which was two storeys lower than the houses adjoining it. The tailor sought an injunction to restrain the owner of the three-storey house from raising that house by 18 feet as he proposed, and thus interfering with the access of light and air to a large ancient light, which lighted the tailor's workshop. The plaintiff proved that the building complained of diminished the sky area by half, and that, in consequence, he had to remove the workmen from the workshop to another part of the premises. *Kindersley, V.C.*, granted an injunction, and, as a mandatory injunction was not asked, an inquiry as to damage: and *held*, that there is no distinction between a right to light and air in regard to town houses and country houses.

MARTIN v. *HEADON.*

(1865) L. R. 2 Eq. 425; 12 Jur. 387; 35 L. J. Ch. 602; 14 W. R. 723; 14 L. T. 585.

——**Trifling Obstruction.**—The defendant erected a building 30 feet high from the ground to the ridge, with sloping roof. It was distant 23 feet from a house opposite, and in an action by the owner thereof, for interference with the lights in his house, it was proved that the light to the basement windows entered at an angle of 45° instead of 50°, that to the back parlour windows at an angle of 55° instead of 72°, and that to the drawing-room windows at an angle of 74° instead of 103°, and thereby the value of the premises was materially diminished. *Lord Denman, C.J., held,* that to sustain the action it was not enough that a ray or two of light should be obstructed. The plaintiff must show that he has less light than before to such a degree that his property is less valuable.

PRINGLE v. *WERNHAM.*

(1836) 7 C. & P. 377.

——**Undertaking.**—*Hall, V.C.*, granted an interlocutory injunction to restrain the defendant from continuing the erection of certain buildings which interfered with the plaintiff's ancient lights. The defendant appealed, and offered to give an undertaking to abide by any order as to pulling down or altering the buildings, which, at the trial, the Court might make. In view of fresh evidence given on the hearing of the appeal, the Court (*Jessel, M.R., James and Cotton, L.JJ.*) discharged the injunction, but *held,* that, without any undertaking, they had power to order the demolition of any building erected after action brought, or notice of objection given by the plaintiff to the defendant.

SMITH v. *DAY.*

(1879) 13 Ch. D. 651; 28 W. R. 712.

——**Unfinished Building.**—The plaintiff's predecessor in title purchased the carcase of a house in 1829 and completed the building, but he never completed the internal fittings thereof, so that the house was not habitable when it was purchased by the plaintiff in 1852. The plaintiff fully completed the house, and resided in it for two years, at the expiration of which he ceased to occupy it, placing a housekeeper in charge; and the house had remained unlet until action brought. The adjoining owner built a room at the back of his house, obstructing the access of light to the plaintiff's premises. On a special case stated, the Court (*Kelly, C.B., Channell, Pigott, and Cleasby, BB.*) *held,* that occupation of the house, or its fitness for occupation during the statutory period, were not necessary in order to acquire a right to the access of light

by actual enjoyment under the *Prescription Act*, 1832, and gave judgment for the plaintiff.

COURTAULD v. *LEGH.*

(1869) L. R. 4 Ex. 126; 38 L. J. Ex. 124; 19 L. T. 737; 17 W. R. 466.

——**Unity of Occupation.**—The plaintiff's house was built in 1804, and had a plot of ground at the rear used as a garden. In 1817 the occupier of the house used the garden, but paid no rent for it. Subsequent occupiers also had access to the garden, but on what tenure or in what way was disputed. From 1830, 10*s.* a year was paid by the owners of the house, as tenants from year to year, to the owner of the garden until 1861, when a lease of the garden for ten years at 10*s.* a year rent was granted. In 1865 the plaintiff purchased the house, and in 1867 the defendant purchased the reversion in fee in the garden and subsequently the residue of the ten-years' lease. In an action by the owner of the house for an injunction to restrain the erection of a row of houses in the garden which interfered with the access of light and air to the house, *Stuart, V.C.*, decreed an injunction. The defendant appealed, and *Lord Hatherley, L.C., held*, that a right to access of light cannot be acquired under 2 & 3 *Will. IV. c.* 71, § 3, by the lapse of time during which the owner, or his occupying tenant, is also the occupier of the land over which the right would extend. During such period of unity of occupation, the running of the twenty years under the statute is only suspended. The decree of *Stuart, V.C.*, was *reversed.*

LADYMAN v. *GRAVE.*

(1871) L. R. 6 Ch. 763; 25 L. T. 52; 19 W. R. 863.

——**Unity of Ownership.**—The plaintiff was tenant from year to year of a public-house from 1823 to 1861. In 1837 his landlord purchase six leasehold cottages and gardens adjoining. Overlooking the gardens were certain windows which were ancient lights. By divers mesne assignments the six cottages and gardens came into the possession of the defendant, who proposed to build against the plaintiff's ancient lights. In an action to restrain the defendant, *Page Wood, V.C.*, granted an injunction, and *held*, that § 3 of the *Prescription Act*, 1832, is retrospective, and that the union of the ownership of dominant and servient tenements for different estates does not extinguish an easement of this description, but merely suspends it so long as the union of ownership survives, and upon severance of the ownership, the easement revives.

SIMPER v. *FOLEY.*

(1862) 2 J. & H. 555; 5 L. T. 669.

——**Unity of Possession.**—The trustees of a will conveyed for value certain premises to the plaintiff together with all buildings, lights, easements, &c. The defendant's premises were on the same date for value conveyed, together with all lights, &c., to the plaintiff's brother, the defendant's predecessor in title by the same trustees. One of the plaintiff's houses contained ancient lights overlooking the land of the defendant. The latter having commenced to erect upon this land a row of houses, the plaintiff sought an injunction to restrain the defendant from building so as to obstruct the plaintiff's ancient lights. *Jessel, M.R.*, granted the injunction, and *held*, that when the owner of a dwelling-house and adjoining land sells the house to one person, and the land to another, under contemporaneous conveyances, either purchaser being aware of the conveyance to the other, the purchaser of the land is not entitled to build thereon so as to obstruct the lights of the house.

ALLEN v. *TAYLOR.*

(1881) 16 Ch. D. 355; 50 L. T. Ch. 178.

——**Unity of Possession.**—The owner of a vacant plot of land began to build upon it, so as to interfere with lights in an adjoining house which had existed from time immemorial. The adjoining owner had enlarged the lights. There was evidence that in the year 1849 there was unity of possession of both premises, but there was no evidence that at any time there had been unity of title. *Jessel, M.R.*, gave a decree granting an injunction, restraining the owner of the vacant plot from interfering with certain of the lights. On appeal, the Court (*Mellish and James, L.JJ.*) *held*, that the right to light was not lost by enlarging the lights of the dominant tenement, that the *Prescription Act*, 1832, has not taken away any of the modes of claiming easements which existed before the statute, and that an owner of ancient lights is entitled to an injunction, and not merely damages if he files the bill before the building complained of is commenced.

AYNSLEY v. *GLOVER.*

(1875) L. R. 10 Ch. 283; 44 L. J. Ch. 523; 32 L. T. 345; 23 W. R. 457.

——**Unity of Possession.**—The owner of a plot of ground with a house thereon, granted a lease of the house, and subsequently conveyed the house, subject to the lease, to the plaintiff, and the plot of ground pursuant to a prior agreement to the defendant. The plaintiff subsequently recovered possession of the house from the lessee for breach of covenant. The defendant began to build on his plot so as to obstruct the access of light to the plaintiff's

house, and the plaintiff sought an injunction to restrain the defendant from building as proposed, and for damages. *Chitty, J.*, *held*, that no grant of light to the house could be implied over land which the owner had contracted to sell before the sale of the house, and that § 6 (2) of the *Conveyancing and Law of Property Act*, 1881, did not apply.

BEDDINGTON v. *ATLEE.*

(1887) 51 J. P. 484; 35 Ch. D. 317; 56 L. J. Ch. 655; 56 L. T. 514; 35 W. R. 799.

——**Unity of Possession.**—The owner in fee of certain premises enjoyed free access of light and air to a window therein for sixty years. In 1846 the adjoining owner built a wall in his garden which obstructed the access of light to the window in question. For sixty years prior to 1846 the garden had been occupied by the owner in fee and by his father, as tenants from year to year. The owner in fee brought an action for an injunction against the adjoining owner, and the latter contended that unity of possession prevented the acquirement of the right to the light in question. *Patteson, J.*, adopted this view, and entered a nonsuit with leave to the plaintiff to move. On hearing a rule, the Court (*Parke, B., and Patteson, J.*) discharged the rule, and *held*, in a considered judgment, that if the dominant and servient tenements are, during the prescribed period, in the occupation of the same person, no prescriptive right can be acquired.

HARBIDGE v. *WARWICK.*

(1849) 3 Ex. 552; 18 L. J. Ex. 245.

——**Unity of Possession.**—The plaintiff's house was built in 1793, and in 1800 the plaintiff's predecessor in title entered into possession of certain adjoining premises 87 feet by 26 feet under a lease from the Dean of St. Paul's. In 1813 the plaintiff's predecessor in title obtained a building agreement in respect of adjoining premises from his landlords, the Goldsmiths' Company. In 1823, pursuant to such building agreement, a lease of the premises was granted on the building being erected. In April, 1853, the company leased to the plaintiff, and his predecessor in title, since deceased, the above house, and certain other premises, "*and all cellars, lights, easements, &c.*" In 1875 the company agreed to grant a lease of the site of the house and other adjoining premises and "*all lights, rights, easements, &c.*" to the plaintiff as soon as a certain building was erected thereon. In the previous year the company had agreed to grant a lease of the adjoining premises to the defendants, "*and all lights, rights, easements, ways, &c.*" In an action by the

plaintiff for an injunction the defendants admitted that the buildings which they had erected and were complained of would darken the plaintiff's lights, and *Malins, V.C., held*, that there was an ancient light in the plaintiff's premises for twenty years prior to 1813, when unity of possession commenced, and granted the injunction in respect of it; but refused an injunction as regards all the other lights.

WARNER v. *McBRIDE.*
(1877) 36 L. T. 360.

——**Unity of Title.**—The lessee of certain premises covenanted that he, his heirs, and assigns, would not do anything to the premises that might be an annoyance to the neighbourhood, or to the lessees or tenants of the lessors, their heirs or assigns, or diminish the value of the adjacent property, or erect any buildings nearer than 20 feet to the road or without the lessors' approval of the plans thereof. Some years later the same lessors demised the adjoining premises, the lease containing identical negative covenants as those just enumerated. Within twenty years the successors in title to the first-named lessee began to build upon the premises, with the approval of the lessors, in such a way as to darken the windows of the houses on the adjoining premises above referred to, the owner of which sought an injunction to restrain the lessors and the lessees from building as proposed. *Bacon, V.C., held*, that the plaintiff could not enforce the restrictive covenants, but granted an inquiry as to damages, and the defendants appealed. The Court (*James, Baggallay, and Bramwell, L.JJ.*) *held*, that the plaintiff was not entitled to relief either on the principle that the lessor could not derogate from his grant, or on the ground that the restrictive covenants in the defendant's lease enured for the plaintiff's benefit.

MASTER v. *HANSARD.*
(1877) 4 Ch. D. 718; 46 L. J. Ch. 505; 36 L. T. 535; 25 W. R. 570.

——**Unity of Title.**—The plaintiff was the assignee of a lease granted in 1864 of certain land, demising all rights and appurtenances, legal, used, or reputed, to the said land, except such rights as might restrict the use of any adjoining land or the conversion at any time thereafter of such land for building purposes, for a term of 999 years at an annual rent.

The defendant, who held under a lease granted in 1865 from the same landlord, containing a similar exception to that in the plaintiff's lease, began to make an addition to her house in July, 1887, which would approach 18 feet nearer to that of the plaintiff,

and interfere with the access of light and air to the plaintiff's premises.

The plaintiff sought an injunction to restrain the defendant from interfering with her ancient lights, and the Deputy Vice-Chancellor of the County Palatine of Lancaster refused to grant the same, on the ground that the action was barred by the terms of the lease, granted in 1864. From this decision the plaintiff appealed.

The Court (*Cotton, Lindley, and Lopes, L.JJ.*) *held*, that the exception restricting the free use of the adjoining land did not operate as an agreement or consent by the lessee that the adjoining owner might always have a right to obstruct the access of light to the plaintiff's house, within the exception in § 3 of the *Prescription Act*, 1832, and therefore the plaintiff had acquired an absolute prescriptive right to the light, and was entitled to the injunction.

MITCHELL v. *CANTRILL.*

(1888) 37 Ch. D. 56; 57 L. J. Ch. 72; 58 L. T. 29; 36 W. R. 229.

——**Mode of User and Position must be the Same.**—There were two ancient lights in the rear of certain premises, one a few feet from the ground and the other higher up in the wall. The owner thereof in rebuilding retained them in the new wall, and altered them into French windows opening inwards, having new light frames, so that more light was admitted than formerly, and they gave greater facility for outlook over the adjoining premises. There had also been iron bars to the windows previously. In an action by the owner of the lights against the adjoining owner who had erected a screen to obstruct the access of light thereto, *Kindersley, V.C., held*, that the mode of user must not be substantially departed from, and that the position of the lights must not be altered nor their size increased. But they may be replaced by windows of an improved structure that let in more light and air.

TURNER v. *SPOONER.*

(1861) 1 Dr. & Sm. 467; 7 Jur. 1068; 30 L. J. Ch. 801; 9 W. R. 684; 4 L. T. 732.

——**Verbal Licence.**—The owners of certain premises gave verbal permission to the adjoining occupier in 1864 to open two windows in a party wall separating the two tenements. At that time there were in the party wall three other windows opened within the previous twenty years by the adjoining occupier without reference

to the owners of the adjoining premises. In 1875 the owners, who were about to alter their premises, gave notice under the *Metropolitan Building Act* (18 & 19 *Vict. c.* 122) of an intention to block up all five windows, and to raise the party wall separating the areas of the two tenements to such a height as would darken eight ancient lights opening into the area of the adjoining occupier. Eighteen years before date of notice the adjoining occupier had erected a conservatory in the area above the eight ancient lights, which materially diminished the light coming thereto.

In an action by the adjoining occupier, *Malins, V.C., held*, that he was entitled to an injunction restraining the threatened darkening of any of the thirteen windows.

BOURKE v. *ALEXANDRA HOTEL CO.*
(1877) 25 W. R. 782.

——**Verbal Licence.**—The reversioners of certain premises brought an action, in 1840, for obstructing the light to twenty-four windows in a house, which had been built in 1815, on the site of old buildings, but which had been advanced a few feet nearer to the defendants' premises. The defendants, to test their rights, erected a screen which obstructed the lights claimed as ancient, and the plaintiffs brought their action. *Tindal, C.J., held*, that enjoyment for twenty years, even by permission asked for verbally by the occupier of a house, and given by the person having the right to obstruct, is sufficient to confer a right under § 3 of the *Prescription Act*, 1832. Enjoyment under that section need not be as of right or adverse.

CORPORATION OF LONDON v. *PEWTERERS' CO.*
(1842) 2 M. & R. 409; 62 R. R. 816.

——**Wall at Right Angles to Lights.**—The defendant erected a wall at right angles to the back of plaintiff's house, thereby obstructing the plaintiff's ancient lights. The plaintiff proved that a substantial amount of sunlight would be shut out from his lights. *Kekewich, J.*, following *Lawrence* v. *Horton* (38 W. R. 555), granted a mandatory injunction.

SHIEL v. *GODFREY.*
(1893) W. N. 115.

——**Workshops.**—The occupier of a factory built in 1796 opened a window in order to light a workshop in 1798. The premises were held on lease for a term expiring in 1820, of which the plaintiff's predecessor in title was assignee. A new lease was granted to him for a term from July 6, 1820. On his bankruptcy

the predecessor in title assigned the lease last mentioned to his assignee in bankruptcy, who granted an under-lease to the plaintiff. The defendants entered into possession in 1802, and were granted a new lease by the plaintiff's lessor for a term from July 6, 1820. The plaintiff's and the defendants' premises, at the time of making the window, belonged to the same owner in fee. In an action to restrain the defendants from obstructing the access of light to the plaintiff's window, the Court (*Bayley, J., and others*) gave judgment for the defendants, and *held*, that where a window has been opened in a building erected by the tenant, for the mere purposes of trade, and which is not annexed to the freehold, but may be removed by the tenant at his pleasure, or at the end of his term, no right of action or presumption of a grant can arise.

MABERLEY v. *DOWSON.*

(1827) 5 L. J. (o.s.) K. B. 261.

——**Workhouse.**—The plaintiffs owned in fee certain premises used as a workhouse, and occupied by paupers, who in the declaration were alleged to be tenants of the plaintiffs in occupation of the workhouse. The defendant was sued for stopping up certain ancient lights, and erecting a privy, so as to cause a nuisance, and at the trial the defendant objected that neither the master of the workhouse nor the paupers were tenants of the plaintiffs. *McDonald, C.B., held*, that the defendant's objection was fatal to the count. If a building after having been used as a malthouse is converted into a dwelling-house, in its new state it is entitled only to the same degree of light as was necessary for it in its former state, and the owner of the adjoining ground may lawfully erect a wall which prevents the admission of sufficient light for domestic purposes, if what light is left would be sufficient for making malt.

MARTIN v. *GOBLE.*

(1808) 1 Camp. 322.

APPEAL TO QUARTER SESSIONS

The owner of certain premises was summoned under § 75 of the *Metropolis Local Management Act*, 1862, for having erected a building beyond the general line of buildings in the street, and a police magistrate made an order for its demolition. The owner entered an appeal to Quarter Sessions, and the Sessions upheld an objection raised to their jurisdiction. On hearing a rule calling upon the justices at Quarter Sessions to show cause why a mandamus should not issue, the Court (*Lord Coleridge, C.J., and Grove, J.*) *held*, that the order of a justice directing the demolition of a building under § 75 of the *Act*, was not an adjudication "with

respect to a penalty or forfeiture" within § 231 of the *Metropolis Local Management Act of* 1855, and, therefore, no appeal to quarter sessions would lie against the order.

R. v. *JUSTICES OF MIDDLESEX* (*EX PARTE ELSDON*).

(1882) 46 J. P. 551; 9 Q. B. D. 41; 51 L. J. M. C. 94; 30 W. R. 657.

ARBITRATION

——**No Jurisdiction to Serve out of the Jurisdiction a Summons to Enforce Award.**—Upon an application *ex parte* by Wulfert a master gave leave to issue a summons directed to Rasch & Co., who were foreigners resident out of the jurisdiction, for leave to enforce the award of an arbitrator as a judgment or order to the same effect under § 12 of the *Arbitration Act*, 1889, and for service of the summons by sending a copy by post addressed to the appellants in Germany and by leaving a copy with their solicitor in London. The award stated that by a written agreement between Rasch & Co. and the Hanover Wall-paper Company (under which style Wulfert carried on business) the former appointed the latter sole agents for the sale of their goods in the United Kingdom for three years, and it was agreed that any dispute arising under the agreement should be submitted to two arbitrators, one to be appointed by each of the parties, subject to the provisions of the *Arbitration Act*, 1889; that a dispute having arisen, the Hanover Wall-paper Company had appointed an arbitrator, but that the appellants had failed to do so, and thereupon the former had appointed their arbitrator to act as sole arbitrator, and that he had proceeded with the reference in the absence of Rasch & Co., and awarded that they should pay certain damages for breach of the agreement.

The master decided that there was no jurisdiction to allow service of the summons upon Rasch & Co. out of the jurisdiction, and dismissed the application.

Upon appeal the Judge *reversed* the decision of the master as to the service of the summons, and referred the matter back to him to determine on the merits, but gave leave to appeal.

The Court (*Collins, M.R., and Mathew, L.J.*) *held*, that there was no jurisdiction to allow service on the appellants out of the jurisdiction of a summons for leave to enforce the award under § 12 of the *Arbitration Act*, 1889.

RASCH & CO. v. *WULFERT.*

(1904) 1 K. B. 118; 73 L. J. K. B. 20; 89 L. T. 493; 52 W. R. 145; 20 T. L. R. 70.

——**Submission Irrevocable.**—By an arbitration clause in a builder's contract the contractor agreed with a public company that disputes between the parties arising out of the contract should be settled by the engineer for the time being, whose decision should be final and binding and without appeal. Extensive deviations from the plans were ordered by the engineer, which, the contractor alleged, were unnecessary, and resulted in the execution of but £18,800 worth of the work proposed originally, and extras to the value of £43,600. Owing to certain delays the work was not completed until two years after the stipulated time, when the contractor sent in a claim for a further payment on account of extras and delay, and objected to the reduction of certain items amounting to £5000 by the engineer, who refused to assign any reason for such reduction. The company directed the engineer to hold an arbitration under the contract, and the contractor moved to revoke his submission to arbitration, on the ground that the engineer was unfit for certain reasons which were stated. The Court (*Day and Collins, JJ.*) *held*, that the submission to arbitration could not be revoked unless they were satisfied that the arbitrator could not deal with the matters in dispute impartially, or without adjudicating upon his own neglects and faults; the contractor is not entitled to have his submission revoked on the ground that he has claims in respect of the work done, not within the arbitration clause, with which it would be convenient to try disputes within that clause. Motion dismissed.

DONKIN & THE LEEDS CANAL CO., IN RE.
(1893) H. B. C. 181.

ARCHITECT

——**Arbitrator in Disputes.**—A building contract provided, *inter alia*, that any difference or dispute arising in connection therewith was to be referred to the architect as sole arbitrator. The specification provided that "*sharp fresh-water sand*" was to be used in the construction of the building. After the contractors had used sand made by grinding down fragments of stone, without objection by the employers, for some time, the latter objected, and referred the matter to the arbitrator. The arbitrator made his award in favour of the employers. The contractors called upon the arbitrator to reconsider his award, and an interdict was presented by the employers to stay further proceedings before the arbitrator. The Court (*the Lord President, and Lords Deas, Mure, and Shand*) *held*, that as there could be no dispute as to

the meaning of the words "*sharp fresh-water sand*," the employers had mistaken their remedy in applying to the arbitrator.

GREENOCK BOARD v. *COGHILL.*
(1878) 5 Ct. of Sess. Cas. (4th Ser.) R. 732.

——**Arbitrator.**—A builder undertook to sign a contract for certain works according to rough sketches and verbal explanations. The architect, acting for the building owner, subsequently sent to the builder for signature a contract to perform the works according to plans differing from the rough sketches, which contract the builder signed without any examination, and he completed the works in accordance with the plans annexed. In an action for an account, *Lord Romilly, M.R., held,* that as the mistake under which he signed the contract was due to his own negligence, and he had taken no steps to rectify the contract when he had discovered it, he was not entitled to any relief. In this contract the architect was the arbitrator in respect of extra works; he had guaranteed to his employer that the works would not exceed a certain sum, but the builder did not know this when he signed the contract. The Court *held,* that the guarantee was a material fact influencing the architect's decision, and as it was not disclosed to the builder, he was not bound by the submission to the architect's arbitration, and the Court would perform the part of arbitrator.

KIMBERLEY v. *DICK.*
(1872) L. R. 13 Eq. 1; 41 L. J. Ch. 38; 25 L. T. 476; 20 W. R. 49.

——**Arbitrator.**—A building contract provided, that all disputes in reference to the contract were to be decided by a named architect whose decision was to be final, and that in certain events the employers might enter upon the premises and take possession of the works and complete them, and for that purpose might use or sell the plant of the contractor. In an action by the contractor to recover balance of the account and damages in respect of his plant seized, the Court *held,* that the action was not excluded by the clause of reference, that it was not clear that the clause gave the arbitrator power to decree the payment of money, that some of the questions did not fall within the reference, and that the arbitrator could not assess damages.

TOUGH v. *DUMBARTON, &c., COMMISSIONERS.*
(1872) 11 Ct. of Sess. Cas. (3rd Ser.) R. 236.

——**Authority of.**—The defendant employed a certain architect to invite tenders for and to superintend the erection of some

houses, according to plans and specification. A man contracted for the plasterers' work at a certain sum, and sub-contracted with the plaintiff to do the work. In the course of the execution of the work the architect, to the knowledge of the defendant, ordered the plaintiff to do the work by a more expensive process than that intended and specified, and told him he would be paid extra for so doing. *Martin, B., held,* at the trial of an action by the plaintiff for the increased cost, that there was evidence of a contract to pay the plaintiff extra for the work, and of authority in the architect to make such a contract with him.

WALLIS v. *ROBINSON.*
(1862) 3 F. & F. 307.

——**Approval of Position, &c., of Building.**—The purchaser of a plot of land covenanted to build upon it within twelve months a dwelling-house of the value of £250 under the superintendence and to the satisfaction of the vendor's architect. After the prescribed period had expired the purchaser proceeded to build a house of the stipulated value, but in a position of which the architect disapproved. The vendor sought an injunction to restrain the erection of the house except in accordance with the covenant, and *Malins, V.C., held,* that the defendant had committed a breach of covenant, and granted the injunction.

GOOLDEN v. *ANSTEE.*
(1868) 18 L. T. 898.

——**Award not a Condition Precedent to Action by Employer.**—A building contract provided that in case of any difference arising between the builder and the employer, the award in writing of the architect in all matters connected with the execution of the works, or value of extras, &c., or as to the meaning of the plans and specification, should be final, and such an award should be a condition precedent to any proceedings whatever in respect of the subject of the award. In an action by the employer against the builder, for failure to carry out the contract, the Court *held,* that the architect's award was not a condition precedent to an action by the employer against the builder for non-completion of the buildings.

MANSFIELD v. *DOOLIN.*
(1869) 4 Ir. Reps. C. L. 17.

——**Certificate a Condition Precedent to Payment.**—The defendant made a contract with a builder for the execution of certain works, to be completed to the reasonable satisfaction of the defendant's

architect. No additions or alterations were to be admitted unless directed by the defendant or his architect in writing, and the final payment was to be subject to the architect's certificate that the whole work had been completed to his satisfaction. The architect checked the builder's accounts, and sent them to the defendant, but he did not certify that the works were completed to his satisfaction. The plaintiff brought an action for payment of certain extra works, but was non-suited at the trial by *Tindal, C.J.* On appeal, the Court (*Tindal, C.J., and three other judges*) *held*, that the issuing of the architect's certificate was a condition precedent to bringing the action, and to payment.

MORGAN v. *BIRNIE.*

(1833) 9 Bing. 672; 3 M. & Sco. 76.

——**Certificate Conclusive.**—A firm of decorators agreed to do certain work for the owner of certain premises, which was to be subject to the approval of the owner's architect, and without his certificate no payment on account or otherwise was to be made. Certain variations from the contract were made, and on completion of the work the firm demanded payment of a larger sum than was certified by the architect, and brought an action to recover the amount. The owner sought an injunction in equity to restrain the firm from prosecuting their action, and *Malins, V.C., held*, that the plaintiff could as well plead at law as in equity that the architect's certificate was conclusive under the contract, and there was no equity to justify the bill, and he refused an injunction.

DE WORMS (*BARON*) v. *MELLIER.*

(1873) L. R. 16 Eq. 554.

——**Certificate Conclusive.**—Certain building works under contract were to be carried out in accordance with the directions of the appointed architect, who was empowered to order the removal of improper materials and the re-erection of work not done in accordance with the drawings and specification. The contractor was to be paid on the architect's certificates, which, however, were not to be considered conclusive evidence of the sufficiency of any work or materials. A clause provided that disputes as to any matter arising out of the contract, except certain specified matters, were to be determined by arbitration, the arbitrator having "power to open up, review and revise any certificate, opinion, decision, requisition, notice, save as regards the excepted matters."

The contractor sued the building owner to recover sums due on certificates given by the architect, and the defendant alleged

as a defence that the work done and materials supplied were defective. *Farwell, J., held,* that the certificates were conclusive and gave judgment for the plaintiff (1904), 2 Ch. 261, which was appealed from.

The Court of Appeal (*Collins, M.R., Stirling and Mathew, L.JJ.*) *held,* that the arbitration clause destroyed the finality of the certificates and that the defendant was entitled to set up the defence and counterclaim pleaded, and *reversed* the judgment of *Farwell, J.*

ROBINS v. *GODDARD.*
(1905) 1 K. B. 294; 74 L. J. K. B. 167; 92 L. T. 10.

——**Certificate of Completion is Conclusive.**—A builder agreed to repair a house according to plan and specification to the satisfaction of a certain architect, under whose directions the work was to be executed. Old lead was to be allowed for according to the specification. The architect certified that the work was complete. In an action before *Byles, J.,* by the builders, against the owner for the amount due, the plaintiff obtained a verdict. On appeal, the Court (*Bovill, C.J., Keating and Smith, JJ.*) *held,* that no evidence could be received from the defendant that the work was not done according to the plan and specification, and that, unless the plaintiff could prove that he had informed the defendant, or the architect, of his having allowed for the old lead in his estimate, he must deduct the value from his claim.

HARVEY v. *LAWRENCE.*
(1867) 15 L. T. 571.

——**Certificate Conclusive in the absence of Fraud.**—The plans of a proposed building were prepared by a certain architect, and the quantities were taken out by a surveyor. A builder, who had sent in a tender which was considered too high, submitted a revised tender, on revised plans and specifications, for a lump sum. Subsequently it was agreed that the contract was not to be for a lump sum, but should be paid for according to the prices and measurements in the revised bills of quantities, which were sealed up and made part of the contract. It was also provided that deviations should only be made to comply with statutory requirements, or on the written order of the architect, and that the certificate by the architect, showing the final balance due on the contract, should be conclusive evidence of due completion, and of the contractor's right to receive payment of the final balance therein certified. The architect certified on completion of the works for payment of a certain sum "*as certified by the measuring surveyors*

to be the final amount due" on the contract. In an action by the builder for the amount stated to be the balance in the final certificate of the architect, the defendants pleaded that the certificate was bad, and counterclaimed for money had and received, and for damages. *Lord Coleridge, C.J., held*, that, in the absence of a charge of fraud against the architect, his certificate was conclusive, and entered judgment for the plaintiff. On hearing a rule obtained by the defendants, the Court (*Lord Coleridge, C.J., Grove and Lindley, JJ.*) *held*, that the certificate was conclusive, even if based on the measurements made by another person for the architect, provided it was not shown the architect had acted corruptly, or abdicated his duty. In a building contract, where it is stipulated that the architect's certificate, "*or an award of the referee*," is to be conclusive, his certificate cannot be a subject of reference to the referee.

CLEMENCE v. *CLARKE.*
(1879) H. B. C. 207.

——**Certificate of, Final.**—The Commissioners contracted with a builder for the erection of certain buildings. The contract provided, *inter alia*, that additions, &c., were to be paid for at the contract prices as the architect considered just, the architect might vary the work, and at his discretion extend the time fixed for completion in certain circumstances; that in the event of the contractor becoming bankrupt, &c., the Commissioners might determine the contract, and take possession of materials, plant, &c., on the ground, and the amount payable to the builder was to be fixed by the architect, whose decision in every matter referred to him was to be final.

In an action by the builder against the Commissioners for preventing him from completing the contract, they alleged that the builder had failed to do the work with due diligence in the opinion of the architect. The builder alleged delay on the architect's part in supplying plans, &c. The Court of Exchequer Chamber (*Kelly, C.B., Channell, B., Blackburn and Mellor, JJ.; Cleasby and Pigott, BB., dissenting*) *held*, upon demurrer, that the defendants by their acts had prevented the plaintiff from proceeding with the works, and that the rule of law applied, which exonerated one of two contracting parties from the performance of the contract when prevented by the wrongful act of the other party. Decision of the Court of Common Pleas *reversed.*

ROBERTS v. *BURY COMMISSIONERS.*
(1869) L. R. 5 C. P. 310; 39 L. J. C. P. 129; 22 L. T. 132; 18 W. R. 702.

——**Certificate not Final.**—A firm of builders contracted to execute certain works for a building owner, and by the terms of the contract it was agreed that the certificate of the architect, showing the final balance due to the contractors, should be conclusive evidence of the due completion of the works. There was a further clause referring any dispute or difference arising out of the contract between the building owner, or his architect, and the contractor, to the sole decision of the architect. The architect had given his certificate showing the final balance due to the contractors; but prior to his signing it he knew certain disputes had arisen between the contractors and the building owner, as to the completion of the works. In an action by the contractors for the balance certified by the architect, *Lawrance, J.*, entered judgment for the plaintiffs. The defendant appealed, and the Court (*Lord Esher, M.R., Lopes and Rigby, L.JJ.*) allowed the appeal, and *held*, that if disputes have arisen before the architect's certificate of the balance due is given, it is not final and conclusive; but otherwise it is.

LLOYD v. *MILWARD.*
(1895) H. B. C. 454.

——**Written Certificate of, Necessary.**—The defendant agreed to pay to a certain builder a specified sum for erecting two houses, according to plans and specifications prepared by an architect, provided that the architect should, before such payment, certify that the works had been carried out to his satisfaction. The builder sued the defendant for the balance due on foot of the contract, but failed to prove a certificate in writing from the architect, although he proved his verbal approval of the works. The jury found for the plaintiff, and the defendant moved for a new trial on the ground of misdirection by *Erle, C.J.* The Court (*Erle, C.J., Williams, Willes, and Byles, JJ.*) *held*, that to entitle the plaintiff to payment it was not necessary that the architect should certify in writing his approval of the works: it was sufficient if he did so verbally.

ROBERTS v. *WATKINS.*
(1863) 32 L. J. C. P. 291; 11 W. R. 783; 14 C. B. (N.S.) 592; 9 Jur. 128; 8 L. T. 460.

——**Clause of Reference may not oust Jurisdiction of Court.**—A builder contracted to erect certain buildings according to plans and specification thereof by A. and B., architects. By a clause in the contract, all disputes between the parties that might arise out of the contract were to be referred to the decision of "*the*

architects." The work was subsequently taken out of the builder's hands and given to another to complete, and he brought an action for the balance due. The Court (*the Lord Justice-Clerk, and Lords Benholme and Neaves*) *held* (*affirming* the judgment of the *Lord Ordinary*), that the clause of reference, if binding to any effect, was merely executorial and not such as to oust the jurisdiction of the Court in the question raised.

McCORD v. *ADAMS.*

(1861) 24 Ct. of Sess. Cas. (2nd Ser.) R. 75.

——**Collusion.**—The plaintiff, a builder, agreed to carry out certain building works for the defendant. The work was to be done to the satisfaction of the defendant's architect, upon whose certificate payment was only to be made. In an action to recover the balance due on the contract, the plaintiff alleged that the architect, in collusion with the defendant and by his procurement, refused to certify for the sum due. The Court (*Pollock, C.B., and Martin, B.*) *held*, that the plaintiff had a good cause of action.

BATTERBURY v. *VYSE.*

(1863) 32 L. J. Ex. 177; 2 H. & C. 42; 9 Jur. 754; 8 L. T. 283; 11 W. R. 283.

——**Collusion.**—The plaintiff contracted with a certain union to execute certain works for an agreed price, to be paid for by instalments on the certificate of the engineer. The plaintiff carried out the work according to the plan and specification; but the scheme was not a success, and, before the works were completed, the guardians took possession thereof, although the contractor was not in default. An action against the guardians and the engineer for the balance of the contract, and extras, some of which had not been ordered in writing as required by the contract, was referred, and the *Official Referee* found, that the engineer had *mâla fide* refused to certify, but that the guardians were not in collusion with him, and entered judgment for the plaintiff. The union moved to set aside the award, and the Court (*Vaughan, Williams, and Lawrance, JJ.*) *held*, that the plaintiff's remedy was damages for wrongfully being prevented from completing the contract: the measure of damages being the amount the plaintiff would have been entitled to if the work had been completed, and the engineer had issued such certificates as he should have issued.

SMITH v. *HOWDEN UNION.*

(1890) H. B. C. 71.

——**Decision Final.**—The defendants contracted with the plaintiff to build a market-house. The contract provided that no deviations, &c., were to be allowed for without the written order of the architect of the defendants; that they should be priced at the contract prices; that no claim in respect thereof should be made without production of the written order of the architect, signed when the order was given; that payments on account of the contract should be made on the certificate of the architect, whose opinion was final as to the value of the work done. If any dispute should arise as to the meaning of the contract, the architect should define the meaning thereof, and his decision was to be final, and also in reference to the value of extras, deviations, &c. In an action brought by the plaintiff for work done, the Court (*Erle, C.J., Willes, Byles, and Keating, JJ.*) *held*, in a case stated, that neither party could raise the question of whether or not there was a sufficient order in writing, or whether a pump, drains, &c., though separately ordered, were part of the contract, as the architect's decision in reference thereto was final.

GOODYEAR v. *WEYMOUTH CORPORATION.*
(1866) 1 H. & R. 67; 35 L. J. C. P. 12.

——**Decision Final.**—A building agreement provided that all disputes between the parties, arising out of the contract or execution thereof, should be referred to the architect, whose decision was to be final. On completion of the work the builder had it measured and priced, and on the employer refusing to pay the cost thus arrived at the builder brought his action. The employer alleged (1) that the measurements were inaccurate, and (2) that the action was excluded by the above-mentioned provision in the contract. The *Lord Ordinary found*, that the dispute came within the provision, and dismissed the action. On appeal, the Court (*the Lord President, Lords Deas, Mure, and Shand*) *held, reversing* the judgment of the *Lord Ordinary*, that the question of the measurement of the completed work was not a dispute or difference of opinion "*connected with the contract or the execution of the work*," within the meaning of the clause of reference.

KIRKWOOD v. *MORRISON.*
(1877) 5 Ct. of Sess. Cas. (4th Ser.) R. 79.

——**Decision Final.**—By a contract in writing the plaintiff agreed to erect four houses on the defendant's land, and the defendant agreed to grant to the plaintiff a lease on completion of the works.

The defendant's architect was to certify for payments on account of the contract, &c., and his decision in every matter was final; and in the event of undue delay, &c., on the part of the plaintiff, the defendant was empowered to employ another builder to complete the work, and sell the buildings and lease the land to other persons. On an application to make this agreement a rule of Court, under § 17 of the *Common Law Procedure Act*, 1854, the Court (*Cockburn, C.J., Blackburn and Mellor, JJ.*) *held*, that even assuming the agreement to be "an agreement or submission to arbitration" within the section, the clause making the architect's decision final amounted to "words purporting that the parties intended that it should not be made a rule of Court."

WADSWORTH v. *SMITH.*

(1871) L. R. 6 Q. B. 332; 40 L. J. Q. B. 118; 19 W. R. 797.

——**Extra Work to be ordered in Writing.**—A builder contracted to erect a certain workhouse according to plans and specification for £5500, all to be completed by a fixed date. The contract provided that extras were only to be carried out on the architect's written order; 25 per cent. was to be retained out of every instalment, and paid to the builder thirty days after the completion of the work; and that the builder should forfeit £10 as liquidated damages for every week's delay in the completion of the work after the specified date. The plaintiff brought an action to recover the balance of the contract and extras, which was referred. The arbitrator found that extras were ordered by the architect in the course of the work, that all the works were completed to the satisfaction of the architect, and that final completion was delayed by reason of the addition ordered. Certificates had been given by the architect from time to time for a total of £5000, but the builder had actually received £6300 against the work generally, without any distinction as to the nature of the work. No written orders for extras were given by the architect, but letters were put in evidence, signed by the architect, in which allusion to the extra works appeared, and directions as to the mode of executing them were given. The Court *held*, in a considered judgment, that the contract deed meant that written directions were necessary *before the additional works were done*, and that the letters and certificates did not amount to such directions. That the payments made were to be treated as paid on account of the total sum found due to the plaintiff, and the plaintiff could not apply any part of the sum of £6300 to the extra works; that the plaintiff was not entitled to payment on a *quantum meruit*, as the defendants, being a corporation, were

incapable of making a new parole contract of that nature; that time was not an essential part of the contract.

LAMPRELL v. *BILLERICAY UNION.*
(1849) L. R. 3 Ex. 283; 18 L. J. Ex. 282.

——**Fees.**—A building owner employed an architect to prepare plans, &c., for certain buildings to cost a fixed sum, but finding the work would cost much more than he was prepared to spend, the owner did not proceed with the works. In an action by the architect for his fees, *Lord Coleridge, C.J.*, told the jury that if, in all the circumstances, they thought the owner was entitled to reject the plans, they should find for the defendant. The jury found for the plaintiff £200.

BURR v. *RIDOUT.*
(1893) *Times*, February 22.

——**Fees.**—An architect sued his employer to recover fees, based on 3 per cent. commission on the amount of the lowest tender received and services rendered in respect of a building, the erection of which was not proceeded with. The action by agreement was decided by *Lord Coleridge, C.J.*, who awarded the architect £210 over and above the sum already paid him, but *held*, that an architect could not recover commission on the estimated cost of a building which is ultimately not proceeded with.

FARTHING v. *TOMKINS.*
(1893) 9 T. L. R. 566.

——**Fees.**—An architect was employed to prepare plans for the erection of certain buildings which were not proceeded with. The owner, however, made some use of the plans. The architect brought an action against the owner for his fees, and the owner pleaded that the plans had been drawn on the footing of their being a competition. The sheriffs gave judgment for the plaintiff. On appeal, the Court (*Lord President, and Lords Deas, Mure, and Shand*) *held*, that it lay upon the defendant to prove that the architect's employment was gratuitous, which he had failed to do, and they *affirmed* the decision of the sheriffs.

LANDLESS v. *WILSON.*
(1880) 8 Ct. of Sess. Cas. (4th Ser.) R. 289.

——**Fees.**—A building owner employed an architect to superintend certain building works, but no reference was made in the contract as to who was to pay his commission. In an action by the architect against the builder employed to execute the works,

Lopes, J., held, that he could not succeed unless the builder had first received the commission from the building owner, in addition to what was due to him on the contract.

LOCKE v. *MORTAR.*
(1885) 2 T. L. R. 121.

——**Fees.**—The committee of a lunatic asylum agreed with the plaintiff to pay him a certain sum for acting as their architect and preparing probationary drawings, &c. Pursuant to this agreement the plaintiff prepared certain probationary plans and drawings, and was prepared to submit others, when his employment was discontinued. In an action against the committee the plaintiff was awarded £437 10*s.* by the jury. On hearing a rule, the Court (*Jervis, C.J., Maule, Talfourd, and Cresswell, JJ.*) *held*, that probationary drawings meant drawings to be approved of by the committee, the commissioners, and the Secretary of State; that even if the visitors could contract for the payment of plans not approved of, yet there was no contract here which would make them liable for dismissing the plaintiff.

MOFFATT v. *DICKSON.*
(1853) 22 L. J. C. P. 265.

——**Fees.**—The owner of a certain estate agreed with an architect to lay out the same. The architect was to receive no direct remuneration for that service, but the owner agreed that in the event of any land being sold for building purposes the owner would appoint the architect to act for him in connection with the buildings to be erected thereon, at the remuneration of £1 5*s.* per cent. to be paid by the parties building. Should the owner dispense with the architect's services at any time, he was to remunerate him for his time, trouble, and expense involved in laying out the estate. The owner died before any of the estate was sold, and his executors dispensed with the services of the architect, who brought an action against them, claiming £6000. The Court (*Jervis, C.J., Maule, Cresswell, and Williams, JJ.*) *held*, on demurrer, that the architect could not recover, as the disposal of the estate for building purposes was the event in which he was to have any remuneration.

MOFFATT v. *LAWRIE.*
(1855) 24 L. J. C. P. 56; 15 C. B. 583; 1 Jur. 283; 3 W. R. 252.

——**Fees.**—The plaintiff was employed as architect by the committee of the subscribers of certain funds to build Mythe

Bridge across the Severn. In an action by the architect against the committee for fees for preparing plans, specifications, and estimates, it was proved, (1) that he was a subscriber, and (2) that, owing to his omitting to examine the ground where the foundations were to be laid, he was led into an error in his estimate, which involved the committee in an additional expenditure of £1600. *Abbott, C.J., held*, that the architect could not recover for the plans, &c., of the works, and that being a subscriber or shareholder he was a partner, and could not maintain an action against the committee, though he subscribed as architect and engineer.

MONEYPENNY v. *HARTLAND.*
(1826) 2 C. & P. 378; 31 R. R. 672.

——**Fees.**—The committee of a club invited designs for a new club house, and accepted those submitted by a certain architect, who instructed the plaintiff to prepare bills of quantities. Ultimately, owing to the tenders being too high, the building was not proceeded with. The plaintiff sued the committee for his fees, but the defendants proved that they authorized the architect to procure tenders provided he did not pledge them to pay. The plaintiff was non-suited.

RICHARDSON v. *BEALE.*
(1867) *Times*, June 29.

——**Fees.**—The plaintiff was appointed architect to a certain School Board by a resolution, and a minute, signed and countersigned, under the *Elementary Education Act*, 1870. By § 30 (1) a School Board is a body corporate having perpetual succession and a common seal; and by (4) minutes signed by the chairman are receivable in evidence in all legal proceedings without further proof; § 35 authorizes the appointment of a clerk, a treasurer, and other necessary officers. By the Third Schedule any officer may be appointed by minute of the Board, signed by the chairman, and countersigned by the clerk, if any, and any appointment so made shall be as valid as if made under the seal of the Board. In an action by the plaintiff to recover fees for plans which he prepared under orders given by minutes, duly signed and countersigned, *Mathew, J., held*, that, by virtue of the provisions of the Act, the plaintiff was entitled to recover payment for his services, although the appointment and orders were not under seal.

SCOTT v. *CLIFTON SCHOOL BOARD.*
(1884) 14 Q. B. D. 500; 52 L. T. 105; 33 W. R. 368; 1 Cab. & E. 435.

——**Fees.**—An architect was employed to prepare plans, &c., for the erection of a proposed residence. The lowest tender obtained, from the builders invited to compete, was too high in the view of the building owner, who consequently did not proceed with the building. In an action by the architect to recover £169, being 3 per cent. on the amount of the lowest tender, as his commission, according to the rules of the Royal Institute of British Architects, two witnesses called, who were architects, said that the rule relied on was not universally adopted, and they considered that £75 tendered by the defendant was a reasonable remuneration for the services rendered. *Kennedy, J.*, said the rule in question was adopted generally, and in the circumstances awarded the plaintiff £125, being 2½ per cent. on a £5000 estimate, and costs.

WHIPHAM v. *EVERITT.*

(1900) *Times*, March 22; R. B. C. 171.

——**Final Certificate.**—By a clause in a building contract the final balance was not to be paid to the builder until the architect had given his final certificate. He had by letter expressed his satisfaction with the work, but the final certificate was not given until a year later. Twenty per cent. of every payment was to be retained as security until two months after completion had been certified by the architect. The builder brought an action for the balance due on the contract within two months after the architect's final certificate, and the Court *held*, that the intention of the parties was that the architect's satisfaction should be expressed by his final certificate, and, as the action had been brought within two months of the date of the architect's final certificate, they gave judgment for the defendant, but without costs in the circumstances.

COLEMAN v. *GITTINS.*

(1884) 1 T. L. R. 8.

——**Fraud in withholding Certificate.**—A builder agreed to execute certain repairs to a house, to the satisfaction of the owner's architect, and alleged that he duly performed the work, but that the architect, in collusion with the owner, and in fraud of the builder, refused to certify his satisfaction with the work, although he had admitted to the builder and his solicitor that he was satisfied with it. In an action by the builder against the architect, *Grove, J.*, *held*, on demurrer, that the builder had a good cause of action.

LUDBROOK v. *BARRETT.*

(1877) 46 L. J. C. P. 798; 36 L. T. 616; 25 W. R. 649.

——**Libel of, in Respect of his Profession.**—An architect was employed by a committee to carry out the restoration of a certain

church, and the defendant, who had no interest in the employment, wrote to one of the committee, alleging that the architect was a Wesleyan, and could have had no experience in church work, and urged him to avert the loss which must be caused if any of the "*masonry of this ancient gem of art*" be ignorantly tampered with. In an action for libel by the architect, the defendant alleged truth, that the opinion was honestly held by him, and that the architect could not show experience in church work. The plaintiff recovered £50 damages before *Bramwell, L.J.* On hearing a rule obtained by the defendant for a new trial, the Court (*Kelly, C.B., and Stephen, J.*) *held*, that the letter was a libel, that there was no justification, and that even if the occasion was privileged, there was evidence of express malice.

BOTTERILL v. *WHYTEHEAD.*
(1880) 41 L. T. 588.

——**Misconduct.**—A builder contracted to erect for a lump sum certain houses, according to plans and specification, by a certain date, to the satisfaction of the owner's architect. If extra works were ordered, the time-limit was to be extended, and should the works not be completed by the fixed date, the builder was to forfeit £10 for every week's delay thereafter, and the owner was to be at liberty to complete the buildings, and retain the cost incurred thereby out of the contract money. The contract was to be paid in instalments of £75 for every £100 worth of work done, on the certificate of the architect, who was to be the sole arbitrator in disputes arising out of the contract. In an action by the builder against the owner and the architect, it was proved that the houses were not completed by the time stated, and that extras had been ordered; and the plaintiff's surveyor stated that a much less sum than the balance due would suffice to finish the work when the architect took possession thereof. *Stuart, V.C.*, made a declaration that the architect had acted improperly, and ordered payment of an amount to be ascertained by an inquiry, and refused an inquiry as to penalties.

PAWLEY v. *TURNBULL.*
(1861) 4 L. T. 672; 3 Giff. 70; 7 Jur. 792.

——**Mistake.**—A company employed an architect to prepare plans, &c., for a hall which they proposed to build. The contract empowered the architect to order additions or deductions, and the value thereof was to be ascertained according to the quantities and prices of the bill of quantities prepared by him. All matters in dispute between the contractor and the company were to be

settled by the architect, and his decision was to be final, and the contractor was to be paid only on his certificate. The contractor brought an action against the architect for negligence in measuring up the extras, and claimed £1364. On demurrer that the defendant was an arbitrator, and, as the defendant did not allege fraud or *mala fides*, there was no cause of action, the Court (*Lord Coleridge, C.J., and Denman, J.*) *held*, that the functions of an architect in ascertaining the amount due to the plaintiff were not merely ministerial, but such as required the exercise of professional judgment and skill, and that he, therefore, occupied the position of an arbitrator against whom, no fraud being alleged, the action would not lie.

STEVENSON v. *WATSON.*
(1879) 4 C. P. D. 148; 48 L. J. C. P. 318; 40 L. T. 485; 27 W. R. 682.

——**Negligence in Certifying.**—The plaintiff engaged an architect to prepare plans and specification of a house, and made a contract with a builder to erect a house in accordance therewith, for a certain sum, to be paid on the certificates of the architect that the house was properly built in accordance with such plans and specification. In an action by the building owner against the architect for negligence in certifying and superintending the work, *Fitzgerald, B., held*, that the defendant would be responsible if guilty of a want of due care and caution in giving his certificates, and that there was upon him the duty of skilled superintendence. The jury found negligence on the facts.

ARMSTRONG v. *JONES.*
(1869) H. B. C. 1.

——**Negligence in Certifying.**—The plaintiffs were the mortgagee of land and two houses thereon, built under a building agreement between the owners of the land and a certain builder, and the transferee of the said mortgage, and they brought an action against the defendant, an architect and surveyor, to recover loss which they had sustained by reason of certain untrue certificates given by him as to the progress made in building the two houses, upon which payment was subsequently made. It had been agreed that the mortgage money should be advanced as the building operations progressed, but there were no contractual relations between the architect and the mortgagees. The action was referred to the *Official Referee*, who gave judgment for the defendant, holding, as a matter of law, that the defendant owed no duty to the

plaintiffs. The Divisional Court refused to set this judgment aside, and the plaintiffs appealed.

The Court (*Lord Esher, M.R., Bowen and A. L. Smith, L.JJ.*) *held*, that the architect owed no duty to the mortgagees to exercise care in giving his certificates, and they could not maintain an action against him for negligence.

Cann v. *Willson* (39 Ch. D. 39) overruled.

LE LIEVRE & DENNES v. *GOULD.*

(1893) 57 J. P. 484; 1 Q. B. 491; 62 L. J. Q. B. 353; 4 R. 274; 68 L. T. 626; 41 W. R. 468.

——**Negligence in Certifying, and Fraud.**—An architect was employed by a building owner to prepare plans and specification for, and supervise the execution of, certain building works. His remuneration was fixed at 5 per cent. commission on the total outlay and out-of-pocket and travelling expenses. He prepared the bills of quantities himself, and procured a builder to tender thereon for the works. The contract signed provided that the builder was to be paid only on the certificate of the architect, whose final certificate was conclusive evidence that the builder was entitled to payment. The building owner sued the architect for negligence in giving his final certificate, and for receiving a secret commission, in that he received £10 10*s.* from the builder for preparing the bills of quantities. *Mathew, J., held*, that an action would not lie against the architect for negligence, and judgment was entered for the defendant, but without costs.

RESTELL v. *NYE.*

(1900) 16 T. L. R. 154. *See also* at p. 99 *infra.*

——**Negligence in Designing.**—A building owner employed an architect to prepare the necessary plans, &c., and superintend the erection of certain proposed model lodging-houses. The architect was instructed to design a flat roof, and not to specify lead as a covering for the roof, owing to its being too costly, but to specify some other material. The architect accordingly specified a novel invention of concrete and iron in the roof, which had come to his knowledge, and of which he approved, at a cost of about one-fourth the cost that using lead or slates would have involved. The roof, however, proved a failure and cracked, letting the rain-water in. In an action by the owner against the architect for negligence, *Erle, C. J., held*, that though failure in an ordinary building was evidence of want of competent skill, failure is consistent with skill, if an architect is employed on some novel method, out of

the ordinary course, in which he had not had experience. The jury found for the defendant.

TURNER v. *GARLAND.*
(1853) H. B. C. 85.

——**Negligence in Estimating Cost.**—A building owner engaged a firm of architects to prepare plans, &c., of certain buildings, and informed them that the cost of the work was not to exceed £100,000. The buildings were begun without specifications, detailed estimates upon quantities having been taken out, and the works cost £200,000 when completed. In an action by the architects against the owner for their fees, negligence was alleged by the defendant, but the *Official Referee* found for the architects. The owner appealed, and as the Court (*Lord Coleridge, C.J., and Wright, J.*) had been informed by the *Official Referee* that he had not found formally or expressly that there was no negligence, they sent the case back for him to deal with the question of alleged negligence.

ARCHER v. *HOBBS.*
(1891) *Times*, November 5.

——**Negligence in Measuring up.**—In the first of these actions the plaintiff sued the defendant for work done by the former as architect for the defendant. The defendant did not dispute the claim, but counterclaimed for the alleged negligence of the plaintiff in measuring up the work done, &c. The plaintiff was employed for the usual services upon the usual terms. The contract provided for the payments on account, &c., on the certificate of the architect, and that his certificate showing the final balance due to the contractor should be conclusive evidence that the works had been duly completed.

The County Court judge gave judgment for the plaintiff on the claim and for the defendant on the counterclaim, the damages to be assessed by arbitration. The Divisional Court allowed the plaintiff's appeal, on the ground that, being placed in the position of an arbitrator by a clause of the contract, he was not liable for negligence in respect of his functions under that clause of the contract. Against this judgment the defendant appealed.

In the second action the defendant was an architect and the plaintiffs the executors of the building owner. The building contract was substantially the same as in the first case, and *Mathew, J., held*, that an action for negligence would not lie against a person placed in the position of the defendant under the contract.

The Court (*A. L. Smith, M.R., and Collins, L.J.; Romer, L.J., dissenting*) *held*, that the architect, in ascertaining the amount due to the contractor and certifying for the same under the contract, occupied the position of an arbitrator, and therefore was not liable in an action by the building owner for negligence in the exercise of these functions.

CHAMBERS v. *GOLDTHORPE*, and *RESTELL* v. *NYE*.

(1901) 1 K. B. 624; 70 L. J. K. B. 482; 84 L. T. 444; 49 W. R. 401.

——**Negligence: Inaccurate Plans.**—The plaintiffs employed the defendant to prepare plans and specification for a factory and offices, and to engage a surveyor to take out the quantities. The defendant did not measure the proposed site, but prepared plans, &c., in accordance with what he erroneously believed to be the true dimensions of the site, and employed a surveyor to take out the quantities. The plaintiffs, believing the plans and quantities to be correct, paid the architect £200, and the surveyor £200, for their services, but were unable to erect the buildings, owing to lack of means, and they disposed of the site. They subsequently discovered that the plans and quantities were not correct, and brought an action claiming the return of the money paid as having been paid upon a consideration which had wholly failed, or, in the alternative, damages for negligence.

Wright, J., in a considered judgment, *held*, that there had not been a total failure of consideration, but as the defendant had been negligent, the plaintiffs were entitled to damages, although, as they had sustained no loss from his negligence, those damages would only be nominal.

THE COLUMBUS CO., LTD. v. *CLOWES*.

(1903) 1 K. B. 244; 72 L. J. K. B. 330; 51 W. R. 366.

——**Slight Error is not Negligence.**—An architect sued the defendants for balance of his commission, and they alleged in their defence negligence in taking out the quantities and in measuring up the work done. *Cave, J.*, referred the case to one of the *Official Referees* (now *Ridley, J.*), who found, that the difference in measurements between the plaintiff and the defendant was but three-quarters per cent., and that, in a contract of £10,000, could not be considered negligence on the part of the architect. Judgment for the plaintiff.

CORBETT v. *RICHMOND*.

(1888) *Building News*, May 18.

——**Negligence in Superintendence.**—An architect was employed to design and superintend the execution of certain drainage works in connection with the plaintiff's house, and having prepared the necessary plan, &c., placed it in the hands of a contractor. The work, however, was not properly executed, and in consequence thereof some members of the plaintiff's family fell ill. The plaintiff sued the architect for negligence in superintending the work, claiming the cost of having the work properly done, and medical expenses. The jury found for the plaintiff, damages to be assessed by a reference.

ELLISSEN v. *LAURIE.*

(1878) *Times*, February 19.

——**Negligence in Superintendence.**—The owner of certain premises employed an architect to carry out certain alterations thereto. Plans and specification were duly prepared, and a builder employed, who performed the work to the satisfaction of the architect. In an action by the architect for his fees against the owner, the latter counterclaimed for negligence, by reason of the architect not having certain beams renewed, which had been previously damaged by fire. A clerk of works had been appointed by the defendant, who stated that new beams were not required. The jury found for the plaintiff, and *Cave, J.*, entered judgment accordingly.

LEE v. *BATEMAN.*

(1893) *Times*, October 31.

——**Negligence in Superintendence.**—An architect was employed to superintend the erection of a certain house. A clause in the builder's contract provided that his decision in all disputes arising out of the contract was binding. In an action by the architect against his employer for the balance of his fees, the employer counterclaimed for negligence, by reason of which certain works were omitted by the builder. The architect contended that, in his final certificate, he had deducted a certain sum in respect of such omissions, and that his decision being final, the employer could not reopen the question. The jury found for the plaintiff on the claim, and for the defendant on the counterclaim. The plaintiff moved for judgment, or a new trial, on the counterclaim, and the Court (*Lord Lindley, Lopes and Kay, L.JJ.*) *held*, that the architect's certificate is final as between builder and building owner, but not as between the latter and the architect.

ROGERS v. *JAMES.*

(1891) H. B. C. 113; 8 T. L. R. 67.

——**Oral Certificate of the Completion of the Works.**—A clause of a builder's contract provided that the completion of the works was to be testified by the written certificate of the surveyor. The balance was to be paid to the contractor, on the surveyor certifying that the whole of the works were in a complete and satisfactory state. In an action by the contractor for the balance of money due under the contract, it was contended by the defendants that no proper certificate had been given by the surveyor to satisfy the contract. The plaintiff relied on the following certificate by the architect: "*I, the undersigned, do certify that T. E. is entitled to receive the sum of* £127 *in payment of final instalment of contract after maintenance of the above-named work, signed, J. B. B., architect,*" and also on the oral certificate of completion given by the architect to the defendants. *Vaughan-Williams, J., held,* that a certificate of completion of a building contract may be given orally, in the absence of specific provision to the contrary in the contract, and gave judgment for the plaintiff.

ELMES v. *BURGH MARKET CO.*
(1891) H. B. C. 119.

——**Ownership of Plans prepared by.**—A clergyman employed an architect to prepare plans, &c., for a church and vicarage, at 5 per cent. commission on the outlay, or 3 per cent. if tenders were obtained and the work not proceeded with; if only the plans were drawn, the commission was to be 2½ per cent. on the estimated cost of the work. The work was not proceeded with, and when the architect sought payment he was requested by his employer to give up the plans. In an action to recover his fees, the *Lord Chief Baron* entered judgment for the plaintiff. On motion to reduce the amount of the verdict, the Court (*Kelly, C.B., and Bramwell and Piggot, BB.*) *held,* that the defendant was justified in refusing to pay until the plans were handed to him, and the rule was made absolute, the verdict being reduced in respect of the plans of the house.

EBDY v. *McGOWAN.*
(1870) *Times,* November 17; H. B. C. 7.

——**Ownership of Plans.**—The plaintiff desired to convert certain houses, of which he was the owner, into flats, and employed the defendant as his architect, on the terms that he was to be paid 5 per cent. commission on the contract price of the works to be executed. The plaintiff prepared the plans and specification, and superintended the execution of the works, on completion of which the plaintiff paid him the agreed commission, and claimed to have

the plans and specification handed over to him. The defendant declined to do so, and the plaintiff brought an action to obtain possession of them. At the trial, *Ridley, J.*, refused to admit evidence, tendered on behalf of the defendant, of a custom under which an architect in similar circumstances was entitled to retain the plans and specification as his property, on the grounds that the custom proposed to be established by that evidence was unreasonable, and entered judgment for the plaintiff. The defendant appealed, and the Court (*Collins, M.R., Mathew and Cozens-Hardy, L.JJ.*) *held*, that a custom set up by the defendant entitling him as architect to the property in the plans after the completion of the work, was unreasonable, and afforded no answer to the action.

GIBBON v. *PEASE.*

(1905) 69 J. P. 209; 1 K. B. 810; 74 L. J. K. B. 502; 92 L. T. 433; 21 T. L. R. 365; 3 L. G. R. 461; W. N. 55.

——**Power to carry out Contract in Builder's Default.**—One of the terms of a builder's contract empowered the architect to purchase materials and employ workmen to carry out the contract, if the building works did not progress as the architect might consider necessary; the cost of such materials and workmen to be deducted from any money found to be due to the builder. When portion of the work was done and paid for, the architect refused to certify for any further payments on the grounds of delay and non-supply of proper materials. The builder therefore could not pay his workmen, and they became clamorous, and accompanied him to the architect's office, where, after remonstrating, he signed an agreement giving up the contract in consideration of a present payment of £50, and referring the question as to what was due to him to an arbitrator. The arbitrator awarded the builder a less sum than the builder thought just, and he filed a bill to set the agreement aside as having been obtained by undue pressure. *Lord Campbell, L.C., held*, that the builder had confirmed the agreement by acting upon it, and was therefore not entitled to relief.

ORMES v. *BEADEL.*

(1861) 30 L. J. Ch. 1; 3 L. T. 344; 9 W. R. 25.

——**Acting as Quantity Surveyor.**—A hotel proprietor, about to make alterations, employed an architect, who accepted the defendant's tender for the work. The specification provided that additions and deviations were to be valued according to the schedule of prices and measurements upon which the contract was based. In an action by the architect to recover back from the contractor the amount of fees charged by him as surveyor, and

paid to the contractor, on the ground that the architect had been employed by the contractor, after the completion, to check the measurements and jobbing accounts, the *Lord Ordinary* found for the defendant, it not having been proved that he employed the architect. On appeal, the Court (*Lord President, Lords Mure and Shand*) *held*, that it is in the interest of the employer and not of the contractor that the aid of a surveyor is called in to take the measurements of extra works, and though, according to practice, the surveyor's fees are included in the contractor's accounts, it is only for the sake of convenience, and, without special employment, no action by the surveyor will lie against the contractor.

BEATTIE v. *GILROY.*
(1882) 10 Ct. of Sess. Cas. (4th Ser.) 226.

——**Employing Quantity Surveyors.**—A theatrical manager proposed to build a theatre, and employed an architect to prepare the necessary plans, specification, and estimate. He objected to the cost of the proposed buildings, and in order to ascertain the amount by which the cost of work could be reduced, the architect engaged a firm of quantity surveyors to take out the reduced quantities from his plans as amended. The quantity surveyors had been paid their charges for taking out the quantities from the original plans, but the theatrical manager ultimately decided not to build. In an action by the quantity surveyors to recover their charges for "preparing quantities on reductions and 1 per cent. on omissions," from the employer, the latter alleged that the plaintiffs were not engaged by him, and the architect in doing so had acted contrary to his express instructions. The plaintiffs obtained a verdict, and on hearing a rule to set it aside on the ground that it was against the weight of evidence, the Court (*Lord Coleridge, C.J., Manisty and Bowen, L.JJ.*) *held*, that the plaintiffs could only recover against the employer upon evidence of actual instructions, and not by virtue of any custom. The Court, however, did not feel justified in disturbing the findings of the jury, who had heard the witnesses in the case.

EVANS v. *CARTE.*
(1881) H. B. C. 10.

——**Sued by Quantity Surveyor.**—An architect prepared plans of a proposed building, and requested a surveyor to take out the quantities thereof. The architect had received no instructions to obtain tenders. When the quantities were prepared the architect handed them to a builder for tender. The surveyor did not know the name of the architect's client, and in the case of quantities

previously prepared by him at the request of the architect, he had been paid through the latter.

In an action by the surveyor against the architect for the amount of his fees, the architect pleaded that his client was liable. The jury, however, found that the defendant had employed the plaintiff personally, and was accordingly liable for his fees.

GORDON v *BLACKBURNE.*

(1879) *The Builder*, February 1.

——**Acting as Quantity Surveyor.**—An architect took out the quantities of a certain building, the erection of which was not proceeded with owing to the refusal of the Poor Law Board to sanction it, and sued the Guardians for his fees. The jury found that there was a custom that in such circumstances the employer was liable to the architect, and that it was known to the parties, and that they contracted on that footing; and *Keating, J.*, entered judgment for the plaintiff.

LANSDOWNE v. *SOMERVILLE.*

(1862) 3 F. & F. 236.

——**Refusing to Certify.**—A builder entered into a written contract with the defendant to build certain premises, whereby the defendant's architect was to be the sole judge in case of dispute, and his decision was to be "binding and conclusive on both parties." In an action by the builder for a large sum due, but which the architect would not certify for, the Court *held*, that in building contracts it would interfere where there is collusion between the employer and architect to injure the contractor, but that the alleged collusion was not proved, and dismissed the bill.

BLISS v. *SMITH.*

(1865) 34 Beav. 508.

——**Satisfaction a Condition Precedent.**—A building contract provided that the work was to be executed "*to the satisfaction of the architect*," additions, &c., were not to be carried out without his order, and he was to ascertain the value of any executed, and the amount was to be paid on completion of the work. The architect declined to certify that the work was completed to his satisfaction. On demurrer, the Court (*Jervis, C.J., Maule, Cresswell, and Talfourd, JJ.*) *held*, that the satisfaction of the architect was a condition precedent to entitle the plaintiff to payment.

GLENN v. *LEITH.*

(1853) 1 C. L. R. 569.

——**Superintending.**—The purchaser of a large plot of land, built, upon a portion thereof, a row of houses fronting a certain street. The end house of the row was a corner-house, standing upon what was formerly the garden of a public-house, and giving on to a new street, and projecting beyond the certified building line of the said new street. A magistrate's order was obtained for the demolition within eight weeks of so much of the house as projected beyond the certified building line. This order was not reduced to writing, or served on the purchaser until the last day of the period of eight weeks referred to, but he was present in Court and heard the order being made. The purchaser refused to comply therewith, and sought an injunction to restrain the Vestry from interfering with the corner-house. *Bacon, V.C.*, granted the injunction. The Vestry appealed, and the Court (*Cotton, Lindley, and Baggallay, L.JJ.*) *held,* that the projecting part of the house was a new building, and came within § 75 of the *Metropolis Management Amendment Act,* 1862, and not within § 74, which applies to new buildings; and that, although the building was a corner-house of a row of houses in an adjoining street, it was also in the new street, and the owner was bound to keep it within the general line of buildings in the new street; and they *reversed* the decision of *Bacon, V.C.* They also held that the order was binding, the Act being silent as to service of the order upon the owner, although it requires it to be in writing (27 Ch. D. 362).

The owner appealed and the House of Lords (*Lords Herschell, L.C., Watson, Bramwell, Fitzgerald, and Halsbury*) *held, reversing* the decision of the Court of Appeal, that no offence under § 75 of the *Act* had been committed by the erection of the appellant's house, and, therefore, there was no jurisdiction for a magistrate's order under that section, directing its demolition; and that the order was not "an order in writing made on" the builder, within the meaning of § 75, and was, therefore, invalid.

BARLOW v. *VESTRY OF ST. MARY ABBOTS, KENSINGTON.*

(1886) 50 J. P. 691; 11 App. Cas. 257; 55 L. J. Ch. 680; 55 L. T. 221; 34 W. R. 521.

——**Verbal Employment by Local Authority.**—An urban authority verbally directed their surveyor to employ an architect to prepare certain plans, &c., which were duly prepared, and upon which the local authority advertised for tenders for the execution thereof. The proposed building was not erected. There was no ratification under seal of the act of the surveyor in procuring the plans. At

the trial of an action brought by the architect for his fees for preparing the plans, &c., the jury found, that the employment of the architect was ratified by the local authority, that offices were necessary, and that the plans were necessary to build them, and found for the plaintiff £94. *Lindley, J.*, entered judgment for the defendants, because the contract, being for more than £50, was not under seal. The plaintiff appealed, and the Court (*Bramwell, Brett, and Cotton, L.JJ.*) *held*, that assuming the contract was founded on an executed consideration, the plaintiff could not recover, for § 174 of the *Public Health Act*, 1875, was imperative, and not directory, and applied to every contract for a sum exceeding £50 entered into by an urban authority.

HUNT v. *WIMBLEDON LOCAL BOARD.*
(1878) 43 J. P. 284; L. R. 4 C. P. D. 48; 48 L. J. C. P. 207; 40 L. T. 115; 27 W. R. 123.

——**Wrongful Interference by.**—A builder's contract provided that the work should be done to the reasonable satisfaction of the consulting engineer, according to certain plans, and should be certified by him or on his behalf. The work was to be finished by a certain date, or in default the contractors were to pay £250 a month for every month's delay. Payment was to be made by cash and shares, the former being subject to retentions to secure the completion of the contract, and a resident engineer was to be employed on the works, completion of which was to be certified by the chief engineer. Owing to certain delay caused by the resident engineer, the contractors were prejudiced by depreciation of securities in which the retentions were invested, and otherwise, and on a reference, the arbitrator gave judgment in favour of the contractors. On appeal, the Court (*Mathew, J., and another*), in a considered judgment, sent the award back to the arbitrator to be altered in favour of the company in respect of the sums awarded, owing to the delay caused by the wrongful interference by the engineer, as neither party could be held responsible for the mistakes of the engineer, and in respect of depreciation.

DE MORGAN v. *RIO DE JANEIRO MILLS.*
(1892) 8 L. T. R. 108; H. B. C. 132.

ASSIGNEE

——**Of Contract.**—A builder contracted with the defendants to build a house by a certain date, and it was provided that 75 per cent. should be paid to the builder when the surveyor certified that work to the value of £200 was executed. The balance was

to be paid three months after completion. The builder assigned £200 of the sum coming to him to the plaintiff, after the date fixed for completion was passed. The plaintiff executed a creditor's deed subsequently, under which the trustee completed the contract out of his own money, and was repaid by the owner, so that no balance remained due on the contract. The plaintiff filed his bill to enforce payment of £200, and the Court (*Selwyn and Giffard, L.JJ.*) *affirmed* the decision of *Malins, V.C.*, and *held*, that the payments by the owner to the trustee were proper, and dismissed the bill.

TOOTH v. *HALLETT.*

(1869) L. R. 4 Ch. 242; 38 L. J. Ch. 396; 20 L. T. 155; 17 W. R. 423.

ASSIGNMENT

——**Of Balance of Contract.**—A firm of contractors agreed to build certain houses for the defendant, to be completed by a certain date. The houses were completed, and the defendant entered into possession. At that time there was due from the defendant to the contractors a certain sum, which they assigned to the plaintiff. The defendant, in an action to recover that sum, pleaded that he was entitled to damages for breaches of contract by the assignors to complete by a certain date, whereby the defendant had lost the use of the premises. On demurrer, the Court (*Cleasby, B., and others*) *held*, in a considered judgment, that the defendant was not entitled to recover any damages against the plaintiff, but was entitled, by way of set-off or deduction from the plaintiff's claim, to the damages which he had sustained by the non-performance of the contract by the assignor, and that the form of defence must be amended accordingly.

YOUNG v. *KITCHIN.*

(1878) L. R. 3 Ex. D. 127; 47 L. J. Ex. 579; 26 W. R. 403

——**Of Instalments to secure Advances.**—By a building agreement the defendant agreed to grant leases to certain builders, when the houses they were to build upon the land to be demised were completed. The defendant agreed also to make certain advances, by instalments of £50, to the builders. The builders bought materials from the plaintiff, and gave him an order on the defendant for payment of the amount of one instalment, the cost thereof. In an action to recover that amount, the County Court judge non-suited the plaintiff. On appeal, the Court (*Mathew and*

Charles, JJ.) *held*, that the agreement was not merely an agreement to make a loan, but stands on the same footing as an agreement to pay for services rendered, and money become due under such an agreement can be assigned in equity.

MAY v. *LANE.*

(1894) 64 L. J. Q. B. 236; 43 W. R. 58; 71 L. T. 869; 14 R. 149.

"BACK YARD OR OTHER VACANT SPACE"

A builder deposited plans of a proposed building, for the approval of a local authority, which did not show thereon an open space of 8 feet behind the building as required by the by-laws, and which, in consequence, were not approved. Notwithstanding such disapproval the building operations were commenced, and the builder was summoned for an offence against the Act incorporating the local authority. He contended that the local Act must be read with § 53 of the *Public Health Act*, 1848, which section had been expressly repealed by § 34 of the *Local Government Act*, 1858, under which the local board were empowered to make by-laws. Such by-laws had been made, and a copy was handed to the builder for his guidance in the building operations, and provided that within a certain period, which then had elapsed, the local authority should either "*approve*" or "*alter*" plans, &c., submitted. The stipendiary convicted the defendant. On a case stated, the Court (*Martin and Channell, BB.*) *affirmed* the conviction, and *held*, that the local Act was not repealed in respect of the additional particulars it directed to be furnished for the approval of the local authority.

PEARSON v. *KINGSTON-UPON-HULL BOARD OF HEALTH.*

(1865) 29 J. P. 711; 3 H. & C. 921; 35 L. J. M. C. 36; 13 L. T. 180.

BANKRUPTCY

——**Action by Mortgagee.**—A contract to construct a tidal harbour was contained in plans and specifications, and provided for payment for work done according to a schedule of prices, and not a lump sum. The works included the formation of a temporary dam to keep out the sea while the excavations were being made. The contractor had constructed this dam and brought certain other plant and materials on to the ground, which he mortgaged to the plaintiff by bill of sale duly registered.

Subsequently the contractor was adjudicated a bankrupt, and a trustee was appointed. The trustees for the debenture-holders of

the company gave notice to the bankrupt's trustee that they had taken possession under their trust-deed of the property of the company, and that the machinery, plant, and materials on the ground belonged to them. A debenture-holder's action was brought, a receiver appointed, and judgment was obtained, under which the property in question was sold. The plaintiff brought this action against the company, and the trustees of the debenture-holders (the purchaser at the sale being added as a defendant subsequently) claiming the materials in the dam and on the ground, and certain plant, under his bill of sale.

Farwell, J., held, that the usual clause in contracts for the construction of works or for building leases, providing that all materials brought on to the ground are to become the property of the building owner, must be construed as vesting the materials in the building owner, subject to a condition of defeasance if the builder completes the work. It is a security to the building owner for the completion of the work, failing which the builder cannot recover the materials, although the building owner does not complete the work himself or by another contractor. Action dismissed with costs.

Ex parte Collins (1902), 1 K. B. 555, distinguished.

HART v. *PORTHGAIN HARBOUR CO., LTD.*
(1903) 1 Ch. 690; 72 L. J. Ch. 426; 88 L. T. 341; 51 W. R. 461.

——**Architect's.**—An architect prepared certain plans, &c., and executed surveys for the defendants in 1877, for which he claimed £498. In 1873 the architect had been adjudicated a bankrupt. In an action by the architect to recover this amount of his fees, which was begun while the architect was an undischarged bankrupt, *Baggallay, L.J., held*, that as the trustee had not intervened, the plaintiff was entitled to maintain the action, and it was referred. The referee found £122 for the plaintiff, and the company appealed. The Court (*Bramwell, Brett, and Cotton, L.JJ.*) *held*, that an undischarged bankrupt may maintain an action in respect of a debt due to him for work and labour done after his bankruptcy, if the trustee does not interfere.

JAMESON & CO. v. *BRICK & STONE CO.*
(1878) 4 Q. B. D. 208; 48 L. J. Q. B. 249; 39 L. T. 594; 27 W. R. 221.

——**Assignees of Contract.**—A builder entered into a contract with a quarry owner for the supply of stone for the purposes of a Government contract. The quarry owner failed to deliver the

stone, whereby the builder's Government contract was determined, and the builder lost profits estimated at £5000, and also sustained other damage. Subsequently the builder became a bankrupt. In an action by the assignees in bankruptcy, to recover damages for breach of contract against the quarry owner, the Court (*Lord Tenterden, C.J., Littledale, Park, and Taunton, JJ.*) *held*, that assignees under 6 *Geo. IV. c.* 16, may maintain an action for unliquidated damages which have accrued before the bankruptcy by the non-performance of a contract.

WRIGHT v. *FAIRFIELD.*
(1831) 2 B. & Ad. 727.

——**Assignee of Contract to Complete.**—A firm of builders agreed to build certain school premises for a certain sum. Some time after beginning the works they became insolvent, and assigned all their property to the plaintiff for the benefit of their creditors. Under the terms of the contract, the school authorities gave the builders notice that they proposed to enforce a clause of the contract which gave their architect power, on the contractors' default, to finish the work by the employment of other tradesmen, and to deduct the cost of so doing from any money found to be due to the builders. The plaintiff then claimed to be at liberty to proceed to complete the contract, and an injunction to restrain the threatened employment of other tradesmen. *Stuart, V.C., held*, that the trustees of a deed of composition, executed by a debtor under § 192 of the *Bankruptcy Act*, 1861, were not entitled to claim to complete a contract entered into by the debtor prior to the date of such deed, where the debtor only contracted that he, his executors and administrators (omitting "assigns"), would execute the work the subject of the contract.

KNIGHT v. *BURGESS.*
(1864) 33 L. J. Ch. 727; 10 Jur. 166; 10 L. T. 90.

——"**Builder.**"—The purchaser of the carcases of certain houses, bought for the purpose of being completed and sold, ordered from certain tradesmen materials for the work of completion, and represented himself to them as a builder. The purchaser became insolvent, and on hearing a petition by him to annul the fiat on the ground that he was not a trader, and that there was not a good petitioning creditor's debt, the Court (*Erskine, C.J., Cross and Rose, JJ.*) *held*, that a person in the position of the purchaser may be made a bankrupt as a builder within 6 *Geo. IV. c.* 16, § 2.

NEIRINCKS, EX PARTE; IN RE NEIRINCKS.
(1835) 1 Deac. 78; 2 M. & A. 384; 4 L. J. Bk. 73.

——**Completion by Assignee.**—Under a building contract the contractor agreed to execute certain work for a public company by a specified date, and in the contractor's default the company were empowered to deduct, from the percentage retentions, a sum of £500, and £5 for every week the completion of the works was delayed. It was further provided that, in the event of the contractor's insolvency, the company might determine the contract. The time for completion was twice extended, but subsequently, owing to the contractor's failure to complete, the company took possession of the work. The contractor thereupon assigned all his interest in the contract, and the company agreed that the works might be carried on and completed by the assignee. The works were duly completed by the assignee, and the company sought to deduct certain sums, as liquidated damages in respect of delay, from the retention money. On hearing a special case stated by the arbitrator, who had decided in favour of the company, the Court (*Lawrance and Kennedy, JJ.*) *held*, in a considered judgment, that the words, "*but without thereby affecting in any other respect the liability of the contractor,*" contained in the proviso as to terminating the contract, kept alive the company's right to deduct the liquidated damages from the retention money, and that the assignee was subject to the liabilities of the original contractor. *Affirmed* by the Court of Appeal.

YEADON WATERWORKS CO., IN RE.
(1895) 72 L. T. 538; 99 L. T. J. 236.

——**Cost of Specified Fittings.**—A builder contracted to execute certain joinery work, and to receive payment on the certificate of the architect superintending the erection of the building. Specified fittings were to be supplied for £95, and to be procured from a firm of tradesmen. The architect subsequently increased that amount to £137. The builder became bankrupt, and on the application of the firm of tradesmen the building owner paid them £95. The trustee in bankruptcy applied to the owner for £137, and refused to accept the difference between the two sums, and the architect refused to certify for more than the difference. The County Court judge dismissed a motion by the trustee for an order directing the architect to certify for £137, on the ground that he had no jurisdiction. On appeal, the Court (*Lord Coleridge, C.J., and Cave, J.*) *held*, that the judge had jurisdiction under § 102 (1) of the *Bankruptcy Act*, 1883, and ought to have exercised it.

EX PARTE GRAY, IN RE HOLT.
(1889) 58 L. J. Q. B. 5.

——**Creditors paid out of Balance due on Contract.**—On September 9, 1903, a builder contracted with a local authority to execute certain works. The contract price was payable monthly subject to 10 per cent. retentions, on the certificate of the engineer to the local authority. The amount of the retentions was to be paid on the expiration of six months from date of completion, during which period the builder was to maintain the works. On October 3, 1903, he filed a petition, and a receiving order was made against him, and on October 12, 1903, he was adjudicated a bankrupt. The works were substantially complete, on October 3, and out of the balance due on the contract, the engineer, under a power contained in the contract, ordered sums amounting to £224 to be paid direct to certain tradesmen who had supplied machinery for the work, according to the terms of the specification, and he subsequently certified further sums as due to them. The trustee claimed that sum and the amount of the retentions as part of the estate of the bankrupt. The machinery owners claimed priority. *Bigham, J., held*, that by filing a petition the builder's conduct had amounted to "unduly delaying proper payment" to the machinery firms, and that the engineer was justified in ordering payment direct to them, and they were entitled to priority; and he ordered the balance of the retention money to be paid into the bank to meet their claims.

WILKINSON, IN RE; FOWLER, EX PARTE.
(1905) 2 K. B. 713; 74 L. J. K. B. 969; 54 W. R. 157; W. N. 143.

——**Detention of Tools.**—A builder contracted to execute certain work according to a specification, and having proceeded with the work for some time, became bankrupt. In an action by his trustee against his employers, for the value of the materials and plant brought on to the premises by the builder for the purpose of executing his contract, and seized by them, the *Sheriff-substitute* found partly for the trustee and partly for the employers. Both parties appealed, and the Court (*Lord Justice-Clerk, and Lords Cowan and Benholme*) *held*, that the employers were entitled to retain the materials to complete the work subject to a claim for their value, and to retain tools for use until completion of the work, subject to a claim for their restoration and for use of them; and that the employers were entitled to set-off their claim for damages, against the claim for work done under the contract, for value of the materials, and for use of the tools; but that the builder was entitled to compensation for the detention of the tools after completion of the work.

KERR v. *DUNDEE GAS CO.*
(1861) 23 Ct. of Sess. Cas. (2nd Ser.) R. 343.

——**Forfeiture Void.**—A builder agreed, in September, 1878, to erect a number of houses upon certain building land, the landowner of which agreed that, as the said houses should be erected and covered in, he would demise to the builder certain plots of land for ninety-nine years at a yearly rent of £300. Until the leases should be granted the builder was to hold the premises subject to the payment of the rent and to the performance of his part of the agreement, and subject to the power of distress and re-entry by the landowner in default of such payment and performance, or on the builder becoming insolvent or bankrupt, in either of which cases the building materials on the ground, &c., should become forfeited to the landowner. The deed was not registered as a bill of sale. On January 28, 1879, the builder became insolvent, and at that time the value of materials, &c., on the land was £700; and there was due to the landowner on foot of cash advances to the builder a sum of £450. The receiver took possession of, and the landowner claimed, the materials, &c. It was arranged that the ownership thereof should be decided by the Bankruptcy Court, and the County Court Judge sitting in bankruptcy decided in favour of the receiver. The landowner appealed, and *Bacon, C.J., reversed* the judgment of the County Court Judge, and decided in favour of the landowner. The receiver appealed, and the Court (*James, Brett, and Cotton, L.JJ.*) *held*, that the provision for forfeiture of the materials was void, as contrary to the policy of the bankruptcy law, and that the materials were the property of the receiver.

EX PARTE JAY; IN RE HARRISON.

(1880) 44 J. P. 409; 14 Ch. D. 19; 42 L. T. 600; 28 W. R. 449.

——**Plant and Materials.**—A firm of builders contracted to erect on certain land, the property of the building owners, a number of houses for a lump sum. The contract provided *inter alia* that in the event of the builders neglecting or refusing to proceed with the works, or becoming bankrupt, or otherwise rendered incapable of completing the contract, the architect of the building owners might, on notice to the builders, appoint others to finish the works, and was empowered to seize all the materials, plant, and implements on the ground, and also all materials made or partially made up and ready for fixing, and which were intended to be fixed, upon the houses and premises, although the same were on the premises of the builders or manufacturers, provided that any money on account of the contract shall have been paid to the builders. Subsequently the builders, having meantime received

large payments, filed their petition in bankruptcy, and two days later the owners' architect gave the required notice to the builders that he would appoint others to finish the works, and that the builders must not remove any material, plant, &c.; accordingly he took possession of all the materials, &c. The building owners obtained an *interim* injunction restraining the trustee in bankruptcy from seizing the materials, &c., and on the hearing of the motion, *Bacon, C.J., held*, that the building owners were entitled, as against the trustee in the liquidation, to retain what they had seized, the seizure being a protected transaction within § 94 of the *Bankruptcy Act*, 1869.

IN RE WAUGH; EX PARTE DICKIN.

(1876) 4 Ch. D. 524; 46 L. J. Bk. 26; 35 L. T. 769; 25 W. R. 258.

——**Plant, &c., assigned.**—A builder entered into a building agreement, a condition of which was that all the materials, plant, &c., he brought upon the land were to be deemed to be annexed to the freehold. In order to secure advances to carry on the works, he assigned his interest in the building agreement. The deed of assignment provided that in the event of the assignor "*becoming bankrupt*," the assignee might take possession of the land, and complete the building contract. On a receiving order being made against the builder, the assignee took possession, with the consent of the freeholder, and completed the houses, using all the materials, &c., then on the premises, valued at £900. The trustee in bankruptcy claimed a declaration that the assignee was not entitled to the plant and materials on the premises at the date of the receiving order. *Wright, J., held*, that "becomes bankrupt" means "be adjudicated a bankrupt," and that, therefore, the builder, not being in default under the mortgage when the receiving order was made, the assignee was not then entitled to take possession; that the materials were in the reputed ownership of the builder with the consent of the true owner, the freeholder, and passed to the trustee in bankruptcy.

IN RE WEIBKING; EX PARTE WARD.

(1902) 1 K. B. 713; 71 L. J. K. B. 389; 86 L. T. 455; 50 W. R. 460; 9 Mans. 131.

——**Plant, &c., brought on the Ground after.**—A builder contracted with the defendants to build an entrance to the docks and other works for £52,200. The defendants' engineer was to be sole judge of the work and materials, and was empowered, if the builder failed to perform the contract, to employ others to do

so, and to deduct the cost thereof from monies payable to the builder. In the course of the works the builder was paid a larger sum than the work done, plant and materials on the ground were value for; the advances were secured on the said work, plant and materials. The builder became bankrupt before the works were complete, and the company seized all the plant and materials to repay their advances. The assignees of the builder sued the company in trover, and the action was referred. On a rule to amend the award, the Court (*Parke, Bolland, and Alderson, BB.*) *held*, that the arbitrator had no power to award that the company could prove against the builder's estate; that the plaintiffs could not recover for the extra work done by the builder, as it was subject to the contract, which was already overpaid; that the company were entitled to the plant and materials, but the plaintiffs were entitled to materials brought on to the premises after the bankruptcy; that the company's payments to the builder, subsequent to the time when the latter materials came on the premises, were not payments for those goods in course of business, but merely general advances, and the defendants were not protected by § 82 of 6 *Geo. IV. c.* 16.

CROWFOOT v. *LONDON DOCK CO.*
(1835) 4 L. J. Ex. 267; 2 C. & M. 637; 4 Tyrw. 967.

——**Plant, &c., claimed by Trustee.**—A firm of builders contracted with a School Board to build a school. The contract provided that all plant, work, and materials brought on to the ground by the contractor for the purposes of the contract, should be considered the property of the Board, and that if the contractor suspended or delayed the execution of the contract, the Board, on notice, should be at liberty to take possession of the works, and all plant and materials upon the ground should be forfeited to the Board, and no further sums of money on account of the contract should be paid by the Board. The contract contained no provision for the revesting of the plant, &c., in the builders upon completing the works.

The firm of builders were adjudicated bankrupts, and the Board gave the required notice, to proceed with the works, to the debtors and to the Official Receiver. Subsequently a trustee of the debtors' estate was appointed, and he was given a further extension of time by the Board to complete the works; but the trustee decided not to take over the contract, and therefore the works were not proceeded with, and the Board sold the plant, &c., to a firm who agreed to take over the building contract. The trustee claimed the plant, &c., and the County Court judge decided in his favour. This decision was appealed.

The Court (*Wright and Bigham, JJ.*) *held*, that the contract did not vest the ownership of the goods in the Board, and that consequently they were not in the order and disposition of the debtors by the consent of the "true owner" within the meaning of § 44 of the *Bankruptcy Act*, 1883, and did not pass to the trustee as being in the reputed ownership of the debtors. The Board's right to issue the notice in question was unaffected by the bankruptcy; although the goods were the property of the debtors at the commencement of the bankruptcy, the title of the trustee was determined by the forfeiture, and the Board were entitled to retain them.

Hart v. *Porthgain Harbour Co., Ltd.* (1903), 1 Ch. 690, distinguished.

IN RE KEEN & KEEN; EX PARTE COLLINS.
(1902) 1 K. B. 555; 71 L. J. K. B. 487; 50 W. R. 334; 9 Mans. 145.

——**Plant and Materials on the Ground.**—A builder contracted to build a hotel for a specified sum, except as to ironmonger's, glazier's, and plumber's work. He was to be paid by instalments at the dates fixed for the completion of certain portions. Should he fail to complete any portion within the time limited, he was to forfeit £250 as liquidated damages. In the event of his bankruptcy, &c., the owners had power to enter, and to put an end to the agreement, in which case the builder was only to be paid the amount of the architect's valuation of the work done and fixed. The builder became bankrupt, but some time before he had delivered certain sash-frames on the premises which had been passed by the clerk of works, but had been returned to the builder's yard to have the owner's pulleys fixed thereto. At the time of the bankruptcy the frames were in the builder's yard, but subsequently he re-delivered them at the works. The assignees brought an action to recover the frames, and *Lord Abinger, C.B.*, directed a verdict for the defendants. On hearing a rule *nisi*, the Court (*Lord Abinger, C.B., Parke and Gurney, BB.*) *held*, that the property in the frames had not passed to the owners at the time of the bankruptcy, and that they were not entitled to retain them as being work already done, not having been fixed to the building, and that there was evidence of conversion of the frames by the owners.

TRIPP v. *ARMITAGE.*
(1839) M. & W. 687; 1 H. & H. 442; 3 Jur. (o.s.) 249.

——**Retention Money mortgaged.**—A firm of building contractors

entered into a contract which provided, *inter alia*, that they should be paid, from time to time, instalments of 80 per cent. of the amounts stated, in certificates of the superintending architect, as due on account of the contract at the dates of such certificates. The remaining 20 per cent. was to be retained by the owner until the completion of the works. It was also provided that, in case of the contractors' bankruptcy, the building owners might discharge the contractors from further execution of the works, and employ others to complete the same, in which case the materials on the ground should become the property of the building owners, and the cost of completion should be deducted from the amount of the contract; on the certificate of the architect that the works were complete, any balance should be paid to the contractors. The contractors mortgaged the retention money to the plaintiffs, and notice of the assignment was given to the building owners. The contractors got into financial difficulty in the following year, and presented a petition for the liquidation of their affairs. The value of the work then done was certified at £9240 18*s.* 11*d.* The defendant was appointed trustee in the liquidation, and was authorized, by resolution of the committee of inspection, to carry out the pending contracts of the debtor contractors, and was to receive £150 a month remuneration and expenses. The defendant then advised the plaintiffs that he was carrying out the contract of the building contractors, and would not be responsible for any orders given in their name, unless they bore his signature or that of his firm. The defendant expended in completing the contract a sum of £4327 10*s.* 11*d.*, of which £1875 12*s.* 6*d.* remained unpaid for want of funds. The plaintiffs supplied goods to the defendant, and knew the latter was completing the buildings out of his own money. The architect certified a further sum of £4732 on account of that contract, and of that sum the building owners retained a sum equal to that assigned by the debtor. The trustee and the mortgagees both claimed from the building owners the amount of the retention money assigned by the debtor. In an interpleader issue, *Field, J.*, gave judgment for the defendant, being of opinion that the case was governed by *Tooth* v. *Hallett* (L. R. 4 Ch. 242, see p. 107 *supra*). The plaintiffs appealed, and the Court (*Lord Esher, M.R., Bowen and Fry, L.JJ.*) *held*, that, in the absence of anything showing that the building owners had exercised the power of taking the work out of the contractors' hands, the trustee must be taken to have completed the work under the original contract, as trustee of the contractors' estate, and not as a person simply employed to complete the work in substitution for the contractors; that the assignment of the

retention money held good as against the trustee, and, therefore, the mortgagees were entitled to succeed.

DREW v. *JOSOLYNE.*

(1887) 18 Q. B. D. 590; 56 L. J. Q. B. 490; 57 L. T. 5; 35 W. R. 570; 4 T. L. R. 717.

——**Of Contractor: Seizure of Plant, &c., by Owner.**—A building contract contained a provision that if the contractor neglected or refused to carry out the works to the satisfaction of the owner's architect, or became bankrupt, the architect should have power, on two days' notice, to appoint another builder to complete the work, and to seize and retain all materials, plant, &c., on the premises, provided the contractor should have drawn any payment on account of the contract. The contractor commenced, and carried on the contract for some time, and drew money on account thereof. Subsequently he became bankrupt, and the architect gave the stipulated notice, and took possession of the materials and plant on the ground. The judge of the County Court *held*, that the owner was entitled, as against the trustee in the liquidation, to retain what they had seized, the seizure being a protected transaction within § 94 of the *Bankruptcy Act*, 1869. On appeal, *Bacon, C.J., affirmed* this judgment.

DICKIN, EX PARTE; IN RE WAUGH.

(1876) 4 Ch. D. 524; 46 L. J. Bk. 26; 35 L. T. 769; 25 W. R. 258.

——**Sureties.**—A builder contracted to erect a jail for a certain sum. By the contract he was to be paid 80 per cent. of the amount of the architect's certificates from time to time, until the retentions amounted to 10 per cent. of the contract price, or £1295. On completion three-fourths of the balance due was to be paid two months after the architect's certificate of completion, and the remainder in six months on the architect's certificate that the works were in good repair. The defendants became sureties for the builder, and, unknown to them, in January, 1866, the percentage retentions had amounted to £1295. To secure advances the builder gave his bond, and assigned the percentage retentions and all future payments on account of the contract to his bankers, the defendants and also the employers having notice of this assignment. On the bankruptcy of the builder the defendants undertook the completion of the contract under a fresh contract with the employers, and completed the works, and certificates of completion, and that the buildings were in good repair, were duly given by the architect. The balance certified by the architect as

payable by the employers was £1243 odd. The plaintiffs and the defendants claimed this sum, and in an interpleader issue, the Court (*Kelly, C.B., and Bramwell, B.; Martin and Cleasby, BB., dissenting*) *held*, that the defendants were entitled to payment of the balance.

SMITH v. *KIRK.*
(1871) 25 L. T. 426.

——**User of Plant, &c.**—A builder contracted in writing to carry out certain sewerage works, and the contract provided that all plant brought on the premises by the builder should be deemed to be the property of the employers, and should not be removed during progress of the works without written authority from their engineer. In case of the suspension of the work owing to the builder's default, the plant could be used by the employers in completing the work. On the contractor's bankruptcy the employers claimed to retain the plant, and the County Court judge decided in their favour. On appeal by the trustee in bankruptcy, *Bacon, C.J.*, *held*, that the right of user gave the employers no property in the plant, and was not such a dealing, within the meaning of § 39 of the *Bankruptcy Act*, 1869, as gave them a right to set off the value of the plant against the sum due to the bankrupt under the contract.

IN RE WINTER; EX PARTE BOLLAND.
(1878) 8 Ch. D. 225; 47 L. J. Bk. 52; 38 L. T. 362; 26 W. R. 512.

BILLS OF QUANTITIES

The corporation of London invited contractors to tender for the execution of certain works according to plans and specification prepared by the corporation's engineer. The specification provided that the contractors were to take out their own quantities, and that the accuracy of the plans were not guaranteed by the corporation. The contractors were warned particularly that they must satisfy themselves as to the nature of the ground through which the foundations had to be carried. Iron cassions were specified to be used in the construction of the works, but when the contractors, whose tender was accepted, proceeded to use the cassions as designed, it was found that they would not resist the pressure of the water, and the plan of the work had to be altered and the use of cassions abandoned. The contractors claimed for the loss occasioned to them in attempting to use cassions, and contended that the corporation had warranted,

although not expressly, that the work could be done inexpensively by the use of cassions according to the specification. The case was argued in the Exchequer, and the Court (*The Lord Chief Baron, Pigott and Amphlett, BB.*) *held*, that there was no implied warranty in the contract, and gave judgment for the defendants. On error, this judgment was *affirmed* in the Exchequer Chamber (*Mellor, Lush, Brett, and Grove, JJ.*). Error was then brought to the House of Lords (*Lords Cairn, L.C., Chelmsford, Hatherley, and O'Hagan*), who *held*, that no warranty could be implied.

THORN v. *MAYOR & COMMONALTY OF LONDON.*
(1876) L. R. 10 Ex. 112; 1 A. C. 120; 45 L. J. Ex. 487; 34 L. T. 545; 24 W. R. 932.

BILLS OF SALE

——**Assignment of Building Agreement.**—A builder assigned, as security for advances made to him, all his interest in a certain building agreement, made between himself and the owner of certain land, together with all materials, &c., on, or to be brought on, the ground for building purposes. Should the assignor fail to proceed with due diligence in carrying out the works, or become bankrupt, the assignee was empowered to take possession of the premises, materials, and plant, and complete the contract. In an interpleader summons, *Wright, J., held*, in a considered judgment, that the assignment, as regards the plant and materials, was a bill of sale, and, as it had not been registered, it was void as against the execution creditor, as regards the plant and materials.

CHURCH v. *SAGE.*
(1892) 67 L. T. 800; 5 R. 140; 41 W. R. 175.

——**Building Contract.**—Under a building contract a landowner agreed with a builder to assist him financially in building the houses, and to grant to him leases of the ground on completion thereof. All materials brought on the premises by the builder for the purpose of erecting the buildings were to be considered as attached to the land, and were not to be removed therefrom without the landowner's consent. A clause empowered the owner to enter and take possession of land, buildings, and materials thereon, should the builder fail to proceed with the completion of the buildings. In an action against a sheriff for a false return of *nulla bonâ* to a writ of *fi. fa.* before *Channell, B.*, the jury found for the plaintiff. On appeal, the Court (*Bovill, C.J., Keating and Montague Smith, JJ.*) *held*, that the contract was not a bill of sale, and that the owner had such an equitable interest in the materials

brought on to the ground, that they could not be taken in execution by a judgment creditor of the builder.

BROWN v. *BATEMAN.*

(1867) L. R. 2 C. P. 272; 36 L. J. C. P. 134; 15 L. T. 658; 15 W. R. 359.

——**Materials mortgaged.**—A builder mortgaged, by several indentures, certain land, buildings in course of erection, and such building materials as might subsequently be brought upon the land for the completion of the said buildings, to secure advances amounting to upwards of £11,000 and interest. The defendants, who were solicitors, were sued by the plaintiff for wrongful conversion of certain building materials, and they counterclaimed that an account should be taken of the sums due upon the various mortgages assigned to the defendants, each of which contained the power enabling the defendants to consolidate them, and other relief. They justified the seizure under a certain deed, dated February 13, 1886, which the plaintiff pleaded was void, not being registered under the *Bills of Sale Act*, 1882. The question was whether or not the plaintiff was bound by the consolidation clause in the deed of February 13, 1886. The jury found that, although the plaintiff's attention was drawn to the consolidation clauses, they were not sufficiently explained for him to understand, and *Manisty, J.*, gave judgment for the plaintiff on the counterclaim to have an account taken on the basis of a consolidation of the mortgages, and for the defendants on the claim for conversion, but ordered that the value of the goods seized should be brought into the account. The plaintiff, and defendants, appealed, and the Court (*Denman and Stephen, JJ.*) *held*, that the deed was an assurance of personal chattels, or a licence to take personal chattels as security for a debt within the meaning of § 4 of the *Bills of Sale Act*, 1878, and therefore was a bill of sale, and was void for want of registration, under § 8 of the *Bills of Sale Act*, 1882.

CLIMPSON v. *COLES.*

(1889) 23 Q. B. D. 465; 58 L. J. Ch. 346; 61 L. T. 116; 38 W. R. 110.

——**Materials vested in Lessor.**—Under the provisions of a building contract all materials brought on the land by the intended lessee were to become the property of the owner of the estate. The former entered, and began to build without a lease. Subsequently the sheriff levied upon certain materials on the land to satisfy a judgment against the intended lessee. The Court (*Willes, Keating, and Montague Smith, JJ.*) *held*, that the property in the materials

had vested in the intended lessors, and they were not liable to be taken in execution by a creditor of the intended lessee, and that the agreement was not a bill of sale.

BLAKE v. *IZARD.*

(1867) 16 W. R. 108.

——**Power in Contract to seize Plant, &c., not a.**—A builder entered into a building contract with the owner of certain land to build a number of houses thereon. Time was to be considered of the essence of the contract, and the agreement provided that, in the builder's default, the owner might re-enter, whereupon all the building materials and plant on the land should be forfeited, and become the property of the owner, "as and for liquidated and settled damages." The builder made default, and the owner gave him formal notice that he had taken possession. The builder's trustee claimed the materials, and the County Court judge gave judgment in his favour, on the ground that the agreement should have been registered as a bill of sale under § 7 of the *Bills of Sale Act*, 1854. On appeal, *Bacon, C.J., affirmed* the decision of the County Court judge. From this decision the executors of the builder appealed, and the Court (*James, Brett, and Cotton, L.JJ.*) *held*, that the stipulation in the agreement did not constitute a bill of sale within the meaning of § 7 of the *Bills of Sale Act*, 1854, inasmuch as, though it was a "licence to take possession of personal chattels," the possession was not to be taken "as security for any debt," and *reversed* the decision of *Bacon, C.J.*

EX PARTE NEWITT; IN RE GARRUD.

(1881) 16 Ch. D. 522; 51 L. J. Ch. 381; 44 L. T. 5; 29 W. R. 344.

BUILDER

——**Solicitor not a.**—A solicitor purchased land with unfinished houses thereon, and subsequently completed and sold them. On hearing a petition by him and another for a *supersedeas*, the Court *held*, that he was not a trader within 6 *Geo. IV. c.* 16, by reason of carrying on such building operations.

EX PARTE EDWARDS; IN RE EDWARDS.

(1840) 9 L. J. Bk. 11; 1 M. D. & D. 3; 4 Jur. (o.s.) 153.

——**Barrister not a.**—A barrister, who was lessee of two plots of building land, entered into a contract with a certain builder to erect thereon a certain number of houses at a fixed price. Subsequently the contract was abandoned, and the lessee purchased

building materials and proceeded to build two hundred houses, which he let as soon as each was completed. In the course of dealing in materials he accepted a bill in which he was described as a builder, and he also had brought an action for a slander which he alleged would injure him in his character as a trader subject to the bankruptcy laws. On petition to have a fiat against him annulled for want of trading, *Knight Bruce, V.C., held*, that the petitioner was not a "builder" within the meaning of the bankruptcy laws, but the fiat was annulled without costs, in the circumstances of the case.

EX PARTE STEWART; IN RE STEWART.
(1849) 3 De G. & S. 557; 13 Jur. (o.s.) 581; 13 L. J. Bk. 14.

——**Barrister not a.**—A barrister bought a building estate, and erected thereon several houses for sale, and in fact disposed of many of them. He had also built a house in Mayfair for sale, and had bought the materials for such building operations in large quantities, and had accepted a bill of exchange in which he was described as a builder. He had brought an action for slander in respect of words spoken in relation to his business as a builder. On hearing a rule, the Court (*Pollock, C.B., Rolfe, Platt, and Parke, BB.*) *held*, that a person who builds houses upon lands which he has purchased, and afterwards sells the houses, such transactions being isolated and not part of a general system of business, is not a "builder" within the meaning of the bankruptcy laws.

STUART v. *SLOPER.*
(1840) 3 Ex. 700; 18 L. J. Ex. 321; 13 L. T. (o.s.) 100.

——**Not Liable after Completion.**—A builder commenced the erection of certain houses without giving to the district surveyor notice under § 38 of the *Metropolitan Building Act*, 1855. On September 15, 1892, the district surveyor served notices under § 45 of the *Act*, requiring the builder to conform in certain respects to the by-laws made under the *Act*. On default, the builder was summoned, and appeared on November 29, 1892, when the magistrate made orders under § 46, requiring compliance with the notices. On further default, the builder was summoned for penalties, and at the hearing it was admitted that, at the date of the order, November 29, 1892, the builder had completed the buildings; and the magistrate, following *Smith* v. *Legg* (1893), 1 Q. B. 398, see p. 131 *infra*, declined to enforce his orders, and dismissed the summonses for penalties.

The Court (*Hawkins and Lawrance, JJ.*), in a considered

judgment on a case stated, *held*, that a justice had no jurisdiction to make an order, under § 46 of the *Act*, upon a builder who, at the date of the order, had completed, and given up possession of, the building, even though he was engaged in erecting it when the notice under § 45 was served upon him.

WALLEN v. *LISTER.*

(1894) 58 J. P. 283; 1 Q. B. 312; 63 L. J. M. C. 51; 10 R. 127; 70 L. T. 348; 42 W. R. 318.

BUILDER'S DEFAULT

By an agreement in writing a builder contracted to pull down and rebuild certain premises, which were to be erected "in carcase" before December 25, 1896, and the landowner agreed in that event to grant a lease of the premises to the builder. If the builder made default under the agreement, he was to forfeit all the benefits thereof, and the buildings and materials on the premises were to become the property of the owner, who had power to re-enter and take possession without compensating the builder. The builder made default, and the owner re-entered in 1897. In an action by the owner against the builder for breach of contract, *Kennedy, J.*, *held*, on the authority of *Oldershaw* v. *Holt* (12 A. & E. 590), that the owner was entitled, in addition to his right of re-entry, and to take possession of the buildings and materials on the premises, to recover damages consequent upon the breach of contract, which he assessed at £7200.

MARSHALL v. *MACINTOSH.*

(1898) 14 T. L. R. 458.

"BUILDING"

The plaintiff, without the consent of the local board, erected a conservatory in his garden at the side of, and leaning against, his house, situate at the corner of a road. The local board caused the conservatory to be pulled down, as it contravened the by-laws, one of which required every person erecting a new building to cause it to be enclosed with walls of brick, stone, or other hard and incombustible substance, &c. The plaintiff recovered from the local board £7 damages before *Field, J.* The defendants appealed, and the Court (*Lord Esher, M.R., Bowen and Fry, L.JJ.*) *held*, that the conservatory was not a "building" within the meaning of the by-laws framed under the *Public Health Act*, 1875, and *dismissed* the appeal.

HIBBERT v. *ACTON LOCAL BOARD.*

(1888) 5 T. L. R. 274.

BUILDING AGREEMENT

——**Grant of Separate Leases.**—Under a building agreement a builder was entitled to separate leases of certain lands from the owner, as soon as the builder had roofed in certain houses he was to erect on the lands. The lessor might re-enter in the event of the rent being in arrear twenty-one days, or if at any time the work of building was not proceeded with regularly for twenty-one days. The builder had roofed in four houses when he died, and after his death building work was stopped for more than twenty-one days. The builder's assignee brought an action to compel the owner to grant the leases, and the defence set up was that the works had been stopped for more than twenty-one days, and the rent was in arrears. The Court (*Cotton, Lindley, and Lopes, L.J.*) *held* (*affirming* the judgment of *Kekewich, J.*), that the assignee was entitled to leases in respect of each of the four houses, as the builder was entitled to claim a lease as soon as he had roofed each house, and the owner had not shown that various sums paid by the builder for rent had not been appropriated by him to the rent due on the houses in question.

LOWTHER v. *HEAVER.*

(1889) 41 Ch. D. 248; 58 L. J. Ch. 482; 60 L. T. 310; 37 W. R. 465.

——**Lien for Deposit.**—The plaintiffs, by a contract dated January 25, 1897, agreed to purchase of the vendor a certain freehold public-house plot on the vendor's building estate for £500, £200 to be paid as deposit on signing the contract, and the balance on completion of the contract. The purchase was to be completed as soon as three hundred houses had been erected on the estate, failing which within two years the purchasers might give seven days' notice to vendor and rescind the agreement, and receive back their deposit. £200 was paid by the plaintiffs to the vendor, who subsequently sold the estate to S., who mortgaged it. The mortgagees sold, and conveyed the estate to the defendant, with notice of the contract of January 25, 1897. The three hundred houses had not been erected, nor had the vendor paid or accounted for the deposit to any of his successors in title. On December 3, 1900, the plaintiffs wrote to the defendant rescinding the contract, and claiming return of the deposit, which was refused.

In an originating summons the plaintiffs claimed a declaration that they had a charge on the premises as security for the repayment of the deposit, and enforcement of that security by sale or foreclosure.

Farwell, J., held, that the plaintiffs, as against the defendant,

had a lien on the property for the deposit they had paid the vendor on signing the contract.

WHITBREAD & CO., LTD. v. *WATT.*
(1901) 1 Ch. 911; 70 L. J. Ch. 515; 84 L. T. 419; 49 W. R. 534.

——**Assignee Not Liable on Entire Contract**—By a building agreement the owner of certain land contracted to grant to a builder, his heirs, &c., leases of four plots of the land as soon as the builder had erected thereon a certain number of houses. The builder mortgaged his contract to the plaintiff, and after became insolvent. The plaintiff erected the required number of houses on two of the plots, and applied for leases, declining to undertake liability for the other parts of the agreement. In an action to compel the owner to grant the leases, *Wickens, V.C., held*, that the plaintiff could have no relief unless he assumed all the builder's obligations under the contract, and that, as the Court could not enforce these obligations, relief could not be granted. The plaintiff appealed, and the Court (*James and Mellish, L.JJ.*) *held*, that as the right to have leases of the two plots depended only on conditions which had been fulfilled, the plaintiff, as assignee of the builder, was entitled to have leases of those two plots, without assuming the builder's liability under the entire contract.

WILKINSON v. *CLEMENTS.*
(1867) L. R. 8 Ch. 96; 42 L. J. Ch. 38; 27 L. T. 834; 21 W. R. 90.

BUILDING ESTATE

——**Assigns not entitled to Benefit of Covenant.**—The owners in fee of a residential estate and land adjoining, sold the estate to the plaintiffs' predecessors in title, and the adjoining land to the defendants' predecessors in title. The latter covenanted with the vendor and their assigns to use and build on the land subject to certain restrictions. The conveyance to the plaintiffs' predecessors in title contained no reference to the restrictions. The plaintiffs brought an action for an injunction to restrain the defendants from building in contravention of the covenants, and *Hall, V.C. held*, that, although the plaintiffs were "assigns" of the original covenantees, they were not entitled to sue on the original covenants (9 Ch. D. 125). The plaintiffs appealed, and the Court (*James, Baggallay, and Thesiger, L.JJ.*) *affirmed* the decision of *Hall, V.C.*

RENALS v. *COWLISHAW.*
(1879) 11 Ch. D. 866; 48 L. J. Ch. 830; 41 L. T. 116; 28 W. R. 9.

——**Covenant against Trade.**—The plaintiff bought a plot of land from a purchaser who had covenanted that no trade or business should be carried on upon the plot. The defendant purchased another plot on the same estate, subject to the same restriction, and he proceeded to erect thereon a laundry. The plaintiff brought an action for an injunction, and the defence alleged that for years laundries had been carried on upon several of the plots of the same estate, subject to the same restriction, and that some other trades had also been carried on for a length of time. *Romer, J., held*, that the breaches were trivial and privately carried on, and that there had been no acquiescence on the part of the residents, and he granted the injunction. From his judgment the defendant appealed.

The Court (*Lindley, Lopes, and Kay, L.JJ.*) *affirmed* the decision of *Romer, J.*, and *held*, that where all the purchasers of lots on an estate are restricted from carrying on any trade, relief in enforcing the covenants will be refused, if the plaintiff is guilty of delay or acquiescence, or if the property has been so laid out that the object of the covenant can no longer be attained; but it will not be refused merely because in a few instances the covenants have not been enforced.

KNIGHT v. *SIMMONS.*

(1896) 2 Ch. 294; 65 L. J. Ch. 583; 74 L. T. 563; 44 W. R. 580.

——**Deviations.**—A building estate was sold in various lots, and all the purchasers covenanted with the vendors not to build more than one house on each lot without the consent of the vendors and adjoining owners, and to build within a prescribed building line. The respective predecessors in title of the plaintiff and defendant entered into these covenants. The plaintiff's predecessor built his house and laid out the remainder of the lot as a garden. Subsequently the defendant, who owned the lot adjoining the plaintiff's lot, began to build three houses thereon, deviating from the building line, and overlooking the plaintiff's grounds more than if the defendant had built according to the agreement. In an action for an injunction the defendant alleged that the vendors, who were trustees for all the purchasers, had permitted several breaches of the covenant, and, therefore, they were not entitled to enforce the covenants, and that, as the plaintiff claimed under them, he could be in no better position. *Bacon, V.C., held*, that, as the breaches of covenant allowed by the trustees were in relation to other parts of the estate, and did not effect the plaintiff's enjoyment of his

lot, they could not be set up against him, and that the deviation in the houses of the defendant was too trifling to affect his rights.

JACKSON v. *WINNIFRITH.*
(1882) 47 L. T. 243.

——**Easement of Light.**—Under a building agreement the plaintiff's predecessor in title agreed to erect, upon each of certain plots of a building estate, a house value for £1000, according to a plan and specification approved by the lessor. Separate leases were to be granted as each house was roofed in, but the predecessor in title was not to have under the agreement any legal interest in the unleased land. Before any of the houses were erected, the lessor sold, without notice of the agreement, the land adjoining. Two years later a lease of the first house was granted, and the lessee granted an under-lease for a long term to the plaintiff. The purchasers of the adjoining land began to build so as to interfere with the access of light to the plaintiff's premises, and *Kekewich, J.*, granted an injunction, sought by the sub-lessee, to restrain them from so doing. The purchasers appealed, and the Court (*Lindley, Kay, and A. L. Smith, LJJ.*) *held*, that the agreement gave the plaintiff's predecessor in title no easement over the remaining property of the lessor, and that the defendants, being purchasers for value without notice, were not affected by any equitable right.

PRINSEP v. *BELGRAVIAN ESTATE, LTD.*
(1896) W. N. 39.

——**Small Villas.**—A land company offered for sale by public auction twenty-two lots of building sites. The particulars and plan described them as suitable for the erection of small villas. The plan also showed that there were a number of villas erected on a piece of land, separating some of the lots, on a building line continuing across such of the plots as fronted in the same direction as the villas. One of the conditions of sale provided for a covenant by the purchasers that no buildings but dwelling-houses, at a cost of £250 each, should be erected thereon, and that a certain line of buildings was to be observed. Only some of the lots were disposed of, and the purchaser of one required the vendors to convey to him the benefit of the contract implied in the conditions of sale, *i.e.* that the vendors would abide by the restrictions therein. The vendors declined to do so, and maintained their right to sell the remaining lots without restriction. On a summons for a declaration that the purchaser was entitled to the benefit of a contract by the vendors implied by the conditions of sale, *Stirling, J.*, *held*, that the purchaser was entitled to the benefit of such a

contract, and that he was entitled to have such obligations of the vendors expressed in the conveyance to him of his lot.

IN RE BIRMINGHAM & DISTRICT LAND CO. & ALLDAY.

(1893) 1 Ch. 342; 62 L. J. Ch. 90; 3 R. 84; 67 L. T. 850; 41 W. R. 189.

——**Specified Value of House to be Built.**—In 1882 portion of a building estate was put up for sale by auction in lots, some of the lots being each restricted by a covenant to build a house thereon of not less value than £1200, and some being free of any restriction. The plaintiffs bought certain of the lots, none of which were restricted by the covenant to build a house of not less value than £1200. The defendant, who subsequently purchased certain lots burdened with the restrictive building covenant, proposed to build houses thereon of less value than £1200.

The plaintiffs sought an injunction to restrain the defendant from so doing, urging that the property was put up for sale at the one time, and the plaintiffs were entitled to keep the defendant to his covenants, and *Kekewich, J., held,* that the doctrine of *Nottingham Patent Brick & Tile Co.* v. *Butler* (16 Q. B. D. 778) ought to be extended to cover this case, and that the plaintiffs were entitled to restrain the defendant from building houses of less value. The plaintiff in such a case, is not obliged to prove damage in order to obtain an injunction.

COLLINS v. *CASTLE.*

(1887) 36 Ch. D. 243; 57 L. J. Ch. 76; 57 L. T. 764; 36 W. R. 300.

——**Specified Value of House to be Built.**—The plaintiffs were owners of two plots of land on a building estate, and had built a house on each plot. The defendant was the purchaser of the two remaining plots of the estate, and proposed to erect thereon four blocks of flats, each block to contain two flats on the ground floor and two above, and each flat to contain two living-rooms and a kitchen, &c. The plaintiffs contended that the defendant was bound by a covenant not to erect a house on any part of the four plots of less value than £500, and that not more than ten houses were to be erected on the four plots, and they brought an action on the covenant for an injunction.

Cozens-Hardy, J., held, that a building containing several residential flats constitutes only one house within the meaning of the word "house" in a covenant not to erect more than a certain

number of houses, unless there is some context which cuts down or alters the popular interpretation of the word.

NOTE.—This case is distinguished in *Ilford Park Estates Co.* v. *Jacobs* (1903), 2 Ch. 522.

KIMBER v. *ADMANS.*
(1900) 1 Ch. 412; 69 L. J. Ch. 296; 82 L. J. 136; 48 W. R. 322.

BUILDING LEASE

The owner of certain premises in the City of London covenanted, in consideration of obtaining a lease thereof, to rebuild the same. Pursuant to the covenant he rebuilt some of the houses, but only repaired others. In an action by the London Corporation for specific performance of the agreement, the Court *held*, that the lessee was bound to rebuild the whole of the premises.

LONDON CORPORATION v. *NASH.*
(1747) 3 Atk. 511.

BUILDING NOTICE

——**To Local Authority.**—A builder gave notice to a local authority of his intention to erect certain shops, and submitted plans, &c., thereof, which were disapproved, because a back road was not shown, and the back of the buildings would be less than 19 feet 6 inches from the boundary of the premises, contrary to the provisions of by-laws made pursuant to the local Act. The builder, however, proceeded with the work, and persisted in doing so after notice. On hearing an application for a demolition order, no evidence was given as to whether or not the plans submitted complied with the provisions of the by-laws, nor as to the character of the buildings erected. The magistrate convicted the builder for erecting the buildings without having the plans thereof approved, but held that the by-laws did not create a continuing offence. On a case stated, the Court (*Lord Russell of Killowen, C.J., and Wills, J.*) *held*, that having regard to the special provision of the Acts, the by-laws were reasonable and valid, and gave judgment for the respondent.

COOK v. *HAINSWORTH.*
(1896) 60 J. P. 439; 2 Q. B. 85; 65 L. J. M. C. 190; 75 L. T. 51; 44 W. R. 541.

——**To Local Authority.**—A builder, after he had excavated for the foundations, gave notice by a postal letter to the local board of his intention to build, but the letter miscarried, and was not

received by the board. When the buildings were raised to the first-floor level, the board had the matter brought to their notice, and directed their surveyor to demolish them on account of the plaintiff's default in not giving notice. By § 76 of the *Metropolis Local Management Act*, 1855, a district board of works is empowered, in default of certain notice being given by the owner before he commences building a house, to order the house to be demolished, or to make such other order as the case may require. In an action by the builder for damages against the local board for the demolition of the building, tried before *Willes, J.*, the plaintiff obtained a verdict. On hearing a rule, the Court (*Erle, C.J., Willes, Byles, and Keating, JJ.*) *held*, that under the section the board had no power to demolish the houses without giving the owner an opportunity of showing cause why they should not be demolished.

COOPER v. *WANDSWORTH BOARD.*

(1863) 32 L. J. C. P. 185; 14 C. B. (N.S.) 180; 9 Jur. 1155; 8 L. T. 278; 11 W. R. 646.

——**To Local Authority.**—A builder was employed to erect certain premises which constituted a "building" within the meaning of the *Metropolitan Building Acts*. He executed the work without giving to the district surveyor due notice pursuant to § 38 of the *Metropolitan Building Act*, 1855, and completed it in March, 1892. In April, 1892, the surveyor discovered that the building had been erected without notice, and that it infringed the *Act*. Accordingly, he served a notice upon the builder, requiring him to effect certain specified alterations in order to render the building conformable to the *Act*. On non-compliance therewith, the builder was summoned under §§ 45 and 46 of the *Act*, and was convicted. The builder appealed, and the Court (*Lord Coleridge, C.J., and Cave, J.*) *held*, on a special case stated, that those sections only applied while the building was in course of erection, and that § 105 did not enable the surveyor to take any proceeding under these sections when the building was completed.

SMITH v. *LEGG.*

(1893) 57 J. P. 295; 1 Q. B. 398; 5 R. 233; 68 L. T. 347; 41 W. R. 464.

BUILDING "ON EITHER SIDE"

The owner of a building estate conveyed to a purchaser a plot upon which the latter erected two villas, with a space of 62 feet between the front walls thereof and the road. A few days later

the same owner conveyed the next plot to another purchaser, and two years after that date he also conveyed an adjoining plot to the purchaser first named, who erected thereon two more villas, the front walls being 62 feet from the road. The purchaser of the intermediate plot three or four years later submitted to the local authority for their approval, plans, &c., for a house which he proposed to build on the intermediate plot, which, however, showed only a distance of 21 feet between the front wall thereof and the roadway. The plans were rejected as being beyond the building line already constituted by the villas already erected on either side, but not in the same street. On a rule for a *mandamus* to compel the local authority to approve the plans, the Court (*Wright and Kennedy, JJ.*) *held*, that although the villas were "on either side" of the proposed new house, they were not buildings "in the same street," within the meaning of § 3 of the *Public Health* (*Buildings in Streets*) *Act*, 1888, and made the rule absolute.

R. v. *FULWOOD LOCAL BOARD.*

(1895) 59 J. P. 311; 72 L. T. 592.

BUILDING OWNER

The plaintiffs were the owners of a house adjoining that of the defendant. The defendant, desiring to rebuild, served on the plaintiffs a notice which purported to be a party-wall notice under § 90 of the *London Building Act*, 1894. The plaintiffs objected that it was not a sufficient notice under the *Act*, as it did not state "particulars of the proposed work," and they applied for an injunction. *Channell, J., directed*, that upon the defendant's undertaking not to act upon that part of the notice dealing with the raising of the party wall, which might not take place for some months, without giving further notice to the plaintiffs, and inspection of plans, &c., there should be no order upon the motion, and that costs should be costs in the action. The plaintiffs appealed.

The Court (*Lindley, M.R., Chitty and Vaughan Williams, L.JJ.*) *held*, that the notice ought to be so clear and intelligible that the adjoining owner may be able to see what counter-notice he should give to the building owner under § 89 of the *London Building Act*, 1894; and a special order was drawn up, all further proceedings being stayed by consent.

HOBBS, HART, & CO. v. *GROVER.*

(1899) 1 Ch. 11; 68 L. J. Ch. 84; 79 L. T. 454.

BUILDING SCHEME

——**Covenant to erect Shop.**—The defendants' predecessors in title acquired certain lands for the purposes of widening a certain street in their district. The surplus land was sold in lots, and one lot was purchased by the plaintiff, but the other lots remained unsold. Further attempts to sell the latter being unsuccessful, the defendants, who had at that time become the local authority under the *Local Government Act*, 1894, obtained the sanction of the Local Government Board, under the provisions of the *Public Health Act*, 1875, to erect thereon a fire-engine station at a cost of £3310. The plaintiff sought an injunction to restrain the erection of the station on the ground that, by the conditions of sale of the various lots, one of which he bought, each purchaser was bound to erect within a certain time a shop and dwelling-house at a certain cost. *Stirling, J., held*, in a considered judgment, applying the test in *Oriental Steamship Co.* v. *Tylor* (1893), 2 Q. B. 518, that having regard to the absence of any express provision as to the maintenance of the proposed buildings when erected, no negative stipulation ought to be implied that nothing but shops and dwelling-houses should be erected on the respective lots, and that the vendors could not be restrained at the instance of a purchaser of one of the lots, there being no such departure from the condition as to render the whole transaction futile.

HOLFORD v. *ACTON URBAN DISTRICT COUNCIL.* (1898) 2 Ch. 240; 67 L. J. Ch. 636; 78 L. T. 829.

——**Sale in Lots at Successive Sales.**—The plaintiffs, owners of certain plots on a building estate, brought an action to restrain the defendants, owners of certain other plots, from erecting or using buildings thereon except as private dwelling-houses, in breach of the stipulations of a building scheme. The plots were sold from time to time subject to stipulations which were substantially the same throughout. All the conditions of sale made the sale subject to certain stipulations, one of which provided that, except on seven shop-plots, no building should be erected for or used as a shop on any plot, and only private dwelling-houses should be built. The whole estate was not shown as laid out according to the scheme on the plans at the earlier sales.

Swinfen-Eady, J., held, that where an estate is sold in lots at successive sales under a building scheme imposing restrictive stipulations on the lots, a purchaser can only enforce the stipulations against the property shown as lotted in the plan and subject to the stipulation at the sale at which he purchases. A purchaser

can enforce the stipulation, although his conveyance contains an accidental departure therefrom.

Injunctions granted to three of the plaintiffs against the second defendant.

Mackenzie v. *Childers*, 43 Ch. D. 265, and *Knight* v. *Simmonds* (1896), 2 Ch. 294, see p. 127 *supra*, applied.

ROWELL & OTHERS v. *SATCHELL & ANOTHER.*
(1903) 2 Ch. 212; 73 L. J. Ch. 20; 89 L. T. 267.

"BUILDING, STRUCTURE, OR WORK"

The district surveyor of Islington laid an information charging that the manager of the Agricultural Hall, without giving notice to him, began the execution of certain work in respect of which a building notice, under § 145 of the *London Building Act*, 1894, should have been served. The work in question was putting into position for the Royal Military Tournament certain prepared wooden seats on tiers of wood, which were so formed as to be fixable and removable after every similar show held in the building, and capable of seating 3000 people. The placing of the seating accommodation could in no way affect the fabric of the hall.

The magistrate convicted the defendant, who appealed. The Court (*Wills and Wright, JJ.*), in a considered judgment, *held*, that such seating was not a "building, structure, or work" within the meaning of § 145, and that, therefore, the owners of the hall were not thereby required to serve a building notice on the district surveyor upon each occasion on which they re-erected the seating.

VENNER v. *McDONELL.*
(1897) 61 J. P. 181; 1 Q. B. 421; 66 L. J. Q. B. 273; 76 L. T. 152; 45 W. R. 267.

BY-LAWS

——**Bad.**—The owner of certain premises was summoned by a local authority for infringing a by-law, made under the powers of a local improvement Act, for securing open spaces around houses, by erecting a greenhouse in the yard thereof, without permission. The by-law in question required that every new building should have in the rear, or side thereof, an open space of at least 150 square feet, and wherever any open space had been left when the building was approved, such space should not afterwards be built upon without approval. The magistrate convicted the owner, who appealed; and the Court (*Lord Coleridge, C.J., and Cave, J.*) *held*, that the by-law, as regards the prohibition of

future buildings on the space in the rear, was bad, and they allowed the appeal.

QUINBY v. *LIVERPOOL CORPORATION.*
(1889) 53 J. P. 213.

——**Building Notice.**—A railway company, without notice to the local authority, erected dwellings for certain of their employes on vacant land, acquired under their statutory powers, and near, but not forming part of, one of their stations. The local authority summoned the company, who were convicted. The by-law requiring notice to be given was framed under §§ 157 and 276 of the *Public Health Act*, 1875. The former section exempts from operation of the statute, "buildings belonging to any railway company, and used for the purposes of such railway under any Act of Parliament." The company appealed, and the Court (*Lawrance and Wright, JJ.*) *held*, that the by-law was valid, and that the buildings in question were not within the proviso.

MANCHESTER, &c., RAILWAY CO. v. *BARNSLEY UNION.*
(1892) 56 J. P. 679; 67 L. T. 119.

——**Notice and Deposit of Plans.**—The plaintiff, a builder, deposited plans with the defendants, pursuant to a by-law, for the construction of a road over his land, and the same were duly approved. The plaintiff commenced, in July, 1875, to build sixteen houses on the land, without depositing the plans thereof, and was allowed to erect them without complaint until November, 1875, and the houses were built in accordance with the defendants' by-laws relating to building. In November, 1875, the plaintiff was summoned for building without having first deposited plans in accordance with the by-laws, and was fined £1. In December, 1875, the defendants pulled down twelve of the houses, and used so much violence that the materials were rendered almost valueless. At the trial before *Blackburn, J.*, the plaintiff was awarded £500 damages, and £18 in respect of negligence. On motion for a new trial, the Court (*Pollock and Huddleston, BB.*) *held*, that the powers conferred on the defendants by the *Local Government Act*, 1858, § 34, was not confined to work executed in contravention of by-laws relating to structure, but extended to by-laws as to notice and deposit of plans (L. R. 3 Ex. D. 4). The plaintiff appealed, and the Court (*Bramwell, Brett, and Cotton, L.JJ.*) *affirmed* the decision of the Exchequer Division.

BAKER v. *PORTSMOUTH CORPORATION.*
(1878) L. R. 3 Ex. D. 157; 41 L. J. Ex. 223; 37 L. T. 882; 26 W. R. 303.

——**Notice and Deposit of Plans.**—The appellant was convicted by the justices of a borough for erecting a dwelling-house in the borough without giving fourteen days' notice in writing to the surveyor, and depositing at the same time plans and sections as required by the by-laws. The by-laws provided that "every person intending to erect any new building shall give fourteen days' notice, to be delivered to the board's surveyor, or left at his house, with detail plans and sections, and any person who shall erect any new building without delivering such notice, and plans and sections, or without having the plans, &c., approved by the board, shall be liable to a penalty of 40*s*." On hearing a case stated, the Court (*Mellor, Lush, and Quain, JJ.*) *held*, that the by-law was within the powers conferred by § 34 of the *Local Government Act*, 1858, and was reasonable, and therefore valid.

HALL v. *NIXON.*

(1875) L. R. 10 Q. B. 152; 44 L. J. M. C. 51; 32 L. T. 87; 23 W. R. 612.

——**Notice and Deposit of Plans.**—A building owner erected certain premises without giving notice to the local board and depositing plans therewith. The by-laws framed under § 34 of the *Local Government Act*, 1858, provided that before beginning to dig or lay the foundation of or for any new building, a written notice thereof, of one month at the least, shall be left with the clerk at one of the monthly meetings of the Board, accompanied by plans, &c., and imposed a penalty of £5 in default. The board summoned, and the justices convicted, the building owner. On a case stated, the Court (*Pollock, C.B., Channell and Martin, BB.*) *held*, that the by-law was bad, and that, if notice be given and the plans deposited, the applicant may build at once, subject to the right of the building being altered, &c., if it infringes the by-laws.

HATTERSLEY v. *BARR.*

(1866) 4 H. & C. 523; 14 L. T. 565; 12 Jur. 894; 14 W. R. 864.

——**Notice and Deposit of Plans.**—Two informations charged that a water company, in October, 1898, did begin to erect a water tower without delivering to the local authority's clerk or surveyor complete plans, &c., of the proposed building, and giving notice of intention to build, as required by certain by-laws. Under § 157 of the *Public Health Act*, 1875, the local authority made certain by-laws, one of which required any person intending to erect a building, to give notice in writing of such intention to the local authority, and to deliver to their clerk or surveyor, plans, &c. Another by-law

required any person proposing to construct a street, erect a building, or execute any works to which the by-laws shall apply, to give notice in writing of the date upon which it is intended to begin the work.

§ 25 of the water company's *Act* empowers them to make and maintain all works incidental to, or necessary for, the waterworks, including "a high service water tower," situated in a certain field. The water company erected this tower without giving any notices to the local authority. The justices dismissed both informations. The Court (*Ridley and Darling, JJ.*) *held*, on a case stated, that § 93 of the *Waterworks Clauses Act*, 1847, did not exempt the water company from the provisions of the *Public Health Act*, 1875, and that they were bound to comply with the by-laws made by the local sanitary authority under that Act.

UCKFIELD RURAL DISTRICT COUNCIL v. *CROWBOROUGH DISTRICT WATER CO.*

(1899) 2 Q. B. 664; 68 L. J. Q. B. 1009; 81 L. T. 539; 48 W. R. 63.

——**Unreasonable.**—The owner of a plot of land built thereon a bungalow with stone foundations, chimney and breastings of brick, and the remainder of wood, except the roof, which was slated. He was summoned for a breach of a by-law, made under § 157 of the *Public Health Act*, 1875, requiring every new building to be enclosed with walls of brick, stone, or other hard and incombustible materials, &c. The nearest house was 200 yards distant in one direction, and 450 yards in another, and five other similar bungalows had been erected in the locality, which was by the sea. The defendant contended that the by-law was unreasonable, and the justices dismissed the summons. On appeal, the Court (*Lord Alverstone, C.J., Wills and Channell, JJ.*) *held*, that the fact that the by-law gave the local authority no power to exempt in certain cases did not make it unreasonable, but if the justices in certain circumstances thought it ought not to be enforced, they might dismiss a summons brought for breach of the by-law or impose only a nominal penalty, in exercise of their discretion under § 16 of the *Summary Jurisdiction Act*, 1879. Case remitted.

SALT v. *SCOTT-HALL.*

(1903) 67 J. P. 306; 2 K. B. 245; 72 L. J. K. B. 627; 88 L. T. 868; 52 W. R. 95; 1 L. G. R. 753; 20 Cox C. C. 492.

——**Open Spaces.**—A local board made a by-law requiring that wherever any open space had been left belonging to any building,

such space should never afterwards be built upon without their consent. The owner of certain premises erected upon a garden in front thereof a room 12 feet high, which practically covered the whole of the garden, without obtaining the consent of the local board. On hearing a summons against the owner, the magistrate convicted him. On a case stated, the Court (*Crompton and Blackburn, JJ.*) *held*, that if the by-law applied to open spaces belonging to old buildings, it was bad, as exceeding the powers conferred by § 34 of the *Local Government Act*, 1858.

TUCKER v. *REES.*
(1861) 7 Jur. 629.

CLERK OF WORKS

The plaintiff contracted to superintend the erection of a certain workhouse in these words: "*I propose to superintend the execution and building of the B. workhouse, and devote my entire attention to it for the sum of £2 per week. Signed, A. B.*" In an action on the contract, *Burton, J.*, *held*, that as it appeared to be a contract not exceeding in value £20, it did not require a stamp, and that it was a continuing contract, and could not be determined without notice.

HICKEY v. *BROWNE.*
(1842) 4 Ir. L. R. 277.

CONDITION PRECEDENT

——**Architect's Certificate.**—A clause in a building contract provided that the architect's certificate was to be a condition precedent to the builder's right to receive any payment for work done. In an action by the builder for the balance alleged to be due, and for which the architect declined to certify, it was suggested that the architect's action was due to the interposition of the building owner. *Watkin Williams, J.*, told the jury, that if they found that the architect, acting on his own judgment, had withheld his certificate, they must find for the defendant, but, if the architect's action was due to the interposition of the owner, they must find for the plaintiff. The jury found for the plaintiff.

BRUNSDEN v. *BERESFORD.*
(1883) 1 Cab. & E. 125.

——**Expenditure of a Fixed Sum.**—The defendant agreed to expend £100 in improving certain premises, under the direction and to the satisfaction of some competent surveyor to be appointed by

the lessor, in consideration of receiving a lease thereof for ten years. The defendant failed to expend the said sum, and refused to do so, although the lessor was prepared to appoint a surveyor. In an action by the lessor for breach of covenant, the Court *held*, that the appointment of a surveyor was a condition precedent to the defendant's liability to expend the £100.

COOMBE v. *GREENE.*

(1843) 11 M. & W. 480; 12 L. J. Ex. 291; 2 D. P. C. (N.S.) 1023.

——**Satisfaction of Architect.**—In an action on a builder's contract, which provided that all the works should be left complete to the satisfaction of the architect, and did not contain any provision for payment by instalments, the Court *held*, that the completion of the works to the satisfaction of the architect was a condition precedent to a right to payment, and that the builder could not recover for the value of work done, as to which, while incomplete, the architect had expressed approval so far as then executed, but which was not completed to the architect's satisfaction.

RICHARDSON v. *MAHON.*

(1879) 4 L. R. (Ir.) 486.

——**Time of Completion.**—A builder contracted to build and complete certain premises on or before a specified date, in consideration of the contract price, to be paid to him by instalments. In an action for the balance of the contract price, the defendant, *inter alia*, contended that the completion of the building by the specified date was a condition precedent to payment. The Court (*Buller, Heath, and Rooke, JJ.*) *held*, that the covenants in the contract were independent, and that the builder could maintain his action for the whole sum, although the building was not completed by the specified time.

TERRY v. *DUNTZE.*

(1795) 2 H. Bl. 389; 3 R. R. 423.

CONTINUING OFFENCE

——**Addition to House.**—The owner of a certain house built an addition thereto upon the fore-court thereof, and brought out the addition considerably beyond the fronts of the houses on either side, without the consent of the urban authority. On May 2, 1881, the surveyor of the latter served a notice upon the owner warning him that he had committed an offence against § 156 of the *Public Health Act*, 1875, and that he would be liable to a

penalty for every day during which the offence was continued after notice. The addition had been completed prior to the date of the notice. The owner was summoned three times between May and October 14, 1881, in respect of the continuing offence, and paid two fines. At length, on the third summons, he undertook to remove the addition, but failed to do so. At the hearing of an information on December 5, 1881, it was contended on the owner's behalf that the information was out of time, but the justices convicted, and fined the defendant, who appealed to the Queen's Bench Division.

The Court (*Grove, J., and Huddleston, B.*) *held*, that the offence to which the penalty prescribed in § 156 was applicable, continued so long as the addition to the house was maintained after written notice from the urban authority, notwithstanding that the addition was completed before the notice was given.

RUMBALL v. *SCHMIDT.*

(1881) 46 J. P. 567; 8 Q. B. D. 603; 46 L. T. 661; 30 W. R. 949.

——**Air Space.** — West Ham Corporation laid an information against a firm of builders, charging that they, having been convicted and fined for erecting a certain dwelling-house without providing the air-space required by a certain by-law, did break the said by-law by continuing the offence after the date of the conviction. It was proved that the premises had never been the property of the firm of builders, that the builders were not in possession of the premises since the date of the conviction, and that they had no right, power, or authority to go upon the premises after the date of the conviction. The stipendiary magistrate convicted the firm of builders.

The Court (*Darling and Channell, JJ.*), on a case stated, *held*, that the firm of builders, having no power to remedy the breach complained of, were not guilty of a continuing offence, and the conviction was quashed.

WELSH & SON v. *WEST HAM CORPORATION.*

(1900) 1 Q. B. 324; 69 L. J. Q. B. 114; 82 L. T. 262.

——**Billiard-room.**—On November 5, 1902, the owners of certain premises were convicted of erecting a building, being a billiard-room, not enclosed with walls of brick, &c., or other hard and incombustible material, &c., contrary to by-laws made pursuant to the *Public Health Act*, 1875, which did not give the local authority power to dispense with its provisions in any particular case. At the date of hearing an information laid against the

owners for the continuing offence, the only evidence given was that one of the owners had been convicted for erecting the building complained of, that the building was in the same state as at the date of conviction, and that both the owners resided in the premises to which the building was annexed. The defendants contended that the by-law was unreasonable, as the premises were in the country, and four miles from the nearest town. The Court (*Lord Alverstone, C.J., Wills and Channell, JJ.*) *held*, that the by-law was reasonable, that the conviction was not evidence of the continuing offence, and that there was power under § 16 of the *Summary Jurisdiction Act*, 1879, for the justices to deal with an offence against the by-laws.

POMEROY v. *MALVERN URBAN DISTRICT COUNCIL.*

(1904) 67 J. P. 375; 89 L. T. 555; 1 L. G. R. 825; 20 Cox C. C. 572.

——**Temporary Structure.**—A temporary structure was erected by the respondents without obtaining a licence from the local authority, and it was completed more than six months before complaint was made. The magistrate dismissed the summons brought by the appellants under § 13 of the *Metropolis Management and Building Acts Amendment Act*, 1882, as not having been brought pursuant to § 11 of 11 & 12 *Vict. c.* 43. The local authority appealed, and the Court (*Matthew and Day, JJ.*) *held*, that as long as the structure remained in existence the offence was a continuing one, and that proceedings might be taken within six months of the time within which it continued to exist.

METROPOLITAN BOARD OF WORKS v. *ANTHONY*

(1884) 49 J. P. 229; 54 L. J. M. C. 39; 30 W. R. 166.

CONTINUING PENALTY

The by-laws of a local authority provided *inter alia* that every person who proposed to build a house, &c., should deposit plans, section, and elevation thereof seven days before the date of the board-meeting at which the plans should be considered, accompanied by a written application for permission to build, the plans, &c., to be to the scale of 1 inch to 8 feet. The owner of certain premises deposited certain plans, &c., which were not approved, and he proceeded to build notwithstanding. On hearing a summons brought by the local authority, the justices convicted the owner, fined him £5, and ordered him to pay a further sum of 5*s.* a day for every day the building continued, from the date of notice of objection, pursuant to a by-law, which provided a

maximum penalty of 40*s.* for every day "during which such work shall continue or remain. . . ." The owner appealed, and the Court (*Denman and Hawkins, JJ.*), in a considered judgment on a case stated, *held*, that there was no power to inflict, by a by-law a continuing penalty for merely not pulling down a building actually erected and completed, and quashed the conviction. The by-law was also *held, ultra vires* on another point.

REAY v. *GATESHEAD CORPORATION.*
(1886) 50 J. P. 805; 55 L. T. 92; 34 W. R. 682.

CONTRACT

——**Lump Sum.**—A builder contracted to execute the mason's work of a certain building "*agreeably to plans thereof now shown to me, and to the extent of this schedule* (attached to the form of tender), *for the sum of* £286 10*s.* 8½*d.*" The schedule contained the quantities which were priced by the builder, the total amounting to the above sum. The owner had power to alter the quantity of work required, and the work, when finished, was to be measured and paid for at the schedule or other rates, "*as also in proportion to the lump sum in this letter of offer.*" The contractor made an under estimate of £30 in one of the items, and sought payment for the actual work done. On appeal, the Court (*Lords Young, Craighill, and Rutherfurd-Clark*) *held*, that the contract was a contract according to the schedule of prices, and not for a lump sum, and that the builder was entitled to claim the full sum brought out by calculating the actual quantities at his prices.

JAMIESON v. *McINNES.*
(1887) 15 Ct. of Sess. Cas. (4th Ser.) R. 17.

——**Lump Sum.**—A contractor agreed in writing with an owner to do certain work with materials to be excavated on the site, according to a specification, for a lump sum. The works required additional materials, those excavated being insufficient for the purpose. In an action by the contractor for the cost of the additional material, the *Lord Ordinary* found for the defendant. On appeal, the Court (*Lord Justice Clerk and others*) *held*, that the contractor could not claim more than the contract price, and, therefore, could not recover the cost of the extra materials.

WEATHERSTON v. *ROBERTSON.*
(1852) 1 Stuart M. & P. (Sc.) 333.

——**Lump Sum.**—A contractor agreed, for a lump sum, to construct certain water tanks "*capable of sustaining a head-pressure of* 60 *feet of water.*" When constructed it was found that the tanks

would not sustain that pressure, and the contractor, in order to strengthen them, supplied certain additional iron stays. In an action by the contractor to recover the cost of the stays, in an addition to the contract price, the *Sheriff-Substitute* found for the defendant with costs. On appeal, the Court (*the Lord President, and others*) *affirmed* that judgment.

WILSON v. *WALLACE.*

(1859) 21 Ct. of Sess. Cas. (2nd Ser.) R. 507.

CONTRACT NOT UNDER SEAL

——**Poor-Law Guardians.**—Certain poor-law guardians, at a board meeting, legally constituted and authorized to enter into contracts, ordered the plaintiff to fit up certain w.c.'s in the workhouse. The work was done and accepted and approved by the guardians. In an action by the tradesman for goods sold and delivered, and work and labour done, the Court (*Wightman, J., and others*), in a considered judgment, *held*, that although the contract was not under seal, the guardians were liable, as the purposes for which they were made a corporation require that they should provide such articles.

CLARKE v. *CUCKFIELD UNION.*

(1852) 21 L. J. Q. B. 349; 16 Jur. (o.s.) 686; 19 L. T. (o.s.) 207; 1 B. C. C. 81.

——**Urban Authority.**—The plaintiffs were engineers, and were employed by an urban authority to perform certain work, the contract being contained in certain correspondence, and not under seal. When the value of the work exceeded £50, the defendants entered into a contract under seal with the plaintiffs for the contemplated work, as required by § 174 of the *Public Health Act*, 1875. Subsequently the work was abandoned, and the plaintiffs brought an action to recover £530, for work done, &c. *Cave, J.*, *held*, that as part of the work was unperformed when the seal was affixed, and there was consideration for affixing it in the promise of the plaintiffs to complete the work, the contract under seal was good in respect of the work already done, and the plaintiffs were entitled to maintain their action for that work; that § 193 was intended to limit the penal consequences of a breach of its provisions to the specific penalties; and, therefore, that the enactment did not render a contract made by an officer, the second plaintiff, with the local authority void, so as to disentitle him to sue upon it.

MELLISS v. *SHIRLEY LOCAL BOARD.*

(1885) 50 J. P. 214; 16 Q. B. D. 446; 55 L. J. Q B. 143; 53 L. T. 810; 34 W. R. 187.

CONVERSION

A working bricklayer sued his employer for damages for detention of his tools, and for extras on his contract. *Willes, J., held*, that production of his contract, being in writing, was necessary to support the claim for extras; but that the employer had no right to detain the tools, as there was no agreement empowering him to do so, and that, even if there was, the user was a conversion.

POULTON v. *WILSON.*
(1858) 1 F. & F. 403.

CORNER HOUSE

By the *Public Health Act*, 1888, § 3, it is unlawful to erect any building in any street or road, beyond the line of the front main walls of the premises on either side adjoining. A building owner erected a house, at the corner of two streets in each of which there was a building line, which projected 7 feet beyond the front main wall in each of the streets. The magistrate dismissed a summons against the owner, and the local board appealed. The Court (*Lord Coleridge, C.J., and Cave, J.*) allowed the appeal.

LEYTON LOCAL BOARD v. *CAUSTON.*
(1893) 57 J. P. 135; 9 T. L. R. 180.

COVENANT

——**Unusually restrictive.**—The plaintiff agreed to sell, and the defendant to purchase, a plot of land, and in the default of the latter, the plaintiff brought an action for specific performance. The defendant resisted, and pleaded, *inter alia*, that the plaintiff's solicitors had represented to the defendant that the plot was subject to no covenants unusually restrictive. The deed contained a covenant that the grantee should build on the land houses, the rent of which should be double the value of the rent reserved by the deed, without limiting any time within which such building was to be required. *Fry, J., held*, that the covenant was unusually restrictive, and granted rescission to the defendant.

ANDREW v. *AITKEN.*
(1883) 22 Ch. D. 218; 52 L. J. Ch. 294; 48 L. T. 148; 31 W. R. 425.

——**Quiet Enjoyment.**—The defendant demised a house for twenty-one years at a rent of £130 per annum to the plaintiff, who covenanted not to use the premises otherwise than as a private

dwelling-house and the residence of a physician and surgeon. The defendant entered into the usual covenant for quiet enjoyment.

Soon after the lease had been executed and the plaintiff had entered into possession, the defendant, who owned the adjoining plot of land, erected thereon buildings and flats about 20 feet higher than the demised house, thereby obstructing the access of air, so that when fires were lighted in the rooms of the house, and the wind was in any direction but the north-west, the chimneys smoked, and rendered the rooms at certain times uninhabitable, and at other times their user was attended with great discomfort and inconvenience.

Buckley, J., held, that the defendant, by erecting the buildings in question, had broken his covenant for quiet enjoyment.

TEBB v. *CAVE.*

(1900) 1 Ch. 642; 69 L. J. Ch. 282; 82 L. T. 115; 48 W. R. 318.

CUMULATIVE STATUTORY PENALTY

A builder was employed to erect certain houses on a plot of vacant ground, adjoining the plaintiff's premises, which had no basement storey. The builder excavated in order to form a basement, and in doing so neglected to sufficiently underpin the party wall, and thereby caused damage to the plaintiff's premises. The builder had given due notice to the district surveyor under § 38 of the *Metropolitan Building Act*, 1855, but not to the adjoining owner under *Part* 3 of the *Act*. In an action by the adjoining owner against the builder tried by *Willes, J.*, the jury awarded the plaintiff damages. On hearing a rule obtained by the defendant, the Court (*Erle, C.J., and Willes, J.*) *held*, that the builder is not an "other person" within the meaning of § 108 of the *Act*, which requires a month's notice of action to be given, before writ or process is sued out against "any district surveyor or other person for anything done or intended to be done under the provisions of the Act." The penalty imposed by § 94 on a building owner who fails to make good damage contemplated by the *Act* is cumulative.

WILLIAMS v. *GOLDING.*

(1865) L. R. 1 C. P. 69; 1 H. & R. 18; 35 L. J. C. P. 1; 11 Jur. 952; 13 L. T. 291; 14 W. R. 60.

CUSTOM

——**Dublin.**—A builder by negligent shoring up, &c., in executing a building contract, took away the lateral support of a certain

house, which fell, and by reason of which the plaintiff's house fell also. In an action for damages for the loss of his house, the plaintiff alleged a custom in the Dublin building trade, that it is the duty of a builder, pulling down a house for the purpose of erecting another, to use skill and precaution in and about bracing and shoring up the party walls between the house taken down and the next adjoining houses, so as to prevent such party walls from falling or being injured; and the jury found for the plaintiff. The Court *held*, in arrest of judgment, that such a custom was unreasonable and void.

KEMPSTON v. *BUTLER.*
(1861) 12 Ir. C. L. R. 516.

——**General or Weekly Accounts.**—A builder contracted under seal to build a house and premises for a certain sum. The contract stipulated that no alterations or additions should be admitted unless directed by the written order of the defendant's architect, "and a weekly account of the work done thereunder should be delivered to the architect every Monday next ensuing the performance of such work." The builder brought an action on the contract against the defendant. The Court (*Cockburn, C.J., Hill and Blackburn, JJ.*) *held*, on a case stated by an arbitrator, that parol evidence was admissible to show that, by the usage of the building trade, "weekly accounts" meant accounts of the day-work only, and did not extend to extra work capable of being measured.

MEYERS, OR MYERS v. *SARL.*
(1861) 3 E. & E. 306; 7 Jur. 97; 30 L. J. Q. B. 9; 9 W. R. 96.

——**General.**—A builder, on invitation by the defendants' surveyor, submitted a tender for the execution of certain works, which proved to be the lowest sent in, and to which the surveyor made no objection. A custom to accept the lowest tender was alleged. In an action by the builder for work and materials, the County Court judge found that the conduct of the defendants amounted to an acceptance. On appeal, the Court (*Coleridge and Erle, JJ.*) *affirmed* the judgment of the Court below, subject to the reduction of the damages owing to a mistake in the calculations.

PAULING v. *PONTIFEX.*
(1852) 20 L. T. (o.s.) 126; 1 W. R. 64.

——**London.**—The defendants built an extensive warehouse in the City of London which obstructed the access of light and air to the

plaintiff's premises. In an action for an injunction, the defendants pleaded that by the custom of London they could build on ancient foundations to any height. On demurrer, the Court (*Willes, Erle, and Byles, JJ.; Williams, J., dissenting*) *held*, in a considered judgment, that the custom of London pleaded was destroyed by the *Prescription Act*, 1832, and that the twenty years referred to in §§ 3 and 4 of the *Act* is to be taken to be the period next before some action or suit, wherein the claim in the action shall have been brought in question.

COOPER v. *HUBBUCK.*

(1862) 12 C. B. (N.S.) 456; 31 L. J. C. P. 323; 6 L. T. 826; 9 Jur. 575.

——**London.**—The plaintiffs were reversioners of certain premises in the City of London, in which there were certain ancient lights. The defendant erected a building which interfered with the access thereto of light and air. The plaintiffs brought an action against the defendant, who pleaded the custom of London, authorizing one owner to obstruct the access of light to adjacent premises, in building on an ancient foundation. The Court (*Lord Denman, C.J., Patteson, Williams, and Wightman, JJ.*) *held*, that in respect of an interference with lights more than twenty years old, the *Statute* 2 & 3 *Will. IV. c.* 71, gave the owner an indefeasible right, and that the custom of London could no longer be pleaded as a defence.

SALTERS' CO. v. *JAY.*

(1842) 3 Q. B. 109; 2 G. & D. 414; 11 L. J. Q. B. 173; 6 Jur. 803.

——**York.**—A custom that obtained in the city of York, whereby a person could erect on new foundations where no building was before, a house which interfered with his neighbour's lights, was held void *per totam curiam.*

MOSELEY v. *BALL.*

(1611) Yel. 216; 9 Coke 58*a*.

DAMAGE

——**To Highway.**—The plaintiffs, being the district highway authority, sued the defendants to recover the sum of £484 15*s*. 11*d*., the amount of extraordinary expense incurred by them in repairing certain highways. The defendants employed certain builders, under contract, to erect a lunatic asylum in the district. In executing the works extraordinary traffic was conducted over the

highways, but the defendants denied that it was so conducted by them or by their orders. The plaintiffs' surveyor testified that extraordinary expenses had been incurred by the plaintiffs in repairing the highways by reason of the damage caused by the excessive weight passing along the same, or extraordinary traffic thereon.

Bigham, J., held, in a considered judgment, that the plaintiffs were entitled to succeed, as the extraordinary traffic had been conducted "by or in consequence of" the order of the defendants, within the meaning of § 12 of the *Locomotives Act*, 1898, but as proceedings had not been taken in respect of the damage caused in the execution of the first of the two contracts, within six months after completion of the contract, the plaintiffs could not recover in respect thereof.

EPSOM URBAN DISTRICT COUNCIL v. *LONDON COUNTY COUNCIL.*

(1900) 64 J. P. 726; 2 Q. B. 751; 69 L. J. Q. B. 933; 83 L. T. 284.

——**To Highway.**—A building owner contracted with several persons for the supply of building materials required for certain improvements he proposed to carry out at his residence. He knew that the materials would be delivered by a certain route in trucks drawn by traction engines, but did not give any directions as to the route or means of conveyance. The price in each case included the cost of carriage, and property in the materials did not vest in the building owner until they had been delivered at the residence of the owner, and accepted on his behalf. The owner was summoned under § 23 of the *Highways and Locomotives Amendment Act*, 1878, to recover the cost of making good the damage done to the roads traversed by the traction engines, and the justices, being of opinion that he was a "person by whose order such weight or traffic had been conducted," ordered him to pay £750 damages and costs. The Court of Quarter Sessions *reversed* the decision of the justices, and stated a case. The Queen's Bench Divison (*Cave and Wills, JJ.*) *reversed* the decision of the Quarter Sessions. On appeal, the Court of Appeal (*Lord Esher, M.R., Rigby and Lopes, L.JJ.*) *reversed* the decision of the Divisional Court, and restored that of the Court of Quarter Sessions. The County Council appealed, and the House of Lords (*Lords Herschell, Watson, Shand, and Davey*) *affirmed* the judgment of the Court of Appeal.

KENT COUNTY COUNCIL v. *GERARD.*

(1897) 61 J. P. 804; A. C. 633; 66 L. J. Q. B. 677; 77 L. T. 109; 46 W. R. 111.

——**Measure of.**—The plaintiffs were a firm of house-painters, and contracted with the defendant to erect a "boat-staging," or platform, to enable them to paint a certain house. Owing to the platform being insecurely fastened by the defendant, an employé of the plaintiffs was so injured that the plaintiffs were obliged to settle legal proceedings taken against them by the employé, under the *Employers' Liability Act*, 1880, by paying him a sum of £125. They brought an action against the defendant for breach of his contract, and *Denman, J.*, *held*, that the defendant was liable on the contract; but, inasmuch as the plaintiffs had employed a competent contractor to erect the platform, and there was no evidence of negligence by the plaintiffs, they were not liable in law to their employé, and, therefore, the sum of £125 was not recoverable as damages from the defendant for breach of contract.

KIDDLE & SON v. *LOVETT.*
(1885) 16 Q. B. D. 605; 34 W. R. 518.

DANGEROUS STRUCTURES

——**Adjoining Structures.**—The owner of certain premises, in the course of building operations, left standing two party walls which were cracked and otherwise defective. An order was made by a police magistrate, under the *Metropolitan Building Act*, 1855, requiring the owner to take one of them down, and secure the other. In default by the owner, the Metropolitan Board of Works entered upon the premises, and pulled down one of the walls; and subsequently gave notice to the owner to underpin or otherwise secure the other wall. In his further default, the Board entered and did the necessary works themselves. Similar notices were served on the two adjoining owners, both of whom, however, also made default. The magistrate made an order against the owner, requiring him to pay the total cost incurred by the Board, and refused to make any deduction in respect of the contribution payable by the adjoining owners. The owner appealed, and the Court (*Lord Coleridge, C.J., and Field, J.*) *held*, that the owner could not require that the adjoining owners should also be summoned, and that, upon the hearing of such a summons, he could not escape liability for the expenses actually incurred, by merely showing that they included items in excess of the market price of labour and materials at the date of the execution of the works.

DEBENHAM v. *METROPOLITAN BOARD OF WORKS.*
(1881) 45 J. P. 190; 6 Q. B. D. 112; 50 L. J. M. C. 29; 43 L. T. 596; 29 W. R. 353.

——**Complaint too Late.**—The owner of certain premises in a dangerous condition was required by the Commissioners of Police, under the provisions of the *Metropolitan Building Act*, 1855, to secure or take them down. In default, a summons was issued, and the magistrate ordered the owner to take down the defective structure to the satisfaction of the Police Commissioners' surveyor within one month. The owner did not comply with the terms of this order, and the Commissioners of Police had the structure taken down, and they summoned the owner for the cost thereof under § 97 (6). The magistrate dismissed the summons on the ground that the complaint had not been made within six months, pursuant to § 11 of 11 & 12 *Vict. c.* 43. On a case stated, the Court (*Lord Campbell, C.J., Wightman, Hill, and Quain, JJ.*) *held*, that the six months were to be reckoned from the date of demand and refusal, and not from the date of the incurring of the expense, and they sent the case back to the magistrate.

LABALMONDIERE v. *ADDISON.*

(1858) 1 El. & El. 41; 28 L. J. M. C. 25; 5 Jur. 433.

——**Cost of Hoarding.**—The surveyor of a local authority served a notice personally upon the agent acting for a certain property, requiring him to repair or take down the roof of one of the houses thereon, which was in a dangerous state. The notice was not complied with, and the surveyor had a hoarding erected at the cost of £1 8*s.* in front of the house. A summons subsequently taken out was not proceeded with, as the house had been meantime repaired by the agent, who, however, declined to pay the costs of the hoarding. On hearing a summons to recover the cost of the hoarding, the agent contended that the summons was premature, as the three months allowed by § 257 of the *Public Health Act*, 1875, to go to arbitration in respect of an apportionment, had not elapsed. The justices dismissed the summons, and the surveyor appealed. The Court (*Lord Alverstone, C.J., Lawrance and Kennedy, JJ.*) *held*, that § 257 did not apply, as there was no question of apportionment, and *allowed* the appeal.

USK URBAN DISTRICT COUNCIL v. *MORTIMER.*

(1904) 68 J. P. 38; 90 L. T. 25; 2 L. G. R. 135; 20 T. L. R. 96.

——**Cost of Part of Work.**—A certain structure was reported to the Metropolitan Board of Works to be in a dangerous condition, and they instructed their surveyor to inspect and report to them as to its condition. On February 2, 1873, he certified the structure

to be in a dangerous state, and on February 3 notice to repair was served on the owner pursuant to § 72 of the *Metropolitan Building Act*, 1855. The owner made default. On April 4 the work was only partly carried out, and as nothing further was done, a summons was taken out against the owner on May 13 and adjourned till May 27, and again until June 10, and finally until July 1 when the work was completed, and the summons withdrawn. The owner refused to pay the surveyor's fees, &c., and was summoned. The magistrate ordered the payment of the fees, but refused to order payment of the charges: 3*s.* 6*d.* for notices, 2*s.* 6*d.* for service thereof, and 2*s.* 6*d.* for office expenses. The Court (*Blackburn, Quain, and Archibald, JJ.*) *held*, that the Board were entitled to charge the first two items, but not the last.

METROPOLITAN BOARD OF WORKS v. *FLIGHT.*
(1873) L. R. 9 Q. B. 58; 43 L. J. M. C. 46; 29 L. T. 608.

——**Costs of Work.**—The respondent gave notice to the owners in fee, under § 72 of the *Metropolitan Building Act*, 1855, to secure or pull down certain dangerous premises, and subsequently obtained an order from a magistrate directing them to do so. In default the respondent had the necessary work executed himself, under § 73 of the *Act*, and obtained a magistrate's order against the owners for payment of the costs so incurred. On appeal, the Court (*Cockburn, C.J., Crompton and Hill, JJ.*) *held*, that the lessee was primarily liable, and that, therefore, the order was bad, being directed to the appellants and not to the lessee, who was "owner" within the meaning of the Act.

MOURILYAN & ANOTHER v. *LABALMONDIERE.*
(1859) 1 El. & El. 533; 30 L. J. M. C. 95; 7 Jur. 627; 3 L. T. 668; 9 W. R. 341.

——**Incumbent of a Church is not the Owner.**—The defendant was the incumbent of a church in Lambeth which the district surveyor had certified to be in a dangerous condition. Notice was served upon the incumbent to secure the dangerous parts of the building, and in his default, a summons, addressed to "the owner," was served upon him, and the magistrate made an order in the terms of the summons. The incumbent having neglected to execute the necessary works, the Board carried them out, and the magistrate ordered the incumbent to pay the cost. The magistrate, however, dismissed a further summons, calling upon the defendant to show cause why a distress warrant should not be issued against him to levy the amount. On hearing a rule calling on the magistrate to show cause why a *mandamus* should not issue,

the Court (*Cockburn, C.J., and Mellor, J.*) *held*, that, although the freehold was vested in the incumbent, he is not the "owner," within the meaning of the *Metropolitan Building Act*, 1855, so as to be personally liable.

R. v. *LEE.*

(1878) 4 Q. B. D. 75.

——**Injury from.**—The plaintiff, in course of business, called upon the tenant of portion of a building, owned by the defendant, and in coming downstairs, owing to their defective condition, he fell, and sustained personal injuries. In an action brought to recover damages, the plaintiff was awarded £200. The defendant applied for a new trial or judgment, on the ground that there was no evidence of liability on his part.

The Court (*Lord Esher, M.R., Bowen and Kay, L.JJ.*) *held*, that there was by necessary implication an agreement by the defendant with his tenants, to keep the staircase in repair, and, inasmuch as the defendant must have known that it would be used by persons having business with them, there was a duty on his part towards such persons to keep it in a reasonably safe condition.

MILLER v. *HANCOCK.*

(1893) 57 J. P. 758; 2 Q. B. 177; 4 R. 478; 69 L. T. 214; 41 W. R. 578.

——**Lessee of a Chapel is Owner.**—The owners of a private chapel leased it for a period of twenty-one years. After notice duly given that the chapel was dangerous, and in default of the owners, the Commissioner of Police had certain works executed to secure the same, and sought to charge the owners with the cost of the work, pursuant to the provisions of the *Metropolitan Building Act*, 1855. The magistrate made the order sought, from which the owners appealed, and the Court (*Cockburn, C.J., and Crompton and Hills, JJ.*) *held*, that the lessee was "owner," within the meaning of § 3, and the order was quashed.

R. v. *MOURILYAN AND ANOTHER.*

(1861) 3 L. T. 668.

——**Local Authority may delegate Authority to Superintending Architect.**—The London County Council had made an order under the *London Building Act*, 1894, relating to certain premises in a dangerous condition, and in carrying out the order the Council had incurred certain expenses, which they sought to recover from the owner. It was admitted that the matter had not been before

the Council, and that the notices, &c., had been issued by their officers under authority which purported to be delegated to the superintending architect by an order made by the Council's predecessors. The magistrate dismissed the summons. On a case stated, the Court (*Wills and Wright, JJ.*) *held*, that the duties of Council under the *London Building Act*, 1894, as to dangerous structures are ministerial, and may be delegated to their superintending architect.

LONDON COUNTY COUNCIL v. *HOBBIS.*
(1897) 61 J. P. 85; 75 L. T. 687; 45 W. R. 270.

——**Not Dangerous to the Public.**—The London County Council served notices, under § 72 (1) of the *Metropolitan Building Act*, 1855, requiring the defendant to take down certain dangerous premises, of which he was the owner. In default, he was summoned under § 73 of the *Act*, and the magistrate found, that the premises were in a dangerous state, that they were not near any highway or public thoroughfare, and, therefore, they could not be dangerous to passers-by. The defendant contended that the section only applied to structures dangerous to the public, but the magistrate overruled this contention, and ordered the demolition of the dangerous portions, refusing to state a case.

On motion for a *mandamus*, the Court (*Cave and Collins, JJ.*) *held*, that the magistrate's decision was right, and refused the rule.

LONDON COUNTY COUNCIL v. *HERRING.*
(1894) 58 J. P. 721; 2 Q. B. 522; 63 L. J. M. C. 230; 10 R. 455.

——**Owner Liable for Injury from Defective Pavement.**—In December, 1895, the defendants served a notice, under § 106 of the *London Building Act*, 1894, upon the owner of a house, requiring him to execute certain works rendered necessary owing to its dangerous state. The owner did not comply with the notice, and also made default in respect of an order, made by a metropolitan police magistrate under § 107, to pull down the dangerous walls, &c. In March, 1895, therefore, the defendants, pursuant to their statutory powers, entered the premises and took down the dangerous portions of the house. To admit of the necessary hoarding, &c., being erected, parts of the foot-pavement were removed. The cost of the work, including the cost of the timber for the hoarding, &c., amounted to £11 7*s.* 6*d.*, and was paid to the defendants by the owner. The house was subsequently rebuilt by the owner, but the foot-pavement was not restored.

In August, 1897, the plaintiff caught his foot in a hole caused by the removal of one of the paving-stones, and was injured. The plaintiff brought an action against the defendants, and was awarded £40 damages by a jury. The question of the defendants' liability was further considered, and *Wills, J., held*, that the duty of replacing the pavement, after the hoarding had been removed, lay upon the owner of the premises, and not upon the County Council, and gave judgment for the defendants.

CRISP v. *LONDON COUNTY COUNCIL.*

(1899) 63 J. P. 484; 1 Q. B. 720; 68 L. J. Q. B. 499; 80 L. T. 654.

——**Summons Defective.**—The Commissioner of Police, pursuant to the *Metropolitan Building Act*, 1855, gave due notice to the owner to repair certain premises which were in a dangerous condition, and on his default, the Commissioner obtained a magistrate's order, and had a hoarding, &c., erected around the premises, and summoned the owner for the cost incurred thereby. The summons was heard before another magistrate, who dismissed it, on the ground that the order made was defective, as it did not contain any allegation that the owner had been summoned to answer the complaint, or any adjudication that the complaint was true. On appeal, the Court (*Lord Campbell, C.J., Wightman, Crompton, and Hill, JJ.*) *held*, that the second magistrate had jurisdiction, and that the order was bad on the face of it, and they dismissed the appeal.

LABALMONDIERE v. *FROST.*

(1859) 1 El. & El. 527; 28 L. J. M. C. 155; 5 Jur. 789; 7 W. R. 205.

——**Time of Meeting of Parties' Surveyors.**—A notice was served on the owner of a dangerous structure under § 107 of the *London Building Act*, 1894, requiring him to appoint a surveyor, and intimating that the London County Council had appointed a surveyor for the purpose of an arbitration under the *Act*. The owner appointed a surveyor who did not meet until after the expiration of seven days from the date of receipt by the Council of the notice of appointment, and then the Council's surveyor refused to meet the owner's surveyor on the ground that as the seven-day limit had elapsed, he had no jurisdiction. On summons before the magistrate the owner contended that he had no jurisdiction as the arbitration proceedings were pending, and that the seven-day limit referred to in *sub-sec.* 2 had only reference to the appointment of the arbitrator, and that there was no limit of time within which

the two surveyors were bound to meet and report. The magistrate dismissed the summons and stated a case. The Court (*Hawkins and Wright, JJ.*) ordered that the proceedings be dropped, and made no order as to costs.

LONDON COUNTY COUNCIL v. *BERNSTEIN.*
(1897) 61 J. P. 630.

DEFECTIVE WORK

A builder contracted, in 1856, to carry out extensive building works for the plaintiff according to plans and specifications, for a certain sum, within a time-limit. In all matters of dispute arising out of the contract the architect's decision was to be final; and he had power to order the removal of unsound work or materials, notwithstanding any certificate he may have previously given in respect thereof. There was also a provision empowering the building owner to bring an action against the builder, if defective work should be discovered in the buildings within a period of twelve months after the date of the architect's certificate of completion, and notwithstanding such certificate. In an action by the building owner against the builder for defective work and materials, brought on July 28, 1871, being long subsequent to twelve months after the completion of the works had been certified, judgment for the plaintiff by consent was entered, subject to a case. On appeal, the Court (*Lord Coleridge, C.J., Grove and Archibald, JJ.*) *held*, that where the certificate of completion and satisfaction by the employer's architect is made conclusive, and is given, the employer has no right of action against the builder for defects subsequently discovered, except within the time, and upon the terms, specially stipulated by the contract.

BATEMAN v. *THOMPSON.*
(1875) H. B. C. 166.

DELAY

——**Bad Weather.**—The defendant agreed to purchase a house of a builder for a certain sum, and covenanted to pay a further sum of £80, provided the pavement in front of the adjoining house should be completed by a certain date. In an action by the builder to recover the latter sum, it was proved that, owing to bad weather, the completion of the pavement in front of the adjoining house was delayed for four days, and therefore was not done by the agreed date. *Tindal, C.J.*, entered a non-suit.

MARYON v. *CARTER.*
(1830) 4 C & P. 295.

——**Caused by Extra Works.**—The defendant contracted with the plaintiffs to build a bridge over the river Lee under authority of a local Act passed in 1875, which required the work to be completed within six years of the passing of the Act, at the expiration of which period the powers conferred by the Act were to lapse. In January, 1881, the corporation served due notice upon the defendant under the contract of their intention to enter the works and complete the contract on the ground that the defendant had failed to make such progress with the works as would admit of completion within the statutory time-limit. The defendant refused possession, and the corporation moved for an interlocutory injunction to restrain the defendant from preventing them from taking possession. The defendant alleged that the delay was caused by the default of the corporation and by their engineer ordering certain extra works. No extension of time, however, had been granted by the engineer. The *Vice-Chancellor* granted the motion on plaintiffs undertaking to abide any order for damages that might be made against them.

CORK CORPORATION v. *ROONEY.*
(1881) 7 L. R. (Ir.) 191.

——**Obtaining Possession of Site.**—A building owner contracted with a builder to pull down a number of old houses, and erect new ones on the site thereof. The work was to be completed within six months. There was a delay of two weeks in giving possession to the builder, to which the builder agreed, but subsequently the builder only obtained possession in parts, the last part not being handed over until five months after the date of the contract. In an action by the builder for damages for increased cost incurred by reason of delay in obtaining possession of the premises, he contended that there was an implied condition in the contract that possession was to be given at the date of the contract. *Wright, J.*, gave judgment for the defendant. On appeal, the Court (*A. L. Smith, Collins, and Romer, L.JJ.*) *held*, that possession of the whole site should have been given at once, but the condition was altered to a reasonable time by the plaintiff consenting to a short delay, and that possession was not given in a reasonable time, and the plaintiff was therefore entitled to damages.

FREEMAN v. *HENSLER.*
(1900) 64 J. P. 260.

——**Other Contractors.**—A builder's tender for the execution of certain work, based upon specifications, &c., was accepted on July 30, 1898. The site was to be cleared and the new works

erected and completed by November 30, 1899. It was provided by the specifications that certain fittings necessary for the equipment of the new buildings were to be purchased and fitted by the building owners, and the builder was not to be responsible for the supply or fixing thereof. He was, however, to pay for the cost of the same out of the price for which he tendered to execute the works. The building owners made default in delivering the fittings in such reasonable time as admitted of the completion of the works in the period stipulated, and the builder claimed damages in respect thereof. *Phillimore, J., held,* that there was no implied promise by the building owners that the fittings should be supplied without unreasonable delay, and that there was no duty cast upon them to provide against such delay, and he gave judgment for the defendants.

MITCHELL v. *GUILDFORD UNION.*
(1903) 1 L. G. R. 857.

——**Penalty for.**—A firm of contractors entered into a building contract with a railway company, which provided that, should the contractors fail to proceed in the execution of the works in the manner and at the rate of progress required by the engineers, &c., the contract, at the option of the company, should be considered void. In these circumstances all money due to the contractors, and all materials, &c., should be forfeited to the company as ascertained damages. The works were not completed by the stipulated date, and subsequently the company gave notice to the contractors to avoid the contract, and took possession of the works, plant and materials. Upon a special case stated, the Court (*Brett and Archibald, JJ.*) *held,* that the clause referring to the avoidance of the contract and the forfeiture of the materials, &c., could only be enforced before the time fixed in the contract for the completion of the works had expired, and they gave judgment for the plaintiffs.

WALKER v. *L & N. W. RY. CO.*
(1876) 1 C. P. D. 518; 45 L. J. C. P. 787; 36 L. T. 53; 25 W. R. 10.

——**Plant, &c., seized.**—A building contract empowered a railway company to take the contract out of the hands of the builders in the case of delay, and employ others to complete it. The company's engineer, pursuant to another clause in the contract, extended the time for the completion of the works. In an action by the builders against the company, the Court *held,* that the company could not take the contract out of the builders' hands simply because the

work was not completed before the expiration of that period; and that a defence, alleging that the plant and materials on the ground were taken by the company pursuant to an enabling clause in the contract, was a good answer to an action for the conversion and detention of such plant and materials.

MOLAN v. *DUNDALK, &c., RAILWAY CO.*
(1880) 6 L. R. (Ir.) 477.

DEMOLITION

——**Breach of By-law.**—A by-law made by a rural sanitary authority provided that 15 square feet of air-space should be left open in the rear of every new building. In an action by the owner of certain premises, to which additions had been made, for an injunction to restrain the local authority from interfering with the same, and for damages for interference, it was not denied by the defendant that he had failed in building to comply with the by-law, but he contended that, as he had entered into a contract to purchase the ground at the rear sufficient to satisfy the statute, the statute did not apply. *Cave, J.*, in a considered judgment, *held*, that the defendant authority were justified in pulling down the offending building, consistently with safety, in any way they pleased, but if there had been excess in pulling down the building they were liable, unless the damage was inappreciable.

JAGGER v. *DONCASTER RURAL SANITARY AUTHORITY.*
(1890) 54 J. P. 438.

——**Consent not obtained.**—The plaintiff moved for an order directing the defendants to pull down certain buildings which had been erected by them on part of lands leased by the plaintiff to them, since an action was brought by the plaintiff to restrain the defendants from building on the demised land contrary to the provisions of the lease. The Court of Appeal, on appeal from *Kekewich, J.*, had made a declaration that the defendants were not at liberty to build without the consent of the plaintiff, to whom they gave liberty to apply for a mandatory injunction after the expiration of three months. On a motion for a mandatory injunction, the Court (*Lindley, M.R., Rigby and Collins, L.JJ.*) *held*, that the plaintiff was entitled to the injunction in the direct form, viz. ordering the buildings to be pulled down and removed.

NOTE.—Hitherto in form such orders were made "restraining the defendant from allowing the buildings to remain on the land."

JACKSON v. *NORMANBY BRICK CO.*
(1899) 1 Ch. 438; 68 L. J. Ch. 407; 80 L. T. 482.

——**Owner must have Opportunity of showing cause.**—The plaintiffs proposed to erect certain buildings, and deposited plans thereof with the local authority, in accordance with their by-laws. The plans were rejected, and amended plans, which were submitted by the plaintiffs, were also rejected. The plaintiffs, notwithstanding such rejection, brought building materials on the ground, broke up the footpath of the road, and commenced building operations. Notice was given to the plaintiffs to remove the buildings, and they were also summoned for breach of the by-laws, and fined. As they continued to build, the local authority's surveyor entered upon the premises and began to pull down the buildings, without notice having been given to the plaintiffs. In an action by the plaintiffs against the local authority, the Court *held*, that the by-laws of the local authority justified the action of their surveyor, and entered judgment for the defendants. The plaintiffs appealed to the Queen's Bench Division, and the Court (*Denman and Wills, JJ.*) *held*, that the plaintiffs were entitled to recover the agreed damages, and entered judgment for them. The local authority appealed, and the Court (*Lord Esher, M.R., Fry and Lopes, L.JJ.*) *held*, that the local authority could not demolish the buildings under § 158 of the *Public Health Act*, 1875, without giving the owner an opportunity of showing cause why they should not be pulled down.

HOPKINS v. *SMETHWICK LOCAL BOARD OF HEALTH.*

(1890) 54 J. P. 693; 24 Q. B. D. 712; 59 L. J. Q. B. 250; 62 L. T. 783; 38 W. R. 499.

DEVIATIONS

——**Architect not Agent for the Owner.**—The defendant agreed to build a house for the plaintiff of the best materials, according to plans, &c., to the satisfaction of the plaintiff. The latter sued the defendant for breach of contract, and the defendant pleaded that before the alleged breach the contract was rescinded, and that the deviations from the plans, &c., were directed and approved by the architect appointed by the plaintiff. At the trial, a verdict was entered for the plaintiff as to the issues in fact, subject to a reference. By his award the arbitrator ordered that the verdict should be set aside, and a verdict entered for the defendant. On hearing a rule obtained by the plaintiff, the Court (*Abinger, C.B., Parke, Gurney, and Rolfe, BB.*) *held*, that the award was not uncertain, inconsistent, or repugnant, and that the plea that the deviations were ordered by the architect was bad, as the architect

was not shown to be the plaintiff's agent to bind him by any deviations from the drawings.

COOPER v. *LANGDON.*

(1841) 9 M. & W. 60; 11 L. J. Ex. 222; 1 D. P. C. (N.S.) 392.

——**Builder not entitled to Recover.**—A builder contracted in writing to build a house and to furnish the necessary materials, according to a plan. In the course of the work some deviations from the plan were carried out. In an action by the builder against the owner, for work and labour, and goods sold and delivered, *Gibbs, C.J., held*, that the plaintiff could not recover, although by reason of the deviations from the original plan, the contract as to the price is superseded.

COTTERELL v. *APSEY.*

(1815) 6 Taunt. 322; 1 Mar. 581.

——**If corruptly made are Material.**—A builder entered into an agreement with the defendant to complete a public-house according to an approved plan. The builder was to expend £300, and the defendant was to provide any balance necessary to complete the work. The defendant's surveyor by a trick got possession of the plan, and would not give it up to the plaintiff, who proceeded to fulfil his contract without it, giving the defendant notice. In an action for specific performance by the builder against the defendant, the defendant pleaded certain deviations from the plan, and *Lord Thurlow, L.C., held*, that small deviations from a plan agreed upon were not material; it is otherwise if they were made obstinately or corruptly.

CRAVEN v. *TICKELL.*

(1789) 1 Ves. J. 60.

——**Owner must be warned of the Cost.**—A carpenter agreed to alter certain premises for a fixed sum. Considerable deviations were made from the original plan, which, it was alleged, the defendant owner had seen, and had not objected to. In an action by the carpenter to recover a measure and value price for all the work done, *Lord Tenterden, C.J., held*, that the employer was not liable for any larger sum than that fixed, by reason of his consenting to deviations, &c., unless he was expressly or impliedly informed that such deviations will increase the cost, and the jury found for the defendant.

LOVELOCK v. *KING.*

(1831) 1 Moo. & Rob. 60.

——**"Quantum Meruit."**—A builder contracted to execute the carpenter's work of a certain house for a fixed sum. The plan of the roof had been deviated from. In an action by the builder for work and labour, *Lord Kenyon held*, that where a builder agrees to erect a building for a fixed sum and additions are made, he is bound by the contract as far as it can be traced, and entitled to sue on a *quantum meruit* for the excess only.

PEPPER v. *BURLAND.*

(1792) 1 Peake 139 ; 3 R. R. 665.

——**Suggested by Builder.**—A builder entered into a contract with the owner (a woman) of certain premises to build a house for a certain sum by a given date, according to plans and specification, to the satisfaction of the owner, or her surveyor. In the progress of the works the builder suggested to the owner certain deviations or alterations. In an action by the builder for the price thereof, there was no evidence of the owner or surveyor having expressed satisfaction with the work, but the surveyor had seen the work going on, and had not objected. The plaintiff agreed that the defendant had not promised to pay by measure and value, and only slight evidence was offered that the defendant had agreed to pay extra for the alterations. An unskilled person would not have known they would have increased the cost. *Martin, B.*, directed a nonsuit.

JOHNSON v. *WESTON.*

(1859) 1 F. & F. 693.

——**Verbally authorized.**—The plaintiff contracted with certain guardians, the contract providing that deviations or additions were not to be paid for unless ordered in writing. In the course of the works the plaintiff executed additional works to the knowledge of the guardians, but without any other order than the verbal directions of the architect. The plaintiff brought an action to recover the balance due to him. The *Vice-Chancellor* allowed the claim on the ground that the guardians had waived the contract by their conduct, but on demurrer, *Lord Cottenham, L.C.*, allowed the general demurrer for want of equity.

KIRK v. *BROMLEY UNION.*

(1848) 17 L. J. Ch. 127 ; 2 Ph. 640 ; 12 Jur. 85.

DWELLING-HOUSE

——**Below Ordnance Datum.**—Certain dwelling-houses were erected by the owner on a piece of land at Charlton, in the Borough of Greenwich, without the permission of the London County Council. The level of the lowest floor is 7 feet above ordnance datum, and the land on which they were built is about

1 foot 6 inches or 2 feet below the lowest floor, *i.e.* 5 feet or 5 feet 6 inches above ordnance datum. Trinity high-water mark is 12 feet 6 inches above ordnance datum, therefore the site is about 7 feet below Trinity high-water mark. The houses were drained into a 15-inch sewer, the property of Greenwich Borough, which falls into the London County Council's southern main outfall sewer, the latter at times being liable to be flooded, and being discharged by means of a pumping station under the control of the London County Council. The magistrate *held* that the land did not admit of being drained by gravitation into an existing sewer of the London County Council within the meaning of § 122 of the *London Building Act*, 1894, and convicted the appellant.

On a case stated, the Court (*Lord Alverstone, C.J., Lawrance and Kennedy, JJ.*) *held*, that land situated at such a level that the drainage from it will find its way by gravitation into the sewer under the ordinary conditions of the sewer, was so situated as to admit of being drained by gravitation into an existing sewer within the meaning of § 122 of the *London Building Act*, 1894.

ELLIS v. *LONDON COUNTY COUNCIL.*

(1904) 68 J. P. 99; 1 K. B. 283; 73 L. J. K. B. 151; 90 L. T. 206; 52 W. R. 381; 2 L. G. R. 147.

——**Partly used for Trade.**—A builder proposed to erect a licensed beerhouse on the site of an old beerhouse. The *London Building Act*, 1894, § 74 (2), requires that in every building exceeding a certain area, used in part for purposes of trade or manufacture and in part as a dwelling-house, the part used for the purposes of trade or manufacture shall be separated from the part used as a dwelling-house, as directed by the *Act*. The magistrate found as a fact that the basement and ground floor of the building were to be used for the purposes of trade, and the part above that was to be used as a dwelling-house. He, however, *held*, that the case was governed by *Carritt* v. *Godson* (1899), 2 Q. B. 193 (see p. 163), and dismissed the summons. The Divisional Court (*Lord Alverstone, C.J., and Lawrance, J.*) dismissed the district surveyor's appeal ((1901) 2 Q. B. 122).

The Court (*A. L. Smith, M.R., Vaughan-Williams and Stirling, L.JJ.*) *held*, that the question whether the building was within § 74 (2) of the *Act* was concluded by the finding of fact in the case at bar, which was binding on the Court.

Judgment of the Divisional Court *reversed*.

DICKSEE v. *HOSKINS.*

(1901) 65 J. P. 612; 2 K. B. 660; 70 L. J. K. B. 851; 85 L. T. 205; 49 W. R. 693.

——**With Public-house attached.**—A firm of builders engaged in erecting a public-house were summoned by the district surveyor for not complying with a notice served on them under the *London Building Act*, 1894, requiring them to construct throughout, of fire-resisting materials, all passages, staircases, and other means of approach to the part of the house to be used as a dwelling-house as required by § 74 (2) of the *Act*. The magistrate dismissed the summons, being of opinion that the building was not a building used or intended to be used in part for the purposes of trade and in part as a dwelling-house within the meaning of the sub-section: even if it was, the way through the bar to the lobby was not, in the circumstances, a means of approach to the part of the building to be used as a dwelling-house. The Court (*Day and Lawrance, JJ.*) *held*, that a fully licensed public-house is not a building "used in part for the purposes of trade or manufacture and in part as a dwelling-house" within the meaning of the sub-section; so that the means of approach to the part used as a dwelling-house need not be constructed of fire-resisting materials as required by that section.

CARRITT v. *GODSON & SON.*

(1899) 63 J. P. 644; 2 Q. B. 193; 68 L. J. Q. B. 799; 80 L. T. 771; 19 Cox C. C. 355.

DISTANCE BETWEEN HOUSES

A local improvement Act provided that houses facing each other should be separated by a space of at least 24 feet in width, and all streets thereafter formed should be not less than 24 feet in width. The defendant was convicted for erecting a stable and wall, each of which by the interpretation clause being a house, within 24 feet of another existing house. It was not proved that the locality in which the stable and wall were erected was a street. On a case stated, the Court (*Cockburn, C.J., Erle, Crompton, JJ., Bramwell and Watson, BB.*) quashed the conviction, and *held*, that the provisions of the Act applied to buildings in streets and not isolated places.

R. v. *SIDEBOTHAM.*

(1859) 28 L. J. M. C. 189; Bell C. C. 171; 7 W. R. 450; 5 Jur. 1083; 8 Cox C. C. 206.

EAVES-DROPPING

——**Unity of Possession.**—The defendant's predecessor in title was owner in fee of a certain house and land, and purchased the

adjoining premises. By his will he devised the house and land to his wife for life with remainder in fee to one defendant, and the adjoining premises to his wife for life and afterwards to his son, the plaintiff's husband. On the death of the testator, and prior to the date of a lease of the house and land granted to the above-named defendant, it appeared that the trustee was in possession of both properties. For twenty years and upwards the plaintiff's house had enjoyed the easement of eaves-dropping from its roof into a channel which passed through the defendant's premises. Thirteen years prior to action brought the plaintiff's wall, which before had projecting pantiles, was raised 3 feet, and the thatch projected some inches further than the pantiles. In an action tried before *Patteson, J.*, the plaintiff obtained damages, and the Court (*Lord Abinger, C.B., Bolland, Alderson, and Gurney, BB.*) refused a rule for a new trial, and *held*, that unity of possession did not extinguish, but only suspended, the right to the easement claimed, and that the right to have the rain-droppings fall on the land of another was not destroyed by raising the height of the wall.

THOMAS v. *THOMAS.*

(1835) 2 C. M. & R. 34; 1 Gale 61; 5 Tyr. 804; 4 L. J. Ex. 179.

ELEVATION

——**Small Excess would not entitle to a Mandatory Injunction.**—Although the Court has power to restrain parties from using a building which has been erected in a form that is in violation of the terms of an Act of Parliament, yet a small excess in the height of a building beyond that to which it might lawfully have been raised, where no irreparable injury arises from such excess in height, would not be a case in which the Court would interfere by interlocutory injunction to restrain the use of the building after it had been erected.

DOVER HARBOUR v. *SOUTH EASTERN RY.*

(1852) 9 Hare 493; 21 L. J. Ch. 886.

EMPLOYER'S SATISFACTION

——**Work to be done to.**—The plaintiff agreed to carry out certain works of excavation to "the entire satisfaction" of the local authority, and of the defendants or their agents, and, in the plaintiff's default to do so, the defendants had power to enter upon and take possession of the works and complete the same; the cost

of the defendants so doing was to fall on the plaintiff. The work did not proceed to the satisfaction of the defendants, and they entered upon and took possession of the works, &c. The plaintiff sued the defendants for work and labour done. The Court (*Cockburn, C.J., and other judges*) *held*, that the defendants, if dissatisfied, whether reasonably or unreasonably, with the progress of the works, were entitled to enter, provided they were acting *bonâ fide*, and gave judgment for the defendants.

STADHARD v. *LEE.*

(1863) 32 L. J. Q. B. 75; 3 B. & S. 364; 9 Jur. 908; 7 L. T. 815; 11 W. R. 361.

ENGINEER

——**Certificate of.**—The plaintiffs contracted with the corporation to carry out certain works, and to be paid only upon the certificate of the engineer to the corporation, who should be the sole arbiter in the event of any differences arising out of the contract between the plaintiffs and the corporation. When the works were in course of completion, the engineer, in alleged collusion with the corporation, refused his certificate, and also declined to make an award in reference to the matters in dispute. The plaintiffs sought a declaration that the withholding of his certificate by the engineer was a fraud on them, and that they were entitled to be paid for the work as if it had been certified. The Court (*Stuart, V.C., and Erle, J.*) *held*, that it was of the essence of the contract that the engineer should certify the amount payable before payment thereof was made, that his certificate had not been fraudulently withheld, but that he was ready to do his duty according to the terms of the contract, and they dismissed the bill.

SCOTT v. *LIVERPOOL CORPORATION.*

(1859) 28 L. J. Ch. 230; 3 De G. & J. 334; 5 Jur. 104; 7 W. R. 153.

——**Fraud.**—No action at law for not certifying lies at the suit of a railway contractor against the engineer employed by the railway company, where the contract provides that the contractor's remuneration shall depend upon his obtaining the engineer's certificate that the works have been executed, and the engineer has not been a party to the contract, although his refusal to certify has been the result of wantonness or fraud, or even of collusion with the railway company.

MURPHY v. *BOWER.*

(1866) 2 Ir. L. R. C. L. 506.

——**Fraud of.**—Certain contractors undertook to build the brickwork of a railway for an agreed sum, and the company's engineer certified the completion of the contract according to specification, whereupon the balance due was paid to the contractors. In an action by the company against the contractors for not building the brickwork of the thickness required by the specification, &c., *Pollock, C.B., held,* that the alleged fraud or neglect by the engineer was material on the question of damages, although not affecting the right of the company against the contractors.

SOUTH EASTERN RY. v. *WARTON.*

(1861) 2 F. & F. 457; 6 H. & N. 520; 31 L. J. Ex. 515; 8 Jur. 391; 6 L. T. 799.

——**Negligence of.**—A firm of engineers were employed by a local board to design, and supervise the carrying out of, a scheme of drainage. In an action brought by the firm against the board to recover the amount of their fees and charges, the defendants counterclaimed for damages on the grounds of the negligence of the firm of engineers, (1) in designing and planning the scheme, (2) in supervising the work, (3) in specifying an improper description of concrete, and (4) omitting to provide for the due escape of sewer gas. It appeared at the trial that the board had appointed a clerk of the works, to superintend the execution of the contract, against whose appointment the engineers had remonstrated. The action was referred, and the *Official Referee* found the engineers negligent, (1) in not showing properly on the plans the works to be executed, (2) in specifying concrete to be composed of so small a proportion of cement as one in nine parts of shingle, and (3) in over certifying for the work done. On hearing a motion to set aside the *Official Referee's* judgment in favour of the board, *Mathew, J., held,* that the engineers were liable in damages for their neglect for the sum necessary to make good the defects of the scheme, and to repay the amount overpaid to the contractors on their certificates, and that their liability was not limited to the amount of their professional charges.

SAUNDERS v. *BROADSTAIRS LOCAL BOARD.*

(1890) H. B. C. 64.

EVIDENCE

——**Contract unstamped.**—A builder contracted in writing to build a house for the defendant, and execute certain other works, but the contract was not stamped. In an action to recover the cost of certain extra works, *Lord Tenterden, C.J., held,* that the Court could

not look at the unstamped contract in order to ascertain whether or not the extra works were included in the contract, and he non-suited the plaintiff.

VINCENT v. *COLE.*

(1828) 3 C. & P. 481; 1 M. & M. 257.

——**Tender with Specification Proof of Contract.**—The defendant was a contractor, and read aloud a specification of proposed works to certain tradesmen, and invited them to submit tenders for the same. The plaintiff handed in a tender signed with his name, but there was no evidence that it was in his handwriting. He performed the work, and subsequently a dispute arose between the parties. In an action by the tradesman, objection was taken by the defendant that there was no proof of a contract, and *Rolfe, B., held*, that such tender taken with the specification sufficiently proved the contract.

ALLEN v. *YOXALL.*

(1844) 1 C. & K. 315.

EXECUTED CONSIDERATION

——**Local Authority Liable though Contract not sealed.**—The plaintiff was engineer of the defendants in respect of certain sewage works carried out by them. A committee to whom the matter was referred, under § 56 of the *Local Government Act*, 1894, passed a resolution in accordance with which the plaintiff visited another district, not included in the scheme, made a survey, and submitted a report thereon and an estimate to the committee. He was then instructed by the committee to act as engineer of the new works also. No agreement under seal as to his employment or remuneration was made, but a correspondence passed between the plaintiff and the clerk to the defendants on the subject. The plaintiff, with the exception of the correspondence, was in communication throughout with the committee, whose resolutions were submitted to, and approved by, the defendants from time to time. The plaintiff carried out the necessary duties, the scheme was sanctioned by the Local Government Board, quantities were taken out by him and tenders procured. No tender was accepted, and the defendants declined to pay the plaintiff the amount of remuneration which he claimed as due upon the agreement disclosed in the correspondence.

The plaintiff brought this action, and it was contended that there being no agreement under the common seal of the defendants he could not recover. *Darling, J.*, took this view, and gave judgment for the defendants, from which the plaintiff appealed,

The Court (*Vaughan Williams, Stirling, and Mathew, L.JJ.*) *held*, that there was a contract to pay implied from the acts of the corporation, and the absence of a contract under the seal of the corporation is no answer to an action brought in respect of the work done or the goods supplied.

Clark v. *Cuckfield Union*, 21 L. J. Q. B. 349, approved.

Nicholson v. *Bradfield Union*, L. R. 1 Q. B. 620, approved.

LAWFORD v. *BILLERICAY RURAL DISTRICT COUNCIL.*

(1903) 67 J. P. 245; 1 K. B. 772; 72 L. J. K. B. 554; 88 L. T. 317; 51 W. R. 630; 1 L. G. R. 535.

EXECUTED CONTRACT

——**Not Binding if not under Local Authority's Seal.**—The corporation of Leamington made a contract, under § 6 of the *Public Health Act*, 1875, with a contractor to execute certain waterworks. On failure of the contractor to complete the contract, it was determined by the corporation, and they directed their engineer and surveyor, by a resolution, to enter into a contract for the completion of the waterworks. The engineer accordingly, as agent for the corporation, directed the plaintiffs to execute the works, and certain extra works, on the basis of the cancelled contract; and the works were duly executed to the entire satisfaction of the engineer. A memorandum of this agreement was made, and signed by the engineer and the plaintiffs. The plaintiffs, who had received payment of large sums previously, brought an action to recover a sum of between £6000 and £7000, balance due to them for work done, and the defendants pleaded, *inter alia*, that the contract, not being under seal, as required by § 174 (1) of the *Public Health Act*, 1875, and the value being over £50, the plaintiffs could not recover. The Court (*Mathew and Williams, JJ.*) *held*, that the contract was not binding on the defendants, and the Court of Appeal (*Brett, Cotton, and Lindley, L.JJ.*) *affirmed* that judgment (8 Q. B. D. 579). The plaintiffs appealed, and the House of Lords (*Lords Blackburn, Bramwell, and FitzGerald*) *held*, that the sub-section is obligatory and not merely directory, and applies to an executed contract, of which the urban authority have had the full benefit and enjoyment, and which has been effected by their agent, duly appointed under their common seal.

YOUNG & CO. v. *LEAMINGTON SPA CORPORATION.*

(1883) 47 J. P. 660; 8 App. Cas. 517; 52 L. J. Q. B. 731; 49 L. T. 1; 31 W. R. 925.

EXECUTOR

——**Completing Contract.**—A builder was employed to erect certain woodwork in connection with a public banquet, but before the work was begun he died. The plaintiffs, as his executors, performed the work, using the materials of the deceased. In an action by the executors for work and labour done and materials found, the Court *held*, that the executors might recover the value of the materials.

MARSHALL v. *BROADHURST.*

(1831) 1 C. & J. 403; 1 Tyr. 349; 9 L. J. (o.s.) Ex. 105.

EXEMPTIONS

——**London Building Act, 1894.**—A builder entered into a building agreement with the Haberdashers' Company on January 3, 1894, to erect on certain land, their property, a number of houses, the plans of which were to be approved by them, at a specified cost per house. It was provided that the work was to be executed in accordance with the requirements of the *Metropolitan Building Act*, 1894, and any other Act of Parliament affecting the premises, and of the Greenwich District Board of Works, and of any other body having for the time being jurisdiction over the premises. The *London Building Act*, 1894, did not come into operation until January 1, 1895, and the proposed buildings would have satisfied the requirements of the *Metropolitan Building Acts* in force. The district surveyor served upon the builder a notice, under § 150 of the *London Building Act*, 1894, objecting to the proposed houses, plans of which had been furnished to the district surveyor. On appeal, the magistrate *held*, that the building agreement was a contract within the meaning of § 212 of the *Act*, and disallowed the surveyor's objections.

The Court (*Cave and Wright, JJ.*) *held*, on a case stated, that the exemption in § 212 of the *London Building Act*, 1894, applies not merely to buildings to be erected under a contract with a builder according to definite plans, &c., but also to buildings to be erected under a building agreement, the performance of which may extend over a period of years.

TANNER v. *OLDHAM.*

(1896) 1 Q. B. 60; 65 L. J. M. C. 10; 15 R. 603; 73 L. T. 404; 44 W. R. 63.

EXTRA WORK

——**Acquiesced in, but no Written Order.**—A company entered into a contract with a firm of engineers to construct a large iron building

at a fixed sum. The contract provided that no deviations therefrom, or additions thereto, should be made without the written order of the engineer employed by the company to supervise the works; and no allegation by the contractors of knowledge of, or acquiescence in, such deviations or additions, on the part of the company, shall be accepted or available as equivalent to the engineer's certificate, or in any way superseding the necessity of such certificate as the sole warrant for such deviations or additions.

During the progress of the works the contractors were allowed to erect girders of a heavier weight, as they stated that it was impossible to cast girders of the specified weight, and the actual weights were entered in the superintending engineer's certificates from time to time authorizing the payment of instalments on foot of the contract. On the completion of the work, the contractors claimed a sum in excess of the contract price for the extra weight of metal supplied. The Second Division of the Court of Session (*Lord Gifford dissenting*) recalled the decision of the *Lord Ordinary* allowing the claim. The company appealed, and the House of Lords (*Lords Cairns, Hatherley, Blackburn, and Gordon*) *held*, that the engineer's certificates were not written orders, and the claim was, therefore, excluded by the contract.

THARSIS SULPHUR & COPPER CO. v. *McELROY & SONS.*

(1878) 3 App. Cas. 1040; 5 Ct. of Sess. Cas (4th Ser.) R. 161.

——**Arbitration Clause does not apply to.**—A builder contracted to erect a jail, and the contract provided "*that no alterations should be made without the written authority of the architect, by whom the value of such alterations should be ascertained, and that no allowance for alterations should be made unless the value of the same was ascertained at the time the work was done, and entered in a book, such entry to be submitted to, and approved by, the architect.*" No payments on account were to be made unless on production of the architect's certificate, to be delivered every fourteen days, and when 90 per cent. of the value had been received, no further payments were to be made to the builder until three months after the architect should have certified the completion of the works. Any disputes with the builder arising out of the contract should be settled by the architect, whose decision was to be final. In an action by the plaintiff for the balance due on the contract and extras, upon a case stated by an arbitrator to whom the action had been referred, the Court (*Jervis, C.J., Cresswell, Crowder, and Willes, JJ.*) *held*, that the architect's certificate of final

completion was sufficient without stating the amount of the balance due, and that the arbitration clause did not apply to the claim for extras, but only to the mode of carrying on the work contracted for.

PASHBY v. *BIRMINGHAM CORPORATION.*
(1856) 18 C. B. 2.

——**Architect's Certificate Conclusive even if no Written Order.**—The plaintiffs contracted to carry out for the defendants certain works, and any additional works found necessary. Such extra works were only to be done on the written order of the engineer, and were to be paid for at the contract rates, and their value was to be fixed by the engineer, whose decision was final. Accounts were to be furnished monthly, and the defendants were not to be bound to pay for any work done unless on the production of the engineer's certificate, which was to be final. In an action for the cost of certain extra works certified for by the engineers, the Court *held*, that the defendants could not set up as defences that the extra works were not ordered in writing, and that no account had been sent in as required by the contract.

CONNOR v. *BELFAST WATER COMMISSIONERS.*
(1871) 5 Ir. L. R. C. L. 55.

——**Architect's Certificate Final.**—In a building contract it was provided that in the case of all extras exceeding £10 in value, the order or plan was to be signed by the architect, and countersigned by two members of the building committee, and the decision of the architect in all matters was to be final. In an action by the builder to recover the balance of his contract and extras certified by the architect, *A. L. Smith, J.*, *held*, that the provision in the contract as to extras did not limit the architect's power of decision, and that, as he had given his certificate, the defendants could not reopen the certificate either to correct an alleged mistake of the architect, or to eliminate extras, the order for which was irregular.

LAPTHORNE v. *ST. AUBYN.*
(1885) 1 T. L. R. 279; 1 Cab. & E. 486.

——**Caused by Defective Plans.**—A clergyman invited tenders by public advertisement for the erection of a church according to plans, &c., supplied by the architect to such builders as applied for them with a view to submitting a tender. Owing to inaccuracies in the plans and bills of quantities, the builder, whose tender was accepted, contracted to do the work for £1998, whereas it really cost him £3600, including extras, which, however, were

not ordered in writing by the architect as provided by the contract. The builder had been accustomed to erect public-houses, but had never built a church before. In an action by the builder against the clergyman for £1483 for extra work, the plaintiff's counsel contended that the inaccuracies in the quantities and plans amounted to a fraud on the plaintiff. *Blackburn, J., held,* that there was no evidence of fraud to go to the jury, and that the contract was binding as to extras, and that there was no evidence of waiver, and he nonsuited the plaintiff.

SHERREN v. *HARRISON.*
(1860) *Times,* February 8 ; H. B. C. 70.

——**Causing Delay.**—The terms of a building contract provided that the architect should have power to extend the time for completion of the contract in proportion to any extra works and alterations which might be ordered by him. Additions, &c., ordered by the architect delayed completion beyond the time-limit, but the architect did not extend the time. In an action by the builder for the balance of contract, *A. L. Smith, J., held,* that the contractor was bound to complete the contract within the time-limit, and was, therefore, liable to pay the stipulated damages for non-completion of the work.

TEW v. *NEWBOLD-ON-AVON SCHOOL BOARD.*
(1884) 1 Cab. & E. 260.

——**Excess of Items in Bill of Quantities.**—A building contract provided that alterations and additions were not to avoid the contract, but were to be paid for at prices to be fixed by the employer's surveyor. The tender was based on quantities calculated by the surveyor, and the specification referred to them. In an action brought by the builder for the balance of his contract, *Hill, J., held,* that having completed the work and claimed payment under the contract, the plaintiff could not claim for work in excess of the quantities on which it was based, nor for any additions or alterations beyond the amount allowed by the surveyor, and that the tender required a stamp as a minute or memorandum of the agreement.

COKER v. *YOUNG.*
(1860) 2 F. & F. 98.

——**Paid for if Written Order produced.**—A building contract provided that no extras should be paid for unless ordered in writing, and weekly bills for the same were furnished. The certificate of the architect showing the final balance due was conclusive

evidence that the work had been duly completed. Certain extras were ordered, but not in writing, and no weekly bills were furnished. In an action to recover the value of the same, *Mathew, J.*, *held*, that the fact that the architect's certificate for the final balance awarded a certain sum in respect of extras, did not entitle the builder to recover beyond the certified sum for extras in respect of which written orders had not been given, nor weekly bills delivered.

BRUNSDON v. *STAINES LOCAL BOARD.*
(1884) 1 Cab. & E. 272.

——**Parol Orders.**—A builder contracted to execute certain works according to plans and specification, to the satisfaction of the defendants' surveyor. The contract provided that the builder was to execute no extra works, or additions without the written order of the surveyor. The works were to be executed according to the plans, and all further instructions were to be given by the surveyor "*in writing or otherwise.*" In an action by the builder on the contract, and for extras orally ordered by the defendants, *Hill, J.*, refused to permit the plaintiff to give evidence of the parol orders given by the defendants for increased excavations.

FRANKLIN v. *DARKE.*
(1862) 6 L. T. 271; 3 F. & F. 65.

——**Set-off of Penalty for Delay.**—The plaintiff entered into a contract to repair the defendant's warehouse for a certain sum. It was provided that if the work was not completed within three months the plaintiff should forfeit to the defendant a sum of £5 for every week's delay beyond the stipulated time; such sum to be deducted from the money found to be due to the plaintiff on the completion of the work. In an action brought by the plaintiff in respect of extra work, *Parke, B.*, *held*, that the defendant was entitled, after having paid the contract price, to set-off the penalty against the extra work; and that he had a double remedy either to deduct or recover it.

DUCKWORTH v. *ALISON.*
(1836) 1 M. & W. 412; 2 Gale 11; 11 Tyr. & G. 742; 5 L. J. Ex. 171.

——**Sub-contractor.**—A contractor employed a mason to do certain work as extras to the contract. In an action for work and materials by the mason against the owner, the plaintiff stated that the work in question was extra to the contractor's contract, and that he had agreed with the contractor to do the work.

On production of the contractor's contract, the jury found that there was a distinct contract between the mason and the owner for the work sued on, and *Channell, B.*, entered judgment for the plaintiff.

ECCLES v. *SOUTHERN.*
(1861) 3 F. & F. 142.

NOTE.—A sub-contractor cannot sue the employer for work within the contract (*Bramah* v. *Abingdon*, 15 East, 62).

——**Surveyor's Certificate Conclusive.**—A builder contracted to erect certain villas and premises for an agreed sum in accordance with drawings, specifications, and conditions. A clause in the contract provided that the builder should be paid for all extras at the price fixed by the building owner's surveyor, and that the price of all deductions, in respect of work not done, should also be fixed by the surveyor. In accordance with the contract, the said surveyor, in his final certificate, certified for a sum which included an amount stated to be in respect of extras and additions. The building owner contended that certain of the extras were not extras to the contract, and the builder brought an action against the building owner to recover the amount certified by the surveyor as due to the builder. The action was referred to an arbitrator, who stated a special case for the opinion of the Queen's Bench, as to whether such certificate was binding and conclusive, in respect of the amount due from the defendant for extras and additions, and *Cave, J., held*, that the surveyor had power impliedly, to determine what were extras under the contract, and consequently his certificate awarding a certain amount to be due for extras was conclusive.

RICHARDS v. *MAY.*
(1883) 10 Q. B. D. 400; 52 L. J. Q. B. 272; 31 W. R. 708.

——**Verbally ordered.**—A builder agreed to execute certain repairs to the chapels and premises of a burial board, and the contract was duly sealed. During the progress of the works the surveyor for the board verbally ordered certain small works not included in the contract. In an action by the builder for the price of the latter, the County Court judge found for the plaintiff. On appeal, the Court (*Fry, L.J.; Mathew, J., dissenting*) *held*, that the board was not liable, as they were bound to contract in strict accordance with § 31 of the *Act* 15 & 16 *Vict c.* 85.

STEVENS v. *HOUNSLOW BURIAL BOARD.*
(1889) 54 J. P. 309; 61 L. T. 839; 38 W. R. 236.

FLOORS.

——**Strength of.**—Plans for the rebuilding of a warehouse destroyed by fire were lodged with a local authority by the building owner. Two days previously by-laws dealing with the construction of the floors of buildings had been allowed by the Local Government Board, and therefore came then into force. The plans submitted were duly approved, and the building proceeded with. Subsequently complaint was made that the floors did not conform to the new by-laws. The stipendiary magistrate dismissed the summons. On a case stated, the Court (*Lord Alverstone, C.J., Wills and Channell, JJ.*) *held*, that where the by-laws of a local authority specify the strength of joists for certain kinds of floors, and do not specify for all possible modes of construction, beyond requiring the materials used to be suitable and of due strength, a floor constructed by timber joists with steel supports is governed by such general words, and not by the rules dealing with floors formed entirely of timber, and they *affirmed* the decision of the stipendiary.

TOWERS v. *BROWN.*
(1903) 2 L. G. R. 942.

FORE-COURT.

The respondents had erected a new building, the external wall of which was not less than 20 feet from the centre of a highway used for vehicular traffic. Between the external wall and the highway a portion of what was formerly a garden was enclosed by a wall 13 feet distant from the centre of the highway. A portion of this wall was left standing, and upon it railings were fixed. Notice to set back the old boundary wall was given to the respondents by the appellants, as no consent had been given by the appellants to the erection of the new building within any space between the external wall and the highway. The magistrate dismissed the summons.

Wright, J., held, on a case stated, that § 14 of the *London Building Act*, 1894, does not empower the London County Council to give notice requiring the owner or occupier of land, upon part of which he has erected a new building, to set back an old boundary wall, so that such wall shall not be less than 20 feet, the prescribed distance, from the centre of the highway.

LONDON COUNTY COUNCIL v. *AYLESBURY DAIRY CO., LTD.*
(1898) 61 J. P. 759; 1 Q. B. 106; 67 L. J. Q. B. 24; 77 L. T. 440.

A builder was summoned by the appellants for failing to comply with a notice to set back the boundary of a fore-court left in front of a house built by him, to a distance not less than the prescribed distance from the centre of the roadway. The road was stated to have been a highway when the *Metropolis Management and Building Acts Amendment Act*, 1878, was passed. The respondent contended that the house fronted to another road, and, therefore, the space complained of was not a fore-court, and that the road in question was a highway at the time the *Act* was passed, and a "street existing" within the meaning of the proviso in § 6 of the *Act* of 1878. The magistrate dismissed the summons without inquiring whether the street was a "street" at the date when the *Act* was passed. On appeal, the Court (*Cave and Wills, JJ.*) sent the case back for the magistrate to decide the latter question.

LONDON COUNTY COUNCIL v. *MITCHELL.*
(1894) 63 L. J. M. C. 104; 10 R. 308.

§ 98 of the *Metropolis Management Amendment Act*, 1862, provides, that "no existing road, passage, or way, being of a less width than 40 feet, shall be hereafter formed or laid out for building as a street for the purposes of carriage traffic, unless such road, passage, or way be widened to the full width of 40 feet," the measurement to be taken half on either side, from the centre or crown of the roadway, to the external wall or front of the house, or to the fence or boundary of the fore-court, if any. The magistrate dismissed a summons brought by the Metropolitan Board of Works in respect of a contravention of the above section. On appeal, the Court (*Willes and Byles, JJ.*) *held*, that the provision did not apply where the building abutted in the rear upon an old lane of less width than 40 feet, and *affirmed* that decision.

METROPOLITAN BOARD OF WORKS v. *COX.*
(1865) 19 C. B. (N.S.) 445.

FORFEITURE

——**Contract not Completed by Fixed Date.**—The lessee of certain land covenanted on pain of forfeiture to erect thereon, by a fixed date, certain houses. The houses were not erected by that date, and the lessors served upon the lessee notice of the breach, but the notice did not require the lessee to remedy the breach. The lessee thereupon gave up possession in an undefended action for ejectment. The plaintiff company, who had advanced large sums to the lessee, and were equitable mortgagees, went into liquidation,

and the liquidator applied for relief against the forfeiture under § 14 (2) of the *Conveyancing and Law of Property Act*, 1881. *Bacon, V.C., held*, that the lessor was not entitled to the forfeiture until he had served notice on the lessee requiring him to remedy the breach of covenant and make compensation under § 14 (1) of the *Act*, and he granted relief.

NORTH LONDON LAND CO. v. *JACQUES.*
(1884) 48 J. P. 405; 32 W. R. 283; 49 L. T. 659.

FOUNDATIONS

——**Difficult Soil.**—A builder contracted with a corporation to execute certain building works according to plans and specifications prepared by the defendants. Having taken a superficial view of the proposed site of the works, and without making any borings or excavations to ascertain the nature of the ground and the foundations that would be necessary, he submitted a tender which formed the basis of the contract. Extra works were only to be paid for if executed on the written order of the architect or engineer, whose decision on all matters of dispute or misunderstanding arising out of the contract was to be final. During the progress of the works the contractor was obliged to incur large extra expenditure owing to the nature of the soil, which involved more costly foundations than the builder anticipated. No extra works in respect of the foundations were ordered by the architect. In an action by the builder to recover the balance of the contract and the cost of the extra foundations, it was proved that the engineer-in-chief had lent the contractor a book dealing with the nature of the soil of the site, and had warned him in respect thereof, but no borings had been made by the corporation. *Mathew, J.*, found for the defendants. The plaintiff appealed, and the Court (*Lord Esher, M.R., Bowen and Kay, L.JJ.*) *held*, that in the absence of a specific guarantee, or definite representation, as to the nature of the soil, the contractor was not entitled to abandon the contract on discovering the nature of the soil, nor because the engineer declined to give written orders entitling to extra payment in consequence of difficulties in executing the works which had not been foreseen by the contractor, and dismissed the appeal.

BOTTOMS v. *YORK CORPORATION.*
(1892) H. B. C. 147.

——**Filled in with Noxious Matter.**—The respondent, a builder, had begun, after notice to the local authority, to erect certain

houses under a building agreement upon land which was formerly part of an old private unconsecrated cemetery, and had been closed by Order in Council. The surface had been raised by depositing thereon builder's rubbish, varying from 1 to 4 feet deep. The district surveyor warned the respondent that he would require him, in accordance with the by-laws, to remove any objectionable matter met with in sinking the foundations, and that he would take proceedings if any bodies were interfered with. The by-laws were made under the *Metropolis Management and Building Acts Amendment Act*, 1878, § 16, with respect to foundation of houses, &c., and the sites of houses, &c., and the mode in which such should be formed, excavated, filled up, &c. The term "site" was defined by § 14 to mean "the whole space to be occupied by such houses, &c., between the level of the bottom of the foundations and the level of the base of the walls." The builder was summoned for commencing to build on a site which had been filled up with materials impregnated with animal matter —to wit, dead human bodies—without having removed the said animal matter, in breach of a certain by-law. The magistrate dismissed the summons, and the local authority appealed. The Court (*Grove and Hawkins, JJ.*) *held*, that the meaning of the word "site" in the by-law was governed by the interpretation of that word in the *Act*, so that the by-law did not authorize the Metropolitan Board of Works to direct the removal of fæcal, animal, or vegetable matter in the soil below the level of the bottom of the foundations.

BLASHILL v. *CHAMBERS.*
(1884) 49 J. P. 388; 14 Q. B. D. 479; 53 L. T. 38.

FRAUD

——**Contractor's.**—A corporation sued their contractor for damages for bad and fraudulent execution of the works. The full amount of the contract had been paid to him, on the certificates of the engineer, some of which had been obtained by fraud. Judgment was given against the contractor for £7000, and subsequently against his sureties, who appealed. The Court (*Lord Esher, M.R., Bowen and A. L. Smith, L.JJ.*) *held*, that the sureties could not set up a defence founded on the fraud of the principal they guaranteed, and dismissed the appeal.

KINGSTON-ON-HULL CORPORATION v. *TURNER.*
(1892) 8 T. L. R. 672.

——**Contractor's.**—A builder contracted with the London School Board to erect certain school-houses. The work was completed

and certified for, and the builder was duly paid the balance of the contract. Subsequently the School Board brought an action against the builder, as provided for in the building contract, on the grounds of fraud in executing the contract, and wilfully deviating from the plans and specifications in his own interest. By consent, the action was referred by *Denman, J.*, to an architect for investigation and report. On reading the report by the architect, *Denman, J.*, found for the defendant, and *held*, that to prove breach of a condition as to recovery by the building owner for fraud or wilful deviation from the terms of a building contract, it is necessary to show that deliberate and substantial variations have been made with the object of benefiting the contractor or saving his pocket.

LONDON SCHOOL BOARD v. *JOHNSON.*
(1891) H. B. C. 191.

——**Contractor's.**—A builder contracted to erect a school-house for the London School Board in accordance with plans, specification, and conditions. By a clause in the contract no certificate, final or otherwise, was to relieve the builder from liability for fraud, default, or wilful deviation, until a period of four years from the date of completion had elapsed. The School Board brought, within four years, an action against the builder for damages, and alleged fraud, default, and wilful deviation from the plan and specification by the builder. The jury found on the facts for the plaintiffs, and assessed the damages at £2141, and *Day, J.*, entered judgment for that amount.

LONDON SCHOOL BOARD v. *WALL.*
(1890) H. B. C. 36.

GARDEN WALL

The owner of a building estate conveyed to the plaintiff a plot of land, and covenanted that no buildings except dwelling-houses, to cost at least £200 each, should be erected on the opposite side of the road to the said land. Three years later the defendant purchased from the same vendor the land opposite to that of the plaintiff, and threw it into a pleasure-ground, building a wall varying in height from 8 feet 6 inches to 11 feet, and also a vinery. In an action for a mandatory injunction, *James, V.C.*, *held*, that the building of the wall to the height of 11 feet, and the erection of the vinery, were breaches of the covenant; that the building of the wall up to 8 feet 6 inches was not a breach of covenant; and that damages instead of a

mandatory injunction were adequate, in the circumstances of the case.

BOWES v. *LAW.*

(1870) L. R. 9 Eq. 636; 39 L. J. Ch. 483; 22 L. T. 267; 18 W. R. 640.

GENERAL LINE OF BUILDING

——**Advertising Station.**—The owners of a dwelling-house, standing back 38 feet from the footpath, and in front of which was a fore-court bounded by a dwarf brick wall 2 to 3 feet high, 9 inches thick, and surmounted by a stone coping and iron railings 5 feet 6 inches in height, removed the wall, and built upon its footings a wall 11 feet in height and 14 inches thick. The new wall was to serve the double purpose of a boundary wall to the fore-court and an advertising station. The whole of the wall was certified to be in front of the general line of buildings, and was erected without the consent of the London County Council. The owners were summoned for unlawfully erecting a structure beyond the general line of buildings without the consent of the London County Council, under § 75 of the *Metropolis Local Management, &c., Act*, 1862. The magistrate ordered the demolition of the wall.

The Court (*Day and Wright, JJ.*) *held*, on a case stated, that the original dwarf wall was not a "building structure or erection" within the meaning of § 75, and that so long as it existed the site on which it stood was to be regarded as vacant land for the purposes of the section; but that the substituted wall was a "building, structure, or erection," within the meaning of the section, and that there was jurisdiction to order its demolition ((1895) 1 Q. B. 915). The owners appealed.

The Court (*Lindley, Lopes, and Rigby, L.JJ.*) *affirmed* the judgment of the Divisional Court, and also *held*, that the issuing of the architect's certificate of the general line of buildings was not a condition precedent to taking out the summons, and that as the order was made after the certificate the order was valid.

LAVY v. *LONDON COUNTY COUNCIL.*

(1895) 59 J. P. 630; 2 Q. B. 577; 64 L. J. M. C. 262; 14 R. 634; 78 L. T. 106; 43 W. R. 677.

——**Alterations.**—The owner of a brick house in a certain street gave notice to the local authority of his intention to effect certain structural alterations thereto, and he obtained leave to erect a hoarding "during alterations of shop front." Negotiations then

took place as to a proposed new line of frontage, but without result. Subsequently the owner had the front wall of the house removed from the first floor down to the ground floor level, leaving the side walls and the front wall of the basement standing; and the upper walls were propped up with timber supports, for which brickwork and iron girders were substituted on February 17, 1893.

On March 1, 1893, the house having been taken down in order to be rebuilt within the meaning of § 155 of the *Public Health Act*, 1875, the local authority, by resolution in due form, prescribed under that section a building line, 10 feet further back from the street than the old frontage, and notice of such resolution was duly served upon the owner. Some further negotiations having failed, the local authority brought an action in the name of the Attorney-General against the owner to restrain him from building beyond this line. *Kekewich, J., held*, that the house had been substantially taken down, and the powers of § 155 arose, but that as the local authority had not prescribed the new line in time, they could not prevent the defendant from maintaining the building he had erected. The local authority appealed, and the Court (*Lindley, Lopes, and A. L. Smith, L.JJ.*) *held*, that inasmuch as a substantial part of the house and of its front wall was left standing, neither the house nor the front thereof had been taken down within the meaning of § 155, and, therefore, the power to fix a building line had never arisen.

ATTORNEY-GENERAL v. *HATCH.*

(1893) 57 J. P. 825; 3 Ch. 36; 62 L. J. Ch. 857; 2 R. 533; 69 L. T. 469.

——**Alterations.**—The owners of a public-house gave orders to a builder to remove the sashes of one of the windows and alter them. The builder during the work substituted brickwork for the stone sill of the window, without the authority or knowledge of the owners. The latter were summoned by the local authority for having taken down part of the front or external wall of a house to be rebuilt or repaired, and not having rebuilt it in accordance with the provisions of the local Act; and the justices convicted him. The *Recorder* quashed the conviction, subject to a case. The Court (*Lord Alverstone, C.J., Wills and Channell, JJ.*) *affirmed* the decision of the *Recorder;* the sill, having been removed without the knowledge of the owners, had not been "taken down to be rebuilt and repaired."

YABBICOM v. *BRISTOL BREWERY.*

(1903) 67 J. P. 261; 1 L. G. R. 477.

——**Areas in Front.**—The owner of a field in a certain parish obtained the approval of the local board of a plan, submitted by him, for laying out the field in streets 30 feet wide, and parallel to each other, for building purposes. He was entitled to erect houses thereon with their front walls set forward to the lines of the streets shown on the plan, but in one street he did not do so, but erected houses set back some feet from the road, having areas in front. The owner of a frontage on the adjoining road began to build six shops, the end one of which abutted on the street last mentioned, and was carried forward to the line of the street, and, therefore, further forward than those houses already built with the areas in front. The frontage-owner was summoned and convicted under 38 & 39 *Vict. c.* 55, § 156, which makes it necessary to obtain the written consent of an urban authority in order to bring forward any house or building forming part of a street beyond the front wall of the building on either side thereof. On appeal, the Court (*Mathew and A. L. Smith, JJ.*) *held*, that the words "*house or building*" do not include new buildings in course of erection on land never before built upon.

WILLIAMS v. *WALLASEY LOCAL BOARD.*
(1886) 50 J. P. 582; 16 Q. B. D. 718; 55 L. J. M. C. 133; 55 L. T. 27; 34 W. R. 517.

——**Bow Window.**—The owner of certain premises built a bow window thereto beyond the general line of buildings, contrary to the provisions of a local improvement Act. The window was built of fireproof material and did not appreciably interfere with the access of light and air. On summons he was convicted. The Court (*Lord Campbell, C.J., and Wightman, J.*) quashed the conviction and *held*, that although this bow window was contrary to the local Act, it was allowed by the *Building Act*, 14 *Geo. III. c.* 78, and the two provisions being inconsistent with each other the latter amounts to a repeal of the local Act.

R. v. *PRATT.*
(1855) 3 C. L. R. 826.

——**Bow Window.**—The owner of certain premises erected in August, 1869, a bay window, without the consent in writing of the Metropolitan Board of Works, projecting beyond the general line of buildings in the street, the distance of such line of buildings not exceeding 50 feet from the highway. The vestry summoned the owner under § 75 of the *Metropolis Local Management, &c., Act*, 1862, on October 21, 1869. The certificate of the superintending architect of the Metropolitan Board of Works deciding the general

line of buildings was given on October 5, 1869. The magistrate considered that he was bound by the certificate of the superintending architect and convicted the owner, who appealed. The Court (*Bovill, C.J., Willes, Montague Smith, and Brett, JJ.*) *held*, that the superintending architect's certificate was not absolutely conclusive, and that the magistrate is entitled to judge for himself whether the line fixed by such certificate is in fact the general line of buildings in the street.

SIMPSON v. *SMITH.*

(1871) L. R. 6 C. P. 87; 40 L. J. M. C. 89; 24 L. T. 100; 19 W. R. 355.

——**A Building in Two Streets.**—A number of cottages stood 8 feet back from a certain road, the said 8 feet belonging to the cottages, and forming no part of the road or footway. A plot of building land, 64 feet in length, lay between the end cottage and a corner plot owned by the appellant. The road was a *cul de sac*, and on the other side of the cottages was only pasture land. The appellant erected on his plot a house abutting on the road, but with main entrance on the adjoining road. On an information under § 3 of the *Public Health (Buildings in Streets) Act*, 1888, the justices *held*, that the building was in both roads, and that the cottages were buildings on one side of the road within the meaning of the section, and convicted the appellant. On a case stated, the Court (*Mathew and Smith, JJ.*) *held*, that it was a question of fact for the justices whether or not the house was in both roads, and whether or not the cottages were sufficiently near to the house to be on one side thereof within the meaning of the Act, and *affirmed* the conviction.

WARREN v. *MUSTARD.*

(1891) 56 J. P. 502; 61 L. J. M. C. 18; 66 L. T. 26.

——**Church is a House.**—A corporation had power under their Act to prescribe the building line of a certain borough, and it was provided that no new street was to be of less width than 40 feet. The perpetual curate of a certain parish began to erect a permanent church on the site of a temporary church, and the corporation gave him notice of a resolution they had passed that the road on which the church was abutting must be not less than 40 feet wide. They then prescribed a building line which came within the limits of the church as designed. *Malins, V.C., held*, on a motion for an injunction, that the church was a house, and the curate, in whom the freehold of the site was vested under 43 *Geo. III. c.* 108, an "owner" within the meaning of the corporation's Act, but that

the motion was too late, and the curate could not be restrained from erecting the church in the manner in which it had been commenced.

FOLKESTONE CORPORATION v. *WOODWARD.*
(1872) L. R. 15 Eq. 159; 42 L. J. Ch. 782; 27 L. T. 574; 21 W. R. 97.

——**Conservatory.**—In August, 1869, the plaintiff contracted with a builder to erect a conservatory of wood and glass upon the portico of his house at the corner of a street, and projecting 4 feet beyond the main wall. The parapet wall had to be pulled down, and the framework was completed by August 24, 1869. The authority of the Metropolitan Board of Works was not previously obtained. On January 14, 1870, the defendants informed the builder that proceedings would be taken unless the projection was removed, which the architect of the Board of Works certified was beyond the general line of buildings. On March 2 the necessary certificate was obtained from the superintending architect, and on March 4 a summons was taken out and served at the builder's place of business, and thence conveyed to the plaintiff. After some adjournments the summons was heard on April 22, and the demolition of the structure was ordered. On motion to restrain the defendants from pulling down the structure, *Malins, V.C., held,* that the summons was good against the builder if issued while the building complained of is being erected; after completion the summons should be against the owner or occupier. The six months limited by § 107 of the *Metropolis Local Management Acts Amendment Act,* 1862, for the commencement of any proceedings for penalties under the Act, begins to run from the time when the structure is discovered to be so far advanced as to show the full extent of the projection complained of, and not from the completion of the building.

BRUTTON v. *VESTRY OF ST. GEORGE'S, HANOVER SQUARE.*
(1871) L. R. 13 Eq. 339; 41 L. J. Ch. 134; 25 L. T. 552; 20 W. R. 84.

——**Conservatory.**—The *Metropolis Local Management, &c., Act,* 1862, § 75, provides that "no building, structure, or erection shall, without the consent in writing of the Metropolitan Board of Works, be erected beyond the general line of building in any street, &c., in which the same is situated, such general line of building to be decided by the superintending architect . . . for the time being." The owner of a certain house erected a small

iron and glass conservatory, projecting beyond the wall of his house but not beyond his shop front. The magistrate dismissed a summons taken out against the owner under § 75 of the *Act*, deciding that the conservatory was not an "erection" within the *Act*, and that it was not beyond the general line of building. On appeal, the Court (*Erle, C.J., Willes, Byles, and Keating, JJ.*) *affirmed* this decision.

R. v. *SPARROW.*

(1864) 16 C. B. (N.S.) 209; 33 L. J. M. C. 118; 10 Jur. 771; 10 L. T. 504; 12 W. R. 832.

——**Corner House.**—The owners of a plot of land, forming a corner between two roads, began to erect thereon four shops and dwelling-houses. The superintending architect of the respondents issued his certificate, which stated explicitly the situation of one of the houses objected to by him as being in front of the building line. The owners appealed, and the certificate was *affirmed*, whereupon the respondents obtained an order from a magistrate for the demolition of so much of the building as was beyond the line of buildings.

The Court (*Wills and Wright, JJ.*), on a case stated, *affirmed* the magistrate's order, and the owners appealed.

The Court (*Lindley, Lopes, and Rigby, L.JJ.*), in a considered judgment, *held*, that when an application is made to a magistrate under § 75 (1) of the *Metropolis Local Management, &c., Act*, 1862, for an order to demolish a building, on the ground that it is beyond the line decided by the superintending architect to be the line of building of the street in which the building is situate, the question whether the building is in that particular street, of which the line has been so laid down, is to be decided by the superintending architect's certificate, and not by the magistrate to whom the application is made.

ALLEN v. *LONDON COUNTY COUNCIL.*

(1895) 59 J. P. 644; 2 Q. B. 587; 64 L. J. M. C. 228; 14 R. 749; 73 L. T. 101; 43 W. R. 674.

——**Dedication.**—The plaintiff built on a site of a mansion, but which was vacant since 1880, fronting to a street, a row of houses further forward than the line of the adjoining houses. The superintending architect of the London County Council made a certificate defining the line of building to be the fronts of the adjoining houses, and the vestry served a notice upon the plaintiff requiring him to put his buildings back to the line certified. A part of the land on which the plaintiff had begun to build, extending

up to the roadway, was part of an estate; upon another part of which a building had been erected in a line with the adjoining houses. It was contended on behalf of the plaintiff that the owner never intended to give up the right to use that part of the estate as a site for building, or to devote it as an open space for ever.

North, J., held, that the building proposed to be erected was a new building, and not a restoration of the old building so as to be subject to the provisions of § 75 of the *Metropolis Local Management, &c., Act*, 1862.

WORLEY v. *ST. MARY ABBOTTS (KENSINGTON) VESTRY.*

(1892) 2 Ch. 404; 61 L. J. Ch. 601; 66 L. T. 747; 40 W. R. 566.

——**Erroneous grounds of Objection.**—The surveyor to Wimbledon Urban District Council published a notice to architects, &c., intimating that all building notices and plans must be deposited not later than noon on the second and last Thursdays in each month, to admit of examination by him before submission to the building committee. A copy of this notice was sent to the architects of the defendants who proposed to erect houses in a certain street in the district. They deposited plans of a private house on August 28, 1903, and gave notice that they would commence to build on August 31, 1903. The plans showed that the billiard-room would project 6 feet 3 inches beyond the line of the main wall of the adjoining house. On August 31 building was started, and subsequently the plans were amended to comply with certain by-laws of the council. On September 15 the building committee disapproved of the plans, on the ground that they infringed the building line. On September 24 the Council notified the defendants that the plans were disapproved, giving, in error, as the reason, that they did not comply with the by-laws. On September 28 the defendants were informed through their architect that the real ground of disapproval was that the plans infringed § 3 of the *Public Health (Buildings in Streets) Act*, 1888. By this date the walls of the billiard-room were 5 feet above ground, and the defendants continued to build. Formal notice of objection was served under § 3 of the *Act* of 1888 on November 18, when the walls were built and the roof-timbers were in position.

On summons the magistrates convicted and fined the defendants £20 and costs, which were paid.

The plaintiffs then claimed a mandatory injunction, and *Farwell, J., held*, that a penalty under § 3 of the *Act* of 1888

for infringement of the building line is not the only remedy, and that an injunction at the suit of the Attorney-General on behalf of the public will lie to restrain such infringement, and in a proper case a mandatory order will be made, notwithstanding a previous conviction and fine for the offence. Mandatory injunction granted, and confined to the billiard-room.

ATTORNEY-GENERAL v. *WIMBLEDON HOUSE ESTATE CO., LTD.*

(1904) 68 J. P. 341; 2 Ch. 34; 73 L. J. Ch. 593; 91 L. T. 163; 20 T. L. R. 489; 2 L. G. R. 828.

——**Fore-court.**—The owner of a house applied to the Metropolitan Board of Works, under 25 & 26 *Vict. c.* 102, § 75, for permission to erect a building on his fore-court, the original line of buildings in the street being some distance from the roadway; and the application was granted on condition that the building was not erected higher than that next adjoining. The owner, however, did not take up the consent, and built higher than the building next adjoining, and was summoned by the local board for building beyond the general line of buildings, contrary to the conditions of the consent, in contravention of § 75 of the *Act*. The superintending architect of the Board, on the day before the hearing, certified that the original line of building was the "general line of building." The magistrate ordered the demolition of so much of the building as was beyond the general line of building fixed, and the owner appealed. The Court (*Cockburn, C.J., Mellor and Shee, JJ.*) *affirmed* the order.

BAUMAN v. *ST. PANCRAS VESTRY.*

(1867) L. R. 2 Q. B. 528; 36 L. J. M. C. 127; 15 W. R. 904.

——**Fore-court.**—The owner of certain premises commenced to erect buildings upon the fore-court thereof, thereby extending the frontage of the premises towards the road. The superintending architect of the Metropolitan Board of Works made a certificate, under § 75 of the *Metropolis Local Management, &c., Act*, 1862, deciding what was the general line of buildings. The premises above mentioned extended several feet beyond the general line fixed by the certificate. The owner was summoned for an offence against § 75 of the *Act*. The magistrate decided against a point of law, taken on behalf of the local authority, that he had no jurisdiction to review the decision of the superintending architect, and, having viewed the street, the magistrate decided that, in fact, the building complained of, although extending beyond the general line of buildings laid down, did not extend beyond the limits of

certain other buildings, viz., stable, chapel, and shops in the same street: and, accordingly, he dismissed the summons. The local authority appealed to the Queen's Bench Division, and the Court (*Lord Coleridge, C.J., Stephen and Mathew, JJ.*) *held*, that the architect's certificate was absolutely conclusive and binding on the magistrate, and they granted leave to appeal (13 Q. B. D. 878). The owner appealed against this decision, which the Court of Appeal (*Bowen and Fry, L.JJ., Brett, M.R., dissenting*) *affirmed*. The owner appealed, and the House of Lords (*Earl of Selborne, L.C., Lords Watson, Bramwell, and FitzGerald*) *affirmed* the judgment of the Court of Appeal.

SPACKMAN v. *PLUMSTEAD BOARD OF WORKS.*
(1885) 49 J. P. 420; 10 App. Cas. 229; 54 L. J. M. C. 81; 53 L. T. 157; 33 W. R. 661.

——**Garden.**—A railway company was authorized by its Act to carry out all the works necessary to constructing an underground line. They were also authorized by a certain section in their Act to deviate laterally within certain limits shown upon the plans deposited. The company erected a part of one of their stations upon the site of two gardens beyond the general building line of, and fronting to, a certain street, within the limits of deviation, without the consent of the London County Council.

On hearing of a summons under § 75 of the *Metropolis Local Management, &c., Act*, 1862, the magistrate *held, inter alia*, that it was not necessary for the purposes of the railway, that any part of the station building should have been erected beyond the general line of buildings, and he ordered the demolition of so much of the building as was beyond the general line of buildings. The defendants appealed, and the Court (*A. L. Smith and Grantham, JJ.*), on a case stated, gave judgment for the appellants.

The London County Council appealed from this decision, and the Court (*Lindley, Fry, and Lopes, L.JJ.*) *held*, affirming the judgment of the Divisional Court, that the special Act empowered the company to build a station on any of the scheduled land within the limits of deviation, and that its effect was to repeal § 75 of the *Metropolis Local Management, &c., Act*, 1862, so far as it related to the station.

CITY & SOUTH LONDON RAILWAY CO. v. *LONDON COUNTY COUNCIL.*
(1891) 56 J. P. 6; 2 Q. B. 513; 60 L. J. M. C. 149; 65 L. T. 362; 40 W. R. 166.

——**Garden.**—An indictment was laid by a local authority against a builder for erecting a building in a certain street several feet

beyond the front walls of the adjoining houses on each side. The defendant's house had a garden, between the front wall and the street, 16 feet deep, and separated from the street by dwarf walls: and upon this garden he proposed to erect a shop. He obtained permission to do so according to plans approved by the local authority's surveyor, but in carrying out the work he brought the shop beyond the line agreed to by the surveyor. *Erle, C.J.*, directed the jury on the facts to find the defendant guilty, and he stated a case for the Court of Crown Cases Reserved. The Court (*Erle, C.J., Pollock, C.B., Martin, B., Blackburn and Mellor, JJ.*) *held*, that whether a house or building forms part of a "street," within the meaning of the *Local Government Act Amendment Act*, 1861, is a question of fact for the jury, and as the jury had not decided that point, the conviction was quashed.

R. v. *FULLFORD.*

(1864) L. & C. 403; 33 L. J. M. C. 122; 10 Jur. 522; 10 L. T. 346; 12 W. R. 715; 9 Cox C. C. 453.

——**House on either side.**—The owner of a plot submitted a plan showing a house which he proposed to build, set back but 6 feet from the road. The local authority had two weeks previously approved the plans of another house which it was proposed to build on the same side of the street, but which showed the house set back 12 feet from the road, and they refused to approve of the plans first mentioned. The owner whose plans had been approved began to build, and on April 29 the front main wall of his house was 5 inches above ground, but not up to the level of the road. On April 29 the first-named owner, notwithstanding that his plans had been rejected, began to build the front main wall of his house.

On hearing a complaint made under § 3 of the *Public Health (Buildings in Streets) Act*, 1888, the magistrates dismissed the summons. The local authority appealed, and the Court (*Fry and Mathew, L.JJ.*) *held*, that the respondent had not erected any part of a house beyond the front main wall of the house or building on either side thereof within the meaning of § 3 of the *Act*.

RAVENSTHORPE LOCAL BOARD v. *HINCHCLIFFE.*

(1889) 54 J. P. 421; 24 Q. B. D. 168; 59 L. J. M. C. 19; 61 L. T. 780.

——**Knowledge of Infringement.**—The London County Council, on October 28, 1891, summoned the respondent for erecting a house beyond the general line of building. The line had been certified on August 6, 1891. Notice of building was given by the

respondent and plans duly deposited in the previous February, and the foundations were excavated within three months after. Notice to the district surveyor, however, was not given until April 18, three days after the brickwork had been commenced. On April 27 the first floor of the building had been erected, and no objection had been made either by the district surveyor, the vestry, or the London County Council, until June, 1891, when the respondent was requested to attend at the offices of the latter. At that time the building was nearly finished. The time allowed for making complaint, by 11 & 12 *Vict. c.* 43, § 11, was six months from the date when the matter of complaint arose. The justices dismissed the summons, and the County Council appealed. The Court (*A. L. Smith and Denman, JJ.*) *held*, that the justices should have convicted, as the summons was in time. The respondent appealed, and the Court (*Lindley and Kay, L.JJ.*) allowed the appeal, and *reversed* the judgment of the Divisional Court.

LONDON COUNTY COUNCIL v. *CROSS.*

(1891) 56 J. P. 550; 61 L. J. M. C. 160; 66 L. T. 731; (1892) W. N. 80; 8 T. L. R. 537.

——**No continuous Line of Buildings.**—The owner of a plot of land built thereon in 1893 a house near, but not abutting on, a certain street, and distant 240 yards north from the next house on the same side of the street, the latter having been erected in 1886. In 1894 he bought a plot 70 feet deep on the same side to the north of the house which he had built the previous year, for the purpose of erecting cottages thereon. On the opposite side of the road a number of houses had been built close up to the roadway. The plan of the proposed cottages showed that they would stand nearer to the road than the owner's house, but there was no continuous line of building. On hearing *mandamus* to compel the local authority to pass the plans of the cottages, the Court (*Mathew and Kennedy, JJ.*) *held*, in making the rule absolute, that the cottages need not be built in line with the house erected by the owner in 1893, as in the circumstances there would be no erection of a house or building beyond the front main wall of the house or building on either side thereof in the same street.

R. v. *ORMESBY LOCAL BOARD.*

(1893) 43 W. R. 96.

——**No Offence.**—A builder was summoned by a local authority for bringing a house beyond the general line of buildings without their written authority, having neglected to comply with a notice to set the house back to the proper building line, contrary to § 3 of

the *Public Health (Buildings in Streets) Act*, 1888. The justices were evenly divided, and dismissed the summons, as they thought they must have a majority to convict. Subsequently a second information was laid in terms the same as the first, but claiming penalties for a longer period. The justices convicted, and the builder appealed. The Court (*Wills and Kennedy, JJ.*) *held*, that the first dismissal was good, and decided that the erection of the house was not an offence under § 3, and that the continuing of the house could not be an offence, and they quashed the conviction.

KINNIS v. *GRAVES.*

(1898) 67 L. J. Q. B. 583; 78 L. T. 502; 46 W. R. 480; 19 Cox C. C. 42.

——**Notice of.**—The plaintiff and the defendants, who derived title from the mortgagees of the plaintiff, were in possession of land purchased by the plaintiff from a Land Company in one lot, all the lots offered being subject to mutual covenants, *inter alia*, not to erect any buildings beyond a specified building line. The defendants took with notice of the restrictive covenants, but the mortgagor imposed no express restrictions upon the defendants as to the use of the land. The plaintiff brought an action for an injunction to restrain the defendants from erecting any building within 15 feet of the roadway, except fences not higher than 6 feet. *North, J., held*, that there was no implied obligation, as between mortgagor and mortgagee, restricting the user of the land, and that the mortgagor (the plaintiff) was not entitled to enforce the restrictive covenant as against the defendants.

KING v. *DICKESON.*

(1889) 40 Ch. D. 596; 58 L. J. Ch. 464; 60 L. T. 785; 37 W. R. 553.

——**Objection delayed.**—A building was erected in January, 1871, beyond the general line of buildings, and the fact did not come to the knowledge of the local vestry until the following December. In January, 1872, they applied to the superintending architect of the Metropolitan Board of Works to decide the general line of buildings, but did not obtain his decision until June, 1872. The *Metropolis Local Management, etc., Act*, 1862, provides that "no person shall be liable for the payment of any penalty or forfeiture under the recited Acts or that Act, for any offence made cognizable before a justice, unless the complaint . . . have been made before such justice within six months next after the commission or discovery of such offence." The vestry issued a summons for building beyond the general building line against the builder on

August 29, 1872, and the magistrate *held*, that they were out of time, and dismissed the summons. On hearing a case stated, the Court (*Keating and Honyman, JJ.*) *held*, that this limitation clause applies only in the case of pecuniary penalties or forfeitures, and not to offences under § 75.

BERMONDSEY VESTRY v. *JOHNSON.*
(1873) L. R. 8 C. P. 441; 42 L. J. M. C. 67; 28 L. T. 665 21 W. R. 626.

——**Person liable.**—Blackpool Corporation laid an information against the respondent under § 3 of the *Public Health (Buildings in Streets) Act*, 1888, charging that certain premises had, without the written consent of the corporation, been erected or brought forward beyond the front main wall of the adjoining buildings in the same street, and that the respondent, after notice, did allow the offence to continue. The premises were erected by the respondent's predecessor in title, a builder, notwithstanding the fact that the plans which he had twice submitted for the corporation's approval were rejected on each occasion. Subsequently the builder became bankrupt, and the ownership passed to the respondent. The justices dismissed the information.

The Court (*Lord Alverstone, C.J., Darling and Channell, JJ.*), on a case stated, *held*, that the respondent had not committed an offence under § 3 of the *Act*, and dismissed the appeal.

BLACKPOOL CORPORATION v. *JOHNSON.*
(1902) 1 K. B. 646; 71 L. J. K. B. 485; 87 L. T. 28; 20 Cox C. C. 276.

——**Plans Approved.**—The plaintiff agreed to grant a lease for a term of years of certain premises to the defendant, when the latter should erect thereon a house according to plans, &c., to be approved by the plaintiff, and according to any Acts of Parliament in force for the regulation of buildings, &c. The house projected 3 feet beyond that of the adjoining owner who, shortly after operations were begun, complained to the Board of Works. The latter gave the defendant notice that he must build in a line with the adjoining house, whereupon the defendant refused to proceed with the work. In an action on the contract to compel the defendant to proceed to erect a house, *Stuart, V.C., held*, that the defendant was bound to rebuild in conformity with the plan modified to meet statutory requirements.

CUBITT v. *SMITH.*
(1864) 11 L. T. 298; 10 Jur. 1123.

——**Pumping Station.**—A waterworks company proposed to erect, under their statutory authority, a new station for pumping adjoining and abutting upon a certain road. The surveyor to the local board served upon the secretary to the company a notice intimating that if the building were erected it would infringe the building line of the road, and that in such an event proceedings by the local board would be taken against the company under § 3 of the *Public Health* (*Buildings in Streets*) *Act*, 1888. The company thereupon sought a declaration that they were entitled to build without the defendants' interference, and the defendants pleaded want of jurisdiction to grant the declaration sought. *Stirling, J., held*, that there might be jurisdiction to make the declaration, but that it was limited to injunctions against apprehended trespass; and that an injunction to restrain proceedings before a magistrate ought only to be granted under very special circumstances, which in this case did not exist, and he dismissed the action.

GRAND JUNCTION WATERWORKS CO. v. *HAMPTON URBAN DISTRICT COUNCIL.*

(1898) 62 J. P. 566; 2 Ch. 331; 67 L. J. Ch. 603; 78 L. T. 673; 46 W. R. 644.

——**Rebuilding.**—The owner of certain premises standing 50 feet back from the street, which he desired to rebuild, applied to the London County Council for permission to build to the line of certain existing buildings, one storey in height, which had been previously erected in the fore-court of the premises, but permission was refused. The owner then submitted plans showing the existing buildings to the district surveyor, who, under § 43 of the *London Building Act*, 1894, certified them to be correct. The council were asked by the owner to approve of the new buildings as deviations from the certified plan under § 43 (2) of the *London Building Act*, 1894, but they declined to entertain the application. The proposed buildings would be in advance of the general line of buildings, subsequently certified. The owner was served with a notice of objection to the proposed buildings, under § 150 of the *Act*, from which he appealed. The magistrate upheld the County Council, and on appeal the Court (*A. L. Smith, Rigby, and Collins, L.JJ.*) *affirmed* the judgment of the Divisional Court (*Ridley and Darling, JJ.*) and *held*, that the owner was not entitled to erect the proposed buildings upon the fore-courts, beyond the general line of buildings, without the consent in writing of the County Council.

SCOTT v. *CARRITT.*

(1900) 63 J. P. 772; 82 L. T. 67.

——**Rebuilding.**—The owner of a certain building which he was desirous to rebuild submitted plans, &c., to a corporation, which were returned approved, but accompanied by a printed notice to the effect that such approval gave no authority for the making of any projection on the front of the building into the street beyond the proper line of building in the street. The owner pulled down the old building, but afterwards received a notice from the corporation, under § 35 of the *Local Government Act*, 1858, that any building thereafter to be built, must be built on a certain line 13 feet behind the line on the plans already approved. The owner sought, and *Stuart, V.C.*, granted, an injunction restraining the corporation from interfering with the plaintiff in rebuilding, &c., and *held*, that the corporation were not at liberty to give such a notice after the notice of approval was given by their surveyor.

SLEE v. *BRADFORD CORPORATION.*
(1863) 4 Giff. 262; 1 N. R. 386; 9 Jur. 815; 8 L. T. 491.

——**Rebuilding.**—An owner pulled down his premises, and submitted the plans of a building, which he proposed to erect on the site thereof, to the local authority. The latter prescribed a building line 6 feet further back than the frontage of the premises pulled down, and refused to pass the plans unless they were altered accordingly. The owner, however, began to put in the foundations, whereupon the local authority sought an injunction. The owner alleged want of *bona fides*, because on either side were comparatively new houses, and a general line had not been prescribed in respect of them. *North, J.*, *held*, that putting back the house 6 feet was not an unreasonable exercise of the powers conferred on the board by § 155 of the *Public Health Act*, 1875, and he granted the injunction.

SUTTON LOCAL BOARD v. *HOARE.*
(1894) 10 T. L. R. 586.

——**School-house.**—A school board submitted plans of a proposed school-building to a local board, to which the latter objected as infringing a by-law. The school board, however, proceeded with the building. On January 22 the local board prescribed a building line which did not interfere with the main wall, but would interfere with certain annexes not then commenced. The board, however, built the annexes, and the local board sought a mandatory injunction. *Pearson, J.*, *held*, that the building line was not well prescribed, as it was prescribed at a time when, owing to resignations, there were not a sufficient number of duly

elected members of the board to form a quorum. The local board appealed, and the Court (*Cotton, Lindley, and Bowen, L.JJ.*) *reversed* the judgment below, and *held*, that a building line under § 155 of the *Public Health Act*, 1875, may be prescribed where a building is taken down to be rebuilt, for any portion which has not been commenced, although other parts may have been commenced, unless what has been commenced involves as a matter of construction a projection beyond the line afterwards prescribed; and they ordered the demolition of the annexes, which might have been built in another position equally suitable, without infringing the building line.

NEWHAVEN LOCAL BOARD v. *NEWHAVEN SCHOOL BOARD.*
(1885) 30 Ch. D. 350; 53 L. T. 571; 34 W. R. 172.

——**Shop.**—The defendants obtained permission from the London County Council to bring forward a one-storey shop to the same line as the shops adjoining and beyond the general line of buildings, subject to the condition that the whole of the land in front of the shop was to be dedicated to the public. The defendants erected the shop and threw the land in question into the pathway, but formed in the latter an entrance to the cellar, 4 feet square, covered over with a hinged cellar-flap, for the purpose of admitting casks of beer to the cellar. On hearing a summons by the London County Council, the magistrate came to the conclusion that the defendants had complied with the condition of the council as far as they could, and he dismissed it. The Council appealed, and the Court (*Mathew and Wright, JJ.*) dismissed the appeal.

LONDON COUNTY COUNCIL v. *BEST.*
(1893) 9 T. L. R. 499.

——**Shop.**—The owner of a house, in which a furniture business was carried on, erected a shop in the garden or fore-court lying between the house and the roadway. Previously the owners of other houses on the same side of the street had obtained the permission of the Metropolitan Board of Works, under § 76 of the *Metropolis Local Management, &c., Act*, 1862, to build shops on their respective fore-courts, on condition that a strip of the fore-court should be dedicated to the public for the purpose of widening the footpath. The owner of the house first mentioned erected his shop level with the other shops, but without the permission of the Board. Subsequently the general line of building was duly certified, and proceedings were taken against the owner within six months of the date of the superintending architect's certificate.

The magistrate dismissed the summons on the ground that it had not been brought within six months of the date of the offence, and, on a case stated, the Court (*Lord Coleridge, C.J., and Manisty, J.*) *held*, that such certificate was not a condition precedent either to the finding of the general line of buildings, or of the offence of building beyond it, and they *affirmed* the magistrate's decision.

PADDINGTON VESTRY v. *SNOW.*

(1881) 46 J. P. 87; 45 L. T. 475; 30 W. R. 46.

——**Shop Front.**—In 1875 the plaintiffs, who were joint owners in fee of a house and an area enclosed by an iron railing, proposed to erect certain bay windows to form a shop front extending beyond the line of frontage in the street, but not beyond the limits of the area. On the refusal of the local authority to approve the plan, the plaintiffs commenced to build without sanction in October, 1875, and the works were continued to the knowledge of the district surveyor, and completed by March, 1876. Subsequently the local authority threatened to proceed against the plaintiffs for contravening § 156 of the *Public Health Act*, 1875, unless the building was set back to the original frontage. The plaintiffs sought an injunction to restrain the local authority from laying the threatened complaint or proceeding to recover the prescribed penalties. *Jessel, M.R., held*, that a Court of Equity has no jurisdiction to restrain criminal proceedings for the recovery of a penalty imposed by an Act of Parliament for a breach of its enactments.

KERR v. *PRESTON CORPORATION.*

(1880) 6 Ch. D. 463; 46 L. J. Ch. 409; 25 W. R. 264.

——**Shops.**—The defendant had begun to erect certain shops according to a plan which he had submitted to, but which had been disapproved by, the local authority, and the latter by information sought an injunction to restrain him from continuing to build beyond an alleged building line. *Romer, J., held*, that all the circumstances of the case must be taken into account in deciding what was the basis of the building line, and that it is not right to pick out a certain wall in an adjacent public building and say it is the "front main wall" which is to govern the line of building. The building must be looked at as a whole: its character, position, and distance from the premises complained of.

A.-G. v. *EDWARDS.*

(1891) 1 Ch. 194; 63 L. T. 639.

——**Shops.**—The owner of a building estate, held under a building agreement, gave notice to the local board on December 6, 1887, of

his intention to build rows of shops and private houses; and on February 7, 1888, on the application of the local board, the superintending architect of the Metropolitan Board of Works gave a certificate, with plan attached, fixing the general line of buildings. The distance of such line was in excess of 50 feet from the road, at the corner of which one of the houses had been built. This house was within 50 feet of the said road, but faced, and was entered from, an adjoining road. On hearing a summons under § 75 of the *Metropolis Local Management, &c., Act*, 1862, the magistrate ordered the demolition of so much of the house as projected beyond the general line of buildings. On a case stated, the Court (*Lord Coleridge, C.J., and Cave, J.*) *affirmed* the decision below.

GILBART v. *WANDSWORTH BOARD OF WORKS.*
(1889) 53 J. P. 229; 60 L. T. 149; 5 T. L. R. 31.

——**Shops.**—The owner of certain land, who had previously laid out a new street thereon, deposited with the vestry, in 1890, plans of a row of shops which he proposed to build in a street immediately adjoining, and at right angles to, the land. The end house of the row, the side wall of which faced the new street, was not completed. In 1892 the owner erected a row of houses in the new street 10 feet further back than the side wall referred to. No other buildings were at that time in the new street. Subsequently the owner granted a building lease of the land to the appellant, who in building utilized the footings and flank wall of the incomplete house so that the building projected 10 feet in advance of the line of buildings in the new street. As the appellant had not obtained the consent of the London County Council under § 75 of the *Metropolis Local Management, &c., Act*, 1862, he was summoned. He contended that he was entitled to continue the erection of a building commenced before the existence of any general line of buildings in the new street, but the magistrate decided against him and ordered the demolition of the projecting part. The Court (*Wills and Wright, JJ.*), on a case stated, *held*, that the fact that the appellant's lessor had commenced the building prior to the existence of a general building line did not entitle the appellant to continue such building after the general building line had been established, and *affirmed* the magistrate's demolition order.

WENDON v. *LONDON COUNTY COUNCIL.*
(1894) 58 J. P. 606; 1 Q. B. 227; 63 L. J. M. C. 117; 9 R. 292; 70 L. T. 440; 42 W. R. 370.

NOTE.—This case was *affirmed* in the Court of Appeal (*Lord Esher, M.R., Lopes and Davey, L.JJ.*), (1894) 1 Q. B. 812.

——**Site of Old Building.**—A builder appeared before a magistrate to answer the complaint of the London County Council that he had begun to erect a building beyond the general line of buildings in a certain street. In 1890 a new street was made, opening at right angles into a road where there was situated a continuous row of houses fronting to the road with fore-courts in front and gardens at the back. The plan of the new street, previously submitted to the council, showed that two of the houses were to be pulled down, and that the new street would occupy the whole site of one, and part of the site of the other. These houses having been pulled down, the builder proceeded to erect on so much of the site of the last-mentioned house as remained a block of buildings, fronting to the new street, and projecting 7 feet beyond the general line of buildings in that street.

The magistrate *held*, that the builder was entitled to build beyond the general line of buildings, and dismissed the summons. The Divisional Court *held*, that his decision was wrong, and the builder appealed.

The Court (*Lord Esher, M.R., Lopes and Rigby, L.JJ.*) *held*, that the builder was not building on the site of a previously existing building within the meaning of § 74 of the *Metropolis Management Amendment Act*, 1862, and, therefore, was infringing § 75 of that *Act*.

Lord Auckland v. *Westminster District Board of Works*, L. R. 7 Ch. 597, distinguished.

LONDON COUNTY COUNCIL v. *PRIOR*.

(1896) 60 J. P. 292; 1 Q. B. 465; 65 L. J. M. C. 89; 74 L. T. 234.

——**Site reduced.**—A railway company acquired under their statutory powers land on which certain houses stood, and demolished them. On the completion of the railway, they conveyed the land to the plaintiff who proposed to build thereon. The superintending architect of the Metropolitan Board of Works fixed the general line of building without reference to the demolished houses, in consequence of which the plaintiff would be unable to build on nearly half of the land. The local board, to whom plans were submitted by the plaintiff, made no objection within the fifteen days prescribed by the *Metropolis Local Management, &c., Act*, 1862, § 63, but subsequently threatened to proceed against the plaintiff if he built according to the plans submitted which infringed the building line fixed. The plaintiff obtained from *Malins, V.C.*, an interlocutory injunction restraining the local board from interfering with the plaintiff's proposed buildings, and the board appealed.

The Court (*James and Mellish, L.JJ.*) *held* (*affirming* the decision below) that the plaintiff had not lost the right to rebuild the houses on the same site as that occupied by the houses before they were demolished, and that for this purpose the yard of a house was equivalent to a house. In determining the general line of buildings the architect ought to have regard to the frontage of houses previously existing, and which may be rebuilt, as well as those still standing.

AUCKLAND v. *WESTMINSTER LOCAL BOARD.*
(1872) L. R. 7 Ch. 597; 41 L. J. Ch. 723; 26 L. T. 961; 20 W. R. 845.

——**Stables.**—The plaintiff was owner of two houses built 6 feet back from the street, which were the first residences erected there. The defendant was owner of a plot of land adjoining the plaintiff's premises, and served upon the urban authority a written notice of his intention to build a stable and coach-house upon his plot. The accompanying plan showed that the buildings would be erected next the plaintiff's premises and would be built right up to the street, *i.e.*, 6 feet in advance of the building line. The plan was passed by both committee and general council of the urban authority, and the minutes of the latter were read and confirmed at the next council meeting, and signed by the chairman.

The *Public Health* (*Buildings in Streets*) *Act*, 1888, § 3, requires that the "written consent" of the urban authority shall be obtained in order to erect a building in any street beyond the front main wall of the building on either side thereof in default of which a penalty of 40*s.* is recoverable for every day during which the offence is continued after written notice is given on behalf of the urban authority.

The plaintiff brought an action for damages and an injunction, and *Farwell, J., held*, that the offence prohibited by § 3 was one compound offence for which a penalty was imposed to be exacted by the urban authority, and, therefore, it gave no cause of action to a private individual who has sustained special damage thereby: and that the proceedings of the urban authority constituted a sufficient "written consent" for the purposes of the section.

MULLIS v. *HUBBARD.*
(1903) 67 J. P. 281; 2 Ch. 431; 72 L. J. Ch. 593; 88 L. T. 661; 51 W. R. 571; 1 L. G. R. 769.

——**Tribunal of Appeal.**—A building owner applied to the Superintending Architect of Metropolitan Buildings, under § 22 of the

London Building Act, 1894, to define the general line of building in a certain street. The owner was dissatisfied with the line fixed and appealed to the Tribunal of Appeal, which body, after inspection and hearing, varied the certificate of the superintending architect. On a case stated by the Tribunal of Appeal, the Court (*Wills and Kennedy, JJ.*) *held*, that on an appeal the Tribunal of Appeal in fixing the building line can take different points from which and to which they will define the general building line to those which the architect has chosen.

LONDON COUNTY COUNCIL, IN RE, AND THE LONDON BUILDING ACT, 1894.

(1904) 68 J. P. 490; 91 L. T. 501; 2 L. G. R. 1265.

——**Villas.**—A clause in a building agreement provided that no building should be erected beyond a certain line of frontage. The same vendor sold the adjoining land subsequently, and the deed conveying the same recited the above-named building agreement, and bound the purchaser to a like covenant. The above-named adjoining land became vested in the defendant, who began to build beyond the building line. In an action on the covenant by the assignee of the purchaser of the first-named land, *Wood, V.C.*, granted an injunction to restrain the defendant from building beyond the building line. The defendant appealed, and the Court (*Knight Bruce, and Turner, L.JJ.*) *affirmed* the decision of the *Vice-Chancellor*.

COLES v. *SIMS*.

(1854) 1 Kay 56; 2 W. R. 151; 23 L. J. Ch. 258; 5 De G. M. & G. 1; 22 L. T. (o.s.) 277.

——**Wooden Structure.**—The owner of certain premises built a wooden structure 9½ feet long, 7 feet high, and 3 feet deep, with a glass front, beyond the front main wall of the premises, without the consent in writing of the local authority, contrary to § 156 of the *Public Health Act*, 1875. The owner was a photographer, and in order to advertise his business he placed a number of photographs in the structures which was entered by a door at one end. The magistrate *held*, that the structure was a "*building*" within the meaning of § 3 of 51 & 52 *Vict. c.* 52, and convicted the owner. On a case stated, the Court (*Pollock, B., and Hawkins, J.*) *affirmed* the conviction.

LEICESTER CORPORATION v. *BROWN*.

(1892) 57 J. P. 70; 9 T. L. R. 8; 62 L. J. M. C. 22; 5 R. 35; 67 L. T. 686; 41 W. R. 78.

——**Yard.**—The occupier of certain premises comprising a house and a yard enclosed by a brick wall, a portion of the yard lying between the front of the house and the footpath in the street, raised part of the wall 5 feet, and roofed in that part of the yard lying between the footpath and his house. On the space roofed in had stood previously two buildings, one used for a w.c. and the other a receptacle for shop shutters. On hearing a summons against the occupier, issued by the vestry under § 75 of the *Metropolis Local Management, &c., Act*, 1862, for erecting a building beyond the general line of buildings, formed by the line on which the front wall of the house stood, the magistrate convicted the defendant, who appealed. The Court (*Cockburn, C.J., Mellor, Lush, and Hayes, JJ.*) *held*, that the structure formed was a "building," although the mere raising of the wall was not within the meaning of the section.

CLARK v. *ST. PANCRAS VESTRY.*
(1870) 34 J. P. 181.

GOODS SOLD AND DELIVERED

A brickmaker agreed with a builder to make bricks for him at a certain price per thousand. In an action by the former to recover the price of a certain quantity delivered, the defendant proposed to show that many bricks were so badly made as to be worthless. *Patteson, J., held*, that the defendant might deduct from the claim the price charged for the bricks which were so badly made as to be good for nothing, but could make no deduction in respect of bricks in a trifling degree badly made, and only less valuable.

PARDOW v. *WEBB.*
(1842) C. & M. 531.

GUARANTEE

——**By Building Owner.**—A builder agreed to execute the carpenter's work in a certain house and to find all materials. The builder, being in difficulties, could not obtain timber, and it was supplied by a local tradesman on the following undertaking signed by the owner of the house: "I agree to pay *M.* (the tradesman) for timber to house out of money that I have to pay *W.* (the builder), provided *W.'s* work is completed." The Court *held*, that this was not a guarantee to pay if *W.* should fail, but a direct undertaking to pay when the work should be completed.

DIXON, &c. v. *HATFIELD.*
(1825) 2 Bing. 439; 10 Moo. (C. P.) 421.

——**By Building Owner.**—A builder contracted with the defendant to build certain houses, and the defendant gave a guarantee for £200 to the plaintiffs, who supplied lime and mortar for the building of the houses to that amount. The defendant gave a further order for £50 worth of lime, &c. The builder subsequently required more lime, and the plaintiffs supplied it on his order, without any further express authority from the defendant, who, however, resided in one of the houses at the time when the last order was delivered. At the trial of an action for the recovery of the cost of the last delivery of lime, *Martin, B., held*, that it was a question for the jury whether the defendant so acted as to lead the plaintiff to believe the latter supply was to be on his credit. The jury found for the plaintiff.

SMITH v. *RUDHALL.*
(1862) 3 F. & F. 143.

HEIGHT OF BUILDING

——**Above 80 Feet.**—§ 47 of the *London Building Act*, 1894, prohibits the erection of a building, not being a church or chapel, to a greater height than 80 feet, without the consent of the London County Council. A builder was summoned for contravening this section, and set up as a defence that, as the Commissioners of Works had entered into an agreement to take a lease at their option when the buildings were completed, and as the buildings had been erected under the supervision of an architect subject to the approval of the Commissioners, the buildings were vested, &c., in her Majesty, and that, therefore, they came within the exemption contained in § 203. The magistrate dismissed the summons, and the County Council appealed. The Court (*Lawrance and Channell, JJ.*) *allowed* the appeal, and sent the case back for a conviction.

DRURY v. *RICKARD.*
(1899) 63 J. P. 374.

——**Exceeding Width of Street.**—The respondents erected a house, at the corner of an old street and of a new street, the latter being less than 50 feet wide, exceeding in height the distance from the front of the house to the opposite side of the street, without the written consent of the London County Council, contrary to § 85 of the *Metropolis Local Management, &c., Act*, 1862. The front of the building was in, and the entrance thereto from, the old road; there was, however, a tradesmen's entrance to the building from the new road. On hearing a summons, the magistrate found,

that the building was not erected in the new street, so as to be subject to the provisions of the section, and dismissed the summons accordingly. The London County Council appealed.

The Court (*Mathew, Wright, and Collins, JJ.*) *held*, that although the main frontage was in the old street, the house was nevertheless "erected on the side of a new street" within the meaning of § 85, and that an offence had been committed by the respondents against that section.

LONDON COUNTY COUNCIL v. *LAWRANCE & SONS.*

(1893) 57 J. P. 617; 2 Q. B. 228; 62 L. J. M. C. 176; 5 R. 494; 69 L. T. 344; 41 W. R. 688.

——**Exceeding Width of Street.**—The respondent, a building owner, was summoned by the London County Council, on March 7, 1894, for erecting a building, exceeding in height the width of a new street, without their consent in writing, contrary to § 85 of the *Metropolis Local Management, &c., Act*, 1862, and for continuing the erection of the same. On September 7, 1893, the respondent applied for the consent of the Council *nunc pro tunc*, but on October 16, 1893, it was refused. On December 23, 1893, a penal notice had been served on the respondent, and a similar notice had been served on the firm of builders in 1892. The respondent contended that, as he had not been summoned for, or convicted of, the original offence, he was not liable for any penalty in respect of the continuing offence, and that as proceedings had not been taken against him within six months, according to § 107 of the *Act*, he was not liable for a penalty in respect of the original offence. The magistrate *held* that the summons was out of time, and dismissed it.

The Court (*Mathew and Kennedy, JJ.*) *held*, that the continuance at a prohibited height, after notice, of a building already erected, was a continuing offence within the meaning of the *Act*, that complaint had been made within six months next after the commission, or the discovery, of the offence, and that the respondent was liable. They accordingly remitted the case to the magistrate.

LONDON COUNTY COUNCIL v. *WORLEY.*

(1894) 59 J. P. 263; 2 Q. B. 826; 63 L. J. M. C. 218; 10 R. 510; 71 L. T. 487; 43 W. R. 11; 18 Cox C. C. 37.

HOARDING

——**Discretion of Local Authority to grant Licences.**—A builder submitted plans, &c., of a proposed building to a local vestry,

and applied for a licence to erect the necessary hoarding. The licence was refused on the ground that the plans showed that the building would infringe the general line of buildings in the street. The builder erected a hoarding which was taken down by the vestry. On hearing a rule for a *mandamus*, the Court (*Lord Campbell, C.J., and others*) were of opinion that the granting of such licence was within the discretion of the vestry acting *bonâ fide*, but in view of the builder having taken the law into his own hands, they discharged the rule.

R. v. *SHOREDITCH VESTRY.*
(1856) 20 J. P. 404.

——**Erection of Advertising Station restrained.**—The lessee of a house and premises covenanted not to erect any building or erection on any part of the premises without the lessor's written licence. Subsequently the lessee erected a wooden hoarding against the side of the house for advertising purposes. The lessor sought, and *Mathew, J.*, granted, an injunction against the lessee.

POCOCK v. *GILHAM.*
(1883) 1 Cab. & E. 104.

——**Not a Building.**—The first-named defendant purchased, in 1869, from the owner in fee, a portion of a residential estate subject to a covenant that the buildings erected thereon should be of a prescribed height, have a cemented front and a slated roof. In June, 1892, the defendant company, under licence from the first-named defendant, erected a wooden hoarding varying in height from 8 to 14 feet, for use as an advertising station. In an action on the covenant, and for an injunction, the chief question was whether the hoarding was a building within the meaning of the covenant, and *Kekewich, J.*, *held*, that the erection of the hoarding was not a breach of the covenant.

FOSTER v. *FRAZER.*
(1893) 57 J. P. 646; 3 Ch. 158; 63 L. J. Ch. 91; 3 R. 635; 69 L. T. 136; 42 W. R. 11.

——**Improper Conditions of Licence.**—A contractor about to erect a large building, which it was estimated would take two years to complete, applied to the Commissioners of Sewers for a licence to erect the necessary hoardings in four streets. The application was refused, except upon condition that there should be a separate licence for each street available only for a period of two months, that a fee of £10 should be paid for each licence, and that no advertisements should be permitted on or against the hoardings. On hearing a rule for a *mandamus*, the Court (*Cockburn, C.J., and*

Mellor, J.) *held*, that one licence was sufficient, and that its duration should be for such reasonable time as was necessary to finish the buildings, and that the Commissioners had no power to impose the condition prohibiting advertisements thereon.

R. v. *COMMISSIONERS OF SEWERS OF THE CITY OF LONDON.*

(1870) 22 L. T. 582.

——**Rating of.**—An advertising agent obtained by written agreement, the right to exhibit advertisements, posters, &c., on certain hoardings, and his name was inserted in a valuation list as being the rateable occupier of the hoardings under § 3 of the *Advertising Stations* (*Rating*) *Act*, 1889. The written agreement contained a provision that the agreement should not give him any interest in the premises upon which the hoardings stood, or in any way make him liable for rates and taxes during the continuance of the agreement.

The Court of Quarter Sessions *held*, that the advertising agent was the person who permitted the land upon which the hoardings stood to be used for the exhibition of advertisements, and dismissed his appeal.

The Court (*Grantham and Channell, JJ.*), on a case stated, *held*, that the advertising agent did not permit the land on which the hoardings were erected to be "used for the exhibition of advertisements" within the meaning of the section, and was not liable to be rated in respect thereof.

BURTON v. *ST. GILES' & ST. GEORGE'S ASSESSMENT COMMITTEE.*

(1900) 64 J. P. 213; 1 Q. B. 389; 69 L. J. Q. B. 184; 82 L. T. 24; 48 W. R. 222.

——**Rating of.**—A contractor about to erect a large Government building, enclosed the site by a large hoarding. Pursuant to a clause in the contract permitting advertisements to be affixed to the hoarding to a height not exceeding 12 feet, the contractor let the hoarding as an advertising station for £60 a month. The hoarding had been erected by permission of the Commissioners of Sewers for the City of London, who had charged a sum of £10 for their licence, and the builder's name had been entered in the poor-rate book as the person liable under § 3 of the *Advertising Stations* (*Rating*) Act, 1889, to be rated in respect thereof. The builder appealed on the grounds that it was not the hoarding, but the land on which it stood, that was rateable, that the land was "otherwise occupied," and that the land was Government property, and that,

therefore, he was not the rateable occupier. The Court (*Mathew and A. L. Smith, JJ.*) *held*, that the hoarding had been erected on land not otherwise occupied, and that as the builder permitted the hoarding to be used for advertising, he must be deemed to be the beneficial occupier, and, therefore, liable for the rate.

CHAPPELL v. *OVERSEERS OF ST. BOTOLPH.*
(1892) 56 J. P. 310; 1 Q. B. 561; 65 L. T. 581; 40 W. R. 192.

——**Standing unreasonably long.**—The defendants, with a view to rebuilding, erected a hoarding in front of their premises, obstructing the approach to the adjoining house, and subsequently pulled down their premises and erected a new building. The adjoining owner brought an action for damages, alleging that, owing to the unreasonable delay in the building operations, the obstruction by the hoarding was continued for a long and unreasonable time, and customers were prevented thereby from entering the plaintiff's shop; and negligence in the work of demolition, by reason of which building materials in large quantities fell, breaking the plaintiff's skylights, and damaging his goods; and negligence in excavating, underpinning, and shoring up, whereby the plaintiff's premises were damaged. *Tindal, C.J.*, entered a verdict for the plaintiff, subject to the award of a barrister, whose award came before the Court on motion. *Tindal, C.J.*, *held*, in a considered judgment, that the Lord Mayor's licence, and custom, were a sufficient answer to the claim in respect of the hoarding, and that the defendants had no right to underpin the party wall, either partially or wholly, unless that could be done without injuring the plaintiff's house.

BRADBEE v. *CHRIST'S HOSPITAL.*
(1842) 11 L. T. C. P. 209; 4 M. & Gr. 761; 5 Scott (N.R.) 79; 2 D. P. C. (N.S.) 164.

HUSTINGS

——**Not a Building.**—Hustings were erected in a borough at the expense of candidates for a seat in Parliament, and were injured by the mob, and repaired by the candidates, who sought compensation through the mayor. The Court *held*, that the structure was not a "building" within the meaning of the *Act* 57 *Geo. III. c.* 19, and the injury was not such as was contemplated by the statute, and that, as the property was not in the mayor, he could not maintain the action, even if it were a "building."

ALLEN v. *AYRE.*
(1823) 1 L. J. (O.S.) K. B. 204; 3 D. & R. 96.

——**Destroyed by Mob.**—A builder agreed in writing with the mayor of a certain borough to erect hustings "*as before, with alterations, for* £19 10*s., by receiving the wood back again, and to find labour, &c.*" As soon as the election was over the mob destroyed the hustings. In an action, by the builder against the mayor, for the price of the wood destroyed, *Wightman, J.*, rejected evidence offered to show that on former occasions the contractor took all the responsibility, and a verdict was entered for the plaintiff. On hearing a rule, the Court (*Patteson and Erle, JJ.*) *held*, in a considered judgment, that the defendant was liable, and that evidence was not admissible to show that on former occasions those who put the hustings up took them away.

FULLER v. *PATTRICK.*

(1849) 18 L. J. Q. B. 236; 13 Jur. (o.s.) 561.

ILLEGAL CONTRACT

——**To build on Disused Burial Ground.**—The defendant agreed to erect certain buildings on a plot of land, and the plaintiff agreed to grant a lease of the same when the buildings were erected, the defendant to pay an agreed rent until the lease should be executed. In an action for such rent, the defence proved that the land was a disused burial ground, and that by a recent Act it was illegal to build thereon, *Day, J., held*, that the contract was an illegal one, and could not be enforced.

GIBBONS v. *CHAMBERS.*

(1885) 1 T. L. R. 530; 1 Cab. & E. 577.

——**To build in Contravention of Statute.**—The defendant contracted with a builder for the erection of a house of wood with stone footings in the fore-court of the defendant's premises for use as a permanent shop. At the suggestion of the builder, and to evade the provisions of the *Metropolitan Building Act*, 1855, wooden footings not let into the ground were substituted for stone. During the progress of the works, the sub-contractor employed by the builder was convicted by a magistrate on a summons under § 45 of the *Act*, for not having given the statutory notice to the local authority. In an action by the builder for the balance of the agreed price, *Martin, B.*, reserved leave to the defendant to move, if the Court should be of opinion that the contract, being in contravention of the *Act*, could not be enforced. On hearing a rule obtained by the defendant, the Court (*Erle, C.J., Williams, Crowder, and Byles, JJ.*) *held*,

that the contract, being illegal, could not be enforced, and the rule was made absolute.

STEVENS v. *GOURLEY.*
(1859) 7 C. B. (N.S.) 99; 6 Jur. 147; 29 L. J. C. P. 1; 1 L. T. 33; 1 F. & F. 498; 8 W. R. 85.

ILLEGAL STRUCTURE

The proprietor of a theatre erected in front thereof a verandah of glass and iron, without first obtaining the consent of the Metropolitan Board of Works, contrary to the provisions of the *Metropolitan Building Act*, 1855. An adjoining owner sought an injunction against the proprietor of the theatre on the ground that the structure had been illegally erected, and that it interfered with the access of light to his premises. *Stirling, J., held*, that the plaintiff could not sue alone, and that any proceedings in respect thereof must be taken by the Attorney-General, *ex officio*, or at the relation of the Metropolitan Board of Works, and that there was no interference with the plaintiff's lights.

BROOKS v. *TERRY.*
(1887) 4 T. L. R. 678.

IMPLIED CONTRACT

The lessee of certain premises under a covenant to repair, verbally promised a builder that he would assign to the builder the lease, if the latter would effect certain repairs. The builder duly put the premises in repair. In an action by the builder, *Best, C.J., held*, that, on refusing to assign the lease, the defendant was liable, on an implied contract, to pay the plaintiff for such repairs.

GRAY v. *HILL.*
(1826) Ry. & M. 420; 27 R. R. 766.

INCONSISTENT ENACTMENTS

The London School Board, under § 19 of the *Elementary Education Act*, 1870, built a school-house upon certain land compulsorily purchased by them for the purpose. The external fence of the playground attached to the school was within 20 feet of the centre of the roadway. §§ 4 and 6 of the *Metropolis Management and Buildings Acts Amendment Act*, 1876, prohibits the erection of a wall, &c., within 20 feet of the centre of the roadway without the consent of the Metropolitan Board of Works. The

London County Council summoned the School Board for contravening the provisions of that *Statute*, but the magistrate dismissed the summons. The County Council appealed, and the Court (*Wright and Collins, JJ.*) *held*, on a case stated, that the provisions of the latter *Act* were inconsistent with the statutory powers of the School Board for the acquisition and user of land, and that, therefore, the Board could use the land for their statutory purposes free from the restrictions imposed by those provisions.

LONDON COUNTY COUNCIL v. *SCHOOL BOARD FOR LONDON.*

(1892) 56 J. P. 791; 2 Q. B. 606; 62 L. J. M. C. 30; 40 W. R. 604; 5 R. 1.

INSURANCE

——**Company may reinstate.**—Certain premises insured against fire were burned down. A clause in the policy empowered the company to "reinstate or replace" the premises, instead of paying the loss. In an action by the insured for the payment of the loss, the Queen's Bench Division (*Manisty and Wills, JJ.*) decided in favour of the company. On appeal by the plaintiff, the Court (*Lord Esher, Cotton and Bowen, L.JJ.*) *held*, that in the event of total loss, the company might reinstate the property by other property equivalent to that destroyed; and in the event of partial loss, they might repair and put in, not in the exact place, but in the same state in which it was before the fire, instead of paying the amount of the loss.

ANDERSON v. *COMMERCIAL ASSURANCE CO.*

(1886) 55 L. J. Q. B. 146; 34 W. R. 189.

——**Building Owner to insure.**—A building contract provided that the building owner "shall and may" insure the fittings against risk of damage from fire, and deduct the premiums from the amount of the contract. The defendant was surety for the due performance of the contract by the builder. The building owner had not insured, and had advanced a considerable sum on account of the contract, when the unfinished works, to the value of £2300, were destroyed by fire. The builder subsequently became bankrupt, and never repaid any of the sums advanced to him by the building owner. In an action by the building owner against the surety to recover the extra cost of finishing the work, *Hill, J.*, directed a verdict for the plaintiff with leave to move. On a rule, the Court of Exchequer (*Pollock, C.B., and Watson, B.*) *held*, in a considered judgment, that it was the duty of the plaintiff to insure, and that the defendant

was entitled to the benefit of the insurance, whether he knew of the stipulation to insure or not. On appeal, the Exchequer Chamber, in a considered judgment, *affirmed* the judgment of the Court below in favour of the defendant.

WATTS v. *SHUTTLEWORTH.*

(1861) 7 H. & N. 353; 7 Jur. 945; 5 L. T. 58; 10 W. R. 132; 29 L. J. Ex. 229.

INTERPLEADER

A builder entered into a building agreement with the owner of certain lands. One of the clauses of the agreement provided that all building and other materials, brought by the builder upon the ground, whether fixed to the freehold or not, shall become the property of the owner. The sheriff of Kent seized certain bricks on the premises under a *fi. fa.*, and the landowner claimed them as his property under the agreement. An interpleader issue, the execution creditor being plaintiff and the claimant defendant, was tried by the County Court judge, who *held*, that the agreement amounted to a bill of sale. On appeal, the Court (*Watkin Williams and A. L. Smith, JJ.*) *held*, in a considered judgment, that the agreement was not a bill of sale within the meaning of the *Bills of Sale Act*, 1878. On further appeal the Court of Appeal (*Lord Coleridge, C.J., Brett, M.R., and Bowen, L.J.*) *held*, in a considered judgment, that the agreement in question was not a bill of sale, and they *affirmed* the judgment of the Queen's Bench decision.

REEVES v. *BARLOW.*

(1884) 12 Q. B. D. 436; 53 L. J. Q. B. 192; 50 L. T. 782; 32 W. R. 672.

INTERROGATORIES

The plaintiff engaged a valuer to ascertain the value of a certain business, and owing to alleged negligence and want of reasonable skill on the part of the valuer, the plaintiff sued him for damages. A summons for leave to administer interrogatories was referred by *Martin, B.*, to the Court (*Lord Coleridge, C.J., Keating, Brett, and Denman, JJ.*), and it was *held*, that the plaintiff was entitled, under § 51 of the *Common Law Procedure Act*, 1854, to interrogate the defendant as to the basis of his valuation. A distinction between an arbitrator and a valuer was drawn by *Lord Coleridge, C.J.*

TURNER v. *GOULDEN.*

(1873) L. R. 9 C. P. 57; 43 L. J. C. P. 60.

JOINT CONTRACT

Five contractors agreed by letter to construct a harbour at Alexandria. No articles of partnership were made, but it was agreed that the profits and losses should be equally shared between them. Before the contract was completed one of the contractors died. In an action by his executors and trustees, *Baron, V.C.*, set aside the agreement, and from this decision they appealed. The Court (*James and Mellish, L.JJ.*) *held*, that the estate was entitled to share in the profits of the contract, and that those profits were to be the actual profits ascertained when the contract was completed, and not by valuation or by sale of the contract.

McCLEAN v. *KENNARD.*

(1874) L. R. 9 Ch. 336; 43 L. J. Ch. 323; 30 L. T. 186; 22 W. R. 382.

LATENT DEFECTS

The contractors employed to build a certain bridge were to perform the work to the satisfaction of the engineer, and maintain it for one year after completion, during which period the last instalment was to be retained as security. About a year after payment of the last instalment, the bridge became unsafe, as one of the piers was not executed according to the contract; and the bridge trustees brought an action against the contractors for repayments in respect of (1) work, &c., not done, (2) cost of remedial works, (3) damages for breach of contract. The Court (*the Lord President, Lords Deas, Mure, and Shand*) *held*, reversing the *Lord Ordinary*, that the knowledge of the engineer was the knowledge of the trustees, and the final settlement having been made on his reports, in the absence of fraud, the trustees were not entitled to open up the matter after the lapse of so long a time.

AYR BRIDGE TRUSTEES v. *ADAMS.*

(1883) 11 Ct. of Sess. Cas. (4th Ser.) R. 326.

LIGHT AND AIR

——**Air to Chimneys obstructed.**—The owner of a public-house sued the owner of an adjoining warehouse for carrying the building to a greater height than the public-house, whereby the air coming to the chimneys of the public-house was obstructed or diverted, causing them to smoke. *Grantham, J.*, left the case to the jury, who found £250 damages for the plaintiff. On motion for a new trial, the Court (*Wills and Day, JJ.*) *held*, that no action

would lie, and that the demise of the dwelling-house did not by implication grant any right to the free passage of air or smoke, from the same, over the adjoining land. *Held*, also, that the mortgagor could maintain the action in his own name, but that the damages recovered must be paid into Court, to await the execution by the mortgagees of a discharge of all claims by them against the defendant.

BENNETT v. *HUGHES.*
(1886) 2 T. L. R. 715.

——**Altered Position of Rebuilt House.**—The owner of certain premises rebuilt them, setting them back 6 feet from the road, on land purchased for the purpose. The new buildings were not built on the same plan as the old ones. The vendor of the land, who never objected to the new buildings, sold the remainder of the land to a purchaser who erected a wooden hoarding within a foot of the new premises, so as to cover the whole of the back windows thereof, intending himself to build later on. The plaintiff was assignee of the rebuilt premises, and sought an injunction to restrain the obstruction to light and air caused by the wooden hoarding. *Wickens*, *V.C.*, granted an injunction and inquiry as to damages, and *held*, that a grant made for the purpose of building creates a legal easement over the adjoining land retained by the grantor, co-extensive with the known uses of the grant; and the fact that the grant does not notice the intention of building is immaterial, when the grantor and grantee are aware of it.

ROBINSON v. *GRAVE.*
(1873) 29 L. T. 7; 21 W. R. 223.

——**Bow Window.**—The defendants pulled down certain premises which they had purchased, and proposed to rebuild, raising them to a height several feet above that of the demolished premises, and several feet nearer to the rear of the plaintiff's premises, a portion of which, containing a bow window and lighting the clerk's room, opened on to a court only 8 feet deep. In an action for an injunction, *Wood*, *V.C.*, granted a perpetual injunction restraining the defendants from obstructing the free access of light and air to the plaintiff's premises, as enjoyed previously, and an inquiry as to the buildings actually erected. In order to support an injunction in respect of light and air, the case should be one in which substantial damages would be recovered at law. When the Court is considering, as a jury, whether sufficient damage is proved to sustain an injunction, it is not bound by the decision of the

Court of Appeal upon similar facts, to the same extent as it is bound by their decision on a point of law.

DENT v. *AUCTION MART CO.*

(1866) L. R. 2 Eq. 238; 12 Jur. 447; 35 L. J. Ch. 555; 14 W. R. 709; 14 L. T. 827.

——**Building Plots.**—The owners of land in fee-simple agreed to grant a lease to the plaintiff's predecessor in title of two plots, each having 66 feet frontage on the Thames towing-path and a depth of four times the length. A house of a specified design was to be built thereon, and the only material restriction imposed by the agreement (lease subsequently granted on September 29, 1884) was that no building was to be erected within 20 feet of the frontage of the plots. It contained no general words of grant and nothing indicating any intention to exclude the operation of § 6 of the *Conveyancing and Law of Property Act*, 1881.

On May 13, 1887, the freeholders conveyed two plots, including the plot adjoining the land above-mentioned, on the north, to the defendant in fee-simple. The defendant subsequently erected upon the land a blank hoarding 6 feet from the side wall of the plaintiff's house, which obstructed the light to the kitchen window of the plaintiff's house. He brought an action for an injunction to restrain the defendant from a continuance of the hoarding and from building in such a manner as would have the same effect in obstructing the light to the plaintiff's windows as the hoarding.

Kekewich, J., held, that the plaintiff was entitled to an injunction restraining the defendant from building on the land so as to interfere with the access of light to the plaintiff's house as hitherto enjoyed. The doctrine that a grantor cannot derogate from his own grant must be applied, not to the vacant piece of land, but to the land with the house on it, according to the contract.

Broomfield v. *Williams* (1897), 1 Ch. 602 (p. 28, *supra*), applied.

POLLARD v. *GARE.*

(1901) 65 J. P. 264; 1 Ch. 834; 70 L. J. Ch. 404; 84 L. T. 352.

——**Contractor and Owner Co-defendants.**—One of the defendants contracted to pull down and rebuild Furnival's Inn, and in rebuilding he interfered with the access of light and air to the lights of the adjoining owner. The latter brought his action against the contractor, and joined as co-defendant the clerk of the works who superintended the erection of the building. *Dallas, C.J., held*, that the action was properly brought against both defendants, and

the jury awarded the plaintiff damages. A rule *nisi* obtained by the defendants was dismissed by the Court (*Dallas, C.J., Park, Burrough, and Richardson, JJ.*).

WILSON v. *PETO.*
(1821) 6 Moo. C. P. 47.

——**Current of Air and Good Light Necessary to Special Business.**—In the top storey of business premises there was a room, used for drying tobacco, with an ancient light at each end, admitting a current of air necessary for the process of drying. The adjoining owner proposed to raise his buildings, so as to interfere with the access of light and air to the room, which had overlooked the roof of the old adjoining buildings. The obstruction was formed by a gable, at an angle of 40° to the plaintiff's east wall, which it met a few feet below the window, and then sloped upward, so as to be distant horizontally 4 feet from the centre, and 12 feet from the top, of the window. In an action for an injunction, the plaintiff failed to prove loss of light or air, and *Malins, V.C.*, refused the motion.

DICKINSON v. *HARBOTTLE.*
(1873) 28 L. T. 186.

——**Custom of London.**—The Merchant Taylors' Co. built on certain ancient school premises in the City of London, so as to obstruct the access of light and air to ancient windows in the premises adjoining; and in an action by the adjoining owner for an injunction, they pleaded the Custom of London, which enabled the owner of an ancient house to erect a new house on the old foundations to any height, and so to obstruct the access of light to his neighbour's ancient windows. In error, the Court of Exchequer Chamber (*Coleridge, Cresswell, Crompton, and Crowder, JJ.*) *affirmed* the judgment of the Court of Exchequer, and *held*, that the Custom is abrogated by § 3 of the *Prescription Act*, 1832, and granted the injunction.

TRUSCOTT v. *MERCHANT TAYLORS' CO.*
(1856) 11 Exch. 855; 2 Jur. 356; 25 L. J. Ex. 173.

——**Diminution must be Appreciable.**—Certain premises had been destroyed by fire, and in rebuilding them the defendants had diminished the quantity of light and air formerly enjoyed by the plaintiffs' premises. In an action, the plaintiffs were awarded damages, and *Tindal, C.J., held*, that to support an action, the diminution of light and air must be proved to make the premises

sensibly less fit for the purposes of business or occupation than formerly.

PARKER v. *SMITH.*
(1832) 5 C. & P. 438; 38 R. R. 828.

——**Drying-yard.**—The owner of certain premises, used as a saw-pit and timber-yard, pulled down a wall erected by the plaintiff at the beginning of the sawyer's premises, which at that part was an open piece of ground. The wall obstructed the access of light and air to the sawyer's house and to the drying-yard. In an action for trespass against the sawyer, *Patteson, J., held,* that the use of an open space in a particular way requiring light and air for twenty years, does not give a right to preclude the adjoining owner from building on his land so as to obstruct the light and air.

ROBERTS v. *MACORD.*
(1832) 1 M. & R. 230; 42 R. R. 784.

——**Easement is as much a Property as Land.**—Certain premises, which were separated from those adjoining by a wall 19 feet high, had ancient lights overlooking the adjoining premises. The adjoining owners pulled down the wall, and proposed to erect buildings 35 feet high, which would obstruct the access of light and air to the ancient lights. On motion for an injunction, *Lord Romilly, M.R., held,* that an Act of Parliament alone can give any person the right to take the property of another without his consent on payment of adequate compensation, and the right to light and air is as much a property as the land which enjoys that easement over the land of another.

DUNBALL v. *WALTERS.*
(1866) 35 Beav. 565.

——**Easement not lost by setting back Rebuilt House.**—The Dyers' Hall in the City of London was pulled down, and a new hall and offices erected on the site thereof, the new building being set back so as to leave an area in front almost 6 feet deep. On the opposite side of the street, which was only 14 feet 3 inches wide, the defendant proposed to erect warehouses to a height of 74 feet upon a site none of the houses on which had been higher than 35 feet 4 inches. The Dyers' Co. sought an injunction to restrain the defendant from erecting the proposed warehouses so as to obstruct and diminish the access of light to the Dyers' Hall which it had enjoyed; and *James, V.C.,* granted the injunction, and *held,* that the easement of light and air enjoyed by the Dyers' Co. was not

lost or diminished by the circumstance, that, by means of clearances effected in the neighbourhood by other parties shortly before the erection of the defendant's warehouse, the plaintiffs acquired more light than the defendant's buildings could subtract.

DYERS' CO. v. *KING.*

(1870) L. R. 9 Eq. 438; 39 L. J. Ch. 339; 22 L. T. 120; 18 W. R. 404.

——**Exhalations rendering Current of Air Necessary.**—The plaintiffs were owners and occupiers of freehold premises, and sought an injunction to restrain the defendant, who owned the adjoining premises, from maintaining certain new buildings above a certain height, on the ground that they obstructed the light and the free passage of air to the plaintiffs' premises. A wall 32 feet in height was 28 feet distant from the back of both premises. At the rear of the premises were yards 9 feet lower than the street level, and in the defendant's yard stood a narrow building rising 13 feet above the street level. He proceeded to raise that building by 16 feet, and also erected a building which closed up one end of a 4-foot passage, between the plaintiffs' wing-building and the adjoining premises. Urinal exhalations on neighbouring premises rendered a current of air at the rear necessary.

The plaintiffs sought an injunction to restrain the defendant from erecting, or permitting to remain erected, any building so as to darken their ancient lights, or obstruct the free passage of air to the back of their premises. *Cave, J.*, awarded £10 damages in respect of the obstruction of light, and granted a mandatory injunction in respect of the obstruction to the current of air. The defendant appealed against the injunction being granted, and the Court (*Lopes, Kay, and Lindley, L.JJ.*), in a considered judgment, *held*, that as the exhalations at the rear of the plaintiffs' premises had not arisen from any act of the defendant, the stagnation in the plaintiffs' yard, caused by the defendant's new building, was not actionable, either as an interference with a legal right, or as a nuisance, and that the injunction must be discharged.

CHASTEY v. *ACKLAND.*

(1895) 2 Ch. 389; 64 L. J. Q. B. 523; 12 R. 420; 72 L. T. 845; 43 W. R. 627; (1897) A. C. 155; 66 L. J. Q. B. 518; 76 L. T. 430.

——**Gullet 18 Inches wide encroached upon with Impunity.**—The pantry of one of two adjoining houses, separated by a narrow gullet 2 feet wide, was lighted by a window a foot square, and situate 5 feet above the ground, on one side of the gullet. The owner of the other house, with the approval of the tenant for life

of the house with the pantry window, pulled down his house, and built a new house encroaching on the gullet, and excluding light and air from the pantry window before mentioned. After the death of the tenant for life of the first-mentioned house, the reversioner sought a mandatory injunction against the adjoining owner, for obstruction of light and air to the pantry window. *James, V.C., held*, that in the circumstances the inconvenience was not such as to entitle the plaintiff to either an injunction or damages.

SPARLING v. *CLARSON.*
(1869) 17 W. R. 518.

——**Height above not Greater than Distance from Window.**—The owners of a public-house sought an injunction to restrain the owners of adjoining premises from building so as to interfere with the access of light and air to the plaintiffs' ancient lights. *Wickens, V.C.*, dismissed the bill on the grounds that no injury was proved. The plaintiffs appealed, and the Court (*Lords Selborne, L.C., James and Mellish, L.JJ.*) dismissed the appeal, and *held*, that it is not to be laid down as a general rule that, where a building injuriously affecting ancient lights has been completed before the bill is filed, the Court is unable to give damages unless the injury is such as would justify a mandatory injunction. The fact that the height of a building above an ancient light is not greater than its distance therefrom, is not conclusive evidence that the light is not injuriously affected, but is *primâ facie* evidence of there being no such interference with the light as the Court will restrain, and requires to be rebutted by special evidence of injury.

CITY OF LONDON BREWERY CO. v. *TENNANT.*
(1873) L. R. 9 Ch. 212; 43 L. J. Ch. 457; 22 W. R. 172; 29 L. T. 755.

——**Hoarding.**—The owner of a building estate granted to the plaintiff a lease of a part thereof, in consideration of recently erected buildings thereon, and on August 10, 1883, he mortgaged the estate to secure the repayment of certain monies advanced. The mortgagees subsequently, in 1886, granted a lease of premises, adjoining those of the plaintiff, to the defendant, who used it as a cricket ground, and erected a hoarding, 11 feet in height, to prevent such ground being overlooked.

The plaintiff sought an injunction to restrain the defendant from maintaining the hoarding, which was alleged to diminish the access of light and air to the plaintiff's premises.

Romer, J., held, that the mortgagees were bound by the lease

that the plaintiff was entitled to an unobstructed access of light, subject only, if at all, to restrictions from the erection of adjoining buildings, and that the hoarding, not being a building, must be removed.

WILSON v. *QUEEN'S CLUB.*
(1891) 3 Ch. 522; 60 L. J. Ch. 698; 65 L. T. 42; 40 W. R. 172.

——**Implied Grant.**—The plaintiff purchased from the London, Chatham, and Dover Railway, in 1863, certain premises previously built upon some surplus land of the company, by the plaintiff. The railway company retained the land adjoining the plaintiff's premises. The conveyance to the plaintiff stated that all the other land would be required for the railway, but it did not grant any easement of light to the plaintiff.

In November, 1887, the defendant, who had bought adjoining premises, demised by the railway company to his predecessor in title, in 1872, subject to any right of light which the plaintiff might have, began to erect buildings which more or less obstructed the access of light to the plaintiff's premises.

The plaintiff sought an injunction against the defendant to restrain him from continuing the alleged interference with the lights in question, and *Kekewich, J.*, gave judgment for an injunction, and an inquiry as to damages, against which the defendant appealed.

The Court (*Cotton, Bowen, and Fry, L.JJ.*) *held*, that on sale of the surplus land, the company impliedly agreed not to permit anything on their property which would interfere with the plaintiff's reasonable enjoyment of the land he purchased, except what was required for the railway, and *affirmed* the decision of the Court below.

MYERS v. *CATTERSON.*
(1890) 43 Ch. D. 470; 59 L. J. Ch. 315; 62 L. T. 205; 38 W. R. 488.

——**Interference submitted to for 35 Days.**—The owner of a house enjoyed the free access of light and air through a certain window for 19 years and 330 days. The adjoining owner erected a wall which interfered with the access of light and air to the window, but the interference was submitted to only for 35 days. In an action for an injunction, *Parke, B.*, directed a verdict for the plaintiff. On error, the Court of Exchequer Chamber (*Lords Lyndhurst, L.C., and Brougham*) *affirmed* the judgment of *Parke, B.*, and *held*, that the right of action was complete; that the statutory

period of 20 years' enjoyment was to be reckoned from the commencement thereof up to the date of bringing the action, and that an interruption, within the meaning of the *Act*, must have been acquiesced in for a whole year.

FLIGHT v. *THOMAS.*

(1841) 8 Cl. & F. 231; 52 R. R. 478; West. 671; 5 Jur. 811; 11 A. & E. 688; 3 P. & D. 442.

——**Interference too Trifling.**—In a court less than 16 feet wide, a house of the height of 31 feet was raised to 36½ feet, and an adjoining small yard, which had a wall 14 feet high in front and a high wall in the rear, was built upon by the defendant to the same height as the house. In an action for an injunction by the owners of the house opposite, *Wood, V.C.*, refused an injunction, and directed an inquiry as to damages. The defendant appealed, and the Court (*Knight Bruce and Turner, L.JJ.*) *held*, that the damage as to light and air was too small to entitle the plaintiffs to any relief, and dismissed the bill without prejudice to an action at law.

ROBSON v. *WHITTINGHAM.*

(1866) 35 L. J. Ch. 227.

——**Licence.**—The defendant formed a window in one of his walls overlooking the plaintiff's premises, under an alleged licence from the plaintiff. The plaintiff subsequently objected, and requested the defendant to remove the window, and on his refusing to do so, the plaintiff built a wall on her own ground to obstruct the access of light and air to the window, and the view therefrom. The defendant threw down part of the wall. In an action by the plaintiff against the defendant for trespass, *Alderson, J.*, directed a verdict for the plaintiff. On hearing a rule for entering a nonsuit or a new trial, the Court (*Lord Denman, C.J., Littledale, Taunton, and Williams, JJ.*) *held*, that the defendant was not justified in throwing down the wall, and discharged the rule.

BRIDGES v. *BLANCHARD.*

(1834) 4 A. & E. 176; 5 N. & M. 567; 40 R. R. 362; 5 L. J. K. B. 78; 1 H. & W. 630.

——**Malthouse.**—The defendant proposed to erect a church so close to the plaintiff's premises and of such a height as to stop the free passage of light and air to the plaintiff's premises, which consisted of a malthouse requiring a free current of air. The plaintiff brought an action for an injunction against the defendant, and *Jessel, M.R.*, granted a perpetual injunction.

KIDD v. *WAGNER.*

(1877) Trans. R. I. B. A. Sess. 1877–78.

——**Narrow Lane.**—The plaintiffs enjoyed a prescriptive right to light and air through the existing windows of their premises situate in a narrow lane. The defendants pulled down certain premises, 35 feet high, situate immediately opposite, and proceeded to rebuild to a height of 59 feet. The plaintiffs alleged that if these buildings were completed they would exclude the light altogether from their basement, and seriously diminish the light coming to the windows of the upper floors of their premises. They sought an injunction, which was granted by *Wood, V.C.* The defendants appealed, and *Lord Cranworth, L.C., affirmed* the judgment of the *Vice-Chancellor.*

STOKES v. *CITY OFFICES CO.*

(1865) 11 Jur. 560; 2 H. & M. 650; 13 L. T. 81; 13 W. R. 537.

——**No Injury to Reversion.**—The plaintiffs were reversioners of certain premises, and sought an injunction to restrain the defendant maintaining a hoarding near the windows thereof, and so obstructing the free access of light and air thereto. It was argued on demurrer, that sufficient injury to the reversion was not shown to enable the plaintiff to maintain the action, and that a hoarding, being a temporary structure, the obstruction of light and air by it is not a permanent injury. The Court (*Cockburn, C.J., Williams, Willes, and Byles, JJ.*) *held*, that the declaration was good, and that the reversioner could maintain the action.

METROPOLITAN ASSOCIATION v. *PETCH.*

(1858) 27 L. J. C. P. 330; 5 C. B. (N.S.) 504; 4 Jur. 1000

——**Nominal Damages.**—The plaintiff had only a life interest in certain premises in which there were four ancient windows and certain other lights overlooking a courtyard 38 feet long with a wall 8 feet 10 inches high on three sides and 11 feet on the fourth side, which bounded the defendant's premises. The defendant proceeded to pull down the old house on his premises, with a view to erecting new premises, the plan of which showed that they would be much higher than the old buildings, and would interfere with the plaintiff's lights. On the defendant beginning building operations, the plaintiff sought a mandatory injunction, but *Hall, V.C.*, refused it, and only gave nominal damages without costs. The plaintiff should have sought his remedy at law.

PERKINS v. *SLATER.*

(1876) 35 L. T. 356; 24 W. R. 39.

——**Obstruction Complete before Action brought.**—The plaintiffs owned certain premises in a mews. On the opposite side of the mews were situated the defendant's premises. Between the two tenements was a shed which partly covered the surface of the mews, but did not extend the whole length thereof. The shed sloped from 18 feet at the defendant's stables to 13½ feet in the front. On July 18, 1863, the defendant began to build on his premises, and on the site of the shed, and on a foot or two in advance of it, he erected a new brick building of greater height and length than the shed, thereby interfering with the access of light and air to the plaintiffs' premises. The latter made no complaint until September 5, when their solicitor protested by letter. Then the walls had been carried to their full height, but the building was not completed. Further delay was caused by the death of the plaintiffs' solicitor until October 30, when the new solicitors protested without result. The buildings were completed on November 26. On January 8, 1864, the plaintiffs sought an injunction, which was refused by *Lord Romilly, M.R.*, and the plaintiffs appealed. The Court (*Turner and Knight Bruce, L.JJ.*) *held*, that there is no rule which prevents the Court from granting a mandatory injunction where the injury sought to be restrained has been completed before the filing of the bill, but it will only be granted to prevent very serious damage. Under *Lord Cairns' Act* the Court has discretion to award damages or leave the plaintiff to obtain them at law.

DURELL v. *PRITCHARD.*

(1865) L. R. 1 Ch. 244; 35 L. J. Ch. 223; 12 Jur. 16; 13 L. T. 545; 14 W. R. 212.

——**Obstruction Complete before Action brought.**—In September, 1864, the defendant built a factory, carrying it to a much greater height than that of the buildings previously existing on the site, and materially obstructed the access of light and air to certain cottages adjoining, which had been built in 1843. On November 30, 1864, the owners of the cottages objected, requiring the removal of so much of the premises as exceeded the height of the old buildings. Negociations took place then between the parties, and the building work was not resumed until December 18, 1864. The premises were completed before February 23, 1865, when the owners of the cottages filed a bill. *Lord Romilly, M.R., held*, that in the absence of fraud, the Court ought not to interfere if the obstruction has been completed before the filing of the bill; but he ordered a small portion of the obstruction to be pulled

down, and directed an inquiry as to the damage caused by the remainder.

LAWRENCE v. *AUSTIN.*

(1865) 34 L. J. Ch. 598; 11 Jur. 576; 13 W. R. 981; 12 L. T. 757.

——**Partial Coincidence with Old Windows.**—The owner of an old house enjoyed an easement over the defendant's property in respect of light and air to several small windows in the house. The owner rebuilt, raising the house to a much greater height than before, replacing nearly all the old windows overlooking the defendant's property by larger windows which only partially coincided with the positions of the old windows, and built also additional windows overlooking the defendant's property. In an action to restrain the defendant from erecting a proposed building which would interfere with the access of light to the new windows, *Lord Romilly, M.R.*, dismissed the bill, and *held*, that where the owner of a building having ancient lights replaces them by new larger windows, the Court will not interfere by injunction to restrain the owner of the servient tenement from obstructing them. *Tapling* v. *Jones* (11 H. L. C. 290, see p. 52, *supra*) applies only to the right to damages at law.

HEATH v. *BUCKNALL.*

(1869) L. R. 8 Eq. 1; 38 L. J. Ch. 372; 20 L. T. 549; 17 W. R. 755.

——**Porch.**—The defendant's predecessor in title had covenanted with his lessor not to make or permit to be made any additional erections in any part of the demised premises, or to make any alteration to the design or elevation of the building and premises, which might lessen the air, obstruct the light, or in any way interrupt the views from the adjoining buildings, or destroy the uniformity thereof. The defendant applied for, and was refused, permission by the plaintiff to erect a porch, whereupon he erected it without permission, and had completed the work before the plaintiff sought an injunction. *Hall, V.C.*, granted a mandatory injunction upon interlocutory motion.

MORRIS v. *GRANT.*

(1875) 24 W. R. 55.

——**Right to prevent the Acquisition of Easement.**—A railway company erected a screen, abutting on their land, opposite a certain house, which had been built sixteen years, and used as an hotel, in order to prevent the owner acquiring an easement of

light and air. The owner of the house brought an action for an injunction to restrain the company from interfering with the access of light and air to his premises. *Bacon, V.C.*, granted an injunction, and the company appealed. The Court (*Baggallay, Lindley, and Fry, L.JJ.*) *held*, that the plaintiff had no equity to restrain the company from taking steps to prevent the acquisition of prescriptive rights for windows overlooking their land, and *reversed* the judgment of *Bacon, V.C.*

BONNER v. *GREAT WESTERN RAILWAY.*

(1883) 47 J. P. 580; 24 Ch. D. 1; 48 L. T. 619; 32 W. R. 190.

——**Short User by Purchaser is no Bar to Right.**—The purchaser of certain premises erected a building in the rear thereof, one side of which was formed by carrying up the wall which separated the garden from that of the adjoining owner. In an action by the adjoining owner, who purchased his house at the same time, and of the same vendor as the plaintiff, *Graham, B.*, directed a non-suit. On hearing a rule, the Court (*Thompson, C.B., Graham, Wood, and Richards, BB.*) *held*, that however short the period of the plaintiff's enjoyment, he might maintain an action against his adjoining owner for obstruction.

COMPTON v. *RICHARDS.*

(1814) 1 Price, 27; 15 R. R. 682.

——**Slaughter-house.**—The owner of a slaughter-house which had been thirty years in use in its present form, sued a brewery company for erecting buildings which interfered with the access of light to a certain window, and the access of light and air to the slaughter-house. *Fry, J.*, *held*, that by building the defendants had violated an implied covenant not to interrupt the access of air to the slaughter-house, and gave damages to the owner thereof in respect of both light and air.

HALL v. *LICHFIELD BREWERY.*

(1880) 49 L. J. 655; 43 L. T. 380.

——**Slight Interference Actionable.**—The owners of certain premises in London proposed to raise the party wall, between their premises and those of the adjoining owners, higher than it had been, and to erect buildings upon their premises of a greater height than the height of those pulled down, so as to darken the access of light and air to the ancient lights in adjoining premises. The adjoining owner was lessee, and carried on the business of diamond merchant and seller of articles of *vertu* on his premises, and he brought an action to restrain the threatened obstruction. *Stuart, V.C., held*,

that the plaintiff was entitled to restrain such an obstruction of his ancient lights, however slight, as would injure him in his business.

HERZ v. *UNION BANK OF LONDON.*
(1859) 2 Giff. 686; 1 Jur. 127; 27 L. T. (o.s.) 186.

——**Statute of Frauds.**—The plaintiff was owner of certain land. In the side wall of the adjoining premises were certain windows, 18 inches distant from rocks on the plaintiff's land, which rose a considerable height and obstructed the access of light and air to the adjoining premises, and rendered them damp. By a parol agreement in 1855 the plaintiff agreed to remove the rock and reduce the height of the land, and was to build on a part thereof two rooms, which were to receive support from the adjoining premises. The two rooms were in due course built under the supervision of the adjoining owner, the rock removed, and more light and air admitted to his premises. In October, 1861, the defendant purchased the adjoining premises, and in 1863 commenced an action for the obstruction of his ancient lights, by the two rooms which had been built. On motion by the plaintiff to restrain the adjoining owner from proceeding with the action, *Wood, V.C., held*, that the *Statute of Frauds* did not apply to such agreement, and granted an injunction against the adjoining owner.

FISHER v. *MOON.*
(1865) 11 L. T. 623.

——**Substantial Diminution.**—The defendants proposed to erect, upon the site of an old building, premises of a greater height, which would interfere with the access of light and air to a certain warehouse, the owners of which sought an injunction to restrain the defendants from erecting the proposed building. *James, V.C., held*, that the plaintiffs had no absolute right to the enjoyment of as much light and air as they had previously enjoyed, but only to that which they required. There was not a substantial diminution of light, and the Court would not interfere with the building objected to.

ADAMSON v. *GATTY.*
(1870) W. N. 184.

——**Translucent Screen.**—The plaintiff was assignee of a lease of certain premises granted by the defendant, the boundary wall of whose town-house was separated by a 12-foot wall from a yard 19 feet deep at the rear of the plaintiff's premises. The defendant erected a screen on the north and on the south sides of his garden, filled with translucent glass, and fitted with louvres to admit air,

standing 35 feet high, and 30 feet distant from the plaintiff's house. In an action for an injunction, *Stuart, V.C.*, dismissed the bill

RADCLIFFE v. *DUKE OF PORTLAND.*

(1862) 3 Giff. 702; 8 Jur. 1007; 10 W. R. 687; 7 L. T. 126.

——**Unity of Ownership.**—A railway company acquired land for the purposes of the railway in 1833. In 1860 the plaintiff acquired from the same landlord, land upon which he erected a hotel, with rear looking on to the railway. In 1874 the company, in consequence of a dispute with the plaintiff, demanded rent from him for the privilege of uninterrupted light and air across this railway. The plaintiff refused to pay any rent, and the company erected a large hoarding, whereby light and air were almost entirely excluded from the rear of the hotel. The plaintiff claimed an injunction to restrain the company from erecting the hoarding, and *Malins, V.C.*, granted it, and *held*, that a railway company has no right to erect a hoarding to prevent the acquisition of a prescriptive right to light and air, and are liable to an action for nuisance for so exercising their rights as to injure the neighbouring owner, where they might exercise them without so doing.

NORTON v. *L. & N. W. RY. CO.*

(1878) 13 Ch. D. 268; 47 L. J. Ch. 859; 41 L. T. 429; 28 W. R. 173.

——**Unity of Ownership.**—A testator seized in fee in possession of a house with windows, and of an adjoining field over which the light to the windows passed, devised the house to one party and the adjoining field to another. The purchaser of the field proposed to build thereon close up to the house, and thereby to obstruct the access of light and air thereto, and he erected a hoarding painted black within 6 inches of most of the windows and openings in the house to assert his right. In an action by the owner of the house for a mandatory injunction, *Chitty, J., held*, that the right to light over the field passed to the devisee of the house, and the devisee of the field was not entitled to block up the windows of the house.

PHILLIPS v. *LOW.*

(1892) 1 Ch. 47; 61 L. J. Ch. 44; 8 T. L. R. 23; 65 L. T. 552.

——**Unity of Possession and Occupation.**—In 1855 the owners in fee of a certain house and adjoining land granted a lease of the land, for ninety-nine years, to trustees, who covenanted to build upon it according to an approved plan. In 1856 the owners conveyed the

reversion in fee of the land to the trustees. In 1857 the owners conveyed the house in fee to a person under whom the plaintiff obtained possession. Subsequently, and with the authority of the trustees, the defendant built upon the land so as to obstruct the light and air which, for more than twenty years, had come to the plaintiff's windows. If the defendant had built in accordance with the plan on the lease the obstruction would have been less. Until the lease had been granted there had never been any severance either in title or of possession or occupancy of the land and house, both of which had been occupied and used together by the proprietors thereof for more than fifty years. On a case stated by order of a judge, the Court (*Pollock, C.B., Martin, Channell, and Wilde, BB.*) *held*, that the plaintiff could not maintain an action against the defendant for building on the land so as to obstruct the light and air which formerly came to the windows of his house.

WHITE v. *BASS.*

(1862) 7 H. & N. 722; 8 Jur. 312; 31 L. J. Ex. 283; 5 L. T. 843.

——**When Easement begins.**—The plaintiffs were, respectively, owner in fee and lessee of certain premises. The defendant was owner of the adjoining premises, and erected a hoarding in front of, and 18 inches from, two windows in the north wall of the plaintiffs' house, thereby seriously obstructing the light and air coming through the two windows into the plaintiffs' house.

The plaintiffs brought an action claiming an injunction, and the question was whether or not the windows were ancient lights.

Romer, J., *held*, that a right to the light and air coming to the windows of a building, which may grow into the statutory right acquired by twenty years' user and enjoyment as of right and without interruption, commences when the exterior walls of the building, with the spaces for the windows, are complete, and the building is properly roofed in, although the window-sashes and the glass may not be put in and the interior finished until some time afterwards.

Courtauld v. *Legh*, L. R. 4 Ex. 126 (see p. 73, *supra*), followed.

COLLIS v. *LAUGHER.*

(1894) 3 Ch. 659; 63 L. J. Ch. 851; 8 R. 760; 71 L. T. 226; 43 W. R. 202.

LIQUIDATED DAMAGES

——**Deducted from Balance due.**—A builder contracted to execute alterations in a certain house within a specified time, "*subject to a*

penalty of £20 per week that any of the works remain unfinished" after a fixed date. On a rule in an action by the builder for the balance due, the Court (*Erle, C.J., Byles, Keating, and Smith, JJ.*) *held*, that the £20 was in the nature of liquidated damages, and not penalty, and could be deducted by the defendant as such, without proving the actual damage sustained.

CRUX v. *ALDRED.*
(1866) 14 W. R. 656.

——**Delay.**—A builder agreed to repair a church according to plans and specification, and to have the works completed by a specified date. In default, he was to forfeit to the defendant £10 for each week the completion would be delayed beyond the specified date. The builder made default. On demurrer, in an action brought by him on the contract, the Court (*Ashurst, Butler, and Grose, JJ.*) *held*, that if two persons agree to perform a certain work within a limited time, or in default to pay a weekly sum for such time thereafter as the completion would be delayed, such weekly payments are not by way of penalty, but in the nature of liquidated damages, and might be set off by the defendant in the action brought against him by the builder.

FLETCHER v. *DYCHE.*
(1787) 2 T. R. 32; 1 R. R. 414.

——**Delay.**—The plaintiffs contracted with the defendants to execute, and complete by a given day, certain works, and, in default, that they should pay to the defendants £3 a day until completion. The balance of the contract was payable on the final certificate of the defendants' inspector, whose decision, in all matters referred to him, was final. In the event of a dispute arising between the contractors and the defendants, it was to be left to the award or certificate of the inspector. A dispute arose, and the inspector certified £990 as due to the contractors. The contractors brought an action against the defendants to recover that sum. The defendants alleged that the plaintiffs were liable to pay them £873 in respect of delay in completion, and they paid the balance into Court. The plaintiffs pleaded that the delay was caused by reason of certain additions and alterations ordered by the defendants, and to this the defendants pleaded that by the contract extra works should be ordered by the clerk of works and countersigned by the bursar, that notwithstanding such extra works as might be ordered, the time-limit was not to be extended, unless by an order signed by the clerk of works and countersigned by the bursar. The Court (*Mellor, Lush, and Hannen, JJ.*) *held*,

that the certificate of the inspector was not a condition precedent to the defendants' right to £3 a day, nor did the clause referring the matter to the inspector exclude the right to bring an action. Having expressly agreed to do all the work, and extra work if ordered, within the original time-limit, the contractors were bound by the decision of the clerk of works and bursar, although it might involve an impossibility.

JONES v. *ST. JOHN'S COLLEGE.*

(1871) L. R. 6 Q. B. 115; 40 L. J. Q. B. 80; 23 L. T. 803; 19 W. R. 276.

——**Delay caused by Employer's Architect.**—A firm of builders sued for the balance due to them on a building contract, and the employers claimed £10 a day for the number of days completion of the work was delayed beyond the stipulated period. One clause in the contract provided that extra works, &c., if ordered, were not to vitiate the contract, or the claim for penalties under the contract. The work was to be completed within a year, unless delayed by alterations ordered, strikes, &c., satisfactory proof of which was to be at once afforded to the board of directors of the employers, "who will adjudicate thereon, . . . and their decision shall be final." In case of default the builders were to pay £10 a day as liquidated damages for every day the work was delayed beyond the specified period. *Wright, J., held,* that the exclusive jurisdiction of the board did not extend to delay caused by the employers or their architect, viz. alterations, delay in giving the builder's possession, and furnishing drawings. Such delay being made out, the employers could not recover the penalties claimed.

WELLS v. *ARMY & NAVY CO-OPERATIVE SOCIETY, LTD.*

(1902) 86 L. T. 764.

——**Delay caused by the Owner.**—The plaintiffs contracted to build a brewery for the defendants within a certain period, or in default to forfeit to the defendants, by way of liquidated damages, a sum of £40 a week for each week that the completion of the work should be delayed beyond a certain date, the amount to be deducted from the contract price. The defendants failed to give the plaintiffs possession of the premises until four weeks later than the date of the agreement; the plaintiffs' workmen occasioned a further delay of one week, and the defendants' workmen a further delay of four weeks. The works were not completed until five weeks after the stipulated date. In an action for the balance of the contract, *Parke, B., held,* that the defendants were not

entitled to deduct from the amount of the contract any sum in respect of delay.

HOLME v. *GUPPY.*
(1837) 3 M. & W. 387; 1 Jur. 825.

——**Delay: Contract varied.**—A building contractor agreed to execute certain works according to specifications, bills of quantities, and schedules of prices, on which he tendered for £5512. If the contract was not completed by a certain date, "or within such extended time as should be allowed," £100 was to be paid by the contractor to the employers for every week's delay as liquidated damages. The contract empowered the employers, by their architect, to determine the contract, if the work was not proceeded with expeditiously, and to take possession of the works and plant, and employ another contractor to finish the work. A delay of some months took place owing to a change in the plan, but no corresponding modification was made in the contract. Disputes arose subsequently, but were settled by an agreement which varied the contract and extended the time. A notice, in August, 1883, to determine the contract owing to delay was withdrawn on the builder undertaking to expedite the works. On a reference, the arbitrator found that the balance of the contract was £867 odd, and the plaintiff sought to recover that sum; the defendants counterclaimed for the liquidated damages in respect of delay. On a case stated, the Court (*Wills and Grantham, JJ.*) *held*, that the agreement of August substituted a fresh measure of performance and a new contract, and that the defendants had repudiated the old one, and they gave judgment for the plaintiff, less £50, at which the arbitrator valued the unliquidated damages owing to delay.

WOOD v. *TENDRING RURAL AUTHORITY.*
(1886) 3 T. L. R. 272.

——**Delay: Penalty waived by Order of Extras.**—The plaintiff, a builder, sued the defendant to recover a balance due to him on foot of a building contract. The defendant counterclaimed the sum of £50, as liquidated damages, for non-completion of the work within the stipulated time. By a clause in the contract the building was to be ready for the roof timbers by May 1, 1892, and the whole of the works to be completed by June 1, 1892, in default of which the builder was to forfeit £2 a week as liquidated damages. The contract price was £664, and extra works value for £22 8*s.* 8*d.* were ordered, which necessarily involved some delay. The works were not completed until December, 1892.

Evidence was given that only a fortnight's delay would have been reasonable in respect of the extra works. The County Court judge *held*, that by giving the order for extras the defendant had waived the condition for a penalty, and entered judgment for the plaintiff on claim and counterclaim.

The Divisional Court (*Wills and Wright, JJ.*) differed, the former being of opinion that the County Court judge was right. The defendant appealed.

The Court (*Lord Esher, M.R., Lopes and Chitty, L.JJ.*) *held*, that in such circumstances the builder is not liable for the liquidated damages, unless by the contract he had agreed that, whatever extras were ordered, he would finish the works within the original time-limit.

Westwood v. *Secretary of State for India*, 11 W. R. 261; 7 L. T. 736 (see p. 226), followed.

Jones v. *St. John's College*, L. R. 6 Q. B. 115 (see p. 228, *supra*), distinguished.

DODD v. *CHURTON.*

(1897) 1 Q. B. 562; 66 L. J. Q. B. 477; 76 L. T. 438; 45 W. R. 490.

——**Forfeit of Deposit.**—A builder agreed to purchase of the plaintiff an estate for £70,000 to be expended by the builder in erecting houses on the estate. £500 deposit was to be paid on the execution of the contract and £4500 within seven months. Should the plaintiff fail to make title, the deposit of £500 was to be returned to the builder, and the plaintiff was to pay him £5000 as liquidated damages. Forfeiture was to follow any substantial breach of the contract by the builder, who should also pay £5000 as liquidated damages. The builder did not pay the £500, and failed to carry out the contract, and the plaintiff brought an action to recover £5000 as liquidated damages. *Fry, J.*, gave judgment for the plaintiff for £5000 and costs. On appeal, the Court (*Jessel, M.R., Cotton and Lindley, L.JJ.*) *affirmed* the decision of *Fry, J.*, and *held*, that the £5000 was not to be regarded as penalty, but as liquidated damages.

WALLIS v. *SMITH.*

(1882) 21 Ch. D. 243; 52 L. J. Ch. 145; 47 L. T. 389; 31 W. R. 214.

——**Or Penalty.**—A builder entered into a contract to take down a certain building, remove the rubbish, and complete all the work by a specified date, under a penalty of £10 for every week thereafter during which the materials remained on the site. The builder failed to complete the work of demolition and removal by

the specified date. In an action to recover a sum in respect of the delay, the Court *held*, that the sum of £10 a week was liquidated damages.

BONSALL v. *BYRNE.*

(1868) 1 Ir. Rep. C. L. 573; 16 W. R. 372.

——**Or Penalty.**—A builder contracted to execute certain works according to plans and specification, and to complete the same on or before a certain date. In default, the builder was to forfeit the sum of £100, and £5 a week for every week's delay, recoverable as liquidated damages. The works were not completed at the date mentioned, and the defendants, in an action brought by the builder for sums due to him under the contract, paid a sum into Court, and counterclaimed to be entitled to recover the sum of £100, and £5 a week for twelve weeks, under the penalty clause in the contract. *Hawkins, J.*, gave judgment for the defendants, being of opinion that these sums were liquidated damages, and not penalties, and the plaintiff appealed.

The Court (*Lord Esher, M.R., Lopes and Kay, LJJ.*) *held*, that inasmuch as the said sums agreed to be paid as liquidated damages were payable on a single event only, viz. non-completion of the works, they were liquidated damages, and not penalties.

LAW v. *REDDITCH LOCAL BOARD.*

(1892) 56 T. P. 292; 1 Q. B. 127; 61 L. J. Q. B. 172; 66 L. T. 76.

LONDON BUILDING ACT, 1894

An information charged the defendants with erecting certain structures beyond the general line of buildings in Cranbourne Street without the consent in writing of the London County Council, contrary to § 22 (1) of the *London Building Act*, 1894 (57 & 58 *Vict. c.* 213). The structures in question were twelve advertisement cases, made of sheet-iron, supported by iron uprights fixed to the front wall, from 2 to 5 feet wide, from 5 to 7 feet high, and projecting 10 inches from the front wall of the building. The cornice over the shop projected 2 feet from the face of the main building. It would be possible to remove the whole of the cases, except the iron supports, in a single day without injury to the building. The consent of the Council had not been obtained.

The magistrate was of opinion that the cases were not structures within the meaning of the *Act*.

On a case stated, the Court (*Lord Alverstone, C.J., and Kennedy,*

J.; Wills, J., dissenting) *held*, that the cases were not structures within the meaning of the *Act*.

Hull v. *London County Council* (1901), 1 K. B. 580, disapproved.

LONDON COUNTY COUNCIL v. *ILLUMINATED ADVERTISEMENTS CO.*

(1904) 68 J. P. 445; 2 K. B. 886; 91 L. T. 352; 53 W. R. 220; 2 L. G. R. 905; 20 T. L. R. 527.

LUNACY

——**Of Contractor.**—A contractor agreed to execute certain works for a grand jury, but before the completion of the contract, became of unsound mind, and was duly found a lunatic by inquisition. The surveyor called upon the surety, who had entered into a bond for the due completion by the contractor of the contract, to complete the work, and the surety duly completed the contract. In an action by the surety against the committee of the lunatic for work and materials, *O'Brien, C.J.*, gave judgment for the plaintiff. On appeal, the Court (*Palles, C.B., and Murphy, J.*) *held*, in a considered judgment, that the contract was not terminated by the lunacy of the contractor, and that the surety was entitled to recover his expenditure in completing the contract from the contractor, sued through his committee.

TRACY v. *McCABE.*

(1893) 32 L. R. (Ir.) 21.

MANDAMUS

——**To approve a Building unlawfully Erected.**—The owner of certain premises removed a wooden fence, and built in its place a wall dividing the premises from the road. She then erected, without permission of the London County Council, stables, the fore-court of which was bounded by the wall, which was less than 20 feet from the centre of the road, contrary to § 13 (1) of the *London Building Act*, 1894. Proceedings were taken against the owner, who then applied for the consent of the Council to the erection of the building, which was refused. The owner appealed to the Tribunal of Appeal, which held that, as no decision had been given by the Council, there could be no appeal. On hearing a rule for *mandamus*, the Court (*Hawkins and Wright, JJ.*) *held*, that whether or not the Council had power to entertain an application after erection of the premises in question, they will not grant *mandamus* to compel them to hear and determine an

application for consent under § 13 (4) to the erection of a building already unlawfully erected.

R. v. *LONDON COUNTY COUNCIL.*
(1897) 61 J. P. 439; 66 L. J. Q. B. 516; 76 L. T. 472; 45 W. R. 605.

——**To approve Plans.**—The owner of certain land proposed to lay it out as a building estate, and deposited plans with the local authority showing the proposed new streets, houses, &c. A note on the plans stated that it was proposed that the local authority should make the street and outfall sewers. The local authority approved the streets plan, but refused to approve the plans of the houses, objecting to make the street and outfall sewers, except at the owner's expense. *Mandamus* was applied for, and the Court (*Lord Russell of Killowen, C.J., and Wills, J.*) *held*, in a considered judgment, that the local authority were not entitled to attach such a condition to their approval, and made the rule absolute.

The local authority appealed from the judgment of the Divisional Court, (1896) 2 Q. B. 219, but the Court of Appeal (*Lord Esher, M.R., and A. L. Smith, L.J.*) *affirmed* the judgment of the Court below.

R. v. *TYNEMOUTH RURAL DISTRICT COUNCIL.*
(1896) 60 J. P. 804; 2 Q. B. 451; 65 L. J. Q. B. 545; 75 L. T. 86; 44 W. R. 646.

——**To approve Plans.**—The owner of certain plots of land submitted plans of certain houses he proposed to erect thereon to a local authority. The plans, &c., conformed to all the requirements of the by-laws, but were rejected by the local authority, on the ground that they would interfere with a public highway. On a rule *nisi* for a *mandamus* obtained by the owner, the Court (*Lord Alverstone, C.J., and Ridley, J.*) *held*, that *mandamus* ought not to go as the corporation were the highway authority, and ought not to be compelled to approve plans which they *bonâ fide* considered would interfere therewith.

R. v. *WEST HARTLEPOOL CORPORATION.*
(1901) 18 T. L. R. 1.

——**To approve Plans.**—The plaintiff proposed to build upon certain lands of which he was the owner, and deposited plans of the proposed houses. The defendants, the sanitary authority, declined to sanction the plans, as they included works which amounted to laying out a new street, the width of which would not satisfy the by-laws.

The plaintiff brought proceedings for *mandamus* to compel the defendants to pass the plans. The jury found that the proposed buildings did not amount to laying out a new street, but, on further consideration, *Kennedy, J.*, gave judgment for the defendants, and the plaintiff appealed.

The Court (*Lord Esher, M.R., Lopes and Chitty, L.JJ.*) *held*, that where a local authority have, in good faith, refused to pass building plans on the ground that the erection of the proposed houses amount to the laying out of a new street of a width which is insufficient under the by-laws, no action will lie for a *mandamus* to compel them to approve the plans, and they affirmed the judgment of *Kennedy, J.*

SMITH v. *CHORLEY RURAL COUNCIL.*

(1897) 61 J. P. 340; 1 Q. B. 678; 66 L. J. Q. B. 427; 76 L. T. 637; 45 W. R. 417.

——**To compel Surveyor to enforce a Statute.**—A public company duly deposited plans of a wall with a local authority, but erected one which had not the proper footings specified in the schedule to the *Metropolitan Building Act*, 1855. The work was completed in March, 1886, but no steps were taken by the local authority to enforce compliance with the provisions of the *Metropolitan Building Act*, 1855, until February, 1889, the defective footings only having been discovered in November, 1888. In the circumstances the district surveyor declined to enforce the *Act*. On hearing a rule, the Court (*Huddleston, B., and Mathew, J.*) *held*, that the *Act* had not been complied with, and made the rule absolute.

R. v. *REDMAN.*

(1889) 6 T. L. R. 9.

——**To Magistrate to state a Case.**—An owner erected a building beyond the general line of buildings in a street in London, and, on hearing a summons taken out under the *London Building Act*, 1894, the magistrate convicted the owner, and ordered the building to be pulled down, declining at the same time a request to state a case. The owner applied to the Queen's Bench Division for, but was refused, a rule *nisi* for a *mandamus* to state a case. The Court of Appeal (*Collins, M.R., Stirling and Mathew, L.JJ.*) granted a rule, and *held*, that this was a "*criminal cause or matter*," within the meaning of § 47 of the *Judicature Act*, 1873; and that the Court of Appeal had no jurisdiction to entertain an application for a *mandamus*.

R. v. *D'EYNCOURT.*

(1901) 85 L. T. 501; 20 Cox C. C. 68.

——**Plans "bonâ fide" rejected by Local Authority.**—A building owner submitted plans of proposed buildings to a local authority, who approved the plans as conforming to the by-laws, but disapproved them in respect of the building line shown on the drawings, which, they alleged, would contravene § 3 of the *Public Health (Buildings in Streets) Act*, 1888. On hearing a rule for *mandamus* obtained by the building owner, the Queen's Bench discharged it, following *Smith* v. *Chorley Rural Council* (1897), 1 Q. B. 678 (see p. 234, *supra*). On appeal, the Court (*A. L. Smith and Vaughan Williams, L.JJ.*) dismissed the appeal, and *held*, that the Court would not order a *mandamus* to issue directing a local authority to approve plans which they honestly considered contravened an Act of Parliament.

R. v. *EASTBOURNE CORPORATION.*
(1900) 64 J. P. 724; 83 L. T. 338.

MEASURE AND VALUE

A builder agreed to lay a certain kind of pavement, of a specified thickness, in certain premises to be used as a laundry, to the satisfaction of the manager, at an agreed price per square yard. Payment was to be made on completion of the work. During the progress of the works the manager objected to the quality of the work, and subsequently the builder's employees were stopped by the owner, on the ground that the work was not being done according to contract, and the owner entered into occupation of the building. An action by the builder, to recover the balance due on the contract, was referred to the *Official Referee*, who allowed the plaintiff's claim, subject to certain reductions. On appeal, the Court (*Lord Coleridge, C.J., and Smith, J.*) *held*, that the manager had no power to waive performance of the contract, or to accept a substitute for it, and though the defendant had derived some benefit from the pavement, that was not sufficient to show a fresh contract to pay for the work that was done, and gave judgment for the defendant.

WHITAKER v. *DUNN.*
(1887) 3 T. L. R. 602.

MEMORANDUM OF BUILDING AGREEMENT

By a memorandum of agreement the owner of certain building land agreed to grant to the plaintiff leases of six plots thereon for ninety-nine years, at a fixed rent, and to advance 75 per cent. of the actual cost of six houses, "*fit for habitation*," which the plaintiff

agreed to erect thereon by a specified date, as soon as the same were roofed in. The agreement further contained the owner's undertaking to let to the plaintiff, should he desire it, on the same terms, all other lots in the same block. When the memorandum was signed, plans of the proposed houses were produced, but rejected by the owner. Subsequently new plans were approved. In an action by the proposed lessee for specific performance of the above agreement, the defence submitted that there was no concluded agreement, as the agreement in question was only for the purpose of bringing the parties together, and that the plaintiff was not in a position financially to perform his part of the agreement. *Bacon, V.C., held*, that the Court will not decree the specific performance of a memorandum of agreement being a preliminary building agreement, nor give damages for the breach of such an agreement.

WOOD v. *SILCOCK.*

(1884) 50 L. T. 251; 32 W. R. 845.

MEMORIAL STONE

The plaintiff purchased from a burial board the right in perpetuity of burial in a certain plot in the burial-ground for £2 10*s*. A relative was buried there, and a memorial stone, at a cost of £6 10*s*., was erected by the board, who, in default of payment of the cost of the stone, removed and sold it. In an action brought by the plaintiff in the County Court, the judge entered a nonsuit. On appeal, the Court (*Lord Coleridge, C.J., and Mathew, J.*) *held*, that the proper remedy of the board was to sue for the cost of the stone, and that they had no right to remove it, and they reversed the decision of the County Court judge.

SIMS v. *LONDON NECROPOLIS CO.*

(1885) 1 T. L. R. 584.

"MORE OR LESS."

——**Interpretation.**—A steel company agreed to supply the contractors for the building of the Forth Bridge with "the whole steel" required for the undertaking, less 12,000 tons. The conditions stated that the estimated quantity of steel required would be "30,000 tons more or less," and provided that differences arising out of the contract were to be settled by "the engineer of the Forth Bridge," whose decision was binding on both parties. In an action by the steel company against the contractors as to the quantity of steel to be supplied, the Court of Sessions (15 &

16 Court of Sessions Cas. 4th Ser. 215 & 440) decided in favour of the steel company. The contractors appealed, and the House of Lords (*Lords Halsbury, L.C., Watson, Bramwell, Herschell, and Morris*) *held*, that the arbitration clause was not binding, as, by Scotch law, an agreement to refer future disputes to an unnamed person, designated only by his office or position, is not binding; and that the steel company were entitled to supply the whole of the steel required for the bridge, and their rights were not affected by the statement that the estimated quantity would be 30,000 tons more or less.

TANCRED, ARROL & CO. v. *STEEL CO. OF SCOTLAND, LTD.*
(1890) 15 App. Cas. 125; 16 Ct. of Sess. Cas. (4th Ser.) 440.

MUTUAL GABLE

The owner of two adjoining building sites erected a house upon one of them, and conveyed it to the respondent. A gable separating the respondent's house from the adjoining house was declared by the title-deeds to be a mutual gable. The purchaser of the other plot made use of the mutual gable when building the house upon it, although in the particulars of sale the unused half of the gable and boundary walls was excluded from the offer. In an action against the purchaser of the other plot for half the cost of the mutual gable wall, the Second Division of the Court of Sessions *held*, that the successor in title to the purchaser of the house was entitled to claim from the purchaser of the second plot one-half of the value of the mutual gable.

On appeal, the House of Lords (*Earl of Halsbury, L.C., Lords Herschell, Macnaghton, Morris, and Shand*) *affirmed* the judgment of the Court below.

BAIRD v. *BELL.*
(1898) A. C. 420 (sc.).

NEGLIGENCE

——**Of Adjoining Owner.**—The defendant employed an architect and a builder to rebuild his house, which adjoined the premises of the plaintiff. In the course of rebuilding, the builder's workmen negligently cut into the party wall of a third house, owing to which negligence a portion of the third house fell, and injured the plaintiff's premises. The contract provided that the builder was to be responsible for all damage caused by the negligence, &c., of his workmen or himself. The plaintiff sued the defendant for the injury done to his house, and *Manisty, J.*, entered judgment

for the plaintiff. The defendant appealed, and the Court (*Baggallay and Brett, L.JJ.*; *Holker, L.J., dissenting*) *held*, that the defendant was liable, as the duty of taking all necessary precautions to prevent any injury happening to the plaintiff's house during progress of the works was imposed upon him. *Affirmed* in the House of Lords.

HUGHES v. *PERCIVAL.*

(1883) 47 J. P. 772; 8 A. C. 443; 9 Q. B. D. 441; 52 L. J. Q. B. 719; 49 L. T. 189; 31 W. R. 725.

——**Bare Licensee takes all Risks.**—The owner of certain land employed a watchman to protect certain unfinished buildings, and had contracted with the defendant to carry out certain excavations on the adjoining plot. To do so the defendant employed a steam crane, with a chain and iron tub attached thereto, and while the watchman was standing on the adjoining plot, within the swing of the bucket, looking at the men at work, the chain broke, and the bucket fell on the watchman, causing to him injuries which proved fatal. It was admitted that the deceased had nothing to do with the defendant's men, nor was it any part of his duty to watch or superintend them at their work, nor need he have stood there. The widow of the deceased brought an action under *Lord Campbell's Act*, 1846, to recover compensation from the defendant for negligence, and *Lopes, J.*, directed a verdict for the defendant at the close of the plaintiff's case. A rule, calling upon the defendant to show cause why there should not be a new trial, was obtained, and the Court (*Williams and A. L. Smith, JJ.*) discharged the rule. The plaintiff appealed, and the Court (*Brett, M.R., Bowen and Fry, L.JJ.*) *held*, that there was no evidence of the defendant's negligence; that the deceased was at most a bare licensee; and that he stood where he did, subject to all risks incident to the position in which he had placed himself.

BATCHELOR v. *FORTESCUE.*

(1883) 11 Q. B. D. 474; 49 L. T. 644.

——**Builder.**—An action was brought by one tenant in common of a party wall against a builder employed by the other tenant, for pulling it down carelessly and rebuilding it with unreasonable delay, special damage being laid in damage to fixtures, loss to business, &c. One count was for trespass and the other for negligence, and the tacit assent of the plaintiff to the work being commenced was *held* to support a plea of leave and licence, but not to be applicable to the claim for negligence.

PFLUGER v. *HOCKEN.*

(1858) 1 F. & F. 142.

——**Builder.**—The owner in fee of certain premises sued a builder for causing damage thereto in erecting a building adjoining. The defendant pleaded the *Metropolitan Building Act*, 1855, and that the damage complained of, if any, was a necessary consequence of carrying out the work, and that the plaintiff's remedy was against his employer. *Kay, J., held*, that the *Act* did not exonerate the builder from liability for damages caused by negligence if loss has been sustained by such.

WHITE v. *PETO.*
(1888) 58 L. T. 710.

——**Contractor: Well-hole not Lighted.**—A builder contracted with a local board to sink wells according to a specification prepared by the board's surveyor; the work was to be done under the superintendence and to the satisfaction of the surveyor, who had power to order defective materials or work to be removed or replaced by the contractor, or at his expense; and to order the dismissal of unsatisfactory workmen. The builder was sued for injuries sustained by the plaintiff owing to one hole not being properly lighted. The jury found for the plaintiff. On hearing a rule, the Court (*Lord Campbell, C.J., Coleridge and Erle, JJ.*) *held*, that the defendant was entitled to notice of action under § 139 of the *Public Health Act*, 1848, and made the rule absolute.

NEWTON v. *ELLIS.*
(1855) 5 El. & B. 115; 24 L. J. Q. B. 337; 3 W. R. 476; 1 Jur. 850.

——**Excavating.**—The plaintiffs were lessees and occupiers of certain premises, and brought an action against the defendant for negligently excavating near their house, which was thereby damaged. The defendant denied negligence, and pleaded that the injury was caused by the negligence of a water company in leaving their main in front of the premises unstopped, or improperly stopped.

A master at chambers refused the plaintiffs permission to add the water company as defendants, but his decision was reversed by *Bigham, J.*, and the defendants appealed.

The Court (*A. L. Smith, Collins, and Romer, L.JJ.*) *held*, that the water company could not be so joined, as the cause of action against them was a separate tort, although the consequent damage might be the same in each case.

THOMPSON v. *LONDON COUNTY COUNCIL.*
(1899) 1 Q. B. 840; 68 L. J. Q. B. 625; 80 L. T. 512; 47 W. R. 433.

——**Heap of Building Materials.**—A builder engaged in erecting buildings adjoining a highway which was separated from a pond by an 8-foot stone wall, deposited a heap of building materials against the wall, reaching up to a point 2 feet 6 inches from the top. A child who was playing on the heap fell over the wall into the pond, and was drowned. In an action for damages by the father in respect of the death of his child, the Court (*Lord Justice-Clerk, and Lords Young, Trayner, and Moncrieff*) dismissed the action, as there was no evidence of negligence.

HORSBURGH v. *SHEACH.*

(1900) 3 F. 268, Ct. of Sess.

——**Heap of Unlighted Material.**—The plaintiff, while crossing a certain road after dark, stumbled and fell over a heap of surface refuse and grass which had been left on the road without any light or protection, and sustained serious injury. The district council had not taken over the road, but had served notice on the owner, under § 150 of the *Public Health Act*, 1875, to make up the road, and on his default had contracted with the joint defendant to do so, according to certain plans and specification. He was to provide all materials, lighting, fencing, watching, &c., but subject to the supervision of the district surveyor. The work was commenced on the day before the accident, and the obstacle which caused the accident was the result of the preparatory cleaning up of the road. After the accident lights were placed on some of the heaps by the district surveyor's orders.

The plaintiff obtained £50 damages in an action against the urban council and the contractor, and *Bruce, J.*, directed judgment to be entered in favour of the second defendant. On further consideration, the judge *held*, in a written judgment, that the district council, having the control of the works, were liable for the negligent acts which they permitted; the payment into Court by the contractor of a sum exceeding £50 afforded no defence to the district council, and the plaintiff was entitled to judgment against them, but as the damages had been obtained from the contractor, the judgment should be confined to costs.

Hardaker v. *Idle District Council* (1896), 1 Q. B. 335, and *Pickard* v. *Smith*, 10 C. B. (N.S.) 470, followed.

PENNY v. *WIMBLEDON URBAN COUNCIL.*

(1898) 62 J. P. 582; 2 Q. B. 212; 67 L. J. Q. B. 754; 78 L. T. 748.

——**Landlord liable for Workmen's Negligence.**—An action will lie against the landlord of a house demised by lease, who, under

his contract with his tenant, employs workmen to repair the house, for a nuisance caused by the negligence of his workmen.

LESLIE v. *POUNDS.*

(1812) 4 Taunt. 649.

——**Notice.**—By a local Act it was provided that no plaintiff should recover in any action brought for anything done under the general Acts for sewers, unless notice in writing was given to the defendants, specifying the cause of action. A notice stated that the defendants altered certain sewers running under, through, or adjoining, or near to, the plaintiff's house so negligently and unskilfully that it fell down. It appeared that the sewer did not run close to the plaintiff's house, but close to another which had been badly shored up, and the stack of chimneys of which fell and injured the plaintiff's house. The Court (*Abbott, C.J., Bayley and Best, JJ.*) *held*, that the notice sufficiently described the cause of action.

JONES v. *BIRD.*

(1822) 5 B. & Ald. 437; 1 D. & R. 497; 24 R. R. 579.

——**Statutory Exemption from all Liability.**—The defendants contracted to execute certain work for the Commissioners of Sewers, and, by reason of their negligence in carrying out the work, the plaintiff's premises were injured. The jury found that the defendants acted *bonâ fide* under the direction of the Commissioners of Sewers, and *Pollock, C.B.*, entered judgment for the plaintiff, with leave to move. On hearing a rule obtained by the defendants, the Court (*Wightman, J., and others*), in a considered judgment, *held*, that as the contractors were acting under the authority of the Commissioners of Sewers, and *bonâ fide* acting for the purpose of executing the *Statute* 11 & 12 *Vict. c.* 112, they were exempted from all liability under § 128.

WARD v. *LEE.*

(1857) 7 E. & B. 426; 26 L. J. Q. B. 142; 3 Jur. 557; 5 W. R. 403.

——**Sub-contractor: Jointly Engaged.**—The defendants, who were laying telephone wires underground, contracted with a plumber to connect the tubes through which the wires passed with solder, to the satisfaction of their foreman, at 12*s.* per joint. The plumber's employé worked under the supervision of the foreman, and was assisted by one of the defendants' men. The plumber, in order to obtain the necessary flare, plunged a benzoline lamp with a defective safety-valve into a cauldron of melted solder, and caused the lamp to explode. The cauldron had no screen, and the plaintiff, who was passing, was injured by the molten metal.

The plaintiff brought an action in the City of London Court to recover damages for personal injuries, and the deputy-judge *held*, that the plumber's employé was the servant of the defendants, and gave judgment against them for £25. The defendants appealed, and the Court (*Wills and Lawrance, JJ.*) *held*, that the defendants were not liable, as the negligence of the contractor's servant was collateral to the execution of the work which the contractor was employed by them to do, and the appeal was allowed. Against this judgment the plaintiff appealed.

The Court (*Earl of Halsbury, L.C., A. L. Smith and Vaughan Williams, L.JJ.*) *held*, that the deputy-judge was right, as there was evidence that the defendants and the plumber were jointly engaged in the performance of the work under such circumstances as to render the defendants liable for the plumber's negligence, and even if the plumber were an independent contractor, the defendants, having authorized dangerous work on a public highway, were bound to take care that those who executed the work for them did not negligently cause injury to passers-by.

HALLIDAY v. *NATIONAL TELEPHONE CO.*
(1899) 2 Q. B. 392; 68 L. J. Q. B. 1016; 81 L. T. 252; 47 W. R. 658.

——"**Volenti non fit injuria.**"—The plaintiff, a carpenter, employed by a firm of contractors in erecting seats in a place of public entertainment in course of erection, was injured by a piece of iron, which fell from the roof, owing to the negligence of an employé of the defendants, who were contractors for the erection of the iron roof. In a remitted action the jury awarded the plaintiff £200 damages, and the County Court judge entered judgment accordingly, from which the defendants appealed. *Hawkins, J.*, *held*, that the case was properly left to the jury, as the plaintiff, although aware of the danger, was compelled by the order of his employer to work where he was working when he was injured, the maxim "Volenti non fit injuria" did not apply, and he was entitled to recover.

THRUSSELL v. *HANDYSIDE.*
(1888) 52 J. P. 279; 20 Q. B. D. 359; 57 L. J. Q. B. 347; 58 L. T. 344.

NEW BUILDING

——**Bedroom in lieu of Conservatory.**—A builder deposited plans with an urban sanitary authority in 1888, which were approved, and he built a house in accordance therewith. Part of the house consisted of a conservatory, constructed of wood and glass, on the

first floor, over a scullery and coal-cellar. Three years later the builder removed the conservatory, and substituted, in its place, a bedroom, or box-room, of the same dimensions as the conservatory. The three external walls of the room were the same height as those of the conservatory, but were formed of bricks and mortar, and the roof was slated, and of the same height as that of the conservatory. One wall, however, of the existing building was raised, from the level of the first floor, up to the height of the three new external walls. No notice specifying the date on which building operations were to be begun was given to the district surveyor.

On hearing a complaint, under a by-law framed pursuant to the *Public Health Act*, 1875, the justices dismissed the summons, on the ground that, as the new room did not occupy greater space than the conservatory, the defendant did not make an addition to an existing building, within the meaning of a local improvement Act. The local authority appealed, and the Court (*Huddleston, B., and Grantham, J.*) *held*, that the mere fact that the bedroom occupied no greater space than the conservatory, did not necessarily prevent its being an addition to an existing building, and they sent the case back to the justices.

MEADOWS v. *TAYLOR.*
(1890) 54 J. P. 757; 24 Q. B. D. 717; 59 L. J. M. C. 99; 62 L. T. 658.

——**Bricked-in Boiler.**—The owners of a brewery removed a boiler on the premises, and erected a larger boiler built over with brick and sunk in the ground. Part of the boiler stood 3 feet 9 inches above the ground. It was not built on the site of the old boiler, but the flue was connected with the old chimney. The owner was summoned for building over an open space without giving notice to the local authority, contrary to a by-law. The magistrate *held*, that the boiler in question was not a new building within the meaning of the by-laws and § 175 of the *Public Health Act*, 1875

GERY v. *BLACK LION BREWERY CO.*
(1891) 55 J. P. 711.

——**Coffee Stall.**—Under the *Metropolitan Building Act*, 1855, every building was required to be "inclosed with walls constructed of brick, stone, or other hard and incombustible substances." A coffee stall was held to be a "new building," of which it was necessary to deposit plans.

ODWELL v. *WILLESDEN LOCAL BOARD.*
(1891) *Times*, December 2; *Local Government Chronicle*, p. 996.

——**Constructed with Materials of Old Building pulled down.**—The owner of certain premises pulled down a stable in a yard at the rear, and erected a stable of smaller dimensions but higher in another part of the same yard, making use of the old materials and the boundary wall. On hearing a summons by the local authority against the owner, for not having obtained permission to build, the justices *held*, that the building was not a new building. On appeal by the local authority, the Court (*Coleridge, C.J., Brett, Keating, and Denman, JJ.*) *held*, that the new stable was a "*new building*" within the meaning of the *Local Government Act*, 1858, and the by-laws made thereunder.

HOBBS v. *DANCE.*

(1873) L. R. 9 C. P. 30; 43 L. J. M. C. 21; 29 L. T. 687; 22 W. R. 90.

——**Notice.**—The owner of certain premises erected on a portion of the site thereof, upon which formerly a stable or other building not used for human habitation stood, a house of six storeys, 56 feet in height. The building was commenced without notice to, or deposit of plans with, the local authority, as required by their by-laws. The owner was allowed to complete the new house, and it was in fact completed in April, 1901. On November 2, 1901, notice requiring the owner to show cause why it should not be pulled down was served upon him, and in default of his appearing, an order was made requiring him to pull down the house. He neglected to comply with this order, and was duly summoned and convicted of an offence under the by-law. On a case stated, the Court (*Lord Alverstone, C.J., Wills and Channell, JJ.*) *held*, that the local authority had power to order the demolition of the house, although no plans had been deposited, and the local authority, consequently, have not disapproved plans of the building; and that their power to order demolition does not cease on the expiration of six months from the date of completion.

FAIRBRASS v. *CANTERBURY CORPORATION.*

(1902) 67 J. P. 181; 1 L. G. R. 181.

——**One Month's Notice.**—A building owner erected certain premises without giving one month's notice of his intention to do so, and submitting plans to the district surveyor, as required by a certain by-law. The building owner was summoned for penalties, provided for by another by-law, and he contended at the hearing, that, as the work done consisted in merely raising old walls a storey higher, he was not within the by-law, and he stated that he had submitted to the surveyor the plan which had been

rejected, only in courtesy. The magistrate found that a "new building" had been erected within the meaning of § 159 of the *Public Health Act*, 1875, and convicted the defendant, who appealed. The Court (*Lord Coleridge, C.J., and Stephen, J.*) *held*, that the question whether the alteration constituted a "new building," was a question of fact for the magistrate to decide, and they *affirmed* the conviction.

JAMES v. *WYVILL.*
(1884) 48 J. P. 725; 51 L. T. 237.

——**Triangular Advertising Station.**—The occupiers of a triangular piece of ground, formerly enclosed by a wooden fence from 7 feet to 9½ feet in height, raised the fence, which had for some time been used for advertising purposes, to a height of from 13 feet to 19 feet, and stayed it with upright timbers and struts inside to make it secure as an advertising station. The land inside was formerly a stonemason's yard, but was now used by the occupiers, an advertising company, for the preparation of hoardings to be used elsewhere. The occupiers were convicted on summons, under by-laws made pursuant to § 157 of the *Public Health Act*, 1875, for erecting a "new building" the external walls of which were not constructed of brick, stone, or other hard or incombustible material properly bonded, &c. On a case stated, the Court (*Cave and Williams, JJ.*) *held*, that the structure was not a "new building" within the meaning of the by-laws, which pointed to a building with a roof and capable of affording protection or shelter, and they quashed the conviction.

SLAUGHTER v. *SUNDERLAND CORPORATION.*
(1892) 55 J. P. 519; 60 L. J. M. C. 91; 65 L. T. 250.

——**Wooden Shed.**—The North Metropolitan Railway & Canal Co. were summoned for erecting upon one of their wharves a building, used by the tenants of the same for the purpose of chopping firewood, without giving due notice, under § 38 of the *Metropolitan Building Act*, 1855, to the district surveyor. The company took tolls for the passage of barges along the canal, and it was agreed by the tenants of the building in question that the wood, chopped and distributed by them, should be brought to the wharf in barges along the company's canal. The magistrate convicted the company, and imposed a penalty under § 41 of the *Act*, from which conviction they appealed.

The Court (*Pollock, B., and Kennedy, J.*) *held*, on a case stated, that the building was not used for the purposes of the canal, within the meaning of § 6 of the *Metropolitan Building Act*, 1855,

and, therefore, that the notice required by § 38 ought to have been given.

COOLE v. *LOVEGROVE.*

(1893) 57 J. P. 647; 2 Q. B. 44; 62 L. J. M. C. 153; 5 R. 418; 69 L. T. 19; 41 W. R. 570.

NEW STREET

——**Approved Plan.**—The owner of a plot of land on which he proposed to erect eight houses, deposited plans, &c., thereof and a proposed new street, with the local authority, and gave due notice of an intention to build, in accordance with a by-law. Another by-law required notice, &c., to be given of every proposed new street, but the owner did not give any notice or lodge plans under that by-law. In due course the plans submitted were approved and six of the houses erected. Some years later the owner was summoned and convicted of forming a street less than 30 feet in width as required by the by-laws. On appeal, the Court (*Lord Coleridge, C.J., and Manisty, J.*) quashed the conviction, and *held*, that the local authority should have satisfied themselves before sanctioning the plans.

THOMPSON v. *FAILSWORTH LOCAL BOARD.*

(1882) 46 J. P. 21.

——**To Artisans' Dwellings.**—The owner of a plot of vacant land, situate behind two houses giving on to a certain street, began to erect thereon two blocks of artisans' dwellings capable of accommodating 150 tenants. A passage was formed leading out of the street and passing between the two houses therein, and separating the two blocks of dwellings. It was 200 feet long, 20 feet wide, and closed by gates at the entrance thereto. It was for the use of the tenants of the dwellings, which contained a number of sets of apartments entered off common staircases. The magistrate, on hearing a summons against the owner for forming a street intended for foot traffic without the consent of the London County Council, contrary to § 8 of the *Metropolis Management Act*, 1882, *held*, that the passage was not intended to be a street for traffic within the meaning of the section, and dismissed the summons. On a case stated, the Court (*Wills and Wright, JJ.*) *affirmed* the decision of the magistrate.

LONDON COUNTY COUNCIL v. *DAVIS.*

(1895) 59 J. P. 583; 64 L. J. M. C. 212; 15 R. 509; 43 W. R. 574.

——**To Artisans' Dwellings only.**—The respondent gave due notice to the local authority of an intention to build certain dwellings for artisans, and proceeded to erect the same, having an approach 100 feet long by 16 feet wide from the nearest public street. It did not afford a means of communication with any other public street, and was formed for the use of the tenants of the dwellings only. On hearing a summons, taken out by the appellants under § 8 of the *Metropolis Management and Building Acts Amendment Act*, 1882, the magistrate dismissed it. The local authority appealed, and the Court (*Mathew and A. L. Smith, JJ.*) *held*, that the approach had not been laid out as "*a street for foot traffic only*" within the meaning of § 8, so as to require the sanction of the local authority, and they dismissed the appeal.

METROPOLITAN BOARD OF WORKS v. *NATHAN.*
(1886) 50 J. P. 502; 54 L. T. 423; 34 W. R. 164.

——"**Builder's" Road.**—A builder erected certain houses, and formed drains therefrom to the boundaries of their respective fore-courts. The road is what is ordinarily known as a builder's road, the bottom being well made and was coated with gravel and ballasted. The footpaths were kerbed, but not flagged. The road was lighted by the parish and opened for vehicular traffic, but had not been taken over as a public road; and the houses on either side were not completed. The vestry made branches from the drains into their sewer in the centre of the road, and for that purpose opened the road and footway. The builder was summoned to repay the cost to the vestry, and the magistrate dismissed the summons on the ground that § 78 of the *Metropolis Management Act*, 1855, did not apply to the facts of the case. The vestry appealed, and the Court (*Lord Coleridge, C.J., and Mathew, J.*) *held*, that the road was not the less a street, within the definitions of § 250 of the *Metropolis Management Act*, 1855, and § 112 of the *Metropolis Local Management, &c., Act*, 1862, because it came within the definition of a new street in the latter section; that § 78 of the *Act* of 1855 applies equally to streets and to new streets; and that, in view of the definition of the word "pave" in § 112 of the *Act* of 1862, the road in question was paved. The vestry, therefore, were entitled to recover the expenses they incurred.

HAMPSTEAD VESTRY v. *HOOPER.*
(1884) 15 Q. B. D. 652.

——**Buildings along Country Lane.**—The owner of certain land, not previously built upon, and situate on one side of what was formerly a country lane, proposed to build thereon; and submitted plans for

the approval of the local authority, as required by their by-laws. The local authority refused approval, because the proposed houses, when built according to the plans, would extend beyond the building line defined by the authority. For many years previously, the local authority had lighted, sewered, channelled, and maintained the lane. Of the total number of eighty-seven houses in the lane, sixty-two had been erected within the previous ten years. The owner sought an injunction to restrain the local authority from interfering with the proposed buildings, and, by consent, a special case was stated under *Order XXXIV.* *Fry, J., held*, that the lane was not a new street, that the local authority were not entitled to disapprove the plans because the intended line of building was too near the lane, and that they were not entitled to pull down the new buildings in course of erection. The local authority appealed, and the Court (*Jessel, M.R., Brett and Cotton, L.JJ.*) *held*, reversing the decision of *Fry, J.*, that the words "new streets" in § 34 of the *Local Government Act*, 1858, are not confined to streets made for the first time out of grass or vacant land, but apply to an old country road or lane, which, by being built upon, has gradually become a street in the popular sense, though it was previously a street within the interpretation clause of the *Public Health Act*, 1848; that the local authority had power to make by-laws to regulate the position of buildings in such a street with a view to keeping it of a certain width (21 Ch. D. 621).

From this decision the owner appealed, and the House of Lords (*Earl of Selborne, L.C., Lords Blackburn and FitzGerald*) *held*, that the words "new streets" in the section are not confined to streets formed for the first time, but apply also to an old highway, formerly a country lane, which has long been a street within § 4 of the *Public Health Act*, 1875, and which, by reason of being built upon, has become a street in the popular sense of the word. But *held* (reversing the decision of the Court of Appeal), *that* "width" in § 157 of the *Act* and in the by-laws, meant width of roadway, and not width from house to house on opposite sides; and, therefore, the local authority were not entitled under any by-law to disapprove of or pull down any houses erected in the new street, on the ground that the buildings were too near the roadway.

ROBINSON v. *LOCAL BOARD OF BARTON-ECCLES.*
(1884) 48 J. P. 276; 8 App. Cas. 798; 53 L. J. Ch. 226; 50 L. T. 57; 32 W. R. 249.

——**Control over Soil of Vacant Space.**—In May, 1898, the respondent began the erection of a shop on the same side of

the road, but distant 40 feet from the end of a row of houses. Forty feet is the statutory width of a street intended for carriage traffic. A side door opened and windows looked into the space intervening between the respondent's shop and the row of houses, and the only way of approaching stables built by the respondent, at the back of the shop, was by an entrance 80 feet down the intervening space. The intervening space was marked as a proposed new street on the estate building plan, and was 90 feet in length, but no evidence was given to show that the owner of the estate had agreed to leave that space open. Nothing had been done by the respondent to form a street, except building the shop and stable as stated.

The magistrate found, as a fact, that a new street for carriage traffic had been begun to be laid out, but that, though the respondent erected the shop and stable in the hope that it would be a street, he did not commence to form it, on the ground that he had no control over the roadway of the alleged street, and he dismissed the information.

The Court (*Lawrance and Channell, JJ.*) *held*, that as the respondent had no control over the soil of the vacant space, he did not by erecting the shop and stable commence to form a street, within the meaning of § 8 of the *London Building Act*, 1894.

LONDON COUNTY COUNCIL v. *DIXON.*

(1899) 63 J. P. 390; 1 Q. B. 496; 68 L. J. Q. B. 526; 80 L. T. 232; 47 W. R. 521.

——**Country Road.**—An ancient public carriage-road, 581 yards long, was of a width varying from 19 feet to 28 feet, and was bounded for the most part by hedges. There were brick-fields extending 485 feet on one side, and the defendants, who owned the brick-fields, proposed to erect new buildings, extending for a distance of 233 feet along the lane, opposite to the brick-works.

North, J., held, that by the erection of the new buildings, the lane between them and the existing buildings would become a "new street," within the meaning of § 63 of the *Towns Improvement Clauses Act*, 1847, and subject to the provisions of that section as to width, and granted an injunction, restraining the defendants from building so as to make or lay out the lane as a new street less than 30 feet wide.

ATTORNEY-GENERAL v. *RUFFORD & CO., LTD.*

(1899) 63 J. P. 232; 1 Ch. 537; 68 L. J. Ch. 179; 80 L. T. 17; 47 W. R. 405.

——**Cul-de-sac.**—One of the defendants owned a field behind a row of houses, fronting on to an old road. A lane, 17 to 20 feet

wide and about 100 feet long, gave access to the back premises of the houses, and also led to the gate of the said field. The field was bounded by an old footway, and certain land, the owner of which had, with the consent of the plaintiffs, constructed a new street, which connected the old footway with the old road. In giving their consent they required the owner to leave available a strip 40 feet in width of the land adjoining the old footway, so that a road might be formed in the event of the field being built upon.

This defendant applied for permission to lay out a new street to form a *cul-de-sac* 40 feet in width, but the only approach thereto from one end was through the lane, which was from 17 to 20 feet wide. The plaintiffs rejected the plans. Subsequently the first defendant's plans were passed, subject to certain amendments, whereby the new street would be 40 feet for the whole length, and he then formed and drained a portion of the road. He also let to the second defendant land abutting on the new street for the purpose of building thereon forty houses, but the plaintiffs rejected the plans of the latter as contrary to the by-laws, the road being unfinished and in part less than 40 feet in width. The second defendant proceeded to build, and the plaintiffs moved for an injunction.

North, J., held, that the by-law which prevented a landowner from "constructing" a new street upon his land, until he had provided an "entrance" thereto of the specified width, was reasonable, and *intra vires*, even though such entrance could only be made upon the land of another person, over whom he had no control; also, that the "construction" of a new street included the building of the houses abutting on it, and, consequently, that the landowner could not build until an adequate entrance had been provided.

HENDON LOCAL BOARD v. *POUNCE*.
(1890) 42 Ch. D. 602; 61 L. T. 465; 38 W. R. 377.

——**Cul-de-sac.**—The defendant, owner of a vacant plot of land formerly used as private gardens, began to build thereon a house fronting to a lane 18 feet wide and 175 feet long, which ran at one end into a highway, and formed a *cul-de-sac* at the other end. The plaintiffs had previously refused to approve the plans of three houses, to be used as shops, submitted to them by the defendant, on the ground that they contravened their by-laws as to the laying out of new streets. The end house of the three houses was a corner house, and abutted on the lane where it joined the highway, but had no shop window fronting the lane. The plaintiffs sought an injunction to restrain the defendant from

laying out or constructing a new street of less width than 36 feet, as required by their by-laws.

Lawrance, J., held, that the defendant was not laying out a new street, and gave judgment for him. The plaintiffs appealed, and the Court (*Lord Esher, M.R., Lopes and Rigby, L.JJ.*) *held,* that the defendant was not laying out a new street along the lane within the meaning of the by-laws with respect to new streets made under the *Public Health Act,* 1875, § 157, and dismissed the appeal.

ST. GEORGE'S LOCAL BOARD v. *BALLARD.*
(1895) 59 J. P. 182; 1 Q. B. 702; 64 L. J. Q. B. 547; 14 R. 293; 72 L. T. 345; 43 W. R. 409.

——"**Laying out.**"—Prior to the *Devonport Corporation Act,* 1900, the defendants began to erect houses upon a triangular plot of land of which they were the owners, and two sides of which abutted upon the public highways in the borough. Plans had been deposited with, and all notices had been given to, the rural authority under the by-laws, but although that authority neither approved nor disapproved of the plans, they had instituted no proceedings for penalties, &c. The *Devonport Corporation Act,* 1900, transferred the previous rights of the rural authority, if any, to the plaintiffs, who did not take any proceedings before the justices for penalties, &c., but brought this action for (1) an injunction to restrain the defendants from continuing to erect the buildings without previously obtaining the corporation's approval of the plans, &c.; (2) an order to the defendants to pull down, &c., the buildings; (3) alternatively a declaration that the plaintiffs were entitled to pull them down.

Joyce, J., held, that the defendants were not laying out the highways as new streets within the meaning of the by-laws; that the by-laws could not be enforced by action for an injunction, but only by the special remedies provided, or by way of information by the Attorney-General; and that no such declaration as asked for ought to be made.

DEVONPORT CORPORATION v. *TOZER.*
(1903) 67 J. P. 269; 1 Ch. 759; 72 L. J. Ch. 411; 88 L. T. 113; 52 W. R. 6; 1 L. G. R. 421.

——"**Laying out.**"—The lessee of a plot of land, with a right of way over the adjoining road, which was for a considerable distance only 15 feet wide, commenced to build thereon two houses, but left the road, over which he had the right of way, the same width as formerly. The local authority summoned him for laying out a

new street as a carriage road less than 36 feet in width, contrary to their by-laws, made under the *Public Health Act*, 1875, § 157. The lessee contended that he had no power over the land adjoining his plot, that the road could not be widened without acquiring the land on the opposite side, and that the road had not been dedicated to the public, and was used as a private carriage way, having gates at each end. The justices convicted the lessee, who appealed.

The Court (*Day and Lawrance, JJ.*) *held*, that commencing to erect the houses on the piece of ground adjoining the road did not amount to laying out the road as a new street, and they quashed the conviction.

GOZZETT v. *MALDON URBAN SANITARY AUTHORITY.*

(1894) 58 J. P. 229; 1 Q. B. 327; 70 L. T. 414.

——**Leading to Vacant Ground.**—A firm of builders proposed to form a road of a certain length, leading to a piece of vacant ground, where it would be stopped by a certain barrier or fence. The Metropolitan Board of Works did not give their consent to the formation of the road, and summoned the builders for laying out a street, for the purpose of carriage traffic, with only one entrance, contrary to § 98 of the *Metropolis Local Management, &c., Act*, 1862, and by-laws thereunder. At the hearing of the summons the builders contended that the section did not require two entrances, and the magistrate dismissed the summons. The Board of Works appealed, and the Court (*Grove and Lopes, JJ.*) *held*, in a considered judgment on a case stated, that such streets must be of the width prescribed by the section, and be open at both ends.

METROPOLITAN BOARD OF WORKS v. *STEED BROTHERS.*

(1881) 46 J. P. 199; 8 Q. B. D. 445; 51 L. J. M. C. 22; 45 L. T. 611; 30 W. R. 891.

——**Person who lays out.**—A local authority, pursuant to the *Public Health Act*, 1875, § 157, made a by-law requiring "every person who lays out a new street" to form it at least 18 feet wide, if it be a back street. On May 20 the owner of a building estate gave notice to the local authority of his intention to lay out certain new streets on the estate, and submitted a plan thereof. On the same date a builder employed by the owner gave due notice of his intention to dig the foundations for four cottages on one side of a private street on the estate, only 12 feet wide. On June 25 the local authority gave notice to the owner that they disapproved of the plan of the

proposed new streets submitted, because the street already referred to was only 12 feet wide; and on June 26 the local authority gave notice to the builder that they disapproved of the plans of the cottages. The builder, however, proceeded with the works. On hearing a summons by the local authority against the builder, he justices dismissed it. On a case stated, the Court (*Pollock and Hawkins, JJ.*) *held*, that a person who, in execution of his contract, simply builds along the line of street already laid out by the building owner, is not a "person who lays out a new street" within the meaning of the by-law.

SUNDERLAND CORPORATION v. *BROWN.*
(1880) 44 J. P. 831; 43 L. T. 478.

——**Quadrangle in a Block of Flats.**—The owner of certain land began to build a block of flats, intending to lay out the centre of the block as a garden, with a foot and carriage way around to give access to the flats. This open space was entered by only one opening under an archway. The owner was summoned for unlawfully commencing to lay out a new street without the consent of the London County Council, and the magistrate found that the roadway around the flats was a street, and convicted the owner. On a case stated, the Court (*Grantham and Lawrance, JJ.*) *held*, that the quadrangle of the block of flats was not a "street," and they quashed the conviction.

WOOD v. *LONDON COUNTY COUNCIL.*
(1895) 59 J. P. 615; 64 L. J. M. C. 276; 73 L. T. 313; 44 W. R. 144.

——**Rebuilding on Old Site.**—The owner of certain premises, with a shop fronting on a certain lane, gave notice to the local authority of his intention to lay out a new street, and submitted a plan thereof, which was approved. The plan involved the setting back of the shop, &c. The owner, however, subsequently abandoned the idea of forming the new street, and put in a new shop front, and rebuilt the front wall on the old site. The local authority summoned the owner for breach of one of their by-laws made pursuant to § 157 of the *Public Health Act*, 1875, which required new streets to be of a certain width, and the justices were of opinion that a new street had not been laid out, and they dismissed the summons. On a case stated, the Court (*Huddleston, B., and Wills, J.*) *held*, that the respondent had done nothing contrary to the by-law, and had committed no offence.

SUNDERLAND CORPORATION v. *SKINNER.*
(1889) 53 J. P. 560.

——**Right Angle formed.**—The owner of certain land applied, under the *London Building Act*, 1894, for permission to construct thereon a new street for carriage traffic. The London County Council refused their sanction, because the new street, which was to be in the form of a right angle, would not afford direct communication between two streets formed for carriage traffic. The owner appealed, under § 175 of the *Act*, unsuccessfully. The Court (*Day and Phillimore, JJ.*), on a case stated by order of a judge in chambers, *held*, that the question whether a proposed new street did or did not afford such direct communication was a question of fact, with the decision of which they would not interfere.

WOODHAM v. *LONDON COUNTY COUNCIL.*
(1898) 62 J. P. 342; 1 Q. B. 863; 67 L. J. Q. B. 707; 78 L. T. 553.

——**Summons out of Time.**—A firm of builders, after due notice given to the local surveyor in May, 1883, erected a house and stables on a plot of land. The flank wall of the stables was a less distance than 20 feet from the centre of the roadway. The district surveyor attended and inspected the works from time to time, and made no objection to the position of the wall referred to. In due course he was paid his fees, which amounted to £5 5*s.* No notice was given of any breach of the by-laws to the Metropolitan Board of Works until November 26, 1883. A summons was taken out in March, 1884, charging the builders with laying out a new street of less than the prescribed width contrary to §§ 98 and 107 of the *Metropolis Local Management, &c., Act*, 1862. The magistrate *held*, that the summons was out of time, as the Board of Works were affected by the notice to their surveyor, and the summons should have been brought within six months, pursuant to § 107 of the *Act*.

METROPOLITAN BOARD OF WORKS v. *LATHEY.*
(1885) 49 J. P. 245.

NOTICE

——**To abate Nuisance.**—The sanitary inspector of a local authority took out a summons, under § 128 of the *Public Health (London) Act*, 1891, addressed to "the owner" of certain premises, requiring him to abate a nuisance. The copy summons was handed to a person serving in a shop on the premises. No one appeared for the defendant, who was unknown. The magistrate *held*, that the summons was not a "notice, order, or other

document," within the meaning of § 128 of the *Act*, that it had not been properly served, and that it ought to have been addressed to the defendant by name. Accordingly he dismissed the summons. On a rule calling upon the magistrate to show cause why he should not hear and determine the matter, the Court (*Charles and Collins, JJ.*) *held*, that such a summons is a "document" within the meaning of § 128 of the *Public Health* (*London*) *Act*, 1891, and may, therefore, be served by delivery to some person on the premises, and the rule was made absolute.

R. v. *MEAD.*

(1894) 58 J. P. 448; 2 Q. B. 124; 63 L. J. M. C. 128; 10 R. 217; 70 L. T. 766; 42 W. R. 442.

——**Of Building.**—By-laws made by a local authority under the *Public Health Acts*, 1848 & 1858, provided that every person intending to build should give a week's written notice of such intention to the town surveyor, and submit at the same time detail plans and sections of every floor of the proposed building. A builder erected certain temporary structures, not intended for residences, without giving notice, &c., and was summoned and convicted by the justices. The Court (*Denman and Lindley, JJ.*), on a case stated, *held*, that the by-laws were unreasonable, if intended to apply to such structures, and were, therefore, bad.

FIELDING v. *RHYL COMMISSIONERS.*

(1878) L. R. 3 C. P. D. 272; 38 L. T. 223; 26 W. R. 881.

——**Of Building.**—The Commissioners of Lieutenancy of the City of London, under 1 *Geo. IV. c.* 100, § 39, and 17 & 18 *Vict. c.* 105, § 2, erected certain buildings for the custody of stores and arms of the militia, without giving a building notice to the district surveyor. On hearing a summons, taken out by the surveyor, the magistrate convicted the Commissioners, who appealed. The Court (*Lord Campbell, C.J., Coleridge and Wightman, JJ.*) *held*, that the buildings were within the exemptions of § 6 of the *Metropolitan Building Act*, 1855, as "employed for H.M. use or service," and the conviction was quashed.

R. v. *JAY.*

(1857) 8 El. & B. 469.

——**Party Structure.**—The plaintiff was sub-lessee of a lessee from the Crown, under a long lease, of land on which certain premises had stood. The defendant was lessee, with eleven years to run, of the adjoining premises. The sub-lessee agreed with the lessee from the Crown to lease the land for ninety-nine

years at £550 per annum, and to erect thereon certain buildings at a cost of not less than £100,000. The plaintiff entered upon the land, and proceeded to erect the buildings thereon.

The defendant, with a view to execute certain works on the wall dividing his premises from those of the plaintiff, gave to the Crown lessee the notice under § 90 of the *London Building Act*, 1894. The defendant, as building owner, obtained an award in his favour in an arbitration under the *Act* between him and the Crown lessee, and commenced to carry out the works specified. At the date of the award the plaintiff had erected the stipulated buildings, but the lease was not granted until afterwards. The plaintiff obtained an *interim* injunction restraining the defendant from raising the wall in question, and, on motion to continue the injunction, *Chitty, J., held*, in a considered judgment, that the word "owner" in § 5 (29) and (32) and in § 90 of the *London Building Act*, 1894, as therein defined, includes a person who has entered on lands and erected buildings under an agreement for a lease, although no lease had been executed, and although the agreement is expressed not to operate as a demise, but only gives a right to enter upon the premises for the purpose of performing the agreement. Such person, as an "adjoining owner," is entitled to receive from an adjacent "building owner" the notice, &c., required by § 90 of the *Act*, and it is not sufficient to give notice to the intending lessor.

LIST v. *THARP.*

(1897) 61 J. P. 248; 1 Ch. 260; 66 L. J. Ch. 175; 76 L. T. 45; 45 W. R. 243.

——**Of Repairs.**—The occupier of a house within the limits of the *Metropolitan Building Act*, 1855, employed a builder to replace the frame of the entrance door, which had become decayed, and to repair with old bricks the defective brickwork on each side of the doorway. The doorway was not thereby enlarged, but rather reduced, and the structure of the external wall was not in any other respect altered. No notice of the work had been given to the district surveyor, who summoned the builder under § 38 of the *Act*. The magistrate dismissed the summons, and the surveyor appealed. The Court (*Lord Campbell, C.J., Coleridge, Wightman, and Crompton, JJ.*) *held*, that no notice was necessary, as the work was within § 9 of the *Act*, being "work done for necessary repair not affecting any external or party wall, in, to, or upon, any old building."

BADGER v. *DENN.*

(1858) 22 J. P. 129.

NOTICE OF BUILDING WORKS

——**Workshop.**—The dock company were summoned by the Corporation of Bermondsey for executing certain building works without giving seven days' notice to the corporation in accordance with the provisions of § 76 of the *Metropolis Management Act*, 1855. By the dock company's *Act*, 1894, they were empowered to execute certain works, and it became necessary in order to do so to demolish a certain workshop and erect another in its place. No notice of intention to erect the latter had been given by the company to the Corporation.

On a case stated by a metropolitan police magistrate, the Court (*Lord Alverstone, C.J., Lawrance and Kennedy, JJ.*) *held*, in a considered judgment, that the interference and control involved in § 76 of the *Metropolitan Management Act*, 1855, was inconsistent with the powers conferred upon the dock company by their statutory authority, and that therefore there was no necessity for them to give notice to the local authority in respect of the new workshop.

SURREY COMMERCIAL DOCK CO. v. *BERMONDSEY BOROUGH COUNCIL.*

(1904) 68 J. P. 155; 1 K. B. 474; 73 L. J. K. B. 293; 90 L. T. 123; 52 W. R. 446; 2 L. G. R. 356; 20 T. L. R. 208.

NUISANCE

——**Building in Contravention of a Statute.**—The defendant was indicted for causing a nuisance by erecting a house within 10 feet of a certain road, contrary to the provisions of 3 *Geo. IV. c.* 112, § 126, which prohibited buildings being erected within 10 feet of the road, and declared the footpaths to be part of the road. Such buildings were to be deemed nuisances, and two magistrates were empowered to convict the owners and occupiers, and to order the removal of the buildings. *Tindal, C.J.*, entered a verdict for the Crown by consent, subject to a case. The Court (*Denman, C.J., Parke, Taunton, and Patteson, JJ.*) *held*, that notwithstanding the specified liability of owners and occupiers, the person who erected or continued a building contrary to the *Act* might be indicted for a nuisance, and that an open shop was a building within the meaning of the *Act*.

R. v. *GREGORY.*

(1833) 5 B. & Ad. 555; 3 L. J. M. C. 25.

——**Dripping Eave.**—The defendants, in order to erect certain premises, cut off the eaves of the adjoining building, and built a

wall having a drip over the adjoining premises. In an action by the reversioner of the adjoining premises for injury to his reversion, tried by *Crowder, J.*, a verdict was entered for the defendants. It was proved at the trial that the sum paid into Court more than covered the damages, and that the defendants continued to build after repeated notices from the reversioner; but evidence offered to show diminution in value was rejected. On hearing a rule *nisi*, the Court (*Jervis, C.J., Creswell, Williams, and Willes, JJ.*) *held*, that as there might be repeated actions for continuing the nuisance, the evidence had been properly rejected.

BATHISHILL v. *REED.*

(1856) 18 C. B. 696; 25 L. J. C. P. 290; 4 W. R. 603.

——**Erection of Equestrian Statue.**—The Commissioners of Woods and Forests granted two building leases of two plots upon which the lessees erected two houses in the line of a new street formed by the Commissioners under statutory authority. The street was complete, and the space in front of the two houses was left open, as shown on the plan annexed to the statute. The lessees filed a bill to restrain the erection of an equestrian statue in the centre of the open space, permission for which had been given to a committee by the Commissioners, on the grounds that it would restrict the space, and diminish the value of the adjacent property, and be a public and private nuisance. *Shadwell, V.C.*, granted an injunction, but *Lord Cottenham, L.C.*, dissolved it, and *held*, that the circumstances did not entitle the lessees to an injunction to restrain the erection of the statue.

SQUIRE v. *CAMPBELL.*

(1836) 1 My. & C. 459; 6 L. J. Ch. 41.

——**Heap causing Horses to Shy.**—The plaintiff was driving along a highway in a cart drawn by a horse which took fright at a heap of road scrapings and rubbish, placed by the defendants upon certain vacant land adjoining the highway, their property, and the plaintiff was injured by the cart being upset. *Pollock, B.*, excluded evidence, tendered on behalf of the plaintiff, at the trial of an action for damages, to show that several other horses shied at the heap of rubbish, and entered a nonsuit at the close of the plaintiff's case.

The Court (*Denman and Stephen, JJ.*), on a motion to set aside the judgment of nonsuit, and to enter judgment for the plaintiff for £150, the agreed damages, *held*, in a considered judgment, that, if the heap was of such a nature as to be dangerous by causing horses passing on the highway to shy, it was a public nuisance,

and that the evidence showed that the heap did, in fact, cause the horses to shy, and was, therefore, admissible.

BROWN v. *EASTERN & MIDLANDS RAILWAY CO.*
(1889) 22 Q. B. D. 391; 58 L. J. Q. B. 212; 60 L. T. 266.

——**Hoarding Creaking and Rattling.**—The plaintiff was owner in fee of a cottage with a window overlooking the defendant's land adjoining. In order to prevent the plaintiff from acquiring a prescriptive right to light, the defendant erected a hoarding to obstruct the light coming to the window. The plaintiff alleged that the hoarding stood on his property, and also that it was a nuisance by reason of its creaking and rattling, and he claimed a mandatory injunction. *Fry, J., held*, that, assuming that the hoarding was on the plaintiff's property, it was not of such a permanent character as to injure the reversion, and dismissed the action with costs. From this decision the plaintiff appealed, and the Court (*Jessel, M.R., Cotton and Lindley, L.JJ.*) *held*, that the hoarding, not being of such a permanent character as to injure the reversion, the plaintiff could not maintain an action for trespass; and that its erection on the plaintiff's land was too trifling an injury to entitle the plaintiff to an injunction.

COOPER v. *CRABTREE.*
(1881) 46 J. P. 628; 20 Ch. D. 589; 51 L. J. Ch. 544; 47 L. T. 5; 30 W. R. 649.

——**Mews.**—The plaintiff and the defendant were adjoining lessees under the same grantor. In 1868 the defendant, whose lease was a building lease and of later date than the plaintiff's, began to build a mews, and on March 30 the plaintiff gave notice that he would apply for an injunction if the work was persisted in. Notwithstanding, the defendant hurried on the work so that on April 13 the building was 23 feet high, and overlooked the plaintiff's garden, and obstructed the access of light to certain of the plaintiff's windows. On April 18 he filed a bill. The plaintiff admitted that he had no prescriptive right to ancient lights, and *Malins, V.C.*, refused relief in respect of the trivial interference with light and air. The question remained whether the bill could be sustained on the grounds of nuisance and injury to the garden, under the ordinary covenant for quiet enjoyment. *Malins, V.C., held*, that the plaintiff was not entitled under the covenant for quiet enjoyment to restrain the lessor, or persons claiming under him, from building on the adjoining land so as to obstruct the access of light and air to the garden. It is a rule of law that

there can be no prescription for an easement of light and air over open land.

POTTS v. *SMITH.*

(1868) 18 L. T. 629; 16 W. R. 891; 38 L. J. Ch. 58; L. R. 6 Eq. 311.

—— **Privies.**—The owner, within the meaning of the *Public Health Act*, 1875, of certain premises, was summoned for failing to obey a notice to abate a nuisance caused by a defective privy and ashpit therein. The justices, under § 96 of the *Act*, ordered the owner to fill up the ashpit, to abandon the privy, and to construct a proper and efficient pail-closet in lieu thereof. On a rule for a *certiorari* to quash the order, the Court (*Pollock, B., and Stephen, J.*) *held*, that the order was bad, inasmuch as the justices had no power under § 96 to order the erection of the pail-closet.

EX PARTE WHITCHURCH.

(1880) 46 J. P. 134; 7 Q. B. D. 534; 50 L. J. M. C. 99; 45 L. T. 379; 29 W. R. 922.

——**Privy.**—The owner of certain premises erected a privy in the rear thereof. At the trial of an action by the adjoining owner for a nuisance, it appeared that the privy was no nuisance until the adjoining owner opened a window in a blank wall immediately over the privy; and *Lord Ellenborough held*, that the adjoining owner, having brought the nuisance on herself, had no cause of action.

LAWRENCE v. *OBEE.*

(1814) 3 Camp. 514; 14 R. R. 830.

——**Projecting Cornice.**—The owner of certain premises caused a cornice to be built thereon which projected over the garden of the adjoining premises, whereby rain-water flowed into the garden and damaged the same, and incommoded the plaintiff in the possession and enjoyment thereof. The jury found a verdict for the plaintiff. On hearing a rule, the Court (*Coltman and Maule, JJ.*) *held*, that the erection of the cornice was a nuisance from which the Court would infer injury to the plaintiff, without proof that rain had fallen between the period of the erection of the cornice and the commencement of the action.

FAY v. *PRENTICE.*

(1845) 1 C. B. 828; 14 L. J. C. P. 298; 9 Jur. 877.

——**Projecting Lamp.**—A heavy lamp projected from the defendant's house, of which he was the lessee, several feet over the

footpath. An employé of the defendant was engaged in blowing water out of the pipes in the lamp, when, owing to wind and the wet pavement, the ladder, upon which he was mounted, slipped. To save himself from falling, the employé caught hold of the lamp-bracket, which, owing to its fastening being in a somewhat decayed state, was unable to sustain him, and it fell, injuring the plaintiff. The defendant had a short time previously employed a tradesman to put the lamp in proper repair. In an action by the plaintiff for damages, the jury found that the tradesman had been negligent; that the defendant had not been personally negligent; that the lamp was out of repair through general decay, but not to the knowledge of the defendant; that the cause of the fall of the lamp was the slipping of the ladder; and that if the lamp had been in good repair, the slipping of the ladder would not have caused it to fall. On these findings, *Quain, J.*, entered a verdict for the plaintiff. On hearing a rule *nisi*, the Court (*Blackburn, Lush, and Quain, JJ.*) *held*, that the plaintiff was entitled to a verdict, and that the rule must be discharged.

TARRY v. *ASHTON.*

(1876) 40 J. P. 439; 1 Q. B. D. 314; 45 L. J. Q. B. 260; 34 L. T. 97; 24 W. R. 581.

——**Prospect intercepted.**—The defendant proposed to erect certain buildings which would have the effect of intercepting the prospect from the gardens of Gray's Inn, and the Benchers sought an injunction, founded, not on nuisance, but on long enjoyment of the right to the prospect. *Lord Hardwicke, L.C., held*, that an injunction could not be granted before the defendant's answer; it is otherwise in a plain case of waste or nuisance, but there is no rule of common law which says that it is a nuisance to build, so as to interfere with another's prospect.

A.-G. v. *DOUGHTY.*

(1752) Ves. Sen. 453.

——**Sty for Pigs.**—The plaintiff and the defendant were adjoining occupiers, and the defendant erected in his garden, and close to the plaintiff's dwelling, a sty for hogs. In an action against the defendant, tried at the Norfolk Assizes, for a nuisance in that the sty corrupted the air and diminished the enjoyment of the house, the defendant was found guilty, and mulcted in damages. On motion to arrest judgment on the ground that the building of the house for hogs was necessary for the sustenance of man, and that one ought not to have so delicate a nose that he cannot bear the

smell of hogs, the Court dismissed the motion, and *held*, that an action on the case was maintainable, as also in respect of a lime-kiln the smoke from which entered the plaintiff's house.

ALDRED'S CASE.

(1611) 9 Coke's Rep. 58*b*; 2 Rolls. 141.

——**Unstable Fence.**—The defendant was the owner of a piece of ground fenced off from the highway, and the infant plaintiff, a boy aged four years, put one foot on the fence, and was about to put the other on when the fence fell on him and caused certain injuries. The jury found that the fence was very defective, but that it actually fell through the child standing partly or wholly upon it, but not for the purpose of climbing over. *Ridley, J.*, directed that judgment should be entered for the defendant. The plaintiffs appealed.

The Court (*A. L. Smith, Rigby, and Vaughan Williams, L.JJ.*) *held*, that the defective fence, being a nuisance, and the cause of the injuries to the plaintiff, the defendant was liable, and allowed the appeal.

HAROLD v. *WATNEY.*

(1898) 2 Q. B. 320; 67 L. J. Q. B. 771; 78 L. T. 788; 46 W. R. 642.

——**Public: Removal of Ashpit Refuse.**—A farmer made a contract with a certain corporation, whose district comprised several townships, for the removal of ashpit refuse and night-soil. Pursuant to the said contract, he deposited night-soil and refuse upon a part of his farm, 40 yards from the road, to the extent sometimes of forty cart-loads a day, which, it was alleged, gave off a stench dangerous to health.

The plaintiffs moved for an injunction to restrain the farmer. It was objected for the defendant that the sanction of the Attorney-General had not been obtained, and therefore the action must fail. Subsequently the sanction of the Attorney-General was obtained. *Stirling, J., held*, that the proceedings contemplated in § 107 of the *Public Health Act*, 1875, must be ordinary proceedings known to the law, and that, in the absence of special damage, a local authority cannot sue in respect of a public nuisance, except with the sanction of the Attorney-General, by action in the nature of an information.

WALLASEY LOCAL BOARD v. *GRACEY.*

(1887) 51 J. P. 740; 36 Ch. D. 593; 53 L. J. Ch. 739; 57 L. T. 51; 35 W. R. 694.

OLD MATERIALS

——**Purchase of.**—The Commissioners of Public Works invited tenders by public advertisement for "*the old Portland stone, Bramley Fall stone, and rough rubble*" of the old bridge at Westminster. A firm of contractors offered "*for Westminster Bridge stone—9d. per c. foot for arch stone, 4d. ditto ditto ditto spandril ditto, 6d. ditto ditto ditto Bramley Fall ditto.*" The secretary to the Commissioners authorized the engineer to accept this offer. Some stone was delivered under the contract, but the defendants refused to deliver the remainder, and the contractors sought specific performance. *Romilly, M.R., held*, that the contract was for the purchase of all the stone of that quality, and granted a specific performance and an injunction against the defendants.

THORN OR VENN v. *THE COMMISSIONERS OF PUBLIC WORKS.*

(1863) 32 Beav. 490.

OLD SITE

The owners of certain land, on which formerly stood six dwelling-houses about 28 feet in height, proposed to erect thereon two factories, each 52 feet high. The district surveyor had certified a plan, pursuant to § 13 (5) of the *London Building Act*, 1894, showing the extent of the said dwelling-houses. The plans showed that the external walls of the factories would be in the same line as the external walls of the dwelling-houses, but they were some feet less than the prescribed distance (*i.e.* 20 feet) from the centre of the roadway. The factories occupied no more land than the old buildings. On failing to comply with a notice under § 3, requiring them to set back the factories, the owners were summoned, but the magistrate dismissed the complaint. On appeal, the Court (*Lord Alverstone, C.J., Wills and Channell, JJ.*) *held*, that the owners were entitled to erect the factories proposed as coming within the proviso to § 13 (5) of the *London Building Act*, 1894.

LONDON COUNTY COUNCIL v. *PATMAN.*

(1903) 67 J. P. 285; 1 L. G. R. 519.

OPEN SPACE

The owner of a hotel, built before the formation of a certain local authority, pulled down a coach-house and stables, in the rear, below the ground floor, and built upon the site a three-storey building, which could only be entered by means of a passage from

the staircase of the main building. On an information against the owner, for not leaving an open space equal to one-third of the area of the ground on which the dwelling-house stood, contrary to a by-law made pursuant to 21 & 22 *Vict. c.* 98, § 34, the justices convicted him. On appeal, the Court (*Pollock, C.B., Martin and Bramwell, BB.*) *held*, that the new erection was not a "new" dwelling-house, but merely an addition to an old one, and they quashed the conviction.

SHIEL v. *SUNDERLAND CORPORATION.*
(1861) 6 H. & N. 796; 30 L. J. M. C. 215.

OPEN SPACE OF NOT LESS THAN 100 FEET

A builder was charged by information with having erected and used a dwelling-house, having in the rear or side thereof an open space of less than 100 feet, such building being more than three storeys in height above the level of such open space, and having a distance across such space between the said building and the opposite property of less than 25 feet, contrary to the by-laws made by a local authority under § 34 of the *Local Government Act*, 1858. The main building in question was more than three storeys high, and at the back of it there was also erected a one-storey building. Both buildings together covered the whole of the space surrounded by the adjoining houses, with this exception, that the smaller building was 4 feet narrower than the larger building, so that a strip of 4 feet in width and 25 or 26 feet in depth remained. The builder was convicted, and he appealed. The Court (*Erle, C.J., Williams, Willes, and Keating, JJ.*) *held*, that the required 25 feet was to be measured at any and every part of the building to the opposite property; it is not sufficient that at some points there was a distance of 25 feet between it and the opposite property.

ANDERTON v. *BIRKENHEAD COMMISSIONERS.*
(1863) 32 L. J. M. C. 137.

"OPPOSITE PROPERTY"

A building owner erected a dwelling-house 25 feet in height. In the rear thereof, and exclusively belonging thereto, there was an open space of 700 square feet, and the distance across such open space, between such house and the opposite property at the rear thereof, including the width of the street, was 52 feet. The land exclusively belonging to the house was bounded in the rear by a public street, and the distance across the open space lying

between the street and the house was 8 feet. On hearing an information against the owner for a breach of a by-law requiring the provision of an open space in the rear of every new dwelling-house of 150 square feet free from any erection thereon above the level of the ground, and the distance between the house and the opposite property to be 10 feet, and if the house be 25 feet in height, such distance should be 20 feet, the justices dismissed the information. The local board appealed, and the Court (*Pollock, B., and Field, J.*) *held*, that the public street was the "*opposite property*," and they remitted the case to the justices to convict.

JONES v. *PARRY.*

(1887) 52 J. P. 69; 57 L. T. 492.

ORDER NOT UNDER SEAL

A contractor supplied certain iron gates to the verbal order of an officer of a poor law union. In an action by the contractor to recover the cost thereof, it was *held* by *Lord Denman, C.J.*, in a considered judgment, that if work be done for a corporation for the purposes of the corporation, under a verbal order, and accepted and adopted by them, they cannot, in an action to recover the price, object that no order was given under seal.

SANDERS v. *ST. NEOT'S UNION.*

(1846) 8 Q. B. 810; 15 L. J. M. C. 104; 10 Jur. (o.s.) 566.

ORDER WITHOUT PRICE BEING FIXED

A joiner sent a number of sash-frames to a contractor to be glazed. He had frequently done so previously. No time for completion of the work, nor price, were named, but it was understood that market rates would be charged. After the order was given, but before the work was done, a reduction was made in the duty on glass. There had been delay in executing the work, but the joiner did not object. In an action for the price of the glass supplied and work done, the Court (*the Lord Justice-Clerk, Lords Medwyn, Monerief, and Cockburn*) *held*, that, in the circumstances, the employer was bound to pay for the work at the rate current when the order was given.

MALLOCH v. *HOUGHTON.*

(1849) 12 Ct. of Sess. Cas. (2nd Ser.) R. 215; 22 Sco. Jur. 33.

PACTIONAL DAMAGES

——**Not Penalty.**—A builder contracted to erect and complete a poor-house and deliver up the keys of the building by a specified date, under "*a penalty of* £5 *for every week during which the whole of the said works shall remain unfinished*," after the specified date. In an action by the builder for the balance of the contract and for extras, the Court *held*, *inter alia*, that the sum of £5 was in the nature of pactional damages, and was not a penalty subject to modification.

JOHNSTON v. *ROBERTSON.*
(1861) 23 Ct. of Sess. Cas. (2nd Ser.) R. 646.

PAROLE LICENCE

The owner of certain premises gave a parole licence to the adjoining owner to put up a skylight over his area. Some time after the skylight had been erected, the owner withdrew his licence. In an action for a nuisance against the adjoining owner, *Lord Ellenborough, C.J., held*, that the plaintiff could not recall the licence at pleasure after the work had been done at the defendant's expense, and no action for nuisance could lie, in respect of a stench caused by the said skylight impeding the air coming to the plaintiff's premises.

WINTER v. *BROCKWELL.*
(1807) 8 East, 308 ; 9 R. R. 454.

PARTNERSHIP

——**Agreement with Brickmaker.**—A builder engaged in erecting certain houses under an ordinary building contract, entered into an agreement with a certain brickmaker, that in consideration of the latter supplying him with a quantity of bricks and making certain advances, &c., he would deposit the building agreement with the brickmaker as security, and use the bricks in the erection of two houses only, and would procure the leases of the same to be granted to the nominee of the brickmaker for sale, the proceeds to be applied to the payment of the debt to the brickmaker, who should be also entitled, as a further consideration, absolutely to one moiety of the profit on the two houses. In an action against the builder by a firm of timber merchants, who had supplied him with timber for these two houses, and claimed *inter alia* a declaration that the brickmaker and builder were partners, *Hall, V.C., held*, that, independently of § 1 of *Bovill's Act*, the agreement between the builder and the brickmaker did not constitute them

partners, so as to render the brickmaker liable to the plaintiffs for the timber supplied to the two houses.

KELLY v. *SCOTTO.*

(1880) 49 L. J. Ch. 383; 42 L. T. 827.

——**Verbal Agreement.**—The plaintiff and the defendant verbally agreed to buy a certain estate, and to realize it as a building speculation for their joint benefit. The defendant was to provide the necessary capital and the plaintiff to give his services as surveyor and land agent, and superintend the building operations. The profits and losses were to be shared equally. The agreement, however, was not to be construed into a partnership between the parties, and should relate only to the particular estate in question. The plaintiff brought an action, claiming a declaration that he and the defendant were partners and for an account, and *Hall, V.C., held,* that the agreement constituted a partnership between the parties, and declared a dissolution.

MOORE v. *DAVIS.*

(1879) 11 Ch. D. 261; 39 L. T. 60; 27 W. R. 335.

PARTY STRUCTURE

The defendants' premises consisted of a two-storey building, adjoining those of the plaintiff, and were sold by the defendants to several purchasers, with a view to rebuilding new premises. The latter began to pull down the building and were negligent. The plaintiff brought an action for an injunction alleging damage done to his premises, and that he had not been served with notice under the *Metropolitan Building Act,* 1855, of the intention to pull down the party structure. *Wood, V.C., held,* that §§ 83 and 85 of the *Metropolitan Building Act,* 1855, do not apply to the case of the mere removal of a building from an adjoining building without disturbing the party structure, and no previous notice under the *Act* need in such case be given.

MAJOR v. *PARK LANE CO.*

(1866) L. R. 2 Eq. 453; 14 L. T. 543.

PARTY WALL

——**Alteration causing a Settlement.**—The premises of the plaintiffs and defendant were divided by a party wall, and it was disputed whether it belonged to the plaintiffs or defendant, with a right of support in the other. Previously a part of the plaintiffs' premises was supported by a beam inserted in the wall. In 1867, in the

course of alterations, this beam was removed, and a new one substituted, carrying additional brickwork, and it was alleged causing a settlement in the house. The defendant threatened to cut off the end of the beam and pull down the additional brickwork. The plaintiffs sought, and *Malins, V.C.*, granted, an injunction, and *held*, that, apart from the question of the ownership of the wall, an easement for support entitled the dominant owner to put any weight on the wall which did not endanger its stability; and that the wall was either the plaintiffs' or a party wall, and in either case he had made a proper use of it.

SHEFFIELD PROVIDENT SOCIETY v. *JARVIS.*
(1871) W. N. 208.

——**Apertures in.**—Two houses originally belonged to the one owner, who sold one in an unfinished state to the plaintiff, a term of the sale being that the purchaser should block up a door which led through the party wall. The defendant subsequently purchased the other house, and owing to some feeling between him and the plaintiff, he bored two holes, 2 inches square each, into the dining-room of the plaintiff, who brought an action for trespass. The Court (*Hawkins and Wills, JJ.*) *reversed* the decision of the County Court judge, and *held*, that the defendant had no right to bore the holes complained of.

WELBANK v. *WEATHERHEAD.*
(1892) 8 T. L. R. 243.

——**Award that Wall might be raised in Future.**—The plaintiffs and the defendants were the freeholders of adjoining houses. In 1902 the tenant of the plaintiffs' house gave notice to the defendants of his intention to rebuild the party wall between the houses, under § 90 of the *London Building Act*, 1894; and the defendants as adjoining owners served upon him a notice, under § 89, setting out the requisitions with which they required him to comply. A difference having arisen between the parties, it was referred to the arbitration of surveyors under § 91, who decided the dimensions and mode of erection of the party wall, and further awarded that the defendants should have the right at any future time to raise the wall. The building operations were then carried out.

In 1904 the defendants, in exercise of their right under the award, proceeded to raise the height of the party wall by building upon it, without serving a building owner's party-wall notice on the plaintiffs, who had meantime acquired their tenant's interest. The plaintiffs thereupon brought an action against the defendants

for an injunction, which was granted by *Phillimore, J.*, and *affirmed* by the Court of Appeal. On August 11, 1904, the defendants served upon the plaintiffs a party-wall notice, pursuant to § 90 of the *London Building Act*, 1894, and, as the latter did not consent, a difference arose within the meaning of the *Act*. In due course the plaintiffs, and the other adjoining owners, appointed their surveyors, who agreed upon a third surveyor. Considerable delay took place in arranging the arbitration, and nothing further had been done on February 11, 1905, when the period of six months from the service of the party-wall notice by the defendants had elapsed. Thereupon the plaintiffs gave notice to their surveyor that, under § 90 (4) of the *London Building Act*, 1894, the powers of the arbitrators had lapsed, and their surveyor in consequence took no further part in the proceedings. The plaintiffs then obtained an order for a reference to an *Official Referee*, to assess the damages due by the defendants to them, but *Bucknill, J.*, refused to make an order directing the defendants to remove the buildings erected upon the party wall, and the plaintiffs appealed from his decision.

The Court (*Mathew and Cozens-Hardy, L.JJ.*) *held*, that § 90 (4) of the *London Building Act*, 1894, does not apply to a case in which, a difference having arisen between the building owner and the adjoining owner with regard to the work to be done under the notice, there is a reference to a surveyor under § 91 of the *Act*, and their award is not made within six months after service of the party-wall notice.

LEADBETTER v. *MARYLEBONE CORPORATION*.
(1905) 69 J. P. 201; 1 K. B. 661; 74 L. J. K. B. 507; 92 L. T. 819; 53 W. R. 470; 21 T. L. R. 377.

——**Building used partly for Trade.**—Certain building owners erected a building of eight floors. The basement was to be used for packing goods, the ground floor as a retail shop, and the floors above as dining-rooms and kitchens. The two upper storeys were supported by an iron and concrete floor, through four openings in which it was intended that lifts should pass. A staircase, with a fireproof landing on each floor, ran from the top of the building to the street. The cubic content of the staircase was 16,656 feet, and that of the whole building, including the staircase, 289,456 feet. On a summons under § 27 of the *Metropolitan Building Act*, 1855, the magistrate ordered the owners to comply with the requirements of the surveyor, for non-compliance with which the summons was taken out. On a case stated, the Court (*Mathew and Cave, JJ.*) *held*, that the building was a building used partly

for the purposes of trade, and that the provisions of Rule 4 of the *Metropolitan Building Act*, 1855, which require that every warehouse or other building used wholly or in part for the purposes of trade or manufacture, containing more than 216,000 cubic feet, shall be divided by party walls in such manner that the contents of each division thereof shall not exceed the above-mentioned number of cubic feet, had not been complied with.

HOLLAND v. *WALLEN.*
(1894) 70 L. T. 376; 10 Rep. 583.

——**Ceasing to be such above a Certain Height.**—The respondents proposed to erect a certain building, and gave notice to the appellant that the building would be a warehouse of a cubical capacity of 657,408 cubic feet, and would be divided by five vertical walls in compliance with § 75 of the *London Building Act*, 1894. Part was to be five storeys, and part only one storey in height. Two of the dividing walls would separate the one-storey from the five-storey parts, but would be carried up beyond the roof of the one-storey part, so as to form the external walls of the other part. For 3 feet above the roof of the one-storey part, the two walls were to be constructed so as to comply with the requirements of the *Act*. The respondents contended that the two walls were not party walls so far as they did not separate one portion of the building from the other, but admitted they were party walls so far as they separated one portion from the other. The appellant contended that the two walls were party walls to the whole height. The magistrate upheld his contention. The Court (*Wright and Collins, JJ.*) *held*, that § 75 of the *Act* only made a wall a party wall, in respect of its dividing one portion of the building from another, so that the walls in question would cease to be party walls when carried up above the roof of the lower part of the proposed building.

DRURY v. *ARMY & NAVY AUXILIARY CO-OPERATIVE SUPPLY, LTD.*
(1896) 60 J. P. 421; 2 Q. B. 271; 65 L. J. M. C. 169; 74 L. T. 621; 44 W. R. 560.

——**Ceasing above a Certain Height to be.**—The plaintiff was owner of a house, one wall of which was, to the height of the first storey, a party wall between the owner's premises and those of the defendant, but above that height it had ancient lights. The plaintiff pulled down his house, and proposed to rebuild it with the windows in the same position as before: he gave notice to the defendant under the *Bristol Improvement Act*, 1840. The

defendant afterwards proceeded to build so as to obstruct the light coming to the ancient windows of the plaintiff. By the *Act* no openings shall be made in any party wall except for communicating from one building to another. On appeal, the Court (*James and Mellish, L.JJ.*) *held* (*affirming* the decision of *Malins, V.C.*), that the wall above the defendant's building was not a party wall, and the plaintiff was not precluded from making windows in it, and they granted the injunction sought.

WESTON v. *ARNOLD.*

(1873) L. R. 8 Ch. App. 1084; 43 L. J. Ch. 123; 22 W. R. 284.

——**Compensation for Extra Use of.**—The appellant was lessee for a term of twenty-one years of a house, and the respondent was the assignee of the ground lease of a house adjoining. Before leasing to the appellant, the lessors raised the party wall between the two houses. The respondent pulled down the adjoining house and rebuilt it, and in doing so he used the party wall to a greater extent than before. Before commencing the work he gave the appellant notice under § 90 of the *London Building Act*, 1894, but the latter did not consent. The difference was referred to arbitration under § 91 of the *Act*, and the arbitrators awarded £18 damages to be paid by the building owner to the adjoining owner, and £38 10*s.* 6*d.* to be paid by the building owner to the adjoining owner, for extra use made of the party wall for the new building, in excess of the portion previously used as a party wall for the old buildings. The respondent did not appeal against the award. The master granted leave to the appellant to enforce the award, against which order the respondent appealed. *Walton, J.*, *held*, that the award was invalid as to the sum of £38 10*s.* 6*d.* (no question was raised in regard to the sum of £18).

The Court (*Collins, M.R., and Mathew, L.J.*) *held*, that the appellant was not, as tenant of the first-mentioned house, entitled to any such payment, and that the arbitrators, in awarding it, had acted beyond their jurisdiction, and consequently their award, *pro tanto* was invalid.

IN THE MATTER OF AN ARBITRATION BETWEEN STONE & HASTIE.

(1903) 2 K. B. 463; 72 L. J. K. B. 846; 89 L. T. 353; 52 W. R. 130.

——**Continuing Offence.**—The owner of certain premises had been convicted and fined for building a party wall 4½ inches in thickness, contrary to the by-laws of a local authority, made under the

Local Government Act, 1858, which required such walls to be at least 9 inches thick. Subsequently he was summoned for permitting the offence to continue, and was convicted and fined a continuing penalty of 5*s.* a day for every day such offence continued. On a case stated, the Court (*Keating and Honeyman, JJ.*) quashed the latter conviction, and *held*, that it was not a "continuing offence" within the by-law, to permit the party wall to remain unaltered, and if it was, the by-law was unreasonable; the proper remedy being the demolition of the wall under § 34 of the *Local Government Act*, 1858.

MARSHALL v. *SMITH.*

(1873) L. R. 8 C. P. 416; 42 L. J. M. C. 108; 28 L. T. 538.

——**Damage by Contractor.**—The owner of certain premises sent notices to the tenant who occupied the adjoining premises, and to the landlord thereof, under § 85 of the *Metropolitan Building Act*, 1855, of his intention to exercise his right, under § 83 of the *Act*, to rebuild a party wall. During the work some damage was done to the adjoining premises, which was made good by the contractor. The surveyors certified that a certain sum should be paid to the contractor in respect of the making good of the damage to the adjoining house, which the occupier paid on being served with a writ. In an action by the occupier to recover the amount from the defendants, who were his landlords, the plaintiff obtained a verdict. On hearing a rule obtained by the defendants, the Court (*Bovill, C.J., Waller, Keating, and Brett, JJ.*) *held*, that a building owner who pulls down and rebuilds a party structure under the *Metropolitan Building Act*, 1855, is not bound to make good the damage to the adjoining tenement. An occupier, under a repairing lease, therefore, cannot recover from his landlord, the adjoining owner, the amount paid upon threat of legal proceedings to the building owner for the repair of such damage.

BRYER v. *WILLIS.*

(1870) 23 L. T. 463; 19 W. R. 102.

——**Dangerous Condition.**—The owner of certain premises sued the adjoining lessee to recover a moiety of the cost of a party wall, which was rebuilt in compliance with a notice by the local authority that it was in a dangerous state. The adjoining lessee had sub-leased the whole property, and received an improved rental, and the question was whether the lessee, who was the defendant, or the sub-lessees in occupation, should pay a moiety of the cost of rebuilding. *A. L. Smith, J., held*, that the lessee

was not "the owner" within the meaning of the *Metropolitan Building Act*, 1855, and entered judgment for the defendant.

WIGG v. *LEFEVRE.*

(1892) 8 L. T. R. 493.

——**Defective, may be compulsorily Rebuilt.** — Where a party wall sufficient for all other purposes is incapable of bearing the structure proposed to be placed upon it by the building owner, he has a right, under § 83 of the *Metropolitan Building Act*, 1855, upon notice to the adjoining owner, to pull down the same compulsorily, bearing the expense. Where a party wall is defective for all purposes, the expense of pulling down and rebuilding must be borne by the building and adjoining owners.

SEAWELL v. *WEBSTER.*

(1859) 29 L. J. Ch. 71; 7 W. R. 691.

——**Delay in Completion.**—The owner of certain premises, being desirous of rebuilding, pulled them down, and, finding that the party wall dividing them from the adjoining house was not strong enough to support the proposed new building, he served notice upon the adjoining occupier under the *Metropolitan Building Act*, 1855, of his intention to pull it down. The work of demolition was begun on February 16, 1892, and on the next day the occupier, who was tenant from year to year of the adjoining house, sought an injunction to restrain the defendant, &c., from interfering with the wall. The rebuilding of the wall was completed in August, 1892. The defence pleaded the *Statute* of 1855, and at the trial the plaintiff obtained leave to amend his claim so as to raise the issue whether, by delaying the completion of the party wall until August, 1892, the defendant had exceeded his statutory powers. *Grantham, J.*, entered judgment for £40 as found by the jury. The plaintiff appealed for a new trial on the grounds, that the judge ought not to have allowed the amendment, inasmuch as the cause of action had arisen since writ issued; and that, as the defendant had employed a competent builder and architect, he was not liable to the plaintiff for their negligence. The Court (*Lindley, Lopes, and Davey, L.JJ.*) refused the application, without calling on counsel for the plaintiff.

JOLLIFFE v. *WOODHOUSE.*

(1894) 10 T. L. R. 553.

——**Erection stayed, a "Difference" having arisen.**—The plaintiffs and the defendant occupied adjoining premises in the City, and had erected a certain party wall between their premises. The

defendant subsequently in forming a sub-basement had begun to excavate under the party wall, cutting away some of the concrete foundations and removing the clay beneath, and substituting therefor new concrete foundations, and new brickwork, carried up beneath the party wall. The defendant had served on the plaintiffs the usual notice under the *Metropolitan Building Act*, 1855, naming his surveyor, and the plaintiffs had appointed their surveyor, but the two surveyors had not agreed as to the work, and had not appointed a third surveyor.

The plaintiffs moved for an injunction to restrain the defendant from continuing the work, and *Jessel, M.R., held*, that the plaintiffs were right in law, and ordered the proceedings to be stayed on the defendant undertaking to do the works in question under the direction of two surveyors and an arbitrator. Although a co-owner of a party wall could not at common law maintain an action for interference when the work done is not dangerous to the security of the party wall, yet such a work, being a right in relation to a "party structure" within the meaning of § 83 (7), and (11), of the *Metropolitan Building Act*, 1855, cannot be carried out when a "difference" arises between the two owners (unless they concur in the appointment of one surveyor), except by the award of two surveyors and a third selected by them, or of any two of such surveyors as provided by the *Act*.

STANDARD BANK OF BRITISH SOUTH AMERICA v. *STOKES*.

(1878) 9 Ch. D. 68; 47 L. J. Ch. 554; 38 L. T. 672; 26 W. R. 492.

——**Executor or Administrator Liable.**—Under the *Building Act* 14 *Geo. III. c.* 78, § 41, where a party wall has been rebuilt, the person who is owner of, and entitled to, the improved rent of the premises adjoining is liable to contribution out of such rent, though he be not otherwise owner than as an executor or administrator. And this, although there be a judgment outstanding, of a prior date to the pulling down of the wall, and no assets to meet it. The portion of rent claimable in respect of such contribution is not assets.

THACKER v. *WILSON*.

(1835) 3 Ad. & E. 142; 4 N. & M. 658; 4 L. J. K. B. 149.

——**Furniture exposed during Rebuilding.**—The plaintiff had for several years occupied a shop in a court as tenant at will. The defendants purchased some adjoining premises and pulled them down, and built upon the site a lofty warehouse, which interfered

with the plaintiff's light. They also for some months stopped up the path in front of the plaintiff's shop, thereby almost entirely destroying for that period his business, from which he derived a profit of £2 a week. During the works the defendants pulled down, pursuant to their powers under the *Metropolitan Building Act*, 1855, the wall of the plaintiff's house, which was in a dangerous state, leaving the plaintiff's rooms exposed to the weather. In an action for damages tried by *Keating, J.*, the jury found for the defendants as to the stoppage of the footpath, and for the plaintiff in respect of interference with his light, and the injury sustained by reason of the rooms being exposed. The Court (*Bovill, C.J., Willes and Keating, JJ.*), on hearing a rule obtained by the defendants for a new trial, *held*, that an owner who pulls down a party wall under the authority of the *Metropolitan Building Act*, 1855, is not bound to protect the rooms from exposure to the weather during the time that the wall is being pulled down and rebuilt.

THOMPSON v. *HILL.*

(1870) L. R. 5 C. P. 564; 39 L. J. C. P. 264; 22 L. T. 820; 18 W. R. 1070.

——**Height increased.**—The plaintiffs were, respectively, owners in fee, and lessees under a building agreement, of certain premises. The defendants were, severally, owners in fee, mortgagees, and lessee, of premises adjoining. A wall, 6½ feet high and 6 inches thick, divided the respective gardens at the rear. The lessees, without the consent of the defendants, pulled down 33 feet of the said wall, and the defendants obtained from *North, J.*, a perpetual injunction against the lessees in respect of interference therewith, but not so as to prevent the lessees from restoring the wall to its former condition. The lessees rebuilt the wall, not, however, as a garden wall, but as part of their new house, and raised it to a height of 50 feet, placing in the soil of the defendants' garden foundations extending thereinto some inches further than those of the old wall, and thereby admittedly committed a trespass. From the height of 6½ feet above the ground level to the top, 4½ inches of the new wall was unbuilt upon. The defendants moved to commit the plaintiff-lessees' architect and sequestrate their property for a breach of the injunction, but the motion stood over to enable the plaintiffs to bring an action for the partition of the party wall. *North, J., held*, that a tenant in common is entitled as of right to a partition of the property held in common, subject to the provisions of a sale, contained in the *Partition Act*, 1868, and made the order for a partition. *Held* also, that the

trespass, being of a permanent nature, the owners of the reversion in fee of one of the premises could maintain an action for trespass, although the tenant made no complaint.

MAYFAIR PROPERTY CO. v. *JOHNSTON.*

(1894) 1 Ch. 508; 63 L. J. Ch. 399; 8 R. 781; 70 L. T. 485.

——**Increasing Height without Notice.**—The plaintiffs and the defendants were freeholders of adjoining premises in London. The tenant of the former gave notice under § 90 of the *London Building Act*, 1894, to the defendants of his intention to rebuild a party wall between the houses. The defendants served on the tenant a notice under § 89, giving certain requirements with which they desired him to comply. A dispute as to the execution of the work was referred, under § 91, to the arbitration of two surveyors, who awarded *inter alia* that the defendants should have the right at any time to raise the party wall as they might decide. The building work was then executed. Two years later the defendants proceeded to increase the height of and build upon the party wall, without giving a building owner's notice to the plaintiffs, who had meantime acquired the tenants' interest.

On appeal against an interlocutory injunction granted in chambers by *Phillimore, J.*, the Court (*Collins, M.R., Stirling and Mathew, L.JJ.*) *held*, that the defendants were building owners within the meaning of the *Act*, and were under an obligation to serve a building owner's notice on the plaintiffs, under § 90, before beginning the work; that the arbitrators had exceeded their jurisdiction, which, by § 91, was limited to disputes in respect of the work referred to in the original notice given to the defendants under § 90; that they had no power to award that the defendants might in future raise the party wall; and that the award was *pro tanto* invalid.

LEADBETTER & OTHERS v. *MARYLEBONE CORPORATION.*

(1904) 68 J. P. 566; 2 K. B. 893; 73 L. J. K. B. 1013; 91 L. T. 639; 53 W. R. 118; 20 T. L. R. 778.

——**Injury to.**—The owner of a party wall raised it, *bonâ fide* intending to comply with the provisions of the *Building Act* 14 *Geo. III. c.* 78, but did not in fact do so. In the course of the work the adjoining house was injured, and the owner brought an action for trespass. At the trial before *Abbott, C.J.*, a verdict was taken for the plaintiff, subject to an award which was given in favour of the defendant. On hearing a rule to set aside the award,

the Court (*Abbott, C.J., and others*) *held*, that the raising of the wall was to be considered as done in pursuance of the *Statute*, and that the defendant was entitled to the protection given by § 100 thereof.

PRATT v. *HILLMAN.*

(1825) 4 B. & C. 269; 6 D. & R. 360; 3 L. J. (o.s.) K. B. 253.

——**Of Insufficient Strength.**—The defendant's premises were burnt down, and had been rebuilt with a sloping roof, which formed one side of two floors or rooms in the roof. The premises were, some years later, again burnt down, and the defendant proposed to rebuild the two top rooms in the same way. The district surveyor objected, on the ground that the two top rooms were storeys within the *Metropolitan Building Act*, 1855, and being storeys, the party wall between the defendant's and the plaintiff's premises adjoining, were not of the requisite thickness for party walls. The defendant proposed to pull down the party wall, and increase its thickness, and the plaintiff objected. A difference having arisen between them, they appointed surveyors, under § 85 (7) of the *Act*, who by their award found that the party wall was not of sufficient strength for the building. The plaintiff appealed, and the judge of the City of London Court (with assessors) *held*, that the rooms were not storeys, and set the award aside. The value of the matter in dispute being certified to be more than £50, the defendant appealed under § 102.

The Court (*Mathew and Grantham, JJ.*) *held*, that the rooms in question were storeys, within the meaning of the *Act*, and that a topmost storey need not necessarily be contained within four vertical walls.

FOOT v. *HODGSON.*

(1890) 55 J. P. 116; 25 Q. B. D. 160; 59 L. J. Q. B. 343.

——**"Lean-to" erected against.**—The defendant was owner in fee of a plot of land, and the plaintiffs were joint adjoining owners. One of the plaintiffs was legal owner in fee of the adjoining premises, and had agreed to sell to his co-plaintiff, who had begun to build cottages upon it. The defendant derived title from the plaintiff who was owner in fee, and by a covenant in the lease the defendant's predecessor in title covenanted to erect a certain wall to be deemed a party wall. The co-plaintiff in building the cottages proposed to raise the wall so as to make a gable end to one of the cottages, and the defendant objected on the ground that it was a party wall, and he pulled some of the building down. The

plaintiffs sought an injunction to restrain him from so doing, and *North, J., held,* that assuming it was a party wall within the meaning of the covenant in the head lease, and that the plaintiffs' land was subject to a similar provision, the wall was in no way vested in the defendant, and that though he might use it as a party wall by putting a lean-to against it, the co-plaintiff could, subject to its being so used, do what he liked with it, and the injunction was granted.

BUCHAN v. *ARTLETT.*
(1888) W. N. 76.

——**Negligence in pulling down.**—In an action against the owner of a house adjoining that of the plaintiff, for damages for negligence of the defendant's agent in pulling down a party wall between the two premises, it is a good defence to show that the plaintiff appointed an agent to superintend the work jointly with the defendant's agent, and that both of the agents were to blame.

HILL v. *WARREN.*
(1818) 2 Stark. 377.

——**No Notice.**—A landlord entered premises in the occupation of his tenant from year to year, and pulled down and rebuilt a party wall between them and other premises belonging to him, without giving the tenant the notice required by § 83 of the *Metropolitan Building Act,* 1855. In an action by the tenant against his landlord for trespass, tried by *Cockburn, C.J.,* the plaintiff obtained a verdict. On a rule, the Court (*Crompton, J., Bramwell and Watson, BB., and Hill, J.*) *held,* that the landlord was justified, as the tenant was not an "owner" within § 3, and it is no objection that the landlord had neglected to give the notice to the surveyor required by § 38. Decision of the Court of Common Pleas *affirmed.*

WHEELER v. *GRAY.*
(1859) 6 C. B. (N.S.) 606; 28 L. J. C. P. 200; 7 W. R. 325; 5 Jur. 916.

——**Notice wrongly issued, not withdrawn.**—The defendants served on the plaintiff a notice under the *Metropolitan Building Act,* 1855, § 85, to rebuild a certain party wall. It proved that the wall was not a party wall, but an external wall, and, therefore, the notice was invalid. The plaintiff failed to induce the defendants to withdraw the notice, although they had been frequently requested to do so, but they stated that they did not propose to act upon the notice.

The plaintiff sought an injunction to restrain the defendants from acting on the notice, which *Wood, V.C.*, granted.

SIMS v. *THE ESTATE CO. LTD.*

(1865) 14 L. T. 65; 14 W. R. 419.

——**Ouster by Defendant of Plaintiff.**—The plaintiff and defendant occupied adjoining lands divided by a wall, of which they were tenants in common. The roof of the defendant's shed rested on the top of the wall across its whole width. The defendant raised the wall, replacing the coping-stones, and built a washhouse where the shed had stood, the roof occupying the whole width of the wall. The defendant obtained a verdict in an action for trespass tried before *Channell, B.*, and the plaintiff sought a rule. The Court (*Lord Campbell, C.J., Erle and Crompton, JJ.*) *held*, that on the facts the jury might find an actual ouster by the defendant of plaintiff from the possession of the wall, which would constitute a trespass upon which the plaintiff might maintain an action against the defendant.

STEDMAN v. *SMITH.*

(1857) 8 E. & B. 1; 26 L. J. Q. B. 314; 3 Jur. 1248.

——**Owner of Improved Rent Liable.**—The lessee of certain land entered into a building agreement with a proposed sub-lessee who was to build houses and pay the lessee £20 a year rent. The sub-lessee employed his lessee, who was a builder, to erect the houses. In an action by the adjoining owner against the lessee, to recover a moiety of the expense of building the party wall, tried before *Best, C.J.*, the plaintiff obtained a verdict. On hearing a rule for a new trial, the Court (*Best, C.J., Park, Burrough, and Gaselee, JJ.*) discharged it, and *held*, that as the defendant was entitled to the improved rent he was liable to contribute to the party wall to which the houses were attached, and that, as there was no adjoining house when the plaintiff's house was built, a reasonable notice was sufficient, and the ten-day notice required by the 14 *Geo. III. c.* 78, § 41, was not obligatory.

COLLINS v. *WILSON.*

(1828) 4 Bing. 551; 1 M. & P. 454; 6 L. J. C. P. 107.

——**Owner of Improved Rent Liable.**—The owner of an improved rent, not of the ground rent, is liable to pay the expenses of a party wall built under the provisions of 14 *Geo. III. c.* 78; and the three months' notice required by § 38 is only necessary, where the person, who at the time when it was necessary to build, &c.,

is liable to pay, cannot agree with the owner of the adjoining house.

PECK v. *WOOD.*
(1793) 5 T. R. 130.

——**Service of Notice.**—The plaintiff was tenant in possession of a part of certain premises, under an agreement for three years from February 1, 1890. The landlord resided in a room on the premises, and was a tenant of the Crown for a long time unexpired. The defendant, who was the adjoining owner, being desirous of rebuilding his premises, served by post upon the landlord a party-wall notice under § 59 of the *Metropolitan Building Act*, 1855. It was headed and addressed to "*J. Smith, . . . and whomsoever it may concern*," and was in the form generally used by architects and surveyors in London. Having done so, the defendant proceeded with the works, without notice to the plaintiff.

The plaintiff obtained, *ex parte* from the Vacation judge, an *interim* injunction restraining the defendant from interfering with the party wall. On motion to continue the injunction until trial, *Chitty, J., held*, that the plaintiff was entitled to three months' notice under § 85 (1) of the *Act*, before any alterations to his premises could be commenced by the building owner, and that notice on the person in receipt of the whole of the rent of the premises was insufficient.

FILLINGHAM v. *WOOD.*
(1891) 1 Ch. 51; 60 L. J. Ch. 232; 64 L. T. 46; 39 W. R. 282.

——**Tenant may deduct Cost from Rent.**—A tenant who has been compelled by a "*building owner*" to pay the proportion of the cost of a party wall or structure which was payable under the *Metropolitan Building Act*, 1855, by his landlord, the "*adjoining owner*" may maintain an action against the latter to recover the sum so paid, and is not bound (though entitled) to deduct it from rent due or accruing due.

EARLE v. *MAUGHAM.*
(1863) 14 C. B. (N.S.) 626; 10 Jur. 208; 8 L. T. 637; 11 W. R. 911.

——**Tenant under Repairing Lease.**—A tenant under covenant to repair cannot maintain an action under the *Building Act* 14 *Geo. III. c.* 78, against his landlord for a moiety of the cost of building a party wall which, being out of repair, the tenant had pulled down and rebuilt at the joint expense of himself and the adjoining

occupier, to whom he had given the statutory notice, but without his authority.

PIZEY v. *ROGERS.*
(1826) Ry. & Mo. 357.

——**Tenants in Common.**—The plaintiff and the defendant were owners in fee of adjoining premises, each deriving title from the same predecessor in title. In the title-deeds of each premises there was a declaration that a wall, 4½ inches thick, separating the respective premises in the rear, was to be and remain a party wall. In the course of erecting a shed the plaintiff built a new piece of wall upon, and corresponding in thickness to, the old wall 4 feet 6 inches long, raising it to a height of 3 feet 4 inches, as a support for the roof of the shed. The defendant knocked the new wall down, and the plaintiff claimed damages and an injunction. *Fry, J.*, defined the meaning of a party wall, and *held*, that the adjoining owners were tenants in common, and if one excludes the other from the use of the wall by placing an obstruction upon it, the only remedy of the excluded tenant is to remove the obstruction. The plaintiff, therefore, was not awarded any damages, and the injunction was refused.

WATSON v. *GRAY.*
(1880) 44 J. P. 537; 14 Ch. D. 192; 49 L. J. Ch. 243; 42 L. T. 294; 28 W. R. 438.

——**Time-Limit for bringing Action.**—An adjoining owner had begun to build a party wall partly on the soil of the plaintiff, more than three months before the date when the action was brought. The work, however, was not finished until within that time. The *Building Act* 14 *Geo. III. c.* 78, § 100, limits the time in which actions may be brought to three months. In an action for trespass against the adjoining owner, *Parke, J.*, *held*, that the plaintiff could recover in respect of such part of the trespass as was committed within the time limited, but that, if nothing had been done within three months, he must bring ejectment.

TROTTER v. *SIMPSON.*
(1831) 5 C. & P. 51.

——**Trespass to, by Erection of W.C.'s.**—The defendant, in rebuilding his premises after a fire therein, gave a party-wall notice, under the *Metropolitan Building Act*, 1855, to the adjoining owner in respect of a wall built entirely on the premises of the adjoining owner, who had built some closets against the wall. The adjoining owner sought an injunction to restrain the defendant from

interfering with the wall, and a mandatory injunction, to compel him to remove certain buildings which he had erected thereon. *Fry, J., held,* that so far as buildings extended against both sides of the wall, it was a "party wall" within the meaning of the *Act*, and that the defendant was entitled, after due notice, to take down such part as might be necessary for the purpose of necessary rebuilding.

KNIGHT v. *PURSELL.*

(1879) 11 Ch. D. 412; 48 L. J. Ch. 395; 40 L. T. 391; 27 W. R. 817.

——**United Building.**—The owners of certain premises made such an addition thereto that the cubic content of the two buildings taken together exceeded 216,000 cubic feet. By the rules made under § 27 of the *Metropolitan Building Act*, 1855, certain buildings containing more than that number of cubic feet must be divided by party walls; § 28 prohibits any buildings from being united, if when so united they will be a contravention of the *Act*. § 9 of the *Act* makes an addition to an old building subject to the said *Act*.

The district surveyor summoned the owners because they had not separated the buildings by a party wall, and the magistrate ordered that a party wall should be built. The owners appealed, and the Court (*Cleasby, B., and Grove, J.*), on a case stated, dismissed the appeal. The owners appealed to the Court of Appeal (*James, Baggallay, Bramwell, and Brett, L.JJ.*), who *held*, that the united building was not within the *Act*, and need not be separated by a party wall; and that an appeal from the decision of a magistrate will lie under § 106 of the *Act*, although there has not been a conviction.

SCOTT v. *LEGG.*

(1882) 10 Q. B. D. 236; 46 L. J. M. C. 267; 36 L. T. 456; 25 W. R. 594.

——**Use of Gable.**—The plaintiff claimed damages for trespass by the defendants in building on and against the plaintiff's gable walls and making use of them without the plaintiff's consent, and an injunction; or, in the alternative, for payment for £25, being half cost of the gable walls. A building society, mortgagees of a building estate, joined with the mortgagor in selling a site on the estate to a purchaser, who covenanted to perform certain scheduled conditions, one being that the purchaser first building a party wall should be repaid half the value thereof by the purchaser of the adjoining site. The purchaser built a house, mortgaged it to the society, who, under their power of sale, sold it to the

plaintiff. The building society subsequently sold the residue of the estate to a company, who sold to the defendants a site adjoining the plaintiff's house, under substantially the same conditions as to party walls as bound the plaintiff. The defendants built a house, using the plaintiff's party wall, half of which was built on the plaintiff's and half on the defendants' land. On appeal from the judge of a County Court, the Court (*Darling and Channell, JJ.*) *held*, that there was an implied contract on the part of the defendants to pay half the cost of the party wall to the plaintiff as the owner of the adjoining house, notwithstanding that the wall had in fact been built by the plaintiff's predecessor in title.

IRVING v. *TURNBULL & ANOTHER.*
(1900) 2 Q. B. 129; 69 L. J. Q. B. 593.

——**Use without Leave.**—A tenant who rebuilds a house in London without a lease or an agreement for a lease, and therein makes use of a party wall of the adjoining house, cannot be sued for half the cost, as owner of the improved rent, even though he afterwards obtains in consideration of the rebuilding a beneficial lease at a low ground rent, *habendum* from a day before the rebuilding.

TAYLOR v. *REED.*
(1815) 6 Taunt. 249.

——**User of.**—The owner of three contiguous building sites sold the middle site, the length of which was 20 feet, to the plaintiff in 1887; and one of the end sites to another purchaser, and he retained the other end site himself. The plaintiff and the other purchaser erected houses on their respective sites, and the owner built a house on the site he had retained, making use of the plaintiff's gable, in respect of which user the plaintiff obtained judgment in the County Court against him for £21 7*s*. The plaintiff's premises extended to the middle of the wall, 4½ inches of which stood on the plaintiff's and 4½ inches on the defendant's ground. On appeal, the Court (*Cave and A. L. Smith, JJ.*) *held*, that the custom had been proved whereby the defendant should contribute to the cost of the wall, which he used, notwithstanding that it was half built on his ground, there being nothing in the agreement to exclude the custom.

ROBINSON v. *THOMPSON.*
(1890) 89 L. T. J. 137.

——**Verbal Assent to Pay.**—A builder proposed to the occupier of the adjoining premises to rebuild a party wall, stating that it

would cost the occupier of the adjoining premises £28. The latter replied, "*Very well. I expect to pay what is right and fair.*" In an action by the builder to recover the sum of £28, *Gibbs, C.J., held*, that the plaintiff was entitled to recover from the adjoining occupier his share of the cost, irrespective of the *Building Act* 14 *Geo. III. c.* 78.

STUART v. *SMITH.*
(1816) 2 Marsh, 435; 7 Taunt. 158; Holt (N.P.) 321.

PENALTY

——**Concluded by Architect's Certificate.**—The plaintiff agreed to build a certain house by a certain date, and in default to pay £5 for each week during which completion was delayed thereafter. £70 in respect of penalty became due. In an action for the balance of the contract, it was proved that some delay had been caused by the defendant, that the architect had certified that the works were complete, and that the plaintiff was entitled to the balance due. *Crowder, J., held*, that the architect's certificate concluded the question of penalties, and directed a verdict for the plaintiff.

ARNOLD v. *WALKER.*
(1859) 1 F. & F. 671.

——**Not Liquidated Damages.**—A firm of builders contracted to erect certain school buildings, the contract providing that in the event of the buildings not being completed by a specified date the contractors should forfeit to their employers, the school governors, a sum of £10 for every week after that date during which the works should remain unfinished and not delivered up; and, also, that in the event of the contractors' bankruptcy, &c., the governors might rescind the contract, &c., and that "in case this contract be not in all things duly performed by the said contractors, they shall pay to the said governors the sum of £1000 as and for liquidated damages." During the progress of the works the contractors filed a petition, and for a time their trustees carried on the works, and then gave notice in writing that they abandoned the contract. Another contractor was employed to finish the works, which were not completed until after the specified date. A proof for £1000, tendered by the governors, was rejected by the trustee in bankruptcy, as it did not disclose that any damage had been sustained by the debtors' default, and the County Court judge *affirmed* this decision. On appeal by the governors, *Bacon, C.J., held*, that the governors were entitled to prove. The trustees appealed, and the

Court (*James, Baggallay, and Bramwell, L.JJ.*) *reversed* the decision of *Bacon, C.J.*, and *held*, that the £1000 was in the nature of a penalty, and that the governors could only prove in the liquidation for the actual damage sustained.

IN RE NEWMAN; EX PARTE CAPPER.

(1876) 4 Ch. D. 724; 46 L. J. Bk. 57; 35 L. T. 718; 25 W. R. 244.

——**Omitted from Contract.**—The plaintiffs sued an urban district council to recover certain payments alleged to be due to them on foot of a contract in writing and duly sealed with the council's seal. The contract, however, contained no provision for a pecuniary penalty in case its conditions were not duly performed. The plaintiffs had performed their contract, and would be entitled to payment if the contract was valid. *Day, J.*, ordered a special case to be stated, and the Court (*Pollock, B., and Wright, J.*) *held*, that § 174 (2) of the *Public Health Act*, 1875, which provides that every contract above the value of £50 shall specify some pecuniary penalty to be paid in case the conditions of the contract are not duly performed, was obligatory, and not merely directory, and that a contract which did not specify such penalty could not be enforced against the urban district council. On appeal, it was stated that the Local Government Board would sanction the payment of the claim in arrears, and that a fresh contract, with a penalty clause, had been entered into, and the Court (*Lord Esher, M.R., Kay and A. L. Smith, L.JJ.*) dismissed the appeal without pronouncing judgment.

BRITISH INSULATED WIRE CO. v. *PRESCOT URBAN DISTRICT COUNCIL.*

(1895) 59 J. P. 552; 2 Q. B. 463, 538; 65 L. J. Q. B. 811; 15 R. 633; 73 L. T. 383; 44 W. R. 224; 11 T. L. R. 595.

PERSON ERECTING THE BUILDINGS

B. entered into a building contract with W. to erect seventy-six houses on W.'s land. B. duly deposited, on April 17, 1877, plans with the local Board, and proceeded to build some of the houses. Fifty-nine were completed by September 1, 1877. On that date B. entered into an agreement with another builder to erect the remaining houses for W., and B. took no further part in the building operations, beyond paying the builder at the rate of £115 for each house completed. In erecting the remaining houses the builder failed to comply with the by-laws of the local board, who laid an information against B. He was convicted by the

justices, and appealed. The Court (*Lindley and Mathew, JJ.*) *held*, that B. was not "the person erecting the buildings," and, therefore, was not liable under the by-law for any violation thereof.

BROWN v. *EDMONTON LOCAL BOARD.*

(1881) 45 J. P. 553.

PERSONAL COVENANT

A builder undertook to execute certain works of repair to a parish church, and the defendants, who were the churchwardens and overseers of the parish, covenanted for themselves and their successors, with the builder, his executors and administrators, that they would pay or cause to be paid to the builder the agreed cost of the works. The contract contained a proviso that this covenant was not to be deemed a personal covenant affecting the defendants in their private capacities. In an action against the churchwardens, &c., personally, the Court (*Tindal, C.J., Coltman, Erskine, and Cresswell, JJ.*) *held*, on demurrer, that this was a personal covenant, and that the proviso was repugnant thereto and inconsistent therewith, and therefore void.

FURNIVALL v. *COOMBES.*

(1843) 6 Scott (N.R.) 522; 5 M. & G. 731; 7 Jur. (O.S.) 399; 12 L. J. C. P. 265.

PERSONAL SERVICE

A railway company employed a consulting engineer for fifteen months in order to complete certain works. He was to be paid £500 for his services in equal quarterly instalments. The engineer died before the work was completed, and whilst two quarterly instalments which were due to him were still unpaid. His personal representative obtained a verdict for the balance of salary due, and on hearing a rule *nisi*, the Court (*Kelly, C.B., Martin and Channell, BB.*) discharged the rule, and *held*, that his personal representative was entitled to recover, and that although the contract was determined by death, it is not so determined as to take away a right of action already vested.

STUBBS v. *HOLYWELL RAILWAY CO.*

(1867) L. R. 2 Ex. 311; 36 L. J. Ex. 166; 16 L. T. 631; 15 W. R. 869.

PETITION OF RIGHT

The suppliant entered into a contract with the War Department, which empowered the latter to reject any materials of which

they disapproved, or any works not considered of sufficiently high quality, and to terminate the contract in case of undue delay. All materials and plant brought on to the ground were to become the property of the War Department, but plant and unused materials reverted to the suppliant on completion of the works. The suppliant did not proceed with due diligence in carrying out his contract, and after due notice he was directed to withdraw from the site. He refused to do so, and presented his Petition of Right, whereupon the Attorney-General filed an information against the suppliant alone, and asked an injunction restraining him from continuing on the site, &c. *Wickens, V.C.*, ordered the Attorney-General's motion, which was heard first, to stand over until the hearing of the suits. *Quære*, whether the contractor's remedy was by Petition of Right, or by bill against the Secretary of State.

KIRK v. *REG.*

(1872) L. R. 14 Eq. 558.

PLANS

——**Approval of.**—A local improvement Act required every person who proposed to erect a new building to give notice to the corporation and deposit plans showing elevation, details and sections of the buildings, the drainage, &c., and the position of all buildings and streets adjoining. The by-laws made pursuant thereto provided that if the corporation did not signify disapproval of the plans within twenty-eight days they shall be taken to have approved. Plans, &c., all in accordance with the by-laws, &c., were submitted to, and rejected by, the corporation, on the grounds that the proposed building was not suitable to the neighbourhood, and would tend to depreciate the adjacent property. On a special case, the Court (*Field and Cave, JJ.*) *held*, in a considered judgment, that the corporation had not an absolute discretionary power, and in the circumstances, were bound to approve the plans, &c., of the proposed buildings, and they granted a *mandamus*.

R. v. *NEWCASTLE-ON-TYNE CORPORATION.*

(1889) 53 J. P. 788; 60 L. T. 963.

——**Approved.**—The owner of an hotel, about to rebuild it, submitted to the local authority, in accordance with their by-laws, a plan showing the proposed new buildings. The local authority by resolution approved the plan, and offered the owner of the hotel a certain sum as compensation for a piece of his land required by them for street improvements. He refused the sum

offered, but proceeded with the work, pulling down his front wall in accordance with the plan. Subsequently the local authority rescinded their former resolution, and ordered him to set back the new building to a certain line, pursuant to § 155 of the *Public Health Act*, 1875. The owner, however, continued to build according to the approved plan, and the local authority served him with a notice requiring him to pull down the building recently erected, and that on failure of compliance therewith the local authority would do so. The owner sought an injunction to restrain the threatened interference, which was granted with costs by *Fry, J.*, who *held*, that the local board having approved a plan and allowed the owner to pull down the front wall of his house, could not afterwards avail itself of powers acquired when the front of a house has been taken down: where the board had not, during the month prescribed by § 158 of the *Act*, disapproved the plans, it could not afterwards object to the building according to the plans; and that a local board cannot pull down a building under § 158 without giving the owner an opportunity of showing cause why it should not be pulled down.

MASTERS v. *PONTYPOOL LOCAL GOVERNMENT BOARD.*

(1878) 9 Ch. D. 677; 47 L. J. Ch. 797.

——**Approved.**—An information was laid against the respondent, charging that he erected a house without building a parapet on the same, contrary to the provisions of the *Bristol Improvement Act*, 1847. The house was built subsequent to October 31, 1897, the date of the commencement of the above *Act*, in accordance with a plan deposited by the respondent with the local authority before June 12, 1896, but which did not comply with the then existing by-laws made under § 157 of the *Public Health Act*, 1875. Notwithstanding such non-compliance, the local authority purported to approve the plan on June 12, 1896, and their approval was endorsed upon it. The justices dismissed the information.

The Court (*Day and Lawrance, JJ.*) *held*, on a case stated, that an "approved" plan is a plan which has been lawfully approved by a local authority, and not one which has merely received their approval in fact.

YABBICOM v. *KING.*

(1899) 63 J. P. 149; 1 Q. B. 444; 68 L. J. Q. B. 560; 80 L. T. 159; 47 W. R. 318.

——**Architect's Claim for Fees.**—A firm of architects, at the request of the defendants, submitted plans and estimates for certain school

premises to be erected for a certain sum. The architects were also to procure tenders for the works and superintend the erection of the buildings at 5 per cent. commission on the total outlay. The plans were rejected by the school committee, on the ground that the works could not be carried out for the estimated cost as submitted by the architects. In an action by the architects for fees, *Cockburn, C.J., held,* that it is a question for the jury whether there was an express or implied condition of the contract that the estimates shall be reasonably near the actual cost.

NELSON v. *SPOONER.*
(1860) 2 F. & F. 613.

——**Building before Plans are approved.**—All purchasers of plots on a certain estate laid out for building were required to enter into a covenant with each other and with the vendors not to erect any building the plan of which had not been approved. The defendant purchased a plot, and began to erect buildings, without submitting a plan. The vendors sought a mandatory injunction and damages, and *Bacon, V.C., held,* that the erection of a temporary structure on another part of the estate, which had not been objected to by the vendors, was not a waiver of the covenant, and that the vendors were not bound to obtain the consent of all the parties entitled to the benefit of the covenant before bringing the action, and he granted damages, but not a mandatory injunction.

KILBEY v. *HAVILAND.*
(1871) 24 L. T. 353; 19 W. R. 698.

——**Fresh Deposit Necessary.**—A private Act of Parliament provided that "the deposit with the corporation of any plan of any street or building shall be null and void if the execution of the work specified in such plan be not commenced within" certain specified periods, at the expiration of which fresh notices were required. On October 1, 1894, a builder deposited a plan of eleven houses which he proposed to erect, and which was duly approved by the corporation. Three of the houses were commenced on October 1, 1896, and were in due time certified complete and fit for habitation by the surveyor. More than three years after the date of deposit, two other houses, adjoining the three already built, were erected, and duly certified. New by-laws were made in November, 1901, with which the buildings shown on the deposited plans did not comply, and on the builder proceeding with the work, he was informed that he must submit fresh plans for approval. On a case stated, *Wright, J.,* decided in favour of

the corporation. On appeal, the Court (*Lord Alverstone, C.J., Collins, M.R., and Romer, J.*) *held, affirming* the judgment of *Wright, J.*, that the plan must be taken to be a plan not of one building but of a number of buildings, and that so far as it related to those not commenced within three years from the deposit thereof, it was null and void, and unless the corporation otherwise determined, a fresh notice and deposit were requisite.

HARROGATE CORPORATION v. *DICKINSON.*

(1904) 68 J. P. 202; 1 K. B. 468; 73 L. J. K. B. 262; 90 L. T. 41; 2 L. G. R. 525.

——**Fresh Deposit Necessary.**—The respondent submitted plans of a certain building which he proposed to erect, but they were not approved by the local authority. Subsequently fresh plans were in due course approved, and the respondent proceeded to erect the proposed building. In doing so he deviated from the approved plans inasmuch as the total height of the building was 9 feet, and the height of the first and the second floors 6 inches, less than that shown on the plans. There was no by-law of the local authority regulating the height of rooms in the buildings within their jurisdiction. The justices *held*, that, although there had been deviations from the plans, there had been no breach of any of the by-laws of the authority, and as the plans had been duly deposited and approved pursuant to the by-laws, they dismissed the summons. The Court (*Lord Coleridge, C.J., and Wills, J.*) *held*, on a case stated, that as the erection of the building was no longer proceeding in accordance with the approved plans, the respondent was bound to submit fresh plans for the approval of the local authority, and having failed to do so, he was liable to be convicted.

JAMES v. *MASTER.*

(1893) 57 J. P. 167; 1 Q. B. 355; 5 R. 112; 67 L. T. 855; 41 W. R. 174.

——**Neither approved nor disapproved.**—In May, 1894, plans of an arcade showing that the buildings were to be used for business purposes, and not as dwelling-houses, were lodged with a local authority, and duly approved as such. On March 28, 1898, revised plans, showing the proposed conversion of the buildings to domestic purposes, were deposited, but were neither approved nor disapproved in writing. The alterations were effected between that date and October 3, 1898, and the premises were inhabited by persons other than a caretaker between October 24 and November 8, 1898. On the hearing a summons for a breach of § 33 of the *Public Health Acts Amendment Act*, 1890, the defendant contended

that only his wife with a child resided on the premises as a caretaker; that the plans lodged in 1898 described the premises as a dwelling-house; that the alterations shown on the plans were for the conversion into dwelling-houses of buildings not originally constructed for human habitation; and that the plans should have been approved or disapproved within a month under § 158 of the *Public Health Act*, 1875. The justices dismissed the complaint, and the local authority appealed. The Court (*Darling and Channell, JJ.*) *held*, that there had been a breach of § 33 of the *Public Health Acts Amendment Act*, 1890, and remitted the case for a conviction.

FULFORD v. *BLATCHFORD.*
(1899) 80 L. T. 627; 19 Cox C. C. 308.

——**Ownership of.**—A builder submitted to a local board the plans of certain houses and shops which he proposed to erect in the district, accompanied by a printed notice, furnished to the builder by the local board, on the back of which were the words, "*All plans deposited will be retained in the surveyor's office for record.*" Attention was directed to these words by the words on the face of the notice, "*See regulations over,*" which the builder saw, but he did not read the notice. The plans were not approved, and the local board refused to return them. In an action to recover their possession, *Mather, J.*, *held*, that it was not unreasonable for the defendants to make by-laws, pursuant to § 157 of the *Public Health Act*, 1875, enabling them to retain such plans, although they be disapproved of and rejected.

GOODING v. *EALING LOCAL BOARD.*
(1884) 1 Cab. & E. 359.

——**Submitted but never approved.**—A landowner agreed to grant a lease of certain premises as soon as the proposed lessee had built thereon a house and offices valued for £1400, according to a plan to be submitted to, and approved by, the proposed lessor. No plan had, however, been approved. In an action for specific performance brought by the proposed lessor, *Romilly, M.R.*, *held*, that no decree could be made for specific performance, and dismissed the bill.

BRACE v. *WEHNERT.*
(1856) 25 Beav. 348; 27 L. J. Ch. 572; 4 Jur. 549; 6 W. R. 425.

——**Written Consent showing Infringement of Building Line approved.**—In June, 1902, a builder submitted plans of two

proposed houses to a local authority, and they were approved duly on June 10. Each house was shown thereon to have a bay window projecting 2 feet 9 inches beyond the front main wall of the house on one side thereof. The builder then began to erect the houses according to the plans, and on August 13, 1902, the local authority served a notice in writing on him to set the buildings back to the front main wall of the next house. On not complying with this notice, he was summoned, and was convicted by the justices, under § 3 of the *Public Health (Buildings in Streets) Act*, 1888. On a case stated, the Court (*Lord Alverstone, C.J., Wills and Channell, JJ.*) *held*, that there was a "written consent" within the meaning of § 3, and quashed the conviction.

MERRETT v. *CHARLTON KINGS DISTRICT COUNCIL.*

(1903) 67 J. P. 419.

POWER TO UNDERPIN

A railway company gave notice, under their statutory authority, to the owners of certain premises, that they proposed to acquire a stable and yard adjoining the railway. The owners gave the company notice that they required them to take the whole of the premises, and on the company refusing to do so, the owners obtained an injunction from *Chitty, J.*, restraining the company from taking any part of the premises without taking the whole. The company then altered their plan, and brought the line just outside the stable and yard in a cutting 16 feet deep, and gave notice, on March 27, 1884, that they abandoned their notice to treat. Four days later they served a notice under their *Act*, that they would require to underpin the stable and yard, and the owners gave no counter-notice. Pursuant to their notice, the company built a concrete wall, 5 feet thick, underpinning the wall of the stables, 4 feet 5 inches of which was on the premises of the adjoining owners. The owners moved for a sequestration order, as what had been done amounted to a taking of their land, and alleged that the wall was the retaining wall of the railway. The company alleged that the real object of the wall was to underpin the building. *Chitty, J., held*, that the company had violated the injunction, and ordered them to pay the costs, an order for attachment not being pressed for. The company appealed, and the Court (*Baggallay, Bowen, and Fry, L.JJ.*) *held*, that the fact that the wall was a "retaining" wall, did not make it the less an "underpinning" wall, and that the company had not acted beyond their powers in making the wall on the plaintiffs' premises.

Where the jurisdiction to inflict costs arises from breach of an injunction or other misconduct, an appeal lies as to costs.

Witt v. *Corcoran*, 2 Ch. D. 69, followed.

STEVENS v. *METROPOLITAN DISTRICT RY. CO.*
(1885) 29 Ch. D. 60; 52 L. T. 832; 54 L. J. Ch. 737; 33 W. R. 531.

PRACTICE

——**Mandatory Injunction.**—The purchaser of two lots on a freehold building estate covenanted with the vendor and the purchaser of all the other lots not to erect any buildings, except 6-foot dwarf walls, beyond a specified building line. This covenant was not to be personally binding on any person, except in respect of breaches committed during the time of his seisin of, or title to, the lot or lots in relation to which the breaches were committed. Early in 1872 a sub-purchaser thereof broke his covenant by erecting a bakehouse, 12 feet high, beyond the building line, but no complaint was made. In September, 1876, the defendant purchased these two lots, and early in 1877 began to build thereon a stable of tarred wood with a slated roof, 15 feet high, beyond the building line. The plaintiff, the purchaser of lots on the same road and directly opposite, immediately instructed his solicitor to write to the defendant, and at that time the stable was built up to the eaves. On April 19 he brought an action for an injunction to restrain the defendant from so doing, and for a mandatory injunction; and *Bacon, V.C.*, granted a mandatory injunction to compel the removal of all erections on the defendant's plot beyond the building line. The defendant appealed, and the Court (*James, Baggallay, and Thesiger, L.JJ.*) *held*, that the injunction should not extend to the building which had been allowed to remain five years without complaint, but must be confined to buildings erected since the defendant acquired his title.

GASKIN v. *BALLS.*
(1880) 13 Ch. D. 324; 28 W. R. 552.

PRINCIPAL AND AGENT

The owner of a certain house employed a builder to pull it down and rebuild it. In the course of the building operations the builder, in order to fix a staircase, negligently cut into a party wall, in consequence of which the house fell, knocked down the party wall, and injured the premises of the adjoining owner. The interference with the party wall was not authorized by the contract between the owner and the builder, and the fixing of the staircase

was not in itself a hazardous operation, if performed with ordinary skill and care. In an action brought for damages by the adjoining owner, *Manisty, J.*, directed a verdict for the plaintiff, and the damages to be ascertained by an arbitrator. The owner obtained a rule to set aside this judgment, but it was discharged by the Queen's Bench Division. He then appealed, and the Court of Appeal (*Baggallay and Brett, L.JJ.; Holker, L.J., dissenting*) *affirmed* the judgment of *Manisty, J.* (9 Q. B. D. 441). From this decision the owner appealed, and the House of Lords (*Lords Blackburn, Watson, and FitzGerald*) *held*, in a considered judgment, that there was a duty on the appellant to see that reasonable care and skill were exercised in the operations which involved a use of a party wall, exposing it to the risk of injury, and that the appellant could not get rid of his responsibility by delegating the performance to a third party; and was liable to the adjoining owner, the respondent, for the injury to his house.

HUGHES v. *PERCIVAL.*

(1883) 47 J. P. 772; 8 App. Cas. 443; 52 L. J. Q. B. 719; 49 L. T. 189; 31 W. R. 725.

PRIVATE ROAD

The owners of a road laid it out for building as a street. It communicated with a highway, and at the point where it joined the same, the owners had erected, without permission of the local authority, certain stone piers with gates, in order to exclude the public. The road was intended for vehicular traffic, but was not dedicated to the public. The local authority issued a summons, under the *Metropolis Local Management, &c., Act*, 1862, and the owners were convicted and fined for having laid out a street for the purposes of carriage traffic, the same not having an entrance of the full width of the street, and not being open at both ends from the ground upwards. On hearing a case stated, the Court (*Lord Coleridge, C.J., and Mathew, J.*) *held*, that since the passing of the *Act* no new street laid out for building should have barriers across it to exclude the public, unless with the consent of the Metropolitan Board of Works or their successors.

DAW v. *LONDON COUNTY COUNCIL.*

(1890) 54 J. P. 502; 59 L. J. M. C. 112; 62 L. T. 937.

PRIVIES

——**By-law Invalid.**—A local board, acting under the provisions of the *Local Government Act*, 1858, § 34, made the following

by-law: "No dwelling house shall be erected without having, at the rear or side thereof, a good and sufficient back street or roadway, at least 12 feet wide, communicating with some adjoining public street or highway, for the purpose of affording access to the privy or ashpit of such house."

A builder was summoned and convicted for having built a dwelling-house without the requisite 12-foot roadway at the side or rear thereof. On hearing a case stated, the Court (*Cockburn, C.J., and Lush, J.*) *held*, that § 34 of the *Act*, which authorized the local authority to make by-laws "with respect to the drainage of buildings, to water-closets, privies, ashpits, and cesspools, in connection with buildings," did not empower them to make the by-law in question.

WAITE v. *GARSTON BOARD OF HEALTH.*
(1867) L. R. 3 Q. B. 5; 37 L. J. M. C. 19; 17 L. T. 201; 16 W. R. 78.

——**Common Use of.**—The respondent built two cottages with one privy to be used in common by the occupants of both cottages. The magistrates dismissed a summons taken out under § 35 of the *Public Health Act*, 1875, against the respondent, as the evidence showed that the said privy afforded sufficient accommodation for the occupants of both cottages, and the said occupants had each the right to use it. The local authority appealed, and the Court (*Cockburn, C.J., and Manisty, J.*) *held*, that the respondent had complied with § 35, on the ground that that section did not require a separate water-closet, earth-closet, or privy, for every house built or rebuilt.

GUARDIANS OF CLUTTON v. *POINTING.*
(1878) 4 Q. B. D. 340; 48 L. J. M. C. 135; 40 L. T. 844; 27 W. R. 658.

PRIVIES AND W.C.'s

——**Power of Local Authority to provide.**—The plaintiff was owner of four cottages which were let at from £3 15*s.* to £4 a year. Each had a privy attached thereto. The urban district council served notices upon the plaintiff in respect of each house, requiring him, within six weeks, to provide a sufficient water-closet for each house. The plaintiff did not comply with these notices, and the defendants proceeded, in exercise of their statutory powers, to execute the works themselves. The plaintiff thereupon brought this action for an injunction to restrain them from so doing. *Stirling, J., held*, in a considered judgment, that a local authority had power under § 36

of the *Public Health Act*, 1875, on being satisfied that a house in their district was without a sufficient privy, to require the owner (subject to his right of appeal to the Local Government Board under § 268) to provide a sufficient water-closet in the place of the existing privy. Motion dismissed.

NICHOLL v. *EPPING URBAN DISTRICT COUNCIL.*
(1899) 63 J. P. 600; 1 Ch. 844; 68 L. J. Ch. 393; 80 L. T. 515; 47 W. R. 457.

——**By-law specifying Kind of.**—A local authority resolved that in future cases of nuisances requiring the reconstruction of privies and ashpits, such should be converted into the waste water-closet system, or into such other water-closet system as they, from time to time, should approve.

Their sanitary inspector served upon the owner of certain houses a nuisance notice, requiring him to convert certain privies into water-closets (either slop, waste, or cistern). The owner did not comply with the notice, and a further notice was served on him by the local authority, requiring him to provide each house with a sufficient privy and ashpit, upon the waste water-closet system, as approved by them. On the owner's non-compliance with this notice, the local authority executed the work, under § 36 of the *Public Health Act*, 1875, and sued the owner for the cost, as private improvement expenses. The justices made an order for payment, and the owner appealed.

The Court (*Lawrance and Ridley, JJ.*) *held*, that § 36 of the *Public Health Act*, 1875, does not empower a local authority to enforce a general resolution that a particular water-closet system shall be adopted within their jurisdiction, and, therefore, the resolution is invalid, and also any proceedings taken under it. They are bound to exercise their discretion in each particular case.

Tinckler v. *Wandsworth District Board of Works*, 2 De G. & J. 261, followed.

WOOD v. *WIDNES CORPORATION.*
(1897) 61 J. P. 646; 2 Q. B. 357; 66 L. J. Q. B. 797; 77 L. T. 306; 46 W. R. 30.

NOTE.—This case was affirmed by the Court of Appeal (1898), 62 J. P. 117; 1 Q. B. 463, &c.

PROJECTING SIGNS

——**Owner entitled to be heard before removed.**—The owner of certain business premises erected in front of his house at a height of 23 feet above the pavement, an open ironwork sign to advertise

the business. The sign was of considerable weight, and projected over the footpath and a part of the roadway. The local authority, pursuant to their statutory authority giving them power *inter alia* on fourteen days' notice to order the removal of "all signs, sign-irons, sign-posts, barbers' poles, stalls, blocks, bulks, show-boards, and other projections," ordered the owner to remove the sign two years after it was erected. The owner neglected to remove, and forcibly resisted the attempted removal by the local authority of, the sign; and he declared his intention to resist any future attempts to remove it. The local authority sought, and *Stirling, J.*, granted, an injunction, and *held*, that the local authority were not bound to act as a Court, and give the owner an opportunity of being heard, before serving him with the notice to remove the sign. If he objected, he should give notice of such objection, and require the commissioners to hear him upon it.

A.-G. v. *HOOPER.*

(1893) 57 J. P. 564; 3 Ch. 483; 63 L. J. Ch. 18; 69 L. T. 340; 8 R. 535.

PROJECTION

——**Bay Window.**—The mortgagees in possession of a certain building estate sold a plot to a purchaser, who covenanted with the vendors, their heirs, and assigns, not to erect any building thereon beyond a certain line of frontage. The purchaser proceeded to erect two houses, each of which had a bay window on each floor, projecting 3 feet beyond the line of frontage. A purchaser of another plot on the estate making title from the mortgagees, and bound by a like covenant, sought an injunction to restrain the erection of the houses, and *Hall, V.C., held*, (1) that the bay windows were "buildings" and the erection of them was a violation of the covenant; (2) that, there being a clear breach of the covenant, the covenantees were entitled to an injunction without showing damage; (3) that the invasion of privacy constituted damage; (4) that the covenant, being not to do an act the doing of which caused an invasion of privacy, it was not necessary for the covenant in terms to purport to preserve privacy; (5) that both the plaintiffs had material interests sufficient to support the suit.

LORD MANNERS v. *JOHNSON.*

(1875) 1 Ch. D. 673; 45 L. J. Ch. 404; 24 W. R. 481.

——**Glass Framework for Advertising.**—The respondent erected an iron framework filled in on the front and sides with leaded glass,

and covered on the top with zinc. It was 10 feet 6 inches long by 5 feet 6 inches deep, and projected 4 feet 6 inches beyond the front wall of the house, the bottom being 11 feet above the pavement. There were letters on the glass portion of the structure, made visible at night by electric lights, arranged inside. The structure was beyond the certified general line of buildings, and had been erected without the consent of the London County Council. The magistrate dismissed a summons taken out by the Council, and the latter appealed. The Court (*Lord Alverstone, C.J., Lawrance and Ridley, JJ.*) *held*, that the framework was not "a structure erected beyond the general line of buildings," within the meaning of § 22 (1) of the *London Building Act*, 1894, and that it was not a "projection" within § 73 (8) of the *Act*, and *affirmed* the magistrate's decision.

LONDON COUNTY COUNCIL v. *SCHEWZIK.*
(1905) 69 J. P. 409; 2 K. B. 695; 74 L. J. K. B. 959; 93 L. T. 550; 3 L. G. R. 1159; 21 T. L. R. 731.

——**Glass and Iron Portico.**—The owners of a hotel, which had been rebuilt and set back a little from the line of the old site, erected an iron and glass portico, 4 feet 3 inches in advance of the line of the old site, over the public footway, within 2 feet from the line of the kerb. It was 13 feet above the footway, and extended 11 feet in length: permission had not been obtained for its erection from the London County Council. Subsequently the building line was duly certified, pursuant to §§ 22 (1) and 29 of the *London Building Act*, 1894, and the owners were summoned. They contended that the portico was not a building or structure. The magistrate convicted the defendants. On a case stated, the Court (*Ridley and Darling, JJ.*) *held*, that a glass and iron portico, projecting beyond the general line of building, and incorporated into the main structure of a building, is within § 22 of the *Act*, if not erected without the consent of the London County Council, and *affirmed* the conviction.

COBURG HOTEL v. *LONDON COUNTY COUNCIL.*
(1899) 63 J. P. 805; 81 L. T. 450; 19 Cox C. C. 411.

——**Oriel Window.**—The architects employed in the erection of certain premises in Liverpool were summoned for contravening the provisions of a local *Act* "for the promotion of the health of the inhabitants of the borough," which prohibited, *inter alia*, the erection of any projection "in front of any building over or upon the pavement of any street except for shop fronts or for doorways." The projection complained of was an oriel window of

stonework, 11 feet in height, and projecting 2 feet 6 inches over the pavement, from which the lowest part was distant 14 to 15 feet. It was proved at the hearing that the window did not interfere with the free use of the street. The stipendiary magistrate dismissed the summons on the ground that the *Act* did not apply to projections on the upper part of the building. The corporation appealed, and the Court (*Cockburn, C.J., Lush and Manisty, JJ.*) *held*, in a considered judgment on a case stated, that the *Statute* did not apply to projections from the front which were too high up to interfere with the free passage along the footpath.

GOLDSTRAW v. *DUCKWORTH.*

(1879) 44 J. P. 410; 5 Q. B. D. 275; 49 L. J. M. C. 73; 42 L. T. 440; 28 W. R. 504.

——**Stone Pilasters.**—The appellant built a number of shops fronting a street in the metropolis, and erected in the front a number of dividing pilasters, which projected into the footpath of the street 9 inches beyond the general building line. The vestry, the respondents, served upon the appellants a notice requiring the removal of the pilasters, and on failure of the appellants to do so, they laid a complaint under § 72 of *Michael Angelo Taylor's Act* against the appellants. The magistrate, overruling an objection on behalf of the appellants that the *Act* had been repealed, convicted them.

The Court (*Lord Coleridge, C.J., Mathew, Cave, Smith, and Charles, JJ.*), in a considered judgment on a case stated, *held*, that § 119 of the *Metropolis Management Act*, 1855, was inconsistent with, and impliedly repealed § 72 of *Michael Angelo Taylor's Act*, and if the pilasters were unlawful, the proceedings were taken under the wrong *Act;* but the pilasters were not unlawful, being authorized by § 26 of the *Metropolitan Building Act*, 1855.

The Court overruled *Vestry of St. Mary, Islington* v. *Goodman*, 23 Q. B. D. 154. See p. 300, *infra.*

FORTESCUE v. *VESTRY OF ST. MATTHEW, BETHNAL GREEN.*

(1891) 55 J. P. 758; 2 Q. B. 170; 60 L. J. M. C. 172; 65 L. T. 256.

——**Stone Pilasters.**—A lessee of the Metropolitan Board of Works had erected, against the front of a number of houses and shops, five stone pilasters, the bases of which projected 6 inches on the public pavement. The vestry passed a resolution declaring such to be inconvenient to passengers along the pavement, and, in

accordance therewith, the lessee was, by notice, required to remove the same. He refused to comply with the notice, and was summoned, under § 72 of the *General Paving Act*, 1817, for non-compliance therewith. The magistrate considered that the pilasters were window-dressings within the meaning of § 26 of the *Metropolitan Building Act*, 1855, and dismissed the summons. The Court (*Denman and Hawkins, JJ.; Lord Coleridge, C.J., dissenting*) *held*, in a considered judgment on a case stated, that § 26 of the *Metropolitan Building Act*, 1855, did not amount to a repeal *pro tanto* of § 72 of the *Act* of 1817 (*Michael Angelo Taylor's Act*), and did not authorize projections which would interfere with the user, by the public, of a public footway.

ST. MARY, ISLINGTON, VESTRY OF v. *GOODMAN.*
(1889) 54 J. P. 52; 23 Q. B. D. 154; 58 L. J. M. C. 122; 61 L. T. 44.

NOTE.—This case was overruled in *Fortescue* v. *Vestry of St. Matthew, Bethnal Green* (1891), 2 Q. B. 170. See p. 299, *supra*.

PROSPECT

——**Injury to.**—The plaintiff brought an action in the Common Pleas in respect of the obstruction of his prospect, and obtained judgment. On error, the judgment was *reversed*, and the Court (*Twisden, J., and others*) *held*, that an action will not lie for building a wall by means of which a prospect is destroyed.

KNOWLES v. *RICHARDSON.*
(1687) 1 Mod. 55; 2 Keb. 642.

"PUBLIC BUILDING"

A builder was summoned and convicted for erecting an ambulance station and neglecting to give the surveyor notice under § 38 of the *Metropolitan Building Act*, 1855. On the hearing of a summons, it was contended by the surveyor that the building was a "public building," within the meaning of the said *Act*, and of § 16 of the amending *Act* of 1878. The building was erected on land acquired by the managers of the Metropolitan Asylum District, and adjoined other premises, the property of the managers, but was not attached to, or worked in connection with, them. The Court (*Lord Coleridge, C.J., and Mathew, J.*) *held*, on a case stated, that the ambulance station was not a "public building," and quashed the conviction.

JOSOLYNE v. *MEESON.*
(1885) 49 J. P. 805; 53 L. T. 319.

PUBLIC OFFICES

——**Fitted for Use as County Court.**—The clerk of a County Court ordered a builder to fit up a hall and office for the purposes of a County Court, and when the work was completed, referred the builder for payment to the treasurer of the Court, who refused to pay. In an action by the builder against the clerk, the Court, in a considered judgment, *held*, that a clerk of a County Court, established under 9 & 10 *Vict. c.* 95, is personally liable upon a contract made by him with a builder, to fit up a hall and offices in which the business of the County Court is to be carried on.

AUTEY v. *HUTCHINSON.*

(1848) 6 C. B. 266; 17 L. J. C. P. 304; 12 Jur. (o.s.) 962; 11 L. T. (o.s.) 152.

QUANTITIES

——**Inaccurate.**—A builder agreed to execute for the defendants certain works for a lump sum which was arrived at by means of a schedule of quantities appended to the contract, containing several manifest errors in the calculations. The builder brought a bill to have the errors rectified, and alleged that at the date of the contract, or soon afterwards, the errors were known to the defendants' architect. On demurrer for want of equity by the defendants, *Stuart, V.C., held*, that the plaintiff was entitled to rectify, and overruled the demurrer with costs.

NEILL v. *MIDLAND RAILWAY.*

(1869) 17 W. R. 871; 20 L. T. 864.

QUANTITY SURVEYOR

——**Architect as.**—A building owner employed an architect to prepare plans, specification, estimate, and the quantities of a house which he contemplated building, in 1856. Owing to the owner's inability to find the necessary site and funds for building, the work was not proceeded with. The negociations as to the proposed purchase of the site were protracted, and in 1861 the architect sent in a lump sum bill for £25 to cover all his charges. The owner repudiated any liability, whereupon the architect sued for his full professional charges, amounting to £60. *Cockburn, C.J.*, left it to the jury to say whether the work was done on the retainer and employment of the defendant, and a verdict for the plaintiff for £15 was entered, without costs.

SPRATT v. *DORNFORD.*

(1862) H. B. C. 80.

——**Architect as.**—A building owner employed a firm of architects to prepare plans of a proposed house, the cost of which was not to exceed £3000. The architects also took out the quantities, but owing to the fact that the estimated cost far exceeded the sum named, that plan was not proceeded with. Subsequently a builder sent in a tender, based upon the bills of quantities supplied by the architects, and in due course the builder paid the defendants their charges for the quantities. In an action against the building owner and the architects, by the builder, for damages occasioned by alleged errors in the bills of quantities, *Denman, J., held,* (1) that there was no warranty by the employer or architects of the accuracy of the quantities; (2) that no action lay for negligence in taking out the quantities; and (3) that the quantities were not made the basis of the contract.

YOUNG v. *BLAKE.*
(1887) H. B. C. 89.

——**Builder Liable for Fees.**—An architect employed by a building owner engaged a surveyor to take out the quantities of a proposed building. The surveyor accordingly prepared the bills of quantities, in which a memorandum stated that the amount of the item for surveyor's fees, inserted therein, should be paid to the surveyor out of the first money paid on account of the contract to the builder. In an action brought by the quantity surveyor for his fees against the builder whose contract was based on the quantities and had been accepted, *Wills, J., held,* that the builder was liable, but that the taking over by the builder of a mortgage on the building *bonâ fide* to protect his claim on the contract, was not such a receipt for money as would entitle the quantity surveyor to recover, nor such a prevention of his receipt of the instalment as would entitle the quantity surveyor to sue for his fees.

CAMPBELL v. *BLYTON.*
(1893) H. B. C. 105.

——**Custom.**—An architect, employed by a building owner to prepare plans of proposed buildings, instructed a quantity surveyor to take out the quantities of the plans with a view to inviting tenders. All the tenders for the execution of the proposed work submitted exceeded the sum which the owner was prepared to expend, and none was accepted. The surveyor sued the owner for the amount of his fees for taking out the quantities, relying on a custom in the building trade, whereby the building owner was liable for the surveyor's fees in the event of no tender being

accepted or the intention of building being abandoned. It was not proved that the owner had authorized tenders being called for. The jury found that the surveyor's employment was not within the scope of the architect's employment nor sanctioned by the defendant, and that the custom alleged did not exist. *Madden, J.*, declined to enter judgment on the ground that the findings were against the weight of evidence. The Court (*O'Brien, C.J., O'Brien and Gibson, JJ.*) *held*, in a considered judgment, that the defendant was entitled to judgment.

ANTISELL v. *DOYLE.*

(1899) 2 Ir. R. 275.

——**Custom for Architect to engage.**—A building owner employed an architect to prepare plans, &c., of buildings which he proposed to erect. The architect engaged the plaintiff to take out the quantities, and prepare bills thereof, upon which tenders for the works should be invited. The bills of quantities were duly prepared, and tenders invited and received, but no tender was accepted and the work was not proceeded with. In an action by the quantity surveyor against the owner for fees, calculated at $2\frac{1}{2}$ per cent. on the lowest tender received, it was proved that it was usual in such circumstances for an architect to engage the services of a quantity surveyor, and it was alleged by the defendant that the architect's authority was limited to preparing the plans, &c., and that he had been told that a builder had been engaged, so that no quantities were necessary. *Quain, J.*, thought that $2\frac{1}{2}$ per cent. on the lowest tender, where no tender had been accepted, would be unreasonable. The jury found for the plaintiff, and by agreement, *Quain, J.*, assessed the damages at a sum calculated at $1\frac{1}{2}$ per cent. on the amount of the lowest tender.

GWYTHER v. *GAZE.*

(1875) *Times*, February 8, H. B. C. 16.

——**Custom.**—A quantity surveyor was engaged by an architect to take out quantities of a certain building. Provision for payment of the cost of the quantities, and plans, and £25 the quantity surveyor's fee, out of the architect's first certificate, was made in the specification. A builder's tender was accepted, but he refused to pay the surveyor's fee out of the first payment made to him. In an action by the quantity surveyor to recover the sum of £25 from the builders, the assistant judge at the Mayor's Court non-suited the plaintiff, being of opinion that there was no privity of contract between the plaintiff and the defendant. The plaintiff appealed.

The Court (*Mathew and A. L. Smith, JJ.*) *held*, that the usage, in the building trade, that the builder whose tender was accepted was liable to the quantity surveyor for his fee for preparing bills of quantities, but that if no tender was accepted the building owner, or the architect, was liable, was reasonable and valid, and that there was evidence of a contract with the plaintiff upon which he was entitled to recover.

NORTH v. *BASSETT.*

(1892) 56 J. P. 389; 1 Q. B. 333; 61 L. J. Q. B. 177; 66 L. T. 189; 40 W. R. 223.

——**Custom: Owner to pay.**—A building owner employed an architect to prepare plans and specification for a proposed building, and the architect engaged a quantity surveyor to take out the quantities in connection therewith. The quantity surveyor took out the quantities, and inserted in the bills of quantities a provision whereby the builder whose tender for the work was accepted would be bound to pay the charges of the quantity surveyor. The building owner did not proceed with the building, and the quantity surveyor sued him for his fees. *Monaghan, C.J.*, told the jury if they were satisfied that the surveyor was employed subject to the custom of the trade, they should find for the plaintiff, and they found for the plaintiff with costs.

GRIBBON v. *MOORE.*

(1869) *The Builder*, July 10, H. B. C. 14.

——**Fees.**—The architect employed by a harbour board, engaged a quantity surveyor to take out the quantities of certain buildings about to be erected by the board. In an action by the surveyor against the board for the amount of his fees, the surveyor relied upon the custom of the building trade for an architect to employ a quantity surveyor at the employer's expense, and *Manisty, J.*, left it to the jury, who found for the plaintiff.

BIRDSEYE v. *DOVER HARBOUR BOARD.*

(1881) *Times*, April 14; H. B. C. 4.

——**Fees.**—The guardians employed a certain architect to prepare plans and specification for a new workhouse. The architect directed the plaintiff to prepare bills of quantities, which were to be paid for by the contractor whose tender was accepted; but owing to a dispute between the guardians and the architect, the guardians refused to proceed with the works. In an action by the quantity surveyor against the guardians for his fees, the jury found for the plaintiff. On appeal by the guardians, the Court

(*Tindal, C.J., Park, Bosanquet, and Coltman, JJ.*) *affirmed* the judgment of the Court below.

MOON v. *GUARDIANS OF THE WHITNEY UNION.*
(1837) 3 Bing. (N.C.) 814; 6 L. J. C. P. 305; 5 Scott, 1; 3 Hodges, 206.

——**Fees.**—A building owner employed an architect to devise alterations in a theatre, and the work was entrusted to a certain builder. The architect employed a quantity surveyor to measure up the work for final settlement. Prior to the surveyor's employment the owner had expressed dissatisfaction with the builder's charges and the amounts certified by the architect, and had stated he would employ an independent surveyor to measure up. In an action by the surveyor against the owner for his charges, it was proved that, by usage or practice of the building trade, an architect is authorized to employ such surveyor, but that in case of dispute between architect and builder on the one hand, and the owner on the other, the operation of the custom would be different. *Denman, J., held,* that in the circumstances to follow the general usage would be unreasonable, and gave judgment for the defendant.

PLIMSAUL v. *KILMOREY.*
(1884) 1 T. L. R. 48.

——**Fees.**—An architect employed a quantity surveyor to take out the quantities of a proposed building, the plans of which he had prepared. The defendants received a lithographed copy of the quantities, and were informed that if their tender was accepted they were to pay the cost of the bills of quantities. The defendants' tender was the lowest, but involved too great an outlay. Subsequently the works were executed by the defendants according to designs prepared by them, under contract with the owner, in which it was agreed with the owner that the defendants would not be liable for the plaintiff's fees. The plaintiff sued the defendants for his fees, alleging the custom of the building trade. The Court of Common Pleas (*Monahan, C.J., Morris and Lawson, JJ.*) *held,* that the defendants were not liable to the plaintiff, as they carried out an entirely different plan to that prepared by him (Ir. Reps. 4 C. L. 467). On appeal, this decision was *reversed* by the Exchequer Chamber (*Whiteside, C.J., Pigot, Fitzgerald, and George, JJ.; O'Brien and Deasy, JJ., dissenting*).

TAYLOR v. *HALL.*
(1870) Ir. Reps. 5 C. L. 477.

——**Fees.**—A burial board passed a resolution instructing their salaried surveyor to prepare plans, &c., and to procure tenders for

the erection of a mortuary chapel. The surveyor employed a quantity surveyor to prepare bills of quantities, upon which tenders were subsequently invited, but no tender was accepted. In an action by the quantity surveyor for the cost of the bills which he prepared, against the burial board, the defence set up was that the latter never employed the plaintiff, and there was no contract with him under the board's seal. *Manisty, J.*, overruling the objection as to the necessity of the contract being under seal, *held*, that as the board had directed their officer to procure tenders, they had impliedly authorized him to have the quantities taken out, and he entered judgment for the plaintiff.

WAGHORN v. *WIMBLEDON LOCAL BOARD.*

(1877) *Times*, June 4; H. B. C. 87.

——**Fees when Builder abandons Contract.**—A builder agreed with a quantity surveyor that, if the latter would supply the quantities for a proposed building, the builder would, if his tender was accepted, pay the surveyor out of the first instalment on account of the contract. The surveyor supplied the quantities, but the builder subsequently abandoned the contract. In an action against the builder by the surveyor for his fees, the Court *held*, that it was implied that the defendant should duly proceed with the building contract, and that, having rendered performance impossible by his own act, he was bound to pay the surveyor for the quantities.

McCONNELL v. *KILGALLEN.*

(1878) 2 L. R. (Ir.) 119.

——**Inaccurate Quantities.**—A building owner employed an architect to prepare plans, &c., for a house, and to procure a contractor to do the work. The architect took out the quantities himself, and procured a tender from a builder, which the owner accepted. The quantities were inaccurate, and the builder sued the building owner for the difference between the contract price and the amount actually expended by him on the works. At the trial the plaintiff was nonsuited by direction of the judge, and the Court of Common Pleas refused a rule. The plaintiff appealed, and the Exchequer Chamber (*Pollock, C.B., Channell and Pigott, B.B., Blackburn, Mellor and Shee, JJ.*) *held*, that there was no evidence that the architect acted as the defendant's agent in taking out the quantities, or that the defendant guaranteed their accuracy, and that, therefore, the plaintiff was only entitled to the contract price.

SCRIVENER v. *PASK.*

(1865) L. R. 1 C. P. 715; 18 C. B. (N.S.) 785.

——**Liability for Fees of.**—A building owner employed an architect to prepare plans, &c., of a house which he proposed to erect, and the architect engaged a quantity surveyor to take out the quantities. The surveyor duly took out the quantities, and inserted therein a sum, to cover his charges and the cost of lithography, which was to be paid to him by the builder, whose tender for the work should be accepted. During the progress of the work the builder whose tender had been accepted, and who had received payments on account of the contract, got into difficulties and became a bankrupt, whereupon the owner took the work out of his hands. In an action by the quantity surveyor against the building owner to recover his charges, *Field, J., held*, that as there had been a tender accepted and a builder found by the building owner, the quantity surveyor had no cause of action against him.

YOUNG v. *SMITH.*

(1880) H. B. C. 100.

——**Mistakes.**—A builder was supplied by an architect with bills of quantities of the work and materials required for the erection of certain premises, upon which he submitted a tender which was accepted, and provided for the payment by the builder of the cost of the quantities. Owing to inaccuracies in the quantities the builder lost money over the contract. In an action for damages brought by the builder against the architect, *Byles, J., held*, that the builder could sue the defendant for negligence in furnishing him with inaccurate quantities, and the jury found for the plaintiff damages to be ascertained by a reference.

BOLT v. *THOMAS.*

(1859) *Times*, August 10; H. B. C. 6.

——**Negligence.**—The London School Board employed the defendants as quantity surveyors in respect of certain buildings of the value of £12,000, which had been duly completed and measured up. The Board determined the employment of the surveyors, and brought an action against them for the recovery of certain memoranda of calculations made by the surveyors in the course of their employment; for damages for the surveyors' negligence in taking out the quantities whereby the Board overpaid the contractor; and for the return of certain money paid to them for the cost of lithographing the bills of quantities. *A. L. Smith, J., held*, (1) that the plaintiffs had no right to the memoranda, the measuring having been done; (2) that, as the surveyors had employed a competent skilled clerk who had carried out hundreds of intricate calculations, they were not liable for negligence in

respect of the two clerical errors complained of; and (3) that as it was agreed that the surveyors should employ their own lithographer, the 15 per cent. paid by the latter to the surveyors, although the surveyors were agents of the Board, was not commission, but really a discount for cash which the surveyors might retain.

LONDON SCHOOL BOARD v. *NORTHCROFT.*
(1889) H. B. C. 27.

——**Negligence.**—A priest, about to build a Roman Catholic church, employed an architect, who prepared plans and instructed a quantity surveyor to take out the quantities thereof. The surveyor handed the lithographed quantities to the architect, who obtained a tender for the works from a firm of builders. There was an error in the quantities, and the builders sued the surveyor for damages sustained by his negligence. *Stephen, J.*, gave judgment for the defendant, and the builders appealed. The Court (*Lord Esher, M.R., Lindley and Bowen, L.JJ.*) dismissed the appeal, and *held*, that there was no privity of contract which would enable the builders to sue the surveyor for negligence.

PRIESTLY v. *STONE.*
(1888) 4 T. L. R. 730; H. B. C. 53.

QUANTUM MERUIT

——**Beer supplied by Owner to Contractor's Men Set-off.**—The plaintiff executed certain works for the defendant, and sued on a *quantum meruit* for work and labour. The defendant offered evidence to prove that he had supplied the plaintiff's men with beer, and *Patteson, J.*, *held*, that it was admissible, although not pleaded as a set-off, as it might be that the plaintiff deserved to be paid less, because his men were supplied with beer by the defendant.

GRAINGER v. *RAYBOULD.*
(1840) 9 C. & P. 229.

——**Contractor cannot sue on a, if he abandons the Contract.**—The plaintiff, a builder, contracted with the defendant to build certain premises upon the defendant's land for £565. When part of the work, value for about £333, was done, and the plaintiff had received payments on account of the same, he informed the defendant that he was unable to proceed with the work from lack of money. The defendant then finished the work himself, using the materials which the plaintiff had left on the ground. *Bruce, J.*, found that the plaintiff had abandoned the contract, and allowed him nothing in respect of the work which

he had done on the building, but he gave judgment for the plaintiff for the value of the materials used by the defendant. The plaintiff appealed.

The Court (*A. L. Smith, M.R., Chitty and Collins, L.JJ.*) *held*, that the plaintiff could not recover from the defendant in respect of the work which he had done as upon a *quantum meruit*, there being no evidence of any fresh contract to pay for the same.

Munro v. *Butt*, 8 E. & B. 738, followed. See p. 351, *infra*.

SUMPTER v. *HEDGES*.

(1898) 1 Q. B. 673; 67 L. J. Q. B. 545; 78 L. T. 378; 46 W. R. 454.

——**Extras.**—A builder was employed to erect certain houses, upon written conditions, which were duly signed and kept in the custody of the defendant's architect, whose certificate was made, by the conditions, a condition precedent to the right to payment. In an action upon a *quantum meruit* for works not certified for by the architect, it was discovered that an erasure had been made in the conditions, and the jury found it had been made by the architect after they had been signed. *Field, J.*, entered judgment for the plaintiff, subject to a reference. On hearing a rule obtained by the defendant, the Court (*Bramwell, Cleasby, and Pollock, BB.*) *held*, that, notwithstanding the erasure, the conditions were either still the governing document, or at least must be looked at to see what were the real terms of the contract, and that the plaintiff could not recover.

PATTISON v. *LUCKLEY*.

(1875) L. R. 10 Ex. 330; 44 L. J. Ex. 180; 33 L. T. 360; 24 W. R. 224.

——**House out of Perpendicular.**—A builder rebuilt the front of a house, and when the work was finished it was found that it was considerably out of the perpendicular, and in danger of tumbling down. The owner refused to pay, and the builder brought an action against him to recover the cost on a *quantum meruit*. *Lord Ellenborough, C.J., held*, that the defendant might reduce the damages by showing that the work was improperly done, and may entitle himself to a verdict by showing that it was wholly inadequate to answer the purpose for which it was undertaken to be performed.

FARNSWORTH v. *GARRARD*.

(1810) 1 Campb. 37; 10 R. R. 624.

——**Set-off.**—The plaintiff agreed to execute certain works for a specified sum. Afterwards the employer supplied some of the

materials which were worked up by the plaintiff. In an action to recover by way of *quantum meruit* the amount due, *Lord Kenyon, C.J., held*, that the cost of the materials supplied must be set off, and cannot be given in evidence on the general issue.

ALLINSON v. *DAVIES.*
(1796) 2 Peake (Add. Cas.) 82.

——**Usage.**—A builder contracted in writing to execute certain brick-and-stone work "*for the sum of* 3*s. per superficial yard of work* 9 *inches thick, and finding all materials, deducting all lights.*" At the trial of an action for work done and materials supplied by the builder, *Bramwell, B.*, directed a verdict for the plaintiff, with leave to the defendant to move. On a rule obtained by the defendant, the Court (*Williams and Willes, JJ.*) *held*, that evidence was admissible showing that the usage of reducing brickwork to 9 inches for the purpose of measurement, did not apply to stonework unless where it was more than 2 feet thick, and that the proper construction of the contract was that it only provided for the price of the brickwork, leaving the stonework to be paid for on a *quantum meruit.*

SYMONDS v. *LLOYD.*
(1859) 6 C. B. (N.S.) 691.

——**When Conditions of Contract are Inapplicable, may sue on.**—A building contract provided that the works contracted for should be executed according to drawings and specifications prepared by the defendants' surveyor, whose decision in any misunderstanding, or dispute, arising out of the contract, was to be final and binding on the parties. Extras, if necessary, were to be ordered in writing by the architect, and the contractor was not to occupy the premises until duly authorized. No portion of the work was to be commenced without the written order of the surveyor, but the non-delivery of the site to the contractor was not to vitiate or affect the contract, nor entitle the contractor to increased allowances in respect of time, money, or otherwise, unless an extension of time was granted by the surveyor. When the contract was made the contractor was informed that the works would be begun at once, and must be completed in four months, and that the cost of the work done in winter would be 50 per cent. more than in summer, and he tendered on that basis. Owing to the defendants' delay in giving possession of the land the work could not be commenced until after October 6. In an action to recover the extra cost of having to execute the works in winter, judgment was entered for the plaintiff. On appeal, the Court (*Lord Coleridge, C.J., and Mathew,*

J.) *held*, that where the circumstances contemplated by a building contract for works are so changed as to make the special conditions of the contract inapplicable, the contractor may treat the contract at an end, and sue upon a *quantum meruit*.

BUSH v. *WHITEHAVEN TOWN TRUSTEES.*
(1888) H. B. C. 121.

——**While Contract remains open, Contractor cannot sue on a.**—A builder agreed to build a house for a certain sum, and the defendant agreed to allow him to build it on his land, and to pay for it. It was admitted that the house had not been built according to the specification, owing to the defendant varying the same. The builder sued the defendant to recover the balance due to him on foot of the contract and for extras; and *Coleridge, J., held*, that an action cannot be brought on a *quantum meruit*, while the contract remained open, but might be brought for extras: an unqualified refusal by one contractor to perform his part of the contract entitles the other party to rescind it, and sue upon a *quantum meruit*.

LINES v. *REES.*
(1855) 1 Jur. 593.

——**Work not worth Price charged.**—The plaintiff was a carpenter, and was employed to do certain works on a farm, the defendant supplying the materials. In an action on a *quantum meruit* for work and labour done, the Court (*Lord Ellenborough, C.J., Grose, Lawrence, and Le Blanc, JJ.*) *held*, that the defendant was entitled to show without notice to the plaintiff that the work done was not worth the sum claimed, and if the plaintiff had already been paid the value of the work done, he cannot succeed.

BASTEN v. *BUTTER.*
(1806) 7 East, 479.

QUANTUM VALEBANT

A builder brought an action against his employer on a special contract for the balance due for building a certain house. In the course of the work he omitted certain items specified in the contract. *Mansfield, C.J.*, entered a nonsuit, and *held*, that if a builder contracts for work of specified dimensions and materials, and deviates from the specification, he cannot recover on a *quantum valebant* for the work, labour, and materials.

ELLIS v. *HAMLEN.*
(1810) 3 Taunt. 52; 12 R. R. 595.

REASONABLE TIME

The defendant covenanted to build a house in a reasonable time. In an action on the covenant, the Court *held*, that it was no defence that a reasonable time had not elapsed since the plaintiff required the defendant to build the house.

FISHER v. *FORD.*

(1840) 4 Jurist (o.s.) 1034; 1 Arn. & H. 12.

REBUILDING ON OLD SITE

The owner of certain houses proposed to rebuild them, and prepared plans of the old buildings, showing basement, ground floor, first, second, third, and fourth floors, together with sections and elevations, which were certified by the district surveyor as correct, under § 43 of the *London Building Act*, 1894. Subsequently the owner submitted to the district surveyor plans of a building which he proposed to erect on the site of the houses, but the district surveyor served the owner, under § 150 of the *Act*, with a notice objecting that the proposed building would be in contravention of § 43 (1) of the *Act*, because it was proposed to deviate from the plans certified by the surveyor of the domestic buildings existing on the site at the time of the passing of the *Act*. The magistrate, to whom the owner appealed, upheld the district surveyor's view, and dismissed the appeal.

The Court (*Wills and Kennedy, JJ.*), on a case stated, *held*, that the "plans showing the extent of the previously existing domestic building in its several parts" are not confined to ground-plans, but include plans showing sections and elevations, and the areas of the several floors, and they dismissed the appeal.

PAYNTER v. *WATSON.*

(1898) 62 J. P. 467; 2 Q. B. 31; 67 L. J. Q. B. 640; 46 W. R. 655.

RECEIVERS

The defendants were appointed by the Court as receivers and managers of the business of a firm of building contractors, and as such ordered certain goods of the plaintiff for the purposes of the business. In an action for the value of the goods, *Mathew, J.*, gave judgment for the plaintiff. On appeal, the Court (*Lord Esher, M.R., Lopes and Rigby, L.JJ.*) dismissed the appeal, and *held*, that in the circumstances there was a *primâ facie* inference that the receivers had pledged their personal credit

for the goods, and looked for an indemnity to the assets of the business.

BURT & OTHERS v. *BULL.*

(1895) 1 Q. B. 276; 64 L. J. Q. B. 232; 14 R. 65; 71 L. T. 810; 43 W. R. 180; 2 Mans. 94.

RECTIFICATION

The plaintiff agreed in writing to build for the defendant six houses on a certain plot of land according to plans and specification; and the defendant agreed, within three months after the completion of the houses, to build a certain bridge and to grant the plaintiff leases of the six houses. When the plaintiff had erected four houses he alleged that he had executed the agreement under a mistake, induced by the negligence of the defendant, and that he was to erect only four houses, the number actually agreed upon between the parties, and he alleged that the defendant was attempting fraudulently to take an advantage of this mistake. The plaintiff brought an action against the defendant, claiming rectification and damages for breach of the agreement to erect the bridge by the defendant. *North, J., held*, that since the *Judicature Act*, 1873, the Court has jurisdiction (in any case in which the *Statute of Frauds* is not a bar), in one and the same action, to rectify a written agreement, upon parol evidence of mistake, and to order the agreement as rectified to be specifically performed.

OLLEY v. *FISHER.*

(1887) 34 Ch. D. 367; 56 L. J. Ch. 208; 55 L. T. 807; 35 W. R. 301.

REGULAR LINE OF THE STREET

The appellant was owner of two houses, fronting the street, and of an adjoining piece of vacant ground forming a corner plot. He pulled down the two houses, and proposed to erect new buildings on the same site as the old. The local authority had, some years previously, proposed to widen the street to a uniform width of 40 feet, and had acquired the necessary ground on one side of the street, except that upon which the houses of the appellant and two other owners stood, the property of all three owners being in a line, and all projecting beyond the proposed line of the street. The appellant contended that his houses did not project beyond the "regular line of the street." Under § 162 of the *Police and Improvement (Scotland) Act*, 1862, the local authority, on the rebuilding of a house projecting beyond the regular line of the street, may require the house to be set back to the line of the street

or adjoining houses. The Court (*Lord Herschell, L.C., Lords Watson and Shand*) *held*, that the expression "*regular line of the street*" must be taken to mean the line of the buildings forming the street, and not a line indicating that part of the street which is dedicated to the public as a highway, and that the respondents had statutory power to restrain an owner of vacant land, situated within 25 feet of the centre of the street, from erecting a building thereon above 7 feet high.

SCHULZE v. *GALASHIELS CORPORATION.*
(1895) 60 J. P. 277; A. C. 666; 11 R. 219.

REPAIRING LEASE

The lessor of certain premises covenanted with the lessee to keep in repair all the external parts thereof. The corporation under a local Act pulled down the adjoining house, and in consequence of want of support the premises collapsed and became uninhabitable. The lessor refused to repair, and the lessee effected the repairs, and sued the lessor on the covenant. The Court (*Denman, C.J., and others*) *held*, that the wall, even before the adjoining house had been pulled down, was an external part of the demised premises, and that the defendant was liable on the covenant, although the corporation had injured the premises in the first instance; but *held*, that the plaintiff could not recover expenses incurred by him in fitting up other premises while the first were under repair.

GREEN v. *EALES.*
(1841) 2 Q. B. 225; 11 L. J. Q. B. 63; 1 G. & D. 468; 6 Jur. O. S. 436.

REPEAL

A builder erected a chimney with a partition of stone-slate of the thickness of 1½ inches between the flues, contrary to the provisions of § 6 of 3 & 4 *Vict. c.* 85, which required the partitions to be at least equal to half a brick in thickness. On the hearing of an information against the builder, he contended that the *Act* had been impliedly repealed by a subsequent local *Statute*, which empowered the local authority to prescribe the materials, &c., to be used in the construction of flues and chimneys, and the dimensions according to which they were to be built. The justices convicted, and fined the builder. On appeal, the Court (*Cleasby, B., Grove and Field, JJ.*) dismissed the appeal, and *held*, that the earlier *Statute* had not been repealed by the local Act.

HILL v. *HALL.*
(1876) L. R. 1 Ex. D. 411; 45 L. J. M. C. 153; 35 L. T. 860.

RESCISSION

The plaintiff agreed to grant a lease of land with the carcases of seven houses thereon to the defendant, who agreed to finish two of the houses by the 25th of the following March, and the remaining five by the 24th of June. The defendant was not to carry away any building materials delivered on the premises; time was to be regarded of the essence of the contract; and until the leases were granted the plaintiff had the right of re-entry in the defendant's default. Under the agreement the plaintiff duly advanced certain sums to the defendant, who subsequently made default in completing the five houses, and also began to remove materials. The plaintiff sought, and *Fry, J.*, granted, an injunction and damages against the defendant, and dismissed his counterclaim; and *held*, that the exercise of a right to rescind a building agreement must be signified in an unqualified manner, and before the other party has gone to expense, believing the right would not be exercised: a mistaken claim to rescind does not *ipso facto* operate to rescind the agreement, unless the other party claims rescission on the grounds of the mistaken claim. If one party rescinds he is not entitled to enter on the premises to remove goods after the date of rescission.

MARSDEN v. *SAMBELL.*

(1880) 43 L. T. 120; 28 W. R. 954.

RESTRICTIVE COVENANTS

The defendant and another offered for sale forty-six building sites at fee-farm rents. They had previously prepared a plan showing roads, drainage, and the various sites. Upon each plot the site of a semi-detached house was indicated. The plan was approved by the local authority, and, according to the defendant, it had been prepared to satisfy the requirements of that body in regard to roads, sewers, and the general building line. Intending grantees were shown a copy of this map, which was framed in the office of the defendant's solicitors, together with a form of agreement to build a certain class of house, &c. A builder purchased four plots after negociations, in the course of which he was told that the plan represented the way in which the estate would be laid out, and that stables could be erected. The boundary walls were not to exceed 2 feet 6 inches in height, and were to be surmounted by an iron railing 2 feet 6 inches in height. The builder erected thereon four houses.

The plaintiff was second mortgagee of the four plots and houses thereon, and resided in one. The defendant owned eight plots

opposite, two of which had been acquired before the subject of the plaintiff's mortgage, and the defendant was subject to the same restrictive covenants as the plaintiff. As to the remaining six plots, the defendant was only obliged to obtain the other grantor's approval of the plans of any house he proposed to build. In 1891 the defendant proceeded to build upon the remaining lots, a billiard-room 20 feet high, a stable and coach-house 17 feet high, and a boundary wall 7 feet high. The plaintiff sought an injunction, and *Romer, J., held,* that there was no cause of action in respect of the erection of the said buildings.

TUCKER v. *VOWLES.*

(1893) 1 Ch. 195; 62 L. J. Ch. 172; 3 R. 107; 67 L. T. 763; 41 W. R. 156.

RIGHT OF WAY

The owner of a public-house in the City of London claimed an injunction to restrain the defendant from erecting a building on the site of an adjoining court, over which the plaintiff claimed a right of way. At the trial it appeared that the defendant had served notice upon the plaintiff of his intention to build thereon, and the plaintiff had asserted the right he claimed. The defendant, however, proceeded with and completed the building, an expensive structure, which blocked up the access to the rear of the plaintiff's house. *Jessel, M.R., held,* that it was a case for a mandatory injunction, and not for damages under *Lord Cairns' Act.*

KREHL v. *BURRELL.*

(1877) 11 Ch. D. 551; 48 L. J. Ch. 252; 40 L. T. 637; 27 W. R. 805.

ROOF OF INCOMBUSTIBLE MATERIALS

The district surveyor summoned the managing director of a company for having covered the roof of a building externally with combustible material, contrary to the provisions of the *Metropolitan Building Act,* 1855, § 19 (1). The building was intended for use as a storeroom or greenhouse, and ordinarily would have been covered with glass. It was covered with a substance called duroline, composed of woven wire coated with a transparent and waterproof compound, which was used in several large buildings in the metropolis as a substitute for glass. If lighted the compound would burn away and leave the wirework uninjured. It gave off an inflammable vapour when subjected to a temperature of 320° Fahr. By the sub-section the roof of every building must be covered externally with slates, tiles, metal, or other

incombustible materials. The magistrate *held*, that, as a whole, in the circumstances, the material was incombustible. The district surveyor appealed.

The Court (*Mathew and A. L. Smith, LJJ.*) *held*, that the roof was not covered with "incombustible materials" within the meaning of the *Act*.

PAYNE v. *WRIGHT.*

(1892) 56 J. P. 564; 1 Q. B. 104; 61 L. J. M. C. 114; 66 L. T. 148; 17 Cox C. C. 460.

RUBBISH SHOOT

The plaintiffs' predecessors in title granted to the defendants in 1830 a lease of 12 acres of land for the purposes of making a reservoir. The land was not used for that purpose, but was used as grazing land down to 1896, when it was sub-demised to a contractor for use as a rubbish shoot. The surface in time was thereby raised about 10 feet above its former level.

The plaintiffs brought an action against the defendants and the contractor, alleging that shooting rubbish constituted waste, and that it had been done with the authority of the defendants, and they claimed an injunction and damages.

Buckley, J., held, that there had been such an alteration of the thing demised as to constitute waste in view of *Lord Darcy* v. *Askwith* (Hob. 234), and that both defendants were liable in damages for the past acts of waste, and that they must be restrained from committing waste in future.

Queen's College, Oxford v. *Hallett* (14 East, 489) commented on.

WEST HAM CENTRAL CHARITY BOARD v. *EAST LONDON WATERWORKS CO.*

(1900) 1 Ch. 624; 69 L. J. Ch. 257; 82 L. T. 85; 48 W. R. 284.

SCHOOL-HOUSE

——**Covenant to build only Private Residences.**—Certain trustees, for themselves and others, purchased an estate with a view to re-selling it for building purposes. In May, 1872, the defendant purchased 4 acres of the estate, covenanting, for himself, his heirs, and his assigns, not to erect or suffer to be erected thereon more than four messuages or dwelling-houses, and that no messuage, dwelling-house, or other building so erected on the land would be used otherwise than as a private residence only, and not for any purpose of trade. The remaining plots on the estate were all sold subject to similar restrictions. In February, 1877, the defendant

sold his plot to the trustees of a charitable institution as a site for a proposed building for the education and maintenance of a hundred girls. The trustees of the estate sought an injunction to restrain the defendant and the trustees of the institution from erecting the proposed building, as being a breach of covenant. *Bacon, V.C.*, refused the injunction, and dismissed the action with costs. The plaintiff appealed, and the Court (*James, Baggallay, and Thesiger, L.JJ.*) *held*, that the proposed building was a breach of the covenant to use the land only for the purpose of a private residence, and not for the purpose of any trade.

GERMAN v. *CHAPMAN.*

(1878) 7 Ch. D. 271; 47 L. J. Ch. 250; 37 L. T. 685; 26 W. R. 149.

SET-OFF

——**In respect of Delay.**—The plaintiff contracted to build and complete certain works by a specified date, and the defendant was then to pay him £418 and any extra works ordered at a certain valuation. If the works were not completed by the specified date the plaintiff was to forfeit £1 a day for every day's delay beyond that date as liquidated damages. Extra time was to be allowed for the execution of extra works if they were ordered. In an action to recover the amount of the contract and extras, the Court (*Lord Denman, C.J., and others*) *held*, on demurrer, in a considered judgment, that the defendant might deduct in the form of set-off £1 a day for each day's delay.

LEGGE v. *HARLOCK.*

(1848) 12 Q. B. 1015; 18 L. J. Q. B. 45; 13 Jur. O. S. 229.

——**Deduction and not.**—A builder agreed to execute certain repairs to premises owned by the defendant for £40. In an action by the builder for the balance of his account, it was alleged by the employer that part of the work was done by him, and he called a witness, who proved that he had been paid for executing the same by the employer. The plaintiff objected to the evidence, on the ground that the work proved by the last witness should have been pleaded as a set-off. The under-sheriff, however, admitted the evidence, and gave judgment for the defendant. On hearing a rule for a new trial, obtained by the plaintiff, the Court (*Tindal, C.J., Bosanquet, Erskine, and Maule, JJ.*) *held*, that the cost of the work done by the employer was a matter of deduction, and not set-off, and refused the rule.

TURNER v. *DIAPER.*

(1841) 2 M. & G. 241; 2 Scott (N.R.) 447.

——**Materials supplied deducted without Pleading Set-off.**—The plaintiffs contracted in writing to find the material and do certain work for the defendant for a fixed sum. Afterwards the defendant supplied a portion of the materials, which the plaintiffs accepted and used up in the work. In an action for work done by the plaintiffs, the Court *held*, that the defendant was entitled to deduct from the damages the value of the materials supplied by him without pleading a set-off.

NEWTON & ANOTHER v. *FORSTER.*
(1844) 12 M. & W. 772.

SETTLED LAND ACT, 1890

A tenant for life altered, reconstructed, and enlarged a mansion house. Part of the premises was not altered, and the walls of another part were utilized for the alterations. On hearing a summons for leave to apply part of the capital to the payment of some of the cost, *North, J., held*, that such works constituted a "rebuilding" under § 13 (4) of the *Settled Land Act*, 1890.

IN RE WALKER'S SETTLED ESTATE.
(1894) 1 Ch. 189.

SERVANTS OF THE CROWN

——**Action lies against.**—The plaintiffs, a firm of builders, contracted with the defendants to build a post-office, according to specifications and conditions, for £5473. When the post-office was partly erected, the defendants determined the contract by notice, and seized the buildings, materials, &c., on the site. The builders claimed damages, and the defendants pleaded that they contracted as servants and agents of the Crown, and on behalf of the Crown as a Government department.

The Court (*Ridley and Phillimore, JJ.*) *held*, that an action will lie against H.M. Commissioners of Public Works and Buildings, who are incorporated by statute for damages for breach of contract entered into by them with a firm of builders for the erection of a public building.

GRAHAM & OTHERS v. *H.M. COMMISSIONERS OF PUBLIC WORKS & BUILDINGS.*
(1901) 65 J. P. 677; 2 K. B. 781; 70 L. J. K. B. 860; 85 L. T. 96; 50 W. R. 122.

SERVICE OF NOTICE.

——**To repair.**—A summons was granted on a complaint that the owner of a certain structure had failed to comply with a notice requiring him, under § 106 of the *London Building Act*, 1894, to

do certain works of repair. The summons was addressed "To the owner," who did not appear at the hearing. The owner was not known, and on the magistrate calling for proof of service, a constable stated that he had affixed a copy of the summons to the premises, which were unoccupied. No evidence was given of any steps having been taken to discover the owner's identity. The magistrate was of opinion that the summons should have been served as a notice under the *Summary Jurisdiction Acts*, and ought to have been served upon the owner under § 1 of 11 & 12 *Vict. c.* 43, personally, or at his last known place of abode. He, therefore, held that the service was bad, and refused to hear the complaint.

The Court (*Wright and Kennedy, JJ.*), upon a rule calling upon the magistrate to show cause why he should not hear and determine the matter of complaint, *held*, that in the absence of evidence that reasonable inquiry had been made to find out who was the owner so that he could be served under § 1 of the *Summary Jurisdiction Act*, 1848, the provisions of § 188 of the *London Building Act*, 1894, did not apply, and, therefore, the service of the notice was bad.

R. v. *MEAD.*

(1898) 61 J. P. 759; 1 Q. B. 110; 66 L. J. Q. B. 874; 77 L. T. 462; 46 W. R. 61; 18 Cox C. C. 670.

SIGN

——**Advertisement.**—The tenant of a shop and premises in the County of London gave permission to an advertising agent to erect an advertisement sign, 10 feet 6 inches by 7 feet, supported on iron brackets affixed to the front wall of the house and projecting 1 foot 4 inches beyond it, but not projecting over the highway. The sign was completed on June 20, 1899, but the information was not preferred until May 17, 1900. A metropolitan police magistrate found as a fact that the sign did project beyond the general line of buildings in the street, that the offence was a continuing offence, and convicted the tenant.

The Court (*Bruce and Phillimore, JJ.*) *held*, that the conviction was wrong, because the sign was not a projection within the meaning of § 73 (8) of the *London Building Act*, 1894, which applies only to projections forming part of the building from which they project; and the prosecution was barred by § 11 of the *Summary Jurisdiction Act*, 1848.

HULL v. *LONDON COUNTY COUNCIL.*

(1901) 65 J. P. 309; 1 K. B. 580; 70 L. T. K. B. 364; 84 L. T. 160; 49 W. R. 396; 19 Cox C. C. 635.

NOTE.—This case was *disapproved* by the Divisional Court in *London County Council* v. *Illuminated Advertisements Co.* (1904), 2 K. B. 886. See p. 232, *supra*.

SKY-SIGN

——**Madame Toussaud's.**—The owner of a large place of entertainment erected on the end wall thereof a palisading which supported an iron trellis with the letters "*Madame Toussaud's*" thereon for the purposes of advertisement. The dome of the building was 30 feet higher than the trellis. The letters were not over the building, but from one point of view they were on the sky-line. On summons for infringing the *London Sky Signs Act*, 1891, the magistrate convicted the owner, who appealed. The Court (*Pollock, B., and Hawkins, J.*) *held*, that the trellis was not a sky-sign within the meaning of the *Act*, and quashed the conviction.

TOUSSAUD v. *LONDON COUNTY COUNCIL.*
(1893) 57 J. P. 184.

——**Windmill used for Advertising.**—A miller erected a tower 50 feet high, formed of timber-work and iron rods and secured by ties to girders, which supported the top floor of his premises. Halfway up the tower there was a square gallery with railing constructed of letters in wood and forming the word "Carwardine" on each side of the gallery. At the top of the tower there were windmill sails propelled by the wind in a 28-foot circle. On the rudder of the sails the words "Wheatmeal, Carwardine's Oatmeal Flour," were painted. Over the roof was fixed an arc light. The miller was summoned under the *London Sky Signs Act*, 1891, for erecting and retaining a sky-sign, and the magistrate *held*, that it was mainly used as a mill though incidentally for the purposes of advertisement, that it was not a sky-sign within the meaning of the *Act*, and dismissed the summons. On hearing a case stated, the Court (*Mathew and Bruce, JJ.*) reversed this decision, and *held*, that it was a sky-sign, and remitted the case for a conviction.

LONDON COUNTY COUNCIL v. *CARWARDINE.*
(1892) 57 J. P. 181; 62 L. J. M. C. 40; 68 L. T. 761; 5 R. 70.

SPECIFIC PERFORMANCE

By a building agreement the owner agreed to grant a lease of certain premises to the defendant as soon as he had built thereon a new house, the defendant agreeing to accept such lease and to pull down the old buildings and erect a new house on the site thereof. In an action for specific performance of the agreement and damages by the owner against the defendant, *Page Wood, V.C.*, *held*, that the *Chancery Amendment Act*, 1858, applied, and that the plaintiff was entitled to damages for the non-building of the

house, and the specific performance of the contract to accept the lease.

SOAMES v. *EDGE.*
(1860) 1 Johns. 669.

SPECIFICATION

——**Error in.**—A builder contracted to build a house according to plans and a specification prepared by the owner. The specification omitted any reference to flooring, but stated that "*the whole of the materials mentioned or otherwise in the foregoing particulars, necessary for the completion of the work, must be provided by the contractor.*" The builder refused to lay the flooring without extra payment, and the defendant determined the contract, took possession of the works, and completed the building, using the builder's timber on the premises for the flooring. In an action by the builder for work and labour, *Crowder, J.*, found for the owner, with leave to move. On hearing a rule, the Court (*Pollock, C.B., Watson and Channell, BB.*) *held*, that the flooring was not an extra, as it was included, though not mentioned, in the contract, and the plaintiff could not maintain trover for the timber left on the premises of, and used by, the defendant.

WILLIAMS v. *FITZMAURICE.*
(1858) 3 H. & N. 844; 32 L. T. 139.

STATUTE OF FRAUDS

——**Original Contract not within.**—The defendant was the surveyor employed to superintend the erection of certain premises, and to receive moneys to be paid by the owner to the builder employed in erecting the same. In consideration that the plaintiff would deliver on the builder's order the necessary materials, the defendant promised that he would pay the plaintiff for them out of such moneys as were payable to the builder. The plaintiff provided £1000 worth of materials, and a like sum became payable to the builder, but the defendant did not pay the plaintiff as agreed. On demurrer, the Court (*Lord Abinger, C.B., Parke, Alderson, and Gurney, BB.*) *held*, that the defendant's promise was an original contract and not within the *Statute of Frauds.*

ANDREWS v. *SMITH.*
(1835) 2 C. M. & R. 627; 1 Tyr. & G. 173; 5 L. J. Ex. 80.

——**Materials of Old House, an Interest in Land.**—The defendant sold, by auction, certain building materials, and one of the conditions

of sale provided that the materials were to be taken down and cleared off the premises before a date two months later, after which date the materials not taken away were to be deemed a trespass, and to become forfeited, and the purchaser's right of access to the ground to cease. The plaintiff was declared the purchaser, and signed the form of contract printed with the conditions of sale; the auctioneer confirmed the sale, and acknowledged payment of £565, the contract price required by the conditions of sale. As a fact only £100 passed, and it was acknowledged "as a deposit" on the purchase, and the defendant's caretaker was employed by the plaintiff as caretaker of the premises. Subsequently the auctioneer, by the defendant's directions, returned to the plaintiff the £100 deposited, and declared the purchase of the building materials off. In an action by the plaintiff against the defendant for specific performance and an injunction, it was contended on behalf of the latter that there was no binding contract between the parties. *Chitty, J., held*, that the contract for the sale of the building materials of a house with like conditions is a contract for the sale of an interest in or concerning land, within § 4 of the *Statute of Frauds*, and, accordingly, was void, from the absence of sufficient description in the contract of the vendor.

LAVERY v. *PURSELL.*

(1888) 39 Ch. D. 508; 57 L. J. Ch. 570; 58 L. T. 846; 37 W. R. 163.

STREET

——**Roadway to Flats.**—The owner of a building estate commenced to lay out a road which communicated at one end with a public highway. It was proposed to build at the other end twenty blocks of flats containing eight flats each, sixteen to be erected in quadrangular form with an ornamental garden in the centre. The approach to these blocks was to be by means of a private carriage-way from the highway running round the quadrangle, and upon each side of such carriage-way between the highway and the quadrangle there were to be erected two of the blocks of flats. Each of the blocks had a separate entrance from the carriage-way. It was proposed to erect gates at the end adjoining the highway, which were to be in charge of a porter and to be kept closed, unless when open to admit the vehicles of the occupiers or tradespeople serving them. The road was 40 feet wide, and its total length was 600 feet. It was not intended to be used by the public, and the consent of the London County Council had not been obtained. On summons the justices convicted the owner, imposing a fine of 20*s.* and costs.

The Court (*Lord Russell of Killowen, C.J., Bigham and Darling, JJ.*), on a case stated, *held*, in a considered judgment, that the carriage-way was a "street" within § 7 of the *London Building Act*, 1894, and that the owner was properly convicted for having commenced to form a street for carriage traffic without having first obtained the sanction of the London County Council.

Wood v. *London County Council* (1895), 64 L. J. M. C. 276, overruled (see p. 253, *supra*).

ARMSTRONG v. *LONDON COUNTY COUNCIL.*
(1900) 64 J. P. 197; 1 Q. B. 416; 69 L. J. Q. B. 267; 81 L. T. 638; 48 W. R. 367.

"STRUCTURE OR ERECTION"

The owner of land fronting a certain street erected a house in line with the general building line, and distant 50 feet from the highway. Between the house and the street there was a vacant space, and the owner erected between this space and the adjoining plot a wall 13 feet high, and projecting 20 feet towards the roadway. The magistrate ordered the demolition of the wall on the ground that, being attached to the house at one end, it was part of a building, and therefore an infringement of § 75 of the *Metropolis Local Management, &c., Act*, 1862. The owner's appeal was dismissed by the Divisional Court, and he pulled down the wall. He then erected on the same foundations a wall less than 8 feet in height, separated by 8 inches from the house. On further summons the magistrate ordered its demolition. On hearing a case stated, the Court (*Lord Coleridge, C.J., and Cave, J.*) *held*, that the section is not intended to prevent the owner from erecting such a wall or fence as would be a reasonable ascertainment of a protection to his property, and it is for the magistrate to say whether such is a "building structure or erection" within the meaning of the section, and they dismissed the appeal.

ELLIS v. *PLUMSTEAD BOARD OF WORKS.*
(1893) 57 J. P. 359; 5 R. 237; 41 W. R. 496; 68 L. T 291.

SUB-CONTRACTOR

The fire-proof and concrete portions of certain premises, in course of erection, were to be executed by the respondents, who contracted with the owner's architect, and not with the builders who were erecting the premises. The contract with the latter admitted of the employment of other tradesmen to perform works on the premises. The builders were to permit the respondents to

use their scaffold, &c. An employé of the builders was injured by a bucket falling upon him, owing to the want of due care on the part of the servants of the respondent. In an action by the injured man the jury awarded him £52 10*s.* damages, and *Grantham, J.*, entered judgment accordingly. The Divisional Court (*Pollock, B., and Manisty, J.*) ordered judgment to be entered for the respondents, as the plaintiff, at the time of the accident, was engaged in a common employment with the servant of the respondents, whose negligence caused the injury to the plaintiff. The plaintiff appealed.

The Court of Appeal (*Cotton and Lopes, L.JJ.; Fry, L.J., dissenting*) *affirmed* this decision. On appeal, the House of Lords (*Lords Herschell, Watson, and Morris*), in a considered judgment, reversed the decision of the Court of Appeal (23 Q. B. D. 505), and *held*, that since the relation of master and servant did not exist between the parties, the doctrine of *collaborateur* did not apply, and the action was maintainable.

JOHNSON v. *LINDSAY & CO.*

(1891) 55 J. P. 644; A. C. 371; 23 Q. B. D. 508; 61 L. J. Q. B. 90; 40 W. R. 405; 65 L. T. 97.

SUBSIDENCE

——**Action Statute-barred.**—A local authority, in executing sewerage works, improperly filled in the excavations, in consequence of which the plaintiff's land subsided and the houses thereon sustained injury. The subsidence began more than six months before the date of action brought, and the land continued to subside until that date. The local authority, in an action brought by the plaintiff, pleaded that by the *Public Health Act*, 1875, § 264, the plaintiff was statute-barred. The jury found a verdict of £150 damages, and *Wills, J.*, entered judgment accordingly. The defendants appealed, and the Court (*Lord Esher, M.R., Bowen and Fry, L.JJ.*) *held*, that the further subsidence which took place within six months before action brought constituted a distinct cause of action in respect of which the action was maintainable.

CRUMBIE v. *WALLSEND LOCAL BOARD.*

(1891) 55 J. P. 421; 1 Q. B. 503; 60 L. J. Q. B. 392; 64 L. T. 490.

——**By Withdrawal of Quicksand.**—The plaintiff was the owner of land with houses on it. The defendants, in excavating for the purposes of erecting a gasometer, penetrated a substratum of

quicksand, which also extended under the land of the plaintiff. In draining their excavations, the defendants withdrew a large quantity of quicksand from under the plaintiff's land, thereby causing a subsidence, and consequent injury to the plaintiff's houses. By § 9 of the *Gasworks Clauses Act*, 1871, the defendants were liable to proceedings for any nuisance caused by them in the execution of their works. The plaintiff brought an action against the gas company and the contractors for damages in respect of injury caused by the subsidence, and an injunction to restrain the company from obstructing the ancient lights of the house, by the increased height of the proposed gasometer. *North, J., held*, that the contractors had not been negligent, that the damage had been caused by the escape of the quicksand, and that the lights of the house would be materially obstructed by the height of the proposed gasometer. He granted an injunction against the company restraining them from erecting the gasometer more than 68 feet high, and gave judgment for £340 damages against all the defendants in respect of subsidence, and apportioned the costs between the defendants. Both defendants appealed.

The Court (*Lindley, M.R., Rigby and Vaughan Williams, L.JJ.*), in a considered judgment, *held*, that the defendants had no statutory authority to carry on the work so as to cause a nuisance, and (*Vaughan Williams, L.J., dissenting*) that as the defendants had caused the subsidence of the plaintiff's land by withdrawing its support, they had committed an actionable nuisance at Common Law, entitling the plaintiff to damages, and that the plaintiff was entitled to an injunction in respect of the erection of the gasometer as damages would not be adequate.

JORDESON v. *SUTTON, SOUTHCOATES, & DRYPOOL GAS CO.*

(1899) 63 J. P. 692; 2 Ch. 217; 68 L. J. Ch. 457; 80 L. T. 815.

SUPPORT

——**Absence of Right to.**—The plaintiff was owner of certain land upon which some modern buildings stood. The defendant, who owned the land adjoining, contracted with a builder for the erection of certain buildings on the border of the defendant's premises; and in the execution of the work the plaintiff's buildings were injured: some of the plaintiff's building material was carried away by the workmen without the defendant's sanction. The plaintiff obtained a verdict in respect of the injury, and of the conversion, in a county court, and the defendant appealed. The

Court (*Parke, Platt, and Martin, BB.*) *held*, that in the absence of a right to support, the action in respect to the injury failed, and that the defendant was not liable for the tortious acts of the builder's workmen.

GAYFORD v. *NICHOLLS.*

(1854) 9 Ex. 702; 2 C. L. R. 1066; 32 L. J. Ex. 205; 2 W. R. 453.

——**Cutting away Footings.**—Where notice was given to the occupier of adjoining premises, of an intention to pull down and remove the foundations of a building, on part of the footing of one of the walls of which one of the walls of such adjoining premises rested, it was *held*, in an action for damages, that the party giving the notice was only bound to use reasonable and ordinary care in the work, and was not bound in any other way to secure the adjoining premises from injury, although, from the peculiar nature of the soil, he was compelled to lay the foundations of his new building several feet deeper than those of the old building.

MASSEY v. *GOYDER & OTHERS.*

(1829) 4 C. & P. 161.

——**Deep Excavations.**—A purchaser of certain spongy land built thereon, in accordance with a covenant, certain cottages, and did not drain the ground previously. The defendant, in excavating deeply for the erection of certain church buildings on the adjoining land, the title to which was derived from the same grantor, drained the adjoining land, and thereby caused injury to the cottages. The land would have subsided even if no cottages had been built upon it, and no negligence was alleged. In an action to recover damages, the Court of Exchequer (*Martin, Bramwell, and Channell, BB.*) gave judgment for the defendant. The plaintiff appealed to the Court in Error, and the judgment was *affirmed* by the Court (*Cockburn, C.J., Keating, Lush, Hannen, and Brett, JJ.*).

POPPLEWELL v. *HODKINSON.*

(1869) L. R. 4 Ex. 248; 38 L. J. Ex. 126; 20 L. T. 578; 17 W. R. 806.

——**Deeper Excavations than those in Next Tenement.**—The plaintiffs were owners in fee of certain premises adjoining the premises of the defendant's employers, both of the premises being independent, and having been dwelling-houses until twenty-seven years prior to 1876, when the plaintiffs' predecessor converted his premises into a coach-factory, removing the internal walls, and

erecting a chimney-stack, which also supported certain floor-girders. These girders were let into the plaintiffs' stack on the one side and into the plaintiffs' wall on the opposite side, and were so braced as to form the main support of the upper storeys of the factory. The defendant, in carrying out certain building operations for the co-defendants, removed the dividing wall, and erected a temporary wooden gable so as to protect the factory while the new building was being erected. The defendant then excavated to a depth of several feet below the level of the plaintiffs' stack, leaving a thick pillar of the original clay around the stack for the purpose of supporting it, there being no cellar in the premises previously. This pillar proved insufficient, and before the foundations of the new wall had been built, it gave way, and the stack fell, drawing with it the entire premises. The plaintiffs sued the defendant, and also his employers, the Commissioners of Works, for damages for removing the lateral support of the plaintiffs' factory; and the action was tried by *Lush, J.*, who directed a verdict for the plaintiffs and an inquiry as to damages. The defendants appealed, and the Court (*Cockburn, C.J., and Mellor, J.; Lush, J., dissenting*) *held*, that no grant of a right to such support could be presumed from the enjoyment thereof by the plaintiffs for twenty years, inasmuch as the owners had never any power to oppose the conversion of the premises into a coach-factory, and had no reasonable means of preventing the enjoyment of such support; and, for the same reason, such support was not an easement which had been enjoyed for twenty years within § 2 of the *Prescription Act*, 1832, as it could not be said to have been enjoyed by a person claiming a right thereto, and without interruption (3 Q. B. D. 85). The plaintiffs appealed from this judgment, and the Court of Appeal (*Cotton and Thesiger, L.JJ.; Brett, L.J., dissenting*) reversed it, and ordered a new trial or judgment for the plaintiffs for £1943 damages. The defendants appealed, and the appeal was heard by the House of Lords in November, 1879, and again in November, 1880, in the presence of the following judges, viz. *Pollock, B., Field, Lindley, Manisty, Lopes, Fry, and Bowen, JJ.*, to whom certain questions were put. The House of Lords (*Lords Selborne, L.C., Coleridge, Penzance, Blackburn, and Watson*) reversed the judgment of the Court of Appeal, and *held*, that a right to such support may be acquired for a newly erected or altered building by twenty years' uninterrupted enjoyment, and is so acquired if the enjoyment is peaceable and without deception or concealment, and so open that it must be known that some support is being enjoyed by the building; that such a right is an easement within § 2 of the *Prescription Act*, 1832; and that the

plaintiffs could sue the owners of the adjoining house and the builder for the damage.

DALTON v. *ANGUS.*

(1881) 6 A. C. 740; 4 Q. B. D. 162; 50 L. J. Q. B. 689; 44 L. T. 844; 27 W. R. 625; 30 W. R. 191.

——**Different Owners of Adjoining Tenements.**—The defendant caused certain premises, over sixty years in existence and therefore ancient buildings, to be rebuilt, without any notice to the plaintiff of his intention to do so; and in the course of the work the premises of the plaintiff adjoining, and also more than sixty years built, sustained damage by reason of the defendant withdrawing therefrom the support of certain parts of the defendant's premises. The plaintiff brought an action for an injunction and damages against the defendant, and *Hall, V.C.*, gave judgment for the plaintiff, and *held*, that where ancient buildings belonging to different owners adjoin each other, there is a right of support from the building, as well as from the land, and this right can be claimed under the provisions of the *Prescription Act*, 1832. The mere fact that the support is derived from the property of an ecclesiastical corporation does not prevent the right of support from being acquired. But the enjoyment of the right must have been open, and not surreptitious. In this case the contractor was added as a defendant, and both he and the owner were held jointly liable for the damages and costs.

LEMAITRE v. *DAVIS.*

(1881) 46 J. P. 324; 19 Ch. D. 281; 51 L. J. Ch. 173; 46 L. T. 407; 30 W. R. 360.

——**Excavations.**—The defendant excavated on his land with a view to building. A house standing on the plaintiff's adjoining ground, within 4 feet of the excavations, was injured by reason of the excavations. It was proved that the weather became very wet after the work began, and partly caused the injury. There was an allegation of negligence against the defendant, and some evidence to show that the wall, which was injured and had to be rebuilt, was rotten, was pressed upon by a great weight of rubbish on the plaintiff's premises, and in any event would not have stood longer than six months. *Bolland, B.*, entered judgment for the plaintiff on the finding of a jury. The defendant obtained a rule for a new trial, which the Court (*Denman, C.J., Littledale, Taunton, and Williams, JJ.*) discharged.

DODD v. *HOLME.*

(1834) 1 Ad. & E. 493; 3 N. & M. 739.

——**Excavations.**—The plaintiff and the defendant were owners of adjoining lands. For more than twenty years the plaintiff's house had been supported by the land of the defendant. The defendant excavated foundations for some buildings, which he proposed to erect on his land, so near the plaintiff's house that it fell. In an action to recover damages, *Parke, B.*, directed the jury that if the plaintiff's house had been so supported, and both parties knew it, the plaintiff had a right to such support as an easement, and that the defendant could not withdraw that support without being liable in damages, such as would put the plaintiff in the same position as he was in before, but the jury ought not to give him a new house for an old one.

HIDE v. *THORNBOROUGH.*
(1846) 2 Car. & Kir. 250.

——**Gable.**—The plaintiff built, between 1854 and 1856, certain workshops, the gable of which rested upon a wall not on his land, but the remaining part of the workshops were upon land which he had agreed to purchase under a building agreement, and partly upon other land which had been laid out as a street. The plaintiff covenanted with the vendor that, on three months' notice given, he would form, pave, and macadamise a certain carriage-road, and also the land laid out as a new street. The formation of the new street was abandoned. The defendant, in whom the land was subsequently vested, pulled down part of the wall in 1882, and the plaintiff brought an action for an injunction to restrain him from so doing. *Denman, J., held*, that the enjoyment of support from the wall, although enjoyed for more than twenty years, was not of right, and that, therefore, no easement was acquired.

TONE v. *PRESTON.*
(1883) 24 Ch. D. 739; 53 L. J. Ch. 50; 49 L. T. 99; 32 W. R. 166.

——**Mutual.**—Where several houses belonging to the same owner are built together so that each requires the mutual support of the adjoining house, and the owner parts with one of the houses, the right to such mutual support is not thereby lost, the legal presumption being that the owner reserves to himself such right, and at the same time grants to the new owner an equal right, and consequently, if the owner parts with several of the houses at different times, the possessors still enjoy the right to mutual support, the right being wholly independent of the question of the priority of their titles.

RICHARDS v. *ROSE.*
(1853) 9 Ex. 218; 2 C. L. R. 311; 23 L. J. Ex. 3; 17 Jur. 1036.

——**Neglect to repair Wall.**—In 1857 the defendants demised a house, separated, up to the first floor, from the adjoining premises by a gateway, for a term of twenty-one years, the lessee covenanting to repair all party walls. In 1865 they demised the adjoining house with the gateway thereunder to the plaintiff, with similar covenant, for a term of eleven and a quarter years. The party wall between the first-mentioned house and the gateway was not repairable by the plaintiff, nor by the defendant, under their covenants. In 1874 a portion of the party wall above the gateway was giving way owing to failure of support from the lower part of the party wall, which had bulged in consequence of the pressure from the plaintiff's premises. The plaintiff brought an action for damages against the defendants for failing to maintain a wall supporting the plaintiff's house.

The *Court* (*Cockburn, C.J., Mellor and Quain, JJ.*) *held*, in a considered judgment, that there was no implied covenant on the part of the defendants to support the plaintiff's premises, although it might be an answer to an action upon the plaintiff's covenant to repair, that the repair had been rendered impossible by the neglect of some precedent obligation on the part of the defendant.

COLEBECK v. *GIRDLERS' CO.*

(1875) 1 Q. B. D. 234; 45 L. J. Q. B. 225; 34 L. T. 350; 24 W. R. 577.

——**Negligent Excavations.**—In 1803 the plaintiff's house was built against the pine end wall of the defendant's house, by permission. In 1829 the defendant made an excavation in a careless and negligent manner in his own land and near his pine end wall, by which he weakened the latter, and consequently caused injuries to the house of the plaintiff. In an action tried before *Goulburn, J.*, the jury awarded the plaintiff £50 damages. On appeal, the Court (*Garrow, Vaughan, and Bolland, BB.*) *held*, that the action was maintainable, and dismissed the appeal.

BROWN v. *WINDSOR.*

(1830) 1 C. & J. 20.

——**Negligent Shoring.**—The plaintiff and the defendant were owners and occupiers of two adjoining houses. For the purpose of rebuilding his house, the defendant contracted with a certain builder, the contract providing *inter alia* that the builder was to take upon himself the risk and responsibility of shoring up and supporting the adjoining premises, and make good any damage occasioned to them in consequence of the building works. The

builder excavated for foundations to a lower depth than the plaintiff's foundations, and owing to defective underpinning, or want of other support to the plaintiff's walls and soil, the plaintiff's house was injured. In an action against the owner for damages, it was contended that he was not liable, and that in view of the express stipulations of the builder's contract, the builder was in default, and was liable. *Field, J.*, entered judgment for the plaintiff. On hearing a rule obtained by the defendant, the Court (*Cockburn, C.J., Mellor and Field, JJ.*) *held*, in a considered judgment, that the defendant was liable, even if the builder's undertaking as to risk had amounted—which it did not—to an express stipulation that the builder should do, as part of the works contracted for, all that was necessary to support the plaintiff's house.

BOWER v. *PEATE.*
(1875) 1 Q. B. D. 321; 45 L. J. Q. B. 446; 35 L. T. 321.

——**Removal of House next that adjoining.**—The plaintiff's house was built on a hill with a descent towards the west. The next house but one belonged to the defendants. For upwards of thirty years the three houses had been out of the perpendicular, leaning towards the west. The defendants' house was the lowest and westernmost of the three, and on the expiration of the lease, they agreed to grant a lease of it to a lessee on condition that the lessee would rebuild it. The lessee pulled down the house, and in consequence, the adjoining house sunk further to the west, so that the plaintiff's house, having lost the support of the middle house, fell.

The plaintiff brought an action, and *Martin, B.*, directed a nonsuit. On hearing a rule, the Court (*Pollock, C.B., Bramwell and Martin, BB.*) *held*, that the defendants' house not adjoining the plaintiff's house, the plaintiff had no right to support from the defendants' house, and discharged the rule.

SOLOMON v. *VINTERS' CO.*
(1859) 4 H. & N. 585; 28 L. J. Ex. 370; 5 Jur. 1177; 7 W. R. 613.

——**Right to.**—The plaintiff purchased, from the Corporation of Liverpool by private treaty, a plot of building land to be built upon according to plans to be approved by the Corporation. Such plans were duly approved by the Corporation in May, 1869, and according to the drawings the proposed buildings extended to the edge of the plaintiff's land on every side. The plaintiff pulled down old buildings which were on the site, and laid his foundations 8 feet 3 inches from the surface instead of 10 feet 9 inches as

shown on the plans, the inspecting officer of the Corporation making no objection to this deviation. In August, 1869, the defendant purchased the adjoining plot from the Corporation. The defendant in 1881 proposed to build, and excavated for his foundations to a greater depth than the depth of the plaintiff's foundations, which were thereby endangered. The plaintiff sought an injunction to restrain the threatened injury, and *Bristowe, V.C.* of Lancaster, granted a declaration that the plaintiff was entitled to the support claimed, and ordered the defendant to pay the costs of the underpinning done by the plaintiff, and the costs of the action. The defendant appealed, and the Court (*Jessel, M.R., Cotton and Brett, L.JJ.*) *held*, that the plaintiff was entitled to the injunction claimed, because there was not enough, in the special circumstances of the case, to take away the right of support from the adjoining lands of the grantor which is implied in a grant of land for the purpose of building.

RIGBY v. *BENNETT.*

(1882) 47 J. P. 217; 21 Ch. D. 559; 40 L. T. 47; 31 W. R. 222.

——**Sinking a Well.**—The defendant dug a well near the plaintiff's land, which sank in consequence, and a building erected upon it within twenty years fell. It was proved that if the building had not been on the plaintiff's land his land would still have sunk, but the damage would have been inappreciable. At the trial, *Erle, C.J.*, entered judgment for the defendant on the findings of the jury. On hearing a rule, the Court (*Erle, C.J., Byles and Montague Smith, JJ.*) *held*, that the plaintiff had no cause of action.

SMITH v. *THACKERAH.*

(1866) L. R. 1 C. P. 564; 35 L. J. C. P. 276; 12 Jur. 545; 14 L. T. 761; 14 W. R. 832.

——**Subsidence caused by Stones piled up.**—The plaintiff held under a grant made for building purposes more than twenty years prior to the date of certain injuries complained of. The defendants were the successors in title of the grantors, and piled up stones on their land immediately adjoining a house built by the plaintiff, causing a subsidence, and injury to the plaintiff's house. In an action by the plaintiff for damage caused by the deprivation of the right of support, the jury found for the plaintiff, and assessed the damages. The defendants appealed, and this judgment was *affirmed.*

GREEN v. *BELFAST TRAMWAYS CO.*

(1888) L. R. Ir. 20 C. L. 35.

——**Withdrawn by working Mines near.**—If a party builds a house on his own land which has previously been excavated to its extremity for mining purposes, he does not acquire a right to support for the house from the adjoining land of another, or at least until twenty years have elapsed since the house first stood on the excavated land and was in part supported by the adjoining land; so that a grant by the adjoining owner of such right to support may be inferred. Such rights can only have their origin in grant. Therefore the owner of the adjoining land is not liable to an action if within such period he works mines under his own land so near its boundary as to cause the excavated land on which the house stands to subside, and the house to become thereby injured.

PARTRIDGE v. *SCOTT.*
(1838) 3 M. & W. 220; 1 H. & H. 31; 7 L. J. Ex. 101.

—— **Withdrawn through Builder's Negligence.**—A firm of builders were employed to pull down certain premises and erect upon the site thereof new buildings. In doing so the adjoining premises sustained injury, and the owner brought an action against the builders for damages for depriving his premises of the support of the buildings pulled down, for negligence, and also for trespass. At the trial before *Kenny, J.*, the jury assessed the damages at £150, but judgment was entered for the defendant. On appeal, the Court (*Palles, C.B., and others*) *held*, that where an easement of support is claimed by the owner of one of two adjoining houses, which have not a common origin, against the owner of the other, it must be proved that the owner of the servient tenement knew, or had the means of knowing, that his house was affording support to the other.

GATELY v. *MARTIN.*
(1900) 2 Ir. R. 269.

——**From Wooden Struts.**—For twenty years the east wall of certain premises had been supported by six struts fixed between them and a neighbouring building. The latter was acquired by a local authority under the *Artisans Dwelling Act*, 1875, and the *Metropolis Improvement Act*, 1877, with a view to pulling it down. The owner gave the local authority notice that he claimed an easement of support, whereupon the local surveyor certified the supported premises to be a "dangerous structure." The owner then brought an action for an injunction against the local authority to restrain them from removing or interfering with the support claimed, and *Pearson, J.*, *held*, that by § 20 of the *Act of*

1875 the easement was extinguished, but the owner was entitled to compensation.

SWAINSTON v. *FINN & THE METROPOLITAN BOARD OF WORKS.*

(1883) 52 L. J. Ch. 235; 48 L. T. 634; 31 W. R. 498.

SURETY

——**Guaranteeing Cost of Materials.**—A builder entered into a contract, and his sureties guaranteed that if a brickmaker would supply the builder with bricks, he would be paid out of the money payable under the contract to the builder. The brickmaker allowed the builder to retain the early instalments. The builder subsequently executed some extra work, but shortly after his contract was determined owing to his default. The sureties assented to the cost of completing the works by another builder being deducted from the amount payable under the contract, and it was then found that the balance was insufficient to pay for the extra works. In an action by the brickmaker upon the guarantee, *Parke, B.*, entered judgment for the plaintiff. On motion by the defendant for a nonsuit, the Court (*Parke, Bolland, Alderson, and Gurney, BB.*) *held*, that as payment had not been made to the guarantors, the guarantee was not broken, and that it did not attach, unless the whole amount of the contract was paid over.

HEMING v. *MALINE.*

(1835) 4 L. J. Ex. 245; 2 C. M. & R. 385; 1 Gale, 206; 5 Tyr. 887; 1 Jur. (o.s.) 893.

——**Guarantees Honest Work.**—Two of the defendants were sureties for the due performance of a contract to construct certain sewers "well and truly." The contractors concealed certain work, which they had executed in a defective manner, from the knowledge of the plaintiffs' superintending engineer, who gave his final certificate, believing the work had been properly done. Six months after obtaining this certificate the contractors were paid certain moneys which had been retained from the instalments, and which were by the contract payable six months after the final certificate. In an action by the local authority against the contractors and the sureties, *Grantham, J.*, upon the findings of the jury, gave judgment against all the defendants for damages to be ascertained by a reference. The sureties appealed.

The Court (*Lord Esher, M.R., Bowen and A. L. Smith, L.JJ.*) *held*, that the non-exercise by the plaintiffs of their right of superintendence did not discharge the sureties from liability, nor were

they discharged because the plaintiffs' engineer had given his final certificate, inasmuch as the giving of the certificate did not prejudice the sureties. Both the certificate and the retention money had been obtained by the contractors by a dishonest performance of the work, against which the sureties had guaranteed the plaintiffs.

MAYOR, &c., OF KINGSTON-UPON-HULL v. *HARDING.*

(1892) 57 J. P. 85; 2 Q. B. 494; 62 L. J. Q. B. 55; 4 R. 7; 67 L. T. 539; 41 W. R. 19.

SURVEYOR

——**Certificate.**—The plaintiff agreed to build certain houses for the defendant. By the terms of the contract instalments on account thereof were to be paid only upon production by the plaintiff of certificates signed by the defendant's surveyor. Some of the instalments were duly paid. The plaintiff sued the defendant for the balance due, but he was nonsuited by *Pollock, C.B.* He appealed, and the Court (*Pollock, C.B., and others*) *held,* in a considered judgment, that the want of a certificate was a good defence to the action, and that the plaintiff was not at liberty to prove that such certificate was withheld by fraud.

MILNER v. *FIELD.*

(1851) 5 Ex. 829; 20 L. J. Ex. 68.

——**Certificate Conclusive.**—The surveyor of the corporation of a city certified, under the provisions of their private Act, that there was imminent danger from a building, of which the plaintiff was owner and occupier, and the town clerk directed the surveyor to cause the building, referred to in his certificate, to be taken down, or repaired in such a manner as he should think requisite. The surveyor thereupon employed a builder to do the work, and the corporation recovered the cost from the plaintiff.

In an action by the plaintiff to recover damages in respect of injury to his possessory and reversionary interest in the premises and to his stock, tried before *Willes, J.,* a verdict was taken by consent, subject to a case. The Court (*Lord Coleridge, C.J., Keating and Denman, JJ.*) *held,* in a considered judgment, that the certificate of the surveyor was conclusive, and could not be questioned in an action to recover back the money so paid; that the acts of the surveyor, authorized by the town clerk, were acts of the corporation; and that the general word "Building No. 95, Market Street," used in the notice was sufficient to cover 95,

Market Street, and the plaintiff's adjoining house, although the latter was in the next street and was separately assessed to rates.

CHEETHAM v. *MANCHESTER CORPORATION.*
(1875) L. R. 10 C. P. 249; 44 L. J. C. P. 139; 32 L. T. 28.

——**Certificate Conclusive.**—A contractor agreed with the defendants to execute "*the several works*" specified therein, according to the provisions of the contract and the conditions attached thereto. It was further provided that the contractor was to keep in repair "*the several works*," including any additional works executed, for a period of three months after the completion thereof. Some delay and difficulty arose in carrying out the contract, but ultimately the surveyor gave his final certificate, which by the contract was to be conclusive, showing that a certain sum was payable to the contractor. The defendants dismissed the surveyor and appointed another in his place. In an action brought by the contractor at the expiration of the three months, to recover the balance certified by the late surveyor, the defendants counterclaimed for penalties for delay, the cost of defects appearing within the three months, and repayment of sums certified *ultra vires* by the surveyor. On a reference the arbitrator found for the plaintiff on the claim and counterclaim, the defendants appealed, and the Court (*Mathew and Bruce, JJ.*) referred the case back to the *Official Referee* to rehear the counterclaim. The plaintiff appealed, and the Court (*Lord Esher, M.R., and Lopes, L.J.*) dismissed the appeal. At the rehearing, the *Official Referee* gave judgment for the defendants on the counterclaim, and the Divisional Court (*Lord Coleridge, C.J., and Lopes, L.J.*) dismissed the plaintiff's appeal to set aside that judgment.

CUNLIFFE v. *HAMPTON WICK LOCAL BOARD.*
(1892) H. B. C. 256.

——**Certificate withheld.**—The plaintiffs contracted to do certain building works for the defendants for a fixed sum, to be paid to the plaintiffs on production of the certificate of the defendants' surveyor that the works had been duly executed. After part of the work had been paid for, the surveyor withheld his certificate for the balance alleged to be due to the plaintiffs. In an action by the plaintiffs for the balance alleged to be due, the Court (*Erle, C.J., Williams, Willes, and Keating, JJ.*) *held*, that the plaintiffs had no cause of action.

CLARKE v. *WATSON.*
(1864) 34 L. J. C. P. 148; 18 C. B. (N.S.) 278; 11 L. T. 679; 13 W. R. 345.

——**Certificate of Completion never given.**—A builder contracted to erect certain houses on land belonging to the defendant, according to plans and specification, under the supervision of the defendant's surveyor. The houses were to be completed by a certain date, and in case of default, the builder was to pay £5 for every week they remained unfinished. Each instalment to which the builder was entitled was to be certified by the surveyor, and the last instalment was payable within three days after his final certificate. By agreement the time fixed for completion was extended. To secure certain advances to the builder by the plaintiff, the defendant gave to the latter a promissory note for £110, payable on the completion of the houses according to contract. The builder completed the work, but no certificate of completion was ever given by the surveyor. In an action on the guarantee, the jury found the houses had been completed before the action was brought, and *Huddleston, B.*, entered judgment for the defendant. On appeal, the Court (*Baggallay, Bramwell, and Thesiger, L.JJ.*) *reversed* the decision of *Huddleston, B.* On appeal by the defendant, the House of Lords (*Lords Selborne, L.C., Blackburn, and Watson*) *affirmed* the judgment of the Court of Appeal, and *held*, that the jury's finding was conclusive, and that the surveyor's certificate was not a condition precedent to payment under the guarantee.

LEWIS v. *HOARE.*

(1881) 29 W. R. 357; 44 L. T. 66.

—— **As Contractor.**—The defendant, the owner of certain premises, contracted with a surveyor to do certain work therein. The latter ordered goods from a tradesman for use in the defendant's house. In an action by the tradesman against the owner for goods sold and delivered, the Court *held*, that the owner was not liable.

BRAMAH v. *ABINGDON.*

(1812) 15 East. 66; 3 F. & F. 143, *n.*

——**Custom.**—The defendants employed an engineer to act for them in certain proceedings. The engineer directed a firm of surveyors to make certain surveys and reports. In an action by the surveyors for fees, it was alleged that, in the absence of any contract or agreement, there was a custom to pay according to Ryde's scale, irrespective of difficulty or time occupied. *Day, J.*, *held*, that there was such a custom, and that the defendant's engineer knew of such custom, and he gave judgment for the plaintiff according to Ryde's scale.

BUCKLAND v. *PAWSON.*

(1890) 6 T. L. R. 421.

——**Employment.**—The guardians of a certain union contracted under seal with a surveyor in respect of certain plans and surveys. Subsequently the surveyor was requested by the guardians to prepare a reduced plan and to attend special sessions to support the union in certain appeals. The latter services formed no part of the work contracted for under seal. In an action by the surveyor to recover his fees in respect of the extra services rendered, *Patterson, J.*, reserved certain points, and the jury found for the plaintiff. On hearing a rule, the Court (*Lord Denman, C.J., and others*) *held*, in a considered judgment, that the guardians could not bind themselves by an order not under seal for such work, not being a contract necessarily incident to the purposes for which they were made a corporation by the statutes 5 & 6 *Wm. IV. c.* 69, § 7; and 5 & 6 *Vict. c.* 57, § 16; and it is not intended by 6 & 7 *Wm. IV. c.* 96, § 3, that the guardians of a union should make themselves liable for the expenses of such plan.

PAINE v. *STRAND UNION.*

(1845) 8 Q. B. 326; 15 L. J. M. C. 89; 10 Jur. (o.s.) 308.

——**Fees.**—The owner of certain land entered into an agreement with a builder to grant him leases of ninety-nine years of certain plots, as soon as the builder had erected certain houses thereon, at a peppercorn rent, until June 24, 1870, and thereafter at £28 per annum. The builder erected houses which were roofed in by September, 1870, and the owner became entitled to receive the first quarter's head-rent on September 29, 1870. The district surveyor surveyed the houses, and sent in an account of his fees to the builder, who became insolvent. The surveyor then claimed payment from the owner, against whom he took out a summons, upon which the magistrate ordered payment. The Court (*Lush and Hannen, JJ.*), on a case stated, *held*, that the owner was not liable as he was not the "owner" within the meaning of §§ 3 and 51 of the *Metropolitan Building Act*, 1855, and that the lessee had the power to let the houses and receive the profits, and was therefore "owner."

CAUDWELL v. *HANSON.*

(1871) L. R. 7 Q. B. 55; 41 L. J. M. C. 8; 25 L. T. 595; 20 W. R. 202.

——**Fees.**—A firm of builders erected certain school premises for the London School Board, and the district surveyor claimed to be paid by them the amount of his fees as district surveyor for work done in connection with the premises. The builders were summoned, and they contended that surveyors' fees were given by

§ 154 of the *London Building Act*, 1894, but that where the work is done under the *Metropolitan Building Act*, 1855, the fees payable are those given by that *Act*. The surveyor contended that the buildings in question were supervised under the later, and not the earlier, *Act*, and, therefore, the fees are those given by the later statute. The magistrate dismissed the summons, and on hearing a case, the Court (*Kennedy and Darling, JJ.*) *affirmed* the magistrate's decision, and *held*, that the surveyor's fees were governed by the *Act* of 1855.

MARSLAND v. *WALLIS & SONS.*
(1901) 65 J. P. 166; 83 L. T. 761.

——**Fees.**—The appellant gave notice to the local authority of his intention to build under one roof fourteen new buildings, to be used as dwelling-houses or flats. He erected fourteen separate suites of rooms, each suite having a separate entrance from one common staircase, and there was only one entrance from the street. In the course of their erection the district surveyor from time to time inspected the work, and, on completion, sought payment for his fees, which were calculated on the basis that each suite was a separate building. The appellant was summoned under § 51 of the *Metropolitan Building Act*, 1855, for non-payment of the surveyor's fees, and the magistrate ordered him to pay the full amount claimed, being of opinion that each suite was a separate building within the meaning of the *Act*.

The Divisional Court (*Lord Coleridge, C.J., and Mathew, J.*) *held*, in a considered judgment on a case stated, that the magistrate's decision was wrong, and allowed the appeal. From this decision the district surveyor appealed. The Court (*Lord Esher, M.R., Fry and Lopes, L.JJ.*) *affirmed* the judgment of the Divisional Court, and *held*, that the separate suites were not buildings within the meaning of *Part I. Sch. II.* of the *Act*, and, therefore, the district surveyor was entitled to one fee only in respect of the entire structure.

MOIR v. *WILLIAMS.*
(1892) 56 J. P. 197; 1 Q. B. 264; 61 L. J. M. C. 33; 66 L. T. 215; 40 W. R. 69.

——**Fees.**—A builder gave notice to a certain district surveyor of his intention to erect fifty-one arches under a public highway, and the surveyor measured and surveyed the proposed site. The arches varied in size, and, therefore, in course of erection had to be measured separately by the surveyor. Each arch or vault was

open in front, and separated from the others by a pier of brickwork. The surveyor claimed 10*s.* fee in respect of each arch or vault under the *Metropolitan Building Act*, 1855, § 49, whereby the surveyor is entitled to a fee of 10*s.* "for inspecting the arches or stone floors over or under public ways." The surveyor took out a summons claiming £25 10*s.*, being 10*s.* for each vault, and the justice ordered payment of only 10*s.* The surveyor appealed, and the Court (*Willes and Keating, JJ.*) *held*, that he was entitled to a fee of 10*s.* in respect of each distinct building to which any number of the arches or vaults were to be appropriated, and that the magistrate's decision on such a summons is subject to appeal under 20 & 21 *Vict. c.* 43, notwithstanding § 106 of the *Building Act*.

POWER v. *WIGMORE*.
(1872) L. R. 7 C. P. 386; 27 L. T. 148.

——**Fees: 5 per cent.**—A surveyor was employed by the defendant to measure certain work and to settle the various tradesmen's bills for the same. In an action by the surveyor to recover his fees, calculated at 5 per cent. on the total amount paid to the tradesmen, evidence was called to prove that 5 per cent. on the expenditure was the customary charge. The defendant had paid into Court half the amount claimed, contending that 2½ per cent. was reasonable. *Lord Kenyon held*, that a surveyor is to be paid according to his labour, and not according to the amount of the bills he looks over and settles, and the plaintiff consented to a nonsuit.

UPSDELL v. *STEWART*.
(1794) 1 Peake (N. P.) 255.

——**Fees: 5 per cent. held Reasonable.**—In an action by a firm of surveyors for fees for superintending certain alterations in the defendant's house, 5 per cent. on the total outlay was claimed. The defendant objected that that sum was too large, especially since in making such a charge the surveyors were interested in increasing the expenditure. *Lord Ellenborough, C.J.* left it to the jury to say whether the claim was reasonable or not, and they found for the plaintiff for the whole amount.

CHAPMAN v. *DE TASTET*.
(1817) 2 Stark (N. P.) 294.

——**Fees: Ryde's Scale.**—Upon taxation of a bill of costs the Taxing Master allowed an item of £73 as remuneration of the

surveyor, who had been employed by the defendants to survey and report upon the value of certain property they proposed to purchase. That sum was the amount of commission on £12,150, the purchase price, as fixed by Ryde's scale.

On hearing an application made to the Court to direct the master to review his taxation in respect of that item, on the ground that the surveyor was only entitled to be paid on a *quantum meruit*, *Lord Romilly, M.R., held*, that the question was one of amount and not of principle, that the Court would not interfere, and that if it were a question of principle, a prevailing practice of paying surveyors by commission ought not to be disturbed.

ATTORNEY-GENERAL v. *DRAPERS' CO.*

(1869) L. R. 9 Eq. 69; 21 L. T. 651. (See also p. 384 *infra*.

——**Landlord not an Owner Liable for Fees.**—The owner of certain land leased the same on several building leases under which he was to receive for the first year a peppercorn, for the second £6, and for the third £12 rent. One of the lessees had entered and built upon his plots several houses, and had not paid the district surveyor's fees, due under § 51 of the *Metropolitan Building Act*, 1855, when the lessor became bankrupt. The surveyor sought to recover his fees from the landlord, and the magistrate made an order for payment. On hearing a case, the Court (*Lord Campbell, C.J., Erle and Crompton, JJ.*) *held*, that the landlord is not an "owner" within the meaning of § 3 of the *Act*, so as to make him liable to pay the surveyor's fees, the builder having become bankrupt.

EVELYN v. *WHICHCORD.*

(1858) El. Bl. & El. 126; 27 L. J. M. C. 211; 4 Jur. N. S. 808; 6 W. R. 468.

——**Limitation of Time for recovering Fees.**—The owner of an estate contracted with a builder to erect certain houses upon it. The houses were erected, and the owner paid the builder the amount of the contract, which included any fees which the builder was liable to pay the district surveyor for the district, under the *London Building Act*, 1894. § 154 of that *Act* provides that such fees are payable at the expiration of fourteen days after the roof of the building surveyed is covered in, by the builder, or, in his default, by the owner or occupier, and may be summarily recovered on it being shown to the satisfaction of the Court that a proper bill specifying the amount of the fees was delivered to him. The roofs of the houses had been covered in before December, 1899. Proper bills were delivered, and payment was demanded

of the builder from time to time from January 17, 1900, to September 10, 1900. In July, 1900, the builder gave notice to the district surveyor that he was insolvent.

On October 20, 1900, proper bills were served on the owner and payment demanded, but he contended that he became liable, if at all, immediately upon the builder making default in payment, *i.e.* in January, 1900, and that, therefore, the surveyor did not take proceedings to recover the same within six months fixed by § 11 of the *Summary Jurisdiction Act*, 1848. The magistrate ordered the owner to pay.

The Court (*Lord Alverstone, C.J., and Lawrance, J.*), on a case stated, *held*, that the period of limitation under § 11 does not begin to run until the bill has been delivered to the party from whom the fees are sought to be recovered in a summary manner.

CORBETT v. *BADGER.*

(1901) 65 J. P. 552; 2 K. B. 278; 70 L. J. K. B. 640; 84 L. T. 602; 49 W. R. 539.

——**Negligence.**—A surveyor was employed by two trustees to survey certain premises, with a view to a proposed loan thereon. The surveyor reported that the house was worth £1800, and was good security for the proposed loan of £1000, which the trustees advanced. The builder did not complete, and got into difficulties, and the plaintiffs were obliged to spend £400 in a foreclosure suit, the house fetching only £810 when sold by auction. In an action by the trustees against the surveyor for negligence, *Wills, J.*, gave judgment for the plaintiffs for £200, and *held*, that a surveyor employed to value for the purposes of a mortgage, is bound to use competent care and skill in inquiring as to the *data* upon which he values the premises, but is not bound to inquire into the financial position of the borrower, or into the nature of the title offered.

BECK v. *SMIRKE.*

(1894) *Times*, January 22; H. B. C. 116.

——**Negligence.**—The mortgagees of certain property engaged a surveyor to advise them upon its value. The surveyor accepted their retainer, and reported that the property afforded ample security for the amount of the proposed loan. On the faith of his report, the mortgagees advanced a much larger sum than the premises fetched when realized to satisfy repayment of the loan. In an action by the mortgagees for damages for negligence, the defendant denied the retainer, and alleged he was acting solely for the mortgagor. The jury on the facts found that the surveyor had

been retained, but had not been negligent. In the second action by one of the mortgagees, the jury found negligence.

CRABB v. *BRINSLEY.*
(1888) 5 T. L. R. 14.

——**Negligence.**—By a contract in writing a builder agreed to execute certain drainage works, including the laying of the pipes at a depth of 3½ feet below the surface of the ground. The work was to be carried out to the satisfaction of an inspector appointed by the employer. The inspector, however, omitted to inspect the work, and issued certificates upon which the builder was paid from time to time. Subsequently the employer ascertained that the drains had not been laid 3½ feet deep, and refused further payment. In an action by the contractor for the balance due, the Sheriff *held*, that he could not recover, having failed to execute his part of the contract, and that the employer was not entitled to damages as the inspector had not objected to the work.

MULDOON v. *PRINGLE.*
(1882) 9 Ct. of Sess. Cas. (4th Ser.) R. 915.

——**Owner is the Owner at the Time the Fees became Due.**—A builder gave notice to a district surveyor of his intention to erect certain houses in the district, under the *Metropolitan Building Act*, 1855, § 38. The houses were in due course inspected and roofed in on July 9, 1866. On August 9, 1866, the surveyor became entitled to receive his fees in respect thereof, payable under § 51 of the *Act*, by the "builder, owner, or occupier." The surveyor demanded his fees from a subsequent purchaser who was not the "owner," builder, or occupier in 1866, when the fees became due, and in 1870 summoned him before a police magistrate, who ordered payment subject to a case. On hearing the case, the Court (*Blackburn, Mellor, and Lush, JJ.*) *held*, that the word "owner," used in the *Act*, meant owner at the time the fees became due, and that the magistrate's decision was therefore wrong.

TUBB v. *GOOD.*
(1870) L. R. 5 Q. B. 443; 39 L. J. M. C. 135; 22 L. T. 885.

——**Refusal to Certify.**—The defendants employed an ironmonger to execute certain works by a specified date, "*to the satisfaction of T. their surveyor*," and payment was to be made on a given day, "*in case the said surveyor should certify that the same was completed agreeably to the contract.*" In an action by the ironmonger for the amount

of the contract on the refusal of the surveyor to certify, it was argued on behalf of the defendants that the bill should be dismissed, as the plaintiff had his remedy at common law, it being a direct issue to try whether the certificate was or was not properly withheld by the surveyor, and the surveyor having no right to arbitrarily refuse to certify; and upon this ground the *Master of the Rolls* dismissed the bill.

MOSER v. *ST. MAGNUS, &c., CHURCHWARDENS.*
(1795) 6 T. R. 716.

——**Salary of.**—The town surveyor of Ramsgate Corporation was appointed at a certain annual salary, with an office, assistants, fuel, and light, and the privilege of taking pupils. He was required by the by-laws to devote the whole of his time to the duties of his office, and to prepare the necessary plans and specifications for all works to be done. Under contracts entered into by the Corporation and certain contractors, pursuant to the provisions of the *Public Health Act*, 1875, the surveyor was to be paid by the contractors for the bills of quantities prepared by him. The Corporation also employed the surveyor apart from his ordinary duties to superintend certain drainage works, and agreed to remunerate him by paying him a percentage on the total outlay. In an action brought to recover penalties under § 193 of the *Public Health Act*, 1875, *Mathew, J., held*, that the surveyor was liable for the penalties, as having been "concerned and interested" in the contracts within the meaning of § 193, in respect of receiving both the cost of the bills of quantities, and also the percentage remuneration.

WHITELEY v. *BARLEY.*
(1888) 52 J. P. 595; 21 Q. B. D. 154, 196; 36 W. R. 553, 823; 57 L. J. Q. B. 643; 60 L. T. 86

——**Valuation by.**—The tenant for life, of certain lands, agreed to sell them to a water company, who paid a certain sum into Court under § 9 of the *Lands Clauses Consolidation Act*, 1845. A dispute having arisen as to a claim by the vendor for interest, the latter raised the objection that the valuation by two surveyors had not been made, as required by the *Act*, on a sale to a limited owner, and he refused to convey until the *Act* was complied with. The company issued a writ claiming specific performance of the agreement, and *Chitty, J., held*, that the requirements of the *Act* must be strictly complied with, and that the absence of a declaration in writing, annexed to the valuation and subscribed by the surveyors,

was fatal to the claim for specific performance, although the valuation was made by surveyors without formal appointment.

BRIDGEND GAS & WATER CO. v. *DUNRAVEN.*
(1886) 31 Ch. D. 219; 55 L. J. Ch. 91; 53 L. T. 714; 34 W. R. 119.

——**Want of Skill.**—In response to the defendants' advertisement the plaintiff, who was a road surveyor, submitted plans, &c., for a scheme of waterworks, which were accepted by the defendants with a full knowledge of the plaintiff's standing. The plaintiff made surveys, &c., and a provisional order was obtained, and tenders for the work were invited. Owing, however, to the fact that the lowest tender was greatly in excess of the plaintiff's approximate estimate, the work was not proceeded with. The plaintiff sued the defendants for his fees in respect of the work he had performed, and the latter pleaded want of due and reasonable skill in the plaintiff. The jury found for the plaintiff in the sum of £300.

HENRY v. *BELFAST GUARDIANS.*
(1879) *Macassey & Strahan*, p. 39.

TEMPORARY STANDS

——**In the Street.**—A number of stands were erected in the City of Westminster to enable spectators to view the funeral procession of her late Majesty Queen Victoria, on February 14, 1901. The question was whether Westminster Corporation or the London County Council was the proper authority, under the *London Building Act*, 1894, to control and licence such structures, to take proceedings against persons erecting the same without licence, and by its district surveyor to inspect them.

By the *London Government Act*, 1899, the power, under § 84 of the *London Building Act*, 1894, to licence the erection of wooden structures and power to take proceedings for default in obtaining or observing the conditions of a licence under that section, was transferred from the County Council to the Corporation of Westminster.

The Court (*Lord Alverston, C.J., Darling and Channell, JJ.*), on a case stated under § 29 of the *London Government Act*, 1899, *held*, that a structure made wholly of wood, except so far as nails are used in its construction, and erected for the temporary purpose of enabling the public to view a spectacle, is a wooden structure within the meaning of § 84 of the *London Building Act*, 1894, and the power to license the setting up and to take proceedings in

respect of the same, is transferred by the *London Government Act*, 1899, from the London County Council to each of the borough councils set up by that *Act* as respects its borough.

WESTMINSTER CORPORATION v. *LONDON COUNTY COUNCIL.*

(1902) 66 J. P. 199; 1 K. B. 326; 71 L. J. K. B. 244; 86 L. T. 53; 50 W. R. 429.

TEMPORARY STRUCTURE

——**Mandamus.**—The London County Council applied for a summons for an alleged offence under § 13 of the *Metropolis Management and Building Acts Amendment Act*, 1882, which prohibits the erection of a temporary wooden structure without the licence of the local authority. That *Act* was repealed by the *London Building Act*, 1894. Application for the summons was made on May 17, 1897, and the information alleged that prior to January 1, 1895, the offence complained of was committed, and had been continued subsequent to that date contrary to § 13 of the *Act* of 1882. The magistrate refused to grant the summons, and the London County Council obtained a rule. The Court (*Wright and Kennedy, JJ.*) *held*, that the only liabilities saved by § 215 of the *London Building Act*, 1894, were those incurred on or before January 1, 1895, and that proceedings for these were barred by § 11 of the *Summary Jurisdiction Act*, 1848, and discharged the rule.

R. v. *CLUER; EX PARTE LONDON COUNTY COUNCIL.*

(1897) 67 L. J. Q. B. 36; 77 L. T. 439.

——**Mission Hall.**—The defendants were summoned for erecting (1) a building of wood without notice to or deposit of plans, &c., with a local authority, (2) a building not enclosed with walls of incombustible, &c., materials, (3) a house or building in advance of the building line. The building was a mission hall composed of wood, made in sections which admitted of being erected and taken down in a few days, and had a canvas roof, and was heated by a stove with chimney. The magistrate found as a fact, that the building was intended for and actually used as a temporary structure, and that it did not constitute a building within the meaning of either §§ 40 or 41 of the *Public Health (Ir.) Act*, 1878, and that the by-law, if applied to temporary structures, would be unreasonable; and he accordingly dismissed the summons. On appeal, the Court (*Lord O'Brien, C.J., and Boyd, J.; Barton, J., dissenting*) *held*, that the *Act* and by-laws in question contemplated

permanent buildings, and not temporary structures, such as the premises complained of, and *affirmed* the magistrate's decision.

DUBLIN CORPORATION v. *IRISH CHURCH MISSIONS.*

(1901) 2 Ir. R. 387.

——**Shooting Galleries, &c.**—The tenant of a vacant plot placed thereon, without leave of the London County Council, three caravans, a shooting gallery, and a steam roundabout. The caravans were distant 8 feet from the nearest street and 30 feet from the nearest building not belonging to the owner; they were less than 30 feet from each other. On a summons, the magistrate found that all were structures or erections of a movable or temporary character within the meaning of 45 *Vict. c.* 14, and that none of them came within the exemptions of 18 & 19 *Vict. c.* 122, § 6, and he convicted the tenant. The latter appealed, and the Court (*Lord Coleridge, C.J., and Mathew, J.*) *held*, that they were not "wooden structures or erections of a movable or temporary character" within the meaning of the *Act*, and may, therefore, be set up without the sanction of the London County Council, and the conviction was quashed.

HALL v. *SMALLPIECE.*

(1890) 54 J. P. 710; 59 L. J. M. C. 97.

——**Skating Rink.**—The owner of certain premises applied for, and obtained, the permission of the Metropolitan Board of Works to erect a skating rink at the rear thereof, under § 56 of the *Metropolitan Building Act*, 1855, on condition that he would remove the proposed building within two years. The rink was erected in due course, and after two years had elapsed, on his neglecting to comply with a request to remove it, the owner was summoned under § 45 of the *Act*. The magistrate dismissed the summons, and, on hearing a case stated, the Court (*Lush and Manisty, JJ.*) *affirmed* his decision, and *held*, that §§ 45 and 46 of the *Metropolitan Building Act*, 1855, applied only to buildings in course of erection, and that the magistrate had no power to enforce the removal of the rink.

PARSONS v. *TIMEWELL.*

(1880) 44 J. P. 296.

TEMPORARY WOODEN STRUCTURE

——**To carry on Business during Alterations.**—A firm of builders erected in the fore-court of a public-house, which they had

contracted to repair, a temporary wooden structure for the purpose of therein enabling the business of the public-house to be carried on during the alterations, but they had not obtained the licence of the London County Council. On hearing a summons issued under the *Metropolis Management and Building Acts Amendment Act*, 1882, the magistrate *held*, that the structure came within the proviso in § 13, which allows a temporary wooden structure to be "erected by a builder for use during the alteration or repair of any building," without a licence, and he dismissed the summons. On appeal, the Court (*A. L. Smith and Grantham, JJ.*) *held*, that the magistrate was wrong, and remitted the case for conviction.

LONDON COUNTY COUNCIL v. *CANDLER.*
(1891) 55 J. P. 679; 60 L. J. M. C. 114.

DOUBLE TENEMENT HOUSE

——**Constitutes Two Buildings.**—The plaintiffs conveyed three adjacent lots of land to the defendant in fee-simple, subject to the following stipulations, viz. that no trade, business, or manufacture should be carried on upon any lot; only one house, valued at not less than £300, was to be erected on each lot; no building should be erected until the elevations had been approved in writing by the plaintiffs' surveyor, and a copy of the design deposited with him.

The defendant proposed to build on each lot a double-tenement house, consisting of a ground-floor tenement and a first-floor tenement above it, each tenement being distinct from the other, without inter-communication, and having separate front doors and separate w.c.s. The cost of each tenement would be less than £300, but the cost of the two would exceed that sum. The plaintiffs' surveyor refused to approve the elevations on the ground that each tenement was a separate house, but the defendant proceeded to build.

The plaintiffs brought an action, and moved for an *interim* injunction to restrain the defendant from building more than one house valued at least at £300 on each lot, or any building of which the elevation had not been approved on their behalf.

Swinfen Eady, J., held, that the proposed building constituted two houses within the meaning of a covenant not to erect more than one house on the site.

Grant v. *Langston* (1900), A. C. 383, 399, followed.

Kimber v. *Admans* (1900), 1 Ch. 412, distinguished (see p. 130 *supra*).

ILFORD PARK ESTATES, LTD. v. *JACOBS.*
(1903) 2 Ch. 522; 72 L. J. Ch. 699; 89 L. T. 295.

THEATRES AND MUSIC HALLS

——**Notice.**—The London County Council served upon the plaintiffs a notice under § 11 of the *Metropolis Management, &c., Act*, 1878, requiring them to execute certain works at St. James's Hall. The Metropolitan Board of Works in 1885 had served upon the plaintiffs a notice under § 11 in respect of the same building, and works were executed by the plaintiffs at a cost of £7000.

Channell, J., in a considered judgment, *held*, that there was no power to serve a second notice under that section in respect of the same building.

ST. JAMES'S HALL CO. v. *LONDON COUNTY COUNCIL.*

(1901) 2 K. B. 251; 70 L. J. K. B. 610; 84 L. T. 568; 49 W. R. 572.

TIME LIMIT

——**Action against Public Authorities.**—The plaintiff contracted with the defendants to adapt a certain building as a receiving house for pauper children. The works were started in February, 1900, but owing, as alleged by the plaintiff, to the action of the defendants, the works were not completed until May 3, 1901. The work, as done according to the contract, was certified by the defendants' architect at £5751 15*s.* 2*d.*, and was paid for in September, 1901. The plaintiff then claimed £1357 19*s.* for extra cost and loss, caused by the delay which he alleged was due to the action of the defendants, and this claim was referred to arbitration. A preliminary objection was raised at the arbitration that no portion of the plaintiff's claim could as a matter of law be recovered from the defendants, because the alleged acts of negligence by the defendants were committed prior to May 3, 1901, and proceedings were not commenced within six months of that date, as required by the *Public Authorities Protection Act*, 1893; and that the amount claimed became due, if at all, on or before May 3, 1901, and by the *Poor Law (Payment of Debts) Act*, 1859, could only be paid within the half-year commencing March 30, 1901, or within three months thereafter. This action was brought by agreement to determine these two points of law.

Farwell, J., held, that the claim arose in respect of a private duty arising out of a contract, and not for any negligence in performing a statutory or public duty, and, therefore, the *Public Authorities Protection Act*, 1893, did not apply; that the sum, if any, owing to the plaintiff did not become due within the meaning of the *Poor*

Law (Payment of Debts) Act, 1859, until the amount was ascertained by arbitration according to the contract.

SHARPINGTON v. *FULHAM GUARDIANS.*

(1904) 68 J. P. 510; 2 Ch. 449; 73 L. J. Ch. 777; 91 L. T. 739; 52 W. R. 617; 2 L. G. R. 1229; 20 T. L. R. 643.

——**For Complaint.**—The owner of certain land built thereon a number of houses contrary to the requirement of by-laws duly made by a corporation in accordance with their statutory authority. The houses were finished more than six months before the corporation brought their complaint, and the magistrate dismissed the summons, holding that it came within § 1 (2) of 11 & 12 *Vict. c.* 43, and therefore should have been brought within a period of six months. The Court (*Cleasby, Grove, and Field, JJ.*), on hearing a case stated, dismissed the appeal of the corporation, and *held*, that the words "order for the payment of money or otherwise" in § 1 includes all orders which a justice has power to make, and that the summons should have been brought within six months.

MORANT v. *TAYLOR.*

(1876) L. R. 1 Ex. D. 188; 45 L. J. M. C. 78; 34 L. T. 139; 24 W. R. 461.

——**For Completion of Contract.**—A builder undertook for a certain sum to execute repairs to a number of houses and leave all the works completed on or before a specified day to the satisfaction of the defendant's surveyor, upon whose approval the builder was to receive payment. The builder failed to complete the repairs in the stipulated time, and the owner resumed possession, and refused to pay him for the work done. The builder sued the owner on the agreement, alleging that the owner had enlarged the time for completion, and for a reasonable price for work and labour done according to the value thereof. The plaintiff was nonsuited, and, upon a rule to set aside the nonsuit, *Lord Campbell, C.J., held*, that there was no evidence to go to the jury to support the plaintiff's claim: he could not recover on the special count not having fulfilled his contract, and the fact that the owner took possession of the premises did not afford an inference that the time for completion had been enlarged by him, or of a contract to pay for the work done according to measure and value.

MUNRO v. *BUTT.*

(1858) 8 E. & B. 738; 4 Jur. 1231.

TRELLIS-SCREEN

——**A Building.**—The plaintiff demised a certain dwelling-house and grounds on November 11, 1878, for a period of ninety-nine years, subject to covenants. Subsequently the premises became vested in the defendant for the unexpired term of the period of ninety-nine years, subject to the covenants in that demise.

In September, 1881, the plaintiff demised a piece of land, adjoining the north boundary of the premises demised on November 11, 1878, for ninety-nine years from Michaelmas, 1881, the lessee covenanting to erect thereon a building according to approved plans at a cost of £1200. The lands demised by the plaintiff was part of a freehold estate of which he was tenant for life with power of leasing. The lands leased in September, 1881, became vested in an assignee, who, pursuant to a covenant, commenced to erect a dwelling-house 16 feet distant from the boundary fence dividing the lands demised in November, 1878, from those demised in September, 1881, with windows overlooking the defendant's garden. The defendant commenced to erect a trellis-work screen above the boundary fence without the lessor's consent, in alleged breach of his covenants not to erect any building without the lessor's consent, and not to cause annoyance to the adjoining occupier. In an action by the lessor for an injunction, *Romer, J., held*, that, in the circumstances, the screen was a building within the meaning of the covenant, and that it also was an annoyance, and granted an injunction.

WOOD v. *COOPER.*

(1894) 3 Ch. 671; 63 L. J. Ch. 845; 8 R. 517; 71 L. T. 222; 43 W. R. 201.

TRESPASS

——**By Cottage against Wall.**—The plaintiff was occupier of a cottage and garden, and the defendant was the adjoining owner. The premises were separated by a wall, part of which had been pulled down by the defendant, who had erected, on the site thereof, a higher wall, with a cottage and buildings against it. In an action for trespass by the plaintiff, the jury, on the direction of *Alexander, C.B.*, found for the defendant. On appeal, the Court (*Bayley, Holroyd, and Littledale, JJ.*) *held*, that the common user of a wall separating two adjoining properties is *primâ facie* evidence that the wall, and land on which it stands, belong to the adjoining owners in equal moieties; and that, where such a wall is pulled down by one tenant with the intention of rebuilding, and a higher wall is built, this is not such a total destruction of the wall as to

entitle one of the two tenants in common to maintain trespass against the other.

CUBITT v. *PORTER.*

(1828) 8 B. & C. 257; 2 M. & Ry. 267; 6 L. J. (o.s.) K. B. 306.

——**Part of House projecting into Adjoining Premises.**—The owner of two adjoining houses sold one to the defendants, who began to pull it down with a view to rebuild. It was then discovered that part of the house retained by the owner projected into, and was supported by, the defendants' house, and that the cellar projected in like manner under the basement of the defendants' house. One of the defendants' cellars also projected under the basement of the house retained by the owner. None of the projections were shown on the plans of the houses. The defendants proposed to rebuild over the plaintiff's projection, or, in other words, to trespass on the vertical column of air above the projection, a right to which was claimed by the owner, and he sought an injunction to restrain the defendants from building as they proposed. *James, V.C., held,* that the vertical column of air over so much of the plaintiff's house as overhung the defendants' site, belonged to the defendants, and not to the plaintiff, and he dismissed the bill.

CORBETT v. *HILL.*

(1870) L. R. 9 Eq. 671; 32 L. J. Ch. 547; 22 L. T. 263.

——**Party Wall.**—The defendant purchased certain premises, pulled them down, and rebuilt them, and in doing so built upon and against a wall, which the adjoining owner claimed as his exclusively. In an action by the latter for trespass, *Burrough, J.,* told the jury that if they were satisfied there was but one wall, and that a party wall, neither owner could maintain trespass against the other. The jury found that it was a party wall, and judgment was entered for the defendant. On hearing a rule obtained by the plaintiffs, the Court (*Bayley, Holroyd, and Littledale, JJ.*) *held,* that trespass does not lie by one part-owner of a party wall against the other part-owner.

WILTSHIRE v. *SIDFORD.*

(1827) 1 Man & Ry. 404.

——**Power to Re-enter and Seize the Works.**—A builder entered into a building agreement with the owner of certain land which provided *inter alia* that in case of default in not completing the buildings at certain periods the owner might re-enter and seize

the materials, &c. There was continued and successive defaults and several periods of indulgence were granted by the owner, but there was no waiver of the last default and no alteration of the builder's position to his prejudice, and no default on the owner's part. *Wightman, J.*, directed a nonsuit in an action brought by the builder for trespass.

STEVENS v. *TAYLOR.*
(1861) 2 F. & F. 419.

UMPIRE

——**Appointment of.**—A dispute having arisen between building owners and an adjoining owner in relation to the erection of a party wall, the respective owners each appointed, in March, 1876 a surveyor under the *Metropolitan Building Act*, 1855. In April, 1876, the adjoining owner commenced an action for an injunction to restrain the building owners from executing the proposed works. In May, 1876, the injunction was refused by *Malins, V.C.*, and his decision was *affirmed* by the Court of Appeal. In August, 1876, the building owners served due notice, under § 85 (7) of the *Metropolitan Building Act*, 1855, upon both of the surveyors, requiring them to appoint an umpire, but the surveyor acting for the adjoining owner refused to comply therewith.

On an application for the appointment of an umpire by the Court on the default of the adjoining owner's surveyor, under § 12 of the *Common Law Procedure Act*, 1854, the Court granted the application, notwithstanding the fact that an action to settle the rights of the parties in relation to a threatened obstruction of ancient lights was pending.

IN RE THE METROPOLITAN BUILDING ACT, 1855; *EX PARTE McBRIDE.*
(1876) 4 Ch. D. 200; 46 L. J. Ch. 153; 35 L. T. 543.

VIBRATION

——**Damage from.**—The plaintiffs were lessee and reversioners, respectively, of certain licensed premises, and brought separate actions against the defendants, who had erected, on adjacent, but not contiguous, land, engine-house, sheds, shaft, &c., for the purposes of their business. Foundations for the work were sunk 30 feet below the surface, and engines, of 500 and 1000 horse-power, were erected within 30 yards of the plaintiffs' premises. Owing to the excavations, vibration, and noise, structural injury was caused to the plaintiffs' premises, and annoyance and discomfort

to the lessee; and they sought an injunction to restrain the defendants from working their engines so as to cause injury and discomfort, and claimed damages. It was proved that the working of the engines caused the rooms and furniture to vibrate, and the vibration even caused sickness, according to two witnesses. Steam was emitted for hours at a time, and descended on the plaintiffs' premises in moisture. A crack had appeared in one of the walls, which was attributed to the vibration. There was no evidence of negligence on the part of the defendant, or loss to the lessee-plaintiff's business. *Kekewich, J.*, found a nuisance, and that the nuisance had caused the damage alleged, but refused an injunction, as damages were the proper remedy.

The plaintiffs appealed, and the Court (*Lord Halsbury, L.C., Lindley and A. L. Smith, L.JJ.*), in a considered judgment, *held*, that there was nothing in either case to justify the Court refusing aid by injunction, and therefore, the appeal must be allowed.

SHELFER & ANOTHER v. *CITY OF LONDON ELECTRIC LIGHTING CO.*

(1895) 1 Ch. 287; 64 L. J. Ch. 216; 12 R. 112; 72 L. T. 34; 43 W. R. 238.

VIEW

——**Obstruction.**—By breaking up a certain road and erecting a number of gasometers on the site thereof, a gas company obstructed the view formerly had from the road of the plaintiff's premises, whereby he was deprived of customers and otherwise injured. The plaintiff filed, and *Kindersley, V.C.*, dismissed, a bill for an injunction. On appeal, *Lord Chelmsford, L.C., affirmed* the decree of the *Vice-Chancellor*, and *held*, that the Court will not restrain the erection of a building because it injures the plaintiff by obstructing the view of his works.

BUTT v. *IMPERIAL GAS CO.*

(1866) L. R. 2 Ch. 158; 15 W. R. 92; 16 L. T. 820.

——**Obstruction.**—The plaintiffs and the defendant were owners in fee of two adjoining plots, which belonged originally to the same building estate laid out under a general building scheme. The conveyances contained respectively a covenant that nothing except 6-foot fences would be erected within 15 feet of the high-road and 10 feet of any other road, and no house would be erected at a greater distance than 50 feet from the building line. The defendant built a shop on his land nearer than 15 feet from the high-road, obstructing the view of a chapel which had been erected

by the plaintiffs. The chapel, however, was itself slightly in advance of the stipulated building, and infringed another covenant also. In an action to restrain the defendant from building the shop, *Kay, J., held*, that the plaintiffs were not prevented in equity from enforcing the covenant as to the frontage line, which they themselves had substantially observed, and granted a mandatory injunction.

CHITTY v. *BRAY.*
(1883) 47 J. P. 695; 48 L. T. 860.

VOLUNTEER BUILDINGS

A builder contracted to erect a building to be used by a volunteer corps as an armoury, storehouse, and drill-hall, and vested in the commanding officer. It was objected that the floor of the basement—a long cellar running under the building—was beneath the level of the sewer. On the hearing of a summons under § 75 of the *Metropolis Management Act*, 1855, the magistrate *held*, that, as the premises were to be used exclusively for military purposes, the provisions of the *Act* did not apply to them, and he dismissed the summons.

The Court (*Grantham and Lawrance, JJ.*) *held*, on a case stated, that the building was not exempted from the operation of the sanitary provisions of the *Metropolis Management Act*, 1855, on the ground that it is occupied and used solely for the purposes of the Crown.

WESTMINSTER (ST. MARGARET AND ST. JOHN THE EVANGELIST) VESTRY v. *HOSKINS.*
(1899) 63 J. P. 725; 2 Q. B. 474; 68 L. J. Q. B. 840; 81 L. T. 390; 47 W. R. 649.

WAIVER

——No Action taken after Time-limit for Completion had passed. —By a building agreement a builder agreed to purchase certain land, and covenanted to erect a number of houses thereon, the owner making advances to the builder. If the purchase was not completed by a fixed date, the owner was at liberty to re-enter and take possession. The purchase was not completed by that date, but the owner continued to make advances. Afterwards the owner entered and took possession of the land and houses, plant and materials thereon. An issue before *Denman, J.*, in which other creditors of the builder claimed the property, as the owner had waived his right to take possession, was decided in favour of the owner. On appeal, the Court (*Lord Esher, M.R., Bowen and*

Fry, L.JJ.) *held*, that the owner had waived his right, and *reversed* the judgment of the Court below.

PLATT v. *PARKER.*

(1886) 2 T. L. R. 786.

——**Covenant to Build.**—The Corporation of London agreed to grant a lease of certain premises to the defendant when the defendant should have rebuilt the house standing thereon to the satisfaction of the Corporation's architect. The defendant entered into possession, but never commenced building operations, or paid rent, &c.

The Corporation sought a decree for the specific performance of the agreement, and the defendant demurred for want of equity, on the ground that a contract to build to the satisfaction of a third party was not one of which specific performance would be enforced. The plaintiffs contended that if they waived the building of the house, they were entitled to specific performance of the rest of the agreement, and *Malins, V.C.*, overruled the demurrer in view of the waiver by the plaintiffs.

LONDON CORPORATION v. *SOUTHGATE.*

(1869) 38 L. J. Ch. 141; 20 L. T. 107; 17 W. R. 197.

——**Extra Work constituting.**—A builder agreed to erect six houses and to complete and deliver up possession of the same to the defendant, on or before a certain date, under a penalty of £6 for each week during which the works should remain incomplete. The contract provided that any penalty was to be deducted from any money due to the builder under the contract. In an action by the builder for work and labour, the defendant claimed to deduct £72 by reason of the houses not being completed at the date named. The plaintiff contended that the defendant ordered extra works to be done in a reasonable time, and that the contract and extra works were so mixed up that it was impossible to complete the contract until the extra works were complete, and that all the works were executed in a reasonable time. On demurrer, the Court (*Williams, Willes, Byles, and Keating, JJ.*) *held*, that the defendant had waived his right to penalties.

THORNHILL v. *NEATS.*

(1860) 8 C. B. (N.S.) 831; 2 L. T. 539.

——**Forfeiture.**—Certain lessees covenanted to build certain houses within a year, and in default, the lease should be void. The houses were not erected by the date agreed, but the lessor's surveyor permitted the lessees to continue, after that date, the erection of

the houses. In an action by the lessor to recover possession of the premises, *Best, C.J.*, directed the jury to find for the plaintiff. On hearing a rule for a new trial, the Court refused the rule, on the grounds that there was in the circumstances no waiver of the forfeiture by the lessors.

DOE DEM KENSINGTON v. *BRINDLEY.*
(1827) 12 Moo. (C.P.) 37.

WARRANTY

A builder purchased from the defendant certain machinery for cutting or sawing marble to be constructed on the "pendulum" principle. The machines broke down in working, and the defendant rejected them. In an action by the vendor for the price, *Grantham, J.*, gave judgment for the plaintiff. On appeal, the Court (*Lord Esher, M.R., Lindley and Lopes, L.JJ.*) *held*, that, even though the defendant might have ordered alterations in, or a particular combination of, the machinery, the plaintiff ought not to have carried them out, as he was responsible to deliver, to the best of his skill, a machine fit for the purpose for which he knew it was required; and the defendant was entitled to reject one of the machines and have the price paid refunded to him: as to the other, on the evidence, he had accepted it, and, therefore, could not recover in respect of it.

HALL v. *BURKE.*
(1886) 3 T. L. R. 165.

WATER-CLOSETS

——**Insufficient.**—The respondents, acting upon the report of their inspector of nuisances, gave notice to the owner of a certain house, under § 36 of the *Public Health Act*, 1875, that it was without a sufficient water-closet, &c., and requiring the owner, within twenty-eight days, to provide a sufficient water-closet, &c. The owner did not comply with the notice, and refused to permit the surveyor of the respondents to enter upon the premises for the purpose of making plans for the works, which, upon the owner's default, the respondents had undertaken. The respondents applied to the justices for an order.

At the hearing the justices rejected certain evidence, tendered on behalf of the owner, to prove that the existing sanitary accommodation was sufficient, and made an order, under § 305 of the *Public Health Act*, 1875, authorizing the respondents to enter, examine, and lay open the house. The owner appealed.

The Court (*Lawrance and Channell, JJ.*), on a case stated, *held*,

that the justices had no jurisdiction to entertain an objection by the owner of the premises that such entry is unnecessary because sufficient sanitary appliances are already provided.

ROBINSON v. *SUNDERLAND CORPORATION.*
(1899) 63 J. P. 19, 341; 1 Q. B. 751; 68 L. J. Q. B. 330; 80 L. T. 262.

WOODEN BUILDING

——**Portable Butcher's Shop.**—A local Act provided that, for the purposes thereof, any building begun after the commencement of the operation of the Act shall be considered a new building. The owner of certain land put together and placed on his premises abutting on the street a wooden structure on wheels, 30 feet in length by 13 feet in depth, and of a certain height. It was fitted with rain-water pipes and gas, for use as a butcher's shop, but there were no sanitary conveniences provided. On summons the justices convicted the owner for erecting a new building without giving notice to the local authority pursuant to the by-laws. On a case stated, the Court (*Lord Coleridge, C.J., and A. L. Smith, J.*) *held*, that the justices were right in treating this structure as a new building and subject to the by-laws relating thereto.

RICHARDSON v. *BROWN.*
(1885) 49 J. P. 661.

WOODEN STRUCTURE OR ERECTION

——**Bungalow.**—The respondents erected a movable and temporary wooden structure, with iron roof, known as a bungalow, on their premises, for show and sale purposes, without a licence in writing from the appellants. After standing a year it was sold, and re-erected elsewhere. The appellants summoned the respondents for having erected the bungalow without a licence in writing under 45 & 46 *Vict. c.* 14, § 13, and 51 & 52 *Vict. c.* 41, and the magistrate *held*, that it was a structure or erection of a movable or temporary character, but that it was so erected and placed for the purposes of sale, and he dismissed the summons.

The Court (*Wills and Kennedy, JJ.*) *held*, that the bungalow was not a "wooden structure or erection of a movable or temporary character," within the meaning of § 13 of the *Metropolis Management and Building Acts Amendment Act*, 1882, and did not, therefore, require a licence in writing from the appellants.

LONDON COUNTY COUNCIL v. *HUMPHREYS, LTD.*
(1894) 58 J. P. 734; 2 Q. B. 755; 63 L. J. M. C. 215; 10 R. 533; 71 L. T. 201; 43 W. R. 13.

WOODEN STRUCTURE

——**Office in Coal Yard.**—A firm of coal merchants erected, for their own convenience and at their own expense, but on the premises of a railway company, a wooden structure 11 feet 9 inches long, 6 feet 9 inches wide, and 8 feet 9 inches high, for use by them as a coal office in connection with their wharf on the railway company's premises. The structure was removable at will by the company. It was contended that the structure was used "for the purposes of or in connection with the traffic of the railway company," within the meaning of § 86 of the *London Building Act*, 1894, and was, therefore, exempt from the operation of § 84. The magistrate found that it was not so used, and convicted the firm of coal merchants. The firm appealed.

The Court (*Day and Lawrance, JJ.*) *held*, that the structure in question was "used in connection with the traffic of the railway company," within the meaning of § 86 of the *London Building Act*, 1894, and that its erection did not require the licence of the respondents under § 84. The appeal, therefore, was allowed.

ELLIOTT v. *LONDON COUNTY COUNCIL.*

(1899) 63 J. P. 645; 2 Q. B. 277; 81 L. T. 155; 68 L. J. Q. B. 837.

——**Pay Office.**—A firm of builders erected a portable pay-office on wheels, constructed of wood and roofed with zinc. It was 10 feet high, by 8 feet, by 6 feet, and was fitted with a desk, and a window, through which the employés were paid. The consent of the London County Council had not been obtained for its erection. The builders were summoned by the London County Council, and the magistrate dismissed the summons, on the ground that the pay office in question was not a structure of a movable or temporary character, within the meaning of the *Act*.

The Court (*Pollock, B., and Vaughan Williams, J.*) *held*, that it was not a "wooden structure or erection of a movable or temporary character," within the meaning of § 13 of the *Metropolis Management and Building Acts Amendment Act*, 1882, and did not require a licence in writing from the London County Council for its erection.

LONDON COUNTY COUNCIL v. *PEARCE.*

(1892) 56 J. P. 790; 2 Q. B. 109; 66 L. T. 685; 40 W. R. 543.

——**Power to Licence.**—By the *London Government Act*, 1899, the powers and duties of the County Council as to *inter alia* licensing the erection of wooden structures under § 84 of the *London*

Building Act, 1894, were transferred to the borough councils. In *Westminster Corporation* v. *London County Council* (see p. 347, *supra*), the Court *held*, that certain wooden structures erected in the borough of Westminster were within § 84 of the *London Building Act*, 1894, and that Westminster Corporation was the proper authority to grant licences for such structures and to take proceedings for the erection of such structures without licence, but they declined to decide whether or not such structures were subject to the supervision or inspection of the district surveyors under the *London Building Act*, 1894. The functions of the district surveyors are in the main regulated by *Part* 13 of that *Statute*, and by the third schedule certain fees are payable to them in respect of supervision of wooden and temporary structures.

On a special case stated under § 29 of the *London Government Act*, 1899, the Court (*Lord Alverstone, C.J., Darling and Channell, JJ.*) *held*, that the transfer of the powers of the London County Council, as to licensing wooden structures, to borough councils, does not operate as a transfer of the powers and duties of the district surveyors with respect to supervision or inspection of such structures. A district surveyor has no powers, &c., under a licence granted by a borough council unless he be named in the licence as the person to inspect, &c.

Such wooden structures are works of which a district surveyor is entitled to notice under § 145 of the *London Building Act*, 1894, as to which he may have duties of supervision independently of the licence of the borough council.

The right to receive fees for supervision, &c., specified in the *London Building Act*, 1894, has not been transferred to the borough councils, nor has it wholly lapsed; it remains in the district surveyor.

COUNCIL OF THE CITY OF WESTMINSTER v. *WATSON.*

(1902) 2 K. B. 717; 71 L. J. K. B. 603; 87 L. T. 326; 51 W. R. 300.

——**Stable.**—A builder erected, against an open shed standing in the centre of a piece of ground of about an acre in extent, a wooden structure, 20 feet by 20 feet by about 12 feet in height, for use as a stable. To all intents and purposes it was on the enclosed private ground of the defendant. On hearing a summons against the builder, taken out by the local authority for breach of a by-law, requiring that every person intending to erect any "new building" should give fourteen days' notice to the local board of

such intention, and deposit plans, &c., the justices dismissed the summons. On a case stated, the Court (*Wills and Channell, JJ.*) *held*, that a wooden structure of such dimensions, intended for a stable, was a "new building," within the meaning of the by-law, and they remitted the case for a conviction.

SOUTH SHIELDS CORPORATION v. *WILSON.*
(1902) 65 J. P. 294; 84 L. T. 267; 19 Cox C. C. 667.

WORK AND LABOUR

A firm of slaters contracted to execute certain work according to a specification at certain prices. The work was not carried out according to the specification, and was in consequence less weather-proof. In an action for the balance of an account for work, labour, and materials, the firm proved that their claim, when added to the amount already paid, would only amount to a fair price for the work done. *Parke, J., held*, that when a tradesman finishes work differing from the specification agreed on, he is not entitled to the actual value of the work, but only to the agreed price, less the cost of completing the work according to the specification; and the jury found for the defendant.

THORNTON v. *PLACE.*
(1832) 1 Moo. & R. 218.

——**According to a Plan not approved.**—A lessor agreed to pay his tenant at a valuation for certain building works to be carried out according to an approved plan, provided they were completed in two months. No plan was approved, but subsequently the lessor encouraged the lessee to go on with the works. In an action by the lessee against the lessor, the Court *held*, that the lessee might recover as for work and labour done on an implied promise by the lessor.

BURN v. *MILLER.*
(1813) 4 Taunt. 745.

——**Credit was given to the Defendant.**—A builder sued the churchwarden of a proprietary chapel for work and labour, and the defence set up was that the churchwarden acted as agent of the incumbent. The jury found that the builder looked to the churchwarden for payment, as it was he who gave all the directions, and on a motion for a new trial, the Court (*Lindley, Lopes, and A. L. Smith, L.JJ.*) dismissed the application.

BUTLER v. *PEMBER.*
(1892) *Times*, July 16.

——**Defective Work.**—The plaintiff erected a stove for the defendant, but owing to some defect the stove could not be used. In an action for work and labour done, *Bayley, J.*, entered a nonsuit, and *held*, that where a person is employed on a work of skill, the employer buys both his labour and judgment, and that he ought not to undertake the work if it cannot succeed, and that he ought to know whether it will succeed or not. It is otherwise if the employer uses his own judgment instead of that of the workman.

DUNCAN v. *BLUNDELL.*
(1820) 3 Stark (N. P.) 6; 5 M. & P. 548.

——**With Defendant's Consent.**—The plaintiff was desirous of taking a lease of the defendant's house and premises, and after a correspondence between the parties and interviews, it was agreed that the defendant should effect certain alterations to the house, towards the cost of which the plaintiff should contribute a sum of £75. The correspondence disclosed no agreement sufficient to satisfy the *Statute of Frauds*. With the consent of the defendant, the plaintiff performed a part of the work, but, owing to the default of the defendant in carrying out the alterations to be performed by him, the plaintiff was prevented from taking possession. In an action by the plaintiff to recover the value of the work done by him with the consent of the defendant, a verdict was taken for the plaintiff, subject to the award of an arbitrator, who stated a case. The Court (*Blackburn and Lush, JJ.*) *held*, that the plaintiff could recover, under the common counts, the value of the work done by him with the defendant's consent.

PULBROOK v. *LAWES.*
(1876) 1 Q. B. D. 284; 45 L. J. Q. B. 178; 34 L. T. 95.

——**Evidence.**—A plumber sued the defendant for work done and materials supplied, on the order of third parties, to certain houses owned by the defendant. After a part of the work had been done the plaintiff refused to do any more unless ordered by the defendant, whereupon the defendant gave his personal order for the work. The defendant contended that credit had been given to the third parties, and denied that he was the owner, or gave the orders. The judge of the County Court admitted evidence that other parties had received orders from the defendant to do work at the same houses, although it was not shown that the plaintiff knew of such orders when he did the work. On appeal, the Court

(*Mellor, Lush, and Hannen, L.JJ.*) *held*, that the evidence was admissible.

WOODWARD v. *BUCHANAN.*
(1870) L. R. 5 Q. B. 285; 39 L. J. Q. B. 71; 22 L. T. 123.

——**Extra Work.**—A plasterer was employed to execute the inside plastering of a certain house under a written contract. During the progress of the work an order was given for an external ornamental entablature. In an action for work and labour in respect of the latter external work, *Lord Tenterden, C.J., held*, that it was not necessary to produce the written contract for the interior work.

REID v. *BATTE.*
(1829) Moo. & Malk. 413.

——**Faulty Work.**—A builder fitted up a kitchen range with an old boiler behind, but it was found that hot water could not be obtained from the boiler, because there were no flues fixed to carry the heat to and about the boiler. In an action against the builder by the employer for fitting up the range in an improper manner, *Erle, C.J.*, gave judgment for the plaintiff, and *held*, that a workman was bound to do his work in a workmanlike manner, and that it is no excuse for his doing it so as to be useless, that he could not have done it otherwise, unless he told his employer so.

PEARCE v. *TUCKER.*
(1862) 3 F. & F. 136.

——**Negligence.**—A builder contracted with the defendant on a special contract to erect certain buildings. The builder sued the defendant for work and labour done and materials supplied, and the latter let judgment go by default. A writ of inquiry was executed before an under-sheriff, and it was proved that the buildings were not equal to those contracted for. The jury found for the plaintiff, and on hearing a rule to set the verdict aside, *Lord Lyndhurst, C.B., held*, that the defendant might give evidence that the work was improperly done, and not according to the contract, in which case the plaintiff would only be entitled to recover the real value of the work done and materials supplied.

CHAPEL v. *HICKES.*
(1833) 3 L. J. Ex. 38; 2 C. & M. 214; 4 Tyr. 43.

——**Negligence.**—The defendant engaged to do certain building work for a third party, and had contracted in writing with the plaintiff to do some part of the work. During the progress of

the works some adjoining buildings, which the defendant should have shored up, fell. The plaintiff cleared the *débris* away, and the defendant promised to pay him for doing so. The plaintiff's claim was in respect of this service only, the contract work having been already paid for. At the trial the Secondary of the Sheriff of London directed the jury to find for the defendant, as the plaintiff failed to produce the written contract. On hearing a rule for a new trial, *Williams, J.*, refused the rule, and *held*, that, although unconnected with the work sued on, the written contract, nevertheless, ought to have been produced.

HOLBARD v. *STEVENS.*

(1841) 5 Jurist, 71.

APPENDICES

I.—FORM OF AGREEMENT AND SCHEDULE OF CONDITIONS FOR BUILDING CONTRACTS.

II.—THE PROFESSIONAL PRACTICE APPROVED BY THE ROYAL INSTITUTE OF BRITISH ARCHITECTS AS TO THE CHARGES OF ARCHITECTS.

III.—RYDE'S SCALE OF SURVEYORS' FEES.

APPENDIX I

FORM OF AGREEMENT AND SCHEDULE OF CONDITIONS FOR BUILDING CONTRACTS

ARTICLES OF AGREEMENT made the day of 190
BETWEEN of
in the County of (hereinafter called "the Employer") of the one part and
of and of
in the County of Builder * (hereinafter called "the Contractor") of the other part

Stamp to be affixed here.

WHEREAS the Employer is desirous of † at

and has caused Drawings and a Specification describing the work to be done to be prepared by of , his Architect: AND WHEREAS the said Drawings numbered 1 to inclusive and the Specification and the Bills of Quantities have been signed by or on behalf of the parties hereto: AND WHEREAS the Contractor has agreed to execute upon and subject to the Conditions set forth in the Schedule hereto (hereinafter referred to as "the said Conditions") the works shown upon the said Drawings and described in the said Specification and included in the said Bills of Quantities for the sum of

NOW IT IS HEREBY AGREED AS FOLLOWS:—

1. In consideration of the sum of to be paid at the times and in the manner set forth in the said Conditions, the Contractor will upon and subject to the said Conditions execute and complete the works shown upon the said Drawings and described in the said Specification and Bills of Quantities.

2. The Employer will pay the Contractor the said sum of or such other sum as shall become payable hereunder at the times and in the manner specified in the said Conditions.

3. The term "the Architect" in the said Conditions shall mean the said or, in the event of his death or ceasing to be the Architect for the purpose of this Contract, such other person as shall be nominated for that purpose by the Employer, not being a person to whom the Contractor shall object for reasons considered to

* Insert "s and co-partners" if such is the fact.
† State nature of intended works.

be sufficient by the Arbitrator mentioned in the said Conditions. Provided always that no person subsequently appointed to be Architect under this Contract shall be entitled to disregard or overrule any decision or approval or direction given or expressed by the Architect for the time being.

4. The said Conditions shall be read and construed as forming part of this Agreement, and the parties hereto will respectively abide by and submit themselves to the conditions and stipulations and perform the agreements on their parts respectively in such Conditions contained.

As witness our hands this day of 190

Signed by the said

in the presence of

Signed by the said

in the presence of

Schedule of Conditions of Contract.

Drawings and Specifications.

1. The works shall be carried out in accordance with the directions and to the reasonable satisfaction of the Architect, in accordance with the signed Drawings and Specification and Bills of Quantities, and in accordance with such further drawings, details, instructions, directions, and explanations as may from time to time be given by the Architect. If the work shown on any such further drawings or details, or necessary to comply with any such instructions, directions, or explanations, be, in the opinion of the Contractor, extra to that comprised in the Contract, he shall, before proceeding with such work, give notice in writing to this effect to the Architect. In the event of the Architect and Contractor failing to agree as to whether or not there is any extra, and of the Architect deciding that the Contractor is to carry out the said work, the Contractor shall accordingly do so, and the question whether or not there is any extra, and if so the amount thereof, shall, failing agreement, be settled by the Arbitrator as provided in Clause 32, and the Contractor shall be paid accordingly. The Contract Drawings and Specification and the priced Bills of Quantities shall remain in the custody of the Architect, and shall be produced by him at his Office as and when required by the Employer or by the Contractor.

Copies of Drawings and Specification.

2. One complete copy of all Drawings and of the Specification shall be furnished by the Architect free of cost to the Contractor for his own use. The Architect shall furnish to the Contractor, within days after the receipt by him of a request for the same, any details which in the opinion of the Architect are necessary for the execution of any part of the work, such request to be made only within a reasonable time before it is necessary to execute such work in order to fulfil the Contract. Such copies and details shall be kept on the works until the completion thereof, and the Architect or his representative shall at all reasonable times have access to the same,

and they shall be returned to the Architect by the Contractor on the completion of the Contract.

Copy of Estimate.

3. The Contractor shall on the signing hereof furnish the Architect with the fully priced Bills of Quantities for his use or that of the Surveyor appointed as in Clause 13 hereof, and for the purposes only of this Contract.

Contractor to provide everything necessary.

4. The Contractor shall provide everything necessary for the proper execution of the works, according to the true intent and meaning of the Drawings and Specification taken together, whether the same may or may not be particularly shown on the Drawings or described in the Specification, provided that the same is reasonably to be inferred therefrom; and if the Contractor find any discrepancy in the Drawings, or between the Drawings and Specification, he shall immediately refer the same to the Architect, who shall decide which shall be followed. Figured dimensions are to be followed in preference to the scale.

Local and other Authorities: Notices, &c.

5. The Contractor shall conform to the provisions of any Acts of Parliament relating to the works, and to the regulations and by-laws of any Local Authority, and of any Water and Lighting Companies with whose systems the structure is proposed to be connected, and shall, before making any variation from the Drawings or Specification that may be necessitated by so comforming, give to the Architect written notice, specifying the variation proposed to be made, and the reason for making it, and apply for instructions thereon. In case the Contractor shall not in due course receive such instructions he shall proceed with the work, conforming to the provision, regulation, or by-law in question, and any variation so necessited shall be dealt with under Clause 13. The Contractor shall give all notices required by the said Acts, regulations, or by-laws to be given to any Local Authority, and pay all fees payable to any such Authority, or to any public officer in respect of the works.

Setting out of work.

6. The Contractor shall set out the works, and during the progress of the building shall amend at his own cost any errors arising from inaccurate setting out, unless the Architect shall decide to the contrary.

Materials, &c., to conform to Specification.

7. All materials and workmanship shall be of the respective kinds described in the Specification, and the Contractor shall upon the request of the Architect furnish him with vouchers to prove that the materials are such as are specified.

Foreman.

8. The Contractor shall keep constantly on the works a competent general foreman, and any directions or explanations given by the Architect to such foreman shall be held to have been given to the Contractor.

Dismissal of workmen by Architect.

9. The Contractor shall, on the request of the Architect, immediately dismiss from the works any person employed thereon by him who may, in the opinion of the Architect, be incompetent or misconduct himself, and such person shall not be again employed on the works without the permission of the Architect.

Access for

10. The Architect and any person authorized by him shall at all

Architect to Works.

reasonable times have access to the works, and the Architect and his representatives shall at like times have access to the workshops of the Contractor or other places, where work is being prepared for the building.

Clerk of Works.

11. The Clerk of Works shall be considered to act solely as inspector and under the Architect, and the Contractor shall afford him every facility for examining the works and materials.

Variations and extras.

12. The Contractor shall, when authorized by the Architect, or as provided by Clause 5, vary by way of extra or omission from the Drawings or Specification; such authorization is to be sufficiently proved by any writing or drawing signed by the Architect or by any subsequent written approval by him, but the Contractor shall make no variation without such authorization. No claim for an extra shall be allowed unless it shall have been executed under the provisions of Clause 5, or by the authority of the Architect as herein mentioned. Any such extra is hereinafter referred to as an authorized extra.

Errors in Bills of Quantities.

12a. Should any error appear in the Bills of Quantities other than in the Contractor's prices and calculations, it shall be rectified, and such rectification shall constitute a variation of the Contract, and shall be dealt with as hereinafter provided.

Price for extras; how ascertained.

13. No variation shall vitiate the contract; but all authorized extras for which a price may not have been previously agreed, and any omission which may have been made with the knowledge of the Architect, or without his knowledge, provided he subsequently give a written sanction to such omission, shall be measured and valued, as hereinafter provided, by* ; and a copy of the bill or statement of such measurement and valuation shall be given to the Contractor. The fees for so measuring and valuing the variation shall be added to the contract sum. If in the opinion of the Architect the work cannot be properly measured and valued, day work prices shall be allowed therefor, provided that vouchers specifying the time and materials employed shall have been delivered for verification to the Architect, or his nominee, at or before the expiration of the week following that in which such work shall have been done. The variations shall be valued at the rates contained in the priced Bills of Quantities, or, where the same may not apply, at rates proportionate to the prices therein contained. The amount to be allowed on either side in respect of the variations so ascertained shall be added to or deducted from the contract sum as the case may be.

Bills of Quantities; expenses of

†14. The fees for the Bills of Quantities and the Surveyor's expenses (if any) stated therein shall be paid by the Contractor to the Surveyor named therein out of and immediately after receiving the amount of the certificate or certificates in which they shall be included. The fees chargeable under Clause 13 shall be paid by the Contractor before the issue by the Architect of the certificate for the final payment. If the Contractor fails or neglects to pay as herein provided, then the Employer shall be at liberty, and is hereby

* Insert "the Architect," or the name of a Surveyor.

† In cases where the Surveyor is engaged by the Employer to be paid direct by him the first sentence of this clause will come out.

authorized, to do so on the certificate of the Architect, and the amount so paid by the Employer shall be deducted from the amount otherwise due to the Contractor.

Unfixed materials when taken into account to be property of Employer.

15. When the Contractor shall have received payment of any certificate in which the Architect shall have stated that he has taken into account the value of any unfixed materials intended for the works, and placed by the Contractor thereon, or upon ground adjacent thereto, all such materials shall become the property of the Employer, and shall not be taken away, except for the purpose of being used on the building, without the written authority of the Architect; and the Contractor shall be liable for any loss of or damage to such materials.

Power to Architect to order removal of improper work.

16. The Architect shall, during the progress of the works, have power to order in writing from time to time the removal from the works, within such reasonable time or times as may be specified in the order, of any materials which in the opinion of the Architect are not in accordance with the Specification or the instructions of the Architect, the substitution of proper materials, and the removal and proper re-execution of any work executed with materials or workmanship not in accordance with the Drawings and Specification or instructions; and the Contractor shall forthwith carry out such order at his own cost. In case of default on the part of the Contractor to carry out such order, the Employer shall have power to employ and pay other persons to carry out the same; and all expenses consequent thereon or incidental thereto shall be borne by the Contractor, and shall be recoverable from him by the Employer, or may be deducted by the Employer from any moneys due or that may become due to the Contractor.

Defects after completion.

17. Any defects, shrinkage, or other faults which may appear within months from the completion of the works, arising in the opinion of the Architect from materials or workmanship not in accordance with the Drawings and Specification or the instructions of the Architect, or any damage to pointing by frost appearing within the like period, shall upon the directions in writing of the Architect, and within such reasonable time as shall be specified therein, be amended and made good by the Contractor at his own cost, unless the Architect shall decide that he ought to be paid for the same; and in case of default the Employer may employ and pay other persons to amend and make good such defects, shrinkage, or other faults or damage, and all expenses consequent thereon or incidental thereto shall be borne by the Contractor and shall be recoverable from him by the Employer, or may be deducted by the Employer from any moneys due or that may become due to the Contractor. Should any defective work have been done or material supplied by any sub-contractor employed on the works who has been nominated or approved by the Architect, as provided in Clause 20, the Contractor shall be liable to make good in the same manner as if such work or material had been done or supplied by the Contractor and been subject to the provisions of this and the preceding clause.

Work to be

18. The Contractor shall, at the request of the Architect, within

opened up at request of Architect.

such time as the Architect shall name, open for inspection any work covered up; and should the Contractor refuse or neglect to comply with such request, the Architect may employ other workmen to open up the same. If the said work has been covered up in contravention of the Architect's instructions, or if on being opened up it be found not in accordance with the Drawings and Specification or the instructions of the Architect, the expenses of opening and covering it up again, whether done by the Contractor or such other workmen, shall be borne by, and recoverable from, the Contractor, or may be deducted as aforesaid. If the work has not been covered up in contravention of such instructions, and be found in accordance with the said Drawings and Specification or instructions, then the expenses aforesaid shall be borne by the Employer and be added to the contract sum: provided always that in the case of foundations, or of any other urgent work so opened up and requiring immediate attention, the Architect shall, within a reasonable time after receipt of notice from the Contractor that the work has been so opened, make or cause the inspection thereof to be made, and at the expiration of such time, if such inspection shall not have been made, the Contractor may cover up the same, and shall not be required to open it up again for inspection except at the expense of the Employer.

Assignment or sub-letting.

19. The Contractor shall not, without the written consent of the Architect, assign this Agreement or sublet any portion of the works.

Sub-contractors.

20. All specialists, merchants, tradesmen, or others executing any work, or supplying any goods for which prime cost prices or provisional sums are included in the Specification, who may at any time be nominated, selected or approved by the Architect are hereby declared to be sub-contractors employed by the Contractor; but no such sub-contractor shall be employed upon the works against whom the Contractor shall make what the Architect considers reasonable objection, or who will not enter into a contract with the Contractor upon terms and conditions consistent with those in this contract, and securing the due performance and maintenance of the work supplied or executed by such sub-contractor, and indemnifying the Contractor against any claims arising out of the misuse by the sub-contractor or his workmen of any scaffold erected or plant employed by the Contractor, or that may be made against the Contractor in consequence of any act, omission, or default of the sub-contractor, his servants or agents, and against any liability under the Workmen's Compensation Act 1897, or any amendment thereof.

Damage to person and property.

21. The Contractor shall be responsible for all structural and decorative damage to property, and for injury caused by the works or workmen to persons, animals, or things, and shall hold the Employer harmless in respect thereof, and also in respect of any claim made under the Workmen's Compensation Act 1897, or any amendment thereof, by any person in the employ of the Contractor. He shall also be responsible for all injuries caused to the buildings, the subject of this Contract, by frost or other inclemency of weather, and shall

reinstate all damage caused by the same, and thoroughly complete the whole of the works.

22. *(*a*) The Contractor shall insure the works, and keep them insured until they are delivered up, against loss or damage by fire, in an office to be approved by the Architect, in the joint names of the Employer and Contractor, for the full value of the works executed, and shall deposit with the Architect the policies and receipts for the premiums paid for such insurance; and in default the Employer may insure the works and deduct the premium paid from any moneys due or which may become due. All moneys received under any such policies are to be paid to the Contractor by instalments on the certificates of the Architect, and to be applied in or towards the rebuilding or reparation of the works destroyed or injured. The Contractor shall, as soon as the claim under the policy is settled, proceed with all due diligence with the rebuilding or reparation, and shall not be entitled to any payment in respect thereof other than the said moneys received, but such extension of the time hereinafter mentioned for completion shall be made as shall be just and reasonable. (*b*) The whole building and the works executed under this Contract shall be at the sole risk of the Employer as regards any loss or damage by fire, and in the event of any such loss or damage being so occasioned which affects the original building or structure in addition to the new work, the Contractor shall be entitled to receive from the Employer the full value of all work then executed and materials then delivered, calculated in the manner provided for by Clause 13 hereof, and this Contract, so far as it relates to any subsequent work, may at the option of either party be determined if in the opinion of the Arbitrator such determination shall be just and equitable. Insurance.

23. Possession of the site (or premises) shall be given to the Contractor on or before the day of . He shall begin the works immediately after such possession, shall regularly proceed with them, and shall complete the same (except painting and papering or other decorative work which in the opinion of the Architect it may be desirable to delay) by the day of , subject nevertheless to the provisions for extension of time hereinafter contained. Date of completion.

24. If the Contractor fail to complete the works by the date named in Clause 23, or within any extended time allowed by the Architect under these presents, and the Architect shall certify in writing that the works could reasonably have been completed by the said date, or within the said extended time, the Contractor shall pay or allow to the Employer the sum of sterling per † as liquidated and ascertained damages for every † beyond the said date or extended time, Damages for non-completion

* In this clause division (*a*) applies to a new building and division (*b*) to an existing building to be altered. (*a*) or (*b*) should be struck out to suit circumstances.

† Insert "day" or "week" as may be agreed.

as the case may be, during which the works shall remain unfinished, except as provided by Clause 23, and such damages may be deducted by the Employer from any moneys due to the Contractor.

Extension of time.

25. If in the opinion of the Architect the works be delayed by *force majeure* or by reason of any exceptionally inclement weather, or by reason of instructions from the Architect in consequence of proceedings taken or threatened by or disputes with adjoining or neighbouring owners, or by the works or delay of other Contractors or tradesmen engaged or nominated by the Employer or the Architect, and not referred to in the Specification, or by reason of authorized extras or additions, or in consequence of any notice reasonably given by the Contractor in pursuance of Clause 1, or by reason of any local combination of workmen or strike or lock-out affecting any of the Building trades, or in consequence of the Contractor not having received in due time necessary instructions from the Architect for which he shall have specifically applied in writing, the Architect shall make a fair and reasonable extension of time for completion in respect thereof. In case of such strike or lock-out the Contractor shall, as soon as may be, give to the Architect written notice thereof. But the Contractor shall nevertheless use his best endeavours to prevent delay, and shall do all that may reasonably be required to the satisfaction of the Architect to proceed with the works.

Suspension of works by Contractor.

26. If the Contractor, except on account of any legal restraint upon the Employer preventing the continuance of the works, or on account of any of the causes mentioned in Clause 25, or in case of a certificate being withheld or not paid when due, shall suspend the works, or in the opinion of the Architect shall neglect or fail to proceed with due diligence in the performance of his part of the Contract, or if he shall more than once make default in the respects mentioned in Clause 16, the Employer by the Architect shall have power to give notice in writing to the Contractor requiring that the works be proceeded with in a reasonable manner and with reasonable despatch. Such notice shall not be unreasonably or vexatiously given, and must signify that it purports to be a notice under the provisions of this clause, and must specify the act or default on the part of the Contractor upon which it is based. After such notice shall have been given, the Contractor shall not be at liberty to remove from the site or works, or from any ground contiguous thereto, any plant or materials belonging to him which shall have been placed thereon for the purposes of the works; and the Employer shall have a lien upon all such plant and materials, to subsist from the date of such notice being given until the notice shall have been complied with. Provided always that such lien shall not under any circumstances subsist after the expiration of thirty-one days from the date of such notice being given unless the Employer shall have entered upon and taken possession of the works and site as hereinafter provided. If the Contractor shall fail for days after such notice has been given to proceed with the works as therein prescribed, the Employer may enter upon and take possession of the works and site, and of all such plant and

materials thereon (or on any ground contiguous thereto) intended to be used for the works, and all such materials as above mentioned shall thereupon become the property of the Employer absolutely, and the Employer shall retain and hold a lien upon all such plant until the works shall have been completed under the powers hereinafter conferred upon him. If the Employer shall exercise the above power he may engage any other person to complete the works, and exclude the Contractor, his agents and servants, from entry upon or access to the same, except that the Contractor or any one person nominated by him may have access at all reasonable times to inspect, survey, and measure the works. And the employer shall take such steps as in the opinion of the Architect may be reasonably necessary for completing the works without undue delay or expense, using for that purpose the plant and materials above mentioned in so far as they are suitable and adapted to such use. Upon the completion of the works the Architect shall certify the amount of the expenses properly incurred consequent on and incidental to the default of the Contractor as aforesaid, and in completing the works by other persons. Should the amount so certified as the expenses properly incurred be less than the amount which would have been due to the Contractor upon the completion of the works by him, the difference shall be paid to the Contractor by the Employer; should the amount of the former exceed the latter, the difference shall be paid by the Contractor to the Employer. The Employer shall not be liable to make any further payment or compensation to the Contractor for or on account of the proper use of the plant for the completion of the works under the provisions hereinbefore contained other than such payment as is included in the contract price. After the works shall have been so completed by persons other than the Contractor under the provisions hereinbefore contained, the Employer shall give notice to the Contractor of such completion and may require him from time to time, before and after such completion, to remove his plant and all such materials as aforesaid as may not have been used in the completion of the works from the site. If such plant and materials are not removed within a reasonable time after notice shall have been given, the Employer may remove and sell the same, holding the proceeds, less the cost of the removal and sale, to the credit of the Contractor. Any notice to be given to the Contractor under this clause shall be given by leaving the same at the place of business of the Contractor, or by registered letter sent to him at that address.

"Prime cost," meaning.

27. The words "Prime Cost" or the initials P.C. applied in the Specification and Bills of Quantities to goods to be obtained and fixed by the Contractor, shall mean, unless otherwise stated in the Specification or Bills of Quantities, the sum paid to the merchant after deducting all trade discount for such goods in the ordinary course of delivery, but not deducting discount for cash, and such sum shall be exclusive of special carriage, the cost of fixing, and Contractor's profit.

Provisional sums.

28. The provisional sums mentioned in the Specification and Bills of Quantities for materials to be supplied or for work to be performed

by special artists or tradesmen, or for other works or fittings to the building, shall be paid and expended at such times and in such amounts and to and in favour of such persons as the Architect shall direct, and sums so expended shall be payable by the Contractor without discount or deduction, or (without prejudice to any rights of the Contractor existing under the Contract referred to in Clause 20) by the Employer to the said artists or tradesmen. The value of works which are executed by the Contractor in respect of provisional sums, or in additional works, shall be ascertained as provided by Clause 13. At the settlement of the accounts the amount paid by the Contractor to the said artists or tradesmen, and the said value of such works executed by the Contractor, shall be set against all such provisional sums or any sum provided for additional works, and the balance, after allowing *pro rata* for the Contractor's profits at the rates contained in the Contractor's original estimate, shall be added to or deducted from the contract sum, provided that in estimating the amounts paid as last herein provided no deductions shall be made by or on behalf of the Employer in respect of any damages paid by the sub-contractor to the Contractor, the intention being that the Contractor and not the Employer shall have the benefit of any such damages.

Artists, &c., engaged by Employer.

29. The Contractor shall permit the execution of work by any other artists or tradesmen who may be engaged by the Employer.

Payment and Certificate.

30. The Contractor shall be entitled under the certificates to be issued by the Architect to the Contractor, and within days of the date of each certificate, to payment by the Employer from time to time by instalments, when in the opinion of the Architect work to the value of (or less at the reasonable discretion of the Architect) has been executed in accordance with the Contract, at the rate of per cent. of the value of work so executed in the building, until the balance retained in hand amounts to the sum of after which time the instalments shall be up to the full value of the work subsequently executed. The Contractor shall be entitled, under the Certificate to be issued by the Architect, to receive payment of being a part of the said sum of when the works are practically completed, and in like manner to payment of the balance within a further period of months, or as soon after the expiration of such period of months as the works shall have been finally completed, and all defects made good according to the true intent and meaning hereof, whichever shall last happen. The Architect shall issue his certificates in accordance with this clause. No certificate of the Architect shall be considered conclusive evidence as to the sufficiency of any work or materials to which it relates, nor shall it relieve the Contractor from his liability to make good all defects as provided by this Agreement. The Contractor when applying for a certificate shall, if required, as far as practicable, furnish to the Architect an approximate statement of the work executed, based on the original estimate.

Non-pay-

31. Should the Employer not pay the Contractor any sum certified

by the Architect within the times respectively named in Clause 30, the Contractor shall give written notice to the Employer of the non-payment, and should the Employer not pay any such sum within the period of days from the date of delivery of such notice at the Employer's address or sent to him there in the ordinary course of post by registered letter, or if the Employer shall become bankrupt or file any petition for liquidation of his affairs, and if his Trustee in Bankruptcy shall repudiate this Contract, or if the Trustee shall be unable to show within days to the reasonable satisfaction of the Contractor his ability to carry out the Contract, and to make all payments due or to become due thereunder, or if the works be stopped for months under an order of the Architect or any Court of Law, the Contractor shall be at liberty to determine the Contract by notice in writing to the Architect, and to recover from the Employer payment for all work executed and for any loss he may sustain upon any plant or material supplied or purchased or prepared for the purpose of the Contract. In arriving at the amount of such payment the rates contained in the Contractor's original estimate shall be followed, or, where the same may not apply, rates proportionate to the prices therein contained. ment by Employer

32. Provided always that in case any dispute or difference shall arise between the Employer or the Architect on his behalf and the Contractor, either during the progress of the works or after the determination, abandonment, or breach of the Contract, as to the construction of the Contract or as to any matter or thing arising thereunder (except as to the matters left to the sole discretion of the Architect under Clauses 4, 9, 16, and 19, and the exercise by him under Clause 18 of the right to have any work opened up), or as to the withholding by the Architect of any certificate to which the Contractor may claim to be entitled, then either party shall forthwith give to the other notice of such dispute or difference, and such dispute or difference shall be and is hereby referred to the arbitration and final decision of or, in the event of his death or unwillingness or inability to act, of , or, in the event of his death or unwillingness or inability to act, of a person to be appointed on the request of either party by the President for the time being of The Royal Institute of British Architects, and the award of such Arbitrator shall be final and binding on the parties. Such reference, except on the question of certificate, shall not be opened until after the completion or alleged completion of the works, unless with the written consent of the Employer or Architect and the Contractor. The Arbitrator shall have power to open up, review, and revise any certificate, opinion, decision, requisition, or notice, save in regard to the said matters expressly excepted above, and to determine all matters in dispute which shall be submitted to him, and of which notice shall have been given as aforesaid, in the same manner as if no such certificate, opinion, decision, requisition, or notice had been given. Upon every or any such reference the costs of and incidental to the reference and award respectively shall be in the discretion of the Arbitrator, who Arbitration.

may determine the amount thereof, or direct the same to be taxed as between solicitor and client or as between party and party, and shall direct by whom and to whom and in what manner the same shall be borne and paid. This submission shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1889.

APPENDIX II

THE PROFESSIONAL PRACTICE APPROVED BY THE ROYAL INSTITUTE OF BRITISH ARCHITECTS AS TO THE CHARGES OF ARCHITECTS

SCHEDULE SANCTIONED BY THE ROYAL INSTITUTE OF BRITISH ARCHITECTS, CONFIRMED AT A GENERAL CONFERENCE OF ARCHITECTS OF THE UNITED KINGDOM, 1872, AND REVISED BY THE ROYAL INSTITUTE, 1898.

Services covered by commission, which is usually 5 per cent.

1. THE usual remuneration for an architect's services, except as hereinafter mentioned, is a commission of 5 per cent. on the total cost of works executed under his directions. Such total cost is to be valued as though executed by a builder with new materials. The commission is for the necessary preliminary conferences and sketches, approximate estimate when required (such, for instance, as may be obtained by cubing out the contents), the necessary general and detailed drawings and specifications, one set of tracings, duplicate specification, general superintendence of works, and examining and passing the accounts, exclusive of measuring and making out extras and omissions.

Charges for services not included in the 5 per cent. commission.

2. This commission does not include the payment for services rendered in connection with negotiations relating to the site or premises, or in supplying drawings to ground or other landlords, or in surveying the site or premises and taking levels, making surveys and plans of buildings to be altered, making arrangements in respect of party walls and rights of light, or for drawings for and correspondence with local and other authorities, or for services consequent on the failure of builders to carry out the works, or for services in connection with litigation or arbitration, or in the measurement and valuation of extras and omissions. For such services additional charges proportionate to the trouble involved and time spent are made. The clerk of the works should be appointed by the architect, his salary being paid by the client.

Circumstances justifying a higher rate of percentage

3. In all works of less cost than £1000, and in works requiring designs for furniture and fittings of buildings, or for their decoration with painting, mosaics, sculpture, stained glass, or other like works, and in cases of alterations and additions to buildings, 5 per cent. is not remunerative, and the architect's charge is regulated by special circumstances and conditions.

Repetition

4. When several distinct buildings, being repetitions of one design,

in some cases justifies a lower rate.

are erected at the same time from a single specification and one set of drawings and under one contract, the usual commission is charged on the cost of one such building, and a modified arrangement made in respect of the others; but this arrangement does not apply to the reduplication of parts in one building undertaking, in which case the full commission is charged on the total cost.

Charge for plans and specifications only half the commission, adding half per cent. if tenders are obtained; also for abandoned work.

5. If the architect should have drawn out the approved design, with plans, elevations, sections, and specification, the charge is $2\frac{1}{2}$ per cent. upon the estimated cost. If he should have procured tenders in accordance with the instruction of his employer, the charge is $\frac{1}{2}$ per cent. in addition. Two and a half per cent. is charged upon any works originally included in the contract or tender, but subsequently omitted in execution. These charges are exclusive of the charge for taking out quantities. Preliminary sketches and interviews, where the drawings are not further proceeded with, are charged for according to the trouble involved and time expended.

Charge for material alteration of design, by time.

6. Should the client, having approved the design and after the contract drawings have been prepared, require material alterations to be made, whether before or after the contract has been entered into, an extra charge is made in proportion to the time occupied in such alterations.

Architect entitled to payments on account.

7. The architect is entitled during the progress of the works to payment by instalments on account at the rate of 5 per cent. on the amount of the certificates when granted, or alternatively on the signing of the contract, to half the commission on the amount thereof, and the remainder by instalments during their progress.

The usual charge per day.

8. The charge per day depends upon an architect's professional position, the minimum charge being three guineas.

Estates.

9. The charge for taking a plan of an estate, laying it out, and arranging for building upon it, is regulated by the time, skill, and trouble involved.

10. For setting out on an estate the position of the proposed road or roads, taking levels, and preparing drawings for roads and sewers, applying for the sanction of local authorities, and supplying all necessary tracings for this purpose, the charge is 2 per cent. on the estimated cost. For subsequently preparing working drawings and specifications of roads and sewers, obtaining tenders, supplying one copy of drawings and specification to the contractor, superintending works, examining and passing accounts (exclusive of measuring and valuing extras and omissions), the charge is 4 per cent. on the cost of the works executed, in addition to the 2 per cent. previously mentioned.

11. For letting the several plots in ordinary cases the charge is a sum not exceeding a whole year's ground rent, but in respect of plots of great value a special arrangement must be made.

12. For approving plans submitted by the lessee, and for inspecting the buildings during their progress, so far as may be necessary to ensure the conditions being fulfilled, and certifying for lease, the charge is a percentage not exceeding $1\frac{1}{4}$ per cent. up to £5000, and above that by special arrangement.

13. For valuing freehold, copyhold, or leasehold property the charge is:— Valuations.

On £1,000	...	...	1 per cent.
Thence to £10,000	...	...	½ ,,
Above £10,000	...	...	¼ ,, on residue.

In valuations for mortgage, if an advance is not made, one-third of the above scale. The minimum fee is three guineas.

14. For valuing and negotiating the settlement of claims under the Lands Clauses Consolidation Act or other Acts for the compulsory acquisition of property, the charge is on Ryde's Scale, as follows:—

On Amount of Settlement, whether by Verdict, Award, or otherwise.

Amount.	Gns.	Amount.	Gns.	Amount.	Gns.	Amount.	Gns.
£		£		£		£	
100	5	2,400	25	5,600	41	8,800	57
200	7	2,600	26	5,800	42	**9,000**	58
300	9	2,800	27	**6,000**	43	9,200	59
400	11	**3,000**	28	6,200	44	9,400	60
500	13	3,200	29	6,400	45	9,600	61
600	14	3,400	30	6,600	46	9,800	62
700	15	3,600	31	6,800	47	**10,000**	63
800	16	3,800	32	**7,000**	48	11,000	68
900	17	**4,000**	33	7,200	49	12,000	73
1,000	18	4,200	34	7,400	50	14,000	83
1,200	19	4,400	35	7,600	51	16,000	93
1,400	20	4,600	36	7,800	52	18,000	103
1,600	21	4,800	37	**8,000**	53	20,000	113
1,800	22	**5,000**	38	8,200	54		
2,000	23	5,200	39	8,400	55		
2,200	24	5,400	40	8,600	56		

Beyond this Half-a-Guinea per cent.

The above scale is exclusive of attendances on juries or umpires, or at arbitrations, and also of expenses and preparation of plans.

15. For estimating dilapidations and furnishing or checking a schedule of same, the charge is 5 per cent. on the estimate, but in no case less than two guineas. For services in connection with settlement of claim by arbitration or otherwise, extra charges are made, under Clause 8. Dilapidations.

16. For inspecting, reporting, and advising on the sanitary condition of premises, the charge must depend on the nature and extent of the services rendered. Sanitary reports.

17. In all cases travelling and other out-of-pocket expenses are paid by the client in addition to the fees. If the work is at such a distance as to lead to an exceptional expenditure of time in travelling, an additional charge may be made under Clause 8. Travelling expenses.

18. When an architect takes out and supplies to builders quantities on which to form estimates for executing his designs, he should do so with the concurrence of his client, and it is desirable that the architect should be paid by him rather than by the builder, the cost of such quantities not being included in the commission of 5 per cent. Quantities.

The Royal Institute of British Architects,
No. 9, Conduit Street, Hanover Square, London, W.

APPENDIX III

RYDE'S SCALE OF SURVEYORS' FEES

Amount of valuation.	Fee.	Amount of valuation.	Fee.	Amount of valuation.	Fee.	Amount of valuation.	Fee.
£	Gns.	£	Gns.	£	Gns.	£	Gns.
100	5	2,400	25	5,600	41	8,800	57
200	7	2,600	26	5,800	42	**9,000**	58
300	9	2,800	27	**6,000**	43	9,200	59
400	11	**3,000**	28	6,200	44	9,400	60
500	13	3,200	29	6,400	45	9,600	61
600	14	3,400	30	6,600	46	9,800	62
700	15	3,600	31	6,800	47	**10,000**	63
800	16	3,800	32	**7,000**	48	**11,000**	68
900	17	**4,000**	33	7,200	49	**12,000**	73
1,000	18	4,200	34	7,400	50	**14,000**	83
1,200	19	4,400	35	7,600	51	**16,000**	93
1,400	20	4,600	36	7,800	52	**18,000**	103
1,600	21	4,800	37	**8,000**	53	**20,000**	113
1,800	22	**5,000**	38	8,200	54		
2,000	23	5,200	39	8,400	55		
2,200	24	5,400	40	8,600	56		

Beyond this Half-a-Guinea per cent.
The fee is exclusive of the charges for attendance and expenses.

Attorney-General *v.* Drapers' Company.

M.R. 1869. Dec. 10.

Costs—Taxation—Surveyors' Charge—Ryde's Scale—Lands Clauses Act, § 80.

Upon the taxation of a bill of costs relating to the re-investment in land of moneys paid into Court under the *Lands Clauses Act*, the Taxing Master allowed a lump sum for Surveyor's charges, being a commission on the amount of the purchase-money, according to *Ryde's Scale*, which is a scale prepared by an eminent Surveyor of that name, on the principle that a commission, varying from 5 to one-half per cent., should be paid to the Surveyor according to the amount of the purchase-money. An application was made to the Court to direct the Taxing Master to review his taxation in respect of this item :

Held, that the question was in reality one not of principle but of amount, and that the Court would not interfere; but that if it were a question of principle a prevailing practice of paying Surveyors by commission ought not to be disturbed.

Certain lands of the Drapers' Company in the City of London having been taken by the South-Eastern Railway Company under the powers of their Acts, the purchase-money was paid into Court in this suit,

M.R. 1869. Attorney-General v. Drapers' Company.

and a Petition was afterwards presented for a re-investment in land of the sum so paid in. Upon this petition the usual order was made sanctioning the proposed investment, and directing the taxation and payment to the Drapers' Company of their costs, including all reasonable charges and expenses, in accordance with the *Lands Clauses Act*, § 80.

Upon the taxation of the bill of costs the Taxing Master allowed an item of £73 for the charges of the Surveyor employed by the Drapers' Company to survey and report upon the value of the property proposed to be purchased by them, and this item was the amount of commission on the purchase-money (£12,150), according to *Ryde's Scale*, being a scale prepared by an eminent Surveyor of that name, on the principle that a commission, varying from 5 to one-half per cent., should be paid to the Surveyor, according to the amount of the purchase-money. The highest commission, amounting to 5 per cent., is payable only when the purchase-money does not exceed £100; and the percentage diminishes rapidly as the amount of purchase-money increases.

The Railway Company now applied that the Taxing Master might be ordered to review his taxation with respect to this item, on the ground that they were liable to pay only the reasonable costs of the Surveyor, calculated separately for every attendance and valuation made by him, and every plan prepared by him.

Mr. *Phear*, in support of the application, submitted that the Master had proceeded on a wrong principle in allowing this item; inasmuch as he had allowed the Surveyor to be paid by commission, instead of on a *quantum meruit*. This mode of payment was not, he stated, allowed in the common law offices; and, further, was capricious and unreasonable, inasmuch as it appeared by the evidence that Surveyors' charges, if paid under the like circumstances by the Corporation of London, were higher in amount than those allowed by *Ryde's Scale*.

Mr. *Bowring*, for the Drapers' Company, was not called on.

Lord Romilly, M.R.:—

This application is altogether misconceived. In these cases I never go into a mere question of amount, and Mr. *Phear*, knowing that, tried to put it on principle, but the question is, in fact, what is the proper sum to be allowed for the Surveyor's charges, and the Master has exercised his discretion upon that, and I cannot go into it. Besides, even if it were a question of principle, I should not be inclined to interfere. The charges of brokers on the transfer of stocks and shares are paid by a commission, and if a similar practice prevails with respect to Surveyors' charges I shall not disturb it: it prevents disputes as to amount; and the charges fixed by the Scale do not seem too high.

Solicitors—Mr. *E. P. Cearns*; Messrs. *Lawford & Waterhouse*.

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