On 3rd July 1896 the Dean of Guild pronounced the following interlocutor:—"Find that the petitioner has not in the preparation of his plans made proper and sufficient provisions for complying with the requirement of section 170 of the Burgh Police (Scotland) Act 1892, to have all the rooms of his intended buildings sufficiently lighted and ventilated from an adjoining street or other open space directly attached thereto equal to at least three-fourths of the area to be occupied by the intended buildings: Therefore refuse to grant the warrant craved."

Note.—[*After stating the facts*]—"It was contended for the petitioner that, being proprietor of the ground behind both lines of tenements, he was entitled to reckon the whole space as directly attached to each line instead of one-half thereof to each, and that thereby he had made proper provision for complying with the requirement of section 170 of the Police Act. The Court cannot adopt this view, but must find that there should be an open space directly attached to each tenement equal to at least three-fourths of the area thereof. Although the buildings and ground will at first belong to one proprietor, the tenements are being built for the purpose of sale, and may soon be divided among many owners."

The petitioners appealed, and argued—The Dean of Guild had misinterpreted the statute. In calculating the free open space behind each of the tenements, the petitioner was entitled to measure the whole area between the tenements, and not merely half of that area, just as in the case of a street he was entitled to take into account the whole breadth of the street, and not merely its breadth up to the *medium filum*. The section of the Act was satisfied if all the rooms were ventilated either from a street or from an open space of the requisite area.

Argued for the respondents, the Magistrates and Council of Portobello—Each tenement of dwelling-houses must have a back-green of the area specified in the statute. The private area behind was not in the same position as a public street, for the street in terms of the statute was to "adjoin" the property, while the private area was to be "directly attached" to the tenement, which showed that the private area must appertain solely to one tenement of dwelling-houses.

LORD JUSTICE-CLERK—It appears to me that upon a proper reading of this clause the requirements of the statute have been sufficiently fulfilled, and that the Dean of Guild's judgment is erroneous.

LORD YOUNG—I am clearly of that opinion. I think the argument for the respondents is not stateable. The words of the statute are "lighted and ventilated from an adjoining street or other open space directly attached thereto." I read these words "street attached thereto" or "open space attached thereto" as meaning coming up to the dwelling-house or touching it. An adjoining street coming up to it will be an open space attached thereto, and in calculating the area required you are not to measure up to the *medium filum* of the street, but you are to measure the whole street. In the same way we must read the provision as regards a back-green. The whole free area must be measured, not merely up to the *medium filum*.

LORD TRAYNER and LORD MONCREIFF concurred.

The Court remitted the case back to the Dean of Guild to grant a lining.

Counsel for the Petitioner — Clyde. Agent—A. C. D. Vert, S.S.C.

Counsel for the Respondents — Young. Agent—R. Pasley Stevenson, S.S.C.

Wednesday, July 15.

SECOND DIVISION.

[Sheriff of Forfarshire.

MACKIE *v.* STRACHAN, KINMOND, & COMPANY.

Discharge—Reparation—Master and Servant—Receipt.

In defence to an action of damages raised by a workman against his employer for injuries received through the alleged fault of the defenders, the defenders produced a receipt signed by the pursuer, and bearing that he had received from them £10 as compensation for his injuries, "and this sum I accept in full discharge of all claims I can or may make in respect of said injury, either under the Employers Liability Act 1880 or otherwise." The pursuer averred that he had been "induced" by the defenders' manager to grant this receipt within a week after leaving the infirmary, and "when he was in a weak state of body and mind and without advice."

The Court *held* that the claim was excluded by the receipt, and dismissed the action.

In October 1895 John Mackie, calender worker, Dundee, raised an action against Strachan, Kinmond, & Company, calenderers, Dundee, for £200 damages in respect of the loss of his left arm, which was so severely injured in the defenders' works on 24th March 1894 that amputation was rendered necessary.

The defenders, besides pleading that the pursuer had set forth no relevant grounds of action, maintained that the action was excluded in respect of a receipt granted by the pursuer on 5th May 1894 for a payment of £10 made to him "*ex gratia*" and "without admitting liability" by the defenders' manager Mr Forbes. The receipt was in the following terms:—"Received from Messrs Strachan, Kinmond, & Company, East Port Calender, Dundee, the sum of £10 sterling, as compensation for

personal injury received by me on March 24th 1894 while in their employment, and this sum I accept in full discharge of all claims I can or may make in respect of said injury, either under the Employers Liability Act 1880 or otherwise." With regard to this receipt, which was produced in process, and which bore the pursuer's signature across a penny stamp, the pursuer averred—"(Cond. 9) Admitted that the pursuer received payment, through the defenders' manager Mr Forbes, of the sum of £10, and gave a receipt therefor. Denied that the defenders made said payment *ex gratia* or without admitting liability. The terms of said receipt admit or at least imply an admission of liability. Explained and averred that defenders' manager Mr Forbes called upon the pursuer within a week of his leaving the infirmary, and induced him, when he was in a weak state of body and mind, and without advice, to sign said receipt for £10, on the distinct assurance that he would not be left in want. The defenders have not implemented the conditions on which the said receipt was granted to them."

The Sheriff-Substitute (CAMPBELL SMITH) having sustained the defenders' plea to the relevancy, and dismissed the action, the Sheriff (COMRIE THOMSON) adhered, expressing further the opinion that the action could not be maintained in the face of the receipt.

The pursuer appealed. At the hearing it was stated that on the occasion of the granting of the receipt, the pursuer had not consulted any agent, and that the interview was one between the parties themselves; further, that the pursuer was willing to repay the £10 if the Court permitted the action to proceed.

Argued for pursuer—The averments were sufficient to elide the receipt, and reduction was unnecessary. These averments were that the pursuer was, when he granted it, an old man weak in body and mind from recent suffering, and under the pressure of dealing with his employer, who had ascendency over him, and promised him that if he signed the receipt he would be kept out of all want. The parties were not on equal terms, and the transaction ought not to stand, especially where the pursuer offered restitution. The case of *Woods* v. *North British Railway Co.*, July 2, 1891, 18 R. (H. of L.) 27, was not in point. In that case there was a proof as to the circumstances in which the receipt was given. Here the defenders asked judgment without inquiry.

LORD JUSTICE-CLERK — There may of course be some cases in which the pursuer, although he has granted such a discharge as we have here, may make such averments on record as would lead to inquiry being made into the circumstances in which it was granted. But in the present case I find on record no averment to the effect that the pursuer was not quite as fit both in body and mind to grant a discharge as the pursuer in the case of *Woods* was held to be. In that case I may remark that we gave our decision after the defenders' counsel had stated to us that he could not maintain the discharge to the effect of excluding the action, but in the House of Lords the learned Lords were asked to hold the discharge as excluding the action.

LORD YOUNG concurred.

LORD TRAYNER—I agree that this discharge is a complete bar to the present action. No doubt the discharge might have been set aside if relevant averments for the purpose had been made and proved. I think reduction would not have been indispensable, and that if averments sufficient to warrant setting aside the discharge had been made and proved, it might have been set aside by exception under the Sheriff Court Act 1877. But we have here no grounds to support reduction or exception. The discharge is complete and adequate, and there is nothing to show that it was not an honest settlement fully understood by the pursuer.

LORD MONCREIFF—I concur. I find in the statements of the pursuer no grounds which would support an action of reduction of this discharge.

The Court refused the appeal.

Counsel for the Pursuer—Blair. Agent—A. W. Ketchen, Solicitor.

Counsel for the Defender—Sym. Agents—Reid & Guild, W.S.

Wednesday, July 15.

FIRST DIVISION.

[Lord Stormonth Darling, Ordinary.

ROSS *v.* ROSS.

(*Ante*, p. 607.)

Succession—Provisions to Children—Legitim—Election—Equitable Compensation.

A testator by universal settlement conveyed to his widow his moveable estate for her own behoof, and his heritable estate for behoof of herself in liferent and his son in fee. The son having claimed legitim, the widow raised an action against him to have it declared that he had thereby renounced and forfeited the heritable estate, and that the said heritable estate belonged to her in fee-simple.

The son having stated in a minute that he did not aver that the value of the heritable estate, subject to the widow's liferent, was greater than the value of the legitim due to him, *held* (*aff.* judgment of Lord Stormonth Darling) that the widow was entitled to equitable compensation *in forma specifica* for the loss of the legitim fund, and therefore to declarator as craved.

The late Sir Charles Ross of Balnagown