with *ad valorem* duty. The question for us is whether that determination is right or wrong. On that I agree with your Lordship that this instrument does not fall within the 54th section of the Act, which it is said to do by the Commissioners. Of course the conveyance on sale there described is said to include every instrument and decree of Court "whereby any property or any estate or interest," &c.—[*reads*]. Now, the question is whether this is a transfer on a sale. I can find with your Lordship no evidence of sale in the matter. We should naturally look in the case of sale for a seller. Who is the seller? There is no disposition contained in this instrument at all, no conveyance by any seller whatever. There is no disponee. All that is done by this instrument is that the Sheriff, under powers conferred upon him, has declared a certain right of reversion forfeited. That does not appear to me to partake at all of the character of a transfer on sale. Therefore I agree with your Lordship that the determination of the Commissioners in this case is wrong, and that the case falls expressly within the 62nd section of the Act, which provides—[*reads*]. It is by a decree of the Court and not a sale at all that this property is declared to be vested in the proprietor. I therefore agree with your Lordship.

LORD KINNEAR—I am of the same opinion. I think it clear that the right arising to the creditor under the 8th section of the Heritable Securities Act 1894 is not a right which arises from sale. A sale of land is a consensual contract by virtue of which the seller becomes bound to convey the land which is the subject-matter of the contract to the buyer for a price, and the conveyance on sale must be a conveyance which is executed in the performance of such a contract. There is no such contract here. The appellant acquired a totally different kind of right from the original owner of the property. He acquired a right in security only, which is a totally different thing from the right of property acquired by a purchaser upon a sale. Then the Heritable Securities Act comes in and gives him what your Lordships have described as a novel remedy, and which certainly is a remedy which does not belong to creditors by the law of Scotland before the passing of that statute. The statute provides a new and very ready method by which a creditor may be enabled to make the subject of a security available for the payment of his debt, and in the application of that method he has obtained a decree from the Sheriff extinguishing the right of his debtor—the right of the owner of the land—and vesting the right of property in the creditor. That appears to me to be certainly not a right arising upon a sale, for the reasons which your Lordships have already given. It is agreed by both parties that it is not a conveyance upon a mortgage, but nevertheless it is a decree which has the effect of transferring and vesting in the appellant a right of property which had previously been vested in another person, that is, in the borrower. It appears to me, therefore, that it falls directly under the language of the 62nd section of the statute, and that the duty chargeable must be in accordance with that section.

LORD M'LAREN was absent.

The Court pronounced the following interlocutor:—

"Reverse the determination of the Commissioners: Assess the duty of 10s. on the instrument in question, being the duty chargeable upon a 'conveyance or transfer other than a conveyance or transfer on a sale,' under section 62 of the Stamp Act 1891; and ordain the Commissioners of Inland Revenue to repay to the appellant the sum of £134, 10s., being the excess duty paid."

Counsel for Appellant—Guthrie—Aitken. Agents—Smith & Watt, W.S.

Counsel for Inland Revenue—A. J. Young. Agent—Philip J. Hamilton Grierson, Solicitor of Inland Revenue.

Friday, June 18.

FIRST DIVISION.

[Dean of Guild Court, Leith.

MACGREGOR *v.* MAGISTRATES OF LEITH.

Burgh—Dean of Guild—Jurisdiction and Powers—Alterations of Structure—Burgh Police Act (55 *and* 56 *Vict. cap.* 55), *sec.* 167.

Where proposed structural alterations of an existing building are admittedly such as to improve the light and ventilation thereof, it is *ultra vires* of the commissioners of a burgh, in the exercise of the powers conferred upon them by section 167 of the Burgh Police Act 1892, to refuse to grant warrant for such alterations on the ground that the existing building itself is defective as regards light and ventilation.

William Daniel Macgregor, the proprietor of certain tenements in Leith, presented a petition to the Magistrates of that burgh in their Dean of Guild Jurisdiction for warrant "to improve the lighting, ventilation, and sanitary arrangements of the premises" by executing certain alterations, such as enlarging windows, taking down partitions, providing a new bathroom, &c.

On 26th April 1897 the Master of Works, after examining the plans lodged with the petition, reported as follows—"The alterations to be made on the windows shown on the plan may improve in a slight degree the light of the respective rooms. It may be further stated for the information of the Court, with respect to the buildings, that

they are situated in a badly ventilated and badly lighted place. They are, besides, low in the ceilings, the height of the apartments being in most instances under eight feet. The apartments on the ground and first floors are very badly lighted and ventilated. It appears to the Master of Works that any alterations short of entire reconstruction of the premises on sanitary principles can never make the premises thoroughly healthful and suitable for the housing of people of the working classes. It is, indeed, even doubtful whether it would not, in the long run, be more profitable for the proprietor to clear away the buildings entirely, and leave the space presently occupied by it open for light and ventilation and the improvement generally of his remaining houses, and making them suitable and healthful for those who may occupy them."

The assistant to the Master of Works, the Medical Officer of Health, and the Sanitary Inspector reported as follows—"The plans submitted show a slight improvement in the means of lighting the premises; but the 'free space' adjoining the altered building is less than that required by the provisions of the Burgh Police (Scotland) Act 1892, section 170, and accordingly we are of opinion that the plans do not provide suitably for light and ventilation."

In obedience to a further remit by the Court, the Medical Officer of Health and the Sanitary Inspector again reported in the following terms—"(*a*) *Lighting.*—The plans show a slight improvement in the means of lighting the premises. On the south side the stair window has been enlarged, and on the north side the number of windows has been increased. But more than half the boarding-house is closely surrounded by other buildings. To the north side of the house the only free space consists of a passage — marked "passage" on plans—seven feet wide, and the buildings facing the boarding-house are three storey high. These buildings, which are let in houses of one and two rooms, at present accommodate nearly eighty persons in a total of twenty-eight rooms. The boarding-house accommodates about forty-seven persons, and the proposed alterations may lead to an increase of lodgers. Into the 'passage' very little direct sunlight enters. Consequently from the north side the ground floor and first floor rooms are badly lighted. Again, to the south side of the boarding-house the space between buildings is only two feet wide, and the wall on the opposite side of this space rises to the second floor of the boarding-house. Consequently on the south side the sunlight is shut out almost entirely. From the standpoint of public health, no living or sleeping room can be considered 'suitably' lighted unless it is so situated that at some period of the day sunlight may have direct access to it. It is proper to add that the dining-room and top floor are well lighted from the south side. (*b*) *Ventilation.*—For the purposes of ventilation the space to the south side is of little or no value. This space is liable to become foul; on one occasion it has had to be cleaned out by the Local Authority, and it will itself from time to time require both ventilation and cleaning. Again, the 'passage' being bounded on the north side by densely-occupied high buildings, is not in our opinion sufficient for the ventilation of a lodging-house in so crowded a locality. It may be added that by this passage about one hundred and twenty-six persons have ingress and egress. In these circumstances we do not consider it necessary to offer any more detailed criticism of the plans. On these grounds we base our opinion that the plans do not 'provide suitably' for lighting and ventilation." They added that, so far as shown on the plans, the drainage system was satisfactory.

The Burgh Police (Scotland) Act 1892 (55 and 56 Vict. cap. 55), sec. 166, enacts that every person who proposes to erect any house or building, or to alter the structure of and to use for human habitation any existing house or building which had not been previously used for that purpose, or to alter the mode of occupancy of any existing house in such a manner as to increase the number of houses or occupants, shall lodge with the clerk of the commissioners a petition for warrant to do so, . . . and also plans, sections, elevations, and such detailed drawings as are necessary to show the height and mode of structure and arrangement of the intended house or building or alteration.

Section 167—"The clerk of the commissioners shall, at their first meeting, after receiving such petition, give notice thereof to the commissioners, who may decline to grant warrant for the erection of any new house or building, or for the alteration of the structure of any existing house or building, until satisfied that the plans provide suitably for stability, light, ventilation, and other sanitary requirements."

On 6th May 1897 the Magistrates pronounced an interlocutor finding "that the plans do not provide suitably for light and ventilation in terms of clause 167 of the Burgh Police (Scotland) Act 1892," and therefore declining to grant the warrant craved.

Note.—"Section 201 of the Burgh Police (Scotland) Act 1892 provides that in burghs where there is a Dean of Guild Court, the Court shall come in room and place of the commissioners for carrying out the provisions of the Act, in so far as they apply to, *inter alia*, the alteration of existing buildings.

"In Leith there is a Dean of Guild Court, and therefore the jurisdiction in these matters falls to be exercised in that Court.

"The Court has satisfied itself, both by inspection of the premises, and the reports of the medical officer of health and the sanitary inspector, that the plans do not provide suitably for light and ventilation, and therefore it has no alternative than to decline the warrant craved.

"This decision was arrived at by a majority of three to two of the Court."

The petitioner reclaimed, and argued—The interlocutor was *ultra vires* of the Dean of Guild Court. It was admitted that the petitioner's proposed alterations were in themselves improvements on the existing building, but the Dean of Guild Court instead of confining their attention to the alterations, which they were bound to do under section 167, had considered the state of the existing building, and on the principle that the better was the enemy of the good had refused warrant. The consequences of such a method of procedure would be most serious for owners of property. They might be precluded from improving existing structures until they became uninhabitable.

Argued for the Magistrates of Leith—The Dean of Guild Court had not exceeded its powers. It was authorised to refuse to grant warrant for the alteration of an existing house. The proposed alterations would probably increase the number of lodgers in the house; and section 169 forbade any alteration which would have that effect to be made without a warrant. The increased number of lodgers was a consideration embraced in the "other sanitary requirements" mentioned in section 167, provision for which must be made in the plans; and that phrase must be taken as alternative to light and ventilation.

At advising—

LORD PRESIDENT — Under the Burgh Police (Scotland) Act 1892 no one is entitled to alter the structure of an existing house in the burgh without a warrant of the commissioners. Anyone who proposes to alter the structure of a house has to present a petition to the commissioners for warrant to do so, and the petition must set forth a description of the alteration, with such relative plans as are necessary to show the height and mode of structure and arrangement of the intended alteration.

The present appellant proposed to alter the structure of his existing house, and he accordingly petitioned the Magistrates of Leith, who are the commissioners of that burgh, for warrant to do so, describing the proposed alterations, and lodging plans in accordance with the statute. The Magistrates have declined to grant the warrant craved, on the ground that they are not satisfied that the plans provide suitably for light and ventilation.

From the proceedings, however, it appears, and in debate it was admitted, that the objection of the Magistrates is not to the alteration, which alone required their sanction, but to the light and ventilation of the house as it exists, and as it will be after the alteration. It is admitted that the alteration, so far as it affects the light and ventilation of the house, improves them. This being so, it seems to me that the Magistrates were bound to grant the warrant. As this was a lawfully existing house, the question before the Court was the merits of the alteration, and not the merits of the house apart from that alteration. I have called this a lawfully existing house, because *de facto* it existed unchallenged. If its defects in the matters of light and ventilation had exposed it to any hostile action on the part of the Magistrates, it is to be presumed that such action would have been taken. What has been done is to take advantage of the appellant's application to improve his house in order to condemn the house, and this is, in my judgment, a misapplication of section 167.

I am for recalling the interlocutor and remitting to the Magistrates to grant the warrant craved.

LORD ADAM and LORD KINNEAR concurred.

LORD M'LAREN was absent.

The Court recalled the interlocutor and remitted to the Magistrates to grant the warrant craved.

Counsel for the Petitioner — Cooper — Munro. Agent—Robert D. Ker, W.S.

Counsel for the Respondents — Balfour, Q.C.—Salvesen. Agents—Irons, Roberts, & Company, W.S.

Friday, June 18.

FIRST DIVISION.

[Sheriff of Aberdeen, Kincardine, and Banff.

MURRAY *v.* RENNIE & ANGUS.

Contract — Implied Condition — Construction of Condition.

In an action for implement of a contract constituted by an offer to execute certain mason-work for a certain sum and acceptance thereof within eleven days of the date of the offer, the defender founded upon one of a number of "conditions of tendering" agreed to by the architects in Aberdeen and the Master Masons Association, of which he was a member.

The condition founded upon was "that architects shall within seven days from date of lodging estimates (either by advertisement or otherwise) inform the contractors who have tendered for work as to who has been successful, and that contractors shall be held bound to abide by their estimates for the same time."

No date had been specified by the pursuer for the lodging of offers.

Held that whether or not these conditions might otherwise enter into the contract between the pursuer and defender, the condition in question had no application thereto, being designed to meet a state of matters where one definite date was fixed for the lodging of all estimates.

Contract — Acceptance — Undue Delay in Acceptance—Proof.

In an action for implement of a