Light and air : a text-book in tabulated form for architects, surveyors, & others, showing what constitutes ancient light; how the right is acquired, jeopardised, or lost; injuries without remedy; the relative position of servient and dominant owners; and methods of estimating injuries, with outline of matters to remember in preparing for the trial, and also full reports and digests of ruling cases / by the late Professor Banister Fletcher.

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LIGHT AND AIR.

BY

BANISTER FLETCHER

FOURTH EDITION

LIGHT AND AIR

"And thinks no light so cheering
As that light which heaven sheds."

MOORE.

" . . . the air
Nimbly and sweetly recommends itself
Unto our gentle senses."

Macbeth, Act i. Scene 6.

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ARCHITECTS, SURVEYORS, & OTHERS

SHOWING WHAT CONSTITUTES ANCIENT LIGHT; HOW THE RIGHT IS ACQUIRED, JEOPARDISED, OR LOST; INJURIES WITHOUT REMEDY; THE RELATIVE POSITION OF SERVIENT AND DOMINANT OWNERS; AND METHODS OF ESTIMATING INJURIES,

With Outline of matters to remember in preparing for the Trial,

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1902

PREFACE TO THE FOURTH EDITION.

This work being again out of print, we have been asked by the publishers to revise and rewrite a new Edition. Pressure of professional engagements has prevented our doing so for some months. This has not been unfortunate because in the meantime the important cases of *Warren* v. *Brown* and *Home & Colonial Stores* v. *Colls* (see pp. 93 and 99) have been heard in the Court of Appeal, and we are therefore enabled to give their weighty decisions. Several judges on the equity side have seemed in recent years to incline rather to a leniency towards the servient owner with regard to light and air, and to treat easements of this nature on a different basis to those of any other nature. The Court of Appeal has now put the law in the same state as it used to be, and any material damage to this form of easement is treated in a serious manner. We have given some of the legal discussions *in extenso* because we feel that by studying the more important judgments of the Courts, the law on the subject is better understood than by giving a mere summary, which latter is sometimes liable to give incomplete and erroneous impressions.

We have endeavoured to make the work more useful by giving leading cases (with references) and modern decisions,

and have added six new plates illustrating the effect of new buildings upon existing easements, such diagrams having been successful in the Courts. We would warn our readers, however, against accepting any fixed rules as to angles of obstruction, &c., as they must remember that each case must depend upon its own merits, and that which is applicable in one case is often useless in another.

BANISTER F. FLETCHER.
H. PHILLIPS FLETCHER.

March 1902.

INTRODUCTORY NOTE.

THERE have been many papers read, and many discussions have taken place during recent years, at the Royal Institute of British Architects and at the Surveyors' Institution upon the necessity of some kind of modification of the existing law relating to light and air. These latter culminated in a report issued by a joint Committee of the two Institutes in 1901. This report embraces the following suggestions (*inter alia*) of which we give a brief summary :—

1. That in future it shall be impossible to acquire the easement of light of an extraordinary amount for special purposes.

2. That an owner against whom the Prescription Act has not run may serve notice upon his neighbour. Such notice to be equivalent to an interruption for one year. The notice to run with the land.

3. Plans of buildings to be taken down may be prepared and certified by District Surveyor, or County Borough Surveyor, and such plans to be accepted as legal evidence.

4. No building erected after the 1st January 1905 abutting upon any street, &c., shall acquire fresh rights of light and air.

Clauses 5, 6, 7, 8, and 9 set out that the dominant owner may require to see plans of proposed buildings, and if he objects he is to appoint his surveyor. The servient owner is to do the same. The surveyors are to appoint an umpire.

10. Provides for a Tribunal to whom either party may appeal from the umpire.

11. Provides for a further appeal to the High Court.

12. In any action either party may apply to the Judge by summons to hear the case with an assessor or assessors, or to refer the same to arbitration under Clauses 8 and 10.

We have the very greatest respect for the distinguished gentlemen who formed this Committee, but we do not think that the methods suggested will justly meet the present position of the question. The suggestions contained in Clauses 5 to 10 are founded upon the present procedure, under the London Building Act, 1894, for the settlement of party wall disputes. But the many legal points that are often involved in light and air cases should scarcely be left to the surveyors to settle. Moreover, it seems to us that the permission to keep on appealing might delay the building operations much more than at the present time.

Another point that seems to have escaped the Joint Committee is that if the easement to light and air is to be abolished, why should not this be applied to any other kind of easement? A purchaser is as much entitled to buy a house with dominant lights as he has to buy one with any other easement, such as a right of support, &c.

We are quite aware from bitter experience how galling it is to have clients' buildings stopped because it is alleged that you are infringing some dominant easement, and many of us, from continually looking at light and air from this standpoint, are perhaps apt to take rather a one-sided view. If we were to put ourselves in the place of a purchaser who had bought a building solely because of its

dominant light, which latter was essential for his special business purposes, we might perhaps be of opinion that the law as it stands, does not even protect the dominant owner sufficiently.

We are inclined to think that the present methods are the best, with the exception that a professional assessor or assessors might sit with the judge, in a similar manner as is customary in the Admiralty Division.

CONTENTS.

LIST OF ABBREVIATIONS.

A. & E.	-	Adolphus and Ellis's Reports, Queen's Fench, 1834-41.
Bing.	-	Bingham's Reports, Common Pleas, 1822-34.
Camp.	-	Campbell's Reports, *Nisi Prius*, 1807-16.
C. & P.	-	Carrington and Payne's Reports, *Nisi Prius*, 1823-41.
C.B., N.S.	-	Common Bench Reports, New Series, 1856-65.
Ch.D.	-	Chancery Division, Law Reports.
Cl. & F.	-	Clark and Finnelly's Reports, House of Lords, 1831-46.
C. M. & R.	-	Crompton, Meeson, and Roscoe's Reports, Exchequer, 1834-36.
C.P.D.	-	Law Reports, Common Pleas Division, 1875-80.
Cro. Eliz.	-	Croke, time of Elizabeth, Queen's Bench, 1581-1603.
Dick.	-	Dickens, Chancery.
Dr. & Sm.	-	Drewry and Smale's Reports, Chancery, 1860-65.
E. & B.	-	Ellis and Blackburn's Reports, Queen's Bench, 1852-8.
East	-	East's Reports, King's Bench, 1801-12.
Eq.	-	Equity.
Esp.	-	Espinasse, *Nisi Prius*, 1793-1807.
Ex. Rep.	-	Welsby, Hurlstone, and Gordon's Exchequer Reports, 1847-56.
H.L.C.	-	Clark's House of Lords Reports, 1847-65.
H. & M.	-	Heming and Miller's Reports, Chancery, 1862-65.
H. & N.	-	Hurlstone and Norman's Reports, Exchequer, 1856-61.
I.R., Ch.	-	Irish Reports, Chancery.
J. & H.	-	Johnson and Heming's Reports, Chancery, 1859-62.
Keb.	-	Keble, King's Bench, 1661-71.
Lev.	-	Levinz's Reports, King's Bench, 1660-97.
L.J.	-	Law Journal Reports.

L.J., C.	Law Journal, Chancery.
L.J., C.P.	Law Journal, Common Pleas.
L.J., O.S.	Law Journal Reports, Old Series, 1823-31.
L.J., Q.B.	Law Journal Reports, Queen's Bench.
L.J.R., N.S.	Law Journal Reports, New Series, from 1831.
L.R., Eq.	Law Reports, Equity Cases, 1865-75.
L.R., 4 Ex.	Law Reports, 4 Exchequer.
L.R., 5 Ch.	Law Reports, 5 Chancery.
L.T.	Law Times Reports.
L.T., N.S.	Law Times Reports, New Series.
M. & R.	Moody and Robinson's Reports, *Nisi Prius*, 1830-44.
Myl. & C.	Mylne and Craig, Chancery, 1837-48.
Myl. & K.	Mylne and Keen, Chancery, 1831-35.
Mod.	Modern (Leach's), King's Bench, 1669-1700.
Poph.	Popham, Queen's Bench, 1591-1651.
R.R.	The Revised Reports.
Rep.	Coke's Reports, 1572-1616.
Sid.	Sir T. Siderfin, King's Bench, 1659-71.
Vern.	Vernon, Chancery, 1680-1711.
Ves. Sen.	Vesey Senior's Reports, Chancery, 1747-56.
W.R.	Weekly Reporter.
Wms. Saunds.	Williams and Saunders' Reports.
Yel.	Yelverton, King's Bench, 1602-13.

TABLE OF CASES CITED.

LIGHT AND AIR.

CHAPTER I.

THE NATURE OF LIGHT AND THE LIGHTING OF BUILDINGS.

PRELIMINARY INVESTIGATIONS—REFLECTION, REFRACTION, AND DISPERSION—SOLAR LIGHT, COMPOSITION OF—PRIMARY COLOURS—COLOUR, COMBINATIONS AND CONTRASTS OF — WHITE LIGHT—ASSUMPTION THAT SKY IS UNIFORMLY LIGHTED—DIRECT SOLAR RAYS NOT USUALLY TAKEN—EFFECT OF DISTANCE—EFFUSION OF LIGHT—VERTICAL WINDOWS, SIZE OF—AFFECTED BY CLIMATE—LAWS FOR DIFFERENT CLIMATES VARY—SUGGESTIONS OF SIR WILLIAM CHAMBERS, ROBERT MORRIS, AND GWILT—MODEL BYE-LAWS AND BUILDING ACT—THE ABOVE NOT SUFFICIENT IN SOME CASES—POSITION OF WINDOWS—REGULATION OF EDUCATION DEPARTMENT—SKYLIGHTS AND LANTERNS—PANTHEON—GLAZING—TABLE SHOWING EFFECT OF DIFFERENT GLASS IN INTERCEPTING LIGHT—ASSISTED NATURAL LIGHTING—GLAZED BRICKS—COLOURS OF PAINT — EXTERNAL REFLECTORS — PRISMATIC LIGHTS.

WITHOUT going into scientific investigations with regard to the phenomena of light, a few remarks may not be out of place in order to introduce the subject of this treatise. Firstly, it may be mentioned that a preliminary investigation into the elements of light will be of service to the reader, and one of the elementary text-books on the subject may be studied with advantage. In most of such works, **reflection**, **refraction**, and **dispersion**, are treated at length, and with the aid of simple experiments, which are usually given, are made interesting and instructive.

Solar Light was discovered by Newton to be a mixture, the whiteness of which is due to the proportions of its ingredients. By means of a prism of glass he threw a luminous band of light upon a screen, and this band was found to contain the following colours—red, green, violet, orange, yellow, blue, and indigo. The first three are the primary colours, and the others are an admixture caused by the overlapping of the adjacent bands in the prismatic spectrum. When an object is called a particular colour, we mean that it gives free passage or reflection (as the case may be) to that particular colour or mixture of colours, and that it arrests or absorbs the remaining colours. Certain combinations and contrasts of colours are pleasing to the eye, and according to Professor Barff, these are only existent when their combination, taken collectively, makes up white light. When two or more colours of the spectrum, by being blended together, produce white light, such colours are said to be complementary of each other.

It is generally assumed that the sky is uniformly illuminated, and in estimating the injury to ancient lights, often the obstruction, not of direct solar rays, but of the general light of the sky is mostly considered.

The effect of distance must also be taken into account, inasmuch as the more remote the obstacle is, the angle of obstruction being the same, the more does the influence of diffusion of light counteract the effect of any such obstruction. This quality of diffusion is very important, diffused daylight being light reflected from the sky, and diffused thence equally to all exposed surfaces.

The Admission of Light to buildings may be classed under the following headings :—

(*a.*) **Vertical Windows.**

(*b.*) **Skylights and Lanterns.**

(*a.*) **Vertical Windows.** — The necessary size for windows to afford sufficient light for interiors of buildings must depend very largely upon the particular circumstances

in each case. For instance, in most cases, if the light in front of a window is uninterrupted, a less quantity of window area would be required than if there were an obstruction, say, of another building close at hand.

The question of climate must also necessarily affect our calculations, and the laws laid down by Vitruvius, Palladio, and Scamozzi, can scarcely be applicable to climates more distant from the equator, and influenced by local considerations, it being an axiom that fewer and smaller windows are required in a warmer climate. Sir William Chambers recommended adding the depth and height of the rooms on the principal floor together, and taking one-eighth part thereof for the width of the window. Robert Morris recommended that the superficial area of the lighting surface should equal the square root of cubical contents of the room in feet. Gwilt was of opinion that one foot superficial of light in a vertical wall, would in a square room be sufficient for 100 cubic feet of the contents, if placed centrally. This is based on the supposition that the building is free from obstruction by high objects in the neighbourhood, which, of course, is very seldom the case in towns. The model bye-laws of the Local Government Board state that the area of the windows in a room should be at least equal to one-tenth of the floor area of such room, and this provision is also incorporated in the London Building Act of 1894. It is evident, however, that as already mentioned, while such window-openings might be sufficient under favourable circumstances, in other cases, insufficiency of light would result from following such rules, so that no hard and fast rule can be laid down, but the experience of the architect must be utilised in each particular instance.

The Position of Windows is also of importance, and must be taken into account; a room with a central or odd number of windows in its wall is always more effectively lighted and brighter than one which has an even number

of windows, and therefore a pier in the centre of its lighting wall. In a long narrow room more effect is obtained by lighting from the ends than from the sides, for if lighted by windows in the longer walls so many more shadows would be cast. This is well exemplified in the ball-room at Windsor Castle, which is 90 feet by 34 feet and is 33 feet high. It is illuminated by a northern window in one of the narrower sides, occupying nearly the whole width of the wall. Different types of building require different light. One of the regulations of the Education Department is to the effect that school desks should be lighted from the left hand side. This is a wise precaution, for if the light be *only* behind the student, the body will cast a shadow on the desk in front of him. Again if the light be on the right hand, the desk will be in the shadow of that hand. If the light be directly in front, the reflected light from the surface of the table is directed into the eyes of the worker and causes an increased strain upon them. It is obvious that no fixed rules can be laid down as to the positions of various rooms in relation to the points of the compass, as so much depends upon the various characteristics of the site and other local considerations.

(*b.*) **Skylights and Lanterns.**—We learn from the ancients that light has a greater illuminating value when admitted through a horizontal aperture in the ceiling, and no greater proof of this can be found than in the Pantheon at Rome. The diameter of the eye of this dome is only 27 ft., and yet the building is well and sufficiently lighted, though each superficial foot of lighting area has to suffice for nearly 3,400 cubic feet of the contents of the structure.

It is therefore evident that top lighting by means of skylights and lanterns is more effective than vertical light through ordinary windows, but it is seldom possible to use such means.

Glazing.—To enumerate the various kinds of glass in use in buildings would be a long matter. In the better

rooms of dwelling-houses polished plate glass ¼ in. thick is frequently used, and it has the practical advantage of affording less resistance to the admission of light. In consequence of its greater thickness it does not dissipate the heat of the room so quickly as sheet glass. It has a further advantage in that sound does not so easily penetrate it.

According to Sir David Brewster, all glass with a roughened or fluted surface increases the amount of light that penetrates any window, but it should be remembered that such surfaces are prone to harbour dust and dirt.

The following table shows the result of some recent experiments :—

Nature of Glass.	Percentage of Light Intercepted.
Polished British plate, ¼ in. thick -	13
36 oz. sheet - - - -	22
Cast plate, ¼ in. thick - - -	30
Rolled plate, four corrugations to 1 in. -	53

Assisted Natural Lighting.

In rooms facing narrow thoroughfares and areas adjacent to high buildings, and in basement and other places where the solar rays have but limited access, some means are often taken for assisting the natural lighting.

The covering of the face of the obstructive walls with white glazed tiles, or facing the same with white glazed bricks, does something to assist the reflection of light into such rooms, provided such walls be kept in a sufficient degree of cleanliness.

The painting of the walls of rooms in light colours, or even lining them with white tiles, also renders them brighter and more cheerful.

It is also found that by keeping the window frame flush with the external face of the wall, more light is admitted into the room.

Assistance to natural light can be rendered by **external reflectors** and by **prismatic lights**.

External reflectors may be placed outside windows at such an angle that they reflect the rays of light into the rooms through the windows before which they are placed.

In America and Canada within the last few years the high buildings have necessitated the adoption of some means of refracting the light to the lower windows, so as to carry the illumination to the back of the rooms. This has been effected to a large extent by **luxfer prisms**, which have now been introduced to this country. They are designed upon the following principle:—The direct natural light coming from the sky is to a large extent absorbed by the floor, although even ordinary glass has some refractive influence upon light, and thus bends some rays into the room. This law of refraction has been utilised in the luxfer prisms, and the latter are so constructed and arranged to suit the varied cases that may arise, either as canopies above the windows, or flush with the windows themselves. Basements are lighted by pavement lenses, which throw the light down on to a canopy fixed vertically, which in its turn refracts the light in a horizontal direction to the rear of the apartment.

CHAPTER II.

HISTORICAL.

PRESCRIPTION—EVIDENCE IN WHICH A GRANT MIGHT BE PRESUMED —GLEBE LAND—*Nec Vi, Nec Clam, Nec Precario*—2 AND 3 WILL. 4, C. 71.

THE present limitation of time to acquire a right to window-light is of modern date.

In former times the period required varied much at different epochs. In the earliest ages of the English law * the right to window-lights by occupancy was gained by prescription, by showing the enjoyment of the window-lights since the beginning of legal memory.

In a case in the reign of Henry the Sixth, it was said by Markham, J.: "If I have a house by prescription upon my soil, and another erects a new house upon his own soil next adjoining, so near to my house that it stops the light of my house, this is a nuisance to my house; for the light is of great comfort and profit to me." † And to the same effect were the expressions of Whitlocke, C. J.: "Like to the case where a man hath a house with windows in it, and another stops the light, then he may have an action upon the case; but true it is, that he shall not only count for the loss of the air, but also he ought to prescribe that time out of mind light had entered by those windows." ‡

Curiously, this "time out of mind"—time during which

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* Latham's "Treatise on the Law of Window-lights."

† 22 Hen. 6, c. 15; Vin. Abr. Nuisance, G. pl. 10.

‡ *Sury* v. *Pigot*, Poph., 866; Tudor's "Leading Cases in Conveyancing," 527; *et vide* the declarations in the cases of *Bland* v. *Mosely*, cited 9 Rep., 18*a*, and *Hughes* v. *Keeme*, Yel., 215.

the memory of man had not run to the contrary—was ultimately settled to begin with the commencement of the reign of Richard the First. Of course, such a fixed date, as time rolled on, became intolerable; and we find a case cited in the law-books (*Bowry* v. *Pope*, 1 Lev., 168), in the thirtieth and thirty-first year of Queen Elizabeth, where, after the plaintiff had obtained a verdict for the obstruction of his ancient lights, the defendant moved in arrest of judgment that the windows, by the plaintiff's own showing, had been made in the reign of Queen Mary; and the Court affirmed this.

At this time much doubt seems to have existed in the Courts, for all the justices are stated to have agreed to the following:—"That if two men be owners of two parcels of land adjoining, and one of them doth build a house upon his land, and makes windows and lights looking into the other's lands, and this house and the lights have continued by the space of thirty or forty years, yet the other may, upon his own land and soil, lawfully erect a house or other thing against the said lights and windows, and the other can have no action, for it was his folly to build his house so near to the other's land; and it was adjudged accordingly."*

It would appear that it was in the year 1623 that the fixed date was abolished, with its recurring necessity for a new date, to be from time to time agreed upon; and the time was fixed, by Act of Parliament, at twenty years. This Act, which is called the Statute of Limitations, does not allude to ancient lights at all; but, as it gave a limit of twenty years to the power of recovering by ejectment, it was considered sufficient to confer a title to an easement belonging to the house—Chief Justice Wilmot pithily remarking, "If my possession of the house cannot be disturbed, shall I be disturbed in my lights?"

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* S. C. nomine *Bury* v. *Pope*, Cro. Eliz., 118.

Yet at this period the law seems to have been uncertain, and to have had a good deal of the "John Roe" and "Richard Doe" (now somewhat exploded) about its methods; for twenty years did not give absolute right, but it was presumptive proof from which the jury *were directed* to find the existence of an agreement, the theory being that there was an agreement between the parties. Of course, this agreement was non-existent in reality; Lord Mansfield saying that the enjoyment of lights, with the defendant's acquiescence, for twenty years is such decisive presumption of a right, by grant or otherwise, that, unless contradicted, or explained, the jury ought to believe it—his view being that it was impossible that length of time (not even time immemorial) can do more than create a presumptive bar.

A curious case is quoted in the law-books (*Darwin* v. *Upton*),* where windows had been enjoyed for more than twenty years. The defence was that twenty-five years before, that is, five years before the commencement of the running of the twenty years, the owner of the adjoining land had given permission to put one window, and it was contended that this could be the only grant sustained; and the judge considered it a point that might be left to the jury to decide.

It would seem that a workshop built for the purpose of trade, and therefore removable as between landlord and tenant, did not give the right of light to its windows. The old law would appear to have been, at this time, that "twenty years'" uninterrupted possession was evidence from which a jury might presume a grant, and had to be taken with the qualification that the possession was with the acquiescence of him who was seized of an estate of inheritance; for a tenant for life or years had no power to grant any such right for a longer period than during the continuance of his particular estate. If a tenant for life

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* 2 Wms. Saunds., 175*b*.

or years permitted another to enjoy an easement on his estate for twenty years or upwards without interruption, and then the particular estate determined, such user would not affect him who had the inheritance in reversion or remainder; but when it vested in possession, he might dispute the right to the easement."*

And there are other cases, as, for example, *Daniel* v. *North*,† in which it was so held. In this case, without the knowledge of the reversioner, a person had enjoyed the use of windows he had put for more than twenty years without any interruption from owner of the opposite premises, who, however, was only a tenant holding a lease. He did not acquire a legal right; and when the premises opposite were let to another tenant, who raised the wall, and so injured the light, he could not obtain any relief.

Curiously enough, it was held, where right of light had been enjoyed from glebe land for more than the prescribed time, yet, on the glebe land being conveyed to a defendant, who built thereon and obstructed the light to these windows, that no ancient light had been created; that at most the grant must be presumed to have been made by a tenant for life, and therefore it was invalid. We will not weary our readers with quoting many cases, or we might give three that support this decision.

The view taken by the judges at different epochs appears to have varied considerably, sometimes favouring more the owner of the land, who wanted to acquire light from adjacent land, and at others favouring more the right of owners to build what they liked on their own land, irrespective of any consideration how far it might affect those buildings that had been erected by the adjoining owners. As an example, it was contended that a dean and chapter could not grant an easement so as to injure their successors; but the Vice-Chancellor said, "The right which a man has in

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* *Yard* v. *Ford*, 2 Wms. Saunds., 175*e*.

† 11 East, 372.

his own property is materially affected by the manner in which the owners of the adjoining property have dealt with their property. Therefore it does not follow, because the Dean and Chapter of Westminster cannot injure their successors, that the circumstance of houses having been built on the adjoining land may not of itself operate as a reason, at law, why the dean and chapter should not have the right to erect the building in question. The same reasoning," he implied, "would apply to the Crown."

The law authority we have quoted says, "Still, in very many cases, the acquisition of a right to window-lights over land occupied by tenants for life or years was difficult, if not impossible." And the general rule of law was, that in order that the enjoyment, which is the *quasi* possession of an easement, might confer a right to it by length of time, it must have been open, peaceable, and as of right. The civil law expressed the essential qualities of the user, by the clear and concise rule that it should be *nec vi*, *nec clam*, *nec precario;* this rule raised great difficulties in the way of owners acquiring the right.*

Such, then, is a brief view of the history, and gives the position of this important matter in the year of grace 1832, in which year an Act of Parliament was passed, having for its object the shortening of the period of prescription, and to make possession a bar or title in itself, and thereby avoiding the old necessity of having recourse to the intervention of a jury to make it so.

We shall next have to consider the law as it now stands.

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* See Co. Litt., 113*b*.

CHAPTER III.

Present Position of the Light and Air Question.

PRESCRIPTION ACT—SECTIONS 3 AND 4—DEFINITION OF LIGHT AND AIR—AIR—ACCESS OF AIR—TABLE I., INJURIES TO LIGHT AND AIR FOR WHICH THERE IS NO COMPENSATION—TABLE II., HOW EASEMENT IS ACQUIRED—RAILWAY COMPANIES—TABLE III., WHAT DOES NOT INTERFERE WITH ACQUISITION OF EASEMENT—TABLE IV., HOW ANCIENT LIGHT MAY BE JEOPARDISED—TABLE V., HOW EASEMENT MAY BE EXTINGUISHED.

The Act of 2 & 3 Will. 4, c. 71, did away entirely with the idea that the right rested on any supposed presumption of grant or fiction of a licence. The words of the section which relate to it are:—

Sec. 3. "When the access and use of light to and for any dwelling-house, workshop, or other building shall have been actually enjoyed therewith for the full period of twenty years without interruption, the right thereto shall be deemed absolute and indefeasible, any local usage or custom to the contrary notwithstanding, unless it shall appear that the same was enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing."

Sec. 4. "Each of the respective periods of years hereinbefore mentioned shall be deemed and taken to be the period next before some suit or action wherein the claim or matter to which such period may relate shall have been, or shall be brought into question, and no act or other matter shall be deemed to be an interruption, within the

meaning of the statute, unless the same shall have been or shall be submitted to or acquiesced in for one year after the party interrupted shall have had or shall have notice thereof, and of the person making or authorising the same to be made."

This, then, is the foundation of right, and the first step the surveyor will take, when consulted, is to see if the ancient light comes within the provision of this statute.

It may be well, before proceeding further, to have a clear understanding of "light and air," and we therefore think Mr Latham's definition a sound one :—

"Light and air are, in the English as in the Roman law, *res communes*, things in which no permanent property can be acquired. Every one may use and enjoy them whenever he has the opportunity so to do; no one can acquire a future property in them. The right, then, cannot consist in a title to the possession of the light and air which in all future time will pass over a given space. But it must consist in some obligation, in some manner imposed on the owner of that space, to refrain from so using it as to interfere with the light and air which will pass over it to the tenement to which the light is annexed. Of this obligation we shall be able to form a clearer notion by a short examination of the respective rights of the owners of two adjoining pieces of land, previous to the acquisition of any right by the one, and the imposition of any obligation on the other.

"Every owner of land, with a few unimportant exceptions, is owner also of all the space superincumbent upon that land. '*Cujus est solum, ejus est usque ad cœlum*' is a maxim of the English law. And an interference with the space superincumbent on a man's land is an injury for which the law gives a remedy. Every man may deal with his land and the space above it in such a manner as he thinks fit, so that he do no injury to his neighbour or to the public. He may erect on his land a house with as

many windows as he pleases; and he may build this house on the very extremity of his land, close to the land of his neighbour. By so doing he confers no new right, and inflicts no injury on his neighbour. It is true that the windows of this building may command a view of his neighbour's gardens or pleasure-grounds, or even of the interior of his house—may so invade his privacy, and consequently lessen the value of his property. But this is not considered by the law as a wrong for which any remedy is given."

Lord Coke lays down "that a thing incorporeal cannot be appurtenant or appendant to another thing incorporeal," "so that an easement can only be claimed as accessory to a corporeal hereditament."

Some writers set forth that there can be no claim for "air," and therefore limit their observations entirely to light; but, as Mr Locock Webb pointed out, although it is rare now that a case is established for the interference of the Court upon the ground of stoppage of air, irrespective of the obstruction of light, yet in his own experience such cases had arisen. In his paper before the Institute of British Architects,* he said: For example, in *Kidd* v. *Wagner*, heard before the Master of the Rolls, where the complaint was that the defendant intended to build a new church in Brighton, so close and of such a height as to stop the free passage of light and air to the plaintiff's malthouse, which required a free current of air, a perpetual injunction was obtained; and in *Dickey* v. *Pfeil*, before Mr Justice Fry, where the complaint was mainly grounded on the stoppage of the free current of air to the plaintiff's houses, situated in the crowded neighbourhood of Drury Lane, an interim injunction was obtained; but such instances are exceptional, and in his following observations no distinction is intended to be drawn between the obstruc-

* *Trans. R.I.B.A.*, Session 1877-78.

tion of light and air, although mention is made of the obstruction of light only.

The right to access of air stands on a different footing to that of access of light, and such right over the general unlimited surface of land formerly could not be acquired by mere enjoyment.—*Bryant* v. *Lefever*, 4 C. P. D., 172. For example, a right to the access of air to a chimney of the plaintiff's house, as decided in the last quoted case, or to the plaintiff's windmill, *Webb* v. *Bird*, 13 C. B., N. S., 841 ; 31 L. J., C. P., 335, could not be acquired under 2 & 3 Will. 4, c. 71, 3, 2.

In 1897 this dictum was upheld, in the case of *Chastey and another* v. *Ackland*,* by the Court of Appeal, who held that there could be no right by prescription to air coming over the roofs of houses. The House of Lords, however, when this case came before them, intimated their intention of reversing it, and the parties came to a settlement by which the appellants agreed to accept a sum of money in settlement, the respondents agreeing to pay the costs in the House of Lords and the Courts below. The House of Lords thus practically decided that in certain cases a right to air may be acquired over an indefinite area.

It will therefore be apparent that the surveyor must not lose sight of the question of "air"; and this loss is generally, in one's own experience, set out in the action.

The London Building Act, 1894, Sec. 88, gives a building owner the right to raise any party structure permitted by such Act to be raised; but Sec. 101 specifically states that nothing in this Act shall authorise any interference with an easement of light or other easements, &c. ; and the custom of London respecting the heightening of walls is controlled by the (prescription) Act 2 & 3 Will. 4, c. 71. *Merchant Taylors' Co.* v. *Truscott*, 11 Ex., 855 ; 25 L. J., Ex., 173 ; *Yates* v. *Jack*, L. R., 1 Ch., 295.

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* *Chastey and another* v. *Ackland*, L. T., 76 N. S., 430.

Let us now consider those cases in which the aggrieved party has no remedy against the building owner.

TABLE I.

Injuries sustained by Servient Owner, for which the Law provides no Compensation or Redress.

1. DIMINUTION OF THE VALUE OF A HOUSE CAUSED BY ITS WINDOWS BEING OVERLOOKED.
2. DESTRUCTION OF ITS PRIVACY.
3. DESTRUCTION OF ITS VIEW OR PROSPECT.
4. INJURY TO VIEW OF GOODS IN SHOP WINDOWS.

1 *and* 2. — **Overlooking and Destruction of Privacy.**—At first sight it does appear as if some compensation or relief should be granted; for, if there is one thing much esteemed by Englishmen, it is privacy, and the injury, unquestionably, in certain cases may be very great. We have in our minds three cases which have happened in our practice; one, the extension of a soldiers' hospital, the whole of the windows of which building overlooked some villas on a portion of an estate for the owner of which we acted professionally. This building, of four lofty stories in height, with the windows in the summer time constantly open, and soldiers sitting at them, was so objectionable that the tenants of the villas (whose privacy was destroyed) left, and the owner was compelled to take a lower class of tenant at reduced rents. In the second case, where a tall factory building was erected, which overlooked a croquet lawn and the secluded portion of the grounds; and the third case, a range of model houses, the flank windows of which, on every story, commanded a view into the adjacent owner's grounds and of his front door.

Such injuries are happening frequently where the privacy

of beautiful secluded grounds are destroyed by a speculative builder, who has purchased the land adjoining, bisecting and intersecting it in all directions with streets, and building houses the back windows of which commanded the whole of the grounds.

It therefore behoves the architect, in advising purchases of estates, to pay much attention to surrounding land and its powers of development, as, should any of the interferences herein alluded to occur, his client will have no remedy, by injunction or by compensation, neither for the loss of the privacy, nor even if he can show that the rental value is most seriously depreciated.

In confirmation of the above we quote Vice-Chancellor Kindersley's words in *Turner* v. *Spooner* (30 L. J., Ch., 801): "No doubt the owner of a house would prefer that a neighbour should not have the right of looking into his windows or yard; but neither this Court nor a court of law will interfere on the mere ground of invasion of privacy; and a party has a right to open new windows, although he is thereby enabled to overlook his neighbour's premises, and so interfere, perhaps, with his comfort." A house is not "injuriously affected," within the meaning of the sixty-eighth section of the Lands Clauses Consolidation Act, by the annoyance of people standing on a railway embankment and overlooking the house (*Re Charles Penny and the South-Eastern Railway Company*, 7 E. & B., 666; 26 L. J., Q. B., 225).

It will therefore be seen that, although other injuries caused by railways may have remedies, a railway can with impunity destroy the entire privacy of one's residence, without paying one farthing compensation.

3. **Destruction of View and Prospect.**—The law has never acknowledged that the dominant owner has a right of prospect. It was decided by Chief Justice Wray, "that for prospect, which is a matter only of delight, and not of necessity, no action lies for stopping

thereof, and yet it is a great recommendation of a house if it has a long and large prospect." *

Justice Twisden said, "Why may I not build a wall that another man may not look into my yard? Prospects may be stopped, so you do not darken the light." †

Lord Hardwicke's decision, too, is important: "You come in a very special and particular case on a particular right to a prospect. I know no general rule of common law which warrants that, or says that building so as to stop another's prospect is a nuisance. Was that the case, there could be no great towns; and I must grant injunctions to all the new buildings in this town." ‡

And in another case the same judge remarked, "It is true that the value of the plaintiff's house may be reduced by rendering the prospect less pleasant, but that is no reason for hindering a man from building on his own ground." §

Lastly, Lord Cottenham said, "It is not, as is said in one case, because the value of the property may be lessened; and it is not, as is said in another, because a pleasant prospect may be shut out, that the Court is to interfere; it must be an injury very different in its nature and its origin to justify such an interference." ||

It may be well to give the difference between "light" and "prospect." "Light" means light of the sky; "Prospect" means the view of things on the earth.

4. **View of Goods in Shop Windows.**—The injury to a shopkeeper if his goods in a shop window cannot be seen is undoubted, and we suppose no one would doubt that if his sign-board were concealed by a projecting building, so that it could only be seen by standing directly in front of it,

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* *Aldred's case*, 9 R. Ch., 57*b*.

† *Knowles* v. *Richardson*, 1 Mod., 55; 2 Keb., 642.

‡ *Attorney General* v. *Doughty*, 2 Ves. Sen., 45.

§ *Fishmongers' Company* v. *East India Company*, 1 Dick., 163.

|| *Squire* v. *Campbell*, 1 Myl. & C., 486.

there would be a palpable injury to the trader. If such were not the case, would pawnbrokers be so anxious to place their well-known sign high aloft and far projecting, so that it may be seen at great distances? would chemists and some medical practitioners favour so strongly the red light? would corner premises have such exceptional value? would publicans set such store on their supposed acquired right of putting their swinging sign-post in the roadway? would tradespeople be so loth to part with pieces of land in front of their shops, if they did not consider it an advantage to expose their goods? Clearly the answer is, the rights are valuable, and that undoubtedly the trader, Mr Smith, in the case *Smith* v. *Owen*,* where his next-door neighbour made such alteration in his premises that it prevented Mr Smith's shop from being seen as far off as before, consequently suffered material damage. The law, however, gave no relief, Vice-Chancellor Wood holding that there was no ground for relief in Chancery. Again, where a greater injury has been inflicted by the Imperial Gas Company, who erected a gasometer, which concealed the plaintiff's board, on which his name and trade were painted, Vice-Chancellor Kindersley and Lord Chelmsford (on appeal) held that a bill in Chancery could not be maintained on that account.†

The decisions, therefore, confirm that the law gives no relief for any of the items set out in Table I. We now come to Table II., which shows how the right to light and air is acquired.

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* 35 L. J., Ch., 317.

† *Butt* v. *Imperial Gaslight and Coke Company*, 14 W. R., 508.

TABLE II.

How Easement to Light and Air is Acquired.

1. BY CONTINUOUS USE FOR TWENTY YEARS.
2. BY EXPRESS GRANT.
3. BY IMPLIED GRANT.
4. BY A DOMINANT AND SERVIENT OWNERSHIP DISTINCT FROM EACH OTHER.

1. **By Continuous Use for Twenty Years.**—The more usual way of the acquisition of light is by its continuous use and enjoyment for twenty years, and the proof of the length of time is sometimes a matter of difficulty to the dominant owner.

The next eccentricity is this, that, although the right cannot be acquired under the twenty years, yet, as it must be interrupted for the whole period of twelve months, it follows—and the law confirms it—that nineteen years and a small portion of another year prevent the possibility of contesting the right. Although at first sight this may appear strange, yet on reflection the reader will see there was absolutely no other way of deciding the law. The law being that the interruption to the twenty years must continue twelve months, clearly, therefore, a man who commenced to stop a light after the nineteen years had elapsed, could not before the expiration of the twenty years have interrupted that light for a period of twelve months, and therefore, as no twelve months' interruption could occur, the Courts held that the light was acquired.—*Flight* v. *Thomas*, 11 A. & E., 688; 8 Cl. & F., 231.

Thus, it will appear that although by law twenty years is necessary for the acquisition of the right, yet, should any one take steps to contest it by erecting obstructions, nineteen years and one day will defeat his attempt. Nevertheless such right is not completely established until the expiry of such twenty years. That is to say, it is *inchoate* till such completion of the said period, and the Courts will

not interfere till such completion is accomplished. This was *held* in the case of *Lord Battersea* v. *The Commissioners of Sewers*,* where the Court held that no action could be brought till after the twenty years from the commencement of the enjoyment.

Similarly in *Bridewell Hospital* v. *Ward*,† the Court declined to grant an injunction as the twenty years was incomplete, but intimated that a mandatory injunction could be granted after the statutory period had been completed.

In alluding to the length of time which creates this special easement, our readers will see that this has been placed at twenty years, and some explanation may be considered necessary. In the year 1874 an Act was passed, called "The Property Limitations Act"; as this Act limited the right of action to recover land to twelve years, it was thought that it might also limit the right of action for light. The many legal authorities have decided, however, that this Act does not affect the "light and air" question; so, until some bold judge, like Chief Justice Wilmot (see p. 8 of this book), shall decide otherwise, it must be taken at twenty years. It does, perhaps, seem inconsistent that the right to light should differ from the right to acquire land.

Next, it is necessary to determine how to compute the running of the time to constitute the necessary number of years to create the ancient light.

The law says the time shall run to be computed next before action brought, so that in computing the time it is only necessary to add the number of years from the date of action. Unquestionably this simplifies the computation of time necessary to create the ancient light.

The period of enjoyment need not be before the present action brought, but may be before any suit or action; Justice Willes remarking, "Can it reasonably be contended

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* 2 Ch., 708 (1895). † 62 L. J., Ch., 270 (1893).

that the right established in the first action evanesces with the termination of the proceedings in which it is established, and that in every subsequent action the contest may be renewed? There is no estoppel, no plea of *res judicata* as to the right upon a plea, or subsequent pleading under Lord Tenterden's Act, unless enjoyment before a former suit or action may be pleaded, as in the present case."—*Cooper* v. *Hubbuck.**

From the above it is clear that until some action is brought the dominant owner is always liable to lose his easement, no matter how many years have run, should he allow it to be blocked up for one year. In the case of *Parker* v. *Mitchell*,† it was held that, although the defendants had enjoyed the easement for fifty years before the action brought, yet as they had not so enjoyed it during the four years immediately preceding the action, they had no right to the easement.

2. **By Express Grant.**—Where the right is obtained by express grant, it is, of course, only necessary to produce the document conferring the right. This document should be under seal; but it does not appear to be absolutely necessary, as an agreement in writing has been held by the Master of the Rolls sufficient *express grant*, although in the document no mention was made of the grant of right to light, but attached to the agreement were plans and sections showing the new lights. The ground for this decision appears perfectly sound and good, and is based on Lord Eldon's decision in an earlier case, "that this Court will not permit a man knowingly, though but passively, to encourage another to lay out money under an erroneous impression of title; and the circumstance of looking on is, in many cases, as strong as using words of encouragement." ‡

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* 12 C. B., N. S., 456. † 11 A. & E., 788 (1840).
‡ 7 N. S., 231.

The case of *Broomfield* v. *Williams*,* tried in 1897 in the Court of Appeal, reversed the decision of the Court below, and Lord Justice Lindley held that, under the Conveyancing Act (1881), a grant of light is deemed to be included in a conveyance, and the fact that adjoining land was shown on the conveyance as "building land" does not show a contrary intention with regard to Sec. 6, Sub-sec. 4 of such Act. In this case the defendant conveyed to the plaintiff in fee a plot of land with a house erected thereon, reserving a right of way adjoining such plot. The deed plan showed a piece of land adjoining marked "building land," and the plaintiff's windows overlooked the same. The defendants subsequently built upon that land, and also upon such land reserved as a right of way. The plaintiffs complained mostly of the latter proceeding, but did not press for an injunction, and the Court of Appeal ordered an inquiry as to damages, Lord Justice Lindley expressing the view that it was a concession on the part of the plaintiff to practically limit his case to the buildings on the right of way.

3. **How Easements are acquired by Implied Grants.**—The principle underlying this form of easement is that a man *cannot derogate from his own grant.* This form of case frequently arises in the development of estates where specific covenants as to easements are not inserted in the lease.

In *Palmer* v. *Fletcher*,† a man built a house on one part of his land and sold it to the plaintiff, and afterwards sold the adjoining portion to the defendant. *Held* that, although it was a new messuage, yet a person who claims the land by purchase from the builder cannot obstruct the lights any more than the builder himself could, who could not derogate from his own grant, for the lights are a necessary and essential part of the house.

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* 66 L. J., Ch., 305. † 1 Sid., 167; 1 Lev., 122 (1615).

In the above case Kelynge, J., expressed the opinion, that if the land had been sold first and the house afterwards, the vendee of the land might obstruct the lights; and in *Tenant* v. *Goldwin*,* Lord Holt said: "If he had sold the vacant piece of land and kept the house, without reserving benefit of the lights, the vendee might build against his house."

The case of *Pollard* v. *Gare*† is a more recent decision, and in this case the plaintiff entered into a building agreement, and upon the completion of the same obtained the lease in the usual manner. The adjoining land was marked out in building plots, and a building line was marked on the plan, so as to extend to all the plots. The rights to build remained, but the Court held that there was nothing to give the granters liberty to build so as to interfere with the access of light to the plaintiff. *Held* that plaintiff was entitled to an injunction restraining defendant from building on the land so as to interfere with the access of light to the plaintiff's house, as hitherto enjoyed.

Where a grantor sells a servient tenement, and either remains in possession of, or sells the dominant tenement, the grantee of the servient tenement has the right to prevent an easement of light accruing to the dominant tenement. In the case of *Wheeldon* v. *Burrows*‡ the servient owner (plaintiff) erected a hoarding under the above circumstances, and the dominant owner (defendant) overthrew the same. Vice-Chancellor Bacon delivered the following judgment:—

"The plaintiff contends that as the defendant's lights are not ancient lights, he holds his land subject to no easement; while the defendant contends that the right to lights over the plaintiff's land was implicitly reserved to him as

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* 2 Lord Raymond, 1089 (1704).

† L. R. (1901), Ch. D., 834.

‡ 12 Ch. D., 31, C. A., where the Court of Appeal confirmed the decision of the Vice-Chancellor.

much as if they had been expressly granted in the conveyances. The judgment in *White* v. *Bass* (reported 7 Hurlstone and Norman, 722) is clear on this point—that in a conveyance such as this there is no engagement not to build on the land, nor any limitation upon the right to use the land—*i.e.*, to use it in a lawful way, as Baron Martin said. So in *Suffield* v. *Brown*, the bowsprit case (reported 4 De Jex Jones and Smith, 185), it was in a similar way held that a grantor should not derogate from the grant which he had made. *Pyer* v. *Carter*, quoted on the other side (1 Hurlstone and Norman's Reports), has been doubted, not only by Lord Chancellor Westbury, but also by Lord Chelmsford, another Lord Chancellor. In cases where an easement has been held to pass by implication, such implication has been gathered from the necessity of the case. No such necessity seems to arise in this case. The position of the defendant's windows is not such that there is any necessity that they should overlook the plaintiff's ground. The plaintiff is entitled to an injunction against the trespass, and an inquiry as to damages occasioned by such trespass."

In the case of *Born* v. *Turner*,* it was held that a mortgagee selling under statutory powers can give to the purchaser an implied easement of light over the unsold portion.

4. **By a dominant and servient ownership distinct from each other.**—This probably presents one of those peculiarities which the lay mind can hardly grasp, and yet the law is most distinct upon the subject.

No rights can arise to a dominant owner antecedent to the severance of the dominant owner's and servient owner's premises. Where the two premises are in the occupation of the same person, any number of years' enjoyment will not confer a right.

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* L. R. (1901), Ch. D., 211.

This seems *common-sense*, because the right to light is, as we before explained, a right to an easement, and while premises are in one occupation an easement cannot arise.

That such is the law is shown by the well-known case, *Harbridge* v. *Warwick.** The plaintiff had occupied for very many years his freehold house, and occupied during the same period an adjacent garden. The plaintiff gave up the tenancy of the adjacent garden, and its owner built a wall which obstructed plaintiff's windows. Plaintiff contended that he had had for over sixty years the right to light from such adjacent garden, but the Court decided (and this was not appealed from, and therefore may be considered the law, as so many other cases confirm it) that the unity of possession (which means plaintiff holding his house and the adjacent garden in his possession) prevented time running to create the ancient light; therefore the time could only run from the period the plaintiff *surrendered the adjacent garden.*

Next, an important element of difficulty as to this *item* 4, where the union of ownership occurs of dominant and servient tenements. Guided by the foregoing principles, it would be imagined that the commencement of the period to create the ancient light would begin when such ownership ceases. But in law this is not the case. Such union of ownership merely suspends the running of the time so long as it continues; and Vice-Chancellor Wood held that in such a case the easement was suspended during this union of ownership, but revived upon its severance.

While this shows that the right to light and air by its continuous use and enjoyment for twenty years may, unwittingly, be affected by purchases of the adjacent property by oneself or others, it is consoling to reflect that, although you may hold your property on lease from the same ground landlord, still your adjacent owner cannot use that fact to

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* *Harbridge* v. *Warwick*, 3 Ex., 552; 18 L. J., Ex., 242.

your prejudice. The celebrated case in this matter is *Frewen* v. *Phillips* (in the Exchequer Chamber, upon error from the Common Pleas, 11 C. B., N. S., 449; 30 L. J., C. P., 356; 7 Jur., N. S., 1247). The plaintiff and defendant held the leases of two adjoining houses, both demised by the Duke of Portland in 1788. In 1857 the defendant built a conservatory, obstructing the plaintiff's windows. It was held that the plaintiff might maintain his action against the defendant for so doing.

Railway companies used not to have the power to stop adjoining owners from acquiring right of light, provided that their so acquiring such right did not in any way interfere with the companies working their railway. The most celebrated case was the case of *Norton* v. *The London and North-Western Railway Company*,* 1878, in which it was decided that the company had no right to erect screens to prevent the houses of the adjoining land acquiring right of light.

This case, however, was overruled by the judgment in *Bonner* v. *Great-Western Railway*,† in 1883, and *Forster* v. *London County and District Railway Company*,‡ and railway companies have as much right to block up their neighbour's windows as any other landowner.

TABLE III.

What does not interfere with the Acquisition of the Easement.

1. NON-COMPLETION OF THE HOUSE OR BUILDING.
2. NON-OCCUPATION.
3. ENJOYMENT OF EASEMENT SUSPENDED.

1. **Non-completion of House or Building.**—We think this is so important, that we may well devote a separate table to its consideration. It has been so fre-

* 9 Ch. D., 625. † 24 Ch. D., 1. ‡ 1 Q. B., 711 (1895).

quently stated that the continuous use for the fixed period of twenty years gives the right, and that to prove the enjoyment for that fixed period is the essence of the case for the plaintiff, that it may surprise our readers to know that *occupation* and *enjoyment* need not extend to the whole of the period required to create such *ancient light*, and that the period of prescription begins as soon as the windows are put in the dominant house, capable of being open and shut and of admitting light.

2. **Non-occupation.**—It is not necessary that the house should be occupied, *Courtauld* v. *Legh*, 4 Ex., 126 (1869). In this case it was held that, though the fittings, papering, &c., were not completed for five years after the time commenced to run necessary to create the statutory right to ancient lights, this did not interfere with the effluxion of time necessary for the acquirement of such light. Further, that, notwithstanding the necessity of the enjoyment for the fixed period, yet, although the house was really uninhabitable, and was not as a matter of fact occupied for some years after the commencement of the running of the time to create the ancient light, the Court of Exchequer held that the right had accrued from virtually the completion of the carcase of the building; and it may interest our readers to know that as to the enjoyment (which, as no tenant had enjoyed, appeared a stumbling-block to this portion of the case), it was held that it was not necessarily by occupation, but might be by ownership.

3. **Enjoyment of Easement Suspended.**—With regard to this, an important decision has been given, showing that when a building is pulled down, and clearly the actual enjoyment of an easement of light has ceased, this does not operate as a loss of the easement, and as this is an important case we quote it. It is the ruling case, and not merely is so now, but most likely will continue to be so for years to come, having been carried to the Court of Appeal. We think it so important that we give the head-note and

the summing-up of the three judges who constituted the Court of Appeal. The case is *The Ecclesiastical Commissioners for England* v. *Kino.** We recommend our readers carefully to read the summing-up. We believe the principles of our laws and their application are more fully acquired by laymen by so doing, than by any other method :—

HALL, V.C., 1880, Feb. 26th.

Court of Appeal.—JAMES, L. J., BRETT, L. J., COTTON, L. J., 1880, March 25th.

The Ecclesiastical Commissioners for England v. *Kino.**

Ancient Lights—Enjoyment of the Easement suspended—Easement itself not suspended.

Where a building with ancient lights has been pulled down, and the actual enjoyment of that easement (though not the easement itself) has been in consequence suspended, the owner of the building can apply to the court to restrain an erection which would interfere with the easement, when the court is satisfied that he is about to restore the building with its ancient lights. Accordingly when under their Act and Order in Council, a church had been vested in the Ecclesiastical Commissioners upon trust, to pull it down and sell the materials and site, and the church had been taken down, the Commissioners were held entitled to an injunction, restraining the defendant from erecting a building which would necessarily interfere with the access of light to windows to be erected in the same position as those of the church which had been pulled down, and the fact that there were no windows then existing, did not at all interfere with their right to such injunction, there being no intention of abandonment of the right to light.

The Ecclesiastical Commissioners, as owners in fee

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* 14 Ch. D., 213.

simple of a church which they have under an order pulled down, are not in a different position from any other owner, and can give to a purchaser from them exactly the same rights which he would have had if he had bought the building as it stood.

Semble, there is no legal impossibility in a grant or a covenant by a rector to or with the churchwardens on behalf of the parish, if made with the proper consents that the church shall have a perpetual right to access of air and light to its windows over the glebe.

In cases of obstruction to light, the rule of the angle of forty-five degrees is only to be used as a test in the absence of any other mode of arriving at a conclusion, it is no rule or presumption of law. The angle of forty-five degrees is not taken from the windows, but from the top of one house to the level of the street on the other side.

An undertaking given by a defendant to pull down if his works should interfere with the plaintiff's access of light, should always be rigorously enforced.

James, L. J.—"In this case we have to consider whether or no we should grant an interlocutory injunction. Upon the point upon which the Vice-Chancellor disposed of the application to him, I am not able to agree with him. It appears to me that there is nothing whatever to prevent the owner of a building which has been taken down, and has during that time had its right of light, though the actual enjoyment of the light has been suspended, from applying to the court for an injunction to restrain an erection which would interfere with that easement, which is not at all destroyed or suspended, although the practical enjoyment of it is suspended, where the court is satisfied that he is about to restore the building, and to restore it with its ancient lights. That was so decided by Lord Justice Giffard in *Straight* v. *Burn*,* which, unfortunately,

* L. R., 5 Ch., 163 (1869).

was not brought to the attention of the Vice-Chancellor, and I cannot see any distinction between that case and this. There the house was taken down and a wall was left standing with holes in it. Here the church was taken down, and the fact that no wall was left standing with holes in it does not, I think, make any substantial difference, because there is no doubt that the object was that the property, which is in the City of London, should be sold for the purpose of being built on; and there is very little doubt that, as far as possible, the purchaser from the Ecclesiastical Commissioners would take and preserve the valuable rights of light. On that point I cannot agree with the Vice-Chancellor.

"Then it also appears to me there is nothing in the objection that the Commissioners, because they were ordered to take down the church to sell the site, are in a different position from any other owners. They were the owners in fee simple of the church, and the very object was that they were to convey all the rights incident to the church for the purpose of making the most money they could for the ecclesiastical purposes for which the purchase-money of the site was to be applied. It is clear that they were to have and to give to a purchaser exactly the same rights the purchaser would have had if he had bought the building as it stood.

"Then, the right being the same in that respect, we ought to act in the same way unless satisfied that there is no injury to the light. Now upon that, for the purposes of an interlocutory application, the balance of the evidence (if there is an evidence really on the part of the defendants) is very strongly in favour of the plaintiffs that there will be that substantial interference with the access of light which is the sole ground on which the Court proceeds, and which is the sole test in the matter for the Court. That rule of the forty-five degrees is a matter of very slight

importance. It may be an element in the case, but it is a very small one indeed. It is only to be used as a sort of test in the absence of any other mode of arriving at a conclusion, but it is no rule of law, no rule of evidence, no presumption of law, and no presumption of evidence, except of the very slightest kind. I venture to say that what I said in those cases of *Kelk* v. *Pearson*,* and *The City of London Brewery Company* v. *Tenant*,† although it is only in truth repeating, with very little variation of language, that which was said by Chief Justice Best in *Back* v. *Stacey*,‡ which has always been considered as the direction which a Judge ought to give to a jury, and which is the direction we ought to give to ourselves expressed as accurately as language can express the rule. Then, as I have said, upon the balance of evidence before us, it appears to me that there will be substantially a diminution of the access of light to those windows, if the windows should be restored, as I believe they will be, so as substantially to diminish the value of the property. Then the only other question to be considered is, whether the point of law about the title which Mr Pearson raised is such as to induce us to hold our hands.

"His contention, in substance, was that, having regard to the fact that the one tenement was a church and the other glebe land, it was utterly impossible in a case of that unity of possession, that there ever could have been anything like a valid grant of the right of light, and therefore there is such an obvious defect of title in the plaintiffs that we ought to hold our hands.

"I am not at present, whatever may be the result of a further hearing—speaking for myself alone—very much impressed by that contention. I am not at all impressed with the notion that it was utterly impossible that there

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* 6 Ch., 809 (1871). † 9 Ch., 212 (1874). ‡ 2 C. & P., 465 (1826).

could have been a valid (either legal or equitable) creation of the right of light to the windows of the church of such a kind as would have prevented the owner of the glebe from obstructing those windows. I think myself it would require a good deal to satisfy me that such a right was incapable of being granted, and we are to suppose that there is that doubt in the face of the fact that this church is a very old church, and that the former church probably had windows much in the same position as the windows were in the church lately pulled down, which was rebuilt by Sir Christopher Wren, and in the face of the fact that from that time to the present, the windows had existed.

"It appears to me that there is sufficient *prima facie* evidence, not only of the *de facto* enjoyment of the light, but of the lawful and rightful enjoyment as of right as between the church and the owner of the glebe, and that the doubt is not such as to induce us to hold our hands from doing that which we ought to do in an ordinary case, namely, stay the creation of these buildings till the hearing or further order."

BRETT, L. J.—"Several very interesting points have been raised in this case, and the objections to the plaintiffs' rights to an injunction seem to me to class themselves thus:—First, Assuming that the proposed buildings would substantially obstruct the light into apertures similar to those existing in the old church lately pulled down, it is objected that the plaintiffs are not the people who in this court, and at this stage should object; and secondly, supposing the plaintiffs are persons who can object, yet that there is not sufficient evidence that the proposed building would sufficiently obstruct the light to the windows which are to replace the windows of the church to such a degree as to authorise this Court to interfere to the extent of granting an interim.

"Now the first point under the first class of objections

is, that there has been in this case such a unity of possession as would prevent the possibility of there being a servient and dominant tenement; that there is such a unity of possession therefore, as would prevent the statue from applying so as to raise a prescription of twenty or forty years, or so as to raise the supposition of a lost grant. I incline myself to think that, if the objection of unity of possession could be maintained, it is equally important with regard to a lost grant as it is with regard to a prescription under the statute. I think that if it were shown that there was such a unity of possession as would prevent the possibility of there being a servient and dominant tenement, this would be fatal to either view. This seems to me to be a very difficult question, and one that requires considerably more knowledge of ecclesiastical law than a Judge can have in his mind at the moment, or at this stage of the proceedings, he is likely to acquire. I am not prepared to say at the present moment whether the rector is merely a bare trustee, whether, being legal owner of the church, he is a bare trustee of the church, or whether his rights with regard to the church and the churchyard are identical, or whether his legal rights with regard to the church and churchyard are the same or not as his rights with regard to the glebe.

"If he be merely trustee of the church, and if he be, in point of law and equity, considered as the owner of the glebe, the inclination of my opinion at present is, that as the real owner of the glebe, he might make that the servient tenement of the church of which he was only trustee, and that where a person is trustee of that which is to be the dominant tenement and is real owner of that which is to be servient tenement, there is not a unity of possession as prevents the application of the statute or the application of the doctrine of the lost grant.

"I therefore think, that at this stage of the proceedings we are entitled to assume that the rector, and therefore the

Ecclesiastical Commissioners v. *Kino.*

Ecclesiastical Commissioners who stand in his place, are merely trustees of the church. It is, I think, a matter of contention at the present moment whether the proposed new buildings stand on the churchyard or on the glebe, but assuming them to stand on the glebe, I think we are entitled to say at this stage that we cannot assume that there is not that difference of position which would entitle the application of the statute or the application of the doctrine of the lost grant. Therefore, so far as that objection is taken it cannot avail at the present time, but it is a matter which must be gravely considered at the hearing.

"Then another objection was taken, which was, that these Ecclesiastical Commissioners are only trustees to sell. With great deference, I think it is not worth while to inquire into that point. I confess I have no doubt that even assuming them to be trustees to sell, that cannot oust them from the right to object to an obstruction to the lights of the building which they have to sell. Then it was, that by the statute and the order in council, they have only vested in them the site of the church or the church itself, and that they have not vested in them any rights of easement which the church in other hands would have acquired. I think that that is an equally untenable objection, and about that also I have no doubt.

"Assuming, therefore, that the Ecclesiastical Commissioners are persons who may come to the Court, for such an injunction as is now asked for, there is raised this question, whether such an injunction ought to be granted where the building which was the dominant tenement is not in existence, and has been pulled down. I confess that the way that strikes me is this. We assume for this purpose that the building while it existed had ancient lights, and therefore the right to have them unobstructed. The building is pulled down. It is said that right is in abeyance. It seems to me that the right is quite as much in

Ecclesiastical Commissioners v. *Kino.*

existence after the building is pulled down, or as it was before until that right is abandoned, and I cannot help thinking that where in our country a man has a legal right which can only be lost by his abandoning it, if he has not abandoned it, and until he abandons it, it exists, and the right is as much in his possession as ever. The mode of enjoying it may be different but the right is in existence.

"If you assume that he has the right, and it is in his possession and in existence, then if the defendant is about to do an act which will injure that right, I can see no reason why the ordinary doctrine should not be applied and why the Court should not grant the injunction. It seems to me that the case of *Straight* v. *Burn* * is an authority in favour of that proposition, and that was the true ground on which the case was decided, not that there was an undertaking by the plaintiff to rebuild. That seems to me to be immaterial except as evidence to show he has not abandoned his right. The question is whether he had the right, and whether there is evidence to show he has abandoned it. If he has not abandoned it, it exists, and he has a right to come to the Court for such a remedy as is here asked. Therefore, that object cannot avail.

"Then we come to that which was much urged, which is, what is the amount of obstruction which is necessary for the plaintiff to show in order to obtain this injunction, and upon that arose that doctrine which I confess startled me as to forty-five degrees, which is relied upon either as a kind of legal doctrine or as a rule of evidence which is to make a *prima facie* case. I confess that that seemed to me to be contrary to all the authorities in these cases which have always been relied upon, and to intimate that a Judge charging a jury would have to tell them 'if the defendant has left the plaintiff forty-five degrees of light that is a *prima facie* case in which

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* 5 Ch., 163 (1869).

Ecclesiastical Commissioners v. *Kino.*

there is no injury to the plaintiff,' unless he can show something particular in the circumstances of the case before him. I never heard of such a mode of directing a jury. The mode of directing a jury has been laid down for years, and the rule has always been since the time of *Back* v. *Stacey* * that which was laid down by Lord Chief Justice Best in that case, namely, that in order to give a right of action and sustain the issue, there must be a substantial deprivation of light sufficient to render the occupation of the house uncomfortable, or to prevent the plaintiff from carrying on his accustomed business on the premises as beneficially as he had formerly done. That is the ruling which has always been said to put the direction in the clearest point of view; and it is in accordance with the judgment of Chief Justice Tindal, one of the most careful Judges who ever sat, in *Parker* v. *Smith.*† It was adopted by Lord Chelmsford in the case of *Calcraft* v. *Thompson,*‡ and has always been the received mode. The question is whether there has been, not some interference, but a substantial interference. There is no trace of anything about forty-five degrees or any other number of degrees.

"Then it was said that that law has been altered by the ruling of Lord Justice James in *Kelk* v. *Pearson.*§ I confess that his judgment there seems to me to be directly to the contrary of that for which it is cited, for I find he says: 'Since the statute as before the statute, it resolves itself simply into the same question, a question of degree, which would be for a jury if this were an action at law to determine, but which it is for us as judges of fact as well as law to determine for ourselves as best we may when we are determining in Chancery;' and he lays down the rule in the very words of Chief Justice Best in *Back* v. *Stacey*; ‖ and Lord Justice Melluish quite as distinctly says, that the

* 2 C. & P., 465 (1826). † 5 C. & P., 438 (1832). ‡ 15 W. R., 387.
§ 6 Chan., 809 (1871). ‖ 2 C. & P., 465 (1826).

question is not what may be considered by some persons as sufficient light in London or anywhere else, but the question is one of degree and comparison with what the man had before the defendant's act, and with what he has after, and there must be a substantial difference. In the case of *The City of London Brewery Company* v. *Tennant*,* it seems to me that Lord Justice James laid down again the very same rule, that it is a question of fact and degree in each particular case, and although the Lord Chancellor, Lord Selborne, did take notice of that Act of Parliament about the forty-five degrees, I do not gather that he meant to say more than that the fact of there being forty-five degrees of light is one of the many facts you are to take into consideration, not as raising a *primâ facie* case or anything like it, bnt one of the facts to be considered in determining whether there has been a substantial interference with the light the plaintiff had before.

"I have ventured to say this because, to my mind, this notion that some expression of a Judge used when he is deciding a question of fact as to his own view in some one fact, being material, or a particular occasion is to be taken to be a rule of conduct for other Judges in considering a similar state of facts in another case where there are many other differences, is a false mode of treating authority, and that the mere view of a learned Judge in a particular case as to the value of a particular piece of evidence is no good whatever to other Judges who have to determine the matter of fact in other cases where there may be but one fact, but many others as well to be considered. I therefore think that in the present case the interim injunction ought to be granted, but that when the case comes to the hearing there certainly will be a very grave question to be considered by the learned Judge who has to try it."

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* 9 Ch., 212 (1874).

Ecclesiastical Commissioners v. *Kino.*

COTTON, L. J.—"I also am of opinion that in this case the plaintiffs are entitled to an interim injunction.

"It is perhaps unfortunate from the course the case took in the Court below, that only one of the points argued before us was really dealt with by the Vice-Chancellor. I will deal with that first. Now, as I understand, he felt a difficulty in interfering when there was no building existing or in the course of erection, in respect of which the right of light could be enjoyed, and when the plaintiffs were not in a position themselves to rebuild or undertake to do so.

"It was said that the Court would not interfere when no right was being interfered with, so as to make an action at law maintainable; it is unnecessary to give an opinion whether an action at law could be maintained in this case. The question we have to deal with is, whether or no a Court of Equity should interfere to prevent an injury to the plaintiffs. I will assume for the present purpose that these windows in the old church, which for centuries had had uninterrupted access of light, were windows which were entitled, as of right, to the access of light. Does the fact that the building has been pulled down put an end to the right? That cannot be so. The cases cited have settled that point, because in *Tapling* v. *Jones*,* the building in which the ancient windows were, and by means of which that old building had enjoyed the access of light, had been pulled down, but yet it was held that when the new building was put up with windows in the old position they were entitled to the old right. The enjoyment no doubt had been discontinued, but the right was continued, and when windows were put up in the same place the owner of the house with these windows was entitled to protection, with respect of the old right. Therefore, there

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* 11 H. L. C., 290 (1865).

had been no time at which the old right had ceased to exist, although its enjoyment had been suspended; and the cases have gone further than that, for in *Straight* v. *Burn*,* where the bill was filed at a time when there was no actual building but only a bit of wall remaining, Lord Justice Giffard granted an injunction, on an undertaking by the plaintiff that he would without delay, rebuild, putting the window in the old position. That recognises that even when there is no building existing—because the old wall could hardly be considered as 'a house, workshop, or other building' within the meaning of the statute—still the Court would interfere by means of an injunction to protect that which the plaintiff had a right to, and to secure for him the future enjoyment under the old right. But then it was said here that the plaintiffs themselves cannot rebuild, and that, therefore, what they have to do is to sell the site and the site only. I will deal with the latter part of the objection first. They have, as I understand, vested in them under the Act of Parliament, the building and fabric of the church and the ground on which it stood, and they vested in them that building with everything in the way of light which that church and the owner of that church enjoyed. No doubt they were required to pull it down and sell it, but in selling the site, in my opinion, they could convey to the purchaser all the rights they themselves would have had if they had been in the position of ordinary owners having acquired that land, with the intention or obligation to pull down, as in a building lease, to pull down the old building and put up a new one, when, if they desired to protect their rights, that is, to continue the enjoyment of the old right of light, they could have put up the windows in the same position as formerly. Therefore, although they themselves cannot rebuild, and are required

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* 5 Ch., 163 (1869).

Ecclesiastical Commissioners v. *Kino.*

to sell, in my opinion they can convey to the purchaser the same right which, if they had built, they would have had of putting up a building with windows in the old places, and entitled to the old easement.

"Then it was said there is a difficulty in granting an injunction; because how can we know that the building will be put up, or that, if the building is put up, the windows will be in that position. We are now dealing with an interlocutory injunction only, and, upon the evidence, and from the position of this property, I should say we must arrive at the conclusion, that, within a short time, having regard to its situation, not only will the land be sold, as the plaintiffs are bound to try and sell it, but that it will be covered with buildings, and I think we may come to the conclusion as judges of fact, that in all probability the purchaser will put up his building so that the windows may have the enjoyment of the old right of light. If on the hearing of this action, the property has not been sold, and no intention is shown of putting up buildings, and if it is not shown satisfactorily to the Court, what will be the position of the buildings or the windows in it, then probably the difficulty will have to be met. But I think it will have to be met, not by putting the plaintiffs or the owners under an undertaking, but by giving some liberty to the defendant to apply to dissolve the injunction so as to prevent him from being kept perpetually under this injunction, when, in fact, the plaintiffs, or the purchasers from them, have abandoned the right to put up the windows in the old place in exercise of the old right. This is not for decision now, but that, in my opinion, would be one mode of dealing with the difficulty, and preventing any injustice being done.

"Then there are other points in the case, and, of course, upon an application for an interlocutory injunction, we ought to be satisfied that a *primâ facie* case is made out by

Ecclesiastical Commissioners v. *Kino.*

the plaintiffs who are applying for an injunction. Now the first objection on the part of the defendants is this, that these windows in the old church were not entitled to light. The building had existed for two centuries, but there had been on the site of that building, another building previously. Are we to come to the conclusion that the plaintiffs under those circumstances have not a *primâ facie* case to say that these windows had a right to light?

"It would require a strong case, I think, after such a lapse of time, to induce us to hold, upon an application for an interlocutory injunction, that the defendant was entitled to erect a building, which for the present purpose I must assume will materially interfere with those lights, if ancient, and will materially embarrass the plaintiffs in dealing with the property in the way they are bound to do.

"Suppose that this piece of land on which the house is intended to be built was glebe, and has been so as long as the church has been there, I am not satisfied that the parson could not, with consent of the patron and ordinary, deal with his glebe in such a way as, at least in this Court, to entitle those who could use and enjoy the church to say, 'You have precluded yourself from ever interfering with the lights that there are in the church,' because we must recollect that, as regards his glebe, the parson, with consent of the patron and ordinary, could, by certain deeds, independent of the restraining statutes (and this church existed before the restraining statutes were passed), deal with and bind the glebe.

"The other question which we must consider is, whether or no the works which the defendant is intending to put up will substantially interfere with the beneficial use of the building which will probably be put up there? I say, 'with the beneficial use of the building;' because it is not probable that any dwelling-house would be put up in this place, and the rule with regard to dwelling-houses is some-

Ecclesiastical Commissioners v. *Kino.*

what different; namely, that there must be a substantial interference with the comfortable enjoyment of the house.

"We must consider whether or no there is a substantial interference with the light, having regard to the use to which the building in this place will be put. That is more favourable to the defendant than the other view. I think upon the evidence of the experts, I should be satisfied that that was so, but we must judge by our own eyes and our own senses. Can we think that raising that building as proposed in that position and at that distance will not materially diminish the access of light to the windows put up in the old place? If so, having regard to what we know of the use of light in these warehouses, I should say, that they would probably substantially interfere with the beneficial use of any warehouse which might be erected there. As to the fact that there could be no warehouse erected there which would not interfere with the defendant's lights, I have seen, and it is common knowledge that there are plenty of warehouses in the city of London consisting of different stages and degrees, one part of which is thrown back to a great height, but a portion of which occupying the old site of these windows would be built at such a height as that it would not in any way interfere with the lights of the defendant, or give him a cause of complaint.

"I think I ought to add one word about the angle of forty-five degrees. Although I quite agree with what Lord Justice Brett has said, I think that the way in which this provision as to forty-five degrees has been dealt with by Judges in the Chancery Division is unfortunate. It seems to me to have arisen from referring loosely to the Metropolitan Building Act, without looking at the clause. That clause really is intended to deal with the question of the width of the streets, so as not to have them formed into a narrow trough, and is not intended to lay down any rule applicable to the light which a man is entitled to enjoy in the city of London. The

angle of forty-five degrees is not the angle taken from the windows, but from the top of one house to the level of the street on the other side, and therefore, to derive from that any other rule as to what is to guide us in saying whether or no there has been a substantial interference with the use and enjoyment of the building as regards light, is in my opinion, looking to a rule laid down for one purpose to guide us as to an entirely different matter. I should not have referred to it but for that reason. When that is the condition, under ordinary circumstances, there would probably be no substantial interference with the enjoyment; but that is not a rule to put before a jury to guide them; or a rule which is to guide the Court in coming to the decision whether there is a substantial interference; but it is only a circumstance which will very often be a sufficient guide. We must take this into consideration.

"Then ought we to interfere by injunction after the undertaking that has been offered? Probably if the plaintiffs had been only persons in the position of owners going to rebuild, I, for my own part, might have been satisfied with that undertaking, and for this reason—because then we should have had the means of testing by experience and not by mere argument, what would be the effect of the defendant's building. When such an undertaking is offered (and I am glad of having the opportunity of repeating this as far as I am concerned), it must never be made illusory. It is an undertaking given by the defendant, who says, 'My works can never interfere with your lights,' and if it be found they do, his undertaking ought to be rigorously enforced, and he never ought to escape by the suggestion that, as the building is up, damages ought to be given instead of a perpetual injunction. In the present case the plaintiffs are in a peculiar position. They cannot build themselves, but they are bound to sell, and, as they are not satisfied with that undertaking, and

Ecclesiastical Commissioners v. *Kino.*

consider it more for their interest, having regard to the proposed sale, to have an injunction to prevent the building being erected, or anything being done which could interfere with the access of light to windows put in the original position—at least, until the rights of the parties are decided."

James, L. J.—"With regard to the argument that there was a legal impossibility in a church acquiring an easement over the glebe; I say this, that as far as at present advised, I think there might have been a grant or a covenant by the rector, to or with the churchwardens on behalf of the parish, made with the proper consents, that the church should for ever have the access of light and air to the windows; I can see no legal difficulty in the way of framing or presuming such a covenant; nor do I see, at present, any doubt as to the legal validity of such a covenant."

Having treated of how the right to light and air may be acquired, and what acts, although apparently injurious to that right, do not really affect it, we shall next consider how the right may be jeopardised, which will be set forth in Table IV., and then how such right may be lost, which we set out in Table V.; and thereafter we shall give Table VI., setting forth what it is necessary for the surveyor to consider in estimating the damage or injury.

TABLE IV.

How Ancient Lights may be Jeopardised.

1. By Alterations to Buildings.
2. By Variations of the Plane at which Light is Admitted.
3. By Advancement of a Wall.
4. By Removal of Buildings.
5. By the Occupation by the Dominant Owner of the Servient Owner's Premises,
6. By Ownership of both Properties being in the same Parties.

1. **By Alterations to Buildings.**—The most important case bearing upon this subject is *Tapling* v. *Jones*,* which was fought up to the House of Lords, and heard there on the 17th, 20th, 21st of February, and 16th March 1865, the action having been commenced in the Court of Common Pleas on the 24th of February 1858. So valuable is this case that we quote it at length from 34 Law Journal Reports (N. S.), C. P., 342 :—

"This action was brought in the Court of Common Pleas, on the 24th of February 1858, and was brought for an alleged obstruction of the access of light and air to certain windows in the west side of a warehouse, No. 107 Wood Street, Cheapside, in the city of London, the property of the respondent, the defendant in error, and the plaintiff below.

"The declaration consisted of two counts. The first count alleged a right on the part of the defendant in error to the access of light and air to certain ancient windows of a messuage and building in that count mentioned, and stated, by way of breach, that the plaintiff in error, by wrongfully building and continuing a wall near to such windows, prevented the light and air from coming to or entering the same. The second count alleged a right to the unobstructed access of light and air to the said windows,

* 11 H. L. C., 290 ; 34 L. T. C., p. 342 (1865).

and averred as a breach that such access was obstructed by the wrongful continuance of a wall, on a close opposite and near to such windows.

"The defendant pleaded, first, not guilty; secondly, a traverse of the right alleged in the first count; and, thirdly, a traverse of the right alleged in the second count.

"There was a replication joining issue on these pleas.

"Upon these issues the cause came on to be tried, at the sittings at the Guildhall of the city of London, on the 16th of February 1859, when a verdict was entered for the defendant in error for the damages claimed in the declaration, subject to a special case. A special case was afterwards stated, which, so far as is material, was as follows:—

"'The plaintiff is a wholesale dealer in silk, and now carries on his business at Nos. 107, 108, and 109 Wood Street. The plaintiff had for several years prior to 1857 carried on his business at Nos. 108 and 109 Wood Street, but he acquired possession of the premises, No. 107 Wood Street, for the first time, in the year 1857, having become the purchaser of them in the month of July in that year. Up to the time when the plaintiff acquired possession of the said premises, No. 107, they were used and occupied as a public-house, known by the sign of the "Magpie and Pewter Platter," and were, and are, in a line with and next adjoining. Nos. 107, 108, and 109 abut on the rear or west side thereof, upon the east side of certain premises fronting in Gresham Street West, and therein numbered 1 to 8, hereinafter called the Gresham Street property. In the year 1852 the plaintiff pulled down his premises, Nos. 108 and 109 Wood Street, which were then old and dilapidated houses, and erected on their site new warehouses. In doing so, he altered the position and enlarged the dimensions of the windows previously existing, increased the height of the building, and set back the rear or back line of those warehouses.

Tapling v. *Jones.*

"'The defendant, who is a carpet warehouseman, on the 23rd of July 1852, was tenant of the said Gresham Street property, and now holds the same under a lease for a term of eighty-one years since granted to him. In and about the year 1856, the defendant pulled down the buildings then standing on the Gresham Street property in order to erect thereon a warehouse.

"'The plaintiff, in July 1857, immediately after his purchase of No. 107 Wood Street, made alterations in it by lowering the first and second floors so as to make them correspond with his adjoining new warehouses, Nos. 108 and 109, and by lowering two of the windows in such floors so as to suit the new position of the floors. One of the lower windows was about one foot longer than before, and the other about the same size as the old one, and both occupied parts of the old apertures. A small window on the first floor was blocked up. He also built two additional stories to No. 107, in the first of which, viz., the fourth story of the premises, he put out a new window, and in the fifth or attic story he placed a window extending across the entire width of the building. These new windows and lights were so situated that it was impossible for the owners of the said Gresham St. property to obstruct or block them without also obstructing or blocking, to an equal or greater extent, that portion of the said windows and lights which occupied the site of the said ancient windows in No. 107.

"'The said alterations and additions in No. 107 Wood Street, so far as the windows are concerned, were completed by the plaintiff in the month of August 1857.

"'After the alterations and additions to No. 107 Wood Street had been so completed, the defendant proceeded to erect his said intended warehouse and premises on the Gresham Street property, and built up the eastern wall thereof to such a height as to obstruct the whole of the windows and lights of No. 107 Wood Street.

Tapling v. *Jones.*

"'The defendant refused to remove the said eastern wall of his warehouse and premises, or any part of it.

"'The question for the opinion of the Court is, whether the plaintiff is entitled to recover in respect of the obstruction of light and air complained of. If they are of opinion that he is so entitled, then the verdict entered for the plaintiff is to stand, and the damages to be reduced to 40s.; if they think the plaintiff is not so entitled, then the verdict entered for the plaintiff is to be set aside, and a verdict entered for the defendant.'

"The Judges for the Court of Common Pleas were equally divided in opinion, the L.C. Justice and Mr Justice Williams being in favour of the plaintiff below, Mr Justice Keating and Mr Justice Byles being in favour of the defendant below. Mr Justice Keating thereupon withdrew his opinion, and judgment was given for the plaintiff below.

"The defendant below brought error upon that judgment, and the Court of Exchequer Chamber affirmed the judgment. There was a difference of opinion among the judges, Mr Justice Wightman, Mr Justice Crompton, Mr Baron Bramwell, and Mr Justice Blackburn being in favour of the plaintiff below, and the Lord Chief Baron and Mr Baron Martin being in favour of the defendant below.

"The Attorney-General and Archibald for the appellant. The right to an easement must rest on some presumed grant, and the extent of the grant is always to be referred to, and measured by, the user and the effect of it.

"The cases show that whatever may be the origin of the right, such right is measured by usage; so, if the effect on the property subject to the right is varied, the party having the right cannot claim the benefit of the right as to the old part which has remained unaltered, so as to shield the user of the new part. Such an alteration sets the owner of the servient tenement free to protect himself. As to the origin of the right being presumed to be in grant before the Pre-

scription Act, *Daniel* v. *North*,* *Barker* v. *Richardson*,† the old theory of the law still remains: *Bright* v. *Walker*.‡ The effect of material alterations which, if acquiesced in, would increase the servitude of the servient tenement, is to destroy the servitude, unless the new encroachment can be shut out without affecting the old right. The consent is to a different thing. The old right cannot be used as a shield for fresh encroachment. The continuance of what the servient tenant has done to protect himself from such encroachment cannot be prevented by the owner of the dominant tenement restoring the property to its original state. The servient tenant consented only to something of which the dominant tenant has deprived himself of the right to insist upon by altering the state of circumstances: *Luttrell's Case*.§ The first case having direct application to the present is *Cherrington* v. *Abney*,‖ also see Com. Dig. and *Martin* v. *Goble*.¶ The cases of *Dougall* v. *Wilson*,[1] *Cotterell* v. *Griffiths*,[2] *Chandler* v. *Thompson*,[3] and *Thomas* v. *Thomas*[4] are not relied upon, but merely mentioned in their order of date. The later cases on which reliance is placed are *Garritt* v. *Sharp*,[5] *Blanchard* v. *Bridges*,[6] *Renshaw* v. *Bean*,[7] *Wilson* v. *Townend*,[8] *Davies* v. *Marshall*,[9] *Cooper* v. *Hubbuck*, and *Hutchinson* v. *Copestake*.[10] The opinion of the majority of the judges in the present case has been approved of by Vice-Chancellor Wood, in *Weatherby* v. *Ross*.[11] The respondent abandoned his old rights; he had no intention of resuming them when he made the alterations, and he cannot resume them now: *Liggins* v. *Inge*;[12] *Stokoe* v. *Singers*;[13] Gale on Easements, pp. 500, 483-4; and *Martin* v. *Hendon*.[14]

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* 11 East., 372. † 23 R. R., 400 (1821). ‡ 1 C. M. & R., 211 (1834).
§ 4 Rep., 87*a*. ‖ 1 Vern., 645. ¶ 1 Camp., 320.
[1] 2 Wms. Saunds., 175*a*. [2] 4 Esp., 69. [3] 3 Camp., 82.
[4] 2 C. M. & R., 39. [5] 3 A. & E. [6] 4 A. & E., 176.
[7] 18 Q. B., 112. [8] 1 Dr. & Sm., 324. [9] 1 Dr. & Sm., 557.
[10] 9 C. B., N. S., 863. [11] 1 H. & M., 349 (1862-3). [12] 7 Bing., 682.
[13] 26 L. J., Q. B., 257 (1857). [14] L. J. R., N. S., Eq., 604.

Tapling v. *Jones.*

"Sir H. Cairns, for the respondent, was not called upon.

"The Lord Chancellor.—By the third section of the Act 2 & 3 Will. 4, c. 71, intituled An Act for Shortening the Time of Prescription in certain Cases, it is enacted, 'that when the access and use of light to and for any dwelling-house, workshop, or any other building shall have been actually enjoyed therewith for the full period of twenty years without interruption, the right thereto shall be deemed absolute and indefeasible, any local usage or custom to the contrary notwithstanding, unless it shall appear that the same was enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing.'

"Upon this section it is material to observe, with reference to the present Appeal, that the right to what is called 'an ancient light' now depends upon positive enactment. It is matter *juris positivi*, and does not require, and therefore ought not to be vested on, any presumption of grant or fiction of a licence having been obtained from the adjoining proprietor. Written consent or agreement may be used for the purpose of accounting for the enjoyment of the servitude, and thereby preventing the title which would otherwise arise from uninterrupted user or possession during the requisite period. This observation is material, because I think it will be found that error in some decided cases has arisen from the fact of the Courts treating the right as originating in a presumed grant or licence.

"It must also be observed, that after an enjoyment of an access of light for twenty years without interruption, the right is declared by the statute to be absolute and indefeasible; and it would seem, therefore, that it cannot be lost or defeated by a subsequent temporary intermission of enjoyment not amounting to abandonment. Moreover, this absolute and indefeasible right, which is the creation of the statute, is not subjected to any condition or qualification; nor is it made liable to be affected or prejudiced by any

attempt to extend the access or use of light beyond that which, having been enjoyed uninterrupted during the required period, is declared to be not liable to be defeated.

"Before dealing with the present Appeal, it may be useful to point out some expressions which are found in the decided cases, and which seem to have a tendency to mislead. One of these expressions is the phrase 'right to obstruct.' If my adjoining neighbour builds upon his land, and opens numerous windows which look over my garden or my pleasure-grounds, I do not acquire for this act of my neighbour any new right or other than I before possessed. I have simply the same right as before; I have simply the same right of building or raising any erection I please on my own land, unless that right has been by some antecedent matter either lost or impaired, and I gain no new or enlarged right by the act of my neighbour.

"Again, there is another form of words which is often found in the cases on this subject, namely, the phrase 'invasion of privacy by opening windows.' That is not treated by the law as a wrong for which any remedy is given. If A. be the owner of beautiful gardens and pleasure-grounds, and B. is the owner of an adjoining piece of land, B. may build upon it a manufactory with a hundred windows overlooking the pleasure-grounds, and A. has neither more nor less than the right which he previously had, of erecting on his land a building of such height and extent as will shut out the windows of the newly erected manufactory.

"If in lieu of the words, 'the access and use of light to and for any dwelling-house,' in the third section of the statute, there be read, as there well may, 'any window of any dwelling-house,' the enactment (omitting immaterial words) will run thus: 'When any window of a dwelling-house shall have been actually enjoyed therewith for the full period of twenty years without interruption, the right to such window shall be deemed absolute and indefeasible.'

Tapling v. *Jones.*

"Suppose, then, that the owner of a dwelling-house with such a window, that is, with an absolute and indefeasible right to a certain access of light, opens two other windows, one on each side of the old window, does the indefeasible right become thereby defeasible? By opening the new windows he does no injury or wrong in the eye of the law to his neighbour, who is at liberty to build up against them, so far as he possesses the right of building on his land; but it must be remembered that he possesses no right of building so as to obstruct the ancient window; for to that extent his right of building is gone by the indefeasible right which the statute has conferred.

"Believing this to be the sound principle, I cannot accept the reasoning on which the decisions in *Renshaw* v. *Bean*,* and *Hutchinson* v. *Copestake*,† were founded. The facts of these two cases were not exactly the same as in the present; for in neither was any ancient window preserved unaltered, but the old windows had been enlarged, and new ones added; in which state of things it was held, that inasmuch as it was not possible for the adjoining proprietor to obstruct the new windows and the access of the ancient lights, without at the same time obstructing the original apertures, the owner of the house must be considered as having lost his right to the ancient lights, at all events until he restored his house to its original condition.

"According to these cases, the law must be thus stated, namely, if the owner of a dwelling-house with ancient lights opens new windows in such a position as that the new windows cannot be conveniently obstructed by an adjoining proprietor without obstructing the old, he, the adjoining proprietor, is entitled so to do, at all events so long as the new windows remain. Upon examining the judgments, it will be seen that the opening of the new windows is treated

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* 18 Q. B., 112. † 9 C. B., N. S., 863.

Tapling v. *Jones.*

as a wrongful act done by the owner of the ancient lights, which occasions the loss of the old right he possessed; and the Court asks whether he can complain of the natural consequence of his own act.

"I think two erroneous assumptions are involved in or underlie this reasoning; first, that the act of opening the new windows was a wrongful one; and secondly, that such wrongful act is sufficient in law to deprive the party of his right under the statute. But, as I have already observed, the opening of the new window is in law an innocent act, and no innocent act can destroy the existing right of the one party, or give any enlarged right to the other, namely, the adjoining proprietor.

"In the present case an ancient window in the plaintiff's house has been preserved, and remained unaltered during all the alterations of the building, and the access of light to that window is now obstructed by the appellant's wall. A majority of the Court below have held that the obstruction was justified whilst the new windows, which the plaintiff some time since opened, remained, but was not justifiable when those new windows were closed, and the house, so far as regards the access of light, was restored to its original state; but, on the plain and simple principles I have stated, my opinion is that the appellant's wall, so far as it obstructed the access to the respondent's ancient unaltered window, was an illegal obstruction from the beginning; and I have great difficulty in acceding to the reasoning that this permanent building of the appellant was a legal act when begun and completed, but has subsequently become illegal through a change of purpose on the part of the respondent. On such a principle, the person who opens new lights might allow them to remain until his neighbour, acting legally according to these judgments, has at great expense erected a dwelling-house, and then, by abandoning and closing the new lights, might require his neighbour's house to be pulled

Tapling v. *Jones.*

down. I think that the judgment ought to be affirmed, but not on the ground or for the reasons given by the majority of the judges in the Courts below. I therefore move that the judgment of the Court below be affirmed.

"LORD CRANWORTH.—My lords, the question raised by the special case is, whether the plaintiff in error was justified in erecting, opposite and near to the house of the defendant in error, a building which prevented the access of light and air, through which light and air has been accustomed to pass to the house in question without interruption.

"Previously to the erection by the plaintiff in error of the buildings complained of, the defendant in error made extensive alterations in his house, and in so doing opened new and enlarged several of the old windows; and it was not disputed that the plaintiff in error was justified in obstructing the new and the enlargements of the old windows. He effected this obstruction by erecting a permanent building on his own land, so near to the house of the defendant in error as to obstruct the whole of his lights, the old as well as the new. The special case finds as a fact that it was impossible for him to obstruct or block the new windows, without at the same time obstructing or blocking that portion of the windows and lights which occupied the site of the ancient windows; and his counsel argued, on the authority of *Renshaw* v. *Bean*,* that under these circumstances he had a right to erect the building in question. After it had been so erected, the defendant in error caused the altered windows to be restored to their original state, and he also filled up with brickwork the spaces occupied by the new windows; and having done this, he called on the plaintiff in error to remove the building which thus blocked up the ancient and only the ancient window.

"This application was not complied with, and thereupon the defendant in error brought his action in the Court of

* 18 Q. B., 112.

Tapling v. *Jones.*

Common Pleas against the plaintiff in error for obstructing his ancient lights.

"At the trial a verdict was found for the plaintiff in error, subject to a special case; which was afterwards argued before the Court of Common Pleas; and the Court being equally divided in opinion, the junior judge, following the usual practice, withdrew his opinion, and judgment was then given for now defendant in error, according to the opinions of what was then the majority of the Court.

"The case was then brought to the Court of error, where the judgment below was affirmed, four of the six learned judges who heard the case concurring in opinion with the Court of Common Pleas in favour of the defendant in error, and two dissenting. The case was then brought by writ of error to this House, and the plaintiff in error was heard at the bar. We did not call on the defendant in error to support his case, being of opinion that the plaintiff in error had laid no ground for disturbing the judgment below, though our opinion was not founded on the same ground as that on which the majority of the judges below seem to have proceeded.

"The case raised two questions. First, whether the plaintiff in error was justified in erecting the building whereby the access of light and air to the house of the defendant in error was obstructed? and secondly, if he was, then whether he was bound to remove it after the windows of the defendant's house had been restored to their ancient condition? The second question does not arise, and I will therefore proceed to state shortly the grounds on which my opinion rests.

"The right to enjoy light through a window looking on a neighbour's land, on whatever foundation it might have rested previously to the passing of the 2 & 3 Will. 4, c. 71, depends now on the provisions of that statute.

"The special case finds that the windows of the house of

Tapling v. *Jones.*

the defendant in error, previously to the alterations made by him in 1857, were ancient windows; by which we must understand windows through which he had enjoyed access of light without interruption for twenty years. His right, therefore, to that light was by the express provision of the statute absolute and indefeasible. It is not disputed that, when the plaintiff in error erected his wall, he obstructed the light to which the defendant in error was so entitled, and that he so prevented him from enjoying what the statute declares was his absolute and indefeasible right. The plaintiff in error, in justification of the course he took, relies on the fact that, before he raised his wall and so caused the obstruction complained of, the defendant in error had made material alterations in his house, enlarging the old windows and adding new ones. There was nothing to make it unlawful for the plaintiff in error to obstruct the access of light to these new windows, and to so much of the altered old windows as did not occupy the old site through which light had passed; and as it was impossible to do this without at the same time obstructing the light which had previously passed through the old windows (so at least we must take the fact to be), the plaintiff in error contends that he had a right to obstruct the whole.

"I am unable to comprehend the principle on which such a claim can rest. Where a person has wrongfully obstructed another in the enjoyment of an easement, as, for instance, by building a wall across a path over which there is a right of way, public or private, any person so unlawfully obstructed may remove the obstruction; and if any damage thereby arise to him who wrongfully set it up, he has no right to complain. His own wrongful act justified what would otherwise have been a trespass. But this depends entirely on the circumstances that the act of erecting the wall was a wrongful act; whereas the opening of a window is not an unlawful act. Every man may open

any number of windows looking over his neighbour's land; and, on the other hand, the neighbour may, by building on his own land within twenty years after the opening of the window, obstruct the light which would otherwise reach it. Some confusion seems to have arisen from speaking of the right of the neighbour in such a case as a right to obstruct the new lights. His right is a right to use his own land by building on it as he thinks it most to his own interest, and if by so doing he obstructs the access of light to the new windows, he is doing that which affords no ground of complaint. He has a right to build, and if thereby he obstructs the new lights, he is not committing a wrong. But what ground is there for contending that, because his building so as to obstruct a new light would afford no ground of complaint, therefore, if he cannot so build without committing a trespass, he may commit a trespass? I can discover no principle to warrant any such inference.

"I will put this case: Suppose the owner in fee simple of close A. were to build a house at the edge of close A., with windows overlooking close B., held by himself, as tenant for life, or by a tenant for life, who, from feelings of kindness, would not object to the opening of the windows of the new house; at the end of twenty years he would, according to the third and seventh sections of the Act, have acquired an absolute and indefeasible right to the access of light across close B. It surely cannot be contended that the remainder-man, because he could not otherwise prevent the owner of the house from acquiring this right, might, before the expiration of twenty years, come on the land of the tenant for life, and there erect a building to obstruct the light of the new windows. And yet the argument of the plaintiff in error must go this length, for there is no difference in principle between a trespass on the soil and any other trespass.

"In the case under discussion, the new windows were

opened by the same person who had a right to access of light through the old windows; but this might have been otherwise. Suppose the owner of an ancient window on a first floor not to be the owner of the second floor, and that the owner of that floor should open a window which the owner of the adjoining land could not obstruct without at the same time obstructing the ancient light; no one, I suppose, would argue that in such a case the owner of the land overlooked could obstruct the ancient light, and yet I can see no difference in principle between the two cases. It may be said that, in the case I have just put, the owner of the ancient light was in no default, and could not be affected by the act of a stranger. If after the owner of the second floor had opened a new window, and within twenty years the owner of the first floor had purchased the second floor, would the continuance by him of the new window authorise the neighbour in obstructing the old light, if he could not otherwise obstruct the new one? This will hardly be contended. So, again, suppose the owner of the first floor to have demised the second floor to a tenant, and that he, without the licence of his landlord, put out the new window; this might entitle the landlord to complain of his tenant as having been guilty of waste, but it can hardly be contended that it would justify the neighbour in obstructing the ancient light enjoyed by the landlord. So, again, if the landlord had given his permission to the tenant to open the window, I cannot see any difference which this would make; the tenant would, *quoad hoc*, be unimpeachable of waste; but it would be lawful to the landlord to make such a demise, which could not in any respect affect the relative rights of the landlord and his neighbour.

"Suppose the owner of a house has a right of way to the door of his house over his neighbour's land, a case put by Mr Justice Blackburn in his judgment, the argument of the plaintiff in error would go to show that if the owner of

Tapling v. *Jones.*

the house should put a pane of glass in his door, his right of way would or might be at an end. For it would be lawful for the neighbour to obstruct it, if he could not otherwise obstruct the light.

"I will not, however, multiply illustrations. The plain principle seems to me to be that no one can interfere with the absolute and indefeasible right of another, unless where such interference is made necessary by the wrongful act of the party possessing the right.

"I do not attempt to disguise from myself that, unless the facts of this case can be distinguished from those in *Renshaw* v. *Bean*,* the conclusion at which I have arrived is directly at variance with the decision of the Court of Queen's Bench in that case. But I own I think that the facts there were substantially the same as those now before us, and the Court decided there that the obstruction of the ancient light was in such a case justifiable. Lord Campbell, in delivering the judgment of the Court in that case, stated the Court did not proceed on the ground that the plaintiff, whose ancient lights were obstructed, had lost the rights which he had previously enjoyed of having light and air through such portions of the new windows as had formed portions of the ancient windows; but his lordship added, 'If, by the alterations which the plaintiff made, he exceeded the limits of that right, and so put himself into such a position that the access could not be obstructed by the defendant without at the same time obstructing the former right of the plaintiff, he has only himself to blame.' The observations I have already made sufficiently indicate the reasons on which I cannot assent to this reasoning; and unless that reasoning be sound, the judgment cannot be supported.

"The case of *Renshaw* v. *Bean** was followed by that of *Hutchinson* v. *Copestake*,† not only in the Court of Common

* 18 Q. B., 112. † 9 C. B., N. S., 863.

Tapling v. *Jones.*

Pleas, where the decision of the Court of Queen's Bench was considered to be binding, but also in the Exchequer Chamber, though there some of the judges seem to have proceeded on the special facts of that case. It is, however, the duty of this House, as the ultimate Court of Appeal, to lay down the law on what they consider to be correct principles; and though we should be slow to decide contrary to the decisions of the Courts of Westminster Hall, where they have been long received and acted on, even if we see cause to question the grounds on which they were supposed to rest, yet no such principle ought to restrain us from correcting what we consider to have been an erroneous decision pronounced only thirteen years ago; more especially when we have, as in this case, the opinions of two very learned judges expressing their very decided dissent from it, and when we think we can discover in judgments of the Chief Justice of the Common Pleas and of Mr Justice Williams great doubts, to put it no higher, of the soundness of the decision which we are overruling. My clear opinion is that the judgment below ought to be affirmed.

"Lord Chelmsford.—My lords, I agree with the judgment of the Court of Exchequer Chamber, but on different grounds from those on which it proceeded.

"The only facts of the special case which are necessary to be noticed are: That in making the alterations in his house, which originally consisted of three stories, with one window in each story, the respondent altered the windows in the two lower stories, but so as to make them both occupy part of the old apertures, and retained the window on the third story, unaltered, and built two additional stories, in each of which he put out a new window. That after these alterations were completed, the appellant, who had previously made preparations for erecting a warehouse on the site of some old buildings which he had pulled down, built up a wall to such a height as to obscure the whole of

the lights in the respondent's buildings; it being impossible (as the special case states) for the appellant to obstruct or block up the upper windows without obstructing or blocking up the portion of the windows or lights which occupied the site of the ancient windows. The special case also states that the new upper windows could not have been obstructed in a more convenient manner (by which I understand more convenient for the appellant) than by building up a wall of sufficient height on his premises. After the appellant's wall was finished, the respondent caused the altered windows in his building to be restored to their original state, and the new windows in the upper stories to be blocked up, and then called upon the appellant to pull down his wall and restore to the respondent's premises their former light and air. The appellant refused, and thereupon the action was brought.

"Upon this state of facts two questions have been raised. First, whether the appellant can justify the obstruction of the ancient lights in the respondent's house on the ground that it was otherwise impossible for him to obstruct the new lights? Secondly, supposing him to have this right, whether it continued after the necessity for its exercise ceased, by the discontinuance of the new lights?

"The first question brings directly into review before this House the decision of the Court of Queen's Bench in the case of *Renshaw* v. *Bean*,* which in its circumstances (as stated by Lord Campbell in his judgment) closely resembled the present case. The Court there held that 'the plaintiff having by the alterations which he made exceeded the limits of his former rights, and put himself into such a position that the access could not be obstructed by the defendant in the exercise of his lawful rights, on his own land, without at the same time obstructing the former right of the plaintiff, he had only himself to blame for the

* 18 Q. B., 112.

existence of such a state of things, and must be considered to lose the former right which he had, at all events until he should, by himself doing away with the access and restoring his windows to their former state, throw upon the defendant the necessity for so arranging his buildings as not to interfere with the admitted right.'

"In this statement of the grounds of decision the word 'right' does not appear to be used with appropriate precision and accuracy. It is not correct to say that the plaintiff, by putting new windows into his house, or altering the dimensions of the old ones, 'exceeded the limits of his right,' because the owner of a house has a right at all times (apart, of course, from any agreement to the contrary) to open as many windows in his house as he pleases. By the exercise of the right he may materially interfere with the comfort and enjoyment of his neighbour, but of this species of injury the laws takes no cognisance. It leaves every one to his self-defence against an annoyance of this description; and the only remedy in the power of the adjoining owner is to build on his own ground, and so to shut out the offensive windows. But as it would be hard upon the owner of a house, to which the free access of light and air had been permitted for a long period, to continue for ever indebted to the forbearance of his neighbour for its enjoyment, the courts of law, upon the principle of quiet possession, formerly held that where there had been an uninterrupted use of lights for twenty years, it was to be presumed that there was some grant of them by the neighbouring owner, or, in other words, that he had by some agreement restricted himself in the otherwise lawful employment of his own land. The Prescription Act (2 & 3 Will. 4, c. 71) turned this presumption into an absolute right, founded upon user on one side and acquiescence on the other.

"It was argued, on behalf of the appellant, that under this Act the right to the enjoyment of light was still made

to rest on the footing of a grant. I do not see what benefit his case would derive from the establishment of this position; but it appears to me to be contrary to the express words of the statute. By the Prescription Act, after twenty years' user of lights the owner of them acquires an absolute and indefeasible right, which so far restricts the adjoining owner in the use of his own property that he can do nothing upon his premises which may have the effect of obstructing them. The right thus acquired must necessarily be confined to the exact dimensions of the opening through which the access of light and air has been permitted. As to everything beyond, the parties possess exactly the same relative rights which they had before. The owner of the privileged window does nothing unlawful if he enlarges it, or if he makes a new window in a different situation. The adjoining owner is at liberty to build upon his own ground so as to obstruct the addition to the old window, or to shut out the new one; but he does not regain his former right of obstructing the old window, which he had lost by acquiescence: nor does the owner of the old window lose his former absolute and indefeasible right to it, which he had gained by length of user. The right continues uninterruptedly until some unequivocal act of intentional abandonment is done by the person who has acquired it, which will remit the adjoining owner to the unrestricted use of his own premises.

"It will, of course, be a question in each case whether the circumstances satisfactorily establish an intention to abandon altogether the future enjoyment and exercise of the right. If such an intention is clearly manifested, the adjoining owner may build as he pleases upon his own land; and should the owner of the previously existing window restore the former state of things, he could not compel the removal of any building which had been placed upon the ground during the interval; for a right once

abandoned, is abandoned for ever. But the counsel for the appellant carried their argument far beyond this point. The part of the case which was the most difficult for them to encounter was that which relates to the unaltered window in the third floor. As to this, they contended that the alteration of the windows above so changed the character of the previously acquired right to light and air as entirely to destroy it. But it is not easy to comprehend how this effect can be produced by acts wholly unconnected with an ancient window, which the owner has carefully retained in its original state. And the learned counsel did not seem to expect much success from their argument in its application to the unaltered window, but directed it, with more plausibility, to the alterations of the windows on the lower floors. As to these, they contended that the owner of ancient windows is bound to keep himself within their original dimensions; and that if he changes or enlarges them in any way, although he retains the old openings, in whole or in part, he must either be taken to have relinquished his right or to have lost it. But upon what principle can it be said that a person, by endeavouring to extend a right, must be held to have abandoned it, when, so far from manifesting any such intention, he evinces his determination to retain it, and to acquire something beyond it? If, under such circumstances, abandonment of the right cannot be assumed, as little can it be said that it is a cause of forfeiture.

"It must always be borne in mind that it is no unlawful act for the owner of a house to break out a window, or to enlarge an ancient window, although in the latter case some difficulty may be thrown upon an adjoining owner to distinguish the old part from the new, and so to ascertain which part he has a right to obstruct, and which is privileged from his obstruction. The alterations may be of such a nature (as in the present case) as to make it impossible

for him to prevent the further restriction of his liberty to build on his own premises, without at the same time interfering with the right previously acquired against him. Yet it would be a very strange extension of the law of forfeiture, to hold that the owner of an ancient window, doing nothing but what he may lawfully do, loses his existing right, because it stands in the way of the means of interfering with an act against which the owner of the adjoining land would otherwise have been able and would have been entitled to defend his property. Even supposing what was done by the respondent amounted to an unlawful encroachment, the question put by Mr Baron Alderson in *Thomas* v. *Thomas* * appears to be unanswerable: 'How does the plaintiff, by claiming more than he lawfully may, destroy his title to that which he lawfully may claim?' But the Court of Queen's Bench, in the case of *Renshaw* v. *Bean*,† held that 'because the respondent, in the exercise of his lawful rights on his own land, could not obstruct (what they called) the access of the plaintiff's former right, without obstructing that former right, he had only himself to blame for the existence of such a state of things, and must be considered to lose the former right which he had.' This doctrine appears to me to be founded neither upon principle nor upon authority. It amounts to this: the plaintiff, having acquired an absolute right to ancient windows against the defendant, does an act which it was lawful for him to do, subject to the right of the defendant to render it useless; but because he has contrived his measures so as to prevent the defendant hindering the attempt to obtain a new right without destroying, or at least suspending, the exercise of the old, therefore the old right may be lawfully interrupted, if indeed it is not altogether lost.

"It may be said (and this was urged in argument at the bar) that, unless such is the law, a person who has an ancient window may acquire a right to any number of

* 2 C. M. & R., 39. † 18 Q. B., 112.

additional windows, by so contriving their position as to place them completely under the protection of the ancient window, and thus effectually prevent the adjoining owner's interference with them. Undoubtedly, this is a very possible case; and yet there does not appear to be anything unreasonable or unjust in denying, even under such circumstances, a power over the ancient lights which did not previously exist; for consider the case upon the presumption of a grant as it stood before the Prescription Act. The rights of the parties would, of course, be taken to be regulated by such grant, and it would have been contrary to principle to permit the grantor to derogate from his own grant, merely because he could not otherwise prevent an act which might prejudicially affect him, but which the grantee was not prohibited from doing by law. And precisely the same consequences seem to follow from the right being now acquired by user and acquiescence — while the user is ripening into a right, the adjoining owner has the power completely in his own hands. If he has no objection to the particular window, but is desirous of preventing any enlargement or alteration of it, or any new window being opened, he may inform his neighbour of his determination to build up against the window unless he will enter into an agreement not to enlarge or alter it, nor to open any new one without his permission.

"The adjoining owner can, therefore, always protect himself by a little vigilance; and if he allows rights to be acquired, under shelter of which he is prevented using his land for the purpose of defence against the acts of his neighbour, he must blame his own want of foresight and precaution, and not the law, which will not permit an ancient right to be invaded upon any such assumed ground of necessity.

"I am therefore of opinion that the case of *Renshaw* v. *Bean** cannot be supported, and that the appellant cannot

* 18 Q. B., 112.

justify the erection of his wall, and the consequent obstruction of the ancient lights on the respondent's building.

"The determination of the first question in the respondent's favour renders it unnecessary to consider whether the respondent had a right to insist upon the removal of the appellant's wall, after he had restored his windows to their original state. In the view which I have taken, it is impossible for me to deal with the second question in the way in which it has been treated in the Court of Common Pleas and in the Exchequer Chamber. If I had been of opinion that the acts of the respondent conferred upon the appellant the power of interfering, for however short a time, with the right of the respondent, I should have been compelled, as a consequence, to hold that the obstruction could not be rendered temporary by any subsequent act of the respondent, because a right once lost can never be revived. But it is unnecessary to dwell upon this point, because it is obvious that after the decision of this case, the question can never again be raised. I am of opinion that the judgment of the Court of Exchequer Chamber ought to be affirmed."

This case deals so fully and so exhaustively with the matter, that further comment is unnecessary; and we now come to—

2. **By variations of the plane at which light is admitted.**—The most important case is the *National Provincial Plate Glass Insurance Company* v. *The Prudential Assurance Company.**

In this case the National Provincial Plate Glass Insurance Company, the plaintiffs, occupied and held for long terms of years No. 66 Ludgate Hill; and the Prudential Assurance Company, the defendants, were owners of buildings to the east and to the north of the building held by the plaintiffs. In 1870 the plaintiffs rebuilt their premises. They set back the upper floors of the east face of

* *Nat. Prov. Plate Glass Insurance Co.* v. *Prudential Assurance Co.*, 6 Ch. D., 757 (1877).

Nat. Prov. Plate Glass Co. v. *Prudential Assurance Co.*

their building about 5 feet 8 inches, the plane of the face of the new building being parallel to that of the old building, and the windows in the new building nearly corresponding with those in the old building. A room on the ground floor of the old building was lighted by a dormer window of three faces, light to which came from an opening or well-hole between the building of the plaintiffs and that of the defendants. The ground floor of the new building was the same as in the old building, but instead of the dormer window, the plaintiffs put a skylight, partially co-extensive with the old window, though of a different shape, and this alteration was made in order to comply with certain provisions of the Metropolitan Building Acts.

In 1876 the defendants began to rebuild their premises, and had partially rebuilt them, when the plaintiffs brought this action, alleging that access of light to the windows on the east face of their building, and to the room on the ground floor, was already obstructed by what had been built, and that the erection of the new building to the height proposed would be an invasion of the plaintiff's right to access of light, and most prejudicial to the enjoyment of their premises; and the plaintiffs claimed an injunction and damages.

On the 23rd of June 1876, the Master of the Rolls, Sir George Jessel, refused to grant an injunction on an interlocutory application.

The action came on for trial on the 12th July 1877.

The judgment of the Court was that it had not been shown "that the access of light to the east windows would be affected, and that the building of a certain bow window would not affect the access of light to the ground floor, but that the raising of the party wall had affected the access of light to the ground floor," and continued in these words:—

"The case, therefore, resolves itself into a question as to the effect of the party wall upon the window on the

ground floor, with regard to which various points have been suggested in argument. In the first place, it is said that the change which the plaintiffs have themselves effected in the mode of lighting their ground floor deprives them of any right under the statute. It is said that the aperture must be the same, or, to use the proposition put forward by Mr Cookson, it must be the same in every respect, except extension in the same plane as the original window, that concession being necessary in consequence of the decision in *Tapling* v. *Jones*.*

"Now, the words of the statute which regulate this matter (2 & 3 Will. 4, c. 71, s. 3) are, 'That when the access and use of light to and for any dwelling-house, workshop, or other building shall have been actually enjoyed therewith for the full period of twenty years without interruption, the right thereto shall be deemed absolute and indefeasible.'

"I understood it to have been suggested in argument that the house must be the same; but if that argument be urged, I am prepared to hold that it is not tenable, and that the house need not be identical in every respect. We are not to be involved in those delicate questions of identity of structure which puzzled the Athenians with regard to their sacred trireme, or which are said to have been raised with regard to a knife. It is enough, as it seems to me, if the house be for practical purposes the same house, and this house standing upon the old foundations is, in my opinion, the same house, if it be necessary that the house shall be the same in order to bring the case within the statute. But I am not convinced even of that. In my view, the conversion of a dwelling-house into a workshop or other building would not deprive the workshop or other building of its right to the access of light which the dwelling-house had enjoyed. However, the point does not appear to me necessary for decision in the present case.

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* 11 H. C. L., 290 (1865). 34 L. T. C., p. 342 (1865).

Nat. Prov. Plate Glass Co. v. *Prudential Assurance Co.*

"The next question which arises on the statute is this: It is said that the access of light to the dwelling-house must be identical, and that the right claimed and the enjoyment which has existed must be of access of light through identical apertures. Now, in its breadth, that proposition is not true, because the case of *Tapling* v. *Jones* * has shown that you may destroy the identical aperture, by taking away the surrounding lines of that aperture, and yet leave your right to light intact. Furthermore, I find nothing whatever in the statute which refers expressly to a window or aperture. I find in the statute a reference to the access of light; and in my view the access of light might be described as being the freedom with which light may pass through a certain space over the servient tenement; and it appears to me that, wherever for the statutory period a given space over the servient tenement has been used by the dominant tenement for the purpose of light passing through that space, a right arises to have that space left free so long as the light passing through it is used for or by the dominant tenement. I come to that conclusion for this reason—that you do not want a statute to give you a right of access, in your own premises, to light through your own aperture. The statute is wanted to assure your right in the space over the servient tenement.

"But then it is said that the cases have to a large extent proceeded upon the form and size of the aperture or window; and that is perfectly true, because, of course, the opening in the dominant tenement is the limit which defines the boundaries of the space over the servient tenement. It is for that reason that in all cases the Court has had regard to the aperture in the dominant tenement by means of which the space over the servient tenement has been useful to the dominant tenement. It is said that that conclusion is inconsistent with the definition given by Lord Westbury in *Tapling* v. *Jones*,* but in my opinion that is not so; and

* 11 H. C. L., 290 (1865). 34 L. T .C., p. 342 (1865).

Nat. Prov. Plate Glass Co. v. *Prudential Assurance Co.*

Lord Westbury, in referring to a window as equivalent to an access, only means that the window in effect defines the access. And that that was the view taken by the House of Lords seems to me confirmed by a passage in the judgment of Lord Chelmsford, in which he says: 'By the Prescription Act then, after twenty years' user of the lights, the owner of them acquires an absolute and indefeasible right, which so far restricts the adjoining owner in the use of his own property that he can do nothing upon his premises which may have the effect of obstructing them. The right thus acquired must necessarily be confined to the exact dimensions of the opening through which the access of light and air has been permitted.' In other words, he seems to me to say that the aperture through which the access of light has been admitted is the measure of the access which is to be enjoyed over the servient tenement.

"This case seems to me to illustrate the propriety of not introducing into the construction of the statute any questions with regard to aperture, opening, or window, except so far as the statute itself introduces them. For instance, in the present case no less than three openings have been suggested as being the decisive or dominant openings to which regard must be had. In the first place, there is a suggestion, which I believe I threw out, that the interstice between the sides of the wall and the overhanging top and bottom where the dormer was situated, might itself be the opening, because I conceive there can be no doubt that by a grant of the house that space would pass, and you have therefore a confined opening from the adjoining premises into what in law is the plaintiffs' house. The second, which is that on which the plaintiffs mainly relied, was that the dormer window, consisting of glass arranged in three distinct planes, was itself the aperture to which regard must be had. The Master of the Rolls, in his judgment on the interlocutory application, seems to have been inclined to a third view, that the

Nat. Prov. Plate Glass Co. v. *Prudential Assurance Co.*

aperture to which you must have regard was the opening in the ceiling in the plaintiffs' room through which the light found its way from the dormer into the plaintiffs' room. But it seems to me not necessary to determine any of these questions. If that dormer window had for twenty years received light passing through a space over the defendants' premises, any aperture which the plaintiffs may be minded to use, and which lets in any portion of the light passing through that same space, is protected by the Act—it is the same access to the same dwelling-house. When you have those circumstances it seems to me you have all that the Act requires.

"But then it is said that the case of *Blanchard* v. *Bridges** is an authority for the proposition that a change in the plane of the window puts an end to the right under the statute, although a change of the aperture by expansion in the same plane would not put an end to that light. Now, such a conclusion seems to me one to which the Courts ought not to come, if they can help it. I am at a loss to see why putting back a window, which has enjoyed light for twenty years, supposing the planes of the windows to be parallel, should effect an absolute surrender of the right which but for the putting back would have existed. Such a conclusion seems to me to have no reason or common-sense to support it. And if putting back in a parallel plane will not work a forfeiture of the right, why does putting back the front at an angle with the original plane do so? I confess that I see no reason for the proposition. However, it is said that *Blanchard* v. *Bridges** is an authority to bind me, whether I see or do not see the reason for it. That case appears to me to have proceeded upon this: there was that which the Court held amounted to an implied grant of a right to have certain windows, and an implied licence or covenant not to obstruct the access of light to those windows; and the whole question was, what was the extent

* 4 Ad. & El., 176.

Nat. Prov. Plate Glass Co. v. *Prudential Assurance Co.*

to which that implied grant, licence, or covenant went? The facts were shortly these: the plaintiff had been allowed to erect windows looking east in his building or cottage; he then built out a projection 5 feet from the original house, two bays looking north and south, and also more or less east, and the question was whether the original grant, licence, or covenant, was to be deemed to protect these new windows. The Court held it was not. It was a mere question how far the implied grant, licence, or covenant was to be deemed to have gone. The Court says that a person might well acquiesce in the existence of a window of a given size, elevation, or position, because it was felt to be no annoyance to him, but that to hold him to be thereby concluded as to some other window to which he might have the greatest objection, and to which he would never have assented if it had come in the first instance, would be a great hardship. Therefore I do not think that case to be a binding authority for the purpose for which it has been used before me; and I hold, in the present case, that there has been for twenty years an access of light to the plaintiffs' dwelling-house through a portion of space over the defendants' tenement, which reached the ground floor of the plaintiffs' house, and a portion of which, if not the whole, still reaches the same tenement of the plaintiffs' through an aperture. I have said that it does not appear to me to be necessary to determine whether the aperture be or be not the same. Further than that, if I am wrong in the conclusion that the aperture need not be the same, I yet think that in this case I ought to hold that as to so much of the new aperture as does let through the old light, it ought to be deemed the same aperture.

"That being so, I next come to the material question, whether the defendants by their building have or have not stopped so much of the light which I have held to be privileged, as materially to affect the beneficial enjoyment of the

Nat. Prov. Plate Glass Co. v. *Prudential Assurance Co.*

plaintiffs' premises, and so to entitle the plaintiffs to a substantial or considerable sum by way of damages. The defendants have asked my attention to several points bearing upon this question. They have said, and said truly, that the privileged light is only a portion of the light which now finds its way through the entire skylight.

"[His lordship then stated that on the evidence he had come to the conclusion that the raising of the party wall in very close proximity to the privileged part of the skylight had diminished the very small amount of light which previously came into the room, and that considerable damages ought to be awarded in respect of that interception of the privileged light. Then came the question whether an injunction ought to be granted, or damages ought to be awarded in lieu of an injunction, and in his lordship's opinion there had been such delay on the part of the plaintiffs in asserting their right as might not of itself be fatal to their obtaining an injunction, but must be considered. His lordship then continued :—]

"Beyond that I must consider what the Master of the Rolls has called the materiality of the injury done to the plaintiffs. Now, by that expression the Master of the Rolls, in *Smith* v. *Smith*,* meant something more than a question of whether there was a material injury which would give him jurisdiction to grant an injunction, because if there were not that material injury no question could arise between injunction and damages as alternatives. Having regard, then, to the materiality of the injury here, I think that it is not very serious. I think that a dark room will be made a little darker, in fact so much darker that damages would have been given to the extent of 100*l.* or 200*l.*, or possibly even more; but that the damage will not be such as to affect seriously the occupation of the plaintiffs' house by the plaintiffs. Further than that, I think I am at liberty to have regard to the

* 20 Eq., 500.

Nat. Prov. Plate Glass Co. v. *Prudential Assurance Co.*

whole scheme of the defendants, and I find that this injury done to the plaintiffs is done by an integral part of a very important building scheme, the other part of which will not result in damage to the plaintiffs. I am also of opinion that a portion of the defendants' building scheme actually enures to the benefit of the plaintiffs, because the substitution of a building to the north-east of the plaintiffs for the screen, which was nearer to them, actually conferred a benefit on the plaintiffs. Now, although I am not at liberty to hold the injury compensated for by the benefit, yet in deciding the question of damages or of injunction, I am at liberty to consider it as one element which has to influence my discretion in deciding which of the two alternatives, injunction or damages, I shall adopt.

"Considering then, as I said, the course which the plaintiffs have pursued, and the general circumstances of the case, including the nature of the defendants' building scheme and the materiality of the injury done to the plaintiffs, I think myself at liberty to refuse, and I think that I shall do that which is most right between the parties by refusing a mandatory injunction, and by assessing damages in lieu of it; and accordingly I assess the damages at the sum of 200*l.*

"Then arises the question with regard to costs. As a general rule, from which I believe I have as yet only departed in one case, costs should follow the event. But in this case I am not at liberty to exclude from consideration the fact that the plaintiffs have put their case far too high. Whether they, by their original claim, claimed relief in respect of the structure to the north-east is not perhaps very apparent on the pleadings, but the plaintiffs have taken that view, because they have opened that case at the bar. With regard to that and the bay, I think the plaintiffs were wrong in their contention. I think that it is far from certain that if the plaintiffs had confined their case to that

which was, in my opinion, the true case in respect to which they had rights against the defendants, the litigation might not have taken a very different turn. I think, therefore, it is a case in which the plaintiffs themselves have put their rights so high, and failed to so large an extent that I am justified, although giving judgment for damages in the manner I have done, to say that that judgment shall be without costs, and I do so accordingly."

3. **By advancement of a Wall.**—It has been held that the advancement of a wall in which ancient lights are situated will not lose the right of light, provided substantial portions of the old windows are included in the new apertures, and the fact that a wall is moved back or advanced, does not *per se* alter the right, although by either operation the right may be lost if, after the building has been moved, the light which formerly flowed into the old apertures cannot come in at the new.

We were engaged in this case, and need not give the decision of Mr Justice North, as the case went to appeal, but we quote from the *Times* reports of 9th February 1886.

The case is very important. We therefore give *in extenso* the report, and advise its careful study.

Court of Appeal—Cotton, Bowen, and Fry, L.JJ., Feb. 9, 1886.

Scott v. *Pape.**

Easement—Ancient Lights—Re-building—Advancement of Wall.

Where an old building has been pulled down and a new one erected, an easement of ancient lights will be preserved if a substantial portion of the old windows is included in the new apertures, and the fact that a frontage wall is moved back or advanced does not *per se* alter the right,

* 31 Ch. D., 554 (1885).

Scott v. *Pape.*

although by either operation the right may be lost if after the building has been moved the light which formerly flowed into the old apertures cannot come in at the new.

This was an appeal from an order of Mr Justice North restraining the defendant from an interference with the access of light claimed by the plaintiff in respect of certain buildings on the west side of Denton Yard, Newcastle-upon-Tyne. It appeared that in 1872 the plaintiff pulled down certain old buildings, consisting of an erection of three stories in height, towards the north, and of another erection two stories high, facing Denton Yard, which was a narrow lane, 7 feet 5 inches wide at the southern, and 5 feet 7 inches at the northern end. New buildings were erected by the plaintiff on the site, which were of a totally different character and of a greater elevation, and were lighted on the east side facing Denton Yard by larger and more numerous windows. The east wall of the new building was also advanced so as to reduce the width of Denton Yard to a uniform measurement of 4 feet. When the plantiff's old buildings were pulled down no formal record was preserved of the exact position of the old windows, but it has been since ascertained that the ancient lights of the larger of the plaintiff's old buildings were found to correspond very slightly, if at all, with the new windows. In 1883 the defendant pulled down four old buildings of low elevation, which belonged to him, and fronted on the east side of Denton Yard immediately opposite to plantiff's new buildings, and began to erect houses of greater elevation on the site, the effect being to interfere with and threaten the access of light to the windows on the east side of the plaintiff's new buildings. In restraint of this interference with such parts of the plaintiff's lights on the middle floor as corresponded with his ancient lights, the present action was brought. Mr Justice North, when the case was before him in May and June last, granted an injunction, being of

Scott v. *Pape.*

opinion that the plaintiff's existing lights were a substantial continuation of his ancient lights, and that there had been no abandonment, and also that the advancement of the frontage line of the plaintiff's new buildings did not destroy the prescriptive easement of light which had been enjoyed by the plaintiff for more than twenty years before the alteration of his buildings. From this decision the defendant now appealed.

Lord Justice Cotton in his judgment said "that, so far as regarded those windows of the plaintiff's new building, which occupied a substantial portion of the space occupied by the former windows, it was wrong to say that the plaintiff intended to abandon such rights as he formerly enjoyed in respect to such old windows, so long as a substantial portion of the old windows was included in the new apertures. Then with respect to the alteration of the line of frontage, which had been advanced forward so as not to correspond with the old frontage line, it had been contended that there had been so material an alteration by the plaintiff of the face of his building as not to preserve, but in effect to abandon, the easement enjoyed before the alteration. This was a question which depended upon the construction of section 3 of the Prescription Act (2 & 3 Will. 4, cap. 71). The *quantum* of light to which a man was entitled by prescription under the Act must depend upon the area of his windows and the distance they were from the servient buildings, and after the period of twenty years he got the statutory right to the access of light through that space of which he had been in the enjoyment for that period. The access of light depended upon the number of pencils of light coming to his windows directly or by refraction, and that right was not lost by the fact that a part only of the old windows was left in the new. The fact that the frontage wall was moved back or advanced did not *per se* alter the right, although by either operation

the right might be lost if, after the building had been moved, the light which formerly flowed into the old apertures could not come in at the new. The structure might be something so entirely different, or the alteration of the frontage line—by moving it back for a distance of 100 yards, for instance—might be such that practically and substantially no portion of the old light was enjoyed by the new windows. In his Lordship's opinion the question must be whether the alteration was of such a nature as to prevent the plaintiff from alleging that he was using through the new apertures the cone of light, or a substantial part of it, which reached the old windows. If that were established, then, although the right must be claimed in respect of the building, it might be claimed in respect of the apertures in the new building which occupied substantially the place of those in the former building. Having regard in this case to the small advance in the line of frontage, though not small, having regard to the width of the lane in which the building was situated, the Court ought not to hold that a substantial portion of the old light did not flow through the new openings. In his opinion the decision of Mr Justice North was right, and the appeal must be dismissed, with costs."

Lords Justices Bowen and Fry also gave judgment to the same effect.

4. **By removal of Buildings.**—The cases are *Roberts* v. *Macord* (1 Mood. & Rob. 230), and *Potts* v. *Smith* (6 L. R., Eq., 311). In the latter case, Vice-Chancellor Malins said, "There can be no prescription for light and air over open ground, because the prescription for ancient light is a thing of limited extent."

From these decisions the surveyor, therefore, may confidently advise his client (it would appear), if he is the dominant owner and has no buildings on his land, that he can have no claim to ancient light from the servient owner. Of course, if acting for the servient owner, he will advise

him that he may put up any buildings on his land he may like, without fear of successful legal interference by the dominant owner.

The law being thus clear that there can be no easement of light for garden purposes, nor for timber-yards or saw-pits, our reader will see the importance, where old buildings are removed, if he is acting for the dominant owner, to take care before their demolition (1) to have carefully prepared drawings showing the ancient lights; (2) to take care that the new buildings are erected before the expiry of the time after which they would cease to be ancient lights.

5. **By the occupation by the dominant owner of the servient owner's premises.**—This is important; for, suppose the dominant owner to have windows overlooking the servient owner's premises, and which have enjoyed light for, say, sixteen years, and he takes on a yearly or other tenancy the servient owner's premises, the time will *cease to run* during all the time he holds the two premises in his occupation, the easement being suspended, and directly he surrenders the adjacent premises the easement will be revived. This method of jeopardising the time necessary to acquire an ancient light may be serious.

6. **By ownership of both properties being in the same parties.**—This is another method of estopping the running of the time, which is by purchasing the adjacent servient owner's premises. The law says, "Where the easement has been acquired, a subsequent union of the ownership of dominant and servient tenements does not extinguish the easement, but merely suspends it during all the time the union of ownership continues, the revival of the easement taking place on the severance." The case which we think is most important and is to be relied on, is *Simper* v. *Foley*,* where the dominant owner had an

* 2 J. & H., 535 (1862).

easement of light over some cottages for twenty years. The dominant owner was the tenant of the premises, and his landlord purchased the adjoining cottages in the year 1837, and sold them in the year 1860, the ownership being united from 1837 until such sale in 1860. It was in this case held that the easement was suspended, and that it revived in 1860.

Having treated very fully of how the right of light may be jeopardised, we have next to consider, in Table V., how it may be lost.

TABLE V.

How Easements of Ancient Lights may be extinguished.

1. BY SERVIENT OWNER OBSTRUCTING FOR ONE YEAR.
2. BY AGREEMENT BETWEEN THE DOMINANT AND SERVIENT OWNERS, OR EXPRESS RELEASE.
3. BY ABANDONMENT.
4. BY ACTS OF PARLIAMENT.

We have shown how right to light and air is acquired under the Act of 2 & 3 Will. 4, c. 71, but that Act is silent as to how that right may be extinguished; we have, therefore, only the decisions of the Courts in specific cases to guide us. Latham, in his work, lays it down "that the modes of the loss of window-light correspond to its acquisition." But this will not help us much when we have to consider *item* 3 in the above Table, for we shall find that a loss of ancient light may arise in less than twenty years, if, from the circumstances of the case, an intention to abandon can be shown, while in the case of the acquisition of light no intention of any kind operates.

1. **By servient owner obstructing for one year.**—Undoubtedly the easist way for the servient owner to rid himself of that most objectionable position of having

to give his neighbour light without fee or reward, is to block up the opening for twelve months. Now, should the dominant owner not discover this obstruction for twelve months, his ancient light is lost. It may be asked, Is it likely that an owner can have his windows obstructed for twelve months without his knowledge? But we think our readers will see that this might easily happen, by the house being empty for that period, and the letting being intrusted to a negligent agent; or being occupied by a tenant too careless to inform the owner, or, as sometimes happens, not being on friendly terms with the landlord, purposely omitting to mention the circumstance; and, lastly, by bribery or collusion (if undiscovered).

NOTE.—The practical method of blocking out a window is, of course, known to all surveyors. The only point we need call attention to is that the surveyor should take care that the obstruction he puts up is sufficiently large to really obstruct all light, and this obstruction should during the year be daily watched, and a record kept, as the dominant owner may contend the obstruction was not for one entire year, and in such cases it will be necessary to produce proof.

2. **By agreement between the dominant and servient owners, or express release.**—This needs little explanation. The parties entitled, as they can create the right by express grant, so can they by express release get rid of the right. It would also appear that a mere agreement between the parties is equally binding.

3. **By abandonment.**—This is more complicated. It would appear that to lose the light by blocking up the opening, the window must have been so blocked up that no light came through it for the period of twenty years.

Lord Ellenborough's dictum is still the law: "When a window has been shut up for twenty years the case stands as though it had never existed."

While you are, therefore, absolutely certain that such a window is abandoned, there are pitfalls in waiting as to some other supposed abandonments.

In the case of *Liggins* v. *Inge*,* it was held that where it could be collected from the circumstances of the case that there was an intention to abandon the right, it was not at all necessary that twenty years need run.

How difficult it must sometimes be to know the intention; and therefore how likely the adjoining owner may be deceived, and consequently involved in litigation!

The celebrated case on this point, which was argued in the Court of King's Bench, is as follows (*Moore* v. *Rawson*) †:—The plaintiff had a house, adjoining which was a shop which had ancient windows. Some seventeen years before the action, the occupier, who was also owner, pulled down the shop, and erected on the site a stable building with a blank wall, where formerly had been the wall with windows therein. Some long time after this, the defendant erected a new building. The plaintiff then opened a window in his stable wall just where his ancient lights had been, and afterwards commenced the action against the defendant, claiming these openings as ancient lights.

The judgment was in favour of the defendant, Justice Littledale remarking, "In this case I think that the owner of the plaintiff's premises abandoned his right to the ancient lights by erecting the blank wall, instead of that in which the ancient windows were; for he then indicated an intention never to resume that enjoyment of the light he once had. Under these circumstances, I think that the temporary disuse was a complete abandonment of the right."

Next, we will consider the case where it was held that, although the windows were blocked up, there was not an intention to abandon (*Stokoe* v. *Singers*).‡ The facts were as follows:—The plaintiff's predecessor was owner of a house in which there were ancient windows. He blocked

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* 7 Bing., 682. † 3 L. J., O. S., K. B., 32 (1824).

‡ 26 L. J., Q. B., 257 (1857).

them up; but the appearance of the premises was such that it was obvious to a spectator from without, that there had formerly been windows, and it was disputed whether it would or would not appear that there were still windows there. Nineteen years after this, the defendant, having become owner of the adjoining land, showed an intention of building on it in a manner which would prevent the plaintiff from ever again opening the blocked-up windows. The plaintiff thereupon opened the windows in order to assert his right. The defendant erected a hoarding on his own land so as to obstruct these windows, and for this obstruction the action was brought. Baron Martin told the jury that, assuming the right had existed, the question would arise whether it had ceased. He explained at considerable length that there were various ways in which the right might be lost. He stated that the right might be lost by an abandonment, and that closing the windows with the intention of never opening them again would be an abandonment destroying the right, but closing them for a mere temporary purpose would not be so. He also stated that, though the person entitled to the right might not really have abandoned his right, yet, if he manifested such an appearance of having abandoned it as to induce the owner of the adjoining land to alter his position in the reasonable belief that the right was abandoned, there would be a preclusion as against him from ever claiming the right. The jury found for the plaintiff. A rule for a new trial was allowed, on the ground of misdirection, "in directing the jury to find for the plaintiff, unless they were satisfied that the lights referred to in the evidence had been closed with the intention of never opening them again." But the Court of Queen's Bench discharged the rule, saying, "Taking the whole summing-up together, it seems to us that the true points were left by the judge to the jury, and found for the plaintiff. We consider the jury to have found that the plaintiff's predecessor did not so close up his lights as

to lead the defendant to incur expense or loss on the reasonable belief that they had been permanently abandoned, nor so as to manifest an intention of permanently abandoning the right of using them."

It will be a good guide, if our readers are in doubt as to any case we may have to deal with, to see how far it is on "all-fours" with the following judgment of the Court, delivered by Chief Justice Denman in making a rule absolute for a new trial on the ground of misdirection by Baron Platt, who, in a case of easement, had told the jury that a shorter period than twenty years would destroy a right:— "The learned judge appears to have proceeded on the ground that, as twenty years' user, in the absence of an express grant, would have been necessary for the acquisition of the right, so twenty years' cesser of the use, in the absence of any express release, was necessary for its loss; but we apprehend that as an express release of the easement would destroy it at any moment, so the cesser of use, coupled with any act *clearly indicative of an intention to abandon the right, would have the same effect, without any reference to time.* It is not so much the duration of the cesser as the nature of the act done by the grantee of the easement, or of the adverse act acquiesced in by him, and the intention in him which either the one or the other indicates, which are material for the consideration of the jury. The period of time is only material as one element from which the grantee's intention to retain or abandon his easement may be inferred against him; and what period may be sufficient in any particular case must depend upon all the accompanying circumstances."

The case of *Smith* v. *Baxter* * is a useful guide of the modern trend of case law with regard to abandonment. The plaintiffs rebuilt their premises, but claimed an easement of ancient lights with respect to three windows of

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* Ch. D., 138 (1900).

their new building which coincided with portions of three in the previous one. Such coincident area had in the case of two of the windows been boarded up, the remaining window had been partially covered with shelving, but the latter allowed a substantial amount of the light to pass into the building. *Held* with regard to the first two windows that the right had been abandoned, but that the right had not been so abandoned with reference to the third window. The Court *made* a declaration of plaintiffs' right instead of granting an injunction on the undertaking of the defendants to submit plans to the plaintiff, the latter having liberty to apply thereafter for an injunction.

By Acts of Parliament.—The legislature frequently passes Acts which extinguish all easements and provide for compensation in lieu thereof to persons who prove that they sustain loss thereby. So that where an Act of Parliament sanctions the purchase of land by any public body or railway company, &c., for the purpose of erecting buildings, the only remedy for an adjoining owner who has a prescriptive right is to bring an action for damages.

Where the Lands Clauses Act is incorporated in any such Act as the above mentioned, the persons acting under the Act need not purchase an easement, but may leave the injured party to seek compensation under Sec. 68 of the Lands Clauses Acts.*

One point to remember in this method of procedure is, that it is not necessary to show any decrease in the saleable value. It is quite enough to show that the property is less adapted for its former use, or that the business carried on has been damaged.†

When any Act permits an obstruction to light, and an aggrieved party terminates his interest owing to such obstruction, the damages are not limited to the period of the interest, but he may include for cost of removal, for

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* *Clark* v. *The School Board for London*, 9 Chan., 120 (1875).

† *Eagle* v. *Charing Cross Railway Company*, 2 C. P. 638 (1867).

fixtures, and for increased rent. In *Q.* v. *Poulter*,* the plaintiff held under a lease for seventeen years, but terminable by notice after three years, of which they took advantage when the premises were affected by the Railway Company. *Held* that claim was not limited to the three years, but that compensation was recoverable for cost of lease, increased rent, and fittings, &c.

In some cases it would appear that no easement need be proved. For it was held in the *Gowers Walk Schools* (*Trustees of*) v. *The L. T. and Southend Ry. Co.*, † that the plaintiffs were entitled, under the Railway Clauses Consolidation Act 1845, sec. 16, to the same measure of compensation for their new windows, as for the ones that had a prescriptive right. The reason being that the Company must pay for damage accrued which would have been illegal but for their statutory powers.

It has also been held that an owner is entitled to recover compensation for injury to the value of his house due to the loss of inchoate rights. ‡

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* *Q.* v. *Poulter*, 20 Q. B. D., 132 (1887).

† 24 Q. B. D., 326 (1889).

‡ *Barlow* v. *Ross*, 24 Q. B. D., 381 (1890).

CHAPTER IV.

VARIOUS METHODS OF ESTIMATING INJURY.

PROFESSOR KERR—HOMERSHAM COX—THEORIES EXPOUNDED—NOT ACCEPTED BY THE COURTS—ESTIMATING INJURY—IMPORTANT CASES OF WARREN *v.* BROWN, HOME AND COLONIAL STORES LTD. *v.* COLLS—ANGLE OF FORTY-FIVE DEGREES—TABLE VI., MATTERS TO BE CONSIDERED IN ESTIMATING VALUE OF INJURY—INJUNCTION AND DAMAGES—EFFECT OF GLAZED BRICKS—DIAGRAM OF CASES.

We now approach the most difficult portion of our subject, and it will be necessary to point out the various methods that have been adopted for ascertaining the exact damage, because a work of this kind could not be considered complete if it did not contain the more prominent methods suggested for arriving at mathematical accuracy.

While, undoubtedly, our readers will be benefited by working out their calculations, we are bound to tell them that neither the method propounded by Professor Kerr, nor that of Mr Homersham Cox, is accepted by the courts of justice.

Professor Kerr, speaking on the subject, after saying that by his method you could affirm that the obscuration is so much per cent. of the light formerly enjoyed, goes on to say, "But I am afraid, after all, that this does not help you in the courts of law. In the first place, they won't pay attention to mathematical calculations."

We think much is to be advanced why the courts of law should not; and in support of this we would instance

the case of *Theed* v. *Debenham.** There the decision was based on the evidence that the low or under light was of exceptional value to the plaintiff, having, in fact, a different value to that which, in ordinary cases, it would have. If the Courts had recognised the mathematical calculations, therefore, an injustice would have been done to the plaintiff; or, to put it more plainly, if mathematical calculation should be the guide, the judges were wrong in their decision. Clearly, however, the decision was *in accordance* with common-sense and justice.

The scheme propounded by Mr Kerr for the measurement of lighting power is as follows:—A plan is made of the window, and, projecting from the centre thereof, a straight line, and from a distance along such line strike a quarter circle, which quarter circle will finish against the wall of the house; he then divides this quarter circle, or quadrant, into four parts, stating as one of his reasons his desire to retain in his scheme the angle of forty-five degrees. We would here mention, to prevent any misapprehension, that this forty-five degrees is not recognised by the law; for in another part of this book our readers will see that we have quoted the judges' dictum, setting out most absolutely that they cannot do so.

These four parts are called—*front*, this portion being directly in *front* of window; the next to it being called *front-diagonal*, the next to that the *side-diagonal*, and the next to that, which finishes against the wall, is called the *side*. The relative values of the lighting are given thus:—

Front - - - - - - - -	61
Front-diagonal - - - - -	58
Side-diagonal - - - - -	53
Side - - - - - - - -	18

But, having obtained these values, it is necessary, by this system, to obtain the value of the perpendicular light;

* 2 Ch. D., 165 (1876).

and for this purpose a vertical section is next required and a quadrant formed, having its base line projected at right angles to the wall, at the height of the centre of the window. Again, this quadrant is divided into four parts, called, and having the relative value, as follows :—

	The value of lighting power.
Vertical - - - - - -	6
Vertical inclined - - - - -	29½
Horizontal inclined - - - -	47½
Horizontal - - - - - -	59

Having, then, these figures, the next process is to multiply these values into the values shown on the preceding list of plan values, and the result is the value of the hemisphere of lighting surface.

To find the quantity of injury, it is only necessary to form a diagram, and project thereon the obstruction.

Only two points seem to require to be mentioned. The first is the small value of the "vertical." This is explained to arise from the actual diminution of lighting surface comprised in this division, owing to the inclination of the vertical lines. The second is that the values mentioned are the values of the central part of each division, and that the value has an increasing or diminishing quantity, according as it approaches either a division of a smaller or higher lighting value.

We have pointed out the reasons why the Courts will not accept this method, although so ingenious and clever.

Mr Cox, barrister, published, in 1871, a second and revised edition of a work on this subject, with elaborate tables of calculations, showing the relative illuminating effects of every ten degrees of sky measured from the zenith ; the obscuration by obstacles of uniform angular width and height, worked out from five degrees of angular width and five degrees of angular height, to ninety degrees of angular width and ninety degrees of angular height ; again, the

obscuration by parts of structures five degrees in width, and a table of cosines worked to four places of decimals. It is well worthy of study, but, as in practice the system is not adopted, we make no further observation thereon.

We have now given a short outline of the mathematical methods which have been suggested, and which have been rejected as being *not practical.*

In confirmation of the non-acceptance of any such theories, and to show the views entertained by our professional journals, we give the following extract from an interesting article in the *Architect* :—

"Is there no law on the subject? he asks. The answer is that there is none except the following in the abstract :— That every window which is twenty years old has its light protected by a certain Act of Parliment of the time of William the Fourth, against any sort of material interference that may be threatened by building operations on other land. But, he goes on to say, is there no standard set up whereby the designer of a house can govern himself? None; nothing but the personal opinion of a jury or a judge, and until more recent years, generally that of a judge alone, dealing with affidavits in Chancery. And what makes matters worse is that during the last twenty years the ordinary succession of Chancery judges has produced a succession of new principles of adjudication, so that all that can be done in the way of ascertaining a rule of judgment is to look up the latest precedents."

The study of the most important and recent cases before the Court of Appeal appears to us to put the law more clearly than in any other cases decided during the past few years. We quote the case as given in *The Times* of 14th November 1901 and 21st December 1901.

Court of Appeal.—Before the Lord Chief Justice of England, Lord Justice Vaughan Williams, and Lord Justice Romer.

Warren v. *Brown.**

This was an appeal from the decision of Mr Justice Wright, reported in 1900, 2 Q.B., 722, and 16 *The Times* Law Report, 549. The action raised a question of great importance to owners of town property, with reference to "ancient lights"—namely, whether the right to light which is acquired by statutory prescription is an absolute right to the continuance, for any purpose whatever, of substantially the whole quantity of light which has come to the windows during the statutory twenty years, or whether the right is limited to such a quantity of light as is sufficient for all ordinary purposes only of inhabitancy or business. There is a considerable body of authority in favour of either proposition. The facts of the case were shortly these. Two of the three plaintiffs were the owners, and the third was the lessee and occupier, of a factory in a street in the town of Leicester, the business carried on in the factory being that of a hosiery manufacturer. In the factory, which was built in 1860, there were windows which had, down to the obstruction complained of in the action, enjoyed the access of light in greater quantity than was necessary for ordinary purposes. From 1860 to 1884 the factory was used as a boot and shoe factory—a purpose which required only an ordinary amount of light. From 1884 downwards it was, with a few short intervals, used as a hosiery manufactory. That manufacture required an unusual degree of light, especially during the time next before the obstruction complained of, owing to improvements in the kind of machinery employed, which rendered necessary a very exceptional quantity and quality of light for the continual and accurate adjustment of filaments to

* 1 C. A., K. B., 15. 18 T. L. R., 55.

fine needles moving by machinery at speed in bundles of some hundreds. In 1899 the defendant, who had an old building on the opposite side of the street to the factory, raised his building considerably above its original height, and so diminished the light through the plaintiffs' windows, though still allowing the passage through those windows of enough light for all ordinary purposes. The plaintiffs claimed that they were entitled to have preserved to them the whole of the extraordinary amount of light their windows had received during the statutory twenty years, although that extraordinary amount of light had been actually required for their hosiery business during a portion only of the twenty years. The defendant, on the other hand, contended that the plaintiffs, as owners of ancient lights, were entitled to so much light as was necessary for the ordinary purposes of life, and to no more. The action was tried last year at Leicester, by Mr Justice Wright, without a jury, and, owing to the conflict of authority, his Lordship, at the conclusion of the arguments, reserved judgment. In the result, on giving judgment on 4th August 1900, his Lordship found that the plaintiffs had suffered substantial damage, and he assessed that of the tenant at 100*l.* and that of the owners at 200*l.*; but, adopting the law as laid down by the Court of Appeal in *City of London Brewery* v. *Tennant* (L. R., 9 Ch., 212), his Lordship held that as the plaintiffs had an abundance of light left for all ordinary purposes of inhabitancy or business they were not entitled to the mandatory injunction claimed by them, on the ground that their extraordinary use had been interfered with. His Lordship added, "Unless, indeed, there is some such limitation of the right to light for ancient windows, it is difficult, as Lord Hardwicke observed in *Fishmongers' Company* v. *East India Company* (1 Dick., 163), to see how the ordinary extensions and improvements of towns could be carried on. If every house which has existed for

Warren v. *Brown.*

twenty years is entitled to have all or substantially all the same light come to its windows as during the twenty years, no new houses could be built opposite to old ones unless at a distance which would impose on servient tenements an unreasonable burden, and might involve great public inconvenience." From that decision the plaintiffs appealed.

Mr Hugo Young, K.C., and Mr W. H. Stevenson were for the plaintiffs; and Mr Warmington, K.C., and Mr A. Neilson, for the defendant.

At the conclusion of the arguments, on 29th October last, their Lordships reserved judgment, which was delivered this morning, allowing the appeal.

Lord Justice Romer delivered the judgment of the Court (the Lord Chief Justice, Lord Justice Vaughan Williams, and himself) as follows:—In this case Mr Justice Wright has found that certain of the plaintiffs' ancient lights have been substantially interfered with by the defendant's new building. He has also found that the plaintiffs have in fact thereby suffered substantial damage, for he assesses their losses, as to the tenant at 100*l.*, and as to the reversioners at 200*l.* On these findings one would have expected judgment entered for the plaintiffs; but the learned Judge has made an additional finding, and by reason of that he has dismissed the action. This finding is to the effect that, notwithstanding the substantial diminution of the ancient lights caused by the defendant's new building, abundant light remains for all ordinary purposes of inhabitancy or business. We felt some doubt at first as to what this additional finding meant, and whether it was not contradictory to the other findings; but after further consideration of the judgment, and after consulting Mr Justice Wright, we have no doubt as to the meaning of the additional finding. It means that, though the light coming from certain of the ancient lights has been substantially diminished, and though the rooms thereby lighted have

been so darkened that both the tenant and the reversioners have suffered substantial damage, yet the darkened house is still as useful for purposes of habitation or business as what we may term the average run of houses. In other words, the learned Judge appears to think that, as a matter of law, there is a sort of standard in the matter of light, and that if a particular house is by its ancient lights extremely well lighted, those lights may with impunity be substantially interfered with so long as the house in its darkened condition does not fall below the standard. In our opinion that is an erroneous view of the law. We do not propose to go through all the numerous cases which were cited before us and before Mr Justice Wright. It is not necessary to do so for the purposes of this case. No doubt, before *Kelk* v. *Pearson* (L. R., 6 Ch., 809) was decided, and still more so before the judgment of Lord Cranworth in *Yates* v. *Jack* (L. R., 1 Ch., 295), some inaccurate views as to the nature of the right to light acquired under the statute were entertained and expressed by various Judges; and in some of the earlier cases, and, indeed, even in some later ones, language has been employed in some judgments which would appear to support the view of the law taken by Mr Justice Wright. But we think that in recent times the law has become settled, and we propose to state shortly, so far as is material for the immediate point arising in this case, what we understand the law to be. The statute in its terms might appear to sanction the view that the right to light once acquired was absolute as to every part of it, so that any interference, however slight, would be wrongful. But it was soon established that the statute had not altered the character of the right, though it had altered the method by which it could be acquired; and it was held that the right would not be interfered with if there were no substantial diminution of the light such as to cause substantial damage to the tenant or owner. And, in considering what

would be a substantial diminution and substantial damage, it is held that the proper point of view is to pay regard not to what some person having fantastic or peculiar views might choose to regard as a substantial diminution or as substantial damage, but to the views of persons of ordinary sense and judgment. And, in particular, in considering whether a house has been substantially injured, it is proper to have regard to the ordinary uses by way of habitation or business to which the house has been put or might reasonably be supposed to be capable of being put. We do not say that in the recent cases the law has been expressed exactly in the language we have used, but we mean that, though various expressions have been used by different Judges, yet in substance, and as the result of what are now regarded as binding authorities, the above is a fair statement of the law as it is to be gathered from those judgments which are now to be regarded as sound. *And at the present day, if ancient lights are interfered with substantially, and real damage thereby ensues to tenant or owner, then that tenant or owner is entitled to relief.* With regard to the exact point arising in this case, we think that, since the case of *Kelk* v. *Pearson*,* it is impossible to hold properly that the statutory right is not interfered with merely because after the interference the house may still come up to some supposed standard as to what a house ordinarily requires by way of light for purposes of inhabitancy or business. Some houses, owing to their having numerous or particularly advantageous ancient lights, are extremely valuable for purposes of habitation or of business. In these cases an owner of the servient tenement cannot justify a substantial interference with these lights, or (it may be) a complete stoppage of some of them causing great damage to the house, on the ground that other houses in the neighbourhood, or even the majority of those houses, or some imaginary standard house, are or is not better lighted than

* 6 Ch., 809.

the injured house after the injury. Nor is the fact that, owing to the house being very well lighted, certain special businesses requiring much light are being or can be carried on, to be wholly disregarded in considering the effect of an interference, merely because after the interference other businesses not requiring much light can be carried on. Yet it is not to an opposite conclusion that Mr Justice Wright appears to have come. Immediately after stating, with regard to the room on the ground floor affected by the interference with its lights, "that abundant light remains for all ordinary purposes of inhabitancy or business," he proceeds to point out what he means by that by observing that "the room in its present state is better lighted than the ground-floor front rooms in many of the principal streets"; and accordingly he gives no relief to either tenant or reversioners. And it is especially noticeable, as to the reversioners, that he considers they have in fact suffered damage to the extent of 200*l.*, and that could only be on the ground that the house had been permanently affected in its letting value; and even as to the tenant we may observe that a very well lighted house is not being unreasonably used because a business requiring much light is being carried on there. The precise point arising in this case was clearly dealt with by Lord Justice Mellish in *Kelk* v. *Pearson*,* where he says, "I cannot think that it is possible for the law to say that there is a certain quantity of light which a man is entitled to, and which is sufficient for him, and that the question is, whether he has been deprived of that quantity of light. It appears to me that it is utterly impossible to make any rule or adopt any measure of that kind. It is essentially a question of comparison, whether by reason of deprivation of light the house is substantially less comfortable than it was before." This statement has been since approved of and followed in many cases, and we believe it accurately states the existing law on the subject.

* 6 Ch., 809.

Warren v. *Brown.*

So far as other Judges have in their judgments used expressions which appear to, or do in fact, conflict with what Lord Justice Mellish has said, those expressions cannot, in our opinion, be justified. And in particular we may say that the opposing views expressed by Vice-Chancellor Malins in *Lanfranchi* v. *Mackenzie* (L. R., 4 Eq., 421) and *Dickinson* v. *Harbottle* (28 *Law Times*, N.S., 186) cannot now be regarded as sound. That being so, we think that in the present case the plaintiffs are entitled to relief. The case has been treated before us by both parties as one turning solely on the findings of Mr Justice Wright. He has found substantial interference with light, and substantial damage to the plaintiffs; and, that being so, there should be judgment for them for the damages assessed. The defendant ought to pay the costs of the action and of this appeal.

Before Lords Justices Vaughan Williams, Romer, and Cozens-Hardy.

Home and Colonial Stores Limited v. *Colls.**

This was an appeal from the decision of Mr Justice Joyce, reported in *The Times* of December 22, 1900, and in 17 *The Times* Law Reports, 180. By the action the plaintiffs claimed an injunction to restrain the defendant, J. H. Colls, from erecting on the site of 44 Worship Street, E.C., any building or erection so as to darken, injure, or obstruct any of the ancient lights of the plaintiffs as the same were enjoyed previously to the taking down of 44 Worship Street. The facts were stated in the judgment of Mr Justice Joyce, to the following effect:—The plaintiffs were entitled for the residue of a term, having about seventeen years unexpired, to a considerable block of buildings situated on the east side of Paul Street, at the corner between that street and Worship Street, which runs

* 18 T. L. R., 212.

westwards from Paul Street, so that the plaintiffs' building had a west front to Paul Street and a south front of about 150 feet in length to Worship Street. Worship Street is a tolerably broad thoroughfare, being 41 feet or thereabouts across. Opposite a portion of the south front of the plaintiffs' premises in Worship Street was the site of some buildings recently removed, which was about 36 feet in width and numbered 44 in the street. The buildings which formerly stood on this site were 19 feet 6 inches in height, and the defendant had entered into a building agreement to erect on this site a building which, if and when completed, would be 42 feet in height. On the west of the defendant's premises, and at the corner between the south side of Worship Street and the east side of Wilson Street, there was a public-house, 33 feet in height, and none of the buildings in Worship Street on the east of the defendant's premises exceeded that height. His Lordship thought it tolerably clear, and he found as a fact, that the defendant's building, if erected to the height of 42 feet as proposed, would not materially interfere with the access of light to any window on the first floor of the plaintiffs' premises, or with any light to which the plaintiffs were entitled in respect of their basement. The real and only question, in his Lordship's opinion, was with respect to apprehend injury to the third and fourth floor windows—counting from Paul Street—on the ground floor of the plaintiffs' building. Those windows were of large size, but, although the top light was said to be the most valuable and important, the uppermost part of each of the windows was filled with coloured glass to a depth of 20 inches from the top, and there were wire blinds fixed at the bottom of each window. The portion of the ground floor of the plaintiffs' buildings which was opposite the defendant's premises was used as an office. It consisted of a large room, 11 feet 10 inches high and of unusual depth, the back wall being

Home and Colonial Stores v. *Colls.*

upwards of 50 feet from the Worship Street front, and it had no window nor source of natural light at the back. This room contained several desks used by about ninety clerks in the employment of the plaintiffs for the purposes of their business. His Lordship held, upon the evidence, that the plaintiffs' premises would still, after the erection of the defendant's building, be well and sufficiently lighted for all ordinary purposes of occupancy as a place of business, and that the action therefore failed. He also came to the conclusion, though after "considerable hesitation," that Mr Justice Wright's decision in *Warren* v. *Brown* (1900, 2 Q. B., 722), if not reversed by the Court of Appeal, ought to govern the present case. The decision in *Warren* v. *Brown* has since been reversed by the Court of Appeal, as reported in *The Times* of the 14th ult., and 18 *The Times* Law Reports, 55. Immediately after his Lordship's judgment the plaintiffs gave notice of appeal, whereupon the defendant proceeded with the completion of his building. The appeal was heard on 2nd and 3rd December.

Mr Hughes, K.C., and Mr W. E. Vernon, for the appellants, the plaintiffs, relied on the recent judgment of the Court of Appeal, in *Warren* v. *Brown.*

Mr Bray, K.C., Mr O. Leigh Clare, and Mr A. B. Nutter, for the defendant, contended that the defendant's building caused no such substantial diminution of light to the plaintiffs' windows as entitled them to relief. They also relied upon the forty-five degrees rule as leaving sufficient light to the plaintiffs' premises, a rule which, though a "rule of thumb," was found by architects and surveyors to be "a good working rule."

At the conclusion of the arguments their Lordships reserved judgment, which was delivered this morning.

Their Lordships allowed the appeal.

Lord Justice Cozens-Hardy read the principal judgment of the Court, which was as follows:—This appeal

Home and Colonial Stores v. *Colls.*

raises a question as to the nature and amount of evidence required to entitle a plaintiff to relief by way of injunction for the protection of ancient lights. The action was tried by Mr Justice Joyce in December 1900. This is important, because at that date it had been laid down by Mr Justice Wright, in *Warren* v. *Brown* (1900, 2 Q. B., 722), that the owner or occupier of a house has no legal right of action so long as he has left to him as much light as is ordinarily required for habitation or business, even though he has been deprived of a substantial amount of light and has thereby suffered substantial damage. This view of the law was accepted by the defendant's counsel in the cross-examination of the plaintiffs' witnesses and in the examination of the defendant's witnesses, and, as we read the judgment, was adopted by Mr Justice Joyce. Mr Justice Wright's decision has recently been reversed by this Court, and the true rule of law with reference to the interference with ancient lights has been authoritatively laid down thus:—"If ancient lights are interfered with substantially, and real damage thereby ensues to tenant or owner, then that tenant or owner is entitled to relief." In this sentence "substantial" does not indicate any particular percentage. In *Back* v. *Stacy* (2 C. & P., 465) an issue was directed by the Lord Chancellor whether the ancient lights of the plaintiff in his dwelling-house had been illegally obstructed by the defendant's building. Evidence having been given that the quantity of light previously enjoyed had been diminished, it was contended that the plaintiff was entitled to a verdict; but Chief Justice Best directed the jury, in language which has been often cited with approval, thus:—"It was not sufficient to constitute an illegal obstruction that the plaintiff had, in fact, less light than before, nor that his warehouse, the part of his house principally affected, could not be used for all the purposes to which it might otherwise have been applied. In order to give a right of

action and sustain the issue, there must be a substantial privation of light, sufficient to render the occupation of the house uncomfortable and to prevent the plaintiff from carrying on his accustomed business (that of a grocer) on the premises as beneficially as he had formerly done." And in *Parker* v. *Smith* (5 C. & P., 438) Chief Justice Tindal directed the jury as follows:—"It is not every possible, every speculative exclusion of light which is the ground of an action, but that which the law recognises is such a diminution of light as really makes the premises to a sensible degree less fit for the purposes of business." Without substantial interference there is no right of action, and in addition, in order to obtain an injunction, the plaintiff must establish substantial injury suffered or threatened. There is no standard or fixed amount of light to which alone a plaintiff is entitled. He must not be fanciful or fastidious. He must recognise the necessity of give and take in matters of this nature. But there may be real damage to the owner or occupier of a building used for particular purposes, or reasonably adapted for particular purposes, although there would be no real damage if the building were not used or reasonably adapted for such purposes. The application of these principles is far more easy when the building which is complained of has been erected and damages only are claimed; but they have to be applied when the plaintiff comes for an injunction before the building has been erected. It is the duty of the Court to arrive at the best conclusion it can upon the effect which the proposed building if erected would produce, and if the Court is satisfied that in that event the plaintiff would have a good cause of action, the plaintiff is entitled, as a matter of right, to an injunction to prevent the defendant from interfering with his ancient light; or, in other words, to restrain the defendant from committing a wrongful act. The difficulty of applying the rule in a *quia timet* action

may well induce the Court to scan the plaintiffs' evidence with severity, especially where an angle of forty-five degrees is left. It is settled that there is no rule of law that a man may always build up to an angle of forty-five degrees, but, in judging of the probable effect of a proposed building the Court may not unreasonably regard the fact that an angle of forty-five degrees will be left as *prima facie* evidence that there will be no substantial interference, and may require this presumption to be clearly rebutted by satisfactory evidence. This seems to be the result of the authorities. It remains to apply these general principles to the present case. We propose to accept all the findings of fact by Mr Justice Joyce, where they are clear, without demur, and only to refer to the evidence where there is no finding, or where, as it seems to us, there are inconsistent findings. His Lordship then proceeded to state the facts as found by Mr Justice Joyce in his judgment, and, after reading to the following passage from that judgment—"Various expert witnesses were examined, and as the result of their evidence I am of opinion that the proposed new building would not affect the selling or letting value of the plaintiffs' premises"—continued:—If that means that an ordinary purchaser or lessee would be content to get a building having the usual amount of light enjoyed by similar houses in this part of London, we see no reason to doubt it; but it is not a relevant statement. The plaintiffs are neither vendors nor lessees. They are occupiers; and their only desire is to use this room (the large room on the ground floor occupied by about ninety clerks) for the same purposes as heretofore and with the same advantages. And it seems to us impossible to hold that they will not suffer "real damage" if they have to consume and pay for more electric light than hitherto. Mr Justice Joyce, at the end of his judgment, refers to Mr Justice Wright's decision in *Warren* v. *Brown*,* and says:—"After considerable hesita-

* 2 Q. B., 722 (1900).

tion I have come to the conclusion that this decision, if it remains unreversed by the Court of Appeal, ought to govern the present case; and I think, sitting as a Judge of first instance, I must follow it. Assuming, therefore, that I am right in this, I am of opinion that the action fails and must be dismissed." As we read the judgment, it is a finding in favour of the plaintiffs that real damage would result, though light enough would be left for ordinary purposes of occupancy as a place of business, and there is no finding that the interference is not substantial. Now there was, immediately opposite the windows in question, what I may call "a gap," in width 36 feet, and in height 13 feet 6 inches. The direct light which passed through this gap penetrated to a considerable depth into the plaintiffs' room. The interference with this light is "substantial" within the meaning in which the word is used. There being some obscurity on this point, it seems right to examine the evidence. His Lordship then went through the evidence, and proceeded:—If we consider the Judge's notes of the evidence, as we have done, the conclusion at which we have arrived from reading his judgment is confirmed. In our opinion, on the balance of evidence, substantial interference and "real damage" will result; and the proper judgment would have been to grant an injunction in the settled form known as the *Yates* v. *Jack* * form. But immediately after the action was dismissed with costs the plaintiffs gave notice of their intention to appeal. Notwithstanding this, the defendant has proceeded with and completed the erection of his building. Under these circumstances there is only one course open to us. We must reverse Mr Justice Joyce's judgment and give the plaintiffs the judgment to which, according to our view, they were entitled. And we must grant a mandatory injunction requiring the defendant to pull down anything erected in breach of the terms of our injunction. This point was really decided by

* 1 Ch., 295.

Home and Colonial Stores v. *Colls.*

the Court of Appeal in *Parker* v. *First Avenue Hotel Company* (24 Ch. D., 287). The defendant must pay the costs here and below.

Lord Justice Vaughan Williams.—The judgment which has just been read is the judgment of the Court; but I wish to add for myself that, so far as the rule of forty-five degrees is concerned, I doubt very much whether that rule, as the law is now settled, can be regarded even as a rough measure of the right of the owner or occupier of ancient lights.

We now come to consider the matter, as all surveyors must do, with reference to the evidence we must submit to the judges, and the methods of calculation which now obtain. First of all, we have to disabuse our reader's mind that the angle of forty-five degrees, although by many considered a good test, is one not recognised by the Courts (see preceding paragraph). This will be emphasised by perusing the following cases, and also by referring to the judgments as set forth in *Ecclesiastical Commissioners* v. *Kino*,* p. 27 *et seq.*

"Lord Selborne, in *The City of London Brewery Company* v. *Tennant*,† after stating that, with regard to the forty-five degrees, there was no positive law upon that subject, and that the circumstance that forty-five degrees were left unobstructed was merely an element in the question of fact whether the access of light was unduly interfered with, held that there was 'undoubtedly ground for saying that if the Legislature, when making general regulations as to building, considered that when new buildings are erected, the light sufficient for the comfortable occupation of them will, as a general rule, be obtained if the buildings to be erected opposite to them have not a greater angular elevation than forty-five degrees, the fact that forty-five degrees of sky are left unobstructed may,

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* 14 Ch. D., 213. † 9 Ch., 212 (1874).

under ordinary circumstances, be considered *prima facie* evidence that there is not likely to be material injury.'

"The question again came under consideration by the Master of the Rolls in *Hackett* v. *Baiss.** The plaintiff in that case was the owner of extensive messuages in Jewry Street, in the city of London, the owners and occupiers of which had uninterrupted enjoyment of light for above twenty years. The defendants were erecting a warehouse opposite to the plaintiff's premises, on the site of some old buildings, part of which only subtended an angle of thirty-eight degrees, and other part an angle of seventy-two degrees, above the horizon at the centre point of the ground windows of the plaintiff's houses. The defendants desired to build their warehouse 52 feet high, and had it carried up to the height of 46 feet, which subtended an angle of more than forty-five degrees at the foot of the plaintiff's ancient lights, by about 1 foot or 1½ feet. His Lordship said, 'The real question I have to decide is this: In a street a good deal narrower than ordinary streets, not being more than 38 feet 6 inches at any point across, and other parts only 34 feet, is a building owner entitled to erect a building to a height which will obstruct the access of light below the forty-five degrees angle? I can say that, as a general rule, he is not. In cases of this kind, positive evidence being unobtainable because the building is not erected, you must go upon theory, and that theory, of course, must be the opinion of skilled persons—persons who have paid attention to the effect of buildings on light. But on this point the Court is not left to guess or to arrive at an arbitrary conclusion upon the evidence of witnesses, because, in the first place, the point has been considered by the Legislature; and after considering the result of professional opinions, the Legislature has adopted the angle of forty-five degrees as the proper angle, below

* 20 Eq., 294.

Hackett v. *Baiss.*

which the incidence of light ought not to be permitted to fall, in the case of buildings on the opposite side of an ordinary street; and that view has been sanctioned by the Court, whose decisions are binding upon me if I differed from them, which I do not.' And after referring to *The City of London Brewery Company* v. *Tennant*,* his Lordship proceeded: 'So that on being satisfied that forty-five degrees are unobstructed, I ought, *prima facie*, to come to that conclusion, unless there is something special in the case. Now, what is special in the case is in favour of the plaintiff. In the first place, as I have said, the street is rather narrower than it ought to be. The legislative rule applies to a street of the ordinary width. In the next place, there is some positive evidence that the present height of 46 feet, a little over forty-five degrees, has interfered with the access of light not to an inconsiderable extent, and has actually caused personal inconvenience to one of the occupiers of the houses. I do not say that that alone would be conclusive.

"'I cordially assent, if any assent were necessary, which it is not, to the remarks made by Lord Cranworth in the case of *Yates* v. *Jack*.† I think it is no answer to say, because for sampling in some business it is better that the direct rays of the sun should not enter into the room, that therefore you may deprive a man of the blessing and comfort of the entry of the direct rays of the sun. If he does not like the sun entering when he is going to sample, he can pull down his blind, or otherwise regulate the access of light. There are other times of the day when his room would be more cheerful, more comfortable, and more enjoyable with the sunshine, especially in a city like London, where we do not see quite so much as we should like of the direct rays of the sun. That is no answer at all. It is not conclusive upon the point, and, so far as it goes, is

* 9 Ch., 212 (1874). † 1 Ch., 295 (1866).

in favour of the plaintiff. That being so, I shall grant an injunction.

"'It is a very serious matter to decide what the terms of it ought to be. I have sent for the order in *Yates* v. *Jack*,* which I have read. It is not necessary that the whole subject-matter in dispute should be fought out in a most inconvenient or disagreeable form, upon a formal motion to commit the defendants for breach of the injunction. Nothing, in my opinion, can be more undesirable; but, at the same time, it is impossible for the Court to say beforehand what kind of building would obstruct the light. The defendants may wish to alter their plans, and if they do so wish, the Court, *à priori*, cannot say whether the plans when altered will or will not be objectionable to the plaintiff; therefore in that case the Court has no alternative. It has, therefore, been my habit to ask the defendant what form of injunction he prefers; and I believe in every case the answer has been the same as Mr Chitty has given to-day, namely, that he prefers an order which tells him exactly what he is not to do. I will grant an injunction to restrain the defendants from erecting the new building at a greater height than 46 feet from the pavement or base line. This, however, is not to prevent the defendants making a sloping roof of a greater height, so long as the angle of incidence of light over the roof to the centre of the ground-floor windows of the plaintiff's house does not exceed forty-five degrees.'"

How little the angle of forty-five degrees can be relied on we further illustrate, following the rule we have laid down to give in *extenso* the most recent decisions. The case is the celebrated one of *Theed* v. *Debenham.*† The bill was filed on the 21st of September 1875, by William Theed, sculptor, the lessee, for the unexpired residue of a term which had about six years to run, of several rooms or

* 1 Ch., 295 (1866). † 2 Ch. D., 165 (1876).

studios at the rear of No. 12 Henrietta Street, Cavendish Square, Middlesex, having a back entrance in a narrow street, called Mill Hill Place, against William and Frank Debenham, partners, carrying on business as mercers at Nos. 27, 29, and 31 Wigmore Street, the back of whose premises also opened into, and was numbered 1 and 2 Mill Hill Place; and a notice of motion, dated the 24th of September, having been served on the defendants, was, by consent, ordered to stand till the 12th of October, on which day an injunction was granted on the usual terms of the plaintiff undertaking in damages.

"On the 2nd of November the bill was amended; and on the 10th of December was re-amended, and, as re-amended, was by William Theed and William Ford, the ground lessee for a term of which some thirty-five years were unexpired, under the Duke of Portland.

"The bill stated that the defendants intended to raise the height of Nos. 1 and 2 to a certain height above their present elevation; that if the defendants were allowed to do this, there would be a very substantial and material diminution of light to the said premises occupied by the plaintiff, William Theed; that in the course of the profession of the plaintiff William Theed as a sculptor, he required not only a direct light, but what is technically termed an under or low light, and which he had hitherto enjoyed; and the bill prayed that the defendants might be restrained from 'erecting or constructing, or allowing to be erected or constructed, any building at, upon, or instead of the said premises, Nos. 1 and 2 Mill Hill Place, and from altering the same premises, so as to darken, hinder, or obstruct the free access of light and air to the plaintiff's said premises on the opposite side of Mill Hill Place aforesaid, as such access was enjoyed by means of ancient lights previously to the 20th day of September 1875.'

"The defendants by their answer admitted that they

Theed v. *Debenham.*

were about to carry their buildings to the height stated in the bill, and they disputed the statements that there would be any substantial or material diminution of light to the plaintiff's premises, and that the plaintiff William Theed would be thereby prevented from carrying on his profession as a sculptor, or otherwise suffer any loss or injury.

"The issues of fact were supported on either side by a considerable body of evidence, and many of the witnesses were cross-examined in Court, with the results appearing in the judgment.

"A point of law was raised which turned upon the distance from each other and height of the respective buildings. It was admitted that the width of Mill Hill Place, from wall to wall, was 31 ft.; the height of the defendants' old building, No. 1, was 29 ft. 3 in., and of No. 2, 31 ft., from the foot pavement to the parapet. The defendants intended to raise their new buildings so that their new parapet would be 38 ft. from the pavement, and their new ridge of roof about 7 ft. above the new parapet.

"The centre of Mr Theed's studio window was about 13 feet above the pavement.

"The plaintiff's lights were all ancient, but their windows had been enlarged within twenty years from the filing of the bill.

"Sir H. Jackson, Q.C., and Byrne, for the plaintiffs. For the operations of sculpture a clear, uninterrupted, horizontal light is necessary; a vertical light is not sufficient. A north light is also preferable to any other.

"The eaves of the present building of the defendants are just as high as the width of the street, that is to say, Mr Theed has an angle of forty-five degrees.

"An ancient light is to be protected, subject to this, that the Court will not interfere where the injury is trivial; it will interfere only where there is substantial injury. The law is established by the following authorities: *Dent*

Theed v. *Debenham.*

v. *Auction Mart Company*;* *Tapling* v. *Jones*;† *Heath* v. *Bucknall*;‡ *Aynesley* v. *Glover.*§

"Kay, Q.C., Lumley Smith, and Borthwick for the defendants. Only a small portion of Mr Theed's light is ancient. Mr Theed can claim no more as a sculptor than an ordinary person can claim: *Yates* v. *Jack.*‖ He cannot enlarge his right by using his premises, which were formerly a stable and coach-house, as a studio: *Kelk* v. *Pearson.*¶

"The right is to such an amount of light as is wanted for the comfortable use and enjoyment of the property: *City of London Brewery Company* v. *Tennant.*[1]

"A covenant for quiet enjoyment accompanying a grant of lights conveys no greater or other right in equity than the covenantee would have at law: *Leech* v. *Schweder.*[2]

"The doctrine of *Clarke* v. *Clarke*,[3] supposed to have been exploded, has to a great extent been supported since: *Kelk* v. *Pearson.*¶

"The rule as to forty-five degrees was adopted by the Master of the Rolls in *Hackett* v. *Baiss.*[4] We claim a right to build to forty-five degrees, measured, not from the street as a base line, but from a horizontal line drawn through the centre of Mr Theed's studio window, which, as to part only, was one of the ancient lights.

"[In answer to an inquiry by the Court, it was stated that the statutory rule as to the angle of forty-five degrees is to be found in sect. 85 of the Metropolis Local Management Acts Amendment Act (25 & 26 Vict. c. 109), passed on the 7th August 1862, and in a bye-law issued under Parliamentary authority by the Metropolitan Board of Works.]

"Vice-Chancellor Bacon, after stating the nature of the complaint made by the bill, and the defendants' assertion of their right to do what they were doing, continued:—

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* 2 Eq., 238. † 11 H. L. C., 290 (1865); 34 L. T. C., p. 342 (1865).
‡ L. R., 8 Eq., 1; 20 L. T., 549; 17 W. R., 755. § 10 Chan., 283.
‖ 1 Ch., 295. ¶ 6 Ch., 809 (1871). [1] 9 Ch., 212 (1874).
[2] 9 Ch., App. 463. [3] 1 Ch., 20. [4] 20 Eq., 294.

Theed v. *Debenham.*

"It is not to be disputed that the plaintiff, Mr Theed, for more than twenty years, has been in the enjoyment of that light which existed up to the time when the defendants pulled down the two houses in Mill Hill Place and altered the third, which is at the corner of Welbeck Street.

"The plaintiff had acquired, therefore, a legal right to the enjoyment of that which for so many years he had possessed. That I conceive to be his property—property which no man has a right to take from him—that is to say, a property which this Court has frequently been called upon to protect, and has always protected, excluding only from such cases merely frivolous complaints on the part of the owner of such property—merely captious or unreasonable complaints—because in point of fact some interference has been practised, which, however, did not materially injure him, and of which he could not reasonably complain in a court of justice, however displeased he might have been at it. [His Lordship then reviewed the evidence with the following result:—]

"I take it, therefore, that it has been proved that there will be, if the defendants' buildings are carried up to the height they propose, a serious diminution of the light required by the plaintiff for the purposes he has mentioned, and which he has hitherto enjoyed; [and after further observations on the test adopted, of raising a screen to the height of the proposed new building, and letting it suddenly fall, whereby, in the judgment of the Court, a very satisfactory illustration of the effect of the proposed change had been afforded, his lordship continued:—]

"Then, as to the contention which has been raised, which amounts to this, that in this country one man can say to another, 'You have got more light than I think is good for you, therefore I will take some of it away,' I apprehend that no case which has been referred to countenances any such suggestion. The evidence of one of the witnesses, Mr

Eales, is clear, distinct, and positive upon the subject. Mr Eales has à notion that, if the light is not interfered with to the extent of more than an angle of forty-five degrees, the right to obscure one's neighbour's light to that extent is a right which anybody may assert against the owner of any light which is already obscured to a lesser extent. He says in effect: 'I can raise this building to this height. My building obscured you to the extent of thirty degrees only before: I will now obscure you to the extent of forty-five degrees; that is enough light for you, and with that you must be content.' I hope I have not overstated it. I have endeavoured to use Mr Eales' own expression, 'You must submit to it; it is enough; you had more than was good for you before.' That is no answer to the plaintiff's case. No case referred to countenances such a proposition.

"The regulation as to the angle of forty-five degrees is to be found, I believe, only in that provision of the Metropolis Local Management Act, in which the width of a street is spoken of, and which of itself, measuring the width of a street and the height of the house, furnishes an angle of forty-five degrees. That, be it observed, is from the street, as Mr Kerr said, and if he had not said it, the Act of Parliament has said it; for the statute enacts that 'in determining the height of such building the measurement shall be taken from the level of the centre of the street;' and that must be so, because the position of the windows is so different in various buildings, that if you were to search for the point from which to measure your angle of forty-five degrees, it would be as various as the buildings to which it would be applied. It is said that the Master of the Rolls, on a recent occasion, in *Hackett* v. *Baiss*,* applied this rule about forty-five degrees. This, however, he did not do; on the contrary, he quoted the decision in *The City of London Brewery Company* v. *Tennant*,† in which Lord

* 20 Eq., 294. † 9 Ch., 212 (1874).

Theed v. *Debenham.*

Selborne said there is no positive rule of law on the subject. The regulation may be an illustration or guide, rule there is none. It is said that the Master of the Rolls applied that rule, and applied it by measuring through the middle of the window. No doubt the Master of the Rolls did what was suitable in the case before him, having regard to the arguments addressed to him, but that he laid down any rule of law I am by no means convinced, and I should be very much surprised to find such was his intention, when I find him at the same time referring to a decision which lays down that there is no rule on the subject. He was deciding what was right between the parties before him, but a positive legal rule he never in any respect laid down.

"This is really the whole of the case. The case, in my opinion, is proved on behalf of the plaintiff. He has proved a statutory right to the enjoyment of his light undiminished. It is proved, and, indeed, is confessed by the defendants, that if they build up to the height which Mr Eales mentions in his deposition, the light will be greatly diminished. In my opinion, they have no more right to take away the light the plaintiff has been enjoying, than they have a right to take away the front wall of his house.

"The case, in my opinion, is therefore very distinctly proved, and the plaintiffs are entitled to the injunction they ask for."

His lordship also gave the plaintiffs the costs of the suit.

It will be seen, from the perusal of this case, that the rule as to forty-five degrees was rejected by the Court. The ancient lights had a north aspect, in a narrow street, and Mr Theed stated that in carrying on his work as a sculptor he required not only a direct light, but an *under* or *low light.*

Having now set out fully the various methods by which you cannot estimate the damage, nor obtain interlocutory, perpetual, or mandatory injunctions, we have to consider

how we are to make our estimate, and for this purpose we set forth the matters necessary to be considered in the following Table :—

TABLE VI.

Matters to be considered in estimating Damage or Injury to Ancient Light and Air.

1. QUANTITY OF DAYLIGHT LOST.

   This should be estimated at different periods of the year, because the value of light will differ. For example, take an office in the City. The loss of daylight in the summer, when probably it would be after *office hours*, would be of little consequence ; but the loss in winter, when it would occur during the office hours, and would thus necessitate the inconvenience and cost of artifical light, would of course have a different value.

2. THE PARTICULAR USE FOR WHICH LIGHT IS REQUIRED, having regard to the fact that, for certain trade purposes, no amount of artificial light can be a substitute for daylight.

3. IF FOR ALL THE TIME IT HAS EXISTED IT HAS BEEN USED FOR THE PARTICULAR PURPOSE : IF NOT, FOR WHAT OTHER PURPOSE.

4. HOW FAR THE ENJOYMENT OF THE PREMISES IS AFFECTED.

5. HOW FAR, BY ALTERATIONS OF DOMINANT OWNER'S PREMISES, THE DIMINUTION OF LIGHT MAY BE AVOIDED.

   In case this can be effected, it will be necessary to make a careful estimate of the cost of these works, and the *quantum* of inconvenience they would occasion to dominant owner. This may be set out in the defence, and may influence the jury in assessing the damage ; but it must be remembered in law the dominant owner cannot be required to alter his premises.

6. WHETHER THE QUANTITY OF LIGHT AND AIR IS SO FAR DIMINISHED AS TO RENDER THE ROOM OR PREMISES UNHEALTHY FOR OCCUPATION.

7. HOW FAR THE INJURY TO DOMINANT OWNER'S PREMISES MAY BE REDUCED by the use, in building servient owner's obstruction, of white glazed bricks, or facing it with white tiles or other material.

In using Table VI., it must be remembered that a material diminution of light is necessary to sustain a

successful action. We may mention a recent case in Fleet Street, in which we were engaged for the defendants, in which we showed in our affidavit "that no appreciable damage would be done by the new buildings." When the case came on for trial, the plaintiffs were non-suited, and mulcted in costs.

The law appears to be that there must be a substantial privation of light, sufficient to render the occupation of the house less comfortable, or to prevent the plaintiff from carrying on his accustomed business on the premises, as he had formerly done.

To the experienced practitioner there is little difficulty in pronouncing a confident opinion, after a careful inspection of the premises or drawings, as to what amount of diminution of light will be considered sufficient by the judges to justify an injunction, and what amount will justify the lesser stringent course of action for damages.

It may be well to set out here the legal opinion as to the different amounts of money injury which justify the different methods of precedure.

Sir George Jessel, whose decisions as Master of the Rolls command such universal respect, says, that "whenever an action can be maintained at law, and really substantial damages, or perhaps I should say considerable damages (for some people may say that 20*l.* is substantial damages), can be recovered at law, then the injunction ought to follow in equity; generally, not universally, because I have something to add upon that subject;" and, further on, his Lordship added, "If I had found by the evidence that there was in this case a clear instance of very slight damage to the plaintiff—that is, some 20*l.*, or 30*l.*, or 40*l.*, but still very slight—and a very large material substantial damage to the defendant, I should be disposed to hold that that was a case in which this Court would decline to interfere by injunction, having regard to the new power conferred upon me by Lord Cairns' Act to substitute damages for it." And

in the more recent case of *Kino* v. *Rudkin*,* it was decided by Mr Justice Fry that since the Judicature Act, as before it, a plaintiff in an action to restrain an alleged obstruction to ancient lights cannot obtain an injunction unless he proves substantial damages.

It will therefore be seen, as Mr Locock Webb says, that "it is impossible to lay down any rule as to what would constitute sufficient damage upon which to ground an application. But the result of the authorities may be, we think, shortly stated thus: It is not every impediment to the access of light and air which will warrant the interference of the Court by way of injunction, or even entitle the party alleging himself to be injured, to damages. In order to found a title to relief in respect of such an impediment, some material or substantial injury must be established, and the onus of proving this injury rests upon the plaintiff.

1. **Quantity of daylight lost.**—We have so fully gone into this question, we need say no more here than that we would advise the surveyor, in estimating the *quantum* of daylight, to free himself from "party ties," and look at the matter as a practical man. By such means will he be able to give his client what in the end must prove to be the best and soundest advice.

2. **Particular use for which light is required.**—We recall a case we were a short time since engaged in, in which the value of a small window at the back of a large warehouse acquired exceptional importance, from the fact that the counter which stood beneath was used for sorting different coloured beads. This window was considered of little importance by the building (servient) owner, as he was aware that it was about 8 feet 6 inches from the floor of the room in which it stood. It was, however, contended by the dominant owner that in no other part of his

* 6 Ch. D., 160 (1877).

extensive premises could this delicate process be carried on with the same convenience, and that the slightest diminution of light was of the first importance, because immediately it became so dark as to necessitate the use of gas the workmen had to cease work, as by gaslight different colours could not be distinguished. Another instance is the celebrated case *Theed* v. *Debenham* (pp. 109-115), where the sculptor highly valued the *low* or *under* light, and successfully contended that such light was absolutely essential to him.

Next we would mention a case in which we were engaged for the plaintiff, where we obtained 500*l.* damages, and one of the items of the claim was that the dispensing could not be carried on with the same accuracy and rapidity as before.

3. **If used for same purpose during period of acquirement.**—It is wise to obtain this information, because it has been held that only the light is protected for the purpose for which it has been enjoyed, or is reasonably adapted to be enjoyed. The ground of this has been that there can be no substantial injury, if a man can enjoy his premises for the same purposes as he has hitherto enjoyed them. However, the latest rulings appear to favour the dominant owner. Vice-Chancellor Bacon said, "In my opinion, they have no more right to take away the light which the plaintiff has been enjoying than they have to take away the front wall of his house, and no man can be heard to say that he may obscure another's ancient light because he has more light than he requires." While, therefore, it may be contended that sufficient light is left for the purposes for which the premises have been used, the dominant owner may set out, and seek to justify, that the market value of his premises is diminished, because, though there is light enough left for present purposes, for others to which the premises could be well adapted there would not be sufficient.

4. **How far enjoyment of premises is affected.**—It is well to bear in mind the words of Lord Justice Romer

in *Warren* v. *Brown** (page 97) that, "It is proper to have regard to the ordinary uses by way of habitation or business to which the house has been put, or might reasonably be supposed to be capable of being put."

5. **How far diminution of light may be avoided.**—While, as we have shown, that the dominant owner cannot be compelled to alter his premises, it may still be a great advantage to be able to show how it can be done, and the cost; for in some cases we have been concerned in, on the dominant owner having it shown to him that such alterations could be effected, and upon our offering on behalf of our clients to do the necessary works, the matter has been arranged. It seems fair to say, "We are sure you do not wish to injure your neighbour by preventing him making the most he can of his land, when by certain alterations, which will not cost you anything, your premises can be just as comfortably enjoyed." Our experience is that it is the exception to find people determined to litigate, and that in the early stages a professional man can often arrange differences in a satisfactory manner.

In the table other reasons appear why it is desirable.

6. **Whether premises are rendered unhealthy for occupation.**—Where it can be shown that the premises are not merely injured as to enjoyment, but are rendered unhealthy, of course a much stronger case is presented. It is not often that such can be shown; still there have been cases where the "ventilation" has been affected by premises being built in, as it were, so that no rays of sun can reach the building, and little air. A typical case of this kind was in Spital Square, where the dominant owner, a medical man, claimed heavy damages for loss of the sun's rays. This case is alluded to, and has diagrams to illustrate it, in Chapter VI. of this work.

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* 2 Q. B., 722 (1900).

7. **How far injury may be reduced by use of materials reflecting light.**—Much stress is sometimes laid on the method of building with white glazed bricks, or facing with white glazed tiles, or the advantage of reflectors of various kinds. It is well, therefore, to consider these points, and to form an opinion of their value, remembering that the fact of the use of such materials would indicate that some damage to light is intended.

CHAPTER V.

THE TRIAL.

REFERENCE—"LEGAL MIND"—BIASSED VIEWS TAKEN BY SOME ARCHITECTS—PREPARATION OF CASE AT LAST MINUTE—CONSULTATION WITH BROTHER PROFESSIONALS—THE TEAM—NON-SKILLED EVIDENCE—TABLE VII., WHAT DOMINANT OWNER MIGHT TRY TO PROVE—TABLE VIII., POINTS FOR SERVIENT OWNER TO ENQUIRE INTO.

UNFORTUNATELY even in this age of compromise, some clients will contest their rights by "trial of battle," the only difference being the "venue," which is now in the courts of law.

At times it is unquestionably necessary to have recourse to law; but we think it is always wise to endeavour to arrange these questions, and for this purpose, no doubt, a meeting between the surveyors of the dominant and servient owners is the usual course of proceeding. But at such meeting it may be found either the dominant owner has such an exaggerated opinion of the value of "light and air," or the servient owner such an unappreciative idea of its value, that no course is open but to appoint an impartial umpire, or to take the case to trial.

Now, as to a *reference*. Although there is much to be advanced in its favour, it appears sometimes to be difficult to persuade clients to adopt this method of settling these questions; partly, may it not be, because the proceeding is

so quiet, and there is still a lingering love of the olden times wherein a man was proud to declare he would fight for his rights.

We would here remark that we cannot help thinking, however, that references to members of our profession would be much oftener made if our awards were given more quickly, and were based on deeper study of the law, so that those who submitted their cases to us would have the assurance that no prejudice, towards either all dominant owners or all servient owners, existed in our minds. We know how difficult it is to imbue ourselves with legal and logical feelings, and we therefore strongly recommend our readers to make a study of legal works; and we can assure them that after a time they will find such study not nearly so dry as they may imagine it to be. Read reports of all trials bearing on this and all kindred subjects; never lose an opportunity of listening to, and discussing questions with, counsel and solicitors. Of course, in doing so we need hardly mention that one must remember that one is a *layman;* but we know no gentlemen in any profession who are so willing to give information, or from whom one can obtain so much instruction, enlivened by so many amusing cases, trials, and anecdotes.

To show that our advice as to endeavouring to obtain what is called a "legal mind," distinguished by impartiality, is necessary, we need only quote the following as indicating its absence:—"I do not find architects so ready to keep to the defendant's side as I think they ought to be. I say it plainly. If a man comes to me with a defence, I take it up without inquiring any further; but if he comes to me as the plaintiff, or representing him, I must have it investigated before I will take it up at all. I will venture a little further, and say my experience has led me to this: that in nine cases out of ten these actions about light and air are based upon something very different from the sense of having suffered injustice. I state that deliberately and

advisedly as my experience; and I think that if architects would do as I suggest—take up a defendant's case with alacrity, but take up a plaintiff's case with very considerable hesitation—they would not have to complain, as they do most justly, of the obstacles which are placed in the way of improving London and other large towns by these most mischievous actions." And again: "But if architects would hesitate a little more to come forward as witnesses against the business of brother architects, less harm would be done. 'Love me, love my building!' and those who put obstacles in the way of honest building ought not to be able to get architectural evidence to support their cases." This quotation is from the Transactions of the Royal Institute of British Architects, and we leave our reader to refer thereto to find who was the speaker. Surely such a bias is not worthy of a great reputation.

Well, we will now assume that all efforts at a settlement have failed, and you are instructed to prepare for the trial. Of course, for whichever side you are, either the dominant or servient, it matters not; your duty is clearly to do the best you can for your client, and if you cannot honestly support his case, throw it up at the outset, so that he may take other opinions. In the preparation of your case it is wise to be prompt; in fact, taking a leaf out of the solicitor's book (who engage counsel at once, so as to secure the best advice for the especial case), you should at once secure an expert who has given such cases his special study, and who, from practice in giving evidence, is not likely to fail in the witness-box. You will consult with him and be advised by him, as to whether you have any cause of action or defence as the case may be. And he will, no doubt, view with you the premises, and suggest to you the kind of drawings or models you should prepare, and the evidence you should get ready; and if the case is complicated, no doubt it will be to your client's interest that an early meeting should take place with his solicitor.

Rest assured that you cannot too early have everything prepared; for, in any negotiation during the legal proceedings, you have all your strong points ready to advance, and you will know how to indicate the weak portions of your opponent's case, and will, therefore, be more likely to obtain favourable terms in any settlement for your client.

It is an old adage that "good wine needs no bush;" yet, after long experience, we venture to affirm that a good case is only "half the battle," and that many good causes are lost because they are not properly explained by diagrams, and are not thoroughly and clearly prepared for counsel and the Court. If such were not the case, why should solicitors be so anxious, in the interests of their client, to secure the leading men at the bar in the "specialty" by which they have made a reputation?

Nothing pleases one more than to find one's opponent very sanguine—to hear him talk of his case in the horsy phraseology as a "walk over'; nothing pleases one less than to hear one's own side using the same expression; as, from long experience, we have found the expression is used too frequently by those who have not considered what can be advanced by the other side—who, in fact, have not weighed the *pros* and *cons* carefully, or who are prejudiced in their client's case (which they have made so thoroughly their own as to be incompetent to guide their client judiciously), or have some case in their mind not at all on all fours with the case in hand. Thus, they are rendered unfit to form a judicial and impartial decision.

That a surveyor should consult a brother professional in a difficulty appears to be the rational proceeding. Again, is there not a great advantage in having a fresh and experienced mind brought to bear on the subject, which, from its being constantly before you, has only the side turned towards you that you have so long and so wearily contemplated?

The next question is as to the "team," as it is called.

We confess we prefer a few leading men to a larger number of lesser weight; and for the following reasons:—1. Good men carry most weight; 2. As they are often appearing in the witness-box, they are less likely to answer awkward questions stupidly; 3. Men unaccustomed to this ordeal are nearly sure to say something that they will admit they never meant in the sense the cross-examining counsel intended; 4. Because one witness breaking down or giving (through the misunderstanding of the question, in consequence of the nervousness attending his position) a wrong answer destroys, at least, two of your good witnesses—in fact, may entirely spoil your case.

While on this portion of the subject, we ought to call attention to other than skilled witnesses. They comprise builders; inhabitants of the premises of the dominant and servient owners; assistants and shopmen; gentlemen who pursue the same profession or trade; persons who have known the premises before and since the injury alleged, including that not-to-be-got-rid-of individual—the oldest inhabitant.

Now, in dealing with this non-skilled evidence, it is very difficult, first, to obtain from the witnesses, before they go into the "*box*," what they know (because they sometimes tell rambling stories, the date and pith of which it is difficult to discover); and when under clever cross-examination they seem to be so liable to forget what they have told, or their memory is so quickened by that trying process, that they say something for which you are quite unprepared, and which they tell you they had quite forgotten, or that they had become "fogged" and did not mean it.

You will assume that we incline to mature skilled witnesses. We affirm that they are less likely, under cross-examination, to say what they do *not* mean; but, of course, other evidence is often imperative, and we would only suggest that such evidence should be produced for what

it is required, and that the professional, skilled, or technical evidence should be relied on as to injury or non-injury.

The main points to consider we have endeavoured to express in the following Table. It sets out what the dominant owner will seek to prove, and if you are acting for the dominant owner, you will try to prove some or all of them.

TABLE VII.

Showing what the Dominant Owner may try to Prove.

The dominant owner will, no doubt, after proving his right to the easement, try to prove some of the following items :—

1. THAT HIS EASEMENT IS BY PRESCRIPTION, AND THAT HIS ENJOYMENT OF THE PREMISES IS INTERFERED WITH.
2. THAT HIS LIGHT IS NOT SLIGHTLY AFFECTED, BUT SUBSTANTIALLY INJURED.
3. THAT HE CANNOT CARRY ON HIS BUSINESS AS HERETOFORE.
4. THAT HE CANNOT CARRY ON HIS BUSINESS WITH THE SAME CONVENIENCE AS HERETOFORE.
5. THAT HE CANNOT CARRY ON HIS BUSINESS WITHOUT AID FROM ARTIFICIAL LIGHT.
6. THAT HIS PREMISES ARE RENDERED UNHEALTHY AND UNFIT FOR HABITATION.
7. THAT THE RENTAL VALUE IS SERIOUSLY DIMINISHED.
8. THAT THE SELLING VALUE IS SERIOUSLY AFFECTED.

   Should these points, 7 and 8, be taken, it will be wise for the surveyor to be prepared with evidence and proof as to *quantum*.

1. Of course, the dominant owner must first prove that the light is an ancient light. That the enjoyment is interfered with; and to do so he will produce, probably, occupants, if the claim be in respect of a private residence, and the employés, if the premises be a shop or warehouse. In the former case, it is likely that it will be

contended that serving cannot be done as late in the day, or that some one accustomed to use the needle cannot thread it without artificial light so many hours later in the morning or earlier in the evening. As to the latter, that colours cannot be distinguished at all, or cannot be distinguished after a certain time in the day in the summer and a certain time in the day in winter; that dispensing cannot be carried on so conveniently or safely; that the shop is dingy and dark, and is rendered less attractive; that the premises are rendered less healthy by reason of the necessity of gas being burned during a greater period each day; that a special loss is sustained, as in certain trades no amount of artificial light (at present) can be a substitute for daylight.

2. We have shown in the preceding pages so clearly the necessity of proving that the injury is substantial, that it is almost certain the dominant owner's surveyor will endeavour to prove this.

3. Clearly, if this can be proved, the dominant owner will obtain relief; for the law is most jealous of allowing an injury of this kind, and certainly it is most just that it should be so.

4. We have often found much dispute as to this item, the word convenience seeming to have a different meaning in many witnesses' minds, although it would appear so clear.

5. It is safer ground, as it would only be necessary to show, on trustworthy evidence, that the gas has now to be lighted at an earlier hour in the day, to support this.

6. This is somewhat difficult of proof while the system of sanitation and health is so much in dispute, and probably the surveyor advising the plaintiff would do well to have what is called a strong case before advising fighting on this count. It is well to remember, however, that the question of air, as well as light, is specially an element.

7. Here the surveyor is almost the sole judge, and certainly, if he be experienced, he can most properly deter-

mine whether or not any injury to the rental value or desirability of the premises has occurred.

8. This will in all probability follow *item* 7, and surveyors are again the best and almost only witnesses to support or rebut.

Having examined Table VII., and briefly pointed out the salient points requiring attention, we next come to Table VIII., and will follow it with a few suggestions.

TABLE VIII.

Important Points for Servient Owners to enquire into.

1. THE LENGTH OF TIME FOR WHICH LIGHT HAS BEEN ENJOYED.
2. THE USE FOR WHICH IT HAS BEEN ENJOYED.
3. IF ANY, AND WHAT, ALTERATION HAS BEEN MADE IN THE WINDOWS, SKYLIGHTS, OR OTHER LIGHTS.
4. IF ANY INTERRUPTION OF THE LIGHT HAS OCCURRED.
5. IF ANY ALTERATION CAN BE MADE IN PROPOSED BUILDING SO AS TO GIVE EQUIVALENT LIGHT.
6. IF ANY EXCESS OF LIGHT EXISTS.
   As heavy blinds would indicate.
7. THE QUANTITY OF INJURY—
   As if only trivial the Courts will not interfere by injunction, and may at the trial dismiss the action with costs. This is important to remember.
8. THE ASPECT OF THE WINDOW OR SKYLIGHT INTERFERED WITH.
9. THE SURROUNDING OBSTRUCTIONS (IF ANY), AND THE DATE, IF IT CAN BE OBTAINED, OF THEIR ERECTION.
10. THE KIND OF GLASS IN THE ANCIENT LIGHT.

1. Naturally this will first engage the defendant solicitor's attention, and he will often find himself in great difficulty. Some will tell him, "Window only sixteen years old," or some number of years short of the prescribed time: and then he will have to find out why it is fixed at this time, and will discover a wedding, a birth, or death,

or an accident to a child, or some such cause has impressed it on informant's mind. It will require patience to test statements and arrive at the fact, and it must be borne in mind legal proof will be necessary if this is the defence, and not merely unsupported statements.

2. The present decisions, it must be remembered, appear to be in favour of but little diminution. Still, it has been held that sufficient light for the use of which the premises have been occupied, or adapted to be occupied, is all that can be claimed (p. 103), and it is therefore well to show (if it can be done) that there is plenty of light for the use for which the premises have been used, and it would appear to have the effect of reducing damages where this can be shown.

3. We advise a careful perusal of the cases we have given *in extenso*—namely, *Tapling* v. *Jones*;* *National and Provincial Plate Glass Insurance Company* v. *The Prudential Assurance Company*;† *and Theed* v. *Debenham*.‡

These most important recent cases should certainly enable the surveyor to determine if, in the case he has to combat, he can successfully bring this item forward with advantage.

4. He will find the same difficulty as we have set out as to *item* 1, unless the interruption has taken place under his superintendence or that of some well-qualified surveyor, when no such difficulty can occur, as the date of obstruction, the watching and the written record will be all ready for production.

5. In the preceding portion of the work we have endeavoured carefully to explain that the dominant owner cannot be compelled to alter his premises; still it is important in estimating damage, and also in showing that the injury can be diminished, to indicate what can be done to the dominant owner's premises, and what the result will be. Although it may give the plaintiff an advantage (in

* 11 H. L. C., 290 (1865). 34 L. T. C., p. 342 (1865).
† 6 Ch. D., 757 (1877). ‡ 2 Ch. D., 165 (1876).

giving him time to consider what reply and objection he may be able to set out against the proposed alteration of his premises), still it seems only fair, before the trial, to give him plans and estimates of the proposal. It is not always a disadvantage; for the Courts are usually willing to consider leniently the case of any party who has done all he can to conciliate his neighbour, and does not want to oppose him or prepare surprises at the trial, but tells him fairly what he means to contend, and enables him, by giving him copies, to have plenty of time and opportunity of answering.

6. Many cases of this kind arise in our minds, indicating that abundance of light existed. It is, however, open to the dominant owner to combat this in several ways.

7. We refer the reader to *Back* v. *Stacey** (p. 37), already alluded to, to show that it must be a substantial privation; also to Lord Justice James' judgment in *Kelk* v. *Pearson*† (p. 32), already cited (*see* also pp. 96 and 103). The loss must be substantial; each case must be judged by itself, and no one can form a decision without either seeing the drawings relating to the particular case, and the drawings and the ancient light stated to be affected.

8. This more especially arises in the case of those requiring north light, as in our own profession, and in the cases of artists and sculptors, and for industries requiring special light.

9. This is difficult to explain without the special case before one, and yet in many cases the surrounding obstructions, which have become ancient through consent, negligence, or accident, may give especial value to the light sought to be injured.

10. So much have we heard of this in cases in which we have been engaged, that we are bound to call attention to it. On the one side, it is contended that if a man has

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* 2 C. & P., 465 (1826). † 6 Ch., 809 (1871).

ground or "matted" glass, it indicates in itself that he has an excess of light, and takes that means of reducing it. On the other hand, it is contended that no such assumption is fair; that he may desire privacy, and that he is entitled thereto; that he may dislike a glare, and that this is the best remedy; that the diminution he has made to obtain one or other of these objects renders the remaining light more valuable to him; that consequently he cannot easily part with any portion of the remaining light. As to the quantity of light lost by ground, "matted," and other kinds of glass, we give a table on page 5, and have dealt with the subject also in our book on "Architectural Hygiene."

CHAPTER VI.

Diagrams of Cases shown on the Plates.

With regard to the preparation of diagrams for the purpose of illustrating the effect of the alleged interference to the easements of light and air, we give twenty-seven diagrams of cases in which we have been engaged. We have found them useful for the purpose of illustrating the effect of such obstructions of the easement. It must be borne in mind that the nature of each individual case must guide us in the preparation of such diagrams as will fairly represent the actual damage or otherwise that will accrue. No hard and fast lines can possibly be laid down, and we merely give these diagrams in the hope that they may be of some slight service for the purpose of elucidating the subject, as in each case they were successful in either assisting to obtain a verdict, or in arriving at an adequate conpromise. In all the diagrams the existing buildings are shown in black, and the defendant's proposed buildings are shown in red. The old angles of light are shown in blue lines, and the angles that would be caused by the proposed buildings in red lines.

The first case is illustrated in Plate 1. This shows the case of *Twinberrow* v. *Braid*, tried in the month of July 1878. The view is taken with the eye 5 feet 3 inches from the ground, and the body moved back 1 foot from the window. It will be seen that the whole sky surface on the left hand of the picture is unobscured; on the right, uncoloured, is shown an existing obstruction of light; in

the centre is another obstruction in the shape of a chimney-stack. If the reader will refer to PLATE 2, he will see that the sky on the left hand is completely hidden from view by the defendant's new buildings, which in this plate are shaded dark, and on the right hand is also a small obstruction of a chimney-stack, also shown in the dark tint. It will be seen that the chimney-stack in the centre is of a different form, and, we may mention here, the defendant's surveyors made much in their affidavits of the advantage to the plaintiffs by this alteration.

Now, if the reader will work out his calculation, he will see that the loss of sky is some 60 per cent. It was so in the large drawings we produced in Court, but in the process of reducing some slight variation may occur; but it is, however, immaterial, as the sole object in view is to show the method of calculation. These plates show lateral obstruction.

Next, we have a case of the erection of buildings directly opposite dominant windows.

PLATE 3 shows a building in a narrow street, with the quantity of sky it possessed. The servient owner pulled down the opposite premises, and rebuilt his premises to a greater altitude, as shown on PLATE 4, thus diminishing the sky view by 90 per cent. The views in this case are taken from the first-floor window, with the eye at a height of 5 feet 3 inches from floor, and the body 1 foot from the window.

To show the same building from a different point of view, we have taken the view from the ground floor,—PLATE 5 showing the view antecedent to the new building; PLATE 6 showing the new building and the result—the total loss of sky.

The special object in giving these illustrations of injury in a narrow street, is to bring prominently before the reader what is so often contended by the opposite parties. By the dominant owner, that he has so little light that he cannot

afford any decrease of it; that the slightest diminution is therefore to him a far greater injury, because he has so little. By the servient owner, that the premises are already so dark that a little more or less cannot practically make any difference; that the lighting of gas a few minutes earlier is of little consequence; that if, in the crowded thoroughfares of great cities, such slight injuries gave the right to injunction, the architectural improvements of the commercial towns would cease to be carried on.

The next obstruction we will, for distinction sake, call a *distant lateral*, as in this case it will be seen from the plan given in PLATE 7 that a narrow roadway intervened, and it was contended that the greatest injury sustained was from the heightening of the buildings marked on the plan B and C.

In this case, it will be noticed, immediately opposite to the plaintiff's premises was a tall building, which is shown on the centre of the first diagram on PLATE 7, and marked D thereon; and to the right thereof is shown a view of the old building, marked A, B, C on diagram, the hatched portion showing that which was raised.

We allude to this case because a test of injury was tried of a practical character. To test whether the injunction should continue, it was suggested that a screen should be put up, with the power of raising it and lowering it at pleasure.

On the day appointed, we attended with the surveyors for the defendant, and the surveyors for the plaintiff were also present. We sat in various positions in the room on the ground floor which was stated to be most injured, one of the plaintiff's surveyors placing himself in a favourable position, with his back to the light and a newspaper in front of him. According to instructions, the screen was lowered without any notice, and raised in the same manner. The result of this test was that the defendant gained the case with costs.

Another portion of the claim in this case was the loss of the sun's rays. The plaintiff, being a medical man, contended that the raising of A, B, C deprived him of the sun's rays, and rendered his house unhealthy. He further contended that as his practice necessitated his living in the immediate locality, and as he could not obtain any other house adapted to his requirements in the same neighbourhood, no money could compensate him, and therefore he ought to have a perpetual injunction. A further ground for this was that his professional duties necessitated his residence therein all the year round, save only for one short fortnight. It will be seen, therefore, how strong was his claim to have a healthy house.

To prove that the buildings A, B, C did not obstruct the sun's rays, we visited the premises at different periods, and made diagrams, of which PLATES 8 and 9 are reduced copies. We found that the morning sun had uninterrupted play on the front till ten o'clock in the morning on the days of our visit. We also found what we considered an important point to call the attention of the Court to—that the whole flank wall of plaintiff's house was in direct sunshine also. At 11.50 A.M. the shadow was thrown on the house as set forth in PLATE 8; but this shadow was cast, not by the defendant's building, but by the old building marked D on plan, PLATE 7. PLATE 9 shows the shadow thrown on a different day at 11.25 A.M. Later in each day, on the different days, we attended to watch the building, but at no period was the plaintiff's statement confirmed of the shadow being thrown by the heightening of B, C.

Having dealt with front, side, or lateral and distant lateral obstruction, we next deal with *skylights*.

In PLATE 10 we set out the view of the sky taken in the shop behind the dispensing counter, where light was admitted by both sides to be most important. We had some difficulty in making the learned counsel, at the view before the trial, quite understand what the ellipse was, as

the skylight was circular on plan; but when he did, he realised the value of the diagram.

PLATE 11 shows the same skylight, with the new buildings indicated thereon, thus showing a loss of sky of $97\frac{1}{3}$ per cent. On the right of the plate we have shown the new buildings continued, and dormers which, although not visible from the point of sight, appear to have the effect of making the diagram more intelligible, and indicated a further obstruction beyond the loss of sky.

We next give a sectional diagram on PLATE 12. It will be seen that on the right hand the servient owner's wall has been raised. We show this by tinting the wall red. Now, to indicate the loss of rays, we show them by the red lines; the blue indicate the rays of light still left at this point, and the black lines show the rays which were enjoyed, but which are now lost. The object of showing these in black is because their line would impinge on the opposite side of the framework of skylight. It might be contended that they were of little value to the dominant owner, as he only derived reflected light therefrom. They certainly have a different value to the rays shown blue. The contention was that the red lines were of the utmost value, because they fell, as will be seen on reference to the plate, on the dispensing counter, and also on the bottles shown against the wall. It was contended that the loss of these rays (marked red) prevented accurate dispensing, and rendered the labels on the bottles illegible at the same distance at which they had been legible before.

PLATES 13 and 14 show a case in which we were called in to advise the Benchers of the Inner Temple, and in which we were of opinion that great injury would result if the Temple Chambers Company, Limited, were allowed to build according to their designs. One peculiarity of the case is that the basements of King's Bench Walk are used as offices, and therefore the light to these rooms is important.

PLATE 13 shows the back room on this floor, and the

writing-table is also shown, the lines of light that would be interfered with are drawn in blue, and coloured blue inside the room. It will be seen that the rays are those which touch the table, and are therefore valuable. On the ground-floor the same method of illustration is used—see PLATE 14—the table also being shown where it was the custom for it to be placed. In this case the Court granted the Inner Temple a perpetual injunction, with costs.

PLATES 15, 16, and 17 were used in *Slack* v. *Richman and Smyth.* This was a case at Wandsworth. A reference to the plan will show the side lighting of the dining and drawing-room in this semi-detached villa. More than twenty years ago the owner built the conservatory, which is shown, and lowered the windows by removing the cills, and making French casements.

The defence was, that there was no interruption to light, because they proposed limiting the new buildings to the angle of forty-five degrees from the bottom of these casement windows, and further, as they were removing the fruit trees, there was really a benefit to the lighting of the drawing and dining-room windows and to the conservatory. These obstructing trees are shown on the drawings prepared by the defendant's surveyor, PLATE 15. With regard to the basement windows, it was alleged that "creepers" covered them, and so no light could enter. We prepared PLATE 17 in reply to PLATE 16, and the verdict was for the plaintiffs.

It will interest our readers to know how rapidly sometimes cases can be tried. The writ was issued on the 20th September. The two days' trial took place, and judgment was given on the last day, 7th December. So that the whole of the proceedings were completed within three months of the issue of the writ.

PLATES 18 and 19 illustrate the position in *Aldin & Co.* v. *Latimer Clark & Co.* This form of case is somewhat rare, as it is seldom that there is an action for "air" without any claim for "light." The plaintiffs are timber merchants,

carrying on an extensive business. The defendants were erecting an electric light works and offices.

A reference to PLATE 18 shows the position of the obstructive buildings. Counsel for the defendants endeavoured to make much of what he alleged would be the advantage of the high building in creating a narrow passage or "gut," and thus causing increased current of air through this narrow way. This case was tried in January 1893, and the verdict was for the plaintiffs with costs.

PLATES 20 and 21 were used in *Maynard* v. *London School Board*. This case was as follows:—The Board had built a school which, under their powers, they were entitled to build, and against their so doing no injunction would be granted. This power to build is not limited, we may mention, to the School Board, but is possessed by many other public bodies, including railway companies. The only remedy the party injured has, is by action for "Compensation."

A reference to PLATE 20 will show that the injury was somewhat lateral. The contention was that advantage had been given in exchange: first, by the setting back; and secondly, by the playground at the southern end of the School Board's new building, which is also shown on the plan.

In the evidence for the plaintiff before the jury we pointed out that we had given all the advantage of the setting back; and with regard to the playground, that the angle on plan being only that beyond the angle on plan of sixty degrees, the quantity of light that would enter between sixty degrees and ninety degrees on plan was very small, and to that extent we had given credit.

The jury gave 100*l.* damages, which was the sum we had advised should be taken, and costs.

PLATE 22 illustrates some of the diagrams used in the case of *Wasson* v. *Pawson & Leafs, Limited.**

This action was brought on the 5th February 1895 by

* *Times*, 6th and 26th February 1895.

the plaintiffs, who on their writ claimed an injunction to restrain the defendants from erecting and raising their new building so as to darken, injure, or obstruct any of the ancient light passing to the plaintiffs' premises, and also from permitting to remain any building already erected, which should cause any obstruction to the said ancient lights. The plaintiffs also claimed damages. We were the only professional advisers called for the plaintiffs, but the defendants called many experts. Mr Justice North thought that an injunction ought to be granted till the trial of the action. But he was by no means certain that the plaintiff would succeed at the latter.

The plaintiffs had to give the usual undertakings as to damages. This decision was appealed against, and came before the Court of Appeal on 25th February, but the judgment was upheld. Lord Justice Lindley was of opinion that the judge below had understated the amount of obstruction, and that the plaintiffs had made out a strong *prima facie* case.

PLATE 23 illustrates the diagrams prepared in the matter of *Sharman* v. *Steward*. The defendant's new premises are shown by the rectangle coloured red on Plan H.P.F.[1] It will be seen from the sections that there was actually a gain of light to the plaintiff's windows on sections H.P.F.[2 and 4]. This action was tried before Mr Justice Cozens Hardy in June 1900, and was dismissed with costs.

PLATE 24 shows the diagrams prepared in the case of *Cookesley* v. *Lord Russell of Killowen*. Our client, Mrs Murray Cookesley, found that the trees shown on H.P.F.[1 and 2] seriously interfered with the light to her studio, and reference to H.P.F.[3] shows that from her easel the sky was entirely obliterated.

The defendant finally agreed to an order for injunction to cut the trees back to an angle of forty-five degrees from the sill of the plaintiff's studio window, as shown by the black angle of light in H.P.F.[2]

PLATE 25 illustrates the case of *Bassano* v. *Bromet*, all the sections being taken on the line A A marked on the plan B.F.[1] In this case it will be seen that the light to basement and ground floors of plaintiff's premises was originally somewhat obstructed owing to the bath-room on the first floor extending beyond the back front of the building, and shown in section on B.F.[2 and 3]. In these sections the loss of floor and wall space is shown in addition to the angle loss. The defendant agreed in Court to pay the sum of £200 and all costs.

PLATE 26 shows the diagrams prepared in the case of *Levy Brothers* v. *Harrison*. In this matter it was argued by the defendants that the plaintiffs had lost their easement. On H.P.F.[1 and 2] the blue portion shows the plaintiffs' new premises, and the red the plaintiffs' old building. H.P.F.[3] shows by the red rectangles the portion of the new windows that was protected by the old lights. H.P.F.[4 and 5] shows on sections to what extent this protection is accomplished. The verdict in this case was for the plaintiffs, as it was held that the new windows in their building concurred sufficiently with the easements acquired by the old windows.

PLATE 27 illustrates the case of *Brown's Executors* v. *Morris*. In this case it will be seen that the defendants desired to raise their building some 14 feet above the old height. We failed to convince their architect that they would materially damage the plaintiffs' lights, and the case was tried in October 1899 in the Chancery Division, with the result that the plaintiffs obtained a verdict. We think that the diagrams fully explain the case, and it will be seen on referring to H.P.F.[10], that there was a considerable loss of light to the bulkhead lighting the plaintiffs' office, in addition to the losses to the windows on the upper floors.

INDEX.

A

B

C

D

E

F

G

H

I

J

K

L

M

N

O

P

Q

R

S

T

U

V

W

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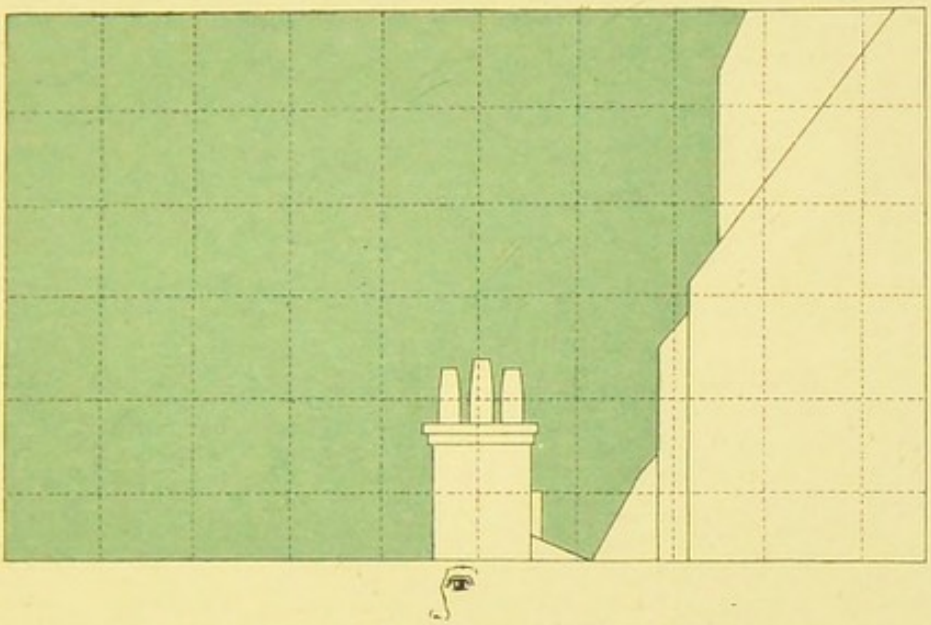
AS IT WAS.

PLATE I.



VIEW TAKEN FROM 1ST FLOOR WINDOW AT A HEIGHT OF 5'.3" FROM FLOOR, 1'.0" BACK FROM WINDOW.

NOTE: THE EYE 5'.3" FROM GROUND.
THE BODY 1'.0" FROM WINDOW.

DANSTER FLETCHER & SONS
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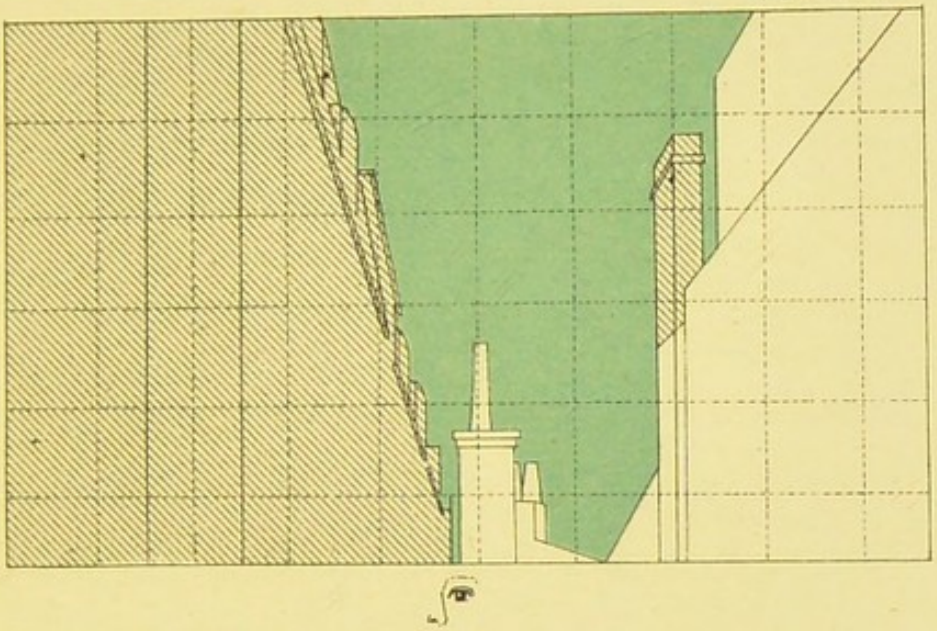
ARCHITECTS.

AS IT WAS.

PLATE 2.



LOSS OF SKY 60 PER CENT.

VIEW TAKEN FROM 1ST FLOOR WINDOW AT A HEIGHT OF 5'.3" FROM FLOOR, 1'.0" BACK FROM WINDOW.

NOTE: THE EYE 5'.3" FROM GROUND.
THE BODY 1'.0" FROM WINDOW.

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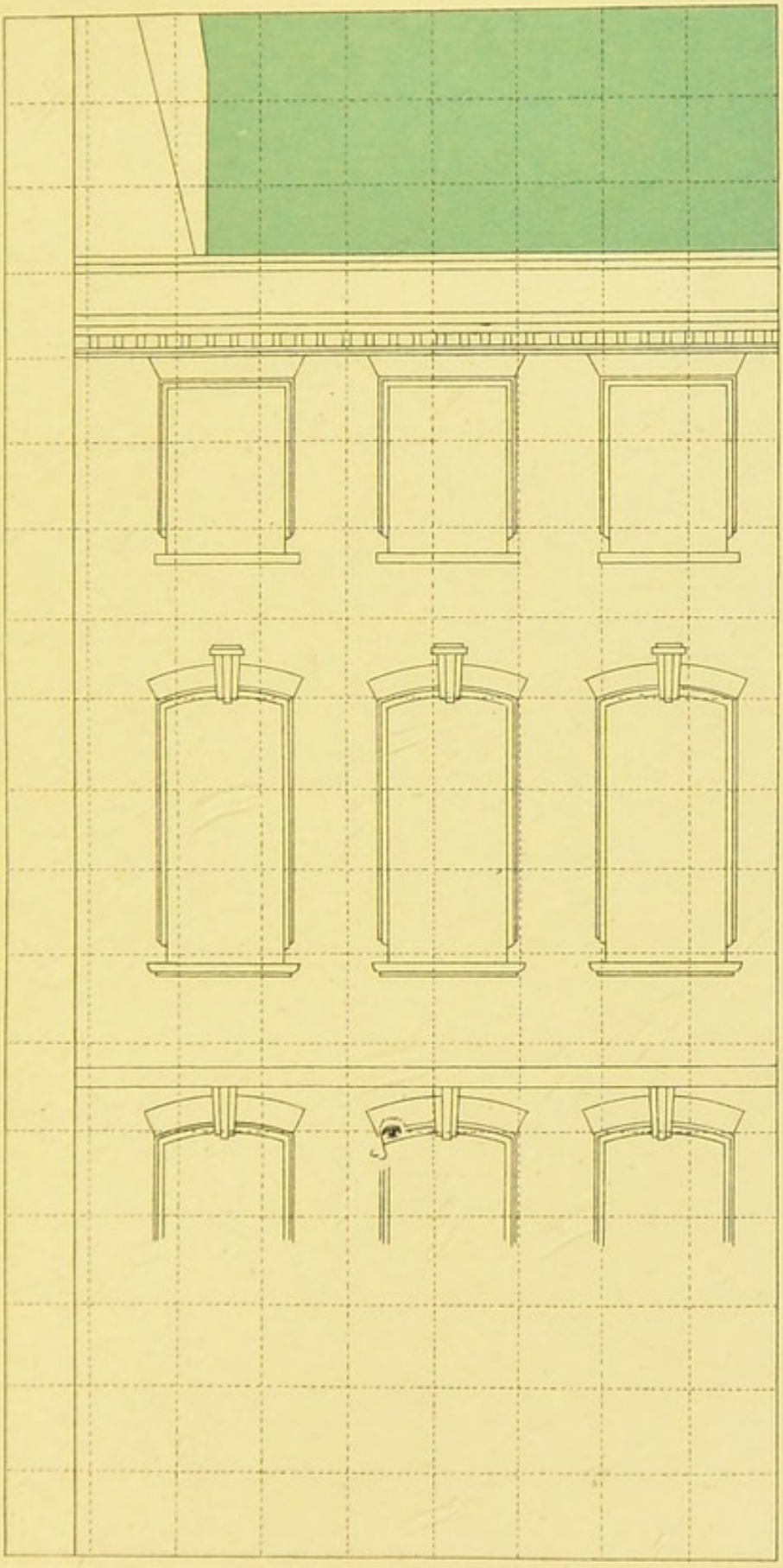
AS IT WAS.

PLATE 3.



VIEW TAKEN FROM 1ST FLOOR WINDOW AT A HEIGHT OF 5'.3" FROM FLOOR, 1'.0" BACK FROM WINDOW

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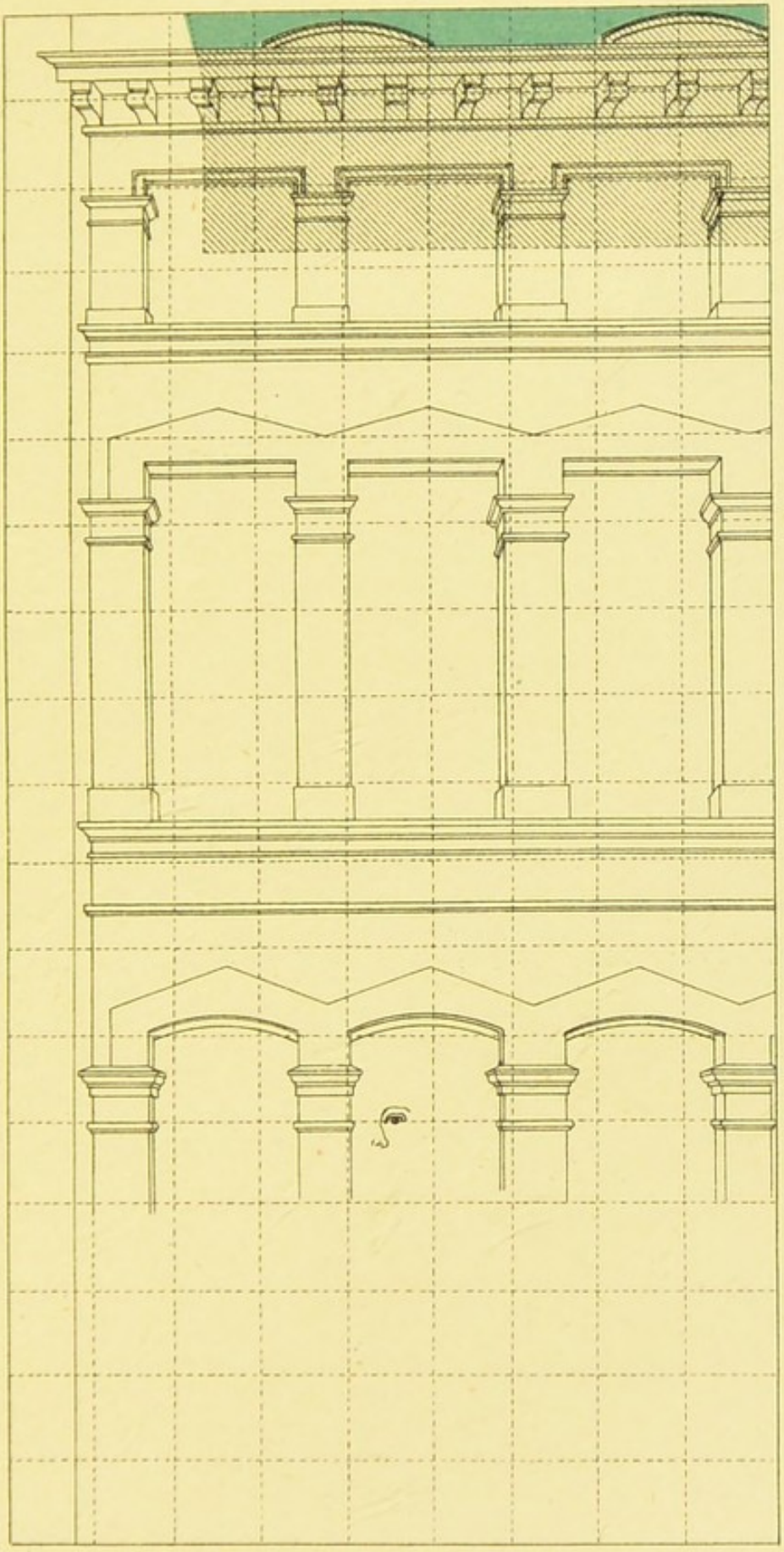
AS IT IS

PLATE 4.



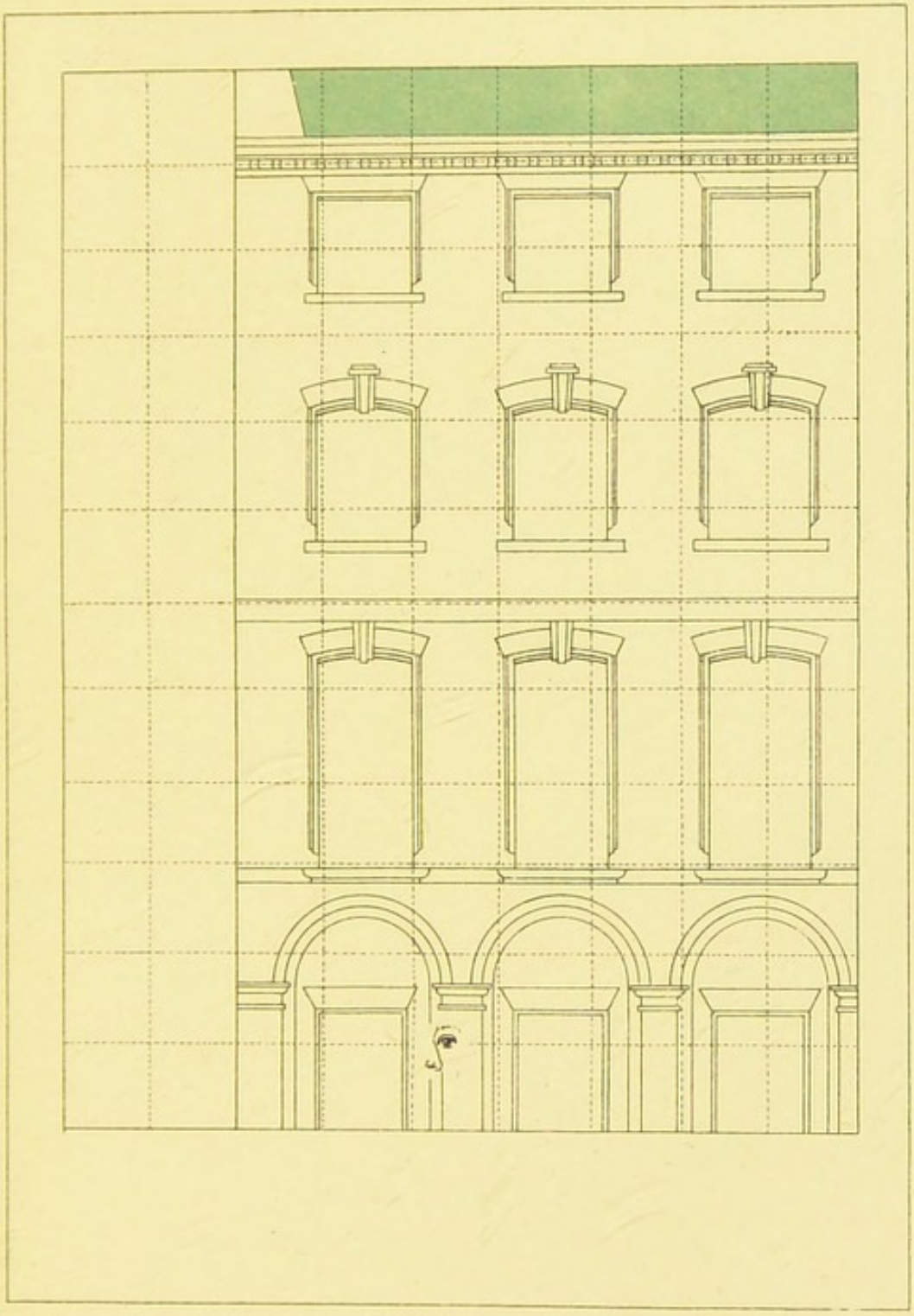
LOSS OF LIGHT 89 PER CENT.

VIEW TAKEN FROM 1ST FLOOR WINDOW AT A HEIGHT OF 5.3' FROM FLOOR. 1.0" BACK FROM WINDOW.

BANISTER FLETCHER & JOHNS 29, NEW BRIDGE STREET, LUDGATE CIRCUS E.C. ARCHITECTS.

AS IT WAS.

PLATE 5.



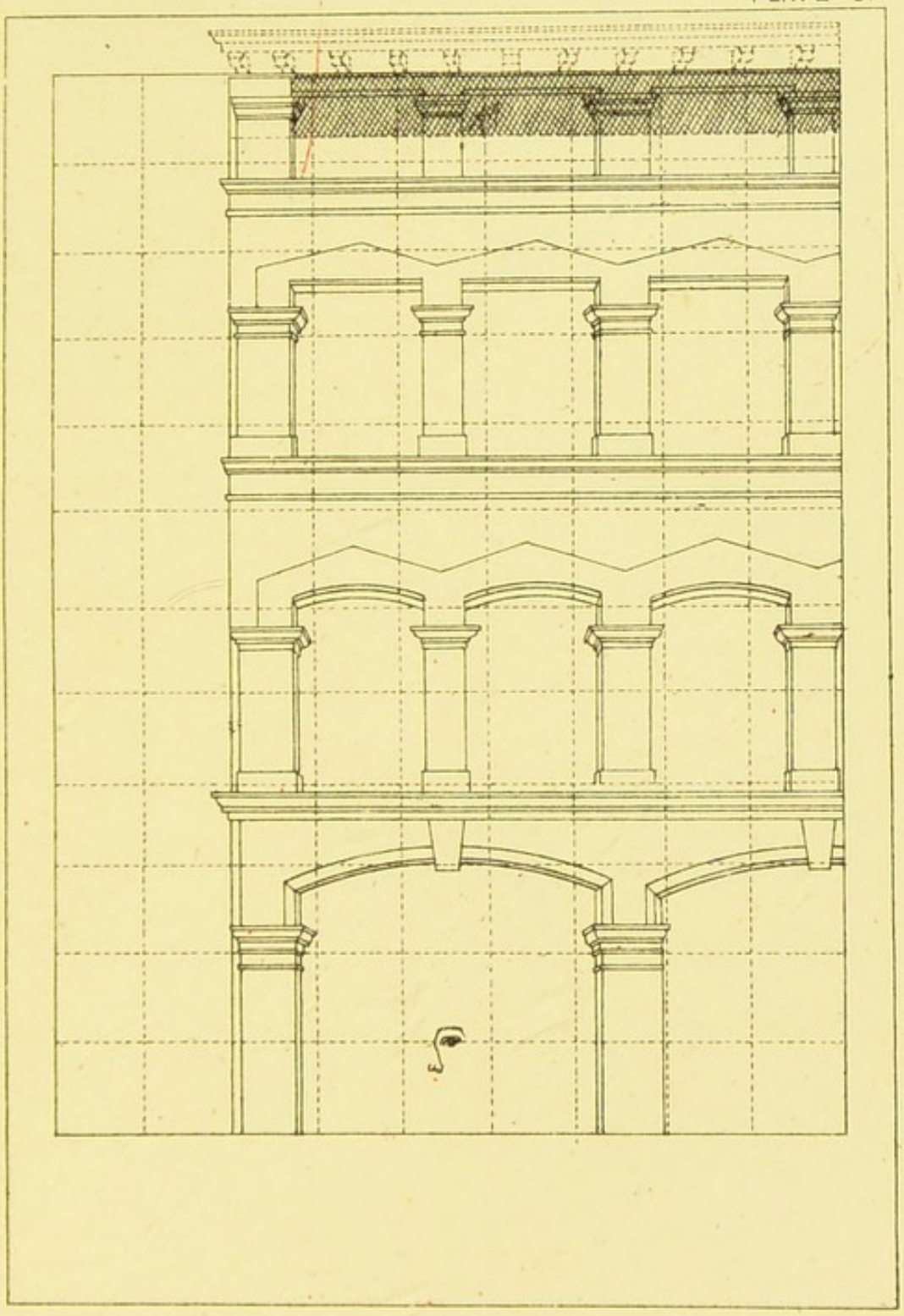
C. F. Kell Lith.

VIEW TAKEN FROM SHOP WINDOW AT A HEIGHT OF 5'.3" FROM FLOOR AND 1'.0" BACK FROM WINDOW

BANISTER FLETCHER & JOHN
2A, NEW BRIDGE STREET,
LUDGATE CIRCUS E.C.
ARCHITECTS.

AS IT IS.

PLATE G.

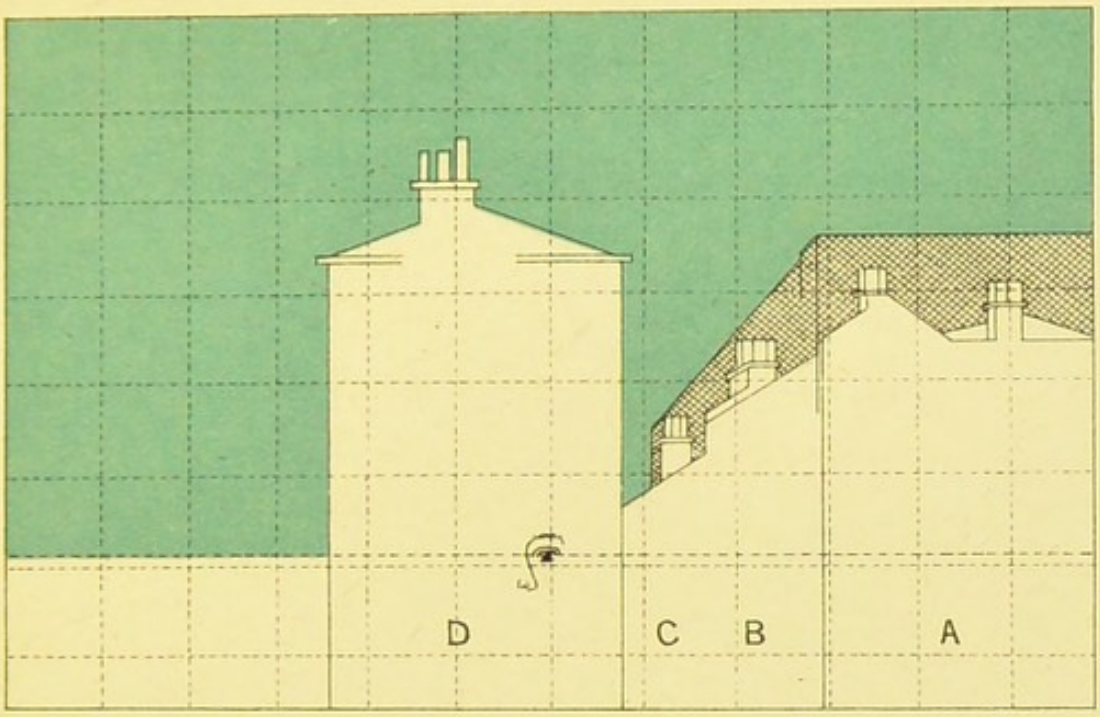


LOSS OF SKY TOTAL.

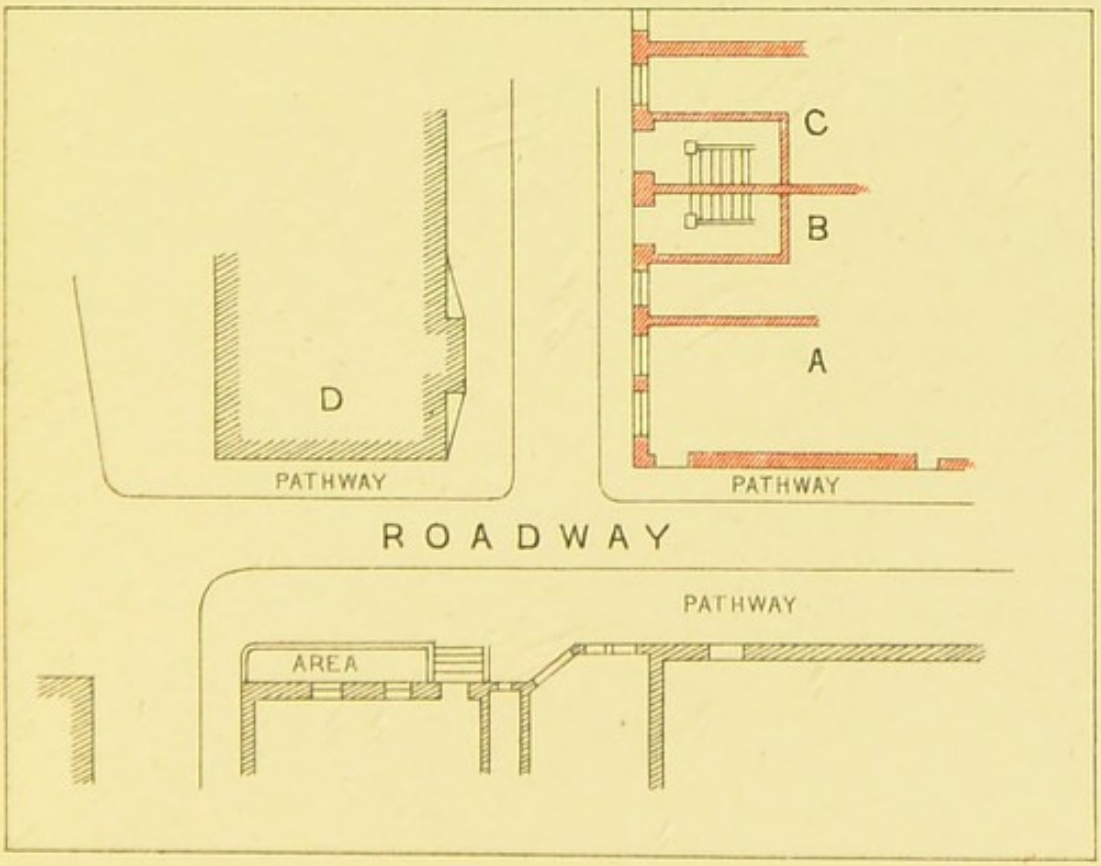
VIEW TAKEN FROM SHOP WINDOW AT A HEIGHT OF 5. 3" FROM FLOOR AND 1. 0" BACK FROM WINDOW.

DANSTER FLETCHER & SONS
28, NEW BRIDGE STREET
LUDGATE CIRCUS E.C.
ARCHITECTS.

PLATE 7.



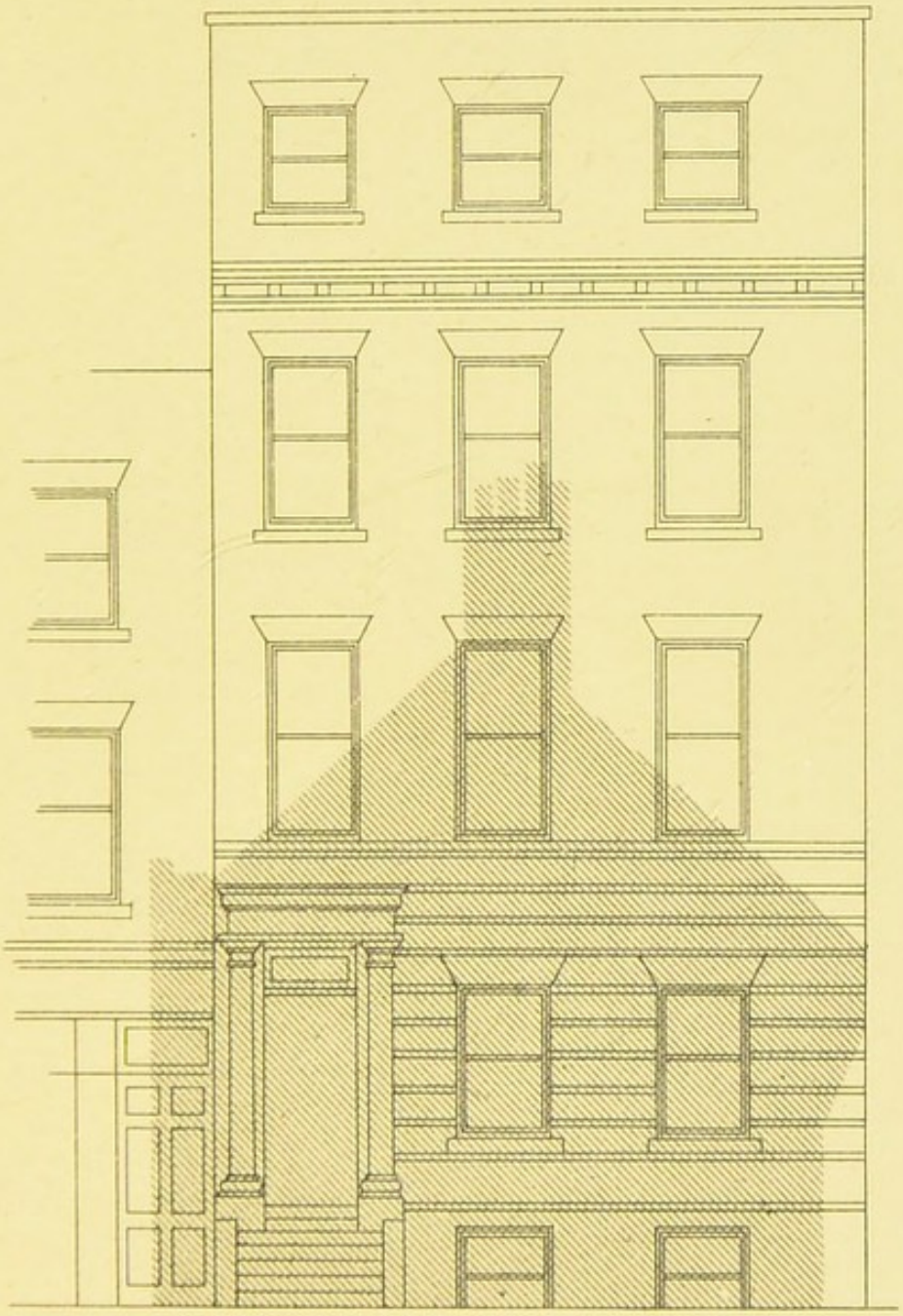
VIEW



PLAN

DANSTER, FLETCHER & SONS
29, NEW BRIDGE STREET
LUDGATE CIRCUS E.C.
ARCHITECTS.

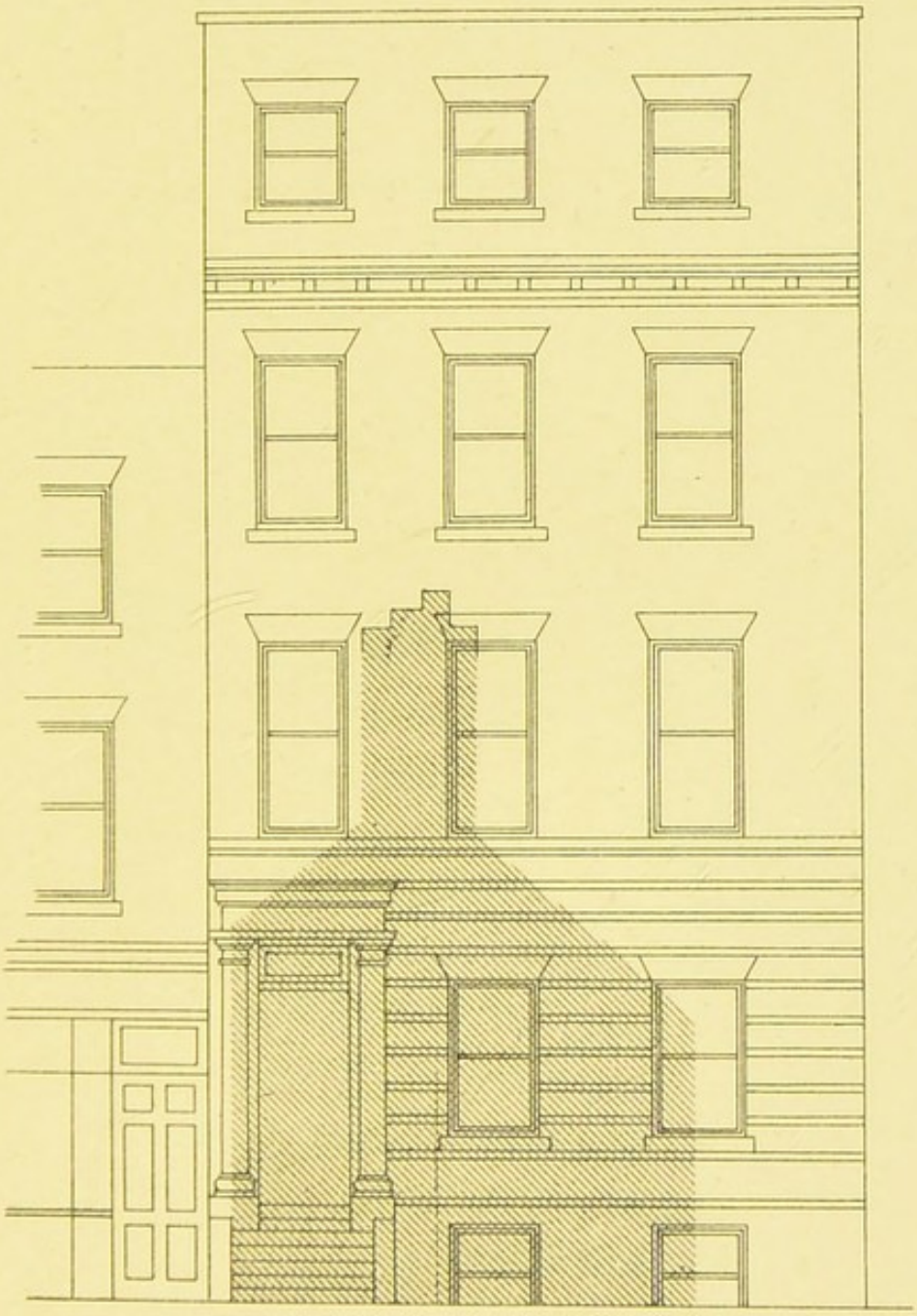
PLATE 8.



PLAINTIFF'S PREMISES

DIAGRAM TAKEN 11.50 A.M. 1ST APRIL.

DANSTER FLETCHER & SONS
19, NEW BRIDGE STREET
LUDGATE CIRCUS E.C.
ARCHITECTS.



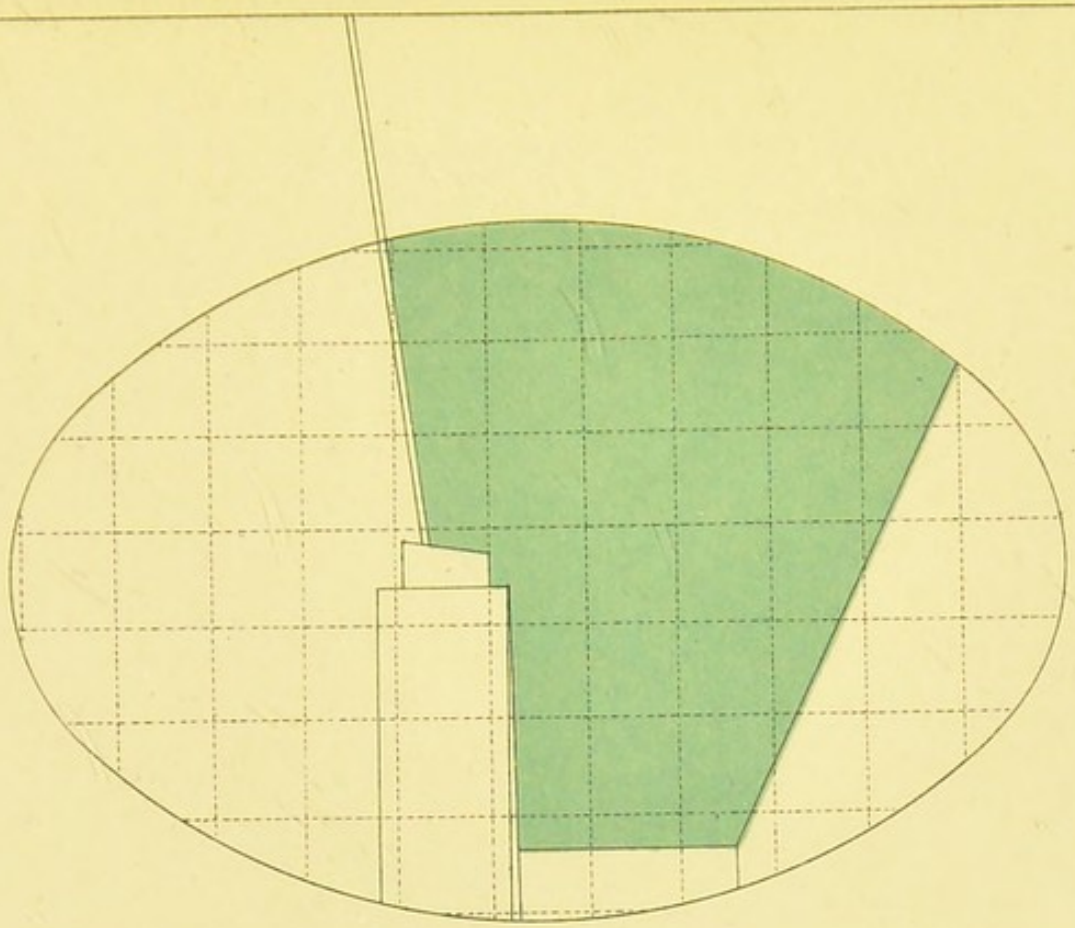
PLAINTIFF'S PREMISES.

C. F. Kell Lith

DIAGRAM TAKEN 11.25 A.M. 1ST APRIL.

Banister Fletcher & Sons
28, New Bridge Street
Ludgate Circus E.C.
Architects.

AS IT WAS.



C. F. Kell, Lith.

PLATE 10.

VIEW TAKEN FROM BEHIND COUNTER IN SHOP LOOKING UP THROUGH SKYLIGHT.

Danister, Fletcher & Jones, 28 New Bridge Street, Ludgate Circus E.C. Architects.

AS IT IS.

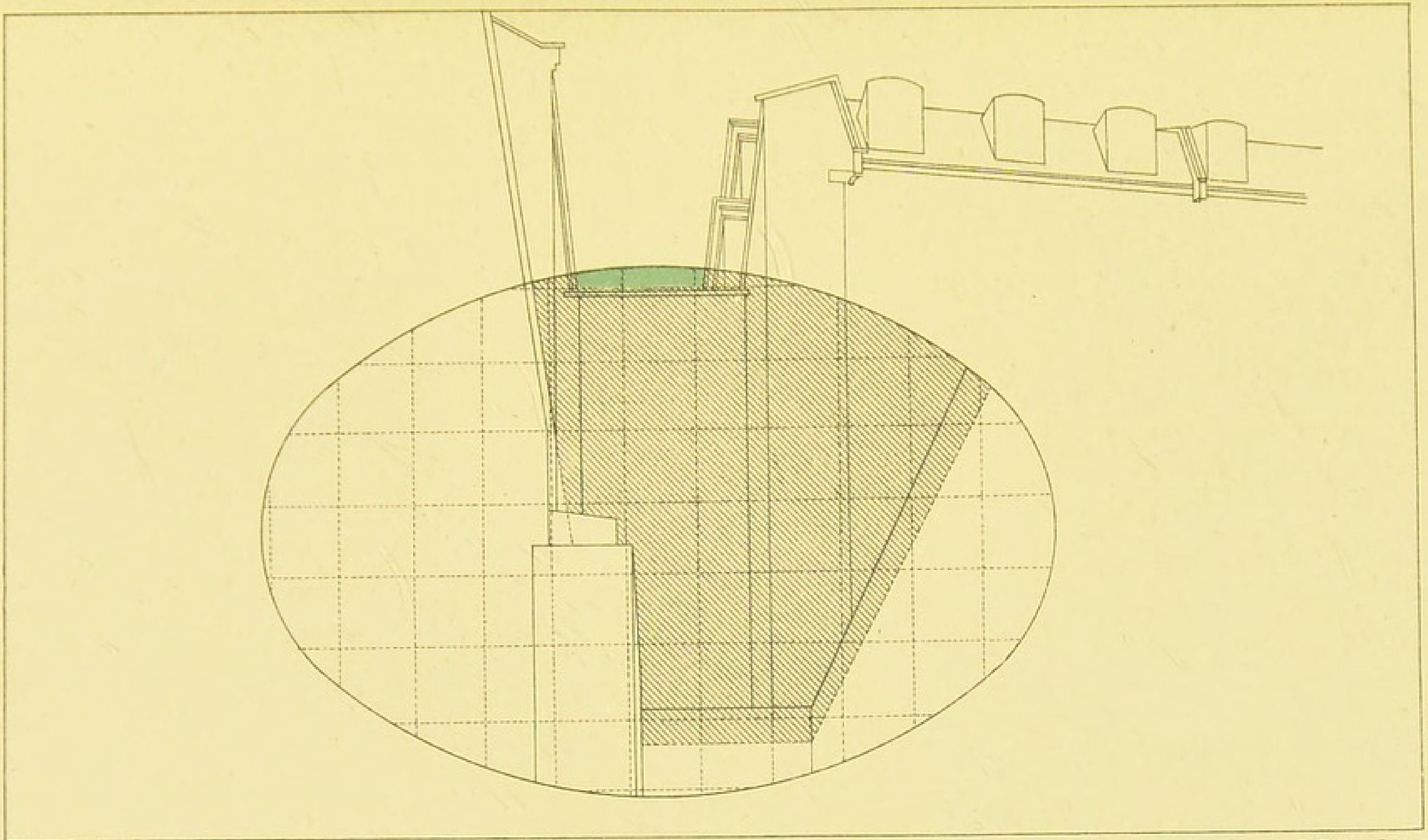


PLATE II.

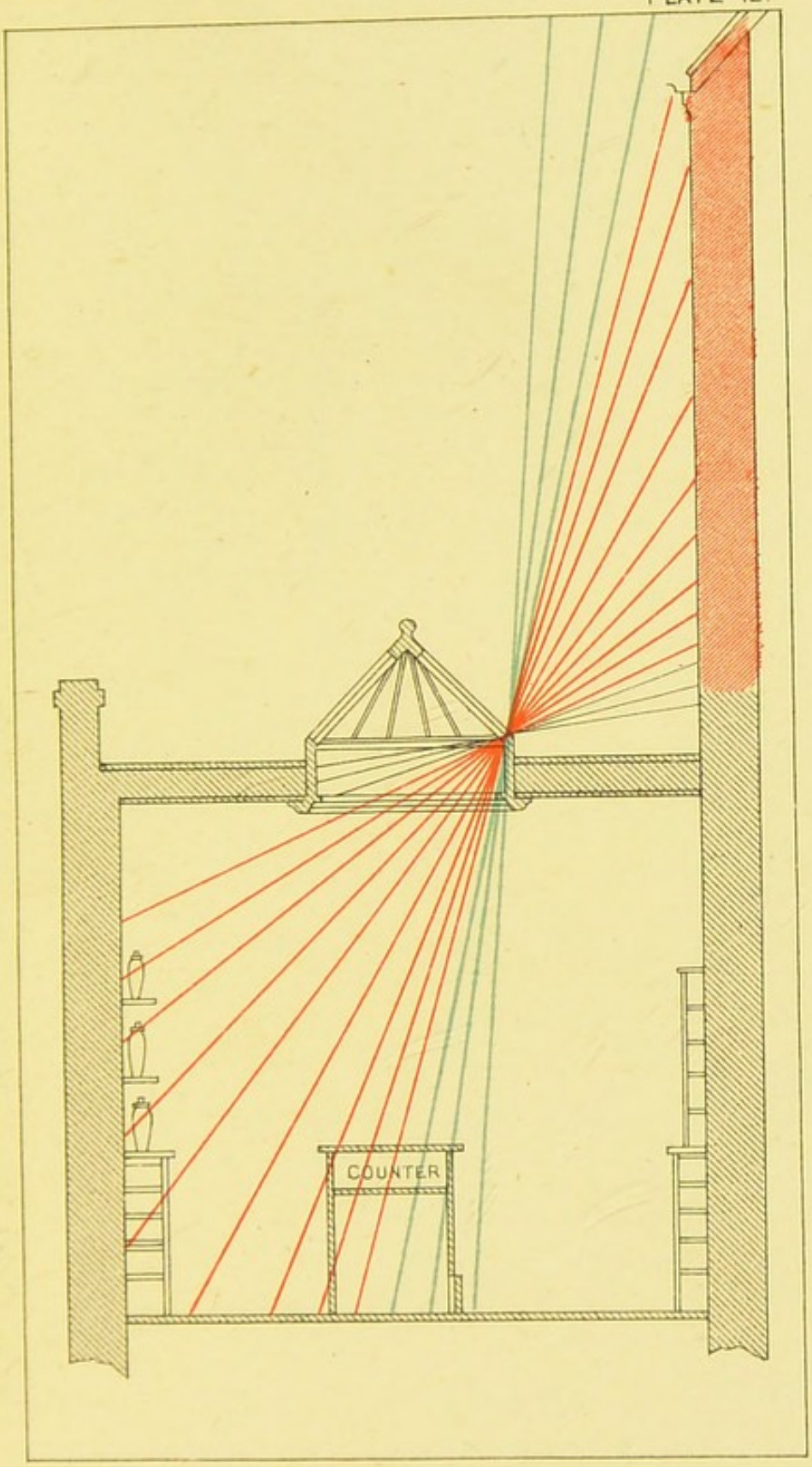
C. F. Kell Lith.

LOSS OF SKY 97⅓ PER CENT.

VIEW TAKEN FROM BEHIND COUNTER IN SHOP LOOKING UP THROUGH SKYLIGHT.

Banister Fletcher & Sons, 29, New Bridge Street, Ludgate Circus, E.C. Architects.

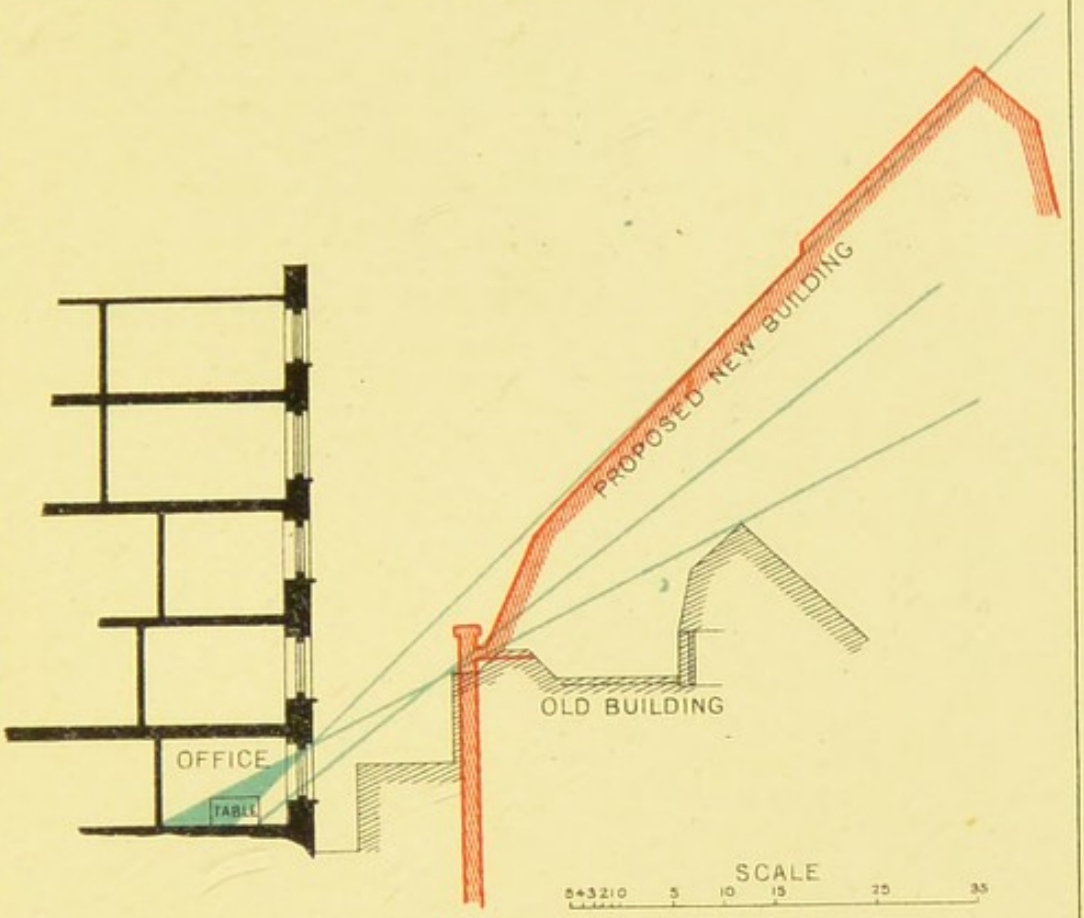
PLATE 12.



RED – LOST RAYS.
BLUE – RAYS NOT AFFECTED.
BLACK – INTERCEPTED RAYS.

SECTION

Danister Fletcher & Sons
28, New Bridge Street
Ludgate Circus E.C.
Architects.



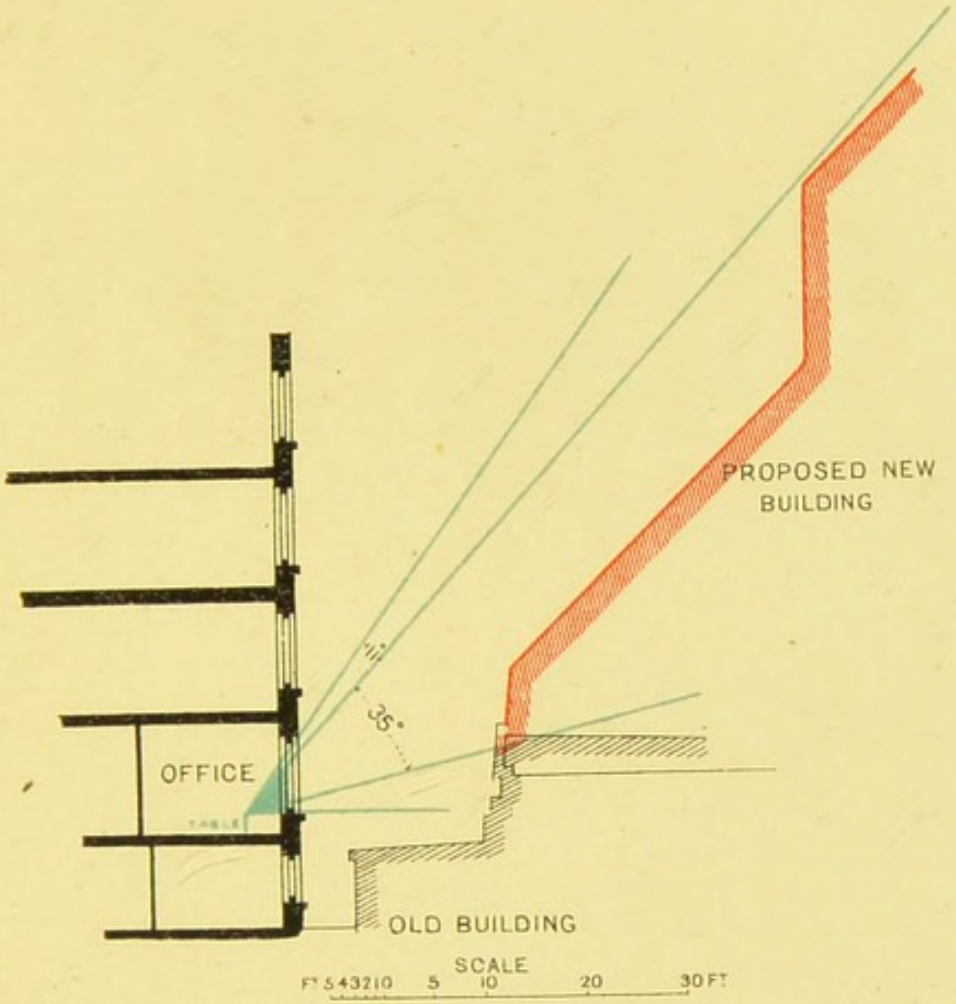
Nº 7 KING'S BENCH WALK

SECTION

THE BLUE LINES SHEW THE LINES OF LIGHT INTERFERED WITH.
THE RED LINES & HATCHING SHEW THE NEW BUILDING.

THE INNER TEMPLE v. TEMPLE CHAMBERS COY (LIMITED).

DANSTER FLETCHER & SONS
29 NEW BRIDGE STREET
LUDGATE CIRCUS E.C.
ARCHITECTS.



KING'S BENCH WALK

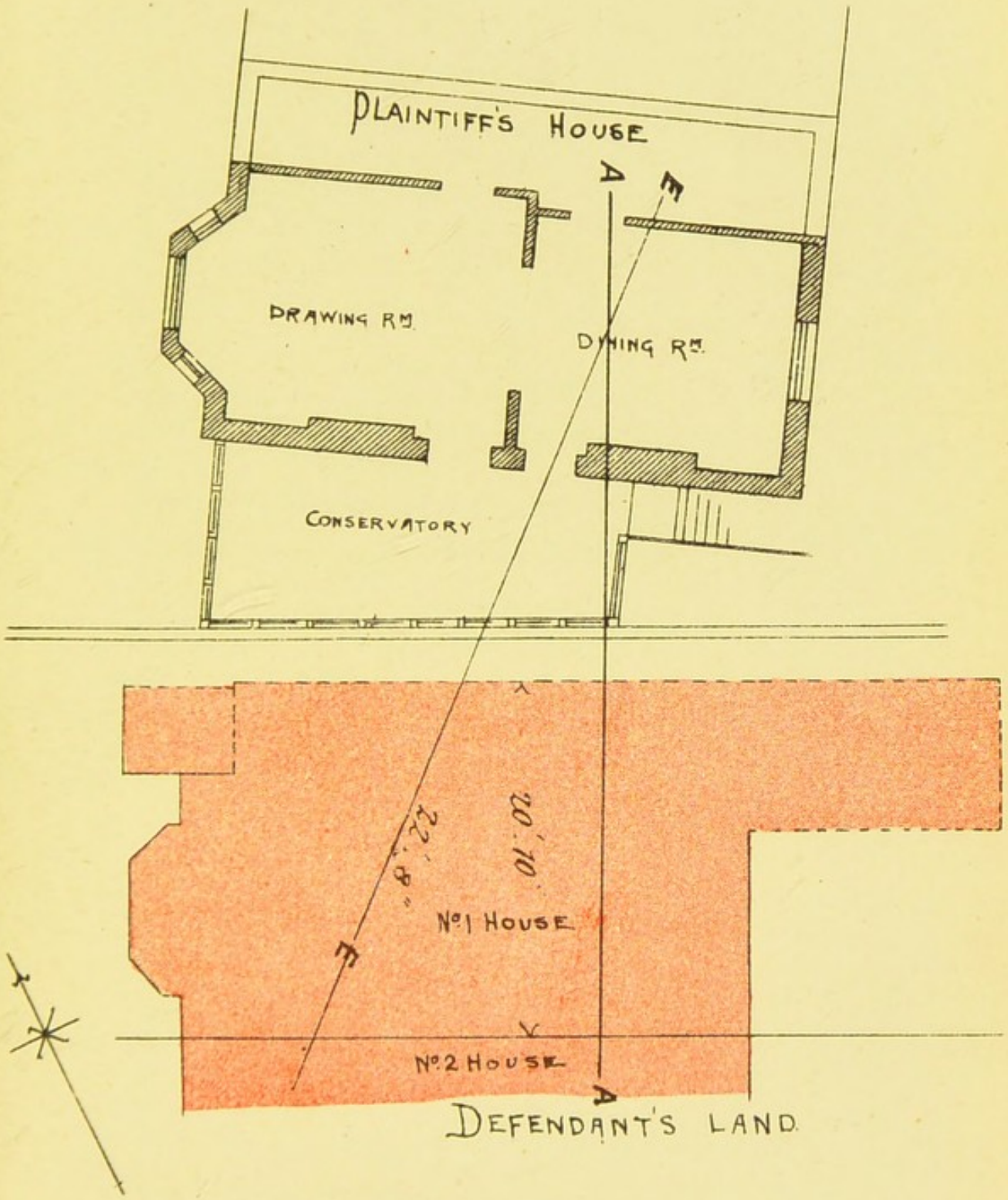
SECTION

THE BLUE LINES SHEW THE LINES OF LIGHT INTERFERED WITH.

THE RED LINES & HATCHING SHEW THE NEW BUILDING.

THE INNER TEMPLE v. TEMPLE CHAMBERS COY (LIMITED).

DANSTER, FLETCHER & SONS
64, NEW BRIDGE STREET
LUDGATE CIRCUS E.C.
ARCHITECTS.

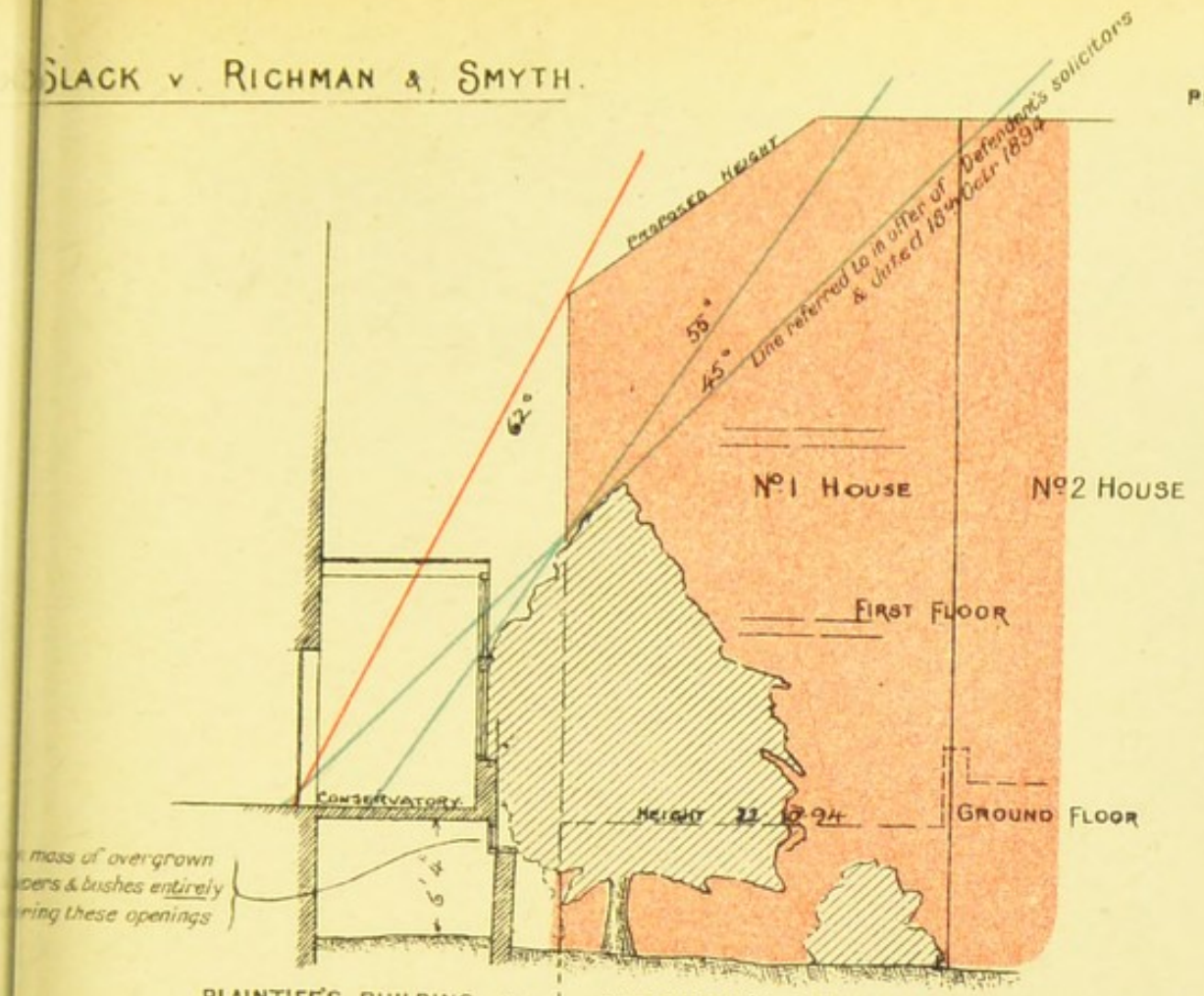


DANSTER, TEECHER & SONS
20, NEW BRIDGE STREET
LUDGATE CIRCUS E.C.
ARCHITECTS.

C. F. KELL, PHOTO-LITHO. 8, FURNIVAL ST HOLBORN, E.C.

BLACK v. RICHMAN & SMYTH.

PLATE 16.

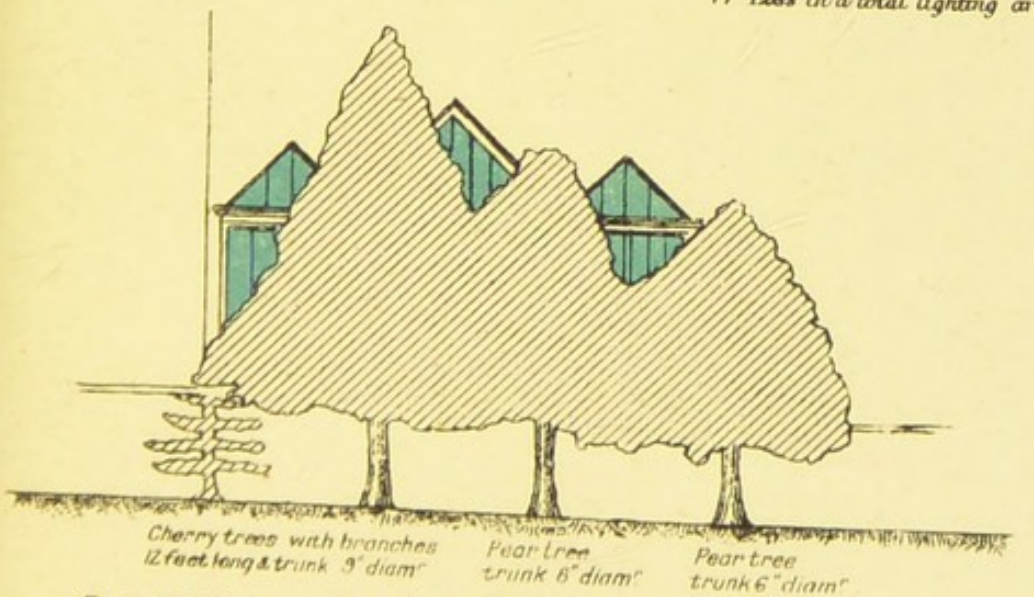


SECTION A.A.

TABLE SHEWING RAYS TO LIGHT TO PLAINTIFF'S BUILDING

	AS EXISTING	IF DEFENDANTS BUILDINGS WERE ERECTED.	
HORIZONTAL SEE PLAN	57° 27°	57° 27°	NO LOSS
VERTICAL EAST TO WEST SECTION D.D	180°	180°	NO LOSS
VERTICAL TO SOUTH WEST EXCLUSIVE OF SOUTH EAST LIGHT TO ROOM	45°	28°	17° SOUTH EAST LIGHT NOT INTERFERED WITH
TOTALS	309°	292°	

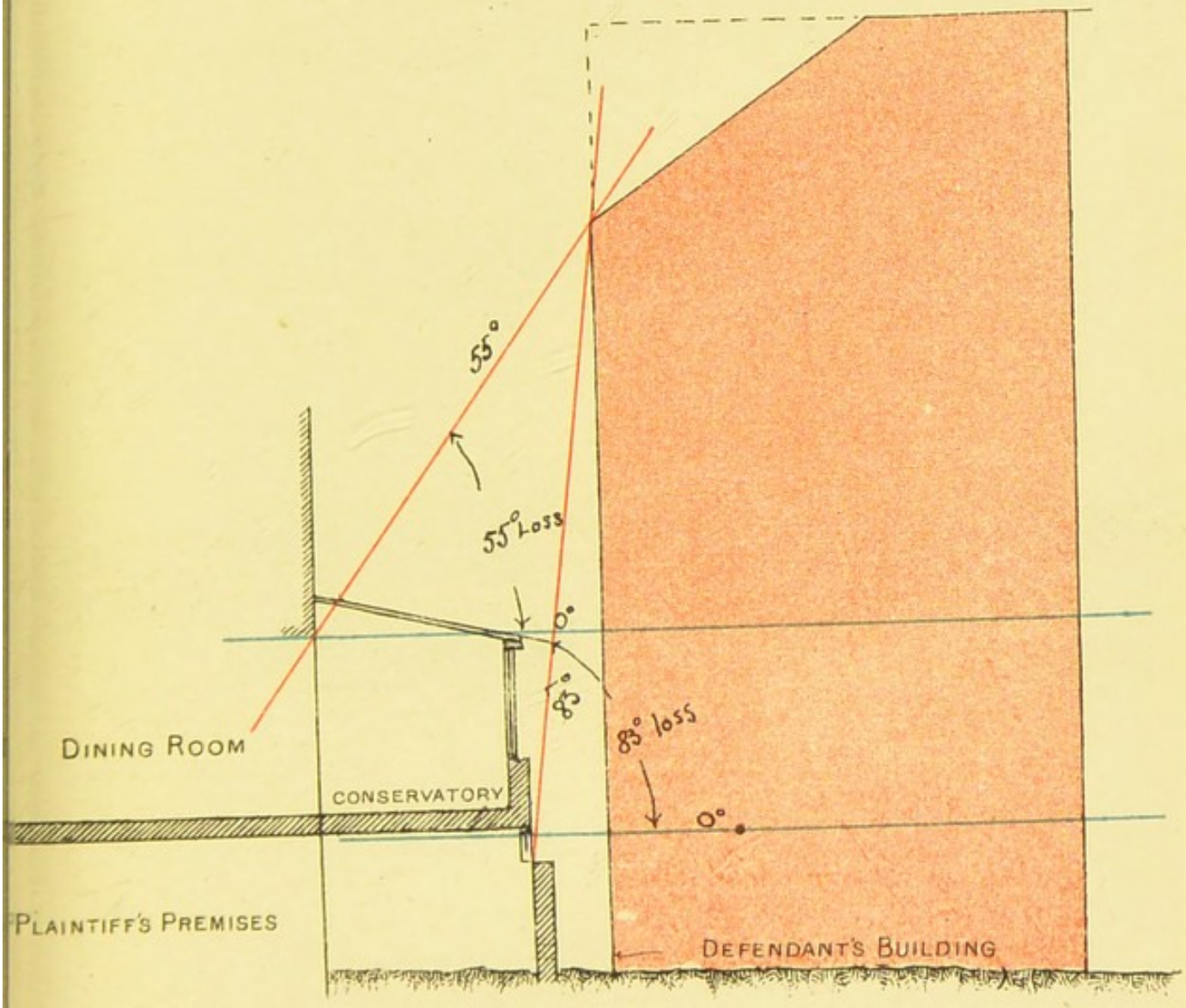
17° Loss in a total lighting area of 309°



ELEVATION OF PLAINTIFF'S PREMISES LOOKING TOWARDS DEFENDANT'S LAND 30TH MAY 1894.

J. F. KELL PHOTO-LITHO & ELECTRIVAL, ST HOLBORN E.C.

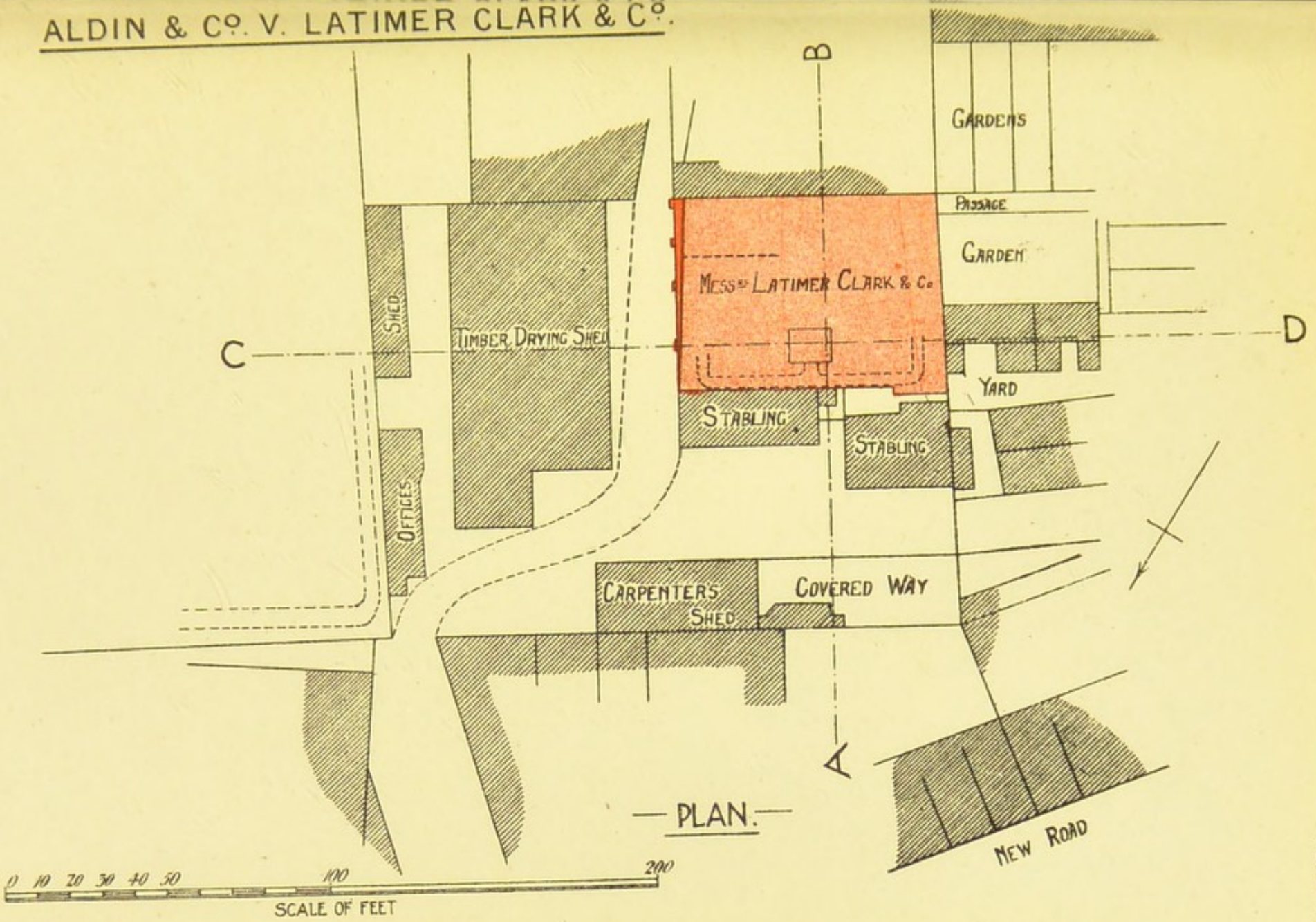
DARBISHIRE, FLETCHER & JONES 28, NEW BRIDGE STREET LUDGATE CIRCUS E.C. ARCHITECTS.



SECTION E. E.

DAVISTER FLETCHER & SONS
20, NEW BRIDGE STREET,
LUDGATE CIRCUS E.C.
ARCHITECTS.

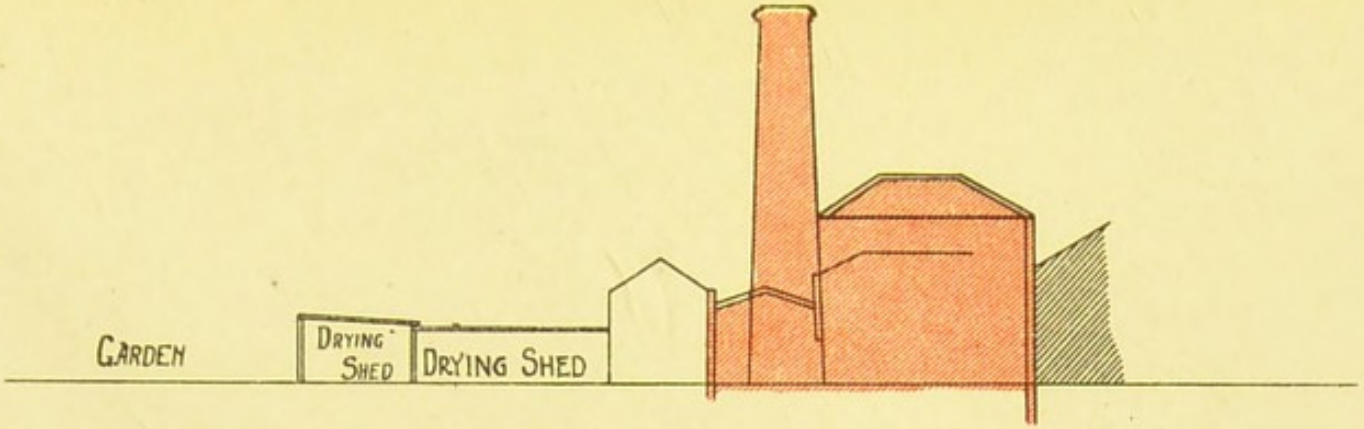
ALDIN & Co. V. LATIMER CLARK & Co.



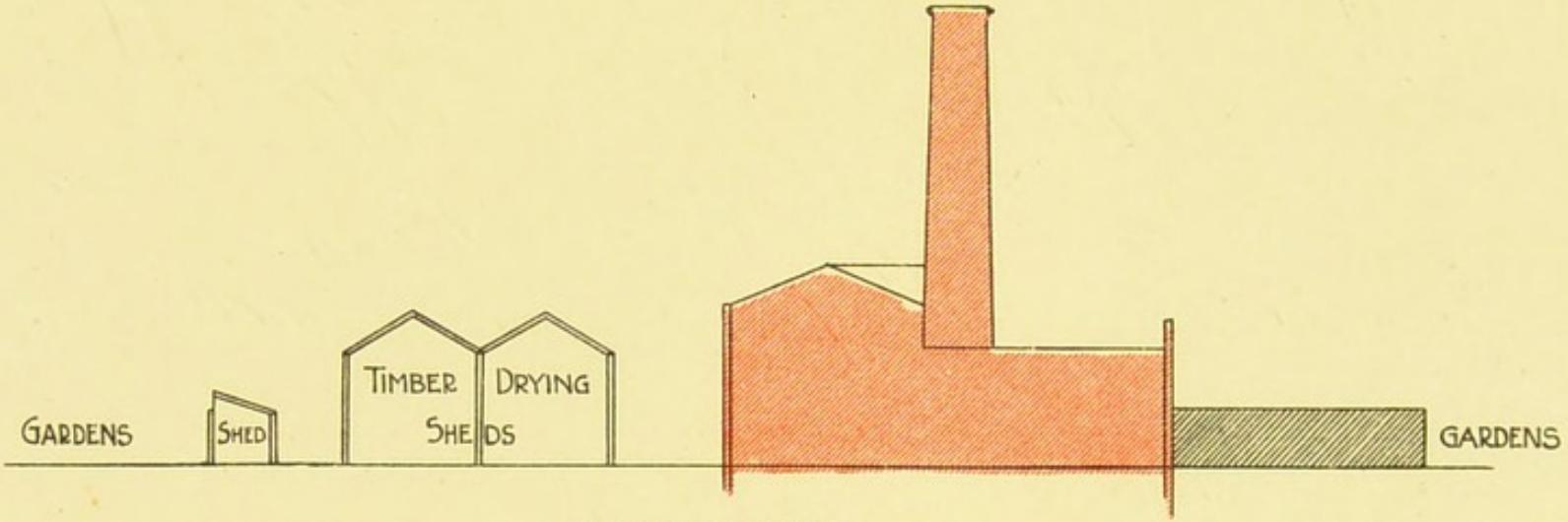
— PLAN. —

DAWBER (FLETCHER & SONS) 28 NEW BROAD STREET, LIVERPOOL CIRCUS E.C. ARCHITECTS.

PLATE 18.



— SECTION A-B —



— SECTION C-D. —

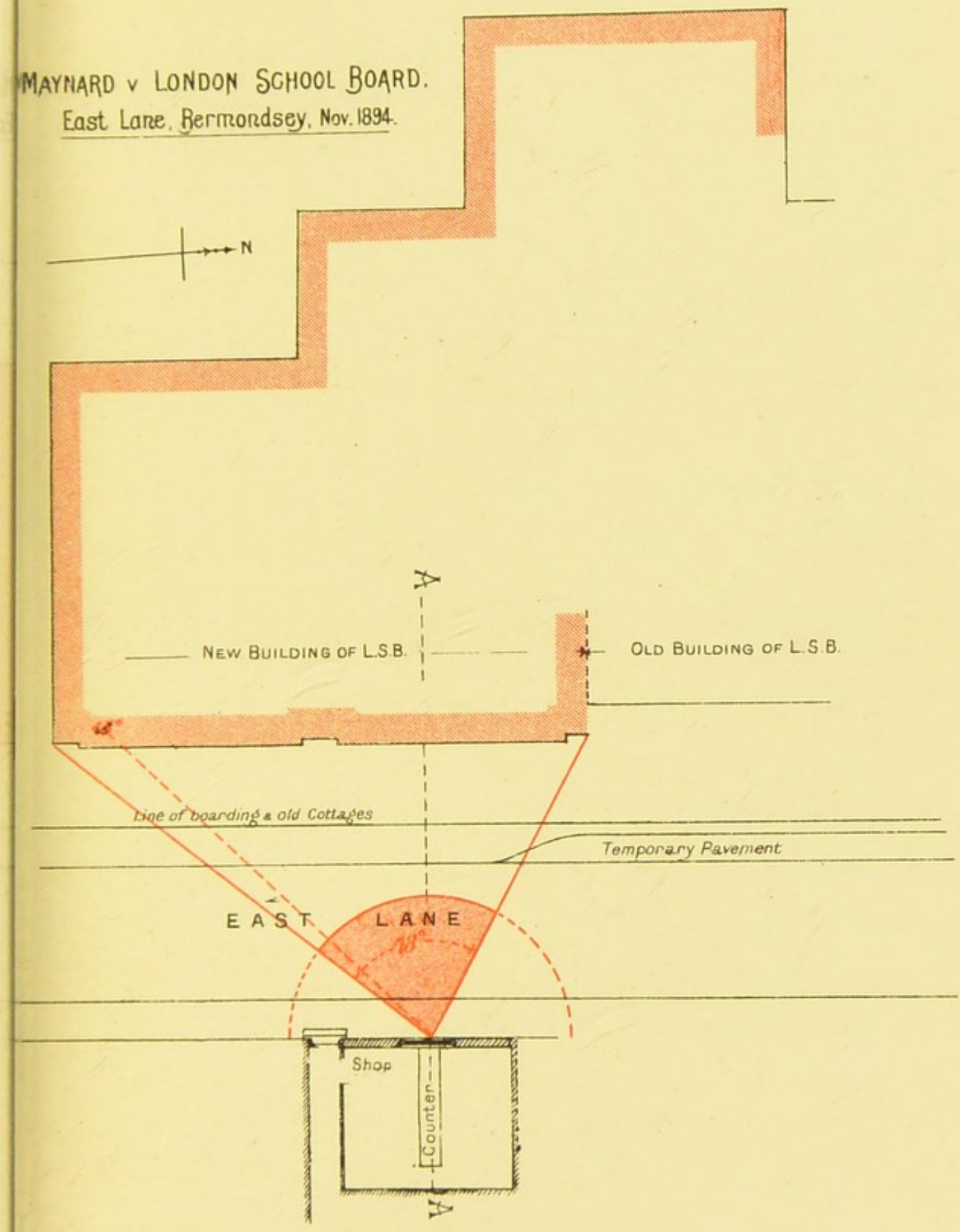
0 10 20 30 40 50 100 SCALE OF FEET

DAWSON (GEORGE & SONS) 28 NEW BRIDGE STREET, LUDGATE CIRCUS E.C. ARCHITECTS.

PLATE 19.

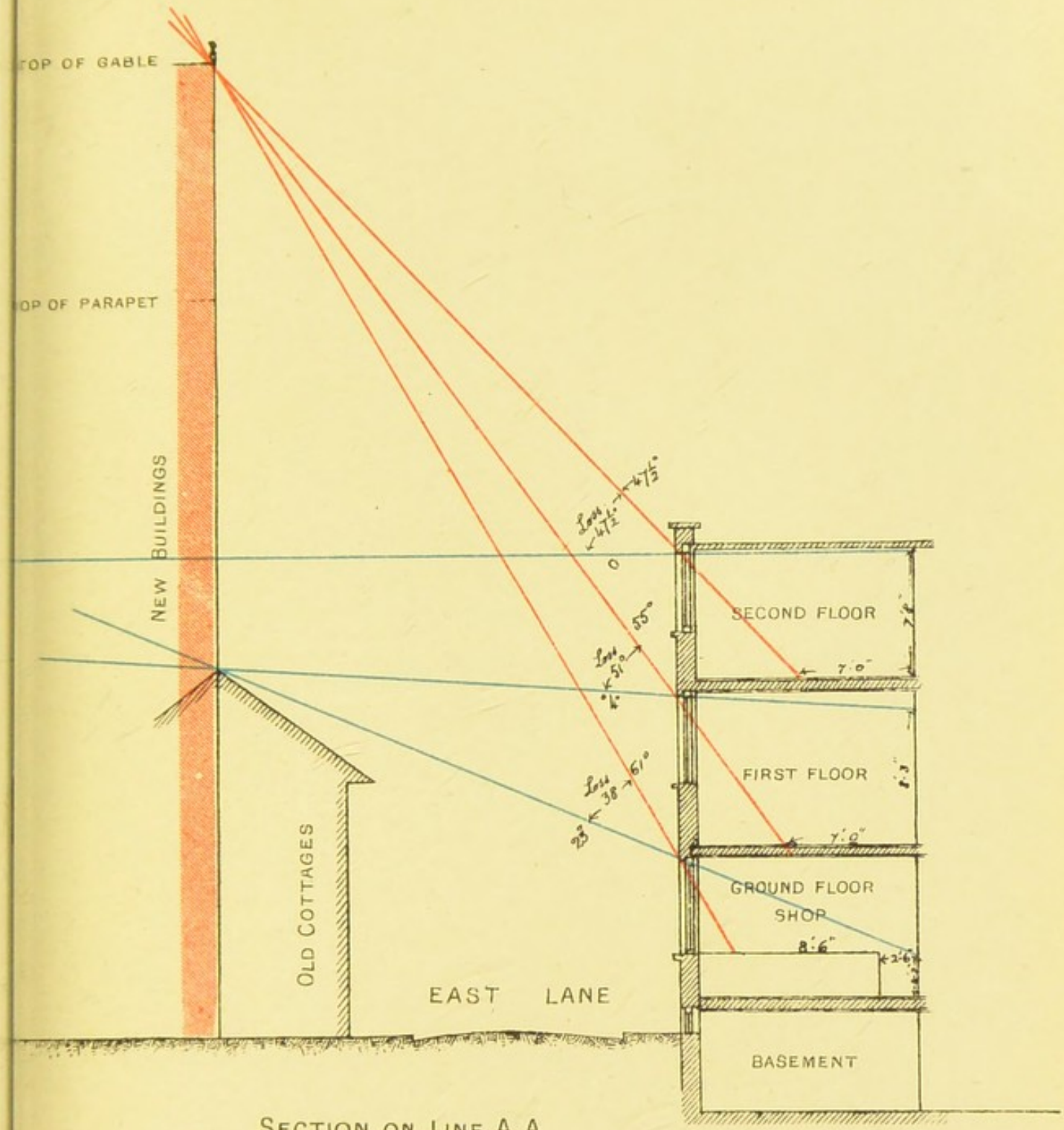
MAYNARD v LONDON SCHOOL BOARD.

East Lane, Bermondsey, Nov. 1894.



DANSTER FLETCHER & SONS
28 NEW BRIDGE STREET
LUDGATE CIRCUS E.C.
ARCHITECTS.

C. F. KELL, PHOTO-LITHO, 8, FURNIVAL ST. HOLBORN, E.C.



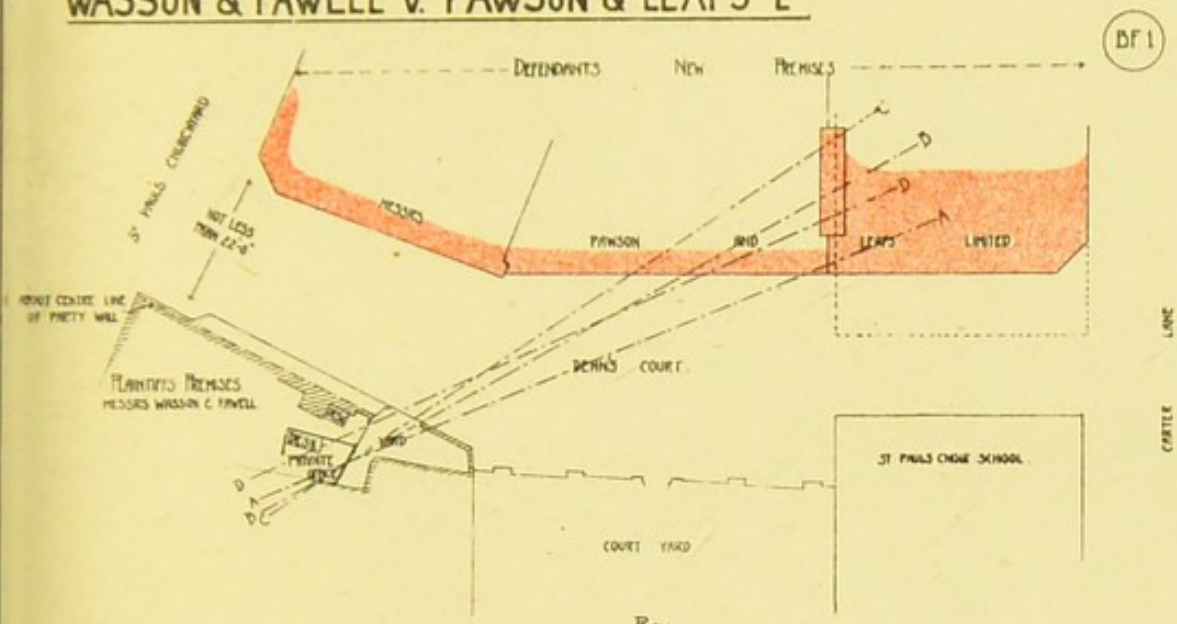
SECTION ON LINE A.A.

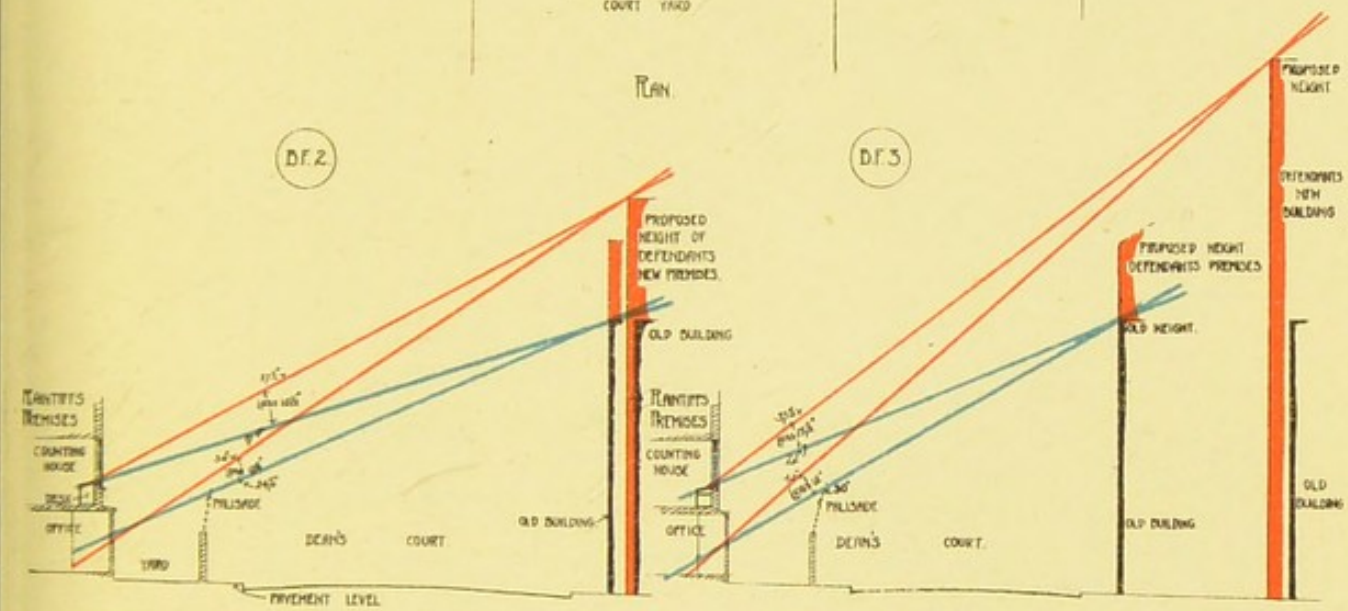
C. F. KELL, PHOTO-LITHO, 8, FURNIVAL ST. HOLBORN, E.C.

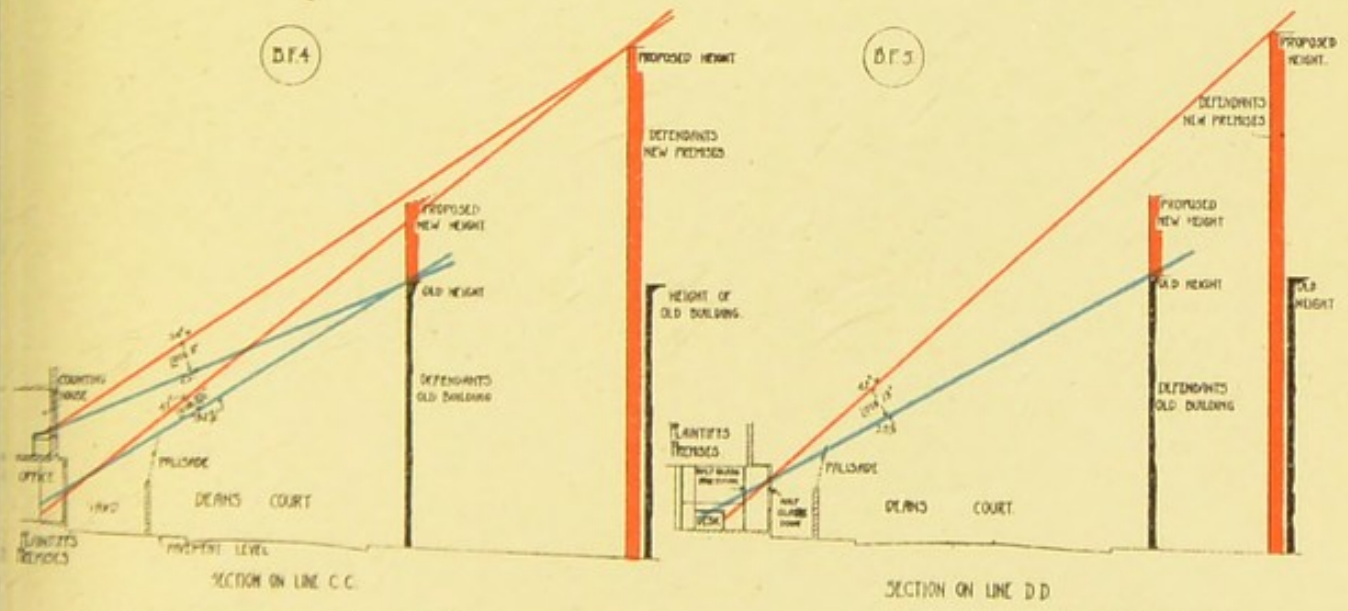
DANSTER, FLETCHER & SONS
28, NEW BRIDGE STREET
LUDGATE CIRCUS E.C.
ARCHITECTS.

WASSON & FAWELL V. PAWSON & LEAFS LTD.

PLATE 22.





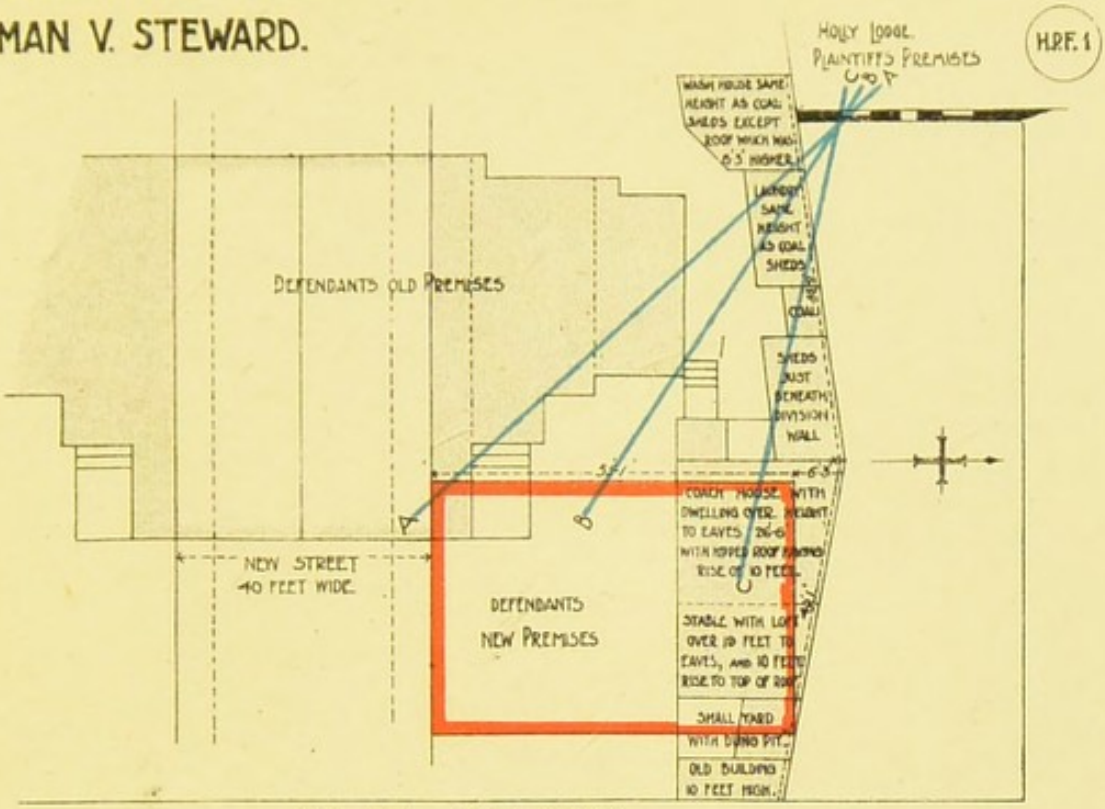


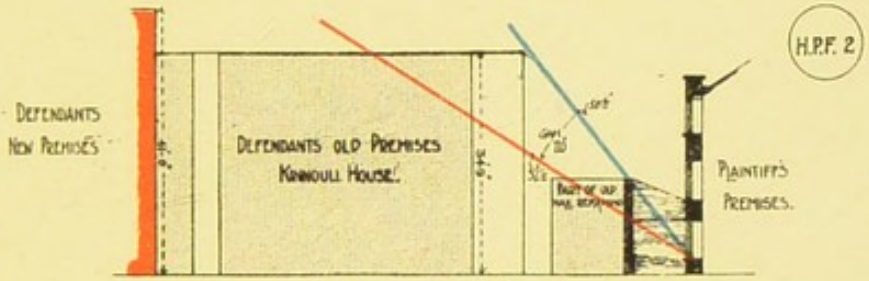
SCALE 0 4 8 16 32 FEET

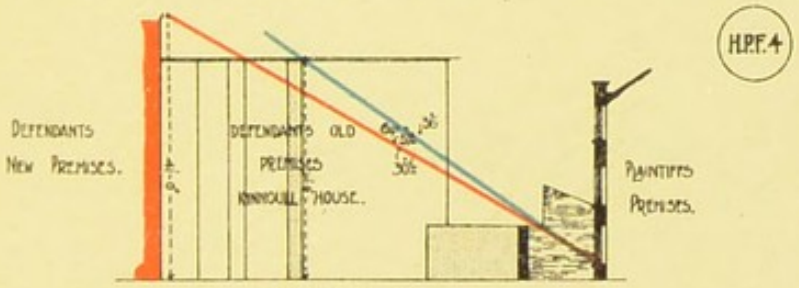
DANSTER, FLETCHER & SONS, 23A, NEW BRIDGE STREET, LUDGATE CIRCUS, E.C. ARCHITECTS

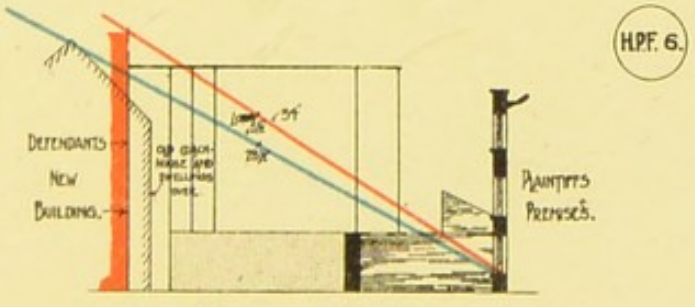
C. F. KELL & SON, PHOTO-LITHO, 8, FURNIVAL ST HOLBORN, E.C.

SHARMAN V. STEWARD.









SCALE 0 5 10 20 40 OF FEET.

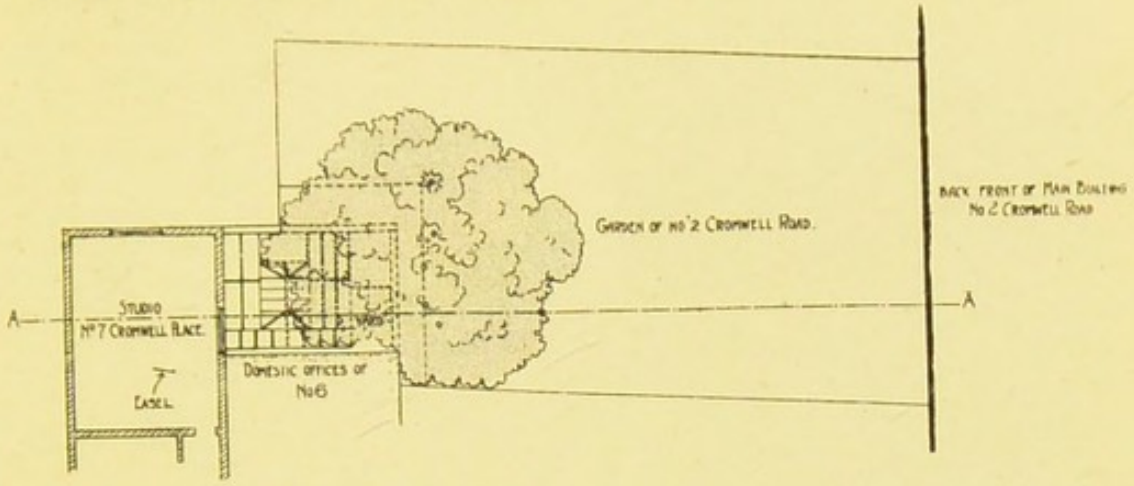
DANSTER FLETCHER & SONS 28 NEW BRIDGE STREET LUDGATE CIRCUS E.C. } ARCHITECTS.

C. F. KELL & SON, PHOTO-LITHO, 8, FURNIVAL ST HOLBORN, E.C.

PLATE 24.

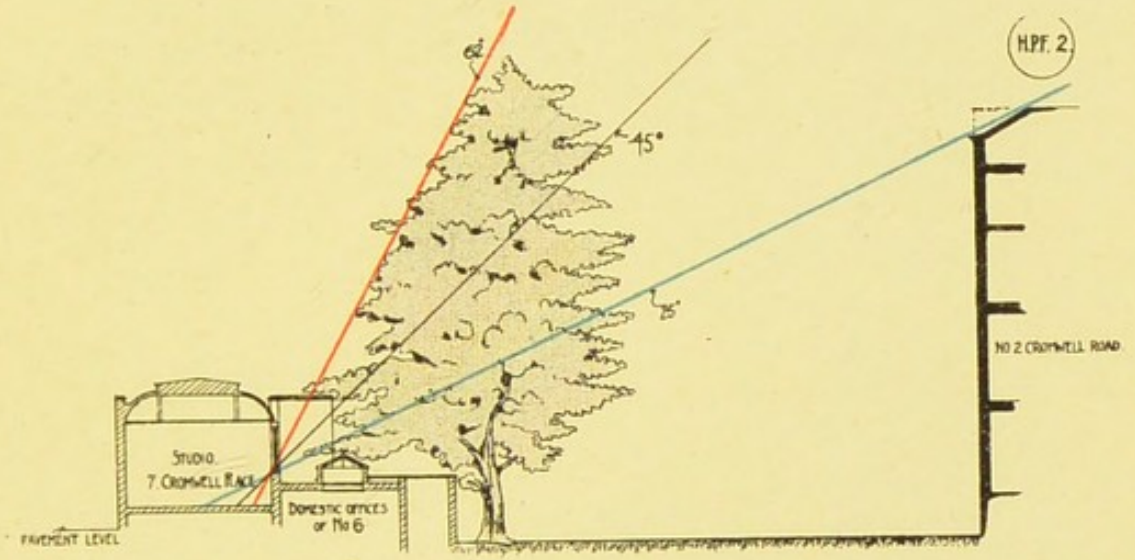
COOKESLEY V. LORD RUSSELL OF KILLOWEN.

H.P.F. 1



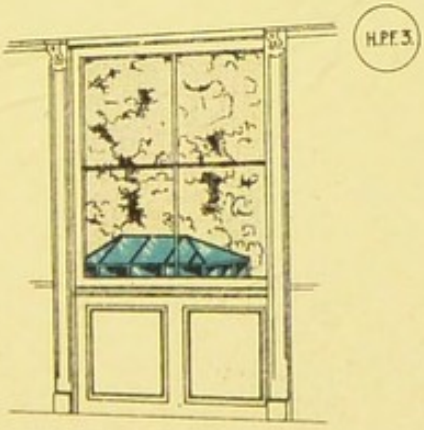
PLAN.

H.P.F. 2.



SECTION ON LINE A A

H.P.F. 3.



VIEW FROM EASEL IN STUDIO.

SCALE 0 5 10 15 20 25 30 FEET

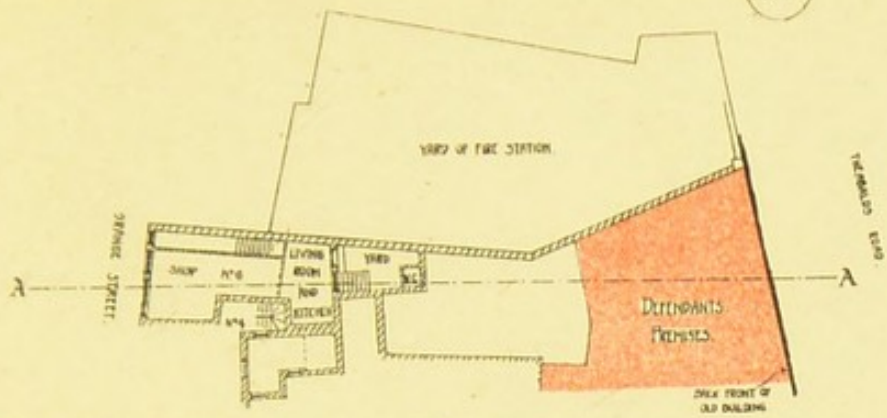
BANISTER FLETCHER & SONS
29, NEW BRIDGE STREET,
LUDGATE CIRCUS, E.C.
ARCHITECTS.

C. F. KELL & SON, PHOTO-LITHO, 8, FURNIVAL ST. HOLBORN, E.C.

BASSANO V. BROMET

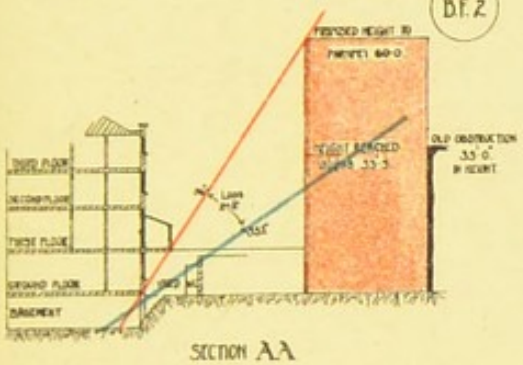
PLATE 25.

B.F. 1



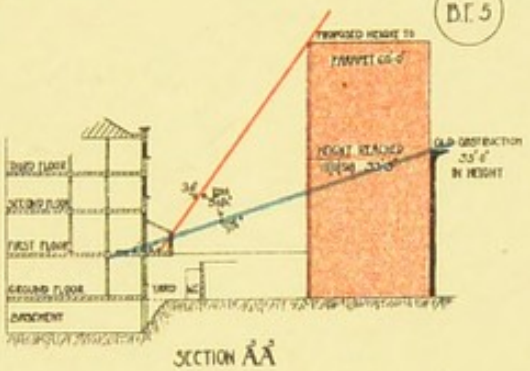
SCALE OF FEET FOR PLAN. PLAN

B.F. 2



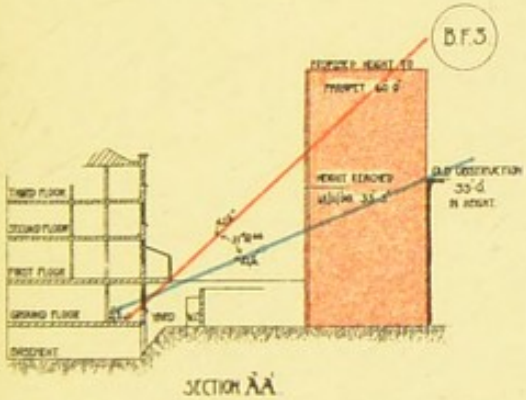
SECTION AA

B.F. 5



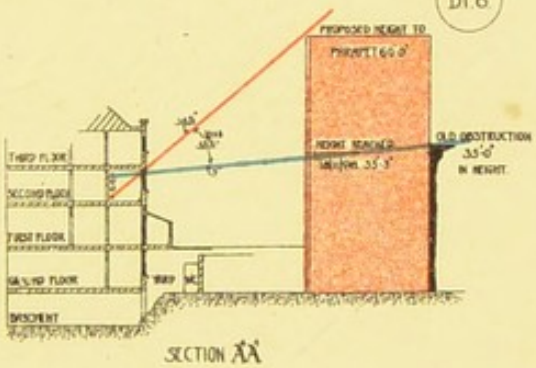
SECTION AA

B.F. 3



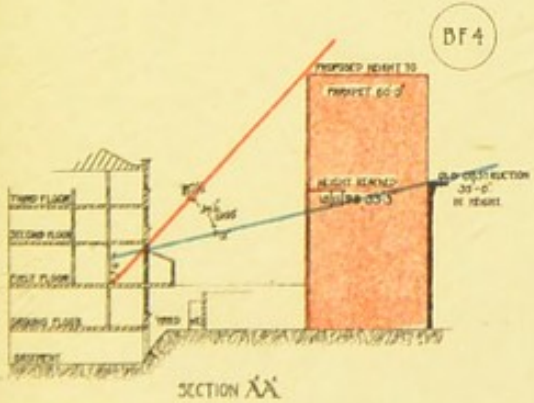
SECTION AA

B.F. 6



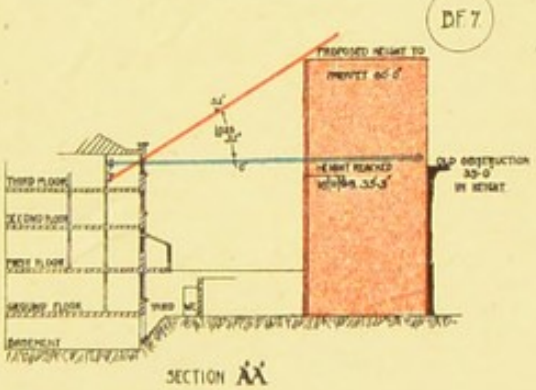
SECTION AA

B.F. 4



SECTION AA

B.F. 7



SECTION AA

SCALE OF FEET FOR SECTIONS

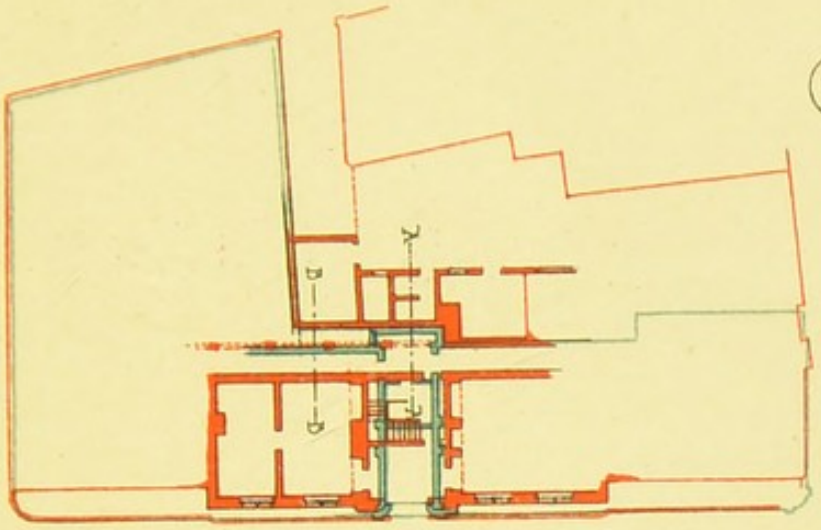
BANISTER FLETCHER & SONS
28, NEW BRIDGE STREET
LUDGATE CIRCUS E.C.
ARCHITECTS

WATKINS & SON, PHOTO LITHO, 8, FURNIVAL ST HOLBORN, E.C.

LEVY BROS. V. HARRISON.

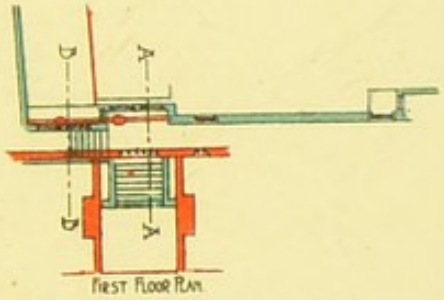
PLATE 26.

H.P.F. 1



Ground Floor Plan.

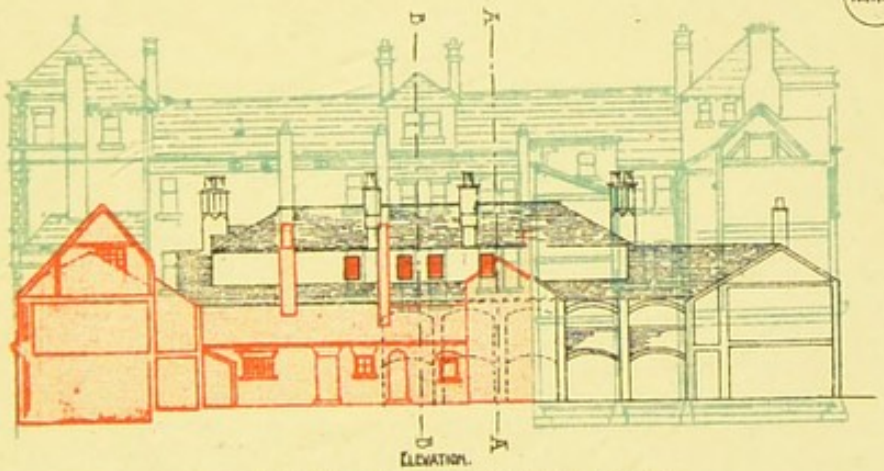
H.P.F. 2



First Floor Plan.

BLUE INDICATES PLAINTIFFS' NEW PREMISES.
RED INDICATES PLAINTIFFS' OLD PREMISES.

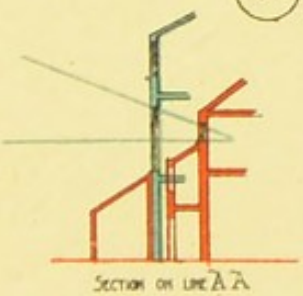
H.P.F. 3



Elevation.

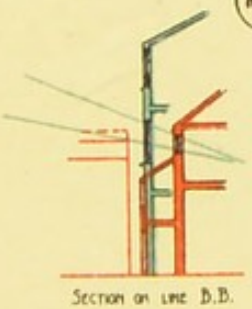
BLACK LINES INDICATE PLAINTIFFS' OLD PREMISES.
BLUE LINES INDICATE PLAINTIFFS' NEW PREMISES.
RED LINES INDICATE DEFENDANT'S PREMISES.

H.P.F. 4



Section on line A.A.

H.P.F. 5



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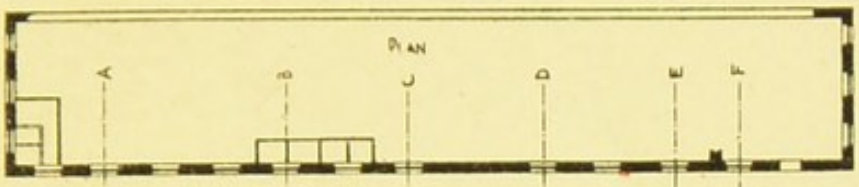

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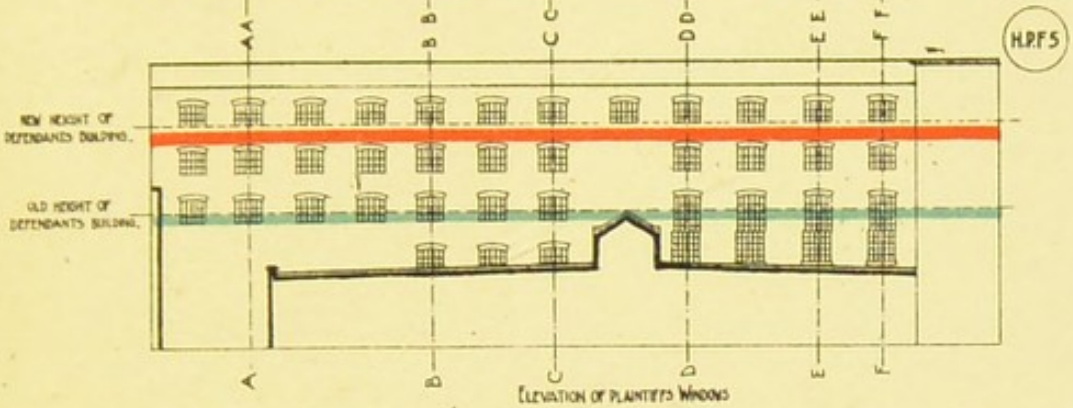

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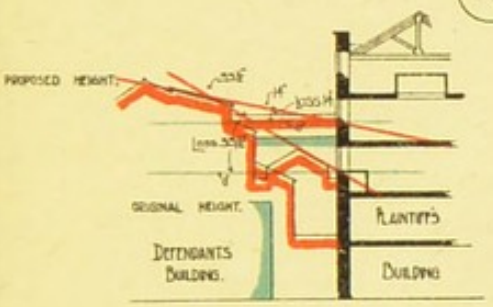

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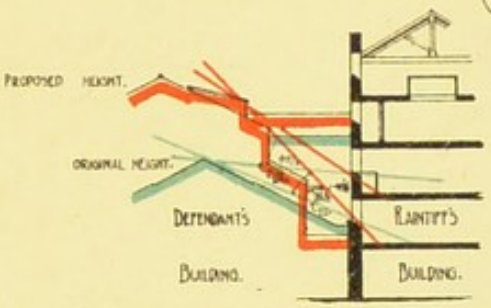

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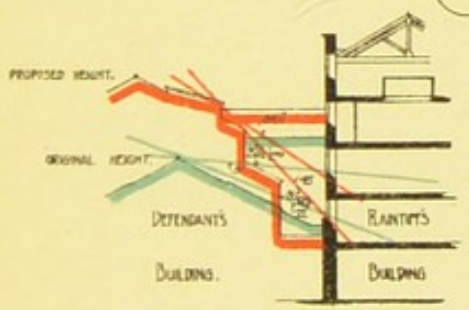

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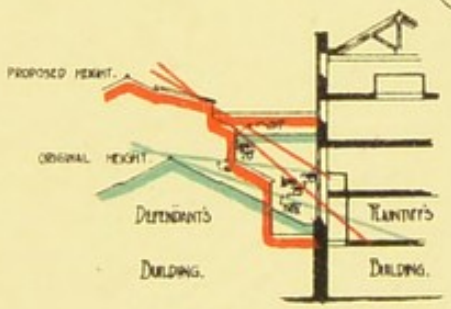

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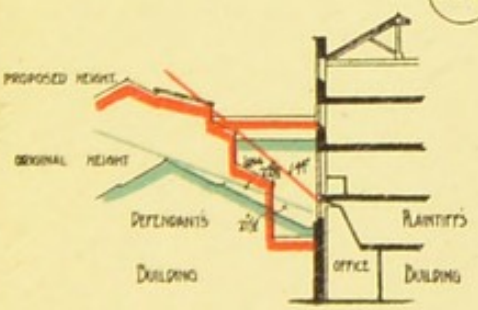

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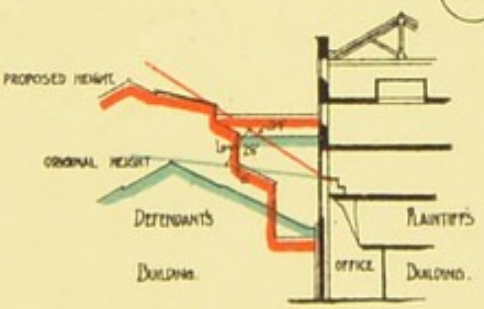

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