right, whatever it was. Therefore upon that ground I concur in your Lordships' opinion.

Allusion was made in the course of the discussion by both parties to the case of *Sanders* v. *Sanders' Trustees*. It was said by the one party that substantially the same question was raised there as in the present case. On the other hand it was maintained that it was distinguishable. I think it is distinguishable in one point of view, that there is here no question of an alimentary right. In *Sanders'* case the right of the beneficiary was a purely alimentary right for her own support, and it was held that there could not be any acquiescence or homologation on her part that could free the trustees from liability for having improperly dealt with trust funds, and thereby destroyed the alimentary right which they were appointed to maintain and see was made safe for her. We have no such case here. It rather occurs to me that the case of *Sanders* is precisely in point on the second branch of it,—the question of the alleged sanction and approval and homologation on the part of Mrs Parkhurst, because this was an illegal act on the part of the trustees, they having no power to invest in bank stock. Now, I cannot see on this record any allegation that Mrs Parkhurst was aware that it was an improper investment on the part of the trustees, and sanctioned that improper investment, and I think your Lordships' observations on the question of homologation in the case of *Sanders* are directly in point. How could she homologate that illegal act when she did not know that it was illegal? Therefore your Lordships' opinion in the case of *Sanders*, and the few observations that I myself made on the point of homologation, appear to me to apply directly to the circumstances of the case, and upon that ground also I think no relevant case is set forth on record, because there is no allegation that Mrs Parkhurst was in the knowledge that it was an improper application of the trust funds at the time that she and her husband got these dividends; and on that ground I should be prepared, if there were no other question raised, to hold that this summons was irrelevant.

LORD SHAND was absent.

The Court adhered.

Counsel for Pursuers (Reclaimers)—Kinnear—Balfour—Asher—Lorimer. Agents—Davidson & Syme, W.S.

Counsel for Defenders—M'Laren—W. C. Smith. Agents—Hope, Mann, & Kirk, W.S.

Friday, May 21.

SECOND DIVISION.

[Dean of Guild.

BARCLAY *v.* M'EWEN AND OTHERS.

Property—Common Property—Common Interest.

The proprietors of the upper flats of a tenement in a street were taken bound to pay "one-eleventh share along with the other proprietors of the said tenement of the expense of upholding and maintaining . . . the pavement and iron railings in front thereof."

The proprietor of the lowest storey, whose title flowed from the same author as those of the respondents, but was of later date, was infeft in the house "together with the plot of ground in front thereof, and cellar under the stair, and a right, in common with the other proprietors in the tenement, to the area of ground on which the tenement is built." He was taken bound to pay the whole expense of maintaining the parapet and railing enclosing the plot in front. Being desirous to convert his house into shops, he presented a petition to the Dean of Guild for warrant to make the necessary alterations, and with that object to remove the cope and railings and pave the plot in front. The proprietors of the upper flats objected, on the ground (1) that the petitioner not being exclusive proprietor of the *solum* of the plot or of the railing was not entitled to make alterations without their consent; and (2) that the proposed alterations would injure the amenity of their property. *Held* (1) (*dub.* Lord Ormidale) that the upper proprietors had no right of property in the *solum* of the plot in virtue of the obligation originally laid upon them to maintain the pavement and railings; (2) that the mere fact that the amenity of their property might be injured, conferred on the upper proprietors no right of objection.

By feu-charter recorded in the General Register of Sasines 21st July 1868, James Steel, builder in Edinburgh, disponed to the trustees of the Improved Edinburgh Property Investment Company, for behoof of the company, "three areas of building ground situated on the west or south-west side of Brougham Street, Edinburgh. This feu-charter contained an obligation on the Investment Company to erect upon the said areas tenements of dwelling-houses, or dwelling-houses combined with shops." It was also provided that the houses to be erected should be at least 16 feet 6 inches from the line of the curbstone. Dwelling-houses divided into flats were erected by the company in accordance with these restrictions. In 1869 the company disponed to the respondents in this appeal the flats situated above the main-door house No. 20 Brougham Place. The title of the respondent M'Ewen contained an obligation on him to pay one-eleventh of maintaining the pavement in front of the tenement. The titles of the other respondents stipulated that they should pay one-eleventh share along with the other proprietors of said tenement of the expense of maintaining the pavement, and also the parapet and iron railing which divided the plot of ground in front of the tenement from the street.

In 1872 the Investment Company disponed to Robert Renwick "All and whole that dwelling-house entering by the main-door No. 20 Brougham Place, Edinburgh, consisting of three rooms, light closet, kitchen, and conveniences, being the southmost main-door in the southmost of the two tenements of ground after mentioned, together with the plot of ground in front thereof, and cellar under the stair; and, in common with the other proprietors in said tenement, a right to the area of ground on which the said southmost tenement is built, in proportion to their respective feu-duties, and the teinds, parsonage and vicarage, thereof; together also with a mutual right, in common with the other proprietors of

said tenement, and the adjoining tenements on the north and south, to the green behind the same for the purpose of bleaching and drying clothes;" declaring that Renwick should "be bound to pay one-eleventh share along with the other proprietors of said tenement of the expense of upholding and maintaining the roof, water-pipes, water cistern, rhones, and drains thereof, and of the pavement in front thereof, and also of maintaining the common passage and that leading to back-green, and outer doors thereof, and of the foresaid back-green, poles therein, and mutual walls enclosing, or the division walls that may hereafter enclose, said green, and of all other similar burdens common to the said tenement, and the whole expense of maintaining the parapet wall and iron railing in front of said house."

On 14th May 1873 Renwick disponed to the appellant the house 20 Brougham Place, describing it in the disposition in the exact terms of his own disposition from the Investment Company, "but always with and under the conditions, provisions, obligations, and declarations" specified in that disposition.

In June 1879 the appellant presented to the Dean of Guild Court of Edinburgh a petition craving warrant to remove the cope and railing separating, as above mentioned, the front plot from the street, to lay the plot with flagstones, and to convert the dwelling-house into two shops. The petition was opposed by the respondents, on the ground that the pursuer was not proprietor of the *solum* on which his house was built, and that they had in virtue of their titles a joint right with the appellant to the cope and railing which it was proposed to remove. They also alleged that the amenity of their properties would be materially injured.

On 16th October 1879 the Dean of Guild issued an interlocutor finding, *inter alia*, that "according to the titles produced, each of the respondents is liable to the extent of one-eleventh (1-11th) in the cost of maintaining the cope and iron railing which encloses the ground to the front of the tenement over which the petitioner claims right to build: Finds that there is thus constituted an implied grant of common property or common interest in the said cope and railing and enclosed ground, such as entitles the respondents to object on reasonable grounds to an alteration on the mode of occupation thereof: Finds that the respondents have reasonable grounds for their objections, in respect that the operations proposed by the petitioner will deprive the respondents of the benefit of the grass plot or vacant space in front of the building to which they are entitled, and will also affect the character of the tenement in other respects: Therefore refuses the prayer of the petition, and decerns," &c.

Barclay appealed to the Second Division of the Court of Session.

On 27th January 1880 the Court remitted to Mr Wardrop, architect, Edinburgh, to examine the tenement, and to report whether, in his opinion, the removal of the cope and railing, and the paving of the front plot as proposed, would injuriously affect the respondents' property, and if so, to what extent.

Mr Wardrop reported on 2d March that the proposed alterations would seriously affect the amenity of the respondents' property, and gave an estimate of the damage which in his opinion would be caused.

Argued for appellant—The finding of the Dean of Guild that the respondents had either common property or common interest in the cope and railing and plot of ground in the titles was erroneous in law. No right of property or interest would arise from the existence of a burden to pay for maintaining the subjects. The respondents had no title to object to a proceeding which would only remove that burden. The mere fact that there would be injury to the amenity of neighbouring proprietors was an objection to an operation by a person *in suo*. The proposed operation however was *innocuæ utilitatis*.

Argued for respondents—The burden imposed on respondents showed that they had a common interest in it.—Lord Deas in *Johnston* v. *White*, *quoted infra*. It is a question of circumstances whether common interest gives a right to object to alterations on the ground of amenity.

Authorities—*Nicolson* v. *Melvill*, Feb. 19, 1708, M. 14,516; *Robertson* v. *Ranken*, March 3, 1784, M. 14,534; *Dennistoun* v. *Bell*, March 10, 1824, 2 S. 784; *Gray* v. *Greig*, June 18, 1825, 4 S. 104; *Stewart* v. *Blackwood*, Feb. 3, 1829, 7 S. 362; *Taylor* v. *Dunlop*, Nov. 1, 1872, 11 Macph. 25; *Johnston* v. *White*, May 18, 1877, 4 R. 721; Deas on Railways, p. 245 (Cases on Amenity).

At advising—

Lord Ormidale—What has first to be done in this case is to ascertain, if possible, whether the plot of ground in front of the appellant's house, No. 20 Brougham Street, is his exclusive property, or whether he has merely a right to it in common with the respondents, the other proprietors of the upper flats of the tenement, the ground flat of which belongs to the appellant. For this purpose I have carefully examined the title-deeds of the parties, the material parts of which have been printed.

I find that Mr James Steel was proprietor of "three areas or building stances" in Brougham Street, and that by feu-charter dated 21st July 1868 he disponed them to the Improved Edinburgh Property Investment Company. This feu-charter contains some clauses of importance in relation to the present dispute. There is a clause imposing upon the vassals an obligation "to erect upon the said areas or pieces of ground tenements of dwelling-houses, or dwelling-houses combined with shops, declaring that the building line of the tenements to be erected as aforesaid shall, as regards Brougham Street, be at least 16 feet 6 inches from the line of the present curbstone." According to this declaration, it would rather appear that the plot of ground between the building line of the appellant's house and the curbstone of Brougham Street was intended to be open and unbuilt upon, and this is made still clearer by the plan or sketch annexed to the feu-charter.

Such being the terms of the right of the Improved Edinburgh Investment Company, the common authors of both parties in 1868, it has next to be inquired whether any and what change subsequently took place on that right as regards the appellant's house and the plot of ground in front of it.

The titles of the appellant flowing from the Improved Edinburgh Investment Company are, first, a disposition by them in favour of Robert Renwick in 1872, and secondly, a disposition by Renwick to the appellant in 1873. These two dispositions are somewhat different in their terms from the feu-charter in favour of the Investment Company themselves, for they bear to dispone—"All and Whole that dwelling-house No 29 Brougham Place, Edinburgh, consisting of three bedrooms, light closet, kitchen, and conveniences, being the southmost main-door in the southmost of the two tenements of ground after-mentioned, together with the plot of ground in front thereof and cellar under the stair." But I think that this must be held to mean, not an absolute and exclusive right to the plot of ground, but merely a right to it in common with the upper proprietors of the tenement; for the disposition goes on to say—"and, in common with the other proprietors in said tenement, a right to the area of ground on which the same is built in proportion to their respective feu-duties and the teinds, parsonage and vicarage, thereof." In no other view does it appear to me to be possible to reconcile the dispositions in favour of Renwick and the appellant with their authors' title, or indeed their own, for unless the common area is held to mean and include the plot of ground in question it would be difficult to see what it can mean at all. Accordingly, I find that in conformity with this view the titles of the respondent, flowing from the same common authors as the appellant's title, contains an obligation upon him to pay to the lawful superior not only a proportion of the feu-duty applicable to the whole subjects, but also "one-eleventh share along with the other proprietors of said tenement of the expense of upholding and maintaining the roof, water-pipes, water-cistern, rhones, and drains thereof, and of the pavement and iron-railings in front thereof"—that is, in front of the disputed plot of ground. So, accordingly, the appellant in his condescendence says that by the respondent M'Ewen's title he is taken bound to pay one-eleventh share "of maintaining the pavement in front of said tenement," whilst by the titles of the other four respondents it is stipulated that they shall pay one-eleventh share along with the other proprietors of the said tenement of maintaining the pavement, parapet, and iron-railing.

This, I think, very plainly shows that the plot of ground in question must be, as it was intended to be, the property in common of all the owners of the tenement—the respondent as well as the appellant. I cannot understand how on any other footing the respondents should be taken bound to contribute to the expense of maintaining a parapet and iron railing with which they have no concern, and which cannot, according to the appellant's contention, be of any use to them.

According, then, to the view which I feel myself compelled to take of the titles to the tenement in question, I am disposed to hold that the respondents have such a right of property, in common with each other and the appellant, in the plot of ground in dispute as to prevent the appellant, without their consent, appropriating it to himself and his own purposes. But I do not understand that he proposes to do so. On the contrary, I understand, in conformity with both your Lordships, that although the appellant proposes to convert his portion of the tenement or part of it into a shop, he is not in effecting this purpose to bring the building line of his property nearer the street than it is. In this view I am unable to see how the respondents can suffer any appreciable injury from the appellant's operations. I am indeed disposed to think that they will benefit rather than otherwise, for although the appellant proposes to remove the cope and rail in front of his property, his doing so cannot in any way, so far as I can judge, be prejudicial to the respondents, but, on the contrary, will relieve them from a proportion of the expense of keeping up the same which they are under an obligation at present to pay. The appellant indeed expressly undertakes to relieve the respondents of that expense in future. And I think there can be little doubt of the small plot of ground in question being less likely to become a nuisance if open to the street than in its present condition.

In these circumstances the only difficulty I have felt in concurring with your Lordships in thinking that the judgment appealed against ought to be recalled arises from Mr Wardrop's report, which is to the effect that the appellant's proposed operations, if carried into effect, would be seriously injurious to the respondents. In saying so I think Mr Wardrop must have referred to what he calls amenity damages only. But no authority was cited to the effect that the upper proprietors of a tenement are entitled, in respect of amenity damage, to object to the owner of the ground flat converting his property into a shop; and yet it is notorious and indisputable that such a proceeding is, and has been for many years, of frequent occurrence in the streets of Edinburgh.

Lord Gifford—The question in this case really is, Whether the appellant and petitioner James Barclay is entitled in converting his dwelling-house No. 20 Brougham Place, Edinburgh, into two shops to remove a coping and iron railing which encloses a small plot of ground in front of the appellant's house, and to convert the said plot of ground and the site or *solum* of the said coping and railing into part of the foot-pavement of the said street, thus widening the public pavement by the extent of the said enclosed plot of ground and relative cope and railing? The object of the appellant is to have the two shops into which he proposes to convert his existing dwelling-house flush with the pavement of the street and forming part of the general line thereof.

The respondents are proprietors of flats in the tenement situated above the appellant's house, and they object to the removal of the cope and railing enclosing the front plot, and to the conversion of the ground forming the site thereof and the said plot into part of the public pavement or the street, as being injurious to their property, as detrimental to its amenity, and as depreciating its marketable value. They also plead that the appellant is not exclusive proprietor of the front plot or of the cope and railing by which it is enclosed.

The Dean of Guild has found that according to the terms of the titles of the parties there is constituted "an implied grant of common property or common interest in the said cope and railing and enclosed ground, such as entitles the respondents to object on reasonable grounds to an alteration on the mode of occupation thereof," and he

has accordingly refused the prayer of the original petition.

The principal ground, and indeed the only ground, upon which the Dean of Guild has proceeded is, that under the titles the proprietors of each flat are taken bound to pay one-eleventh share each of the cost of maintaining the cope and iron railing which encloses the plot in front of the appellant's dwelling-house. The Dean of Guild holds that this implies a grant of common property or common interest not only in the cope and railing but also in the plot of ground which they enclose, and therefore he refuses to allow the appellant to interfere therewith.

I am of opinion that the view which the Dean of Guild has taken of the titles is not well founded, and that the respondents have shown no good reason why the appellant should not be allowed at his own expense to remove the cope and railing, and to convert the site thereof and of the enclosed plot into part of the public foot-pavement of the street. I think the appellant is entitled to do this, and I am therefore for sustaining the appeal and remitting to the Dean of Guild with instructions to grant the warrant craved, and to see the same carried out, provided always that no injury be done to the safety or stability of the tenement.

I think it quite plain from the terms of the titles that the appellant alone is the sole and exclusive proprietor of the small enclosed plot of ground in front of his existing dwelling-house. This plot of ground is expressly conveyed, first, to Robert Renwick, the appellant's author, and then to the appellant himself, and the appellant stands infeft therein. This small plot of ground is specially distinguished from the ground on which the tenement itself stands; for while the plot is specially conveyed to the appellant as his exclusive property, there immediately follows a conveyance to the area of ground on which the tenement stands, but this last only in common with the other proprietors in the tenement, so that while the site of the tenement itself is common to the whole proprietors, the little plot in front of the main or street-door dwelling-house belongs to the proprietor of that dwelling-house alone. This was evidently intended, for while a common right is given to all the proprietors in the bleaching green behind the tenement, the narrow plot in front was appropriated to the main-door or street flat alone, intended, it would appear, to be used as a flower-border or strip of grass belonging to the street flat alone.

Now, I think the exclusive conveyance of this plot to the appellant includes the site of the coping and iron railing by which the plot is enclosed. The enclosure is just part of the plot itself. There is no separate conveyance of the site of the coping; in particular, there is no conveyance of it to the proprietors of any of the upper flats of the tenement. In substance and in common sense the enclosure is part of the plot, and as such is the appellant's exclusive property.

It does not derogate from this that the proprietors of the upper flats are taken bound to pay each one-eleventh part of the cost of maintaining the cope and railing. It was just because it was not their property that this obligation required to be imposed upon them. It was of the nature of a burden for behoof of the proprietor of the main-door house. The truth is, however, that this burden was imposed only temporarily because the upper flats happened to have been sold before the main-door was disposed of, for when the appellant's author came at last to buy the main-door house, now belonging to the appellant, the disposition of 1872 imposed upon the appellant's author "the whole expense of maintaining the parapet wall and iron railing in front of said house." This disposition being last in date, I am disposed to think superseded the obligations contained in dispositions of previous dates relative to the upper flats. But be this as it may, I think that by the force of the express conveyance the appellant is sole proprietor of the plot and its enclosure, and whether the owners of the upper flats are liable in the maintenance of the cope and railing they are not proprietors thereof.

Now this really solves the whole case. There is no prohibition in the titles against shops. On the contrary, the feu-charter expressly allows shops combined with dwelling-houses, and the respondents did not and could not contend that the appellant was not entitled to convert his dwelling-house into shops, provided he did so without removing the cope and railing. It was admitted also, and it seems plain, that the appellant might pave his front plot instead of sowing it with grass or using it for flowers, and so the only question was, whether he could remove the cope and railing so as to make his front plot a part of the general pavement? But the moment the appellant is seen to be proprietor of the cope and railing, his power to remove them follows, there being no prohibition or contract against his doing so. Even if the respondents were liable in a share of their maintenance, this would not entitle them to object to their being taken away, for the removal would only relieve the respondents of a burden and would not deprive them of any right.

I am not at all moved by the report of Mr Wardrop. No doubt a proprietor who converts his dwelling-house into shops may injure the amenity of neighbouring dwellings, whether they be the upper flats of the same tenement or adjoining or neighbouring tenements, and the introduction of shops may depreciate the marketable value of the whole street. But if the introduction of shops is not prohibited, and is in itself lawful, the neighbours cannot prevent it, nor can they claim damages, for the case is one occurring every day, of *damnum sine injuria*.

I need hardly add that as the appellant at his own expense and for his own behoof proposes to convert his front plot and its enclosure into pavement, he alone must at his own expense maintain and uphold that pavement in all time coming, unless he be relieved thereof under the provisions of the Police Acts or other public statutes.

LORD JUSTICE-CLERK—I concur entirely in the opinion of Lord Gifford, and have nothing to add.

The Court pronounced this interlocutor:—

"Sustain the appeal, and recal the judgment complained of: Find that the appellant is proprietor of the plot of ground in question and the cope and railing surrounding it, and that the respondents have no right of property therein: Find that the proposed operations of the appellant are within the rights under his titles, and do not

encroach on any right possessed by the respondents; and remit to the Dean of Guild to permit the proposed operations, to be duly carried out with due regard to the safety of the tenements above: Find the appellant entitled to expenses," &c.

Counsel for Appellant—Solicitor-General (Balfour)—Moncreiff. Agent—J. W. Moncreiff, W.S.

Counsel for Respondents — Kinnear — Shaw. Agent—P. Morison, S.S.C.

Friday, May 21.

SECOND DIVISION.

[Lord Curriehill, Ordinary.

STURROCK *v.* SMITH OR CARRUTHERS AND OTHERS (CARRUTHERS' TRUSTEES).

Superior and Vassal—37 *and* 38 *Vict. cap.* 94—*Composition—Mode of Calculating Composition Due in respect of Mineral Rent.*

A vassal the minerals in whose lands were let for a term of years, being called on to pay composition on the death of the last-entered vassal for the constructive entry of a singular successor, under the Conveyancing Act of 1874, claimed to have the value of the minerals capitalised and a percentage on the capital value taken as the year's rent due to the superior. *Held* (*dub.* Lord Ormidale) that where minerals are let at a fixed annual rent, without any immediate prospect of their exhaustion, that is to be taken as the amount of the composition due to the superior.

Observations on *Allan's Trustees* v. *Duke of Hamilton*, 5 R. 510.

John Sturrock, the immediate lawful superior of the lands of South Cobinshaw, raised this action against the defenders, who were the trustees acting under the trust-disposition and settlement of the Rev. William Carruthers, and had been as at 29th July 1864 infeft, by virtue of a notarial instrument recorded in the Particular Register of Sasines for the sheriffdom of Edinburgh, in the one-third *pro indiviso* share of the lands of South Cobinshaw, which had belonged to the Rev. William Carruthers. The defenders though thus infeft, did not enter with the pursuer, but, following the practice which was common previous to the passing of the Conveyancing Act of 1874, tendered for entry David Carruthers, the eldest son and heir-at-law of William Carruthers, and he was on 17th November 1864 entered with the pursuer by writ of *clare constat* duly recorded. David Carruthers thus became the vassal last entered and infeft in the lands.

David Carruthers died on 7th April 1879, and the defenders were then, in virtue of section 4, subsection 2, of the Act 37 and 38 Vict. cap. 94 (1874), duly entered with the pursuer as superior of the lands. The pursuer demanded of the trustees a composition of one year's rent of the one-third *pro indiviso* share of the lands, and this being refused by the trustees, who tendered David Carruthers' heir for entry, and contended that only the casualty of relief was exigible, Sturrock brought the present action. In estimating the amount of the casualty the pursuer claimed to include, besides the agricultural rental, a mineral rental of £600 which was being paid for the lands at the time the action was brought, under an arrangement set forth in the following joint-minute for the parties—"Prior to Martinmas 1864 there was no mineral rental of said lands; from Martinmas 1864 to Whitsunday 1873 the mineral rent of said lands, being fixed rent, was £450 per annum, under a lease in which the West Calder Oil Company (Limited) are tenants for twenty-four years from Martinmas 1864; from Whitsunday 1873 to Martinmas 1876 the fixed mineral rent was £900 per annum under said lease, and subsequent minute of agreement; from Martinmas 1876 to Martinmas 1881 the mineral rent under said lease is reduced to £600, conform to letter; and as regards the said rent of £900, one-half thereof, being £450, is subject to the tenant's power to break on giving twelve months' notice, and the remaining half, being £450, is subject to the tenant's power to break every five years from Martinmas 1866." The defenders besides denying liability as above mentioned, maintained that the value of the mineral rental fell to be ascertained by capitalising the rent actually received with reference to the state of the mineral workings, and they offered to pay interest at 4 per cent. on one-third of the value thus ascertained in name of composition. The Lord Ordinary on 15th July 1879 found the pursuer entitled to the composition of one year's rent of the lands, and on 6th November 1879 issued another interlocutor, in which, *inter alia*, he found "(4) that the gross mineral rent of the estate of Cobinshaw for 1879 amounts to the sum of £600, whereof one-third, or £200, is the share effeiring to the defenders," and decerned in favour of the pursuer for this sum, subject to a slight deduction for public burdens. He added this note:—

"*Note.*— . . . (4) The most important point argued was the amount at which the mineral rent should be taken. The minerals were unlet and unwrought prior to 1764. In that year they were let to tenants for twenty-four years, the fixed rent being £450. The minerals have never been wrought, except to a limited extent, by the sub-tenants of the principal lessees, and the fixed rent of £450 was paid from 1864 to 1873. From 1873 to 1876 the fixed rent was raised by mutual agreement to £900 per annum; but in 1876 it was reduced for five years—*i.e.* till 1881—to £600. That sum is, I think, the fair amount at which the mineral rent of 1879 should be taken. The defenders maintained that there should be inquiry into the actual value of the minerals (as was suggested in the recent case of *Allan's Trustees* v. *The Duke of Hamilton*, 5 R. 510), and that a percentage of the value should be taken as the rent. But as the minerals are not being wrought except to a trifling extent by the sub-lessees, and are not alleged to be exhausted, and as the fixed rent of £600, under deduction of public burdens, seems to be a fair average rent, I see no ground for instituting the inquiry suggested by the defenders.

Against both interlocutors the defenders reclaimed, but before the case was heard in the Second Division judgment was pronounced by the House of Lords in the case of *Lamont* v.