the operative part of the magistrates' order dismissing the petition, and it will then be for the magistrates to proceed on the footing that the right is a right of common interest, and they will still have to determine whether the proposed operations are injurious to the respondents' interests. To ascertain that there must be an investigation, which must be made by the magistrates, and as there is no averment of injury to the respondents' property nor plea to that effect, in order to lead to investigation the record must be opened up and some such averment and plea introduced. That may be done either in this Court or it may be remitted to the magistrates to do so.

Lord Deas concurred, observing that the question of injury to the respondents, who had a common interest, was the only question in the case.

Lords Mure and Shand concurred, remarking that the difficulty of the case was occasioned by the peculiar terms used in the titles, which seemed at first sight to convey more than a common interest which belongs by common law to proprietors in such a position as the petitioner and respondents here.

The respondents amended the record by adding an averment to the effect that the proposed alterations would injure their property, and pleading that, all parties having a common interest in the area, the petitioner should not be permitted to execute them.

Thereafter the following interlocutor was pronounced:—

"Recal the interlocutor of the Magistrates of 25th August 1876: Find that the area in question is not the common property of the petitioners and the respondents, but that it is the property of the petitioners, subject to a right of common interest in the respondents: Allow the respondents to add to the record the averment and plea-in-law now proposed; and the same having been made at the bar, hold the same as part of the record, and remit to the Magistrates to proceed farther in the matter of the petition as shall be just and consistent with the above finding: Find the appellants entitled to the expenses incurred by them in this Court, allow an account thereof to be given in, and remit the same when lodged to the Auditor to tax and report."

Counsel for Petitioner—Asher—J. P. B. Robertson. Agents—Keegan & Welsh, S.S.C.

Counsel for Respondents—Moncrieff. Agent—James W. Moncreiff, W.S.

Friday, May 18.

FIRST DIVISION.

[Sheriff-Substitute of Lanarkshire.

ROBB *v.* EGLIN.

Process—Sheriff—Decree by Default—Reponing—Sheriff Court Act 1876, *secs.* 20 *and* 33.

It is competent to appeal to the Court of Session for the purpose of being reponed against a decree by default pronounced by the Sheriff-Substitute, even before the expiry of the period within which it is competent to appeal to the Sheriff-Depute.

This was an appeal from the Sheriff Court of Lanarkshire in an action by James Robb, residing in Glasgow, against William Eglin, boot and shoe factor there, to recover the sum of £250 alleged to be due by the defender to the pursuer. The case was ordered to the Debate Roll in the Sheriff-Court of 27th February 1877, and when the case was called on that day no appearance was made for either party, and the Sheriff-Substitute, as directed by section 20 of the Sheriff Court Act of 1876, dismissed the action, finding no expenses due to either party.

The pursuer did not appeal to the Sheriff, but on the 10th March, while an appeal to the Sheriff was still competent under sec. 33 of the above Act, he appealed to the Court of Session.

It was stated in the Single Bills that at the time that the debate should have taken place in the Sheriff Court the process had been borrowed up to be transmitted to Edinburgh and produced in a Court of Session action pending between the same parties, which was set down for trial on the 8th of March.

The pursuer argued that the appeal was competent, and cited *Morrison* v. *Walker*, June 24, 1871, 9 Macph. 902.

The Court, in respect of the authority above cited, held that the appeal was competent, and reponed the appellant on payment of £3, 3s. of expenses to the respondent. They further remitted the cause back to the Sheriff-Substitute to be proceeded with.

Counsel for Appellant—Wallace. Agents—J. & A. Hastie, S.S.C.

Counsel for Respondent—Rhind. Agent—R. P. Stevenson, S.S.C.

Saturday, May 19.

SECOND DIVISION.

[Sheriff of Dumfries and Galloway.

NIBLOE *v.* VICKERS AND MANDATORY.

Process—Sheriff Court—Decree by Default—Reponing—Expenses.

An action of accounting was brought in the Sheriff Court in 1875, and after protracted delays on both sides the defender in 1877 failed under certification to attend adjourned diets for examination of havers. The Sheriff