Counsel for Pursuer (Appellant)—Johnstone—G. Burnet. Agents—Gordon, Pringle, Dallas, & Co., W.S.

Counsel for Defenders (Respondents)—Trayner—Baxter. Agent—R. W. Wallace, W.S.

Thursday, October 19.

FIRST DIVISION.

[Lord Lee, Ordinary.

SINCLAIR *v.* BROWN BROTHERS.

Property — Feu-Contract—Mutual Gable—Obligation on Adjoining Feuar in Towns to Repay Half Cost of Erection of Mutual Gable to Feuar who has Built it—Obligation to Pay Half Cost imposed by a Contract which is Silent as to Time of Payment.

A, a superior, feued a part of his lands to B, and five years later a further portion to C, the feu last given off being adjacent to that already granted to B. By his feu-contract B was taken bound to erect a mutual gable, one-half upon his own ground, and the other half upon that of his neighbouring feuar, against whom he had the right of recovering one-half of the cost of erecting the wall, but the contract was silent as at what time repayment could be demanded. C erected some temporary buildings upon his feu, whereupon B demanded repayment of half the cost of the mutual gable which he had erected according to the obligation in his feu-contract. C refused payment on the ground that he had made no use of the pursuer's gable. *Held* (1), on a construction of the feu-rights of the parties, that C was liable under his feu-contract to make immediate payment of half the expense of the mutual gable irrespective of his making use of it; but (2) that he had not made such use of the gable so as to bring him within the common law obligation of recompense, and that therefore he ought not to be found liable in the expense of a proof directed to establish that he had made use of the gable.

By feu-charter entered into between James Steel, builder in Edinburgh, and Peter Sinclair, also builder there, dated 4th and 5th, and recorded 20th October 1876, Steel, as heritable proprietor of the lands, disponed to Sinclair certain portions of the lands of Dalry situated on the south side of the street called Caledonian Crescent, all lying in the county of Edinburgh. By the feu-contract it was, *inter alia*, provided that the eastmost gable of the tenement to be erected on the eastmost area, and the westmost gable of the tenement to be erected on the westmost area of the ground feued should have vents carefully carried up and openings left where pointed out by Mr Steel or his successors, and the said gables should be common to Sinclair and his successors and the feuars adjoining the said areas on the east and west respectively, and should be built to the extent of one half of the thickness thereof on the ground feued by said feu-contract, and to the extent of the other half on the ground adjoining the same on the east and west respectively; and the cost of erecting these mutual gables, whether built by Sinclair or by the adjoining feuars on the east and west, should be borne equally by the feuars to whom they should respectively belong in common, but no part of such cost should be borne by Mr Steel, and that Sinclair should be entitled to recover from the adjoining feuars their respective shares of the cost of his erecting the said mutual gables; and, on the other hand, Sinclair was taken bound to pay Mr Steel or the adjoining feuars, as the case might be, the proportion effeiring to him of the cost of erecting the mutual gables, if said gables were erected by Mr Steel or the adjoining feuars. The said feu-contract also provided that Sinclair should be bound to enclose the back ground behind the tenements by building a division dwarf-wall with an iron railing as therein mentioned, or if Mr Steel should consider a high wall necessary, he was taken bound to erect a rubble wall having a hammer-dressed rounded cope; and it was declared that the division-walls and railings on the east and west of the areas should be common to Sinclair and the feuars of the adjoining ground on the east and west respectively, and that the cost of erecting them, whether built by him or the adjoining feuars, should be borne equally by him and the feuars to whom they should belong in common; and it was provided that he should be entitled to recover from the adjoining feuars their respective shares of the cost of erecting the said mutual division-walls. Prior to the term of Whitsunday 1877 Sinclair had erected, in terms of the feu-contract, a tenement upon the westmost area feued to him.

In terms of the feu-contract, Sinclair built the westmost gable of his buildings on the westmost area of ground feued to him to the extent of one half the thickness thereof on the ground which he had feued, and to the extent of the other half of the thickness thereof on the adjoining ground to the west, which ground was not then built on to any extent. He also, prior to Whitsunday 1877, built a division-wall between his area and the ground to the west, as provided for in the feu-contract.

A second feu-contract was also entered into by Steel with David Brown and Robert Brown, the partners of the firm of Brown Brothers, the defenders in the present action. This contract was dated 4th and 5th March 1879, and 11th and 12th October 1880. By it a further portion of the lands of Dalry, also lying on the south side of Caledonian Crescent, and immediately to the west of and bounding the ground feued to Sinclair, was conveyed to David and Robert Brown as trustees for the firm of Brown Brothers. By this last-mentioned feu-contract the defenders David Brown and Robert Brown bound themselves and their said firm to erect on the piece of ground thereby feued, so far as not already done, buildings which should be of the yearly value of at least double the feu-duty payable by them. This feu-contract also contained the following provision:—"And in respect the said Peter Sinclair or his successors in the foresaid ground feued to him have erected thereon one or more tenements of dwelling-houses, the westmost gable of which is built to the extent of one half of the thickness thereof on their said ground, and to the extent of the other half on the ground hereby feued, it is hereby provided that the said disponees shall be bound to pay to the said Peter Sinclair or his successors the one-half of the cost of erecting the said gable, which shall thereafter be mutual and belong in common to the said disponees

and the said Peter Sinclair or his successors." By this last-mentioned feu-contract it was also provided that Brown Brothers, the defenders, should be bound to pay to the adjoining feuars the proportion effeiring to the defenders of the cost of erecting the mutual division-walls.

No restrictions were laid upon the defenders as to the class of buildings which they were to erect, further than that the external walls should be of stone, and that the walls fronting Caledonian Crescent should be of polished ashlar, and that the building should be of the yearly value of at least double the feu-duty (£25, 10s.)

The defenders, who were in possession of the ground feued to them in the manner just described for some years prior to their obtaining their formal title to it in October 1880, had prior to 1st November 1877 erected upon a portion of it a large wooden building with an iron roof for the purpose of drying timber.

In November 1881 Sinclair raised the present action against the defenders to recover one-half the cost of the erection of the mutual gable above referred to, alleging that the defenders had made use of it by using it as the gable of their drying shed. The cost of erecting the mutual gable and division wall was stated by the pursuer to be £261, 19s, 4d., of which sum he claimed from the defenders one-half, being £132, 15s. 8d., with interest from 1st November 1877, when the defenders' drying shed was finished.

The defenders denied that they had made any use of the mutual gable or division wall, and maintained that until they did so they were not liable to repay the pursuer one-half of the cost of its erection. They maintained that in any event the cost of erection was overstated. A proof was led from which it appeared that the shed was about one-half the height of the gable-wall erected by the pursuer, the windows of whose gable therefore overlooked it. The shed was supported on its own pillars, and only touched the gable-wall by a rhone in front connected with the gable by a zinc "flashing". The proof in great part consisted of evidence as to the custom of the building trade with regard to the time at which repayment of half the cost of a mutual gable is in use to be made by the adjoining feuar.

By interlocutor of 8th March 1882 the Lord Ordinary (LEE) found that by the terms of their feu-contract the defenders were bound to pay the pursuer one-half of the cost of erecting the mutual gable and division wall, and gave decree for £132, 15s. 8d. as concluded for, with interest at 5 per cent., to run from 5th March 1879, the date at which the defenders' feu-contract with Steel was signed by them.

His Lordship added the following note to his interlocutor:—"In this action the pursuer claims from the defenders payment of one-half of the cost of a mutual gable and division wall erected by him to the west of his feu in Caledonian Crescent. The defenders are feuars of an adjoining building area to the west under the same superior, and it is alleged that they have made use of the gable not merely by occupying the ground but by erecting upon it a substantial store or drying shed for wood, two storeys in height, abutting upon and touching the gable, and constructed with an iron roof, supported on timber bearers partly resting upon it, with a rhone in the front, which is connected with the gable by means of a zinc flashing.

"The principal ground of action, however, is that by the terms of their feu-contract the defenders are bound to pay the half of the cost of the gable, which is thereafter to be mutual and to belong in common to the proprietors of the two feus. Had the action been laid solely upon recompense, as for use taken of a gable without contract, I should have had difficulty in sustaining the pursuer's claim, for the terms of the pursuer's feu-contract are not such as would have enabled him to prevent his superior, or others in his right, making a temporary use of the ground adjoining the pursuer's feu. The pursuer's rights, no doubt, might have entitled him to object to the superior making use of his reserved power of altering his plans to the effect of defeating the pursuer's claim to recover one-half of the cost of the mutual gable which he was taken bound to erect. For instance, if the superior, in order to enable the feuar to the west to evade payment, had sanctioned the erection of a brick building with a gable of its own, I can scarcely doubt that the pursuer would have had a remedy. This would have been contrary to the good faith of the contract between the superior and the pursuer, and against the superior the pursuer must have some claim.

"In the present case, however, I am of opinion that the terms of the defenders' contract imposed liability upon them for a half of this gable irrespective of the use which they might make of it. The gable is expressly referred to as having been erected by the pursuer, and the defenders are expressly taken bound to pay one-half of the cost of erecting it. The feu-contract shows that they were already in possession, and that the obligations imposed by it upon the defenders had already begun to run. Their term of entry, notwithstanding the date of the contract, is declared to have been Martinmas 1873. The stipulated feu-duty (£22, 5s. per annum), so far as not already paid, is to be payable half-yearly, beginning at Whitsunday 1879 for the half-year preceding. The defenders are bound to build 'within the space of one year from the date hereof, and, so far as not already done, buildings which shall be of the yearly value of at least double the said feu-duty.' The kind of building facing Caledonian Crescent is specified, so far as the front walls and other particulars are concerned, but with a proviso that the external walls may be built of brick with the consent of the superior, James Steel. The contract was signed by the defenders on 4th March 1879.

"I observe that the requirements of the defenders' feu-contract as regards the cost and style of building are considerably less stringent than those of the pursuer's feu-contract. They do not stipulate in the same way for observance of the feuing plan, and they require only that the building shall be of an annual value of double the feu-duty. As, however, the provision is quite distinct that the defenders shall be bound to pay one-half of the cost of the mutual gable, and that the superiors shall not be liable in any such expense, I can only gather from these provisions that the obligation to pay for the mutual gable was intended to be irrespective of the kind of building erected by the defenders.

"On the whole, I am satisfied that the defenders are, by the terms of their contract, made liable for their share of the mutual gable at once and without respect to their use of the gable.

"It was much pressed upon me that in previous cases the contract always mentioned a time of payment. I do not find that this was so in the leading case of *Wallace* v. *Brown* (M. Pers. and R., App. 4), where the obligation was to pay when the contiguous purchaser 'begins to build,' and no building had been commenced, but the property had been sold by the trustee on the contiguous purchaser's estate with a right to the half of the gable. In other cases, as in *Mackenzie* v. *Mackenzie* (8 Sh. 74), the right of the party building the gable was to commence 'within one month after such adjoining lots are feued,' or as in *Ness* v. *Ferrier* (4 Sh. 7), 'so soon as the same shall be feued,' or as in *Hunter* v. *Luke* (8 D. 787), 'one month after the said mutual gable, &c., shall have been begun to be built,' or where the conterminous lot had not been sold, 'so soon as the said conterminous lot is sold,' or as in *Earl of Moray* v. *Aytoun* (21 D. 33), 'within one month from the date of the purchase of the adjoining feu.'

"It appears to me that where the obligation to pay rests on contract and not on recompense, and where the contract shows that the value has already been given, there is no presumption that the time of payment may be indefinitely postponed by the feuar of the adjoining stance delaying to use the gable. I think, on the contrary, that the presumption is in favour of an immediate obligation unless the period of payment is postponed. In this case I am of opinion that there was no postponement, and that the pursuer is entitled to decree.

"On the question of amount, I am of opinion that the pursuer has sufficiently proved that according to the rates of the period the cost of the gable is correctly stated."

Against this interlocutor the defenders reclaimed, and argued—This claim is premature. The result of the proof showed that no use had been made by the defenders of the mutual gable, and on a fair construction of this contract there can be no claim for payment prior to such use. This contract merely expresses the ordinary rule of common law, that the adjoining feuar is only bound to pay half the cost of the mutual gable when he begins to use it.

Authorities—*Law* v. *Monteith*, 30th November 1855, 18 D. 125; *Rodger* v. *Russel*, 10th June 1873, 11 Macph. 671; *Walker* v. *Sherar*, 4th February 1870, 8 Macph. 494; *Glasgow Royal Infirmary* v. *Wylie*, 15th June 1877, 4 R. 894.

Argued for respondents—The defenders are liable upon two grounds: (1) under the terms of the contract this is a pure and simple obligation—as between the parties the conditions of the contract are prestable at once; (2) the proof shows that the gable was made use of, and therefore apart from the contract the money is now due.

Authorities — Erskine, iii. 1, 6; *Graham* v. *Lamont*, 18th February 1875, 2 R. 438; *Jack* v. *Begg*, 26th October 1875, 3 R. 35.

At advising—

Lord President—If it could have been made clear by the terms of the contract that one-half of the price of the mutual gable was not to be paid by the defenders until the wall was used, then I think that the pursuers would not have been entitled to prevail in the present action, because the circumstances proved are not sufficient to establish such use of the subjects as would in the ordinary case subject the defender in payment. I am of opinion, however, with the Lord Ordinary, that the obligation to pay one-half of the cost of this mutual gable is not dependent upon the defender making use of it, and ought not to be postponed until such use is made. It was argued by the reclaimers that the provisions of this contract were not intended to exclude the rule of common law applicable in such circumstances. Now, I think that the rule of common law in such cases amounts to this—that in towns where continuous streets of houses are in course of erection, a party building a gable wall is entitled to erect one half upon his own ground and one half upon that of his neighbour, and when the neighbour builds upon his own ground the builder of the gable is entitled to claim repayment of one-half of the sum which he has expended. To any such rule there must, however, be many exceptions. The common law rule can only be enforced in the case of a continuous street, unless it was made clear in the contract that the gable was to be built on the ordinary terms. The present case is uncommon in two respects—first, because it imposes certain obligations, but fixes no definite term of payment; and second, because it does not appear from the defenders' feu-contract that they are bound to build any peculiar kind or size of house, or indeed to build any dwelling-house at all. Subject to certain conditions as to material, they might erect any kind of house they liked, but "the external walls shall be of stone, and the walls fronting Caledonian Crescent shall be built of ashlar." So far as I can see, the defenders if right in their contention, might by merely erecting a building worth £45 per annum comply with the conditions of their charter, and provided that they did not take any benefit from the mutual gable might indefinitely postpone repayment of their half of the original cost.

Now, it appears to me that the rule of common law is inapplicable in such a case, for this reason, that the builder of the mutual gable might never be recouped for his outlay by his neighbours never building or making use of the gable. Hence the peculiarity of the clauses in these contracts. It also affords a very good reason for the contracting parties not leaving the matter to be dealt with by the common law, and that payment should take place without delay or postponement until the gable wall came to be used by the defenders. Both the feu-charters which we have been referred to require to be examined in order to understand the relation between them. By the pursuers' charter it is provided that "the said gables shall be common to the said Peter Sinclair and his foresaids and the feuars adjoining the said last-mentioned areas on the east and west respectively, and shall be built to the extent of one half of the thickness thereof on the ground hereby feued, and to the extent of the other half on the ground adjoining the same on the east and west respectively; and the cost of erecting the said mutual gables, whether built by the said Peter Sinclair or his foresaids, or by the adjoining feuars on the east and west, shall be borne equally by the feuars to whom they shall respectively belong in common, but no part of such cost shall be borne by the said James Steel or his foresaids; and the said Peter Sinclair shall be entitled to re-

cover from the adjoining feuars (but not from the said James Steel) their respective shares of the cost of his erecting the said mutual gables; and, on the other hand, the said Peter Sinclair shall be bound to pay to the said James Steel or to the adjoining feuars, as the case may be, the proportion effeiring to the said Peter Sinclair or his foresaids of the cost of erecting the mutual gables."

We have here a declaration of the incidence of this burden, and it is expressly declared that there is to be absolute equality amongst the feuars. But equality cannot exist if one party is to be kept out of his money owing to the other feuar postponing indefinitely his building operations with the possibility of his never making use of the mutual gable, and so escaping the repayment of his share of the cost of its erection. Nor is there any intention expressed that payment should be postponed until the adjoining feuar came to make use of the gable. I am therefore of opinion that payment for this gable cannot be longer delayed.

By the time the defenders' feu-charter was granted circumstances had materially changed. In 1873 arrangements were entered into with Steel to take the ground, but it was 1877 before the mutual gable was built. The pursuer obtained his feu-contract in 1876, whereas the defenders' title was not completed until 1880. Meanwhile the only mutual gable in which the defenders were interested had been built by the pursuer. In the defenders' feu-contract the following passage occurs:—"And in respect the said Peter Sinclair or his successors in the foresaid ground feued to him have erected thereon one or more tenements of dwelling-houses, the westmost gable of which is built to the extent of one-half of the thickness thereof on their said ground, and to the extent of the other half on the ground hereby feued, it is hereby provided that the said disponees shall be bound to pay to the said Peter Sinclair or his successors the one-half of the cost of erecting the said gable, which shall thereafter be mutual and belong in common to the said disponees and the said Peter Sinclair or his successors; and the said disponees further bind themselves and their foresaids to enclose the ground hereby feued (so far as not adjoining the said gable) and the ground already belonging to the disponees by building a division dwarf wall 12 inches thick and 18 inches high, including a stone cope 6 inches thick and surrounded by an iron railing of a pattern to be approved of by the said James Steel." That is to say, there was one mutual wall, and one only, in which the defenders are interested, and that was already built, the rest of the ground being fenced off by a division dwarf wall of the height and pattern specified.

Now, the obligation is that the defenders are to pay one-half of the price of this mutual gable, and this seems to me to be a pure and unconditional obligation. There is not a word about payment being postponed for a fixed period, or until the defenders should take any benefit from the gable and I think that we can find in this contract quite a sufficient explanation why that direction was inverted. I therefore agree with the Lord Ordinary in the decision which he has arrived at. Upon the question which has been raised by the reclaimers as to the expenses of the proof, if your Lordships should be of opinion along with me that there is not sufficient evidence to show that there has been actual use of the mutual gable, then the proof led was useless, and the pursuer has failed to prove his averments. I think that is so, and that the pursuer is not entitled to the expenses of this proof.

Lord Mure—This question depends upon contract, and not upon any rule of common law. If it had depended upon common law, the proof of use would not in my opinion have been sufficient to render the defenders liable for the cost of one-half of the mutual gable from any use to which they have hitherto put it. But I agree with the Lord Ordinary that the terms of this contract are quite sufficient to render the defenders liable for this claim. The conditions of both contracts are clear and distinct—that the adjoining feuars shall pay half the cost of the mutual gable. It was maintained that the defenders were not bound to pay because they had not used the wall, but I think that the clause read by your Lordship is quite unqualified, and that payment should be, as stated by Erskine in the passaage to which we were referred, immediate and unconditional. There is nothing in the wording of this contract to countenance any delay. To admit of the contention of the defenders there ought to have been some qualifying words, as, for example, "as soon as he shall make use of the same." It seems to me that the obligation is clear and distinct, but at the same time I think that the Lord Ordinary has gone too far back in fixing the interest to run from 5th March 1879, seeing that the defenders' title was not completed until November 1880.

I agree also with your Lordships in thinking that the proof was unnecessary, and that the defenders should be relieved of the expenses occasioned by it.

Lord Shand—I think that the Lord Ordinary was right in the result which he arrived at, and I adopt the reasons which he has stated in his note. The agreement between the parties is quite distinct, and is contained in the two feu-contracts founded on by the parties and referred to by your Lordship. By these the pursuer was taken bound to build the gable, but the superior obliged the adjoining feuar to repay one-half of the cost. In both the deeds the obligation is absolute; there is no condition as to use, nor is there any term of payment fixed. It is instantly prestable as between superior and vassal. The defender asks for delay, maintaining that he is not obliged to pay until he makes use of the gable, and he calls in the rule of common law. But this rule is not applicable in the present case, for the common law can only apply when there is no contract. The ground upon which the rule rests, however, is that the person using the mutual gable is to make payment for the benefit which he thereby derives. This is clearly stated in the opinion of Lord Ivory in the case of *Law* v. *Monteith*. But I can see no reason why this rule should apply in the present case. The pursuer does not found upon recompense but upon contract, and the contract says that the party taking the feu must pay his share of the mutual gable when asked. As the pursuer has failed to make out in the proof that the building complained of is in any way let into the

mutual gable, I agree with your Lordships in thinking that the expenses thereby occasioned must be disallowed.

The Court altered the interlocutor of the Lord Ordinary by disallowing the expenses of the proof, on the ground that the pursuer had failed to make out his averments, and by varying the date from which interest was to run on the sum found due from 5th March 1879 to 8th November 1880, at which latter date the defenders' title was completed.

Counsel for Reclaimers—Keir—Shaw. Agent—George Andrew, S.S.C.
Counsel for Respondents—J. P. B. Robertson—Young. Agents — Nisbet & Mathison, S.S.C.

Thursday, October 19.

SECOND DIVISION.

ORR, PETITIONER.

Bankruptcy—Petition for Sequestration—Mandate—Recall of by Death of Mandant—Bankruptcy (Scotland) Act 1856 (19 *and* 20 *Vict. c.* 79).

A mandate granted by an insolvent authorising his mandatory to apply for sequestration of his estates under the Bankruptcy Acts, falls by the death of the mandant before the deliverance of the Sheriff awarding sequestration is pronounced. A sequestration therefore *declared void* where the mandant had died previous to the deliverance awarding sequestration.

Alexander Brown Arthur granted a mandate, dated 4th October 1882, in favour of William Veitch Orr, the present petitioner, authorising him to apply for the sequestration of his estates in terms of the Bankruptcy Acts. Mr Orr having obtained the consent of certain concurring creditors, prepared a petition at the instance of the insolvent for sequestration of his estates, which was lodged with the Sheriff-Clerk of Lanarkshire at Glasgow on Tuesday, 10th October current. A deliverance in usual form sequestrating the insolvent's estates, and appointing the meeting of creditors for the election of trustee to be held on 23d October, was pronounced by the Sheriff-Substitute on the following day, Wednesday the 11th. Thereafter the usual *Gazette* notice was inserted, and an abbreviate of the sequestration was recorded in the Register of Inhibitions as required by the statute. Upon the following day, Thursday the 12th, the petitioner learned that the body of a man which had been discovered in Leith Docks upon the said Tuesday, 10th October, had been identified as that of the said Alexander Brown Arthur. It thus appeared that the mandate granted by the deceased had fallen by his death previous to the date of the said deliverance, although this was not known to the petitioner at the time. It had been discovered that the estate was not only hopelessly insolvent, but that the insolvent had for some time been in the habit of pawning and appropriating to his own uses goods supplied to him on sale and commission by certain of his creditors.

Mr Orr thereupon presented this petition to the Second Division of the Court of Session. The prayer of the petition craved the Court "to pronounce a deliverance confirming the deliverance of the Sheriff-Substitute, and all that has followed thereupon, and sequestrating the estates of the said Alexander Brown Arthur, and declaring the same to belong to his creditors for the purposes of the Bankruptcy (Scotland) Act 1856, and Acts explaining and amending the same; and to appoint the creditors to hold a meeting on the 23d October, at the hour and place fixed by the Sheriff-Substitute; and to remit the sequestration to the Sheriff of Lanarkshire at Glasgow."

The Court, after hearing counsel on the competency of the petition, pronounced this interlocutor:—

"The Lords having considered the petition, and heard counsel for the petitioner thereon, in respect that it appears that the bankrupt Alexander Brown Arthur was not in life when the deliverance awarding sequestration was pronounced, and that the sequestration was therefore void, Refuse the prayer of the petition."

Counsel for Petitioner—G. Burnet. Agent—R. C. Gray, S.S.C.

Saturday, October 21.

FIRST DIVISION.

[Lord M'Laren, Ordinary.

THOMSON *v.* MUNRO.

(Sequel to *Thomson* v. *Munro, et e contra*, reported *ante*, 28th June 1882, vol. xix. p. 739.)

Arbiter — Corruption — Process — Reduction of Decree-Arbitral—Jury Trial — Discretion of Court in allowing Proof or Jury Trial.

The pursuer of an action of reduction of a decree-arbitral averred that the arbiters whose award he sought to reduce had acted in a manner inconsistent with their duty as arbiters in refusing to him as one of the parties to the submission a hearing upon various points connected with the case, and in taking certain evidence outwith his presence, and in determining by lot various points on which they had differed. He pleaded that these acts and omissions amounted in law to corruption. He moved the Court to appoint the cause to be tried by jury as being a question of fact. *Held* (*aff.* judgment of Lord M'Laren) that the mode of trial being in the discretion of the Court, and the question for decision depending on the legal import of the facts which might be proved, the case was unsuited for jury trial, and ought to be sent to proof before the Lord Ordinary.

In the previous actions between these parties (reported *ante*, vol. xix. p. 739) the First Division of the Court on 28th June 1882 adhered to the interlocutor of the Lord Ordinary (M'Laren) in so far as it dealt with and contained findings in regard to expenses, but *quoad ultra* superseded consideration of the reclaiming-note for Thomson (the pursuer in the present action), in order that