been a very different matter, as Lord Deas says. But that is not the case here. All parties, Mr Mitchell among them, were satisfied that the work should be done, and the real question is as to the incidence of the cost. On that question there is no appeal to the Sheriff under the statute, and therefore we cannot hold that the party has laid by too long and is not justified in coming forward now with his defence.

Lord Mure—I concur in the opinion so clearly stated by your Lordship, and I am inclined to add that the view taken by the Sheriff-Substitute of the 64th section of the Act of 1856 is in my opinion a sound one, and that the Commissioners were only entitled to proceed with the work on one condition, viz., that the street had not before the adoption of the said Act (viz., the Act 13th and 14th Vict. cap. 33) been well and sufficiently paved and flagged, or otherwise made good. That was a condition precedent—if the street was paved they were not entitled to move. They served a notice upon the parties interested in 1871. No attention was paid to that, and no objection taken. Then the work was completed, and the present action was brought to recover the expense of it. They allege—"the street within the burgh of Dundee, commonly called Ann Street, was not well and sufficiently paved and flagged, or otherwise made good, previous to the adoption of the first-mentioned Act, 13 and 14 Vict. chap. 33;" and by that allegation they make their action competent. They are met by the allegation that "the said road or street had been made good before 1851." I am of opinion that there is no ground for preventing the defenders—because they did not take an appeal to the Sheriff—from stating this objection to the competency of this action.

The judgment of the Sheriff was accordingly recalled, and that of the Sheriff-Substitute, in so far as the competency of the defence stated by Mr Mitchell was concerned, affirmed. After hearing counsel on the proof as to the state of the road prior to the adoption of the Police Act, the Court unanimously were of opinion (1) that the burden of proof in respect of the lapse of time between the taking over of this road by the Police Commissioners and the raising of this question lay upon the Police Commissioners; (2) that they had failed to prove that the road had not been "made good" prior to the adoption of the Act, and they therefore affirmed the Sheriff-Substitute's interlocutor on the facts also, pronouncing the following interlocutor:—

"Sustain the competency of the appeal: Recal the interlocutor of the Sheriff dated 8th December 1875: Finds, in point of fact, that in 1871 the Police Commissioners for the burgh of Dundee served notices under section 64 of the Nuisances Removal, &c. (Scotland) Act 1856, upon the owners of property abutting upon the eastern portion of Ann Street, Dundee), including the defender (appellant), requiring them to pave the carriage-way of said street opposite their respective properties in manner therein specified, and on the owners failing to comply with the said requisition had the work executed under a contract: Find, however, also in point of fact, that the said Commissioners of Police have failed to prove that the carriage-way of said street was not made good prior to the adoption in the burgh of Dundee of the General Police and Improvement (Scotland) Act 1850: Find, in point of law, that the owners of property abutting on said street are not liable for the expenses of the foresaid works, but that the same must be defrayed out of the general police rates: Therefore, of new assoilzie the defenders from the conclusions of the action, and decern: Find the pursuer (respondent) liable in expenses both in this Court and the inferior Court; allow accounts thereof to be given in, and remit the same when lodged to the Auditor to tax and report."

Counsel for Pursuer—Dean of Faculty (Watson)—Johnstone. Agents—Leburn, Henderson, & Wilson, S.S.C.

Counsel for Defender — Asher — Strachan. Agent—David Milne, S.S.C.

Saturday, June 3.

SECOND DIVISION.

[Lord Young, Ordinary.

TRAILL *v.* SMITH'S TRS. AND OTHERS.

Debtor and Creditor—Bond and Disposition in Security—Reduction—Fraud—Agent.

T in 1870 borrowed £1000 on heritable security through S. & S., who were agents for both A's trustees and B's trustees, by both of whom they were authorised to invest money. The real creditor was not at the time disclosed by S. & S., but at Martinmas 1870 they granted a receipt for interest on the loan in name of A's trustees. Receipts were granted in the same terms up to Martinmas 1872, inclusive. Up to that date no bond for the loan had been executed. In May 1873 S. & S. wrote to T, stating that by mistake the bond for the loan of £1000 had been overlooked, and that "it now falls to be taken in favour of the trustees" of B. T signed the bond in favour of B's trustees sent with this letter, and thereafter the receipts for interest were granted in name of B's trustees. In an action at the instance of T for reduction of the bond granted to B's trustees, and alternatively, if the bond was not reduced, for declarator that he was not bound to pay £1000 to A's trustees, the Court, upon the evidence, *Held* (1) that A's trustees actually lent £1000 to T; (2) that the bond which was executed was obtained by the fraud of S. & S.; and (3) that B's trustees could take no benefit from that fraud; and that accordingly T was entitled to reduction of the bond.

This was an action at the instance of Dr Traill of Woodwick, residing in St Andrews, against the trustees of the deceased John Smith, and the trustees of the deceased John Ballantyne. As against Smith's trustees, the summons concluded for reduction of a bond and disposition in security for £1000 granted by the pursuer in their

favour. As against Ballantyne's trustees, the summons concluded for declarator, in case decree of reduction should not be obtained, that the pursuer was not indebted to Ballantyne's trustees in the sum of £1000, and was not bound to grant to the said trustees any bond in security of that sum; "and in particular, that the pursuer is not bound to pay to the said defender the sum of £1000 sterling, with accruing interest thereon, alleged to have been advanced by the trustees of the said John Ballantyne at or about Whitsunday 1870, through their agents Scarth & Scott, Writers to the Signet, Leith, to the pursuer in loan, upon the security of his properties in Kirkwall and St Andrews above described, nor to grant to the said defender any bond and disposition in security, or other heritable security over the said subjects."

The circumstances under which the action was brought were as follows.—In 1869 the pursuer, who was possessed of an estate in Orkney, and house property in Kirkwall, required £1000 to pay for a house which he had bought in St Andrews, and he instructed his factor in Kirkwall, Mr Robert Scarth, to negotiate a loan for him. Mr Robert Scarth applied to Messrs Scarth & Scott, W.S., Leith, by letter of 30th July 1869, in which he says "Dr Traill of Woodwick has purchased a house in St Andrews for £925, and has not a farthing to meet for it. He wishes to borrow £1000 on the security of the new purchase, and of his houses and gardens here in Kirkwall. . . . Can this be managed by you?" On 3d August, one of the partners of Scarth & Scott replied that they had "no fear as to arranging a loan for Dr Traill." Thereafter Messrs Scarth & Scott got certain titles of Dr Traill's property in order to prepare a bond and disposition in security for the proposed loan. As the money was required at the Martinmas term 1869, and the loan had not been obtained at that date, Mr Robert Scarth in the meantime advanced £1000 out of his own funds to Dr Traill.

In May 1870 Messrs Scarth & Scott were ready with the money, and on 11th May 1870 Mr Robert Scarth wrote them the following letters—

"I am to-night in receipt of your esteemed favour of 9 inst.

"Please on 16th to credit me with the £1000 loan obtained for Dr Traill of Woodwick, less the expense, of which please send me an account discharged.

"At the same time debit me with £253, 6s. interest due by my constituents and myself at this term, and forward the receipts, and further debit me with £387, 6s. 10d. expense of the Dicksons' action.

"Please to pay in the balance of the £1000 to my credit with the Union Bank in Edinburgh (my Binscarth account), and send me paid-in slip.

"Before leaving for Leith on Tuesday first, I shall make my entries at Kirkwall in conformity, leaving blank for the last of loan."

On 8th June Messrs Scarth & Scott replied as follows:—

"On 16th May last we paid into the Union Bank here £341, 7s. 2d. to the credit of your private account, being the balance of Mr Traill's loan, under deduction of expense of bond, interest due at last term, and the expenses of the action Dicksons against you, as per annexed statement. We enclose receipts for these, with the exception of the sum retained to meet the expense of the bond, an account of which will be sent so soon as the bond has been recorded.

"We may mention that as the bond requires to be recorded in three registers, the expense is much greater than usual."

Statement referred to.

Dr Traill's loan, . .			£1000	0 0
Mr Scarth ½ year's int. for Trinity House, less tax,	£19	12 1		
Lieut.-Col. Borrough's do.	58	16 3		
do. Smith's trustees,	58	16 3		
do. Mr Wyndham,	78	8 2		
Dr Traill do. Smith's trustees, . . .	37	13 3		
Mr Gellatly's account, as taxed, . . .	208	4 10		
Scarth & Scott's do., .	179	2 1		
Sum retained to meet expense of bond, .	18	0 0		
Balance paid into Union Bank, . . .	341	7 2		
			£1000	0 0

On 9th November 1870 Messrs Scarth & Scott wrote to Mr Robert Scarth the following letter:—

"We annex note of interests payable by you to our constituents at the term of Martinmas first.

"The bond by Dr Traill waits for signature his return south, which we have not yet heard. So soon as we do, we shall send it to him for this purpose.

In the note of interests sent with this letter was the following entry:—"Bond to Ballantyne's trustees, p. £1000—£22, 10s." This interest having been remitted by Mr Robert Scarth, Messrs Scarth & Scott granted a receipt in the following terms:—"Received from Dr Traill the sum of twenty-two pounds ten shillings sterling, being half-year's interest to date of bond ℔ £1000 to the trustees of the late John Ballantyne, Esq., and the same is hereby discharged." Receipts for the half-year's interest up to Martinmas 1872 were granted in similar terms.

On 17th May 1873 Messrs Scarth & Scott wrote the pursuer as follows:—

"*7th May* 1873.

"Dear Sir,—With reference to the loan of £1000 which we negotiated for you through Mr Robert Scarth over your property in Kirkwall and St Andrews, we find that from the matter being overlooked at the time, the bond was never executed; it now falls to be taken in favour of the trustees of the late Mr Smith, and we send it herewith for execution. We will feel obliged by your signing it according to the printed directions prefixed, and returning it to us at your convenience.—We are, Sir, yours faithfully, SCARTH & SCOTT."

The pursuer, as here requested, signed the bond, which was the deed now under reduction, and returned it to Messrs Scarth & Scott.

At the Whitsunday term 1873 Messrs Scarth & Scott granted the receipt for interest to Mr R. Scarth, not in the usual terms, but in name of Smith's trustees, and they omitted from their usual note of interests due the name of the creditors in the bond.

Scarth & Scott were sequestrated in February

1875, up to which date the receipts for interest had since Whitsunday 1873 been granted in name of Smith's trustees. Mr R. Scarth had resigned the pursuer's factory after the Whitsunday term 1873.

The Lord Ordinary allowed a proof.

It appeared that Messrs Scarth & Scott had been agents for both Smith's and Ballantyne's trust, and that the trustees having full confidence in them, had paid very little attention to the trust affairs.

In regard to Smith's trustees, the evidence was to the following effect:—In 1867 these trustees had authorised Scarth & Scott to look out for an investment of the trust-funds, and were subsequently (but at what date did not accurately appear) informed by them that they had lent £1000 to Dr Traill. In April 1873, however, Smith's trustees found that there was no bond for this loan. Messrs Scarth & Scott explained that by an oversight the bond had not been executed, and they then wrote to Dr Traill the letter of 7th May 1873, and obtained the bond. In 1861 Smith's trustees had admittedly lent money to Dr Traill.

The evidence in regard to Ballantyne's trustees was to the following effect:—In March 1870 Ballantyne's trustees having on deposit receipts in bank a sum of upwards of £1300, besides a balance due by Scarth & Scott of over £1000, agreed to and authorised Scarth & Scott to make the following loans:—"To Dr Traill of Woodwick, the sum of £1000, over subjects belonging to him in St Andrews and Kirkwall; Mr Rudolph W. Crudelius, wool-broker, Leith, the sum of £500, over subjects belonging to him in the Citadel, Leith; and Mr David Carse, coach proprietor, the sum of £600, over subjects belonging to him in Orchardfield, Leith Walk." The loans to Crudelius and Carse were undoubtedly made, and Scarth & Scott told the trustees that the loan to Dr Traill had also been made. The trustees never made any inquiry whether or not a bond had been granted.

Smith's trustees founded upon an account which had been rendered to them by Scarth & Scott, in which the entry of £1000 lent to Dr Traill appears. On an examination of the books of Scarth & Scott, however, no capital sum of £1000 lent to Dr Traill was entered in name of Smith's trustees, but it was entered in name of Ballantyne's trustees, with a note explanatory of the manner in which payment had been made, viz., to Mr R. Scarth's credit with the Union Bank.

The Lord Ordinary pronounced this interlocutor:—

"19*th November* 1875.—The Lord Ordinary having considered the proof and whole cause, and heard counsel thereon—Finds, 1*st*, that at Whitsunday 1870 Messrs Scarth & Scott, as agents for Ballantyne's trustees, and in pursuance of the authority and instructions of the said trustees, lent to the pursuer £1000 of the trust-funds, the pursuer agreeing to grant therefor a bond and disposition in security over his property specified in the bond and disposition in security challenged in this action; 2*d*, that on 9th May 1873 the pursuer was, by the false and fraudulent representation of Messrs Scarth & Scott, to the effect that the said loan had been made on account of Smith's trustees, or that they had acquired right as creditors therein, and that the bond and disposition in security therefor consequently fell to be granted in their favour, induced to execute and deliver in favour of Smith's trustees the bond and disposition in security challenged in this action; and 3*d*, that the pursuer received no loan from Smith's trustees, and was not, at the date of said bond and disposition in security, and is not now, indebted to them, and that the said bond and disposition in security ought to have been granted in favour of Ballantyne's trustee, from whom, through Scarth & Scott as their agents, the pursuer obtained the loan at Whitsunday 1870, and for the whole amount of which the pursuer was, and still is, indebted to them: Therefore reduces, decerns, and declares in terms of the reductive conclusions of the summons: Sustains the defences for the defender, Ballantyne's trustee, and assoilzies him from the conclusions of the summons directed against him: And decerns and ordains the defenders, Smith's trustees, to repay to the pursuer the sums set forth in the petitory conclusions of the summons, together with interest on the several sums at the rate of 4 per cent. per annum during the non-payment: Finds Smith's trustees liable in expenses to the other parties in the cause subsequent to the date of closing the record; and remits the accounts to the Auditor to tax and report, and decerns."

Smith's trustees reclaimed and argued—There were two questions in the case—*first*, as between Smith's trustees and Ballantyne's trustees; and *second*, between Smith's trustees and the pursuer. In regard to the second question, the pursuer having granted a bond at the request of his own agents, was bound thereby, especially as upon the faith of that bond they had discharged Scarth & Scott. In regard to the second question, Scarth and Scott were really in a position of cashiers for both the trusts, and had the monies of both raised up, together with power to invest both. Out of this fund £1000 was lent, to Traill, and Scarth & Scott were entitled to have credited the loan to either set of trustees. They did not do so at the time, but in 1873 they did so. At that date they settled with Smith's creditors by taking the bond, as they were entitled to do in their favour.

Argued for Ballantyne's trustees—It was admitted that they had leant £1000 to the pursuer, and therefore whatever became of the claim of Smith's trustees, their debt remained due. But in a question with Smith's trustees (although no question between them and Smith's trustees were under this summons) the question was, Whose money did Trail get? There could be no doubt of that in the evidence. Smith's trustees could not take benefit from the fraud of their own agents.

Argued for the pursuer—He had only got £1000, and could only be asked to pay the same sum. The bond was impetrated from him by Scarth & Scott's fraud when acting as agents for Smith's trustees, who must therefore bear the loss.

At advising—

Lord Justice-Clerk—In the aspect in which it has been presented to us, this case appears very perplexing and complicated. There has

been, undoubtedly, fraud on the part of the agents Scarth & Scott, and also considerable laxity by the various parties concerned, in not looking more closely into the conduct of their affairs. The difficulty is increased by the form of the action, in which there are two conclusions —the first for reduction of the bond granted by Dr Traill in favour of Smith's trustees; and the second for establishing his immunity from any claim by Ballantyne's trustees. Much complexity has thus been added to the case, and Dr Traill would, I think, have been in a much better position if he had concluded merely against Smith's trustees for reduction. As the action is laid the conclusions are contradictory, but in the meantime I shall consider the case on the footing of one of reduction only.

From this point of view the pursuer's averments became sufficiently simple. Dr Traill says that in 1870 he borrowed £1000 on the security of certain house property at St Andrews, and that in the transaction Scarth and Scott acted both for borrower and lenders. The £1000 was paid to Dr Traill, who for three years paid the interest to Scarth & Scott, receiving from them receipts as acting for Ballantyne's trustees. Now, in this action, Dr Traill seeks to reduce a bond which he was led to sign in 1873 in favour of Smith's trustees, at the instance of Scarth & Scott. No bond had been until that time executed, and then he was applied to by Scarth and Scott to sign the bond, "as it falls to be executed in favour of Smith's trustees." Dr Trail says that as Smith's trustees paid no money to him, they cannot expect to get any from him. On the other hand, Smith's trustees say the real transaction was between Scarth & Scott, and Dr Trail only, and that Ballantyne's trustees are not proved to have given Dr Traill any money at all. Now, it appears to me that the whole matter resolves itself into the three following points of inquiry:—

(1) Did Ballantyne's trustees in 1870 advance £1000, and did Dr Traill borrow it?

(2) Was this bond which was executed obtained by the fraud of Scarth & Scott in 1873?

(3) If there were such fraud, can Smith's trustees take benefit from it?

The whole case really turns upon the first of these points. Now, is there any ground for saying that Ballantyne's trustees are not the real creditors of Dr Traill? In 1869 Mr Robert Scarth, on behalf of Dr Traill, wrote to Scarth & Scott to know if they could find £1000 to advance on a house to be purchased by the Doctor. After all the purchase transactions had been carried through the negotiations for the loan went on. On 16th March 1870 there was a meeting of Ballantyne's trustees, and a minute was written out and the loan of £1000 authorised. On the 9th of May Scarth & Scott sent to Mr Robert Scarth a note of payments due, and on the 11th May the following important letter was written by Robert Scarth to Scarth & Scott. [*Reads letter of 11th May.*] On May 16, 1870 the account of Ballantyne's trustees was debited £1000, "to paid Dr Traill amount of loan," and the same entry is to be found in the cash-book, and on the same day there is a payment to R. Scarth's account as shown by the letter of June 8 [*reads*]. There the matter ends, there is no mystery, nothing remarkable; it is an ordinary Whitsunday transaction, and up to this point all is quite clear, and there can be no shadow of doubt that Scarth and Scott were acting for Ballantyne's trustees. It does not, I think, signify in the least whether Dr Trail knew or did not know who was his creditor for the £1000, he had simply authorised Scarth & Scott to bind him to anyone who was ready to lend him the money. I do not therefore think that Dr Traill's knowledge was an element, for he was absolutely bound by the bargain in which he got the £1000. It is not a case of specific appropriation, for all that happened was that Scarth & Scott had in their hands £1000 belonging to Ballantyne's trustees, and they paid it to Dr Traill, and the relation of debtor and creditor was thereby established between Dr Traill and Ballantyne's trustees, just as effectually as if bags of gold had been handed over by the one to the other. Things stood thus for three years, during which time Dr Traill was paying the interest and getting the receipts half-yearly from Scarth & Scott in the name of Ballantyne's trustees. Then came the letter of May 1873 from Scarth & Scott to Dr Traill on which so much was founded [*reads letter*]. It is clear that the letter was false, and a fraud, and that it was simply an attempt to cheat Ballantyne's trustees out of the £1000 which they had lent, and give the security to Smith's trustees who had not lent Dr Traill any money at all. Of course the real cause of the letter was that Smith's trustees were bestirring themselves, and calling on Scarth & Scott to account for £1000 of theirs which the firm had got from them six years before.

I am quite clear that the money Dr Traill got was not the money of Smith's trustees. Interest no doubt was paid to Smith's trustees as on the investment from 1867, but none of it entered the books of Scarth & Scott. Clearly the whole transaction was a fraud on Ballantyne's trustees and a fraud on Dr Traill, but the money was not that of the Smith Trust. Smith's trnstees got the bond, but they gave nothing for it; and it is an established principle of law that where a fraud has been perpetrated and loss must be suffered, those who benefit by the fraud must be the sufferers. Therefore Smith's trustees cannot here reap the advantage of the fraud of their agents. The only thing which could possibly have liberated Smith's trustees would have been participation in the fraud by Dr Traill, but there is no breath of such an idea, and it is utterly out of the question. Lastly, Smith's trustees say that by signing the bond Dr Traill led them to discharge Scarth & Scott of their indebtedness to the trust; but as to that, I may observe that Smith's trustees were equally to blame with Dr Traill, for both accepted as true the false statements of Scarth & Scott. The bond, therefore, must be reduced, and that puts an end to the first part of the action; the second part, as I have already observed, is incompatible with the first. I am for adhering to the Lord Ordinary's interlocutor.

The other Judges concurred.

The Court pronounced this interlocutor:—

"The Lords having heard counsel on the reclaiming note for Smith's trustees against Lord Young's interlocutor of 19th November 1875, refuse said note, and adhere to the

interlocutor complained of: Find the expenses incurred since the date of the Lord Ordinary's interlocutor payable as follows—The expenses incurred by Dr Traill to be paid by Smith's trustees, and the expenses incurred by Ballantyne's trustees to be paid by Dr Traill; and remit to the Auditor to tax the same and to report, and decern."

Counsel for Pursuer—R. V. Campbell. Agents—Maitland & Lyon, W.S.

Counsel for Smith's Trustees—Dean of Faculty (Watson)—Pearson—Guthrie. Agents—Gibson-Craig, Dalziel, & Brodies, W.S.

Counsel for Ballantyne's Trustees—Balfour—Low. Agents—W. & J. Cook, W.S.

Saturday, June 3.

FIRST DIVISION.

[Lord Craighill, Ordinary.

CLARK *v.* KIRKWOOD (M'ALLISTER'S TRUSTEE).

Process — Reclaiming Note—Leave of Lord Ordinary—Court of Session Act 1868 (31 *and* 32 *Vict. cap.* 100), *secs.* 27, 28, *and* 54—*Act of Sederunt, March* 10, 1870, *secs.* 1 *and* 2.

An interlocutor renewing an order for proof may be reclaimed against, under the Court of Session Act, 1868, secs. 27, 28, and 54, and Act of Sederunt of March 10, 1870, without the leave of the Lord Ordinary.

In this case, which was an action for payment of a law agent's accounts, the Lord Ordinary upon 15th March 1876, allowed both parties a proof of their averments. Upon 18th March the accounts sued for were, on the defender's motion, and of consent of the pursuer, remitted to the Auditor to tax and report. On the report being made, objections were lodged, and upon 30th May the Lord Ordinary, after hearing parties, pronounced an interlocutor finding, *inter alia*, "that the necessity for a proof is not obviated by said taxation, ... therefore renews the order for proof," &c. The defender asked leave to reclaim against this interlocutor, which the Lord Ordinary refused. A reclaiming note was thereupon presented to the First Division, and on the case being called in the Single Bills the pursuer objected to its competency.

At advising—

Lord President—Proof was allowed in this case by the interlocutor of 15th March 1876, and if by the interlocutor of 30th May the Lord Ordinary had merely appointed the proof to proceed that interlocutor would not have been reviewable under the Court of Session Act of 1868, or the Act of Sederunt of March 10, 1870; and it would not have been a six days' interlocutor. But by the second interlocutor the order for proof is renewed. It appears to the Court that an interlocutor renewing an order for proof imports an allowance of proof of new, and therefore is an interlocutor which may be reclaimed against without leave.

Lord Deas, Lord Ardmillan, and Lord Mure concurred.

Counsel for Pursuer (Respondent)—Strachan. Agent—George Begg, S.S.C.

Counsel for Defender (Reclaimer)—Pearson. Agents—Rhind & Lindsay, W.S.

Tuesday, June 6.

SECOND DIVISION.

[Lord Curriehill, Ordinary.

NISBET *v.* SMITH.

Contract — Essential Error — Advertisement—Feu-Duty.

N advertised his house for sale, "feu-duty £9," and further directed intending purchasers to his agents, "in whose hands are the title-deeds." S purchased the house "as advertised" without further inquiry, and entered into possession. When the disposition came to be prepared it was found that the £9 in use to be paid by N consisted of £5 feu-duty and £4 ground-annual, being the proportion effeiring to this house of certain larger burdens extending over a larger piece of ground of which this house formed a part, which burdens had never been regularly allocated.

In an action at instance of N to compel S to implement the contract by taking a disposition, S refused to take any disposition unless he were either guaranteed from any greater payment than £9, or the burdens were regularly allocated.

Held that S was not justified in his refusal, in respect that (1) the advertisement imported the titles into the contract, and did not essentially misrepresent the true state of matters; and (2) that S had never examined the titles though invited to do so.

This was an action at the instance of John Nisbet, salt merchant, Glasgow, against Alexander Smith, commission agent there. The pursuer concluded for implement of a contract of sale entered into on 24th March 1875, whereby the defender agreed to buy, and the pursuer to sell, "Jane Villa," and the ground on which it stood at Pollockshaws, the ground being in extent about an acre, and forming part of a plot of ground 6½ acres in extent, originally feued by Sir John Maxwell of Pollock to James Connell at a feu of £32, 19s., and of which 3½ acres were subsequently disponed by Connell under a ground-annual charge of £14, of which 3½ acaes the acre upon which 'Jane Villa' stood formed a part. Further, the summons concluded for relief from the contract in event of non-implement by the defender's failure to pay £1200 to the pursuer, with reservation of the pursuer's claims for damages. The pursuers averred that since his purchase of the property in 1866 he had paid £5 feu-duty and £4 ground-annual yearly, and that in March 1875 he advertised the villa for sale in the following terms:—"To be sold by public roup, in the Faculty Hall, St George's Place, Glasgow, on Wednesday, 31st March 1875, that villa known as Jane Villa,