Wednesday, January 18.

SECOND DIVISION.

PIRIE & SONS *v.* TOWN COUNCIL OF ABERDEEN.

Reparation — Damages—Fault — damnum fatale—*Property—Stream.* A stream flowing through a town, and used as a sewer, was covered over by a tunnel, at the mouth of which a grating was placed. In a flood of unprecedented violence this grating became choked up, and the stream overflowed and caused damage to buildings lower down the stream. *Held* that no responsibility attached to the upper heritor from the mere fact that his property had caused the injury, and that fault or negligence on his part was necessary to make him responsible for the damage.

The pursuers were proprietors of a block of ground and buildings in Aberdeen on the side of a small stream, the Denburn. On 16th October 1869, the Denburn overflowed and caused considerable damages to the pursuers' property, and they now sued the Magistrates and Town Council of Aberdeen, as representing the community, for £1350 as damages. The whole circumstances of the case are fully set out in the note appended to the following interlocutor and note of the Lord Ordinary (GIFFORD).

"Finds that the pursuers have failed to instruct that the loss and damage which the pursuers' property sustained by the flood or overflow of water on or about 16th October 1869 was occasioned, directly or indirectly, by the negligence or fault of the defenders, or by any causes for which the defenders are responsible; assolizies the defenders from the conclusions of the libel: Finds the pursuers liable in expenses, and remits.

"*Note.*—The Lord Ordinary has felt this case to be one of great nicety, and it is not without a good deal of hesitation that he has come to be of opinion that the pursuers have failed to instruct that the loss and damage which their property sustained by the flood or overflow of water on or about 16th October 1869 was caused, directly or indirectly, by the negligence or fault of the defenders. He does not think that the defenders are chargeable with any act, either of omission or commission, which can be said to have caused the injury complained of; and he is unable to find any other ground on which responsibility for the pursuers' losses can be fixed upon the defenders. In the Lord Ordinary's view the foundation of all actions like the present is *fault* or *negligence*—no responsibility arises against a proprietor from the mere fact that his property has caused injury to a neighbour if no fault or negligence is alleged or proved, mere *dominium per se* is not a ground on which damages can be awarded against a proprietor. No doubt, the possession of property involves various duties, and the neglect of these duties, or of any of them, may give rise to a claim of damages. Damages may also be due where the actual use of property occasions injury under the maxim *Sic utere tuo ut ulienum non lædas;* but in all cases, as it appears to the Lord Ordinary, there must be some fault, either of omission or commission, to found a claim of damages against a proprietor.

"This point was considered in the case of *Campbell* v. *Kennedy*, 25th November 1864, 3 Macph. 121; and the observations of the judges upon the case of *Cleghorn* v. *Taylor*, 27th February 1856, are extremely important. See also the various authorities quoted in *Campbell's* case, and in Addison on Wrongs, p. 346.

"While, however, in order to subject the defenders in damages, fault or negligence of some kind must be proved, such fault or negligence may in certain circumstances be very easily inferred. In particular, if it be shown that an injury by flooding has been sustained by a lower heritor, by reason of some structure erected, or operation performed on a stream by an upper heritor, there will be almost a presumption of fault against such upper heritor; and, at all events, the onus will lie upon him to show that the loss was occasioned by a *damnum fatale.* Proof of care in the construction or management of the works will not be sufficient to relieve the upper proprietor from responsibility. See this principle applied in the case of *Kerr* v. *Earl of Orkney*, 17th December 1857, 20 D. 298.

"The circumstances of the present case are very special, both in regard to the position and structure of the grating which caused the overflow, and in regard to the manner in which the grating and the channel of the Denburn above it was attended to and kept clear. The Lord Ordinary will very shortly notice the various points upon which the pursuers relied as establishing liability against the defenders.

"(1.) First, the pursuers maintained that the grating, the obstruction of which caused the overflow, was on the property of the defenders, and that this, *per se*, was sufficient to make the defenders in every way responsible therefor in reference to its structure, its maintenance, and its management.

"The whole of the grating, excepting about a foot on the left hand looking down the stream, is upon the property of the defenders. The mouth of the tunnel or culvert is also, with the exception of about a foot, on the defenders' property, but the tunnel then immediately enters the property of the Caledonian Railway, which is marked pink on the plan, and for a long way down the Denburn flows in the tunnel under the property of the railway company. It is apparent that the tunnel has been made, not for the use and benefit of the defenders, the town of Aberdeen, but for the use and benefit of the railway company, whose line and other works are constructed above the tunnel or culvert, and who at that place occupy the whole solum of the Denburn.

"Now, the eye or mouth of the tunnel or culvert, and the grating, which is a pertinent or accessory thereof, can hardly be separated in this question from the tunnel or culvert itself: and, although the strict boundary line cuts the grating and mouth of the tunnel obliquely, so as to leave an angle upon the property of the town, the Lord Ordinary has great difficulty in treating the town as an upper heritor, with the tunnel and its grating on their ground.

"The history of the construction of the tunnel and grating has been distinctly proved. The tunnel and grating were constructed, not by the town, but by the railway company. Originally it was intended that the solum above the culvert, or part thereof, should remain the property of the town; and it is shown by the towns-minutes that they exercised some control in reference to the structure and dimensions of the culvert. They were interested therein, not only as proprietors of the ground through which the culvert was to run, but in reference also to certain sluices and water

rights held by parties farther down the stream. Under the original bargain, therefore, which is embodied in the disposition of 12th and 14th June 1865, the railway company were bound, for behoof of the town, and to the satisfaction of Mr Smith, the town's superintendent, *inter alia*, 'to cover over the Denburn from the present tunnel at Union Bridge northward, along the whole line of the burn to the point where the proposed railway will leave the burn;' and the railway company bound themselves 'to uphold and maintain the coverings or tunnels of the said burn, in so far as constructed by them, in all time coming;' but the town, provided the work was done to the satisfaction of their superintendent, was to relieve the railway company of farther responsibility. This arrangement, however, was altered by the contract of excambion of 3d and 9th January 1867, by which the ground forming the solum of the Denburn, which had been covered over by the tunnel or culvert, was conveyed by the burgh to the railway company. In this way the railway company not only originally made the tunnel or culvert over the Denburn, but became proprietors of the solum or ground on which the culvert was made, with the exception only of the angle where the opening of the tunnel and its grating projected beyond the railway wall.

"In these circumstances, the Lord Ordinary cannot hold that the tunnel and its grating are on the ground of the town, so as to make the town responsible therefor in the same way as an upper heritor would be responsible who constructed a bridge or culvert over a stream for his own advantage or benefit. It rather appears to the Lord Ordinary that the railway company must be held to be the true proprietors of the tunnel; and, although its mouth and grating do project a few feet beyond the line of the railway company's property, this is rather of the nature of a servitude against the town than a transference to the town of the eye and grating of the culvert.

"The grating of the culvert is really merely a pertinent or accessory thereof. It is necessary for its protection to prevent the culvert from being choked or obstructed by rubbish and *debris* brought down by the stream. If the mouth of the culvert or the grating were to fall into disrepair, the Lord Ordinary thinks that the railway company, and not the town, would be compelled to repair them; for, though the greater part of them is on the town's land, they are really a pertinent of the culvert, which is exclusively the railway's property. At all events, the present is not a case where the town, as an upper heritor, has constructed a *novum opus* on a stream for its own behoof, and so as to be in every way responsible therefor.

"The next question is, were the tunnel and grating of safe and proper construction? The Lord Ordinary thinks that it is sufficiently proved that they were.

"There is no difference or conflict in the evidence as to the dimensions of the tunnel or calvert. It seems to be admitted on all hands that it was of quite sufficient size to receive and carry away all the water which could possibly come down the Denburn. Even the flood of 16th October 1869, if the grating had not become obstructed, would all have passed away by the culvert.

"There is a conflict of evidence, however, as to whether the grating was or was not of a proper and safe construction. The Lord Ordinary thinks that the great preponderance of evidence is in favour of the defenders. The two first skilled witnesses, called by the pursuers themselves, Mr Willet and Mr Smith, distinctly say that, if kept clean, the grating was a perfectly safe structure; and although Mr Anderson would have preferred a different construction, this was merely to facilitate the cleaning, and would not have dispensed with cleaning altogether. It seems also proved that the grating, at least the perpendicular part of it, is the identical grating which was formerly at the mouth of the old tunnel further down the stream, and it never seems to have occurred to anybody that there was any fault or defect in the construction of the grating, or that it was such as to occasion the slightest danger. As already explained, it was put up by and at the expense of the railway company, as an integral part of their tunnel. The necessity of a grating of some kind was admitted by everybody; and there is really no reliable evidence at all which would entitle the Lord Ordinary to find that this grating was of unsafe and improper construction.

"(3) It is next said by the pursuers that the banks of the Denburn, immediately above the grating or tunnel mouth, were not raised high enough, so as to confine the flood and send it down the culvert. In particular, it is said that the right bank, or bank next the bleaching-green, was too low.

"On this point also there is conflict of evidence, but, weighing the whole, the Lord Ordinary thinks the result is, that the right bank, being the bank in question, was within a few inches of being as high as the top of the arch of the culvert, and that it was as high as was necessary in such circumstances. It is plain that the only use of elevating the banks is to keep the water as high as the highest point of the arch, so as to secure that the whole area or section of the arch shall be available for the reception of water. This, the Lord Ordinary thinks, was substantially the case. To make the banks higher than the arch would only have the effect, as was explained by some of the witnesses, of retarding the flood for a few minutes till the water accumulated, and this would not in any appreciable degree have affected the result.

"In the Lord Ordinary's opinion, therefore, no defect in point of height of the banks has been sufficiently established. On the contrary, it seems made out that the overflow would have happened just as it did though the banks had been as high as the pursuers demanded. There is, of course, the farther question whether the town would be liable for the state of the banks, or whether, if the tunnel and its mouth were solely the railway company's, the railway company would not also be bound to put the banks at the tunnel mouth in a proper condition?

"(4) The point next in order is, whether the grating was kept properly clear? This point is of great importance, for the proximate cause of the overflow which damaged the pursuer's property was the grating having been choked up by rubbish and *debris* brought down by the stream.

"In considering the evidence as to the cleaning of the grating, the ulterior question must be kept in view, who was the party bound to keep it clean, and responsible for doing so? But it will contribute to distinctness to take first the simple question of fact—was the grating in fact kept clear, and attended to with reasonable care? This point is the more important, as, besides the alleged insuffi-

ciency of the banks, the allowing the grating to become obstructed is the only fault alleged upon record. Defect in construction, although raised in evidence, is not stated on record.

"There is much conflict in the evidence as to whether the grating was kept properly clear, and was or was not properly attended to. The Lord Ordinary, however, thinks that the mass of testimony which has been adduced by the defenders seems sufficiently to instruct that the Denburn and its gratings, particularly the grating in question, were not only regularly cleaned and kept perfectly clear, but were, in point of fact, perfectly clean and open during the whole week on which the flood occurred, and down to the very time when the flood happened.

"Now, if this be so as to the cleaning, and if the banks were sufficiently high, as the Lord Ordinary thinks they were, it goes far to put an end to the pursuers' case, for the insufficiency of the banks and the neglect of cleaning are the two things mainly relied on by the pursuers on record.

"There remains the question, who was bound to clear out the Denburn and gratings? In point of fact this duty seems to have been undertaken and, as the Lord Ordinary thinks, was fairly discharged, by the Police Commissioners of Aberdeen —a different statutory body from the defenders, who are the Magistrates and Council of the city.

"It is not for the Lord Ordinary to decide in this process, whether, under the police statutes, the commissioners are bound to clean the Denburn and its gratings, or whether the Town Council or the railway company are thereby relieved. Neither the Police Commissioners nor the railway are parties to the present process, and no decision therein could affect them. It seems sufficient, however, for the present purpose to find that the cleaning, on whomsoever incumbent, was, in point of fact, efficiently done. It was a very reasonable arrangement that the Denburn, which partakes much of the nature of a sewer, should be looked after by the police, who accordingly seem to have paved or causewayed its whole bed, and taken care that offensive or obstructing matters should not be allowed to accumulate. The mere fact that the solum of the alveus is the property of the town does not, as the Lord Ordinary has already explained, make the town liable either for its condition or its management. Practically, it is part of the sewage or drainage system of Aberdeen.

"(5) The only other point requiring special notice is the plea of the defenders, that the flood which injured the pursuers' property was of such an extraordinary kind and character, both in the quantity of water and the suddenness with which the water fell, or rather rose, as to make the damage resulting a *damnum fatale*, for which no one can be held responsible.

"There is a great deal of evidence that the flood was a very uncommon one. The rise in the water seems to have been unprecedentedly sudden, and no witness says that he can remember any preceding flood so great and so sudden.

"If, however, the case had been the ordinary case of an upper heritor having made an artificial structure for his own use, which on the occasion of the flood in question caused the damage, the Lord Ordinary would have had great difficulty in holding that the flood was a *damnum fatale*. He thinks a very strong case is required to establish this. He who meddles with the ordinary course of a stream is bound to provide not only for ordinary, but for extraordinary floods, even for those which are so rare that they may only happen once or twice in a century.

"But the present, as has been seen, is not the common case between an upper and a lower heritor, in which the upper heritor had diverted, dammed up, or controlled a stream for his own advantage. The Denburn, for a long distance above the point in question and down to the harbour into which it falls, is really an artificial stream. It is included in the city of Aberdeen, paved by the Police Commissioners, cleaned by them, arched and bridged in various ways, as the exigencies of the city require. It appears to the Lord Ordinary that the strict rules applicable to upper and lower heritors, which govern what may be called rural streams, cannot safely be applied to what has become, like the Fleet Ditch of London, a city sewer; and if all concerned have taken reasonable precautions, an accidental flooding is one of the contingencies which those who purchase property in the neighbourhood must be held to contemplate and to take the risk of. It is in this view that the Lord Ordinary thinks that the uncommon nature and unexpected result of the flood of 16th October is material, and aids the defence which has been set up. It is proved that the stream was carefully watched by the cleaning force, and that every available means were used to prevent and to remove the obstruction of the grating. The unprecedented amount of material brought down by the sudden flood got beyond the command of the men in charge, but the Lord Ordinary cannot help regarding the occurrence as a misfortune, and not a fault.

"In the whole circumstances, the Lord Ordinary rests his judgment upon this, that the pursuers have not proved that the defenders' fault or negligence caused the damage."

The pursuers reclaimed.

The SOLICITOR-GENERAL (CLARK) and MARSHALL for them.

SHAND and MACLEAN in answer.

At advising—

LORD COWAN—On 16th October 1869, owing to heavy rain which had fallen, the Denburn, which passes through the city of Aberdeen, became much flooded, and in consequence of the overflow of water on the west bank of the burn, considerable damage was done to the property of the pursuers. This action has been brought by them against the Magistrates and Council of the city for reparation of that damage, and the ground of liability set forth is contained in the 7th article of the condescendence. At a part of the burn above the property of the pursuers, there has been constructed a tunnel or culvert over its course, at the mouth of which there is a heck or grating to prevent rubbish getting into the tunnel, and so obstructing the passage of the water along that part of the course of the burn which is thus covered.

The allegation of the pursuers is, that it was "the duty of the defenders, as proprietors of the said heck as well as of the Denburn and its alveus," to keep the heck well red and free from obstruction, and to prevent the accumulation of rubbish at the heck which might choke up the water from entering the tunnel. Farther, it is averred that it was "the duty of the defenders to have had the west bank of the Denburn at and above the mouth of the tunnel" of sufficient height to prevent the escape of the water before it reached the archway. These duties the defenders are alleged to have

failed to perform, and from that failure, through the overflow of water, the damage to the pursuers' property is alleged to have arisen. The question is, whether any duty to the effect alleged was incumbent on the defenders, and whether, supposing there were such neglect or fault on their part, it has been established so as to infer against them liability for the damage concluded for.

The facts in evidence are summarised in the note of the Lord Ordinary appended to his interlocutor, and in explaining the grounds on which I am of opinion that this reclaiming note should be refused, I assume that the statement of facts there given, so far, is consistent with the evidence. I do so after having fully considered the proof and the commentaries made on it at the recent debate.

The primary question, as it appears to me, is how far it can be held in the special circumstances of this case that liability attaches to the defenders as proprietors of the heck or grating and of the alveus of the Denburn. There is little or no question that it was the accumulation of water at the mouth of the tunnel which caused the overflow; but there is as little doubt on the proof that the alveus of the burn, in so far as it is covered by the tunnel with its heck or grating, is the property not of the defenders, but of the railway company, with exception of a small portion of the *solum* at the mouth of the tunnel. As noticed by the Lord Ordinary, it is matter of admission that the whole of the grating, excepting about a foot upon the left bank of the stream, and the mouth of the tunnel, also with exception of about a foot, are on the defenders' property. From this point, however, the whole tunnel downwards is on the property of the railway company, and indeed is included within and forms part of their station under the several arrangements and relative deeds between them and the defenders in 1865 and 1867. It is in this admitted state of the ownership of the *solum*, on which the erection is made, that the defenders' liability as proprietors has to be considered, and this with due regard to these facts—(1) That the erection was not for the benefit of the town of Aberdeen, but for the use and benefit of the railway company; (2) that the tunnel and its grating or heck were constructed not by the town, but by the company; and (3) that the grating or heck at its mouth cannot be separated from the rest of the tunnel, but truly forms a part of that erection made by the railway company and not by the defenders.

The defenders may, indeed, be said to have allowed or tolerated the mouth of the tunnel and the grating thereon to have been, to the comparatively insignificant extent I have stated, formed on ground which belonged to them; but this cannot in any reasonable sense be held to imply liability against them as the true proprietors of the tunnel and its adjunct or necessary appendage, the heck or grating at its mouth. But although the connection of the defenders with the property of that portion of the burn where this erection occurs had been different from what it truly is, I think the principle recognised in the case of *Henderson and Thomson* v. *Sir Michael Stewart*, 23d June 1818, excludes any liability on their part. This decision is reported by Baron Hume, p. 522, and is referred to and founded on in *Dun* v. *Hamilton*, 11th March 1837. The tenants of Sir Michael, under permission contained in their lease, formed an embankment for collecting water in a large and deep reservoir upon his property. The embankment burst, and great damage was done by the water on the lands of inferior proprietors. The report of the case is very instructive. It was strongly urged that the permission given to the tenants in their lease was of itself enough to infer liability against the landlord, but Sir Michael's defence was sustained, that it was implied in any such permission "that the dam should be sufficient, and kept in proper repair; and if it was not, the reservoir was just as unauthorised by the defender as any act from which injury or violence could result to the pursuers or the public." The principle thus recognised goes further than it is at all necessary to go in the circumstances of the present case.

On this ground alone it does appear to me that the defenders are entitled to be assoilzied—unless it has been established by the proof that through acts of theirs, whether of fault or of negligence, the damage suffered by the pursuers through the overflow of water on the occasion libelled was directly caused. On this part of the case it is not my intention to dwell. I think it sufficient to say that throughout the proof I can find no fault or negligence of the kind established as against the defenders. There may be other parties responsible on that ground. It may or may not be that the railway company are in that predicament. They have not been called as parties to this action, and it would be out of place in their absence, and upon a proof led to which they were no parties, to hold them responsible. To this action it is a sufficient defence for the only parties called as defenders to show, as I think they have done, that no fault or negligence in this matter has been proved to attach to them.

The Lord Ordinary has with great minuteness in his note adverted to the several grounds on which the pursuers rely in support of their action against the defenders. His analysis of the evidence on these several points appear to me satisfactory, in so far as relates to the alleged liability of the defenders in the matter of this action; and assuming fault or neglect to have been the cause of the overflow which caused the damage, I am of opinion that the pursuers must look elsewhere for redress than to the defenders.

Supposing liability to any extent to attach to the defenders, a separate defence is stated on the ground of the damage having resulted from a *damnum fatali*. Having regard to the principles on which a defence of this kind has been judged of, and especially to the views stated in the House of Lords in the case of *Tennant* v. *The Earl of Glasgow*, referred to in the debate, and to the decision in this Court in the case of the *Earl of Orkney*, 17th December 1857, I would have difficulty in holding upon the evidence that the damage could here be ascribed to a *damnum fatali*, for the consequence of which no one is liable; or that the defenders, if fault or negligence in the matter of this erection can be held to attach to them, could evade liability for the consequences of this flood on the ground now under consideration. But entertaining the views which I have explained, and which, if well founded, lead to the absolvitor of the defenders from liability in this matter, it is not necessary for me to enter on the discussion further. There may be other parties against whom action may be hereafter brought as liable to the pursuers, and I desire to abstain from making any observations that might have the effect of prejudicing any defence on that ground which may be pleaded by such parties.

On the whole, I consider that the findings in the Lord Ordinary's interlocutor should be affirmed, and the reclaiming note refused.

The other Judges concurred.

Agent for the Pursuer—James Webster, S.S.C.
Agent for the Defenders—T. J. Gordon, W.S.

Thursday, January 19.

FIRST DIVISION.

MRS M'CLEW OR M'GIBBON *v.* WILLIAM RANKIN SENIOR AND OTHERS.

Process — Reduction — Title to Sue — Acquiescence — Servitude—jus quæsitum tertio. In the titles of the two first built houses in a street, a servitude *non altius tollendi* was inserted, accompanied by an obligation on the common superior to insert a similar restriction upon the remaining feuars in the street. Accordingly, in the titles of the next tenement which was feued off a servitude similar in kind, but different in terms and in degree from that above mentioned, was imposed, and the same obligation followed on the superior to insert similar restrictions in future feu-rights.

The owners of the two first-mentioned houses desiring to build in contravention of the restriction in their titles, applied by petition of lining to the Dean of Guild, lodging therewith a plan of the proposed buildings. This petition was served upon the owner of the last-mentioned house and others interested, but no copy of the plan was served, or other information given as to what was intended to be done, while a statement was made that the operations would not be injurious to the neighbourhood. Decree of lining was accordingly obtained in absence. In a subsequent reduction of this decree of lining, and declarator of servitude, at the instance of the owner of the last-mentioned house :—

Held (1), That she was not barred by acquiescence from reducing the decree, even though the buildings were almost complete, on the ground that she was not resident on the spot; that all information was withheld by the defenders in the petition for lining served upon her which might have led her to suspect that they meditated an infringement of the servitude; and that, being a lady and unskilled to business matters of the kind, she had been misled by their representations on record, so as not to oppose the petition.

Held (2), Upon the question of title—that the superior had sufficiently complied with the obligation on him to impose similar restrictions upon subsequent feuars, and that the restriction, being of the nature of a known servitude, and being imposed as a real burden upon each of the three properties, accompanied by an obligation on the common superior to insert a similar restriction upon all subsequent feuars, a mutuality of right and obligation arose in the owners of the three properties, which, there being admitedly a material interest to do so, entitled them each to enforce the servitude against the rest.—Or, in other words, they had each a *jus quesitum tertio* in the obligation of their co-feuars.

Opinion by Lord Deas, (who concurred, but desired to restrict the grounds of his judgment)—That the imposition of a negative servitude may be inferred. But that it can only be inferred from the title-deeds themselves, and not from extrinsic circumstances. That the insertion in the defender's titles of an obligation upon the superior to insert similar restrictions in all future conveyances, warranted the inference that the servitude imposed upon each was for the benefit of all, or in other words, that a mutual servitude was imposed—and that this was sufficient, without going farther, to entitle the pursuer to enforce the restriction in the defender's titles.

This was an action of reduction, at the instance of Mrs M'Gibbon, the proprietrix of the tenement of ground and house erected thereon, being No. 9 Carlton Place, Glasgow, of a decree of lining obtained in absence, before the Dean of Guild Court of Glasgow, on 29th April 1869, in a petition at the instance of William Rankin senior, and others, the proprietors of the adjoining tenements, Nos. 10 and 11 Carlton Place. Combined with this action of reduction, there were also conclusions of declarator that the defenders had no right under their titles, or otherwise, to erect and maintain upon the back ground behind their houses, or any part of it, any building or structure whatsoever exceeding 15 feet in height, or without consent of the pursuer to built upon the mutual division wall between the back ground of the property No. 10 Carlton Place and that of the pursuer No. 9. There were farther corresponding conclusions for interdict against their building; and to have them ordained to remove what they had already built.

The case thus divides itself into two parts; *First*, the question of reduction of the decree of lining, already obtained by the defenders, empowering them to proceed with the operations contemplated, which were the erection upon the back ground of Nos. 10 and 11 Carlton Place of warehouses and other premises, for the prosecution of their business of cork merchants and manufacturers; *Second*, the question of title, as to whether the defenders had right to make such erections, or whether the pursuer was entitled to prevent them. The question of acquiescence as a bar to the reduction was not raised by the defenders on the original record. But a statement and plea to that effect were allowed to be added when the case came into the Inner House on Reclaiming Note.

On the first head it appeared that the defenders had upon 27th April 1869 presented a petition to the Dean of Guild of Glasgow for authority to built, and that along with their petition they had lodged the architect's plans of their proposed erections. That the Dean of Guild had ordered service of the petition upon the pursuer and others interested, and answers within 48 hours. That the petition was accordingly served upon the pursuer, but without any copy of the plan, or any other specification, whereby it might have been apparent to what extent the defenders were intending to raise their buildings, or whether it was to be beyond the 15 feet to which they were admittedly entitled. That the pursuer resided at some distance from Carlton Place, and that her tenant was at the time absent from Glasgow. The pursuer farther stated that "from ignorance of matters of this kind, and being put off her guard by a statement in the plea in law annexed to said petition