delivered. But it did not require any technical delivery, for it was by a father in favour of his children, and besides he put it on record himself. It was then said that the bond was no longer binding because it had been impliedly recalled by three subsequent bonds of provision. But (1) It was not in Mr Hope Johnstone's power to recal it. A father who binds himself in his marriage-contract to make a provision in favour of his children, and makes it, cannot recal it at will. It was maintained that he might have burnt it while in his own power, but so he might have done any other wrong act, but that would not prove that the act was a right or lawful one. But (2) He never recalled it. No doubt the subsequent deeds seem to be for a smaller sum, but you cannot innovate upon a larger provision by a subsequent deed giving a smaller sum. Subsequent deeds may give security for a smaller sum *pro tanto* of the whole obligation, but they do not innovate on the original bond. And in corroboration of this we find that the deed was afterwards recorded. I see no answer to this, and this disposes of the whole of the first point.

On the second point—the £7000 provision—I concur. The father left a legacy from his general estate to his younger children. Why should he not? The only answer attempted to be given was the maxim *debitor non presumitur donare.* But this does not apply, for he was not the debtor during his lifetime; he only bound the heir of entail to pay it. Throughout the whole argument I have failed to see where the difficulty lay.

LORD YOUNG—I concur.

The Court adhered.

Counsel for Pursuer (Respondent)—Johnstone—Pearson. Agents—Pringle & Dallas, W.S.

Counsel for the Heir in Possession and the late Mr Hope Johnstone's Trustees (Defenders and Reclaimers)—Kinnear—Keir. Agents—Hope, Mann, & Kirk, W.S.

Counsel for the next Heirs (Defenders and Reclaimers)—Lord Advocate (M'Laren)—Mackay. Agents—Lindsay, Howe, Tytler, & Co., W.S.

Wednesday, May 19.*

FIRST DIVISION.

[Lord Young, Ordinary.

CITY OF GLASGOW BANK LIQUIDATION—(*JOHN GILLESPIE'S CASE*)—THE LIQUIDATORS *v.* JOHN GILLESPIE (MR AND MRS GODBY'S MARRIAGE-CONTRACT TRUSTEE) AND OTHERS.

Trust—Homologation—Homologation of Trustee's Illegal Acting by Beneficiary—Where Trustee sought Relief from Beneficiary.

Trustees invested part of the funds under their charge in the stock of a bank of unlimited liability—an investment which the deed did not authorise. The bank failed, and its liquidators, as coming in place of the only surviving trustee,—who had surrendered to them his entire estate on receiving his discharge,—raised an action against the beneficiaries for payment of the calls on the stock belonging to the trust-estate. They averred that the beneficiaries in question "were informed and were well aware of the said investment, and gave their sanction and approval thereto;" and "also from time to time received accounts showing the investments of the trust and the application of the income, and were thus informed that the said bank stock was retained as a permanent investment of the trust-funds." *Held* that this averment, although, if well founded, it might bar the beneficiaries from claiming damages from the trustee for his breach of trust, was irrelevant where it was sought to show that the beneficiaries had come under an obligation to relieve the trustee in the circumstances which had occurred.

Question (*per* Lord Deas) Whether such an obligation could be proved otherwise than by writ of the beneficiaries in express terms?

By antenuptial contract of marriage between Mr Frederick Godby and Miss Mary Binnie or Godby, now Parkhurst, dated 7th October 1848, Mr Godby conveyed to Robert Binnie and John Binnie, and the survivor of them accepting, and such others as might be appointed, by virtue of the powers thereinafter specified, as trustees for the purposes therein mentioned, two policies of insurance on his life for £200 and £800 respectively; and the trustees were directed to hold the same when recovered for behoof of Miss Binnie in liferent, and the children of the marriage in fee, with ulterior destinations in the event of there being no children. By the same deed Miss Binnie conveyed to the trustees the sum of £500, receipt of which the trustees acknowledged, and which sum it was declared "shall be invested by us, the said trustees, on such security as we or our foresaids, as trustees foresaid, with consent of me, the said Mary Binnie, may approve of;" and it was further agreed that the trustees should pay the annual proceeds or interest of this sum half-yearly to Miss Binnie, on her own receipt alone, during the joint lives of Frederick Godby and her, and thereafter to the survivor; and that the same should belong to the children of the marriage in fee, with ulterior destinations in the event of there being no children.

Mr Godby died on 2d January 1856. The amount received in respect of the policies of insurance on his life assigned to the trustees by the marriage-contract was £1102, 10s. Of this sum £800 was in 1868 invested by the trustees in £500 City of Glasgow Bank stock, and stood registered in their names. On 29th December 1869 one of the trustees—John Binnie—resigned office, and by deed of assumption dated 6th and registered 21st March 1871 the surviving trustees assumed John Gillespie, W.S., and James Gillespie, residing near Cramond, Edinburgh, as trustees along with himself, and the stock was thereafter registered in their and his names.

Robert Binnie died in 1872, and on the City of Glasgow Bank going into liquidation the Court on 22d February 1879 ordered James Gillespie's name to be deleted from the register of members and list of contributories. The remaining trustee,

* Decided March 20.

John Gillespie, who was otherwise involved in the failure, was unable to pay in full, but he received his discharge on granting to the liquidators an assignation of "all right competent to me to be relieved out of the funds held by the trustees under the said contract of marriage, or by the beneficiaries under the same, of the calls made upon me in respect of the said stock, and all right competent to me to obtain repayment out of said funds, or from said beneficiaries, of the sum paid by me to the said liquidators in manner foresaid, with power to them to institute and follow forth, either in my name or their own, all actions and proceedings which they may deem necessary in the premises, they always relieving me and my heirs and successors of all expenses incurred in connection therewith."

The pursuers of this action were the liquidators of the bank—as such and as assignees of John Gillespie—and the defenders were John Gillespie (who did not appear) and also Mrs Godby, who had in 1865 been married to Mr Parkhurst, and Mr Parkhurst for their interest. The action concluded for declarator "that the pursuers are entitled to have paid over to them the whole annual proceeds or income of the trust-estate under the charge of the defender the said John Gillespie, as trustee foresaid, during the lifetime of the said Mrs Mary Binnie or Godby, now Parkhurst, aye and until the amount of the said annual proceeds or income so paid over to the pursuers shall be equal to the amount of calls made or to be made by them upon £500 stock of the City of Glasgow Bank, part of the said trust-estate, with interest at the rate of 5 per cent. per annum on the said calls from the date when they respectively became payable;" and for payment of the calls already made.

It was not disputed that the marriage-contract between Mr and Mrs Godby did not authorise the investment of trust-funds in City of Glasgow Bank stock, but the pursuers averred that "Mr and Mrs Parkhurst were informed and were well aware of the said investment, and gave their sanction and approval thereto. Mrs Parkhurst and her husband also from time to time received accounts showing the investments of the trust and the application of the income, and were thus informed that the said bank stock as retained was a permanent investment of the trust-funds. They sanctioned and approved of said investment." The defenders "denied that either Mr or Mrs Parkhurst ever gave any sanction or approval to the investment in City Bank stock. They were not consulted with reference to the purchase, they did not know of the purchase being made, and their attention was never subsequently called to the matter."

The pursuers pleaded—"(2) The defenders Mr and Mrs Parkhurst, or at least Mrs Parkhurst, having sanctioned and approved of the investment of part of the trust-funds in the purchase of City of Glasgow Bank stock, the pursuers are entitled to the annual income of the trust-estate payable to Mrs Parkhurst until the whole calls made or to be made upon the said stock shall be satisfied or paid. (3) At anyrate, the pursuers are entitled to draw the said annual income until the amount paid by John Gillespie towards calls upon the said £500 stock is satisfied or paid."

The defenders pleaded, *inter alia*—"(1) The investment of trust-funds in City of Glasgow Bank stock not being warranted by the terms of the trust-deed, and not having been consented to or approved of by the present defenders, they are entitled to absolvitor."

The Lord Ordinary (YOUNG) sustained the first plea-in-law for the defenders, and assoilzied them from the action.

"*Note.*— . . . It is not pretended that Mr and Mrs Parkhurst undertook to relieve Mr Gillespie of the obligation and risk attaching to the stock in question, either universally or to the limited extent of Mrs Parkhurst's interest in the trust-estate. It is, however, averred in fact that they were informed of the purchase of the stock, 'and gave their sanction and approval thereto,' and also to its subsequent retention, of which they were informed by accounts rendered to them from time to time. The legal *medium concludendi* is that these facts imply an obligation to relieve the trustee of the liabilities attaching to him as the registered holder of the stock to the extent of Mrs Parkhurst's life-interest in the trust-estate, to which the conclusions are limited.

"The question therefore is, whether the facts, taking them as averred, legally imply the obligation on which the action is laid? and I am of opinion that they do not.

"The pursuers sue as Mr Gillespie's assignees, and the action must be considered exactly as an action by him directed against Mr and Mrs Parkhurst, on the alleged implied obligation of relief, would have been. Now, his position is the same as if he had bought the stock with the trust-money in 1871, when on his assumption he took it over and caused it to be registered in his name. I should have thought so irrespective of the fact that he was law-agent of the trust when it was in fact bought and advised, and accomplished the purchase in that capacity. He retained the stock for seven years after his assumption. A trustee so acting may stipulate for an express guarantee, total or partial, against risk and liability, but such a guarantee will not readily be implied. Now, the footing of this action is that Mrs Parkhurst (with her husband's consent) impliedly gave such guarantee to the extent of her marriage-contract provision, which her trustee was accordingly entitled to regard as pledged in his hand to secure it. Searching for the facts which are said to imply this, I find only this—that she and her husband knew and approved of the purchase and subsequent retention of the stock. I have not in this action to consider whether this fact would disentitle Mrs Parkhurst to claim from the trustee the loss sustained by her in consequence of the improper investment. But I am clearly of opinion, and so decide, that it implied no obligation to relieve him of the liabilities attaching to himself by the investment, which was an improper one, notwithstanding Mrs Parkhurst's approval.

"I suggested to the defenders' counsel, whether, notwithstanding my opinion against the relevancy, it might not be prudent, with reference to their interests in the matter of procedure, to allow a proof before answer, and decide the case on the facts as proved; but he elected to take a judgment on the relevancy, which — having the opinion which I have expressed—I have not felt myself at liberty to refuse. The printed correspondence leaves the substantial matter of fact in no doubt, and I have assumed, as I hope I have

made clear, that the pursuers' averments are exactly true. The defenders certainly knew of the investment, and were well satisfied with it. If this is sufficient to support the action, my judgment is wrong; and if not, a proof would apparently be superfluous."

The pursuers reclaimed, and argued — Both this case and *Sanders* were cases of homologation, but there the deed was alimentary; here the lady was herself a party to the deed, and she knew of the investment. She was really in the position of a trustee. There ought to be a proof before answer.

Authority—*Sanders* v. *Sanders' Trustees*, Nov. 7, 1879, 17 Scot. Law Rep. 75, 7 R. 157.

Argued for respondent—In *Sanders'* case there was previous consent as well as subsequent homologation. Here there was no previous consent.

Authorities—*Douglas* v. *Dempster*, June 30, 1859, 21 D. 1066; *Lauder* v. *Millars*, July 15, 1859, 21 D. 1353; *Cowan* v. *Kinnaird*, Dec. 15, 1865, 4 Macph. 236; *Hope*, March 15, 1870, 8 Macph. 699; *Ramsay* v. *Ramsay's Trustees*, Nov. 24, 1871, 10 Macph. 120; *Menzies* v. *Murray*, March 5, 1872, 2 R. 512.

At advising—

Lord President—The liquidators of the City of Glasgow Bank sue this action in the character of assignees of Mr John Gillespie, W.S., and they can stand in no better position in the question raised by this record than their cedent would have done if he had been pursuing the action himself. The nature of the claim is a claim of indemnity, and it is grounded upon this—that Mr John Gillespie having been made liable as trustee under the marriage-contract of Mr and Mrs Godby as a partner of the City of Glasgow Bank in respect of stock held in his name as a trustee under their marriage-contract, he is entitled to an indemnity or relief to a certain extent against Mrs Godby, now Mrs Parkhurst. The grounds of this claim are certainly very peculiar, and, so far as I can see, do not resemble any case that has yet occurred in this branch of the law.

It is necessary to attend to the facts very particularly. Mr and Mrs Godby were married in 1848, and in their antenuptial contract, which was dated on the 7th of October of that year, Mr Godby conveyed to two gentlemen of the name of Binnie—Robert and John Binnie,—as trustees, two policies of insurance on his life for £200 and £800 respectively, and the trustees were directed to hold these two policies when recovered—that is, of course, upon the death of Mr Godby—for behoof of Mrs Godby in liferent and the children of the marriage in fee, and with ulterior destinations in the event of there being no children; but Mrs Godby's interest in these sums when recovered was to be that of a liferenter merely. There is another provision in the marriage-contract regarding a certain sum of £500 which was conveyed to trustees by Mrs Godby, but it does not appear to me that that enters into this question at all. The husband Mr Godby died in 1856, and the two policies of insurance being realised amounted to somewhere about £1100, and this sum was invested by Mr Robert and Mr John Binnie, the two trustees, to the extent of £800, in City of Glasgow Bank stock. That investment was made in December 1868, and at that time it is to be observed Mr Gillespie was not one of the trustees. Before this investment came to be made Mrs Godby had been married a second time to her present husband Mr Parkhurst, and the averment of the pursuers, upon which mainly their claim is rested, is that "Mr and Mrs Parkhurst were informed and were well aware of the said investment, and gave their sanction and approval thereto" after the investment was made, but not before. "Mr and Mrs Parkhurst," it is further averred, "also from time to time received accounts showing the investments of the trust and the application of the income, and were thus informed that the said bank stock was retained as a permanent investment of the trust funds." Now, after all this had been done, and in 1869, Mr John Binnie, one of the trustees, resigned, and Mr Robert Binnie, the remaining trustee, assumed two new trustees—Mr James Gillespie and Mr John Gillespie. This was done in 1871, and the deed of assumption being produced to the bank, the stock, which had been previously registered in the name of Mr Robert and Mr John Binnie, was transferred to the name of the trustees as they then stood, viz., Mr Robert Binnie, Mr James Gillespie, and Mr John Gillespie. With regard to Mr James Gillespie it has been found in the course of this liquidation that his registration as a partner of the bank *qua* trustee was unauthorised, and his name has been removed from the list of contributories. But there is no doubt that the name of Mr John Gillespie was entered as a partner in respect of those shares with his perfect knowledge and consent. His position was this—he had been law-agent in this marriage-trust for a considerable period, and at the time when the investment in the bank stock was made. He says that he was not consulted about that investment at the time—Mr Robert Binnie being the person who managed the financial affairs of the trust—but he was quite aware of the investment having been made, and when he was assumed as a trustee he adopted that investment and continued it for a very considerable number of years—not less than seven years before the stoppage of the bank.

Now, in these circumstances, the bank say in name of Mr John Gillespie that he is entitled to be relieved or indemnified for what he did in adopting and continuing that investment by Mrs Parkhurst to the extent of her interest in the trust-estate. If there are any grounds for such a claim of indemnity, I confess I am not able to see why it should be limited to the extent of Mrs Parkhurst's interest in the trust-estate. It is not a claim which can arise out of the circumstance that Mrs Parkhurst is interested in the trust-estate, and therefore if she is under a personal liability to Mr Gillespie at all, I have throughout the discussion here been much puzzled to understand why it should be limited, or why it should not extend to a complete indemnity of Mr Gillespie. One quite understands that when a trustee is acting in the performance of his duty, and within the limits of authority, he is entitled to a full and complete indemnity for all that he has done, not from the beneficiary individually, but from the trust-estate—from the estate of the person whose trustee and mandatory he is—the deceased person or the living person, as the case may be. But that claim of indemnity does not lie against the beneficiaries personally. The

ground of it is that in the execution of the authority committed to him, and in the due performance of the duty which he has undertaken, he is entitled, like every other mandatory, to be kept scatheless. But it must be quite obvious, and is matter of decision, that if the trustee in place of acting within his power, and merely performing his duty, transgresses those powers and commits a breach of trust—for every transgression of power by a trustee is in law a breach of trust—then he is no longer entitled to such indemnity, but, on the contrary, he may be made personally answerable to the beneficiaries under the trust for what he has done. Now, here Mr Gillespie *ex concessis* exceeded his power. There was no power of making such an investment as this given to the trustees, and it was an investment of a character which without special powers no trustees were entitled to make. Therefore he committed in that sense—not using the term offensively, but in the legal sense—a breach of trust, and he would be in respect of that breach of trust personally liable to those who were interested in the trust-estate—in short, he would be bound, if the trust-estate suffered, to replace the money which had been lost to the trust-estate.

One can very easily understand that a claim of that kind against a trustee who has committed an excess of power may be barred in respect of the personal conduct of those who are interested in the trust-estate. If they knowingly and willingly assented to the commission of that breach of trust, it is very possible that they may be barred from making any claim against the peccant trustee. But that is not the nature of the case we are dealing with at all. That is a case in which the trustee would succeed in defending himself upon the ground that those who are seeking to make him liable are barred from doing so by their own conduct. But what is maintained here in name of Mr Gillespie is nothing of that kind. It is something not only much larger, but something quite different in character. It is that he is to be indemnified for the consequences of his own breach of trust by those who have lost their money by reason of that breach of trust. Now that, upon the face of it, is a very anomalous and extraordinary claim. If a trustee knowing that he has not the power to make a certain investment, nevertheless makes it, and then he comes to the beneficiaries who are interested in the fund and explains to them what he has done, giving them even the fullest explanation as to his having actually committed a breach of trust in what he has done, and they assent to it and let it stand, can that possibly imply anything more than this, that they forgive him for what he has done? And, above all, can it imply this extraordinary consequence that the person against whom the breach of trust has been committed shall undertake a personal liability to indemnify the trustee for the breach of trust which he has committed? That would be an extraordinary implication, and one that I think on its mere statement condemns itself. One can quite understand persons being barred by their conduct—by their acquiescence or assent to a certain thing that has been done—from afterwards challenging it or seeking relief against the consequences of it. But that they—the persons sinned against—should by their mere conduct or acquiescence be held to take the place of the sinner, and to relieve him of all the consequences of his transgression, is an entire novelty. I never heard of such an indemnity as that, and I never heard of such an implication from mere conduct, or silence, or acquiescence, or what amounts to consent. And therefore I quite agree with the Lord Ordinary in the conclusion that he has come to—that this record is quite irrelevant to raise such an obligation of indemnity or relief against Mrs Parkhurst, either to the extent of her liferent interest in this estate or to any other effect whatever.

Lord Deas—I should not have objected to a proof before answer in this case to ascertain the precise state of the facts. So far as we can guess, it was not likely to have made the case stronger against Mrs Parkhurst. How it might have been if she had been the fiar of the estate we do not require to consider. She was a mere liferentrix, and it is perfectly plain that if she undertook any obligation of the kind alleged at all, it must have been an obligation to relieve the trustee Mr Gillespie of all the liability which from his own fault had devolved upon him. Now, that would require very strong proof, to say the least of it. I am not prepared to say that a claim of that kind could arise by mere implication at all. Her knowledge of what was done, and her acquiescence in it might, as your Lordship has said, have barred her from making any claim upon the trustee in consequence, but it could not have gone further than that; and I am not prepared to say that such an obligation as it is said was thereby constituted could have been proved in any other way than by a writing, and that writing in express terms. There is nothing of that kind here. In short, I am very clear that the Lord Ordinary has come to the right conclusion, and that to have allowed a proof before answer would only have been incurring useless expense, and therefore I entirely concur in the result at which your Lordship and the Lord Ordinary have arrived.

Lord Mure—I concur. With regard to what Lord Deas has said about a proof before answer, I agree with him in thinking that in one view of the case it might have been matter for consideration provided the averment had remained on record which the parties asked leave to add to it, as to the sanction and approval of the investment before it was made. But as I understand, that alleged antecedent authority is not now before the Court. The allegation to that effect was withdrawn at the discussion before avizandum was made with the case; and it being a simple allegation of approval, without any as to Mrs Parkhurst's having been a party to the investment in the shape of having considered it beforehand, I do not think there is any matter on this record in any view of it which required a proof before answer, because what is alleged in the condescendence and made the foundation of the 2d plea-in-law is simply the after knowledge and sanction of the money being in the bank, and of dividends being drawn from the money so invested. Now, I concur with your Lordships and the Lord Ordinary that in the circumstances of this case no such claim could have been made by Mr Gillespie, and still less can it be made by the party to whom he made over the

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

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

LORD SHAND was absent.

The Court adhered.

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

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

Friday, May 21.

SECOND DIVISION.

[Dean of Guild.

BARCLAY *v.* M'EWEN AND OTHERS.

Property—Common Property—Common Interest.

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

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

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

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