with, made up by him after consultation with the different parish trustees, which lists were amended and approved of by the meeting, and after being docqueted by the chairman were ordered to be reported to the next Michaelmas general meeting of trustees in 1867, in terms of the 53d section of the Act. Then at the Michaelmas general meeting of the trustees, held at Banff on 27th September 1867, the lists of roads for both districts were submitted to the meeting, and after being examined, adjusted, and approved, each list was signed by the chairman, and the lists were declared to be the lists of roads for the respective districts to be maintained out of the moneys to be raised by assessment under the Act. In point of fact both these lists included all the bridges within the county of Banff, and referred to all the bridges on its boundaries with the counties of Aberdeen and Elgin. At a special meeting of the trustees held on 28th February 1867, and at the annual general meeting of the trustees held on 30th April 1867, lists of the county bridges in each district were submitted and approved as in terms of the 61st section of the Act, but these lists only specified the bridges on the boundaries of the county between it and Aberdeen and Elgin, and none of the bridges wholly situated within the county."

The present petition was presented by the trustees in the view "that although all the bridges a list of which is appointed to be made up under section 61 of the statute are specified in the lists approved of by the trustees as aforesaid, yet there should have been a separate list made up and approved of in terms of the said 61st section, containing the whole bridges within the county and upon its boundaries."

The petitioners prayed the Court to authorise them to have a list of bridges made up in terms of section 61 of the statute, to be approved of at their first general meeting, or at such time and on such conditions as the Court might appoint.

After hearing counsel in support of the petition—

Lord President—It was the duty of this body of road trustees among other things to cause to be made up within six months after their first general meeting a list of all the bridges in the county under section 61 of the Act. They omitted to do that within the six months, and they now ask for authority to do so notwithstanding the lapse of that time. This appears to me to be quite a case for the exercise of our equitable jurisdiction, and I think the illustration suggested by counsel of proceedings under the Bankruptcy Act is quite in point. Where that statute directs a meeting to be held, or a notice given within a certain time, and that is omitted to be done *per incuriam*, we have on most occasions given authority for it to be done notwithstanding the lapse of the prescribed time. I have therefore no difficulty in acceding to the prayer of this petition.

Lords Deas, Mure, and Shand concurred.

The Lords pronounced this interlocutor:—

"Grant the prayer of the petition, and authorise the petitioners to make up a list of bridges in terms of section 61 of the Banffshire Roads Act 1866, referred to in the petition, such list to be settled and approved of at their first general meeting after the said list shall have been made up, and that notwithstanding of the period allowed by the said statute for making up said list having expired."

Counsel for Petitioners — Trayner — Watt. Agent—Alex. Morison, S.S.C.

Friday, October 21.

SECOND DIVISION.

[Sheriff of Lanarkshire.

(Before Lords Young, Craighill, and Rutherfurd Clark.)

CAMERON *v.* FRASER AND OTHERS.

Property—Neighbourhood—Liability of Proprietor for Injurious Effects of Operations on his own Property—Liability not discharged if Operations conducted by an Independent Contractor.

One who performs any operations, however reasonable and lawful, on his own property, must so perform them as to cause as little damage as possible to his neighbour; and it is no defence against an action by that neighbour, on the ground that the operations were conducted so as to cause unnecessary injury, that they were conducted by an independent contractor.

William Cameron, brickburner and grocer, was tenant of the shop No. 58 Cavendish Street, Glasgow, the proprietor of which, as well as of the adjoining building, being the corner house of Cavendish Street and Eglinton Street, was William Fraser, spirit merchant. Warrant from the Dean of Guild to take down the corner house and erect a new tenement on its site, and to occupy a portion of the street for building materials, having been obtained by Fraser, operations were begun in June 1880. Fraser entered into a contract with Galbraith & Company, builders, for the removal of the old and the erection of the new buildings. A barricade was erected within the limits prescribed by the Dean of Guild for the purpose of laying down the building material required. In the course of the operations conducted by the contractors damage was caused to Cameron's goods exposed for sale by the dust caused by the destruction of the old building and by the slackening of lime for the new one. In the course of the operations, also, injury was caused to the chimney of Cameron's dwelling-house, which communicated with his shop, and a quantity of stones, soot, and rubbish in consequence fell into his house, breaking a grate, and doing other damage to his property. He raised this action against Fraser, concluding for £100 as damages for the injury done to his goods and his business, which, he averred, had greatly fallen off in consequence of the inconvenience and annoyance to which his customers had been put through the defender's operations. He also averred that by these operations he had been prevented from access to his coal-cellar, and that the plaster in his dwelling-house was broken and destroyed. The defender denied that any serious loss and inconvenience had been caused to the pursuer, but maintained that if any such had been caused he was not responsible therefor, in respect that he had contracted with an independent contractor to do the work.

He pleaded—"(1) The defender having contracted with properly qualified contractors for the execution of the work connected with the buildings, and having retained no personal control over the tradesmen employed, is not responsible to the pursuer for any annoyance or damage caused by them in carrying on their operations."

In consequence of this plea the pursuer raised a supplementary action against Alexander Galbraith & Company, the contractors. These actions were conjoined.

The Sheriff-Substitute (SPENS) before answer, and under reservation of the pleas of parties, allowed a proof, and thereafter pronounced the following interlocutor:—"Finds that the defender Fraser became proprietor of the premises in question about two years ago: Finds the premises are let by the year: Finds the defender Fraser has a spirit shop in proximity to the pursuer's premises: Finds that the defender Fraser resolved to make considerable alterations in connection with the spirit shop, his property and occupied by him, and other premises belonging to him, including premises above the pursuer's shop and immediately to the side thereof: Finds that in May or June 1880 these operations were begun by part of the building being taken down and a barricade being put round the corner of Eglinton Street and Cavendish Street: Finds that one side of said barricade was in close proximity to the pursuer's shop: Finds that during the summer months very great inconvenience was caused to the pursuer's business: Finds also that certain of the goods in the shop were made unuseable in consequence of the sand and dust, caused by the operations, getting mixed with said provisions: Finds this led to considerable loss of custom on the part of pursuer: Finds the shop had to be closed on several days: Finds also a certain amount of damage was caused by operations in connection with a chimney above a room occupied by the pursuer at the back of the shop: Finds no liability has been proved as against the other defenders, the contractors; therefore assoilzies them from the conclusions of the petition and decerns, but finds the landlord is liable to pursuer for the damage occasioned to the stock of the shop, and the loss of business in respect of breach of implied contract; assesses the damages at the sum of thirty pounds, and decerns against the defender Fraser in pursuer's favour for said sum of thirty pounds, with interest at the rate of five per centum per annum: Finds defender Fraser liable to the pursuer in expenses, and the pursuer liable to the defenders Galbraith & Company in expenses."

He added this note—"The difficulty I have had in this case has been solely due to the case of *Laurent* v. *Lord Advocate*, 7 Macph. 607. It is to be pointed out, however, that the case in the Court of Session referred to did not bar an action by a tenant against a landlord for breach of implied contract. The defender in letting the shop in question knew it was for the purposes of a grocery business. In so letting it, it must, I think, be held to have been implied that no operations of his would either damage the goods in the shop or stop the business; that the business was seriously damaged, as well as that a considerable portion of the stock was made unsaleable, is, I think, perfectly clear from the proof, and that for that damage the landlord should pay. As regards loss of custom—which no doubt is the chief element of damage in the sum I have awarded—I think that that is damage to which the pursuer is legally entitled, because the shop was let as a grocery shop, or at least was let in the knowledge that that was the business that was being carried on in it, and if the landlord by his actings drives away custom, he, it seems to me, is liable for that loss of custom. I may say that I estimate the damage to goods and inconvenience at £10, and the loss of custom at £20.

"As regards the contractors, I can see no possible ground of liability against them; they were employed by the defender Fraser to do the work required, and there is nothing whatever to show that they did not do the work properly enough; at all events, pursuer has failed to prove any *culpa* inferring liability against them."

On appeal the Sheriff (CLARK) pronounced this interlocutor—"Finds that the defender Fraser, as proprietor of the premises in question, caused the operations complained of to be carried out, and in consequence thereof the pursuer, as occupant of a shop in proximity, was subjected to certain inconvenience and loss of custom: Finds that the said operations were in themselves legal and entirely within the power of the defender: Finds that they were carried out in the ordinary way and with a greater amount of inconvenience or injury to the interests of the pursuer's shop than in such circumstances must be expected: Therefore finds that no case has been made out for reparation against the defender: Finds that the other defenders, Alexander Galbraith & Company, were contractors under the foresaid defender for the carrying out of the said operations, and that in their case it has not been established that they were guilty of unskilfulness or dereliction of duty; therefore recalls the judgment appealed against, and assoilzies the whole defenders from the conclusions of the conjoined actions: Finds the pursuer liable to the defenders in expenses," &c.

He added the following note:—"This is a case not unattended with difficulty. The law involved appears to be laid down in the opinions of the Judges in the case of *Laurent* v. *The Lord Advocate*, March 6, 1869. The ground principle is the well-known maxim *sic utere tuo ut alienum non lædas*. In applying this principle to the case of neighbouring proprietors within burgh, the question becomes complicated by the consideration that operations lawful in themselves cannot always be carried out without damage of a serious kind to the interests of the proprietor or occupant of an adjacent tenement. In such a case the law seems to be that there is no claim for reparation unless one of two things is made out—either that the operations were in themselves illegal, or that they were not carried out with that degree of care and attention to the interest of the neighbouring tenement which in the circumstances was proper. It seems plain that the fact of the defender in such an action being the pursuer's landlord makes no difference, unless it can be shown that there was some contract or undertaking between them that damage so accruing was to be the subject of compensation. It may also be proper to state that different rules may apply where the operations complained of

are not made on neighbouring tenements, but on or within the subjects actually let.

"In the present action the pursuer was tenant under the defender of a shop in proximity to other property of which the defender was also proprietor, and the defender resolved to make certain alterations on this latter part of his property. The result was that in carrying out these alterations the pursuer was put to inconvenience and suffered damage to a certain extent from the dust, &c., created, and also from the barricade raised. His custom was affected. I do not think this can be disputed on the proof, though I must say that the inconvenience and actual loss seems to be very much exaggerated. The real question however is, Can it be said that the defender is responsible for what has taken place? Now I think it is plainly made out that the operations were in themselves perfectly legal. They were what a proprietor is entitled to do on his own property. The next matter for inquiry is, whether they were carried out with that care, skill, and attention which would reduce the pursuer's loss and inconvenience as far as possible? Now, on this also it seems to me, on a fair construction of the evidence, that no case has been made out against the landlord. He employed contractors accustomed to such work and capable of its performance. The work was done in the ordinary way in which such operations are carried out in Glasgow. It may be that the lime and materials might have been laid down at a greater distance from the pursuer's shop, and the barricade might have been of a different construction and to a certain extent have occupied a different site. Yet I must say on the evidence that I am by no means sure that any changes of this kind would have benefited the pursuer, and it is obvious to remark that they would probably have injured others whose interests were equally worthy of attention. So far, therefore, as the landlord is concerned, I do not see that any case has been made out against him.

"The action is also laid against the contractors, and certainly if it could be shown that they had acted in a reckless or unskilful manner, whereby the evils inseparable from the operations on which they were engaged were unnecessarily intensified, they might have rendered themselves liable in the circumstances. I do not see, however, on the evidence that this has been made out. They seem to have acted in the usual and approved way, having regard not only to the interest of the pursuer but also to the interests of the whole neighbourhood, and also of the thoroughfare. It must not be forgotten that operations of the kind in question can never be carried on within burgh without a certain degree of inconvenience and even damage to neighbouring occupants. The public are well aware of this, and when they take subjects within burgh, either as dwelling-houses or shops, must be held to have had it in view. It forms a species of implied contract among all neighbours so situated. It is only therefore when the inconvenience or damage is in excess of what may reasonably be expected that any claim for reparation would seem to arise."

The pursuer appealed, and argued—It must be conceded on the other side that one who conducted such operations as had been conducted by Fraser, was bound to do so in such a manner as to cause as little damage as possible to his neighbour. The proof showed that in this case the lime had been slackened in such a manner as to do, not as little, but as much harm as possible, and, in like manner, the old building had been demolished with so little attention to the usual precautions for keeping down dust that much unnecessary damage had been done. It was no answer for the defender Fraser to say that he had employed an independent contractor. The pursuer had no concern with any arrangements there might be between him and his contractor; he was bound to have the operations properly done, just as if he had done them himself—*Bower* v. *Peate*, Feb. 25, 1876, 1 L.R. Q.B. Div. 321. There was here liability founded on the law of neighbourhood as well as on the relation of landlord and tenant—*Laurent* v. *Lord Advocate*, 7 Macph. 607 (Lord Deas at p. 612). That was a case decided on the special terms of an issue, the general law being stated by Lord Deas with the concurrence of Lord Ardmillan.

Argued for Fraser — For structural damage done by the operations there was no doubt a liability, and that was all the benefit the appellant could take from *Laurent's* case. But a claim for injury to the appellant's business and goods must proceed on the ground of fault, and on the evidence fault was not proved.

At advising—

Lord Young—This is a case raising questions of legal importance, though the value is only about £30, for the appellant's counsel said he was satisfied with the amount of damages which the Sheriff-Substitute awarded. The case is in no way complicated in point of fact. The pursuer is tenant of a grocer's shop, in which he seems to have carried on a good business till these operations next door by the person who happened to be his landlord were begun. It is proved that the effect of these operations was to a great extent to destroy the goods in the pursuer's shop and to injure the custom the shop enjoyed, thereby damaging the property of the tenant in the lease. It was a lease of a shop for the purpose of a grocer's business, and if by any operations of another the business cannot be carried on, the tenant's estate is thereby damaged. This may be taken as a safe principle of law, that when a party executes operations on his property (probably the observation may be made generally, but I may be taken now as limiting it to the case of property in towns, where the most frequent examples of it are afforded), however reasonable and lawful these operations may be, he must take care in conducting them to do as little damage as possible to his neighbour. I should have been disposed to think (but it is unnecessary to decide that) that he must make good by reparation any special damage caused to another by his operations. I express no decided opinion on that, since it is unnecessary so to do. But in saying so much as I have done, I guard myself against being thought to mean that a party next door or near to the operations which are carried on is entitled to complain of every little inconvenience caused to him. Dwellers in towns must put up with inconveniences incidental to life in towns, and the same remark is true, though in a less degree, of dwellers in other places. There will be more dust on some occasions than on

others, and there are disagreeables connected with repairs, always going on somewhere in towns to a greater or less extent, which must be put up with, and the occasioning of which will give rise to no claim of damages. But it is proved here that the goods in the pursuer's shop were to a large extent destroyed, so that they had to be thrown out, and that the manner in which the whole operations were conducted was such that people would not resort to the shop, and that the business fell off to an extent which is capable of the most distinct proof, not because of any circuity made necessary by an erection on the pavement, but because the atmosphere of the place was rendered such that people would not pass through it, it being the same atmosphere which prevented customers from coming to the shop, destroyed the goods, and rendered them unsaleable. It is vain to say that damage of that kind and extent was not avoidable, and that repairs and improvements cannot be made without such injury being caused. Being therefore of opinion that the injury is established as matter of fact, without deciding any more general principles of law, I think that sufficient to infer liability to make it good to the neighbour. I do not think that the amount allowed by the Sheriff-Substitute will do more than compensate the pursuer for the direct damage caused by the operations of his neighbour the defender Fraser, for his own purposes and convenience. I am of opinion, therefore, that the judgment of the Sheriff-Substitute ought to be affirmed in substance, and that the pursuer should have decree for £30.

Lord Craighill—I am of the same opinion. It is not necessary to decide the important and difficult questions of law submitted to us.

Lord Rutherfurd Clark—I am of the same opinion. I decide the case solely on the ground that by the defender Fraser's operations injury was caused which might have been avoided.

This interlocutor was pronounced:—

"Find in fact that the operations of the respondent (defender) William Fraser, in the record referred to, were so executed and performed as to occasion real injury and damage to the property of the appellant (pursuer), also in the record referred to, and that the said injury and damage so occasioned might have been avoided by due care on the part of said respondent in the execution and performance of said operations: Find in law that the said respondent is liable in damages to the appellant for the injury and damage so occasioned to his property: Assess the damages at the sum of £30 sterling: Recal the interlocutor appealed against: Ordain the said respondent to make payment to the appellant of the said sum of £30: Find that no misconduct or other ground of action has been proved against the respondents (defenders) Alexander Galbraith & Company, and assoilzie them from the conclusions of the action," &c.

Counsel for Appellant—Guthrie Smith—A. J. Young. Agents—Adamson & Gulland, W.S.

Counsel for RespondentFraser—D.-F. Kinnear, Q.C.—Lang. Agent—J. Young Guthrie, S.S.C.

Counsel for Respondents Galbraith & Co.—H. J. Moncreiff. Agents—Carment, Wedderburn, & Watson, W.S.

Friday, October 21.

SECOND DIVISION.

[Sheriff of Midlothian.

(Before Lords Young, Craighill, and Rutherfurd Clark.)

GALLOWAY AND NIVISON *v.* POLLARD.

Process—Multiplepoinding—Competency—Double Distress—Decree for Expenses in Name of Agent-Disburser.

In an action for delivery of certain documents, a trustee under a voluntary trust-deed was unsuccessful and was found liable in expenses of process. Creditors of the successful party arrested these expenses in his hands, and thereafter the agents for the successful party obtained decree for these expenses in their own names, and charged the trustee as an individual to pay them. The arresting creditors having brought a furthcoming in pursuance of their arrestments, the trustee brought a multiplepoinding for his own protection. *Held* that there was double distress, and that the process was competent—Lord Rutherfurd Clark *dissenting and holding* that inasmuch as the right of the agents disbursers was a right constituted by a decree of Court, the right of the arresting creditors of their client could not compete with it, and that there was therefore no double distress.

James Pollard, chartered accountant in Edinburgh, was trustee under a disposition executed for behoof of creditors by James Smith, merchant in Kirkliston. In that capacity he raised an action in the Sheriff Court of Midlothian against Meikle & Wilson, accountants in Edinburgh, for delivery of certain books belonging to Smith which were in their hands, and which they claimed a right to retain for payment of work done in connection with them. Pollard having succeeded in this action in the Sheriff Court, Meikle & Wilson appealed, and the Second Division on 6th November 1880 (*ante* vol. xviii. p. 56, 8 R. 68) recalled the Sheriff's judgment, and found them entitled to retain the books, and to expenses against Pollard in both Courts. These expenses amounted in all to £33, 1s. 11d. Pollard having had in his hands a further sum belonging to Meikle & Wilson, this sum, added to the expenses thus found due to them, amounted to £57, 4s. 9d. On 18th November 1880 creditors of Meikle & Wilson used arrestments in Pollard's hands for the sum of £50 due by Meikle & Wilson to them; and this arrestment was followed by others on 14th December and 21st February following. On 26th January 1881 the Auditor's report in the Sheriff Court action above alluded to was approved of, and the Court decerned for the expenses found due by the preceding interlocutor in name of William Galloway, S.S.C., who had acted for Meikle &