words which indicate appearance and architectural design, rather than size or use by the occupier. Now, of character and style in that sense nothing is indicated on the plan. No doubt the plan may be said to indicate "character" by noting "self-contained lodgings and corner tenements." But a full observance of these words might lead to a somewhat curious result. One building might be a very humble brick erection of two apartments—that would be a self-contained lodging. The next building to it might be a house of two storeys, in which one family might reside, the lower storey occupied as their dwelling house, the upper as their warehouse or workroom. This again would be a self-contained lodging, and yet while compliance with the directions in the plan would thus be given, no uniformity of building would be observed, and the amenity of the place seriously injured. Yet the preservation of uniformity of building and amenity were the only two purposes suggested as in the contemplation of the clause. Again, the phrase "corner tenements" places no restriction on the extent of ground which they are to occupy. Accordingly, a "corner tenement" might extend indefinitely along the two streets at the corner of which it is placed. It might, therefore, while still in strict accordance with the words on the plan, be made more in the street than at the corner.

To restrict the rights of property by the use of terms so vague as those on the plan in question would be going further I think in that direction than has ever yet been done. I can find no precedent for doing so, and am not inclined to make one.

I think the decision of the question before us is attended with considerable difficulty, but as the best consideration I can give it, I am of opinion that we should recal the second, third, and fourth findings of the Lord Ordinary's interlocutor, and decern, as concluded for, against the defenders Lamb and Gibson, and Robert and James Anderson.

LORD JUSTICE-CLERK — That is the opinion of the Court.

LORD RUTHERFURD CLARK was absent.

The Court pronounced the following interlocutor:—

"Recal the 2nd, 3rd, and 4th findings in the interlocutor reclaimed against, including the finding as to expenses in favour of the defenders Lamb & Gibson and Robert and James Anderson, and decern in terms of the conclusions of the action against Lamb & Gibson and Robert and James Anderson, and find them liable to the pursuers in the expenses of process, including expenses since the date of the reclaiming-note."

Counsel for the Pursuers—Balfour, Q.C.—Salvesen. Agent—J. Smith Clark, S.S.C.

Counsel for the Defenders—Lees—Dundas. Agents—Clark & Macdonald, S.S.C.

Friday, March 6.

SECOND DIVISION.

SOMERVILLE *v.* THOMSON.

Process—Diligence for Recovery of Documents—Action of Damages for Breach of Promise of Marriage—Defender's Business and Bank Books.

In an action of damages for breach of promise of marriage the pursuer moved for a diligence to recover (1) the business and bank books of the defender, and (2) the books of the banks of which the defender was a customer.

The Court *refused* the diligence, there being practically no dispute as to the defender's financial position.

Opinion (*per* Lord Young) that the pursuer of an action of damages for breach of promise of marriage is not entitled to a diligence to disclose the defender's financial position; *contra* (*per* Lord Trayner) that such a diligence would be competent if the question of the defender's financial position was material to the case, and was in dispute.

In an action for damages for breach of promise of marriage the pursuer averred that the defender carried on business as a livery stable keeper, that in this business he employed three horses and seven or eight machines, and that he also owned a farm, and was possessed of other means of considerable extent.

The defender in his defences explained that his business consisted of a small posting establishment employing two horses, and his farm a croft of £20 rent per annum.

The pursuer, after the issue had been adjusted by Lord Kincairney, Ordinary, gave notice of trial for the sittings. In anticipation of the trial she moved the Court for a diligence to recover (1) the defender's bank account books with the Caledonian Bank and the Commercial Bank, Limited, and any deposit-receipts which he held for money deposited in either of these banks or any other bank; (2) the journals, day-books, ledgers, and other business books of the defender relating to his posting business and farm; and (3) the bank books of the two banks mentioned, or excerpts therefrom, in terms of the Bankers Evidence Act 1879, showing the state of the defender's account between 1st January 1890 and the date of executing the commission.

The motion was opposed by the defender, who argued—(1) That the pursuer's case did not require that a diligence of this kind should be granted; and (2) that in an action of this kind such a diligence could not be competently granted—*A* v. *B*, July 14, 1875, 12 S.L.R. 621; *Craig* v. *North British Railway Company*, July 3, 1888, 15 R. 808; *British Publishing Company, Limited* v. *Hedderwick & Sons*, July 14, 1892, 19 R. 1008; *Johnston* v. *Caledonian Railway Company*, December 22, 1892, 20 R. 222.

LORD JUSTICE-CLERK—I think that we ought not to grant the diligence asked for.

LORD YOUNG—I concur.

LORD TRAYNER—I think that in this case there is no necessity for the diligence which the pursuer craves, for the parties are practically at one with regard to the defender's financial position. I wish, however, in consequence of some observations made in the course of the discussion, to guard myself from being supposed to hold any principle or general rule which would exclude the pursuer of an action of damages for breach of promise from obtaining such a diligence, if the extent of the defender's business or the state of his financial position were important to the proper determination of the case.

LORD YOUNG—Perhaps it is right that I should state my opinion on the general question without going into details. I am of opinion that the pursuer of an action of damages for breach of promise of marriage is not entitled to a diligence to disclose the defender's financial position.

LORD RUTHERFURD CLARK was absent.

The Court refused the motion for a diligence.

Counsel for the Pursuer—A. M. Anderson. Agent—John Veitch, Solicitor.

Counsel for the Defender—Maclennan. Agent—Alex. Ross, S.S.C.

Thursday, March 12.

FIRST DIVISION.

[Lord Low, Ordinary.

A *v.* B.

Husband and Wife—Adherence—Cruelty—Conduct showing Animus—Relevancy.

In an action of separation and aliment brought by a wife against her husband on the ground of cruelty, the pursuer proposed after the closing of the record to add an averment that the defender had, on an occasion prior to her leaving him, made an attempt to ravish her niece who was then living with them. This she stated had only come to her knowledge after the closing of the record. *Held* that the averment was relevant as showing the *animus* of the defender towards his wife, although the alleged act of misconduct, being unknown to her at the time, could not be founded on as an act of cruelty justifying her non-adherence. *Held*, for the same reason, that the averment was relevant by way of defence to an action of divorce for desertion brought by the husband.

An action of divorce for desertion was brought by a husband against his wife. A second action was brought by the wife against her husband for separation and aliment on the ground of her husband's cruelty. The averment of the defender in the first action was that she left the pursuer "upon the ground of his continued cruelty and maltreatment, which were endangering her health and life."

In the action of separation the pursuer enumerated various specific acts of cruelty which she alleged to have been committed by her husband in the course of their married life, and averred generally that "the cruel, harsh, and violent conduct of the defender caused the pursuer to suffer in health, and made it impossible for her to live with him and dangerous to do so." After the record in both actions had been closed, the wife presented a minute of amendment applying *mutatis mutandis* to both records, containing averments of facts which she alleged had only come to her knowledge subsequently to the date of closing the records. The minute stated that in the month of April 1890, M, a niece of the pursuer (the wife), was living with herself and the defender. It proceeded— . . . "The pursuer had occasion to go out early that morning, but before going she came and wakened M, telling her to get up in a quarter of an hour to make the defender's breakfast. M fell asleep, but was shortly afterwards awakened by someone catching hold of her, and discovered that the defender was in her bed. He was dressed only in his sleeping garments, and attempted to have connection with her. She resisted him violently, and succeeded in getting out of bed into the middle of the room, and upraising a chair ordered him out. At first he would not go, and offered her money or anything else if she would say nothing about it, but upon her threatening to open the window and call for help, he left the room. As this occurred so soon after the marriage of the spouses, and she was not afraid of any repetition of the occurrence, M abstained from communicating it to the pursuer."

The Lord Ordinary (Low) on 22nd February 1896 issued an interlocutor allowing the proposed amendment.

The husband reclaimed, and argued—The amendment was irrelevant. (1) The averments did not relevantly support an action of separation, inasmuch as the act averred did not amount to legal cruelty—*Beauclerk* v. *Beauclerk*, L.R., 1891, Prob. 189. It was admittedly unknown to the respondent, and could not therefore constitute an act of "cruel maltreatment." (2) Nor, for the same reason, could it form a valid cause for the desertion, and as such constitute a defence in an action of divorce.

Argued for respondent—The averments made by the respondent in both actions put the character of the reclaimer at issue, and the proposed amendment contained an attack upon that, and was accordingly relevant in both actions. Postnuptial incontinence was a good answer to a demand for adherence, and any answer relevant to that was relevant in an action of divorce—Fraser's Husband and Wife, p. 1211. The