the terms of the specification, viz.—[*His Lordship read the part of the specification which is quoted supra*]. That call is a great deal too wide, and would open up an inquiry into the whole business of the company. If, however, there is a book, or if there are books, in the business which would show the number of copies printed and issued, then I think the pursuer is entitled to the information that he can get from them. That is a matter probably that can easily be adjusted by the parties.

As to the call for excerpts of entries showing the particular places where the newspaper was disposed of, I do not think that that is a matter to be granted. That is a question of fact which ought to be ascertained and proved in the usual way, and not by means of entries from the defenders' books. I am for refusing that part of the specification.

LORD M'LAREN—I think that it is the right of the pursuer to obtain a return of the approximate circulation of the newspaper in question at the time of the alleged libel. The expense of a diligence in a case like the present is often obviated by the defender voluntarily giving the information which is sought. As that has not been done here I think the pursuer is entitled to a diligence. As regards the distribution of the circulation throughout the West of Scotland, I think that that is a fact which is capable of being proved by oral evidence within such limits of accuracy as are required for the purposes of the case, and I agree that this part of the specification ought not to be granted.

LORD KINNEAR concurred.

The specification was accordingly amended at the bar so as to read as follows:—"The books . . . containing records of the number of copies printed, issued, sold, or returned, that excerpts may be taken therefrom by the commissioner showing the average circulation of the paper for the month of September 1900."

The Court granted the diligence on the specification as amended at the bar.

Counsel for the Pursuer—Clyde. Agent—W. C. B. Christie, W.S.

Counsel for the Defender — Cooper. Agents—Millar, Robson, & M'Lean, W.S.

Tuesday, March 19.

FIRST DIVISION.

(Lord Kyllachy, Ordinary.

DISTRICT COMMITTEE OF LOWER WARD OF LANARKSHIRE *v.* MAGISTRATES OF RUTHERGLEN.

Local Government—Burgh—County—Royal Burgh—Public Health—Local Authority—Area Within Ancient Royalty but Outside Parliamentary and Municipal Boundaries—Limits of Burgh and County—Statute—Construction—Public Health (Scotland) Act 1897 (60 *and* 61 *Vict. cap.* 38), *secs.* 3 *and* 12.

Section 12 of the Public Health (Scotland) Act 1897 provides that the local authority to execute the Act shall be in burghs the town council, and in counties the district committee of the county council. The word "burgh" is defined as including (section 3) "not only royal burgh, parliamentary burgh, burgh incorporated by Act of Parliament, but also any police burgh within the meaning of the Burgh Police (Scotland) Act 1892." The word "county" is defined as meaning "a county exclusive of any burgh." *Held* that for purposes of public health administration under the Public Health (Scotland) Act 1897 the area of a royal burgh includes the whole royalty of the burgh, and is not limited either to the police and municipal area or to the area of the burgh as defined for parliamentary purposes.

This was an action at the instance of the District Committee of the Lower Ward of the County Council of the County of Lanark against the Provost, Magistrates, and Town Council of the Royal Burgh of Rutherglen, and also against William Ferguson, C.A., trustee on the sequestrated estates of Smith & Riddell, builders, Rutherglen, who were the builders of certain houses situated upon property which was within the royalty of the said burgh, but outside the limits of that burgh as defined by the Representation of the People (Scotland) Act 1832 (2 and 3 Will. IV. cap. 65), Sched. M, for the purpose of the parliamentary franchise, and adopted by the Royal Burghs (Scotland) Act 1833 (3 and 4 Will. IV. cap. 76), for the purpose of the municipal franchise.

The pursuers concluded, *inter alia*, for declarator that "the pursuers, the District Committee of the Lower Ward of the County of Lanark, are the local authority for executing the Public Health (Scotland) Act 1897 in the district of the Lower Ward of Lanarkshire; that by virtue of the powers conferred upon them by section 181 of the said Public Health (Scotland) Act 1897 the said pursuers made byelaws for the whole of their district for regulating the building or re-building of houses or buildings, which byelaws were made and enacted on 10th January and 7th February

1898, approved of by the County Council of Lanarkshire on the 18th day of February 1898, and were confirmed by the Local Government Board for Scotland on 11th May 1898; that the said pursuers, the District Committee, are the only local authority that has the right or power to exercise the jurisdiction and powers conferred by sections 181 to 188, both inclusive, of the said Public Health (Scotland) Act 1897, in that part of the Parish of Rutherglen situate outwith the boundaries of the Police and Municipal Burgh of Rutherglen and within the district of the Lower Ward of the County of Lanark, and which is delineated and tinted yellow on the plan herewith produced and herein incorporated; and that the defenders, the Provost, Magistrates, and Town Council of the Royal Burgh of Rutherglen, as local authority thereof, have no right or power to exercise the jurisdiction or powers of a local authority over the said area so delineated on said plan."

The area referred to as tinted yellow on the said plan was that part of the royalty of the Burgh of Rutherglen which was outside the parliamentary and municipal area. It included the property upon which Smith & Riddell had built the houses referred to above.

Further conclusions followed, having reference to the buildings erected by Smith & Riddell on the said property without lodging plans with the clerk of the District Committee of the County Council as required by the byelaws of the County Council. The exact terms of these conclusions are not material for the purpose of the present report.

The pursuers also concluded that the Provost, Magistrates, and Council of Rutherglen should be interdicted "from exercising or claiming or attempting to exercise the jurisdiction and power of a local authority over the area delineated and tinted yellow on the said plan, and from exercising or attempting to exercise over the said area the power and jurisdiction conferred by the said sections 181 to 188, both inclusive, of the Public Health (Scotland) Act 1897."

Defences were lodged for the Provost, Magistrates, and Town Council of Rutherglen, in which the history of the Burgh of Rutherglen was traced from the 12th century, and averments were made relative to the exercise of jurisdiction by the Town Council outside the parliamentary area, and as to proceedings on the adoption by the burgh of the General Police and Improvement (Scotland) Act 1862 (25 and 26 Vict. cap. 101). In respect of the view taken by the Court it is not necessary to specify these averments. It was not disputed that the lands in question (tinted yellow on the plan) were within the royalty of the burgh, which included an area of 1420 acres or thereby, and outside the parliamentary area, which included only 360 acres or thereby.

The pursuers pleaded, *inter alia*—"(1) The pursuers, the District Committee, being the local authority under the Public Health (Scotland) Act 1897, within the area in question, are entitled to declarator and interdict as craved, with expenses."

The defenders pleaded, *inter alia*—"(5) The boundaries of the Burgh of Rutherglen, over which jurisdiction is claimed by the defenders, being within the boundaries described in the Burgh Charters and fixed by immemorial usage, and the Town Council being the local authority within the area in question, the defenders are entitled to absolvitor. (6) The said defenders being entitled to exercise and having all along exercised jurisdiction within said area, the whole defenders should be assoilzied."

The provisions of the various Acts of Parliament on which the rights of the parties depended are quoted in the opinions of the Lord Ordinary and the Lord President, *infra*.

On 9th June 1900 the Lord Ordinary (KYLLACHY) pronounced the following interlocutor:—"Finds and declares that the pursuers, the District Committee of the Lower Ward of the County of Lanark, are the local authority for executing the Public Health (Scotland) Act 1897 in the district of the Lower Ward of Lanarkshire; that by virtue of the powers conferred upon them by section 181 of the said Public Health (Scotland) Act 1897, the said pursuers made bye-laws for the whole of their district for regulating the building or rebuilding of houses or buildings, which bye-laws were made and enacted on 10th January and 7th February 1898, approved of by the County Council of Lanarkshire on the 18th day of February 1898, and were confirmed by the Local Government Board for Scotland on 11th May 1898; that the said pursuers, the District Committee, are the only local authority which has the right or power to exercise the jurisdiction and powers conferred by sections 181 to 188, both inclusive, of the said Public Health (Scotland) Act 1897, in that part of the parish of Rutherglen situate outwith the boundaries of the Police and Municipal Burgh of Rutherglen, and within the district of the Lower Ward of the County of Lanark, and which is delineated and tinted yellow on the plan; and that the defenders, the Provost, Magistrates, and Town Council of the Royal Burgh of Rutherglen, as local authority thereof, have no right or power to exercise the jurisdiction or powers of a local authority over the said area so delineated on said plan: Grants interdict as craved against the defenders the Provost, Magistrates, and Town Couucil of the Royal Burgh of Rutherglen, and finds these defenders liable in expenses to the pursuers; ordains the pursuers to lodge their account of expenses; and remits the same to the Auditor to tax and to report; And further, finds and declares in absence against Smith & Riddell, builders, Wardlawhill, Rutherglen, and James Smith and James Riddell, the individual partners of that firm, as partners and as individuals, and William Ferguson, C.A., Glasgow, trustee on the sequestrated estate of the said Smith &

Riddell, in terms of the whole declaratory conclusions of the summons, and ordains Smith & Riddell, and James Smith and James Riddell to lodge the plans as concluded for, and decerns."

Opinion.—"The question in this case is whether the District Committee of the County Council for the Lower Ward of Lanarkshire have, for the purposes of public health, jurisdiction over that part of the royal burgh of Rutherglen which is outside the Parliamentary boundary. The county authority maintains the affirmative, and brings this action to have its right declared. The Town Council, on the other hand, contend that their jurisdiction extends over the whole area of the Ancient Royalty—an area which in Rutherglen is, as it happens, exceptionally large, and includes indeed a large extent of agricultural land.

"The question depends primarily upon the Local Government Act of 1889, by which, for the purposes, *inter alia*, of public health, the county and burgh authorities have their jurisdiction defined; and on the terms of that Act there appear to be two things of which there is no doubt. The first is that the county includes every area which is not in the sense of the Act a royal or parliamentary burgh. The second is that, for the purposes of the Act, the boundaries of all burghs are, by the 44th section, declared to be the boundaries thereof for police purposes, as ascertained, fixed, and determined by the provisions of any general or local Act of Parliament.

"The question therefore is—What are to be held as the police boundaries of the burgh of Rutherglen? And that matter is so far settled by the 4th section of the General Police Act of 1862, which is admitted to be the Police Act for the burgh of Rutherglen, and which, by its 4th section, provides that the boundaries of such royal burghs as (like Rutherglen) send or contribute to send a member to Parliament, shall, for the purposes of the Act, include the whole limits of such burgh as the same are defined by or referred to in the Municipal Reform Act of 1833—that is, the Act 3 and 4 Will. IV. cap. 76. The words are added, 'or otherwise as fixed by law.' But these words make no difference for the present purpose, referring, as I think they plainly do, to burghs which have Local Police Acts, and have their boundaries thus or otherwise fixed by statute. The words are also added, 'unless it shall be resolved in adopting this Act that its operation shall be limited to such portion of the burgh as is comprehended within the parliamentary boundaries.' But these words also have no application to the present case.

"Accordingly, the bounds of the burgh of Rutherglen for the purposes of the Act of 1889, and, *inter alia*, for the purposes of jurisdiction under the Public Health Acts, are left to be ascertained by reference to the Municipal Reform Act of 1833, and the only section of that Act which makes reference to the boundaries is the first section, which defines the area within which persons possessing the prescribed qualification shall have right to exercise the municipal franchise, and which defines that area, as I read the section, by reference to two conditions, viz.—(1) It must be within the royalty of the burgh; and (2) it must also be within the parliamentary area, viz., the area to which the Parliamentary franchise is confined by the Reform Act of 1832, the Act 2 and 3 Will. IV. c. 65. The words are 'That from and after the period when this Act shall come into operation the right of electing the town councils in all such burghs respectively shall be in and belong to all such persons and to such only (except as hereinafter excepted) as are or shall be qualified as owners or occupants of premises within the royalty, whether original or extended, of any such burgh, to vote in the election of a Member of Parliament for such burgh by virtue of an Act passed in the second and third year of the reign of His Majesty King William the Fourth, entituled "An Act to amend the representation of the people in Scotland,' and as are duly registered as such voters in the registers by the said-recited Act appointed to be kept.'

"Now, it appears to me that on a combined reading of these various statutory enactments it is sufficiently clear that they define the boundaries of the burgh of Rutherglen for the purposes of the Act of 1889, including the purposes of public health, as being the boundaries contended for by the County Council. I observe there is a suggestion that in adopting the General Police Act of 1862 more extensive boundaries were by error or otherwise described, but that obviously can have no effect as against the terms of the Acts of Parliament. I observe also that both parties allege a certain amount of usage in favour of their respective contentions. But, in the first place, it is clear that the boundaries maintained by the pursuers have been assumed, at least as frequently as those maintained by the defenders; and in the next place, it is, I think, manifest that no actings or assumptions, whether by the parties to this action or by third parties, can override the true construction of the statutes when once ascertained. The result seems to be that the pursuers should obtain declarator in terms of their summons."

The defenders, the Provost, Magistrates, and Town Council of Rutherglen, reclaimed.

The arguments of the parties sufficiently appear from the opinions of the Lord Ordinary and the Lord President.

At advising—

LORD PRESIDENT—The question in this case is, whether the District Committee of the Lower Ward of the County of Lanark, or the Provost, Magistrates and Town Council of the Royal Burgh of Rutherglen, are the local authority for executing the Public Health (Scotland) Act 1897 in the territory outside the police and municipal boundaries but within the royalty of the burgh.

The Lord Ordinary says that the question depends primarily on the Local Govern-

ment Act of 1889, and that upon the terms of that Act there appear to be two things of which there is no doubt—(1) that the county includes every area which is not in the sense of the Act a royal or Parliamentary burgh, and (2) that for the purposes of the Act the boundaries of all burghs are by section 44 declared to be the boundaries thereof for police purposes as ascertained, fixed, and determined by the provisions of any general or local Act of Parliament, and his Lordship then proceeds to consider what are the police boundaries of the burgh of Rutherglen under that Act, referring to the General Police Act of 1862 as determining this. I am unable to concur with the Lord Ordinary either in this mode of stating the question or as to the Acts upon the provisions of which it is mainly to be determined.

The question, in my view, depends upon the construction and effect of the Public Health (Scotland) Act 1897, and the Acts referred to in that Act, and therefore it may be proper, in the first place, to advert to the Act of 1897, and then to trace backwards the references to other statutes which it contains, with the view especially of ascertaining what territory is included in the terms "burgh" or "royal burgh" for the purposes of the present question.

By section 3 of the Act of 1897 it is declared that the word "burgh" includes not only royal burgh, parliamentary burgh, burgh incorporated by Act of Parliament, bnt also any police burgh within the meaning of the Burgh Police (Scotland) Act 1892, and that the word "county" means a county exclusive of any burgh, and does not include a county of a city. It thus appears that whatever is included in any burgh (and particularly in any royal burgh) is excluded from the county for the purposes of the Act.

By section 12 it is declared that the local authority to execute the Act in burghs subject to the provisions of the Burgh Police (Scotland) Act 1892 shall be the town council or burgh commissioners, and in other burghs the town council or board of police, as the case may be, and in districts where the county is divided into districts under the Local Government (Scotland) Act 1889, and subject to the provisions of section 17 of that Act, as amended by this Act, the district committee.

As the Act of 1897 refers to the Burgh Police Act of 1892 in its definition of "burgh," I may point out that it is declared in the latter Act that "burgh" when used alone, unless otherwise expressed or inconsistent with the context, shall include royal burgh, parliamentary burgh, burgh incorporated by Act of Parliament, burgh of regality, burgh of barony, and any populous place or police burgh administered in whole or in part under any general or local police Act or burgh created under this Act, and by section 5 of the Act it is declared that it shall apply to every existing burgh, with the exceptions of the burghs named in Schedule II., viz., Edinburgh, Glasgow, Aberdeen, Dundee, and Greenock. It is thus clear that the royal burgh of Rutherglen is a burgh within the meaning both of the Public Health Act 1897 and of the Burgh Police Act 1892 (not as defined by the Act of 1862), and it appears to me that *prima facie* the term "burgh," as used in both these Acts with reference to a royal burgh would include the whole burgh erection or royalty of the burgh unless there is something in the Acts to restrict it to narrower limits.

Section 11 of the Act of 1889, in making the transfer of the powers and duties of local authorities to the county councils expressly excludes "burghs and police burghs," leaving to them the powers of public health administration conferred on them by the Act of 1867.

The definition of "burgh" in the Act of 1889 is less extensive, but that appears to me to be of little moment in this question, as the Act of 1889 relates to county (not to burgh) administration nor to a subject-matter affecting both like public health, with which the Acts of 1867 and 1897 deal. Further, neither the Act of 1897 nor the Act of 1892 refers to the Act of 1889 for the definition of burgh. Section 43 of the Act of 1889 appears to me to apply to very special and somewhat exceptional circumstances which do not exist in the present case.

By section 44 (*b*) of the Act of 1889 (with which the Lord Ordinary has begun), it is declared that the boundaries of burghs, for the purposes of that Act (it is not said for the purposes of the Public Health Act 1867) shall be held to be the boundaries thereof as the same shall be or may be ascertained fixed or determined for police purposes under the provisions contained in any general or local Act of Parliament, or when no police assessment is levied as the same are or may be ascertained fixed or determined for municipal purposes. This provision would apparently confine the definition of "burgh" to the area fixed for police purposes, even although that might be a much smaller area than the royalty, but again it is to be observed that this is only for the purposes of the Act of 1889, which is prior to the Acts of 1892 and 1897, and must therefore give way to these later Acts if their provisions differ. The restrictive character of the definition of "burgh" in the Act of 1889 is well illustrated by the next provision in this section (44) that police burghs shall not in any case be deemed to be burghs for the purposes of the Act except for those of the Roads and Bridges Act 1878.

By section 105 of the Act of 1889 it is declared that the expression "county" means a county exclusive of any burgh wholly or partially situate therein, and does not include the county of a city, and that the expression "burgh" means any royal or parliamentary burgh. The use of the term "royal burgh" would have left the question of area open even for the purposes of the Act of 1889 had it not been that apparently the effect of section 44 is to provide that the boundaries of a royal burgh, for the purposes of the Act, should be the boundaries fixed for police purposes, or where no police assessment is levied as the

boundaries may be ascertained for municipal purposes, and these boundaries might, as in the present case, be much within the royalty.

The pursuers referred to section 3 of the Roads and Bridges Act 1878, which declares that the boundaries of burghs, for the purposes of that Act, shall be held to be the boundaries thereof as ascertained fixed or determined for police purposes under any general or local Act of Parliament, or when no police assessment is levied, as the same may be ascertained fixed or determined for municipal purposes. This restrictive definition is quite intelligible in a Road Act, which simply looked to who were the road authorities for the respective areas, but it seems to me that it can have no effect in interpreting, still less in limiting, the larger definitions of the Acts of 1892 and 1897.

By section 3 of the Public Health (Scotland) Act 1867, the word "burgh" is declared to include not only royal burgh, parliamentary burgh, burgh incorporated by Act of Parliament, burgh of barony, burgh of regality, but also any populous place having a town council, police commissioners, or trustees exercising the functions of police commissioners under any general or local Act. Here again no limitation is placed upon the term "royal burgh," so that it would, I apprehend, include the whole area within the royalty.

By section 3 of the General Police and Improvement Act 1862 it was declared that the expression "royal burgh" shall mean a burgh having magistrates and councillors elected under the powers of the Public General Act, 3 and 4 Will. IV. c. 76, and also the burghs enumerated in Schedule F; and by section 4 of that Act it is provided that the boundaries of such royal burghs as send, or contribute to send, a member or members to Parliament shall, for the purposes of that Act, include the whole limits of such burgh as the same are defined by or referred to in the Act of 3 and 4 Will. IV. c. 76, or otherwise fixed by law, unless it shall be resolved in adopting that Act that its operation shall be limited to such portion of such burgh as is comprehended within the parliamentary boundary. This provision seems to imply that unless the operation of the Act (1862) is expressly limited to such portion of the burgh as is comprehended within the parliamentary boundaries (which it appears to be here assumed are smaller than the burgh proper), the term "burgh" shall include the whole limits as defined by the Act 3 and 4 Will. IV., c. 76, or otherwise fixed by law. It is to be observed that the section does not declare that the boundaries of the "burgh" may not be larger than the limits defined for the purposes of the Act, the words being that it shall "include the whole limits," though it may also include something more. In other words, there is nothing in the section which should prevent the definition from including the entire royalty where it is larger than the portion of the burgh comprehended in the parliamentary boundary.

The pursuers maintained that the words "or otherwise fixed by law" mean fixed by statute, but I am unable to see any sufficient ground for this limitation. It appears to me that the words are equivalent to "lawfully fixed," and that if the limits were lawfully fixed otherwise than by statute this would satisfy the language of the section. For the reasons already given, however, it appears to me that the important definitions are not those of the Act of 1862, especially as things which were doubtful under the former Act are clear under the latter Act.

By the Act 3 and 4 Will. IV., c. 76, it is declared that from and after the period when the Act comes into operation the right of electing town councils in all such burghs respectively (except those contained in Schedule F to the Act annexed), shall be in and belong to all such persons, and to such only (except as thereinafter excepted), as are or shall be qualified as owners or occupants of premises within the royalty, whether original or extended, of any such burgh, to vote in the election of a member of Parliament for such burgh by virtue of the Act 2 and 3 Will. IV., c. 65, and as are duly registered as such voters in the registers by that Act appointed to be kept. If the effect of this provision was, as the pursuers contend, to restrict the right of voting in town council elections to persons who had a qualification in a locality within both the parliamentary area and the royalty, this restriction was removed by section 3 of the Municipal Elections Amendment Act 1868, which provided, *inter alia*, that all persons should be entitled to vote "who are possessed of the qualifications described in the Acts 2 and 3 Will. IV., c. 65, or 31 and 32 Vict. c. 48, in respect of the premises therein described within the royalty of any such royal burgh where the limits thereof at any point or points extend beyond the parliamentary boundaries of such burgh." It was argued for the pursuers that the term royal burgh is something less than the royalty, but this contention does not appear to me to be well-founded, and in any view the right of voting at municipal elections is conferred upon all who possess the requisite qualification within the royalty. It is difficult to suggest any reason for giving the municipal franchise to qualified persons throughout the royalty, unless the councillors whom they took part in electing were to have some jurisdiction and powers throughout the royalty. By section 31 of the Act it is declared that the magistrates and council elected under the Act shall have the same jurisdiction and the same rights of administration of the property and affairs of the burgh as their predecessors.

The pursuers maintain that the boundaries of Rutherglen for parliamentary purposes contained in Schedule M to the Act of 2 and 3 Will. IV., c. 65, must be held to limit the burgh for the purposes of the present question to the parliamentary and municipal area, but I am unable to find any warrant for this contention. The definition in the Act of 1832 is for the purposes

of that Act, and for no other purpose.

Upon a consideration of the whole of these enactments, it appears to me that the area of a royal burgh for the purposes of the Public Health Act 1897 includes the whole royalty of the burgh, and that it is not limited either to the police or municipal area or to the parliamentary area, as the pursuers contend that it is.

Holding these views, I do not find it necessary to consider the effect of what was actually done by the burgh in adopting the Act of 1862 in the year after it passed. A meeting was called by the Provost to be held on 10th March 1863 for the purpose of considering the propriety of adopting in whole or in part the Act of 1862, "as applicable to the whole limits of" the burgh, as the same are defined by or referred to in the Act of 3 and 4 Will. IV. cap. 76. The meeting unanimously resolved to adopt, and did adopt, the Act of 1862, "and the whole powers and provisions thereof as applicable to the whole limits of the royal burgh of Rutherglen without any limitation" in terms of the Act. The resolution was duly reported to the Sheriff of the county in order that he might pronounce a deliverance thereon, and on 11th March 1863 he did pronounce a deliverance declaring that the Act of 1862 "and the whole powers and provisions thereof, have been adopted by the Magistrates and Council of the said royal burgh of Rutherglen, as applicable to the whole limits of the said royal burgh, without limitation, and finds and declares that the said Act shall apply to the whole limits of the said royal burgh of Rutherglen without any limitation accordingly." It would be difficult to devise larger language than this, and the defenders contend that it applies to the whole royalty of the burgh, and that even if it should be held to have been *ultra vires* to adopt the Act over the whole of that area, the adoption is protected from challenge by the deliverance of the Sheriff being declared to be final by section 20 of the Act of 1862, and by section 18 of the Act of 1892, which declares that such proceedings shall not be liable to challenge after three years from the date of the alleged non-compliance with the statutory requirements and provisions.

The defenders also rely on section 7 of the Act of 1892, which declares that the boundaries of any burgh which at the commencement of that Act is administered wholly or partly under any general or local Police Act, shall for the purposes of the Act be the boundaries to which such Police Act extends, and upon the fact that when Rutherglen was divided into wards in 1885 the whole area within the royalty was comprehended in the division, and the division was approved of by the Home Secretary on 7th August 1885.

It appears to me, however, to be unnecessary to express any opinion upon these and other arguments maintained by the defenders, as I consider, for the reasons already given, that the Lord Ordinary's interlocutor should be recalled, and that they should be assoilzied from the conclusions of the summons.

LORD ADAM and LORD M'LAREN concurred.

LORD KINNEAR having been absent at the hearing gave no opinion.

The Court recalled the interlocutor of the Lord Ordinary, and assoilzied the defenders from the conclusions of the summons.

Counsel for the Pursuers and Respondents — Dundas, K. C. — W. Thomson. Agents—J. & A. Hastie, Solicitors.

Counsel for the Defenders and Reclaimers —Sol.-Gen. Dickson, K.C.—Clyde. Agents —Mackenzie & Black, W.S.

Wednesday, March 20.

FIRST DIVISION.

DUKE OF SUTHERLAND, PETITIONER.

Parent and Child—Aliment—Payment to Father out of Fund Held for Pupil Son by Trustees—Entail.

Circumstances in which the Court, on the petition of a father, *authorised* and *ordained* trustees holding funds belonging to his pupil son to repay to the father out of the income of the fund sums expended by him in the maintenance and education of his son, and to pay a fixed annual sum to meet such expenses during the three succeeding years.

This was a petition presented by the Duke of Sutherland, with consent and concurrence of certain trustees acting for behoof of his eldest son the Marquess of Stafford, for the purpose of obtaining the authority of the Court to the trustees to pay to the petitioner out of the income of funds belonging to the Marquess in the hands of the trustees the expenses of the yearly education and maintenance of the Marquess.

The petitioner stated "that the petitioner is heir of entail in possession of the earldom and estate of Sutherland, in the counties of Sutherland and Ross and Cromarty. That the next heir of entail is the eldest son of the petitioner the Right Honourable George Granville Sutherland Leveson-Gower, commonly called Marquess of Stafford, residing at Dunrobin Castle, Golspie. That the said Marquess of Stafford was born on the 29th day of August 1888, and is now in his thirteenth year. That he is the only heir whose consent is necessary to the disentail of the estates of the petitioner. That applications for authority to disentail certain portions of his estate have from time to time since 1895 been made to the Court by the petitioner, and granted. That on each occasion the value of the expectancy of the said Marquess of Stafford has been ascertained, and security for the respective amounts has been given by the petitioner. That it was thought desirable that moneys coming