

in principle, against that. The respondents in their case very properly admit that "an individual . . . is not entitled to use the highway in such a manner as will result in the destruction of separate private property subjacent to the road or otherwise, or in causing material inconvenience or obstruction to the free passage of other users." If to this had been added the further consideration that the estimate as to material inconvenience or obstruction must not be minimised by reason of quite abnormal expenses having to be promptly defrayed after the passage of the respondents' traffic so as to restore the ordinary users against the destruction or waste caused, then I think the admission would have been complete and would have been in accord with sound law.

Whether it may be expedient or proper to adopt the relevant provisions of the Roads and Bridges Act I do not know. But the case does appear to be eminently one for mutual arrangement, possibly to be ratified by private statute so as to avoid the mutual danger that a change in facts—after all the point is almost entirely a question of degree—might be followed by a change in legal result. This case, however, must depend upon its own established facts, and on these the appeal fails.

I concur.

Their Lordships dismissed the appeal with costs.

Counsel for the Appellants—Dean of Faculty (Condie Sandeman, K.C.)—Graham Robertson, K.C.—Crawford—Chalmers. Agents—Campbell & Smith, S.S.C., Edinburgh—Martin & Company, Westminster.

Counsel for the Respondents—Macmillan, K.C.—Gentles, K.C.—Gilchrist. Agents—Morton, Smart, Macdonald, & Prosser, W.S., Edinburgh—Beveridge & Company, Westminster.

Friday, July 6.

(Before the Earl of Birkenhead, Viscount Finlay, Lord Dunedin, Lord Atkinson, and Lord Shaw.)

WESTVILLE SHIPPING COMPANY,  
 LIMITED v. ABRAM STEAMSHIP  
 COMPANY, LIMITED.

(In the Court of Session, June 17, 1922,  
 S.C. 571, 59 S.L.R. 539.)

*Contract—Rescission—Title to Sue—Restitutio in integrum—Assignment of Contract to Sub-assignee—Assignment Repudiated but not Reduced at Date when Action Raised—Pursuers Reinvested in Contract at Date of Closing Record.*

A assigned his rights under a ship-building contract to B on certain representations as to the stage of construction reached by the vessel which were in fact false. B thereafter subassigned his rights to C, making practically the same representations to C as had been made to him by A. On C discovering

that the representations were false, and intimating that he repudiated the contract, B was advised that he had no defence, and it was arranged that judgment should be allowed to go against him in the English Courts. B then brought an action against A for reduction of his contract with A and for damages, but at the time of raising his action judgment had not been pronounced by the Court in England annulling the sub-assignment, though such judgment was obtained before the record was closed. In the action by B against A objection was taken that B had no title to sue in respect that at the date of raising the action he had not been reinvested in his right to the contract, and therefore was not in a position to make *restitutio in integrum*. Held (*aff.* the judgment of the First Division) that B had a good title to sue.

*Contract—Rescission—Misrepresentation—Assignment of Contract to Sub-assignee—Whether Assignors Barred from Rescinding the Original Contract by their Actings with Sub-assignee—Failure to State Competent Plea when Sued by Sub-assignee—Homologation—Consent to Alteration in Contract in Knowledge of Misrepresentation.*

The sub-assignees of a shipbuilding contract, after discovering the falsity of the representations on which they had bought, requested the shipbuilders to make a slight alteration in the design of the ship. Thereafter in an action at their instance the sub-assignment was annulled. The assignees having thereafter sued the original cedents for rescission of their contract with them on the ground of misrepresentation and for damages, held (*aff.* the judgment of the First Division) that the act of the sub-assignees in agreeing to the suggested alteration on the design of the ship did not bar the assignees from insisting in their action, and that the unimportant character of the alteration did not make *restitutio in integrum* inequitable.

*Contract—Rescission—Restitutio in Integrum—Personal Bar—Mora—Fall in Value of Subject of Contract.*

Circumstances in which held (*aff.* the judgment of the First Division) that in an action for the rescission of a ship-building contract on the ground of misrepresentation, a fall in the value of the subject of the contract owing to a slump in freights did not render *restitutio in integrum* inequitable, and appeal dismissed.

The case is reported *ante ut supra*.

The Abram Steamship Company, Limited, appealed to the House of Lords.

At delivering judgment—

EARL OF BIRKENHEAD—[*Read by Lord Dunedin*].—I have had the advantage of reading the judgments herein of my noble and learned friends Lord Dunedin and Lord Atkinson. I agree with them, have nothing

to add, and move that the appeal be dismissed with costs.

VISCOUNT FINLAY.—[Read by Lord Dunedin]—I have had the advantage of reading the judgment prepared by Lord Dunedin and find that it exactly expresses my views on this case. I concur with it and have nothing to add.

LORD DUNEDIN.—The facts on which the question is raised in this case are as follows:—The appellants by a contract of date 24th September 1919 contracted with a firm of shipbuilders for the building and finishing of a steel screw steamer of certain dimensions. The appellants in February 1920 assigned that contract to the respondents. In the negotiations for assignment there were representations as to the stage of construction which the steamer had by that time reached, which representations were admittedly untrue. By the time of the agreement of assignation the sum of £26,000 was payable within 20 days of the execution of the agreement and that sum was duly paid. On 13th March 1920 the respondents assigned to the British Hispano Company for a certain consideration all the rights under the agreement. In doing so they passed on the information which they had received from the appellants as to the state of progress of the vessel.

In June 1920 the British Hispano Company discovered that the representations made as to the state of progress were untrue. They at once repudiated the contract. The respondents gave intimation of this to the appellants and in turn repudiated their contract. The British Hispano Company raised action in the English Courts to set aside this contract and recover the money paid under it. While that action was in dependence the respondents raised the present action against the appellants to set aside the contract and recover the money paid under it. The summons was signeted on 5th November 1920. On 11th December judgment was given in favour of the plaintiffs in the English action, the respondents in this case, defendants in that, being advised that they had no defence.

The only other matter that need be mentioned is that before the action was raised a suggestion was made by the builders for a small alteration in the deck-house. This was passed on by the respondents to the sub-purchasers and approved of by them.

On these facts it is admitted that there was misrepresentation for which the appellants are responsible which induced the respondents to enter into the contract with them for the purchase of the ship. The materiality of such misrepresentation was not actually admitted, but it was found by both Courts below on what I consider very clear grounds. There is therefore so far good ground for setting aside the contract.

The defence depends on two points—first, it is said that the respondents elected to affirm the contract after they were aware of the grounds for rescission by consenting to certain alterations as shown by certain letters. Election to affirm must, if to be gathered from action, be gathered from

unequivocal acts. It would not matter that the act in itself was trivial, but the triviality of the act may easily affect the inferences to be drawn from it. Now here the alteration of a certain part of the deck-house was an alteration suggested by the builders and passed on by the respondents to the sub-purchaser. It was assented to, but I cannot for myself think that the assent to such an alteration in the circumstances can possibly be taken as a considered affirmation of the contract. The plea thus becomes equally useless to the appellants in the present action as it would have been if it had been taken in the action brought by the sub-purchaser against the respondents. This takes away the whole sting of pointing out that the decree in that action was a consent decree. Persons cannot be held liable for not having put forward pleas which are ungrounded in themselves.

The second point is that the action is barred by the fact of the sub-sale. So long as the sub-sale stood this would of course be so. As has well been pointed out by the Lord President no one can be allowed to maintain a contract between him and another and at the same time to reduce another contract on which alone his title to make that contract depended. That was the position of Dunn in *Molleson's case*, 21 R. (H.L.) 10. Dunn proposed to stick to his contract with the United Breweries Company and at the same time to reduce the original contract. But here the sub-contract no longer exists. It has been put out of the way by the decision in the English Courts. I am of opinion that the dicta in *Molleson's case* provide the answer to the contention. It is true that Lord Watson puts the matter hypothetically, but Lord Herschel was more explicit. He says—"No doubt if there had been any fraud, if there had been misrepresentation, it would have been open to Dunn notwithstanding the execution of the conveyance to set aside the conveyance and put an end to the transaction altogether." On principle I can see no answer to this point. The sub-contract which was *ex hypothesi* the only obstacle has been completely swept away. The respondents have been put back into their original position, *i.e.*, as purchasers under the contract with the appellants. Why then should they not reduce that contract if they have relevant grounds to do so?

The only point remaining is founded on date. It is said on the authority of *Symington v. Campbell* (21 R. 434) that at the date of the raising of the present action the pursuers had no title to sue and that the action is not saved by a title subsequently emerging. It is as well to set out what *Campbell's case* actually decided.

A purchased a vessel from B. Prior to his purchase injury had been done to the ship by the alleged fault of C; A raised an action against C for damages for such injuries. Subsequently to the service of the summons A obtained from B an assignation of all claims competent to him against C. It was held that at the date of the summons A had no title to sue and that

a subsequent assignation did not cure that defect. But it is to be observed that there the title conferred by the assignation was a perfectly independent title. The sale of the ship by B to A did not convey any right to damages, which were a personal right in B; consequently the subsequent assignation could never cure the original defect in title. Here the matter is quite different; the original title to set aside a contract induced by misrepresentation was quite good. It is true that for the moment there seemed a good answer, namely, "You have parted with the subject of the contract and therefore you have lost your interest," but the moment that the instrument by which they had so parted was swept away the original title was then in all its force.

I therefore concur in the judgment proposed.

LORD ATKINSON—Beyond concurring with the judgments which have been delivered by my two noble friends who have preceded me, and expressing my high appreciation and approval of the admirable and convincing judgment which has been delivered by the Lord President in the First Division of the Court of Session, I should not have attempted to add anything to what has been already said were it not that some of the contentions urged by Mr Brown in support of the appeal, especially on the point of the rescission of the contract of the 13th March 1920 entered into between the British Hispano Company and the respondent company, need, I think, special consideration. Where one party to a contract expresses by word or act in an unequivocal manner that by reason of fraud or essential error of a material kind inducing him to enter into the contract he has resolved to rescind it and refuses to be bound by it, the expression of his election, if justified by the facts, terminates the contract, puts the parties *in statu quo ante* and restores things as between them to the position in which they stood before the contract was entered into. It may be that the facts imposed upon the party desiring to rescind the duty of making restitution *in integrum*. If so he must discharge this duty before the rescission is in effect accomplished, but if the other party to the contract questions the right of the first to rescind, thus obliging the latter to bring an action at law to enforce the right he has secured for himself by his election, and gets a verdict, it is an entire mistake, I think, to suppose that it is this verdict which by itself terminates the contract and restores the antecedent status. The verdict is merely the judicial determination of the fact that the expression by the plaintiff of his election to rescind was justified, was effective, and put an end to the contract. Questions as to whether the judgment relates back to a date earlier than its own are really irrelevant. So long ago as the year 1804 this was in effect decided by Lord Ellenborough, C.-J., Grove, J., Laurence, J., and Blane, J., in the case of *Hunt v. Silk* (5 East. 449). It was there laid down "that a contract cannot be

rescinded by one party for the default of the other unless both can be put *in statu quo* as before the contract." This decision was approved of and followed in *Blackburn and Others v. Smith* (2 Welsby, Hurlstone, and Gordon, p. 783). There the defendant agreed to sell, and the plaintiff to purchase, a piece of land. The latter paid a deposit and took possession. Owing to the events which occurred the plaintiff gave notice to rescind the contract and brought an action to recover the deposit. Baron Parke, when delivering the judgment of the Court, said—"Further, we think, on the principle of the case of *Hunt v. Silk*, inasmuch as the plaintiffs had possession of the property and the parties could not be placed *in statu quo*, the count for money had and received, that is, the deposit, cannot be maintained." That means that owing to the fact of this possession rescission could not have its natural effect.

It may be doubted whether since the decision of the case of *Lamare v. Dixon* (1873) L.R., 6 H.L. 414), to be presently referred to on another point, the same importance will henceforth be attributed to the entry into possession of land as was given to it in these two cases. In the case of *Reese River Mining Company and the Liquidator of the Company v. Joseph Mackrill Smith*, the respondent alleged that he had been induced to take shares in the company by fraud and misrepresentation contained in the prospectus. He filed a bill against the directors alleging that he took shares in the company on the faith that the statements made in the prospectus and articles were true and accurate and within the knowledge of the directors. But these statements, he alleged, were false, &c., and prayed that his name might be removed from the register of the company. A winding-up order had been subsequently made; Smith's name was placed on the list of contributories. On the 10th July 1886 he took out a summons to have the register rectified by the removal of his name. The application was refused by the then Master of the Rolls. On appeal this decision was reversed by the Lords Justices, and from their decision an appeal was brought to this House. The Lord Chancellor (Lord Hatherley), in giving judgment said—"It appears to your Lordships—and with all humility I would say it appears to me—perfectly correct to say that the agreement subsists until rescinded—that is to say, in this sense, until rescinded by the declaration of him you have sought to bind by it, that he no longer accepts the agreement, but entirely rejects and repudiates it. It is not meant, I apprehend, by that expression 'until rescinded' used by any of your Lordships at the time when that case (*i.e.*, *Oakes v. Turquand*, L.R., 2 H.L. 325) was argued before the House to say that the rescission must be an act of some court of competent authority, and that until the rescission by that court of competent authority takes place the agreement is subsisting in full rigour." On the next page he states what he thinks is the true view—"If in a case of this description the directors had committed the fraudu-

lent act of putting a man's name upon the list which they ought not to have put there, and had allotted him shares so that if it turned out to be beneficial it would be competent to the person to say, 'Now I elect to hold them because, although coming to me by your fraud upon me, I find it is beneficial to me to hold them and you cannot aver your own fraud to prevent me so doing,' in that case the directors could not have taken his name off the list without communication with him. But if immediately that he knows what the directors have done he says, 'I have made up my mind to reject the contract and I assert that intention of mine in the plainest and most open manner competent to me by my communication to you insisting on having my name removed, and on your neglecting your duty to remove my name I proceed to file my bill to compel you to do so'—I take it that thereupon the contract is at an end, and the gentleman is entitled to have his name removed from the list."

Lord Westbury and Cairns would appear to have approved of this statement of the law. Well, it is not now disputed that false statements were made to the British Hispano Line Company as to the forward condition of the ship they bought at the time they bought her. It is not disputed now that these statements were material, neither is it disputed that, relying upon them as truthful and accurate, the company entered into the contract to purchase the ship.

On the 20th June 1920 they sent their representative to Dublin to discover by inspection what was the actual condition of the ship. It was then found that all the statements as to her forward condition were untrue, that little more had been done beyond laying the vessel's keel. They then consulted their solicitors, and took a course very much like that suggested by Lord Hatherley. They wrote to their vendor, the respondents, a letter detailing the misrepresentations made to them on which they alleged they acted, and wound up the letter with this paragraph—"We must now, however, inform you that had we known the position and that your statement was incorrect, we should never have agreed to purchase your contract, and that in consequence of this misrepresentation we must repudiate the contract and ask you for an immediate return of the sum of £33,000 paid by us.—Yours," &c.

On the 9th July the solicitors again wrote—"We are instructed to again state that our clients feel that misrepresentations were made and they insist on repudiating the contract. Unless we hear from you with regard to the matter within the next few days, we are instructed to commence proceedings.—Yours," &c.

The respondents did not pay to the British Hispano Line Company the £33,000 or any part of it. They did not accept the latter company's repudiation of the contract to purchase this ship as being void on the ground of essential error. On the contrary, on the 8th of July 1920 they wrote to the latter company stating that they would

hold them to their contract. The British Hispano Line Company was therefore obliged to institute proceedings to enforce the rights which their election to rescind conferred upon them, and as consequential relief to procure the repayment of the £33,000. The writ was issued on the 18th of August 1920. The respondents, according to the evidence, finding they had no defence to the action settled it. On the 30th November 1920 the solicitors on both sides appeared before the District Registrar for the Cardiff District, when after hearing them it was ordered that judgment by consent should be entered for the plaintiff for rescission of the contract of the 13th March 1920 and for the sum of £33,000 and costs when taxed. The formal order was not drawn up till the 11th December 1920. On the 16th December 1920 the plaintiffs and defendants in the action entered into an agreement providing that the plaintiff company would not take any steps to enforce this judgment until judgment should be given in an action brought by the defendants in Scotland against the Abram Steamship Company, Limited, and Thomas M'Laren & Company, and that in consideration of this concession the respondents would pay interest at bank rate upon the sum of £33,000. This is, however, wholly immaterial, for in truth it is not this judgment which really puts an end to the voidable contract of the 13th March 1920. That was done early in the month of July previous in the manner mentioned. This brought it to an end, provided always that the British Hispano Line Company was then entitled in law to take that course. It was contended they were not entitled to take it because with full knowledge of the deception which had been practised upon them and of the essential error into which they had been led, they by letter dated the 2nd of July 1920 unequivocally expressed an intention to treat the contract of the 13th March 1920 as a subsisting contract then in full force and effect, and that this election so to treat it was final and decisive. This contention is based upon two letters, the first written by the builders of the ship to the solicitor of the respondents and forwarded to the British Hispano Line Company, and the second written by the latter company to the shipbuilders. The letters respectively run as follows. The respondents' solicitor wrote to the British Hispano Company the following letter:—"Cardiff, 2nd July 1920.—S.S. No. 17.—Dear Sirs—We have received the following letter from Messrs Abram & Sons, Ltd. It is more or less an extract from one received from the Dublin Shipbuilders, Ltd.—'With reference to the midship accommodation in the above vessel, we find that the altered arrangement which you approved some time ago does not work out very satisfactorily as the pantry space under the winding stairs is practically valueless. We enclose blue print showing an amended arrangement in which we have changed the entrance door to the starboard side in lieu of the after end. The ladder under this arrangement is straight and a good pantry space is obtainable.

Will you kindly advise us whether this arrangement meets with your approval per return? We enclose herewith blue print which will explain the letter. We think perhaps it would be advisable for you to reply direct to the Dublin Shipbuilders, Ltd.—Yours," &c.

The British Hispano Company wrote to the Dublin Shipbuilders the following letter:—"Cardiff, July 2nd, 1920.—S.S. No. 17.—Dear Sirs—Referring to your letter addressed to the Abram Shipping Company, we return herewith blue print, and shall be pleased if you will proceed with the suggested re-arrangement. We shall also be obliged if you will let us know whether steamer has progressed since the writer had inspection of her some little time ago.—Yours," &c.

The law applicable to questions such as this is stated with admirable clearness and precision by Mellor, J., when delivering the judgment of the Exchequer Chamber in *Clough v. London and North-Western Railway Company*, L.R., 7 Ex. 26, at pp. 34, 35. He expressed himself thus—"We agree with what seems to be the opinion of all the judges below, that if it can be shown that the London Pianoforte Company (*i.e.*, the company alleging to have been defrauded) have at any time after knowledge of the fraud, either by express words or unequivocal acts, affirmed the contract their election has been determined for ever. But we differ from them in this, that we think the party defrauded may keep the question open so long as he does nothing to affirm the contract. The principle is precisely the same as that upon which it is held that the landlord may elect to avoid a lease and bring ejectment when his tenant has committed a forfeiture. If with the knowledge of the forfeiture, by receipt of rent or other unequivocal act, he shows his intention to treat the lease as subsisting, he has determined his election for ever and can no longer avoid the lease. On the other hand, if by bringing ejectment he unequivocally shows his intention to treat the lease as void, he has determined his election and cannot afterwards waive the forfeiture—*Jones v. Carter*, 15 M. & W. 718. We cannot do better than cite the language of Bramwell, B., in *Croft v. Lumley* (6 H.L. C. at p. 705), which precisely expresses what we mean." He then, p. 35, cites at length the well-known passage from Baron Bramwell's judgment, and states that, *mutatis mutandis*, it is applicable to the election to avoid a contract for fraud. In such cases the question, he says, is—"Has the person on whom the fraud was practised, having notice of the fraud, elected not to avoid the contract, or has he elected to avoid it, or has he made no election?" All this reasoning is obviously quite as applicable to a case of essential error as it is to a case of fraud. Turning for a moment to these analogous cases of the so-called waiver by the lessor of the forfeiture of a lease one finds that the governing factor is the intention of the party purporting to waive it. All the cases on this point up to the year 1903 are collected in Smith's Lead-

ing Cases, eleventh edition, vol. i, p. 36, and the following pages in the notes to *Dumpor's* case. At the bottom of p. 38 it is stated that "it is conceived that the mere receipt of subsequent rent does not, of its own proper force, operate as a waiver of a forfeiture. It is only evidence of the election of the lessor to retain the reversion and its incidents instead of taking possession of the land. The judgments of Bramwell, B., in *Croft v. Lumley* (6 H.L. Cas.), at p. 705, and also of Crompton, J., at p. 713, are referred to in support of this statement. In these passages both these learned judges refer to the strong expressions of Lord Mansfield in the case of *Doe v. Batten*, 1 Cowp. 243. In that case there was a payment under peculiar circumstances of rent accrued due after the alleged forfeiture, and Lord Mansfield said—"The question therefore is *quo animo* the rent was received and what the real intention of the parties was." Bramwell, B., at p. 707 of his judgment in *Croft's* case qualifies this statement of the law by pointing out that where the intention of the parties is spoken of it is not meant that the landlord can do an act lawful only if he has a particular intention and yet say that he had it not. The judgment of Lord Cairns in *Lamare v. Dixon* already cited points in the same direction. In that case *Lamare*, the appellant, entered into an agreement to take a lease of a house, went into occupation of the house, and occupied it for two years. From time to time he called upon the landlord to fulfil certain promises made by him which had induced *Lamare* to enter into the contract. He, *Lamare*, paid the rent as it accrued due, but always under protest. It was held that these facts did not amount to such acquiescence as to prevent the tenant from ultimately refusing to perform his contract, but that the payments were meant to be treated as merely made in respect of the actual use and occupation of the house and in no other character. While he was in possession of the house he wrote to the respondent a letter containing the following passage—"I beg hereby to give you notice that if you do not cause all the above matters (*i.e.*, repairs) to be done on the premises, or at least commenced before this day fortnight, I shall myself do what is necessary and charge you with my outlay. I send you the last quarter's rent, but you will of course understand that I in no way abandon my claim against you for damages on account of the non-performance of your agreement in many respects." The respondent replied saying he had done all he had agreed to do and would not do any more. Lord Cairns, in giving judgment at p. 431 of the report, said—"It is quite true that *Lamare* said in this letter that he would do the work and sue for damages. I do not at all hold him to be concluded by that. I apprehend he was perfectly free a week after that letter as he was a week before to maintain and hold his position on the non-performance of the agreement—to say that although he had used the threats of doing the work and suing for damages he was not bound to pursue that course but was at liberty to repudiate the agreement *in toto*."

I am clearly of opinion, having regard to these authorities, that the letter of the British Hispano Line Company dated the 2nd July already quoted at length cannot be regarded as such a positive and unequivocal expression of their election to treat the agreement of the 13th March 1920 as a valid, subsisting, and effective agreement as to disentitle them to repudiate it on the 3rd and 7th of July 1920 as in fact they did.

When the contract was rescinded and thus got out of the way I think there was nothing to prevent the respondents from enforcing their rights against the appellants. I am of opinion therefore that the appeal fails and should be dismissed with costs.

LORD SHAW—I have given much consideration to this appeal, but I cannot see any object to be served by my writing a separate opinion upon it. My reason is that in the most careful judgment of the learned Lord President I find every statement in fact and proposition in law set out in a manner which I would not wish to alter in any particular. I respectfully venture to adopt that opinion as expressive of my own views.

I agree to the motion proposed.

Their Lordships dismissed the appeal with costs.

Counsel for the Appellants—Sir John Simon, K.C.—C. H. Brown, K.C.—A. H. D. Gillies. Agents—Smith & Watt, W.S., Edinburgh—Botterell & Roche, Solicitors, London.

Counsel for the Respondents—A. T. Miller, K.C.—W. G. Normand. Agents—Webster, Will, & Company, W.S., Edinburgh—William A. Crump & Son, Solicitors, London.

Monday, July 23.

(Before Viscount Haldane, Lord Atkinson, Lord Shaw, and Lord Parmoor.)

PORTER v. CAMPBELL'S TRUSTEES  
AND OTHERS.

(In the Court of Session, December 8, 1922,  
1923 S.C. 206, 60 S.L.R. 153.)

*Building Restriction—Superior and Vassal—Obligation to Build a "Self-contained Lodging" and thereafter to Maintain the Same—Proposal to Convert into Four Self-contained Flats.*

A feu-contract relating to a piece of ground upon which one of the houses in a terrace was built contained a clause binding the feuar to build on the steading of ground feued "a self-contained lodging . . . and thereafter to maintain and uphold in good condition, . . . and to rebuild . . . the same if and when necessary of the same height, elevation, and outward style of architecture . . . with the said lodging: . . . Declaring that in construing the preceding clause with reference to the erection or rebuilding of said lodging it shall be read so

that the external architecture . . . shall correspond in all respects with the architecture of the rest of the terrace and shall line with steading number one of the said terrace. . . ." These conditions and restrictions were declared to be real burdens upon the ground in question. The proprietor of a house upon the steading having proposed to make certain alterations on the house, then in single occupation, which while not in any way affecting its external structure or elevation, would allow of its being occupied by four separate families, objection was taken by the proprietor of the adjoining house and also by the superior. *Held (aff. the judgment of the Second Division)* that the proposed alterations, which affected merely the internal structure of the house, did not involve a contravention of the restriction in the feu-contract, and appeal *dismissed*.

The case is reported *ante ut supra*.

The objectors appealed to the House of Lords.

At the conclusion of the argument for the appellants, counsel for the respondent being present but not being called upon, their Lordships delivered judgment as follows:—

VISCOUNT HALDANE—This is an appeal from an interlocutor of the Second Division which refused to recal a finding by the Dean of Guild in Glasgow about a house known as No. 11 Great Western Terrace. The appellants are the trustees of a Mr Anderson, now dead, who are the feudal superiors of all the house properties in Great Western Terrace. There are joined with them the trustee to the marriage contract of a Mr and Mrs Alexander Campbell, who are proprietors of the adjoining house, No. 10 Great Western Terrace. The controversy which has arisen is this—It is proposed by the respondent to take this house and use it or apportion it for flats, making certain internal structural arrangements as regards the doors opening upon the staircase, which, as the house stands now, goes inside from the front door up to the top. There is also a basement, to which I will refer later.

Before going into details I will turn to the words in the feu-disposition to the respondent, or rather to the respondent's author, which are sought to be enforced as entitling the appellants to a prohibition of the structure which I will presently describe. They are contained in the disposition of 1874, which was a feu-contract made between James Whitelaw Anderson and Robert Young. The words which we have to construe are these—"The second party and his foresaids"—that is, the respondent's author—"shall be bound and obliged, as by acceptance hereof he binds and obliges himself and his foresaids, to build, complete, and finish a self-contained lodging with a sunk area of twelve feet in breadth, with retaining walls of said sunk area and the carriage-way and retaining walls thereof hereinafter referred to all conform to the elevation and other plans showing the exterior workmanship prepared by Messrs Alexander and