Thursday, March 3.

FIRST DIVISION.

[Sheriff Court of Lanarkshire at Glasgow.

WILLIAM BAIRD & COMPANY, LIMITED *v.* BARR.

Mines and Minerals—Surface Owners—Right to Support—Damage to Ground and Buildings by Underground Workings—Liability for Damage Under Conveyance of Minerals—Existing Buildings—Substituted Buildings.

The proprietor of certain buildings and vacant ground adjacent thereto brought an action against the proprietors of the minerals underneath his properties for payment in respect of loss and damage to the properties in question caused by the underground working of the minerals. The pursuer was a singular successor of the parties from whom the defenders acquired the minerals. The titles of the defenders conveyed the whole minerals under, *inter alia*, the pursuer's lands, together with the several disponers' "whole right, title, and interest, present and future, therein," with full power to the defenders to search for, work, win, and carry away the minerals conveyed, the defenders being taken bound in each of the conveyances "to make up and pay to the disponer and his successors all loss and damage which may be done by the operations of the said disponees . . . to the ground before described, and to the houses and other buildings existing thereon, at the date hereof." It was admitted that the damage done to the properties of the pursuer had been caused by a subsidence due to the removal by the defenders of the minerals conveyed by the conveyances.

Held (1) that the defenders were liable for the damage caused by their underground workings—(*a*) to buildings existing at the dates of the conveyances; (*b*) to ground which was at the dates of the conveyance, and continued to be, vacant; and (*c*) to ground from which a building existing at the dates of the conveyances had been removed prior to the subsidence, and on which a building had been erected subsequent to the subsidence, at an increased cost owing to the injury to the ground due to the subsidence; but (2) that the defenders were not liable for damage caused to the buildings erected subsequent to the date of the conveyance, and in particular to a building which had prior to the subsidence been erected on the site of a building which existed at the dates of the conveyances but had been accidentally burned.

Peter Barr, 60 Stewart Street, Glasgow, brought this action in the Sheriff Court of Lanarkshire at Glasgow against William Baird & Company, Limited, for payment of £550 sterling, with interest from the date of citation in the action.

The pursuer was the proprietor of property situated in the High Street of Kilsyth, consisting of—(1) a two-storey tenement, with frontage to High Street, having shops and houses on ground-floor and dwelling-houses above; (2) a back building projecting from the last-mentioned tenement, wholly occupied as dwelling-houses; (3) a two-storey tenement, built back from the High Street; and (4) two one-storey cottages, one being to the north and another to the south of the last-mentioned property, all of which are occupied as dwelling-houses. He also owned some unbuilt-on ground adjacent to said properties. The defenders were proprietors of minerals which they worked underneath and adjacent to the said properties belonging to the pursuer. These minerals were worked by them from a pit outside the boundaries of the pursuer's property. In the conveyances of the said minerals to the defender's authors the partners of the then company of William Baird & Company, obtained in the years 1875 and 1876, the disponers conveyed "all and whole the whole ironstone and coal and other mines, metals, and minerals of whatever kind or description in and under the lands . . . together with their whole right, title, and interest, present and future, therein," with full power to the disponees to search for, work, win, and carry away the minerals disponed, and the disponees and their successors in the said minerals were taken bound "to make up and pay to the disponer and his successors all loss and damage which may be done by the operations of his said disponees and their foresaids to the ground before decribed, and to the houses and other buildings existing thereon at the date hereof." In each of the said conveyances it was also expressly conditioned and declared "that the minerals and others hereby disponed must be worked by means of underground operations only, and that from and through adjoining or neighbouring properties, and any operations on the surface of the subjects before described, or within a distance of 30 fathoms underneath the surface of the same, are hereby expressly prohibited." The pursuer was a singular successor of the parties from whom the defenders acquired said minerals, and he averred that he was entitled to the benefit of the provisions in the said conveyances.

The pursuer averred—"(Cond. 6) On or about 12th June 1899, as the result of defenders' mineral workings underneath or adjacent to the pursuer's said properties, a subsidence or draw took place, being caused by the defenders taking away, or having previously taken away, the necessary support and removing the minerals constituting such support, the result of which was to damage pursuer's properties as follows—to crack the ground, crack lintels and walls at several places from top to bottom, open joints and injure the internal plaster-work, and in some cases to damage the gables to such an extent

that they will require extensive repair, if not to be rebuilt. Further damage has since been sustained by the pursuer by said mineral operations of the defenders."

The defenders, in a joint-minute of admission, admitted that the damage done to the properties of the pursuer had been caused by the defenders removing the minerals conveyed to their predecessors under the said conveyances.

The sum sued for was made up—to the extent of £125 of damage caused to buildings which were in existence at the date of the said respective conveyances; to the the extent of £115 of damage to the ground belonging to the pursuer; and to the extent of the balance of £310 of damage to buildings on said ground erected in place of similar buildings which were thereon prior to the granting of said conveyances, or to buildings which were erected on ground suitable for that purpose alone, and situated in the centre of the town of Kilsyth, where such buildings might reasonably have been expected to be erected and in the ordinary course of utilising the said ground.

The pursuer pleaded—"The defenders having by their mineral workings removed the support to the pursuer's said properties to which the pursuer is entitled, and caused the loss and damage complained of, and being by their title and at common law bound to make good same, decree should be granted as craved."

The defenders pleaded, *inter alia*—"(2) The pursuer's statements are irrelevant and insufficient to support the conclusions of the action. (3) The buildings alleged to have been damaged having been erected subsequent to the dates of the said respective conveyances of the minerals to the defenders' authors, the defenders are entitled to absolvitor, with expenses. (5) In any event, the damages are excessive."

The Sheriff-Substitute (STRACHAN) allowed a proof before answer.

At the proof it appeared that the pursuer was proprietor of certain properties in High Street, Kilsyth, marked from A to F on a plan, and a piece of ground lying behind the same. The building A was erected in 1894 to replace a building which existed on the ground at the dates of the said dispositions, and which had been burned down. The building erected in 1894 was larger both in area and in height than the building which previously existed on the same site. The new building was seriously damaged by the subsidence which took place in 1899. The buildings marked B, D, and E on the plan were in existence at the dates of the said dispositions, and these buildings were also damaged. At the site marked C on the plan there had been a building in existence at the date of the said dispositions, but this building was taken down by the pursuer in 1902 to admit of the necessary sanitary requirements being provided in connection with the building marked F. The building marked F on the plan was erected by the pursuer in 1902. At the dates of the said dispositions a building existed on the ground marked F, but that building was taken down in 1892. In view of a crack in the ground caused by the subsidence it was deemed necessary to strengthen the foundations for the building erected at F in 1902 by laying down extra layers of concrete and iron rails. Behind the buildings A, B, and F was vacant ground belonging to the pursuer. This ground was damaged by the subsidence so that it could not be used for building purposes without extra foundations, which would add materially to the expense of the buildings.

By interlocutor dated June 16th 1993 the Sheriff-Substitute (STRACHAN) found that the pursuer had no claim against the defenders in connection with the ground marked C; allowed the pursuer £226, 15s. in respect of loss sustained by him by damage to the building or ground marked A; £47, 8s. in respect of the damage to buildings B, D, and E; £90 in respect of the damage to the ground marked F; and £25 in respect of the damage to the ground behind A, B, and F; and accordingly found the pursuer "entitled to the sum of £389, 3d., being the amount of the various sums for which the defenders are liable as aforesaid in connection with the said subsidence: Therefore decerns against the defenders for payment to the pursuer of the said amount with interdict as craved."

Note.—[*After dealing in detail with the damage to the several buildings and pieces of ground, and the sums to be allowed to the pursuer in respect of such damage*]—"There only remains for consideration the legal question whether the pursuer's claim is excluded to any extent by the provision in the disposition of the minerals restricting the defenders' liability 'to the loss and damage which might be done by their operations to the ground before disponed, and to the houses and other buildings existing thereon.' It is maintained by the defenders that they are not liable for the damage done to the building A, in respect that it was erected subsequent to the conveyance, and did not therefore exist on the ground at the date thereof. The building then on the ground was destroyed by fire in 1892, and the building A was erected on the same site about two years afterwards. I do not understand the defenders to maintain that their liability terminated with the destruction of the building on the ground at the date of the conveyance, or that they were not liable for any buildings which might be erected in place of those which had been destroyed. The ground on which they maintained the non-liability for the new buildings, as I understood it, was that these are materially different from the previous ones in size and character. The buildings which stood on the ground at the date of the conveyance consisted of a building two storeys in height and a cottage one storeyed standing along side of it. The present building consists of a tenement of two storeys in height occupying the same frontage as both the old buildings. The height of the present tenement is somewhat greater than the old

one owing to the ceilings being higher, and the south end extends several feet backwards beyond the line of the old tenement. These distinctions, it is said, are of such a character as entirely to differentiate the new building from the old, and to exclude the defenders' obligations.

"The obligation in question is certainly very bald and imperfect, and must be construed in a fair and reasonable manner so as to prevent the pursuer being unnecessarily deprived of any of his proprietary rights, or any undue burden being imposed on the defenders. It cannot be supposed that the pursuer's author, in disponing the minerals to the defenders under the obligation referred to, intended to give up his right to make any necessary alteration or addition to the buildings on the ground, adapt them to modern requirements or necessities, or to utilise his ground for ordinary building purposes. What was intended by the obligation clearly was that no new buildings of a different kind or character, such as a church or hall or warehouse, should be built on the ground, whereby in the event of a subsidence the defenders' liability would be materially increased. But there has been nothing of that kind here. The present buildings though somewhat improved and adapted to modern requirements are substantially of the same nature and character as the old ones. Any increase in the height or breadth is only what might have been reasonably contemplated when the obligation was entered into, and cannot in my opinion affect the defenders' liability. The comparatively small amount of damages awarded for a serious subsidence shows that in re-erecting his buildings the pursuer has done nothing in the least degree unusual or extravagant.

"It was further maintained by the defenders that the cause of the extra foundation for F did not fall within the category of damage to the ground. It was only, it is said, a precautionary measure adopted in order to prevent damage to the buildings. This view is I think clearly untenable. If the condition of the ground was such in consequence of the subsidence that a building could not be erected on it without incurring extra expense in order to render the foundations safe, it is obvious that the ground was damaged by the subsidence to the extent of this increased cost.

"Very much the same objection was stated to the claim for damage to the ground behind the building, but I have found that, apart from the increased cost of foundations, the ground has been directly diminished in value by the subsidence to the extent of the sum I have allowed."

The defenders appealed.

Counsel for the appellants stated that they did not dispute liability for the sum of £47, 8s., awarded by the Sheriff-Substitute in respect of the loss sustained by the pursuers by damage to the buildings B, D, and E. Counsel for the respondents did not press their claim for damage in connection with the ground marked C. Accordingly the argument was directed exclusively to the claims in respect of buildings A and F, and the ground behind A, B, and F.

Argued for the appellants—In the conveyances of 1875 and 1876 by the respondent's author, the whole minerals under the ground were conveyed, with his "whole right, title, and interest, present and future, therein," with full power to work the minerals, and the clause (quoted *supra*) founded upon by the respondent was to be read as a clause of limitation or definition of the damage which the disponees and their successors were to be liable for. The legal effect was that the appellants were entitled to work out the minerals, and if in doing so any damage resulted to the surface the deeds themselves gave the rules as to compensation—*Aspden* v. *Seddon*, 1875, L.R., 10 Ch. App. 394; *Smith* v. *Darby*, 1872, L.R., 7 Q.B. 716, *per* Lord Blackburn, at p. 723; *Greenwell* v. *Low Beechburn Coal Company* [1897], 2 Q.B. 165; *Bank of Scotland* v. *Stewart*, June 19, 1891, 18 R. 957, 28 S.L.R. 735; *Baird* v. *Feuars of Kilsyth*, November 1, 1878, 6 R. 116, 16 S.L.R. 53; *Anderson* v. *M'Cracken Brothers*, March 16, 1900, 2 F. 780, 37 S.L.R. 587. The principle of these cases applied here, and not the principle of *White* v. *Dixon, Limited*, December 22, 1881, 9 R. 375, March 19, 1883, 10 R. (H.L.) 45, 19 S.L.R. 266, 20 S.L.R. 541, and similar cases relied on by the respondent, in which the mineral disponees had not under their titles acquired any right to withdraw support from the lands. It was now settled that a disponee of minerals was at liberty to remove the whole of them without leaving support for the surface—the liability to make compensation for the damage done by exercising that right being determined by a construction of the titles—*Buchanan* v. *Andrew*, March 10, 1873, 11 Macph. (H.L.) 13, 10 S.L.R. 320; *White* v. *Dixon, Limited*, *supra*, *per* Lord Blackburn, at p. 47. The words in the clause as to compensation were clearly limited to the ground and buildings existing at the date of the dispositions. The question in the case of the different claims was—Was the damage within the language of the clause? The liability in the contract was not to be enlarged by construction—*Maxwell* v. *MacFarlane*, November 13, 1903, 40 S.L.R. 64. The building A was not in existence at that date. The building on the site at that date had been removed, and the present building was materially different in weight, size, and cost. It was not a "substituted" building, but even if it had been an exact reproduction of the former building, no claim for damage in respect of it was valid, as it was not in existence at the date of the dispositions. As regards the formerly existing building on site F, no damage was done, as that building was taken down before the subsidence. The present building F was subsequent in date to the dispositions, having been erected in 1902, and the allowance by the Sheriff-Substitute of £90 in respect of the extra cost entailed in making the foundation was wrong. Such expenditure was not damage to the ground

in the sense of the claim. It was merely a precautionary measure taken in order to prevent damage to the buildings to be erected. The Sheriff-Substitute was also wrong in allowing £25 for damage to the ground behind A, B, and F. There was nothing to show damage to that ground, and the award was entirely arbitrary — no loss having been proved.

Argued for the respondent—The "right, title, and interest" conveyed to the appellant's authors referred only to the minerals. They did not extend beyond the ambit of the property conveyed in the dispositions, viz., the minerals, and did not affect the right of the surface owners, or derogate from the right conveyed by the surface titles. The principle was that the proprietors of the surface had a right of support, unless by express language or clear implication the titles showed that this right was taken away—*White* v. *Dixon, Limited, supra; Neill's Trustees* v. *Dixon, Limited,* March 19, 1880, 7 R. 741, 17 S.L.R. 496; *Hamilton* v. *Turner*, July 19, 1867, 5 Macph. 1086, 4 S.L.R. 202; *Davis* v. *Treharne*, 1881, 6 App. Cas. 460; *Love* v. *Bell*, 1884, 9 App. Cas. 286. The case of *Aspden* v. *Seddon, supra*, was a type of a class of cases in which the terms of the titles were such as to show that the owner of the surface had given up his common law right of support. The contracts in the present case did not import a giving up or renunciation of this right of support. The building A existing at the date of the dispositions had been burned down, *i.e.*, it had ceased to exist through no fault or act of the proprietor. Such an accident did not terminate the liability of the appellants. That liability continued in respect of the substituted building. The substituted building was somewhat larger, but it was of the same character, and it was not suggested that it imposed a heavier burden of support than the earlier building. There was nothing to show that the respondent had given up his right to alter or even enlarge existing buildings or to adapt them to modern requirements. As regards F, the building existing at the date of the conveyance had been taken down, but by the express terms of their obligation the appellants were liable for "all loss and damage to the ground." The subsidence had so injured the ground that a building could not be erected without incurring extra expense in order to make the foundations safe. The Sheriff-Substitute was right in taking such extra expense as a measure of the damage to the ground. The same principle applied to the ground behind A, B, and F. The respondent had a right to utilise that ground for ordinary building purposes, and the result of the subsidence was to increase the cost of so utilising the ground.

LORD PRESIDENT—The question in this case is, whether the respondent, who owns certain property in the High Street of Kilsyth, is entitled to recover from the appellants, who are owners of the minerals under and adjacent to that property, damages in respect of injury caused by their working these minerals to the ground belonging to the respondent and to buildings upon it.

The respondent's property consists of (1) a two-storey tenement with frontage to the High Street of Kilsyth, having shops and houses on the ground floor, and dwelling houses above, (2) a back building projecting from the last-mentioned tenement, wholly occupied as dwelling-houses, (3) a two-storey tenement built back from the High Street, and (4) two one-storey cottages, one being to the north and the other to the south of the last-mentioned property, all of which are occupied as dwelling-houses; and he also owns some ground unbuilt on adjacent to the buildings mentioned. The minerals have been and are worked by the appellants from a pit or pits outside the boundaries of the respondent's property.

The appellants acquired rights to the minerals under and adjacent to the respondent's property from persons who had obtained conveyances of them in 1875 and 1876 from the common author of the respondent and the appellants, and by the dispositions of the minerals the disponees and their successors were taken bound "to make up and pay to the disponer and his successors all loss and damage which may be done by the operations of his said disponees and their foresaids to the ground before described, and to the houses and other buildings existing thereon at the date hereof."

It was further expressly conditioned and declared in each of the conveyances "that the minerals and others hereby disponed must be worked by means of underground operations only, and that from and through adjoining or neighbouring properties, and any operations on the surface of the subjects before described, or within a distance of 30 fathoms underneath the surface of the same, are hereby expressly prohibited."

The appellants acquired the minerals with the powers and under the obligations just mentioned, while the respondent is a singular successor of the persons from whom the minerals were acquired, and I do not understand it to be disputed that he is *in titulo* to enforce the stipulations contained in the conveyances just mentioned.

The respondent alleges that on or about 12th June 1899, as the result of the appellants' mineral workings underneath or adjacent to his property above mentioned, a subsidence or draw took place, in consequence of the appellants taking away, or having previously taken away, the requisite support, by removing the minerals constituting that support, with the result that considerable damage was caused to the respondent's property, in respect of which he claims £550 of damages. He states that to the extent of £125 the damage was caused to buildings which were in existence at the dates of the respective conveyances of the minerals to the appellant's authors in 1875 and 1876, to the extent of £115 to the ground (I understand to ground not built on) belonging to the respondent, and to the extent of £310 to buildings now on the ground which were erected in place of

somewhat similar buildings which were upon it at and prior to the granting of the conveyances of the minerals above mentioned, or to other buildings which were erected on ground suitable for being built on.

I understood the appellants' counsel to say at the debate that there were three classes of damage in respect of which the claims were made, the first of which, amounting to £47, 8s, they did not dispute, but that in the cases of the second and third, amounting to £115 and £226, 15s., respectively, liability was disputed.

I think it is clear, and I did not understand it to be contested, that under the clauses in the conveyances of the minerals already mentioned the appellants are liable for damage caused by their underground workings to ground which was at the dates of the respective conveyances above mentioned, and still is, unbuilt on, and I do not see how it could have been disputed that damages were due in respect of injury to such ground, but on the other hand I think, upon the language of the clauses in the conveyances, that the appellants are not liable for damage caused by their workings to buildings erected on the ground subsequent to the respective dates of the conveyances of the minerals. The words in the conveyances "to the houses and other buildings existing thereon, at the date hereof," seem to me to be words of limitation or definition, and to exclude damage to buildings which might be erected on the ground subsequent to the dates of the respective conveyances. The main legal controversy, however, between the parties relates to the question whether the appellants are liable to pay damages in respect of injury to buildings erected subsequent to the dates of the respective conveyances, in substitution for buildings which existed on the ground conveyed at and prior to these dates, and the Sheriff-Substitute has in effect held that the appellants are liable for injury to such substituted buildings. I am, however, unable to concur in this view, as I consider that the language of the compensation clauses in the conveyances is, in so far as they relate to buildings, strictly limited to buildings which existed on the ground at the respective dates of the conveyances. There was a building on the site marked A on the plan at the dates of the respective conveyances, but it was afterwards taken down, and a building stated to be nearly double its size, and of a heavier and more costly description, has been substituted for it. I am of opinion that upon a sound construction of the conveyances no claim for damage caused by underground operations to this substituted building can be sustained, because it does not answer the description of a building existing on the ground at the dates of the conveyances. While, however, the substituted building is materially different from that which existed on the ground at the dates of the conveyances, being larger and more important and therefore creating a heavier liability on the appellants to pay damages, if they are liable in damages, I should have been disposed to hold that, even if the new building had been a literal reproduction of the old one, no claim for damage caused to it by the appellants' underground workings could have been sustained, because it was not a building on the ground at the dates of the conveyances or any of them.

The respondent raised a question as to whether, even if he was held not entitled to claim *ex contractu* in respect of injury to buildings substituted for those which were on the ground at the dates of the conveyances, he might not make a claim in respect of that damage at common law, but I consider that this contention cannot receive effect seeing that, as already stated, the conveyances, in my judgment, practically involve a surrender or renunciation of any claim of damages which might otherwise have arisen in respect of injury done to buildings which did not exist on the ground at their respective dates.

I understood the counsel for the respondent to suggest, though somewhat faintly, that if he had not a claim under the terms of the conveyances he might have a claim at common law. That suggestion, however, cannot in my judgment be entertained, because even if the appellants in working the minerals let down the surface, they were not guilty of any legal wrong in doing so, but were on the contrary acting within the rights conferred upon them by the conveyances.

The effect of the clauses in the conveyances appears to me to be to surrender the right of support, in consideration of an obligation to pay damages in respect of injury done to the ground and to buildings which were upon it at the dates of the respective conveyances. In other words, the case falls within the principle of *Aspden* v. *Seddon*, 1875, L.R., 10 Ch. App. 394, not within that of *White* v. *Dixon* (9 R. 375, *aff.* 10 R. (H.L) 45).

Lord Adam concurred.

Lord M'Laren—I am of the same opinion. The liability of a mine owner to conduct his workings in such a way as not to injure buildings on the surface is very well ascertained and understood when left to the operation of the law. But as we all know, where the proprietor of land and minerals gives off the minerals, separating the estate into a superficial estate and an underground estate, it is very usual to fix by stipulation in what way the obligation to maintain the surface is to be carried out, or whether it is to be carried out at all. In this case the parties have entered into a conventional arrangement in substitution for the legal liability to maintain the surface. With respect to the clause defining the mine-owners' obligation to compensation, it is perfectly clear to my mind, both upon the language of the clause itself and the context, that the parties intended to make an exhaustive specification of the conditions upon which compensation should be paid, and to exclude all other claims of compensation. Now, when it is said that the mine-owner shall

be liable for damages done to existing buildings, I think it is plainly exclusive of liability for damage to buildings which may thereafter be put up, whether on the site of an old building or on unoccupied ground. It cannot make the slightest difference where the new building is placed—it is equally a new building.

But regarding the view which finds expression in the judgment of the Sheriff Court, under which the renewed building is supposed to be an equitable substitute for the old, I venture to offer a test of its soundness by giving an illustration. Suppose that by the effect of the underground workings a building on the surface is so shattered and weakened as to be incapable of being restored, and it is necessary for the safety of the people who occupy it that they should leave and the building be pulled down. Now, under the deed of conveyance, the liability of the mine-owner would be to pay the full value of the building, because in the case I am supposing the building is utterly destroyed and rendered useless, and therefore the damage done is just the value of the building. Having paid this sum, of course the obligation of the mine-owner under the deed is at an end, so far at least as regards that part of the superficial estate. He never could be called upon, according to our construction of the obligation, to pay for damage done at any future time. But, according to the Sheriff's interpretation of the contract, the proprietor, after having got the full value of the building destroyed, may proceed to put up a substituted building, and when it also is destroyed in the course of working the mine the owner would have a second claim, and so on *ad infinitum*. That, of course, would be to substitute a very different obligation for the one which the mine-owner undertook. This is the important point in the case.

I concur with the opinion of your Lordships and in the judgment proposed.

LORD KINNEAR concurred.

The Court pronounced this interlocutor—

"Sustain the appeal: Recall the interlocutor of the Sheriff-Substitute, dated 16th June 1903: Find that the pursuer is proprietor of certain properties in Kilsyth, consisting of buildings marked A, B, C, D, E, F, and of adjoining vacant ground shown on a plan: Find that the defenders are proprietors of the minerals under and adjacent to the said properties under dispositions granted by predecessors in title of the pursuer and of the defenders in 1875 and 1876: Find that under and in terms of the said dispositions the defenders are liable to pay to the pursuer the amount of loss and damage caused by the operations of the defenders to the ground described in the said dispositions, and to the houses and other buildings which existed thereon at the dates of the said dispositions: Finds that in or about the month of June 1899, in consequence of defenders' working the minerals under or adjacent to the pursuer's said properties, damage was done to the buildings marked A, B, D, and E, and to the ground upon which the buildings marked F on the said plan are now erected: Find that building A was erected in 1894 to replace a building which existed on the ground at the dates of the said dispositions, and which had been burned down shortly before, and that the said new building erected in 1894 was larger both in area and in height than the building which previously existed on the same site: Find that the buildings B, C, D, and E were in existence at the dates of the said dispositions, and that the building marked C on said plan was taken down by the pursuer in 1902 in connection with the re-erection of the building marked F hereinafter mentioned: Find that at the dates of the said dispositions a building existed upon the ground now occupied by the building marked F on the said plan, that the said building was taken down in 1892, and that the buildings marked F on the said plan were not erected until 1902: Find that in erecting the building marked F in 1902 the pursuer provided extra foundations at a cost of £90, in consequence of damage done to the ground on which the said buildings were erected: Find that damage has been done by the defenders' mineral workings to the vacant ground behind A and B, and also to the ground upon which the buildings marked F are erected: Find in law that the defenders are liable to the pursuer for damage done by their mineral workings to buildings which were in existence at the dates of said dispositions, and also for damage done to ground unbuilt on: Find further that the defenders are not liable to the pursuer for damage done to buildings which were not in existence at the dates of the said dispositions, but which buildings have since been removed: Therefore find that the defenders are not liable to the pursuer for any damage done to the buildings marked A on the said plan: Find that the defenders are liable to the pursuer for the damage done to the buildings marked B, D, and E on the said plan, and assess the amount thereof at £47, 8s.: Find that the defenders are liable to the pursuer for the damage done to the said vacant ground behind the buildings marked A and B, and also to the ground on which the buildings marked F are now erected, and assess the amount at £115: Therefore decern against the defenders for payment to the pursuer of £163, 8s., and *quoad ultra* assoilzie the defenders from the prayer of the petition."

Counsel for the Appellants and Defenders—The Lord Advocate (Dickson, K.C.)—Clyde, K.C.—R. S. Horne. Agents—Webster, Will, & Co., S.S.C.

Counsel for the Respondent and Pursuer—Shaw, K.C.—Hunter. Agent—R. Ainslie Brown, S.S.C.