nesses, James Browning, joiner, Edmonston, and James Lockhart, gardener, Edmonston, while the said John Moir Macqueen well knew that the said Alexander Reid had not signed said bonds, or either of them, before the said witnesses, to the loss, injury, and damage of the said pursuers?

"4. Whether, on or about 9th May 1854, and at the delivery of the said bonds, the said John Moir Macqueen falsely and fraudulently represented to the said John French, as agent foresaid, for the purpose of enabling the said John French to complete the testing clauses of said bonds, that the said bonds were signed by James Kay, smith at Lauder, and William Glass, residenter there, as witnesses, while he well knew that the said James Kay and William Glass, who subscribed said bonds, did not reside at Lauder, but in Edinburgh, to the loss, injury, and damage of the said pursuers?

"5. Whether the defender, as agent foresaid, induced the pursuers respectively to advance the foresaid sums of £1200 and £300 on said bonds and dispositions in security over said subjects, by falsely and fraudulently overstating the rental of said subjects, to the loss, injury, and damage of the said pursuers?

"6. Whether the defender, as agent foresaid, undertook the duty of getting the said bonds duly executed by the obligants therein; and whether he failed to perform said duty, to the loss, injury and damage of the pursuers?

"7. Whether, on or about 9th May 1854, and at the delivery of the said bonds, the said John Moir Macqueen fraudulently represented to the said John French, as agent foresaid, that the said bonds had been duly executed by the obligants therein, while the said bonds had not been duly executed by said obligants, to the loss, injury, and damage of the pursuers?"

Damages laid at £840.

The parties, having failed to adjust issues before the Lord Ordinary (Barcaple) his Lordship reported the case.

FRASER and SCOTT, for the pursuers, argued—It is quite competent, in an action at the instance of two or more persons, even when they are unconnected, to conclude for a sum in name of damages to be paid to them all jointly. In the present case the several persons were not unconnected, as the two bonds on which they had advanced their money were secured *pari passu* over the same subjects. The two bonds were contemporaneous in date, and were carried through by the same agent. There was a general agreement to lend £1500, and it was for the mere matter of convenience that the securities were taken in the shape of the two bonds, one for £1200, and the other for £300, instead of one bond for £1500.

LORD ADVOCATE and W. N. MACLAREN, for the defender, answered—This action is at the instance of two different sets of pursuers. The first of these sets consists of the two parties first named in the summons, who aver that they lent £1200 to Scott on a bond and disposition in security. The other set consists of the two last-named pursuers, who aver that they advanced £300 to Scott on a separate bond and disposition in security. The two bonds were two totally separate and distinct transactions. The first two pursuers accordingly are averred to have suffered damage out of a transaction totally separate and distinct from that out of which the last two are averred to have suffered. The summons, notwithstanding, concludes that the defender should be decerned to pay to the whole four pursuers jointly the sum of £840. It was quite incompetent for two or more sets of unconnected pursuers, suing together in one summons of damages, to conclude for one sum of damage to be paid to them all jointly. In order that the summons should be sustained at the instance of two or more sets of unconnected pursuers, it must conclude for a separate sum in name of damage to be paid to each set. Harkes *v.* Mowat, 4th March 1862, 24 D. 701; Fleshers of Dumfries *v.* Rankine, 10th December 1816, F.C.

The Court sustained the second plea in law for the defender, to the effect that the conclusions of the summons were not framed in such terms as to authorise the Court to pronounce decree for reparation and damages in the present action. There were here two sets of pursuers with no community of interest—nay, whose interest might at any time become adverse. Their respective claims might come to depend upon quite different grounds; the one might succeed and the other fail, and yet they had no mode, nor any clue to a mode, of ascertaining what amount of interest each set of pursuers had in the sum of £840 concluded for.

Action dismissed with expenses.

Agents for Pursuers—Murray, Beith, & Murray, W.S.

Agent for Defender—John Moir Macqueen, S.S.C.

PETITION—MORRIS (*ante*, vol. ii., p. 222.)

Appeal to House of Lords—Interim Execution. A petition to apply a judgment of the House of Lords affirming one of this Court is incompetent; and one for delivery of a bond of caution to repeat expenses, ordered to be paid under an application for interim execution, is unnecessary, where the judgment is affirmed, because the bond is conditional on reversal only.

In this case the Court of Session had decerned in the petitioenr's favour, with expenses, and an appeal having been taken to the House of Lords, had granted *interim* execution for expenses on the usual bond of caution for repetition being lodged. The House of Lords having simply affirmed the judgment, the petitioner in this petition asked the Court to apply the judgment of the House of Lords, and to grant warrant to the clerk for delivery of the bond of caution.

ORR PATERSON appeared for the petitioner.

ALEX. BLAIR for the respondent.

The Court, *ex proprio motu*, dismissed the petition as unnecessary, holding that where the House of Lords' judgment was a simple affirmance, it was neither necessary nor competent to apply the judgment, and there was no occasion for delivery of the bond of caution, because its coming into operation was conditional on reversal only.

Agents for Petitioner—Duncan & Dewar, W.S.

Agents for Respondent—Hunter, Blair, & Cowan, W.S.

Wednesday, Dec. 5.

FIRST DIVISION.

CLEPHANE AND OTHERS *v.* MAGISTRATES OF EDINBURGH AND OTHERS

(*ante*, 22 D. 1222, and 2 Macp. H.L. 7).

Property—Mortification. Held that the University of Edinburgh had no right, under the