all necessity for pronouncing on these points is precluded by the special circumstances of the case.

Unquestionably the late Mrs Pringle was originally entitled to elect to take her legal right of terce in preference to the provisions in her husband's settlement. But she was bound, in fairness to those interested, to intimate her election without delay. And if she intended to claim her legal right of terce, she ought openly and distinctly to do so. She could not reasonably keep hanging over the head of the heir a claim for terce, with, in all probability, five per cent. interest on last term's rents, for a wholly indefinite period. In the present case she was the more imperatively called on to come forward with a claim by the fact of the annuity due under the settlement being within her knowledge assigned from term to term for her use. Though she did not formally accept the tender, she never in any way rejected it. She never made any claim to terce, either by formal process or informal demand, during all the ten years that she survived her husband. She allowed the money assigned in bank to meet her annuity under the settlement to lie unrepudiated till her death. In this special condition of things, I consider it to be a sound conclusion, that no claim for terce was intended to be made by her; that the only claim which can be now held to have been kept up is that for the annuity under the settlement; and that this claim, and this only, was transmitted by her to her representatives.

I do not, in so holding, indicate any opinion either that silence is necessarily to transmit to a widow's representatives a claim against her husband's heir for one-third of the rents during her survivance; or that, where matters are entire, these representatives have not the same power of electing between the terce and other provisions primarily competent to the widow herself. All that I decide is, that in the special circumstances of the present case no claim of terce was transmitted to her representatives by Mrs Pringle.

The question was accordingly answered in the negative.

Agents for Pursuers—Messrs C. & A. S. Douglas, W.S.

Agents for Defenders—Messrs Romanes & Paterson, W.S.

Saturday, February 26.

SECOND DIVISION.

POLLOK *v.* CASSIDY.

Master and Servant — Injury to Person — Culpa. Circumstances in which an employer *held* liable in damages, in respect he had not provided proper measures for the protection of his workman, who sustained injuries in consequence.

This was an appeal from the Sheriff-court of Hamilton. The action was one brought by a workman against his employer, concluding for damages for personal injuries; and the question was, whether the injuries were sustained through the fault of the employer? It appeared that the pursuer was on 22d June 1868 engaged by the defender's orders in removing from the empty bed of the Monkland Canal certain stones and loose mason work which had formed part of the pier of a bridge recently taken down. There was a high clay embankment immediately behind the said pier, and which had previously rested on it, and it was at the foot of this embankment that the pursuer had been set to work. While the pursuer was at work on the day in question, a portion of this embankment fell upon him, and injured him so severely that his leg had to be amputated. The pursuer alleged that it was the defender's duty to have made provision for the safety of his workmen by having the embankment sloped back in such a way as to obviate the danger of its falling. The defender, on the other hand, alleged that the danger had been as obvious to the pursuer as to him, if there was danger, and maintained generally that the accident was due to the pursuer's own negligence.

The Sheriff-Substitute (VEITCH) found for the pursuer, and awarded him £25 damages. The Sheriff (BELL) adhered, but increased the damages to £50.

The following is the interlocutor of the Sheriff:—"Having heard parties' procurators on their respective appeals, and considered the proof and whole process—Finds that at the time the pursuer sustained the injuries for which he seeks reparation he was engaged, by the defender's orders, in whose employment he was, in removing from the empty bed of the Monkland Canal certain stones and loose mason work which had formed part of the pier of a bridge recently taken down: Finds that there was a high clay embankment immediately behind the said pier, and which had previously rested on it, and it was at the foot of said embankment that the pursuer had been set to work: Finds that, the support of the pier being withdrawn, a part of the embankment gave way and fell on the pursuer, and injured him so severely that one of his legs had shortly thereafter to be amputated: Finds it proved that the embankment, as soon as the pier against which it rested was removed, became dangerous, and ought to have been cut down, or at all events duly sloped, before any one was allowed to work beneath it: Finds that it is not proved that it had been so cut down or sloped, and it is not proved that the plan, No. 9—prepared, not from actual observation, but from statements furnished by the defender—contains a correct representation of the embankment at the time of the accident: Finds, on the contrary, that the pursuer depones as a witness *in causa*—'When the pier was removed the embankment was left exposed: it was nearly perpendicular, but rather inclined to the side of the canal where we were working. We were occupied in digging out a stone with picks. I was stooping down with my face towards the canal, and back towards the embankment. Some of the embankment came down upon me, and knocked me down into the bed of the canal:' Finds that this evidence is expressly contradicted by that of the pursuer's two fellow-workmen, John Garretty and Owen Reilly, and is consistent with probability, whereas it is hardly possible that any debris, or any portion of the embankment, could have fallen on the pursuer had it been sloped back in the manner delineated in said plan: Finds that the rule of law is, that 'while a servant is required to consider his liability to an injury by the carelessness of his fellow-workmen as one of the incidents of his employment, the risks of which he has aasumed in contracting with his employer, he is equally entitled to expect that the master, on his side, will do his duty towards him, by taking all

proper measures to protect him, as far as possible, from unnecessary danger;' and so the master has been held liable in damages for the want of lining or barring to the sides of a pit, in consequence of which some of the crumbling strata fell on the men working at the bottom (See Smith on Reparation, p. 56, and *Marshall* v. *Stewart*, 18th December 1851): Finds that the defender did not, in the present instance, fulfil his duty to the pursuer by taking proper precautionary measures for his protection: Therefore adheres to the interlocutor appealed against in as far as it repels the defences, and finds the defender liable in damages; but as regards the amount of damages found due (being only £25), sustains the pursuer's appeal, and so far alters the said interlocutor: Finds that, considering the injuries to the pursuer resulted in the loss of a leg, which was amputated above the knee, the minimum sum in which the defender falls to be held liable is £50: Decerns against said defender for that sum accordingly, and *quoad ultra* dismisses both appeals."

The defender appealed.

SOLICITOR-GENERAL and HARPER for him.

PATTISON and MACDONALD in answer.

The Court held unanimously that there was negligence on the part of the defender in not providing for the due sloping of the embankment; and that there was nothing to infer recklessness or negligence on the part of the pursuer, especially as the pursuer was not a skilled workman, but a common labourer; and the danger from the position of the embankment was one which required a certain amount of skill to appreciate.

Agents for Appellant (Defender)—Keegan & Welsh, S.S.C.

Agent for Respondent (Pursuer)—N. M. Campbell, S.S.C.

Tuesday, March 1.

REDDIE *v.* SHEPHERD AND MANDATORIES.

Bill of Exchange—Onerous Indorsee—Negotiation—Waiver. Circumstances in which *held* (1) that the drawer of a bill, for whose accommodation it was granted, was not entitled to plead against an onerous indorsee failure to negotiate, as relieving him from liability; (2) that the drawer having asked and obtained time to pay, he had, on the principle of waiver, barred himself from stating objections to the negotiation of the bill.

This was an appeal against a judgment of the Sheriff of Lanarkshire, finding the defender and appellant liable in payment to the pursuer of the contents of a bill for £200. The bill was drawn by the defender in Glasgow on 24th March 1867 at four months' date, and was accepted by a Mr Bowman. The bill had come into the hands of the pursuer and holder, who was a *bona fide* onerous indorsee, from a Mr Robertson, financial agent, London, to whom it had been handed by the appellant, the drawer, professedly to get discounted, but who, instead of discounting it, had handed it to Shepherd, the pursuer, partly in payment of an old debt due by him to Shepherd, and partly for an immediate cash payment of £100.

The defence to the action was that the holder had failed duly to negotiate it, in respect that, though due and payable in London on 27th July, it had not been presented for payment till the 29th, and that, therefore, all recourse against the drawer was lost.

The Sheriff-Substitute (F. W. CLARK) pronounced the following interlocutor:—"Finds that the bill in question, which is dated the 24th day of March 1867, and payable four months after date, was drawn by the defender on and accepted by Andrew Rollo Bowman, and that the same was thereafter endorsed blank by the defender: Finds that the pursuer gave adequate value for the said bill, and is now onerous indorsee and holder thereof: Finds that all objections to the due negotiation of the said bill have been waived by the defender: Finds, further, that in the circumstances of the present case, the pursuer being an onerous indorsee, it is of no importance whether the drawer gave value or not to the acceptor; therefore repels the whole pleas in law for the defender, and decerns against him in terms of the conclusions of the summons: Finds the pursuer entitled to expenses; allows an account thereof to be given in, and remits the same when lodged to the Auditor of Court to tax and report, and decerns.

"*Note.*—From the evidence, parole as well as documentary, and more particularly from the depositions of William Tatham, solicitor, London, and of Mr Anderson, writer, Glasgow, it is quite obvious that the defender waived all objections to due negotiation after he had been made aware of the grounds upon which such might be taken. The effect of such waiver is well established (see Wilson's Thomson's Bills and Notes, pp. 377 to 384). That the pursuer gave value for the bill, and is an onerous holder, is established by his deposition; and whatever equities may subsist between the drawer and acceptor, or any intermediate indorsee, these are of no avail against him unless he could be shown to have been privy to or in the knowledge of such equities. No evidence of this kind is adduced. It may be that the defender's story is substantially true, and that he has been deceived by those by whom he was induced to connect himself with the bill. It may be that he has never received any benefit from the transaction. All this, however, is matter with which the pursuer has no concern.—See Thomson, *ut supra*, pp. 190, &c."

The defender appealed.

The Sheriff (GLASSFORD BELL) adhered in the following interlocutor:—"Finds that it was stated for the defender that his appeal was directed against that part of the interlocutor appealed against by which it is found that all objections to the due negotiations of the bill in question had been waived by the defender: Finds that the irregularity in negotiation founded on in the minute of defence is, that although the bill was due and payable on 27th July 1667, it was not presented for payment (as has been proved) till the 29th July: Finds that if there was no waiver of the objection thence arising, recourse against the defender would have been lost (Thomson on Bills, Wilson's ed., p. 296); but finds that if a party to a bill promises payment, or admits liability, and asks indulgence after he is aware of the failure in negotiation, he is held to have waived any objection founded on said failure (see *Turnbull*, Feb. 16, 1831, and *Watt*, Jan. 19, 1816): Finds that the witness William Tatham, solicitor, London, has deponed that the defender called upon him within two or three days after the bill fell due, and craved time to pay it, requesting that it might not be sued on, and offering to pay £100 to account, and to