spect; and as the words used in the 16th section are open to construction, the Lord Ordinary is at present disposed to think that the construction must be adopted which is most in consistency with the special object and spirit of the Act, and that the solution of the question here raised will mainly depend upon whether, at the time it was raised, the husband or his disponees had obtained that complete possession of the property which the proviso at the end of the 16th section requires, in order to exclude the wife's claim. The Lord Ordinary has therefore allowed a proof before answer on this point; and the proof has been limited to this, because he understood parties were agreed in wishing the question raised in the second plea in law disposed of before that relative to the amount of the provision claimed was entered upon."

After a proof had been led, his Lordship pronounced an interlocutor in the following terms:—"Finds that, in the circumstances of the present case, an annuity of £50 will be a reasonable provision for the maintenance and support of the pursuer; and that the defenders are bound to make a provision of that amount for the pursuer, as the condition of their being entitled to claim the rents and proceeds of her estate as falling under the *jus mariti* of her husband: Therefore, and to that extent, repels the defences, and appoints the case to be enrolled, in order that parties may arrange as to the manner in which the annuity is to be secured; and reserves in the meantime all questions of expenses.

"*Note.*—In fixing the annuity in this case the Lord Ordinary has been guided by the rule which appears to have been laid down by the Second Division of the Court in the case of *Sommer*, 2d March, 1871, 8 Scot. Law Rep. p. 388, viz., that it is a provision to the wife alone which the statute authorises. And he does not think he would now be warranted, when fixing the amount of an annuity under the statute, in giving any material weight to the consideration that several of the pursuer's children are to some extent looking to her for support. He has, however, fixed the amount at a somewhat larger sum than that allowed in the case of *Sommer*. Because it is in evidence that it will require at least £40 a-year to enable the pursuer, alone, to live as she has been accustomed to do. And having regard to the position which she has occupied since her mother's death, when she succeeded to the liferent of the property in question, and the way in which she has all along been allowed to administer the whole of the rents on her own behalf, and that of her family, the Lord Ordinary does not think that she can now be expected to maintain herself, in ordinary comfort, on a smaller annuity than £50. But he has left it to the parties, in the first instance, to arrange how that annuity is to be secured."

Mrs Taylor reclaimed.

Fraser and Balfour for her.

Solicitor-General and Asher for respondents.

The Court substantially adhered, and pronounced the following interlocutor:—

"*Edinburgh, 28th October* 1871.—The Lords having heard counsel on the reclaiming-note for Mrs Agnes Monro or Taylor, alter the interlocutor of the Lord Ordinary reclaimed against; find that the annual income falling under the husband's *jus marili* from the pursuer's separate estate consists of the sum of £88, being the rents of the Kirkwynd property; and the sum of £12 annually, being the interest on the bond for £300. Find that the sum of £50 annually is a reasonable allowance to be made for the support and maintenance of the pursuer out of the said income: Find that the pursuer is under no obligation to invest the sum of £300 in annuity with a view to provide such annual allowance: Find that the pursuer has drawn the said interest, amounting to £12, to this date: Find the defenders liable in the sum of £38 annually from the 4th day of May 1870 till the date of this judgment; and in the sum of £38 yearly during the lifetime of her husband, the pursuer herself continuing to uplift the interest on the £300: Find the pursuer entitled to expenses, subject to modification; and remit to the auditor to tax and report, and decern.

Agents for Pursuer—J. & A. Peddie, W.S.

Agents for Respondents—Webster & Will, S.S.C.

Wednesday, November 1.

FIRST DIVISION.

STEWART *v.* COCHRANE & CO.

Agreement—Master and Servant—Dismissal. Held that under a written agreement a manager of a bleach work was engaged for a year, with a break at the end of three months, and that his employers, not having availed themselves of the break, were not entitled subsequently to dismiss him before the end of the year without payment of the whole year's salary.

This was an appeal from the Sheriff-court of Renfrew.

In December 1869 the defenders, who are bleachers and finishers at Pollokshaws, entered into a contract with the pursuer by the following missive letters:—

"*3d Dec.* 1869.

"Gentlemen,—I hereby agree to come to you to take charge of your bleaching works at River-Bank, Pollokshaws, on the following conditions:—

"1*st*, I shall go on the 26th December to the Albyn Mills, So. York Street, and I remain there in the bleachg. department, for the purpose of acquainting myself thoroughly with the system on which your goods are bleached and finished. Whilst there my hours of attendance to be from 6 A.M. till 6 P.M., and I promise to acquaint myself thoroughly with each department of bleaching and finishing, so that I may be able to manage your works satisfactorily. When my month at the Albyn Mill is over, I shall go to Pollokshaws and start your works, and I bind myself to give you a good production from each department, and to finish your goods to your satisfaction.

"2*d*, In consideration of my so doing you are to pay me at the rate of £120 for the first three months, from the date of my going to Riverbank. If at the end of this time you are satisfied with me you are to give me an engagement to the end of 1870, and to pay me at the rate of One hundred and fifty pounds stg. for the remaining nine months; should you not be satisfied with me our arrangement to terminate at the end of the three months after I have started your works.

"Should you give me an engagement to the end of the year you are to pay me for the month I have spent at the Albyn Mill, but should I leave at the end of the three months, owing to your being dissatisfied with my management, nothing to be paid me for that month.—Waiting your acceptance, I am, &c. R. H. Stewart."

"Mr R. S. Stewart,

"Dear Sir,—We have received your letter of engagement, of date 3d December, and hereby accept of the same. Yours truly, J. J. COCHRANE, & Co."

In terms of this agreement the pursuer went on 26th December 1869 for one month to the Albyn Works, and thereafter entered on his duties at Riverbank. Owing, however, to the machinery not being ready the works were not started till the middle of March. The pursuer continued to act as manager till the 3d October 1870, when he was dismissed in terms of the following letter:—

"Mr Stewart,

"Dear Sir,—As our work is not managed to our satisfaction just now, neither in regard to the finish of our goods or the production, we are obliged to give you intimation that you will cease to be our manager at the end of September 1870.—We are, Dear Sir, Yours truly,

"J. J. COCHRANE & Co.

Mr Stewart then raised the present action, claiming payment of his salary from 26th December 1869 to 26th December 1870, at the rate of £120 per annum for the first three months, and of £150 for the succeeding nine months, under deduction of £80 received to account of his salary. The summons also concluded for £100 damages for wrongful dismissal.

The defenders maintained that, by the true construction of the letter of agreement, the engagement at Riverbank was for three months only, with an option to the defenders to renew the contract for nine months if they were satisfied with the pursuer's management; that the contract had not been renewed; but, on the contrary, they averred that on the 30th April 1870 they had intimated their dissatisfaction to the pursuer, and that they could not give him the engagement contemplated, but told him that if he chose to remain on some time longer he might do so on the understanding that his employers were under no obligation to keep him for any particular period, and that his salary was to be at the rate of £120 per annum. The defenders further averred that the pursuer's management had been inefficient.

Parties having been allowed a proof of their averments, it appeared from the evidence that throughout the whole period of the pursuer's management the defenders were constantly complaining of the bad way in which the goods were finished, whereas the pursuer maintained (and the evidence supported this view) that the faults complained of were due to defective machinery and the bad quality of the water supplied. The alleged conversation on the 30th April was deponed to by Mr James Cochrane, one of the defenders. The pursuer denied that any such conversation took place.

The Sheriff-Substitute (COWAN) pronounced the following interlocutor:—"Finds, in fact, that, in terms of the letter No. 4/107 of process, (that of 3d December 1869) pursuer went, on 26th December 1869, for one month to the Albion works, and on the expiry of said month entered on the duties of manager at the defenders' works of Riverbank; finds that when he so entered on his duties there the works had for some time been stopped, and he required to start them; finds that the pursuer did start the defenders' works, and continued to act as manager of defenders' works down to 3d October 1870, when he was dismissed, in terms of the letter No. 3/5 of process; finds that at the end of three months from pursuer starting the works at Riverbank the defenders did not dismiss the pursuer from their employment, or make any new arrangement with him, nor did the pursuer on his part stipulate for any new engagement; finds that the pursuer has sought for, but been unable to obtain, any new engagement with other parties prior to 26th December 1870; finds that pursuer has failed to prove any special damage, owing to the manner of his dismissal; finds that pursuer has all along discharged his duties to the best of his ability; has been careful in his management, attentive to his duties, and has shown himself in every way desirous of meeting the views of his employers; finds that the faults complained of in the goods finished at Riverbank are due to the machinery, the water, and changes among the hands during the course of his management; finds that the balance of salary due to pursuer is sixty pounds sterling: Finds, in law, that on a sound construction of the document in process, it imports an engagement to the end of 1870, with a break in the option of either party at the end of three months from pursuer's going to Riverbank. That, in the absence of any alteration of the terms of agreement at the end of the three months, the parties must be held to have silently covenanted to go on upon the footing expressed in that document, which must therefore regulate the agreement between parties; finds, in the circumstances above stated, that the pursuer is entitled to his salary down to 26th December 1870, as concluded for; further, that he is not entitled to a further claim for damages, there being no special circumstances of hardship, and no special damage proved. Therefore, decerns against the defenders for the sum of sixty pounds sterling, and finds them liable in expenses."

On appeal, the Sheriff (FRASER) recalled the interlocutor of the Sheriff-Substitute:—"Finds that on 30th April 1870 the defender James Cochrane intimated to the pursuer that the defenders were dissatisfied with him, and that they did not mean to enter into an engagement with him to continue as manager for the remaining months of 1870, but that if he chose to remain upon trial the defenders agreed to retain him upon that footing, but not as giving him an engagement to the end of 1870 at an increased salary, as contemplated by the original contract; finds that this was an engagement for service terminable at the will of either party at any time, or at least after reasonable notice; finds that the pursuer did remain upon this footing down to the 3d of October 1870, when he left the service of the defenders, in consequence of having been dismissed by them after notice given; finds that the notice given was reasonable notice, and that the defenders had power so to dismiss the pursuer. *Secundo*—In reference to the defence of dismissal founded upon alleged inefficiency of general management, and want of care and attention on the part of the pursuer, finds this defence unfounded, and, on the contrary, finds that the pursuer did devote himself constantly to the service of the defenders, and faithfully gave them the benefit of all the skill of which he was master, and the extent of which the defenders knew before they engaged him. *Tertio*—Finds that the pursuer is entitled to payment for the month's service at Albion Mills, and for the whole subsequent period down to 3d October 1870, but at no higher rate than at £120 per annum; and that thus he was entitled to £92, 7s. 11½d., to which there has been paid to account, as admitted in the summons,

£80, leaving a balance due to the pursuer of £12, 7s. 11d.; decerns against the defenders for the said sum of £12, 7s. 11¼d., and assoilzies them from the whole other conclusions of the summons; finds neither party entitled to expenses."

The pursuer appealed.

WATSON and D. CRICHTON for him,

SOLICITOR-GENERAL and R. V. CAMPBELL for the defenders.

At advising—

LORD PRESIDENT—This dispute chiefly turns on the construction of the letter of 3d December 1869—with its acceptance. The pursuer, who was not specially acquainted with a bleacher's business, was to go to Albion Mills for a month to be instructed in the process. He was then to go to Pollokshaws to begin his duties. Then comes the part of the letter which specially requires to be construed—"In consideration of my so doing" (*reads letter of 3d December* 1869). The question is,—was this an engagement for three months, or one for twelve months? The view of the defenders is, that it was an engagement for three months only, but that if the parties consented to renew it for nine months longer, it was provided by anticipation that the salary for the nine months was to be at the increased rate of £150 per annum. The pursuer's view is, that the engagement was for a year, unless the employers should take advantage of the break provided at the end of three months, and terminate the engagement. I am in favour of the pursuer's view. I think the fair and reasonable construction of the agreement is, that it was an engagement for twelve months, with a period of one month's instruction, thereafter a period at a salary of £120 per annum, during which he should be on trial, with a break at the end of the trial period. It appears to me that if the defenders did not avail themselves of their right to terminate the engagement at the end of three months, but went on saying nothing, the engagement for nine months took effect, and could not subsequently be interrupted, but must run its course. Mr James Cochrane speaks to some conversation which took place about the 30th April 1870, which the pursuer does not recollect. I do not doubt that some conversation took place, but what was the result of it? Mr Cochrane says that he intimated to the pursuer that he was not to go on with the agreement, but if he chose he might remain on at the old rate, subject to dismissal at pleasure. That would have been the substitution of a totally different agreement. But considering the vague manner in which this new agreement is averred, and the still more vague manner in which Mr Cochrane speaks of the conversation alleged to embody it, I cannot hold that there was any new agreement varying the terms of the old. It was at least the proper course to make the new agreement in writing. I do not say that it is incompetent to supersede a written agreement by a verbal agreement, but it is very inexpedient. It is important to observe what, according to the true construction of the agreenent, the defenders were bound to do. They ought to have intimated to the pursuer that they were not going on with the agreement, and insisted that he should leave, or, if they allowed him to remain they ought to have recorded the terms on which he was remaining. If they did neither, the proper inference is that he remained at the works on the old agreement. Consequently, I think that the Sheriff-Substitute was right, and that the pursuer is entitled to his salary.

The other Judges concurred.

The Court substantially reverted to the interlocutor of the Sheriff-Substitute.

Agent for the Pursuer—A. Kirk Mackie, S.S.C.
Agent for the Defenders—John Martin, W.S.

Wednesday, November 1.

SECOND DIVISION.

WHITELAW *v.* FULTON.

Lease — Renunciation — Possession — Landlord's Hypothec. Circumstances in which *held* that a party who had taken a sub-lease of premises, with a deduction of rent for the first year for repairs, and without "further recourse," and who entered into possession in June, proceeded to make alterations, and occupied until August, was debarred from renouncing the lease on the ground that the premises were not in a tenantable condition; and further, ordained to replenish the same with furniture equal to the current year's rent, and fire and air the same to prevent deterioration from damp.

Whitelaw, a pawnbroker in Wishaw, brought the present petition before the Sheriff-Substitute at Hamilton, craving him "to decern and ordain the respondent, within such short space as your Lordship may appoint—(1) To place sufficient furniture, goods, and plenishing within the said shop and other premises situated at No. 15 Glasgow Road, Wishaw, equal at least in value to the current year's rent thereof; (2) as also to decern and ordain the respondent to open the said shop and other premises, and carry on his business therein, and (3) to keep proper fires lighted therein, and air the same in such manner as shall prevent deterioration from dampness."

The respondent, who was also a pawnbroker in Wishaw, stated in defence—"That the conclusions to decern and ordain the respondent to open the shop and other premises referred to in the petition, and carry on his business therein, and to keep proper fires lighted therein, and air the same, are incompetent. The shop and premises referred to were, at the time when the defender should have entered thereto, and have since been, uninhabitable and unusable in consequence of their not being in a proper state of repair. In particular, the walls were and are excessively damp, and goods could not be placed near or against them. The floor of the premises also requires to be renewed. The defender has all along been ready and willing to occupy and stock the premises if they were put into a proper state of repair."

It appeared from the proof that Fulton had taken the house in question from a Mrs Deans on lease for five years from Whitsunday 1870, on the understanding that he was to execute certain repairs, while Mrs Deans undertook, as her share of the expense thereof, to allow an abatement from the first year's rent to the extent of £7. Fulton, however, determined not to occupy the premises himself, and a sub-lease was entered into between him and the appellant Whitelaw by the two following missives:—