on, giving power to the Court to appoint new trustees.

The question now arises, whether these clauses are to be taken in their rigid literality—be held applicable to all trusts whatever—or whether they are to be restrained to the case of gratuitous trusts, such as were provided for by the two previous statutes, and, I clearly think, are exclusively provided for by the 2d section of the Act 1867. I am of opinion that the latter is the sound conclusion. I think the general phrase "any trust" is to be construed as referring to any trust of the same general description with those previously referred to. Fairly interpreting the statute, I think that no other construction can be put on it. The whole of the provisions are such as are fairly applicable to the case of gratuitous trusts, and these alone. I have particularly noticed those referring to the "beneficiaries" under the trust—so expressly called. I cannot fancy the Legislature having in view the case of trusts for creditors, such as is here involved. Still less can I suppose it intending to apply its provisions, without any discrimination, to that large body of varying trust-deeds which would be comprehended under the term "any trust-deed," taken absolutely. I think the whole arrangements of the statute are different from what they would have been had it been contemplated to apply its provisions to all trusts whatever of any kind. The petitioners have not satisfied me that this unlimited construction is to be given to the Act. I hold, on the contrary, that it was exclusively intended to follow out into further ramifications the provisions of the two prior statutes as to gratuitous trust-deeds. I cannot therefore apply its provisions to the trust-deed now in question.

The Court accordingly directed the Lord Ordinary to refuse the petition as incompetent.

Agent for Petitioners—A. Kirk Mackie, S.S.C.

Tuesday, May 28.

CARLIN *v.* PATERSON.

Bankruptcy Act 1856 (19 *and* 20 *Vict. c.* 79), § 143. A discharged bankrupt *held* barred from challenging heritable securities held by a creditor in the sequestration (who had sold the subjects during the process of sequestration), in respect that in the offer of composition the securities were not stated as objected to, nor notice in writing given to the original holder, or to the person to whom he had sold the subjects.

This was an action at the instance of James Carlin, sometime cab proprietor in Glasgow, against William B. Paterson, writer in Glasgow, concluding for reduction of certain bonds and dispositions in security, which purported to have been granted at various dates in the year 1869 by the pursuer in favour of the defender, over certain subjects in Glasgow then belonging to the pursuer. The grounds of reduction were that the bonds were not subscribed by the pursuer, and not his writ; and further, that they were obtained by fraud.

On 6th April 1870 Carlin applied for and obtained sequestration under the Bankruptcy Act. In the state of affairs given up by Carlin, he stated the heritable subjects before mentioned among his assets, "less heritable securities which are disputed." At that time he was engaged in defending an action of maills and duties at the instance of Paterson, in which decree was pronounced against him (Carlin) on 10th June 1870.

On 23d June, Paterson exercised the power of sale contained in the bonds, and sold the subjects by public roup. The bonds were given up to the purchaser. The price obtained was sufficient to pay the debt due to him, with interest, and there was a small balance over, which was disposed of by a multiplepoinding.

On 12th September 1870 Carlin made an offer of composition of 2s. 6d. per £, which was accepted by the creditors on 23d September. In the offer of composition he made no mention of the securities held by Paterson.

The Lord Ordinary (MURE) pronounced the following interlocutor:—

"2*d February* 1872.— . . . Finds that in the offer of composition upon which the pursuer was discharged the securities in question were not stated as objected to by him, and that no notice in writing was given by the pursuer to the defender, or to the party to whom the property over which the securities were granted had, without objection, been sold during the sequestration, of the pursuer's intention to object to the securities: Finds, in these circumstances, that the pursuer is barred from now challenging the securities; therefore dismisses the action, and decerns: Finds the defender entitled to expenses."

His Lordship held that the action was excluded by sec. 143 of the Bankruptcy Act, 1856, which enacts that the bankrupt shall not be entitled "to object to any security held by any creditor, unless in the offer of composition such security shall be stated as objected to, and notice in writing given to the creditor in right thereof."

The pursuer reclaimed.

TRAYNER, for him, argued that the spirit, if not the letter, of sect. 143 of the Bankrupt Statute was complied with. Paterson and the other creditors had fair notice that the securities were disputed. Moreover, at the date of the offer of composition the property had been sold by Paterson, and his debt paid, so that the securities were not securities held by a creditor.

THOMS and M'KECHNIE, for the defender, were not called upon.

At advising—

LORD PRESIDENT—There are various provisions in the Bankrupt Statute that occasionally operate very hardly against particular interests. We had a striking example in *Pendreigh's* sequestration, May 9, 1871, 9 Macph. H. L. 49. But these provisions, necessarily conceived in universal terms, were made so stringent just because, if there were any loophole of escape, the Court might, from motives of compassion, hesitate to apply the hard rules of the statute. The expediency of these hard rules is so great that the Legislature has so framed them that, when the facts occur to which they are applicable, there is no escape from them. I assume that the pursuer's case on the merits is as strong as possible. But sect. 143 of the statute says that the bankrupt shall not be entitled "to object to any security held by any creditor, unless in the offer of composition such security shall be stated as objected to, and notice in writing given to the creditor in right thereof." It will never do to say that it is possible to admit equivalents for the requirement of the statute. It is said that the fact of the securities being disputed by the bankrupt in the original state of affairs, appears

also in the circular issued by the trustee. But there is no mention of it in the offer of composition.

The other Judges concurred.

The Court adhered.

Agent for Pursuer—William Officer, S.S.C.
Agent for Defender—Lindsay Mackersy, W.S.

Wednesday, May 29.

SECOND DIVISION.

MARIANSKI *v.* JACKSON.

Landlord and Tenant.

Circumstances in which a tenant found entitled to have two rooms lathed and strapped for him by his landlord.

This was an appeal from a decision of the Sheriff and Sheriff-Substitute of Lanarkshire, in a question between a tenant of a dwelling-house and his landlord, as to what constituted necessary repairs to be made by the landlord. The question arose on a petition presented, on 5th April 1871, by D. O. Marianski, to the Sheriff of Lanarkshire, stating that by lease, dated the 12th day of November 1866, the respondent let to the petitioner the house of Greencroft with garden and park for 19 years, at a rent of £40 sterling per annum, from the term of Whitsunday 1868. That on or about said term of Whitsunday 1868, the petitioner entered into possession of said house, and had expended several hundred pounds in improving the grounds. That said house was neither wind nor water-tight, and generally was out of repair. That the petitioners during the last six months, had made repeated demands on the respondent to put the house in repair, so as to be habitable, but the respondent persistently refused to do so. That in January 1871 the petitioner raised a summons against the respondent in the Small-Debt Court at Hamilton, and got decree against him for £4 in name of damages; that still the respondent refused or delayed to make the necessary repairs. The petition prayed the Sheriff to ordain the respondent forthwith, and at the sight of a man of skill, to put the house in a tenantable and habitable condition.

The respondent put in two defences to this petition—(1st) That the present action had been already disposed of by the small-debt action in which the Sheriff decerned for £4 in name of damages, and which constituted *res judicata* in the case; and (2d) Supposing the action has not been already disposed of, the damp referred to in the petition as on the back wall of back sitting room, rises from the foundation of the house—the wall not being strapped and lathed; that the respondent was willing to make certain alterations, and that the petitioner occupied the house from Whitsunday 1868 till February 1870 without objection.

The Sheriff-Substitute (SPENS), by interlocutor of 28th April 1871, repelled the preliminary pleas, and remitted to J. Findlay, builder, to examine the premises, and report whether they are in a fit and proper state of repair, and, if in his opinion they are not, what repairs he would think it necessary should be done by the landlord to put them in a proper, habitable, and tenantable condition. Mr Findlay made three reports upon these premises. In the first and second reports he suggested that the walls of the front bed room and back sitting room should be lathed and strapped; and stated his opinion that without the lathing and strapping of the walls of the front bed room the house would not be in a good tenantable condition.

Upon consideration of this report, and after himself inspecting the premises, the Sheriff-Substitute, on 10th August 1871, pronounced an interlocutor, finding that the petitioner was not entitled to require the respondent to execute operations upon the premises other than repairs, and that he was not entitled to demand that alterations, amounting to material improvements, should be made.

In a Note the Sheriff explained that an expensive improvement, such as lathing and strapping the under flat, which had never been lathed and strapped, could not be held to come under the head of repairs, unless health were impaired.

The Sheriff (BELL) sustained this interlocutor.

The petitioner appealed.

SCOTT and ROBERTSON for him.

M'LAREN and ORPHOOT for respondents.

To-day the Court unanimously recalled the interlocutor, and remitted to the Sheriff to see that the strapping and lathing of the two rooms on the ground floor should be proceeded with. They also found expenses due in both courts to appellant.

LORD COWAN said—I think the Sheriff is in error. I think every tenant is entitled to have his house kept habitable during his tenancy, in the absence of any stipulation to the contrary. The fact that nearly two years elapsed before the complaint was made does not preclude him from his remedy.

LORD NEAVES—The point is, that when the object of a contract of lease is of such a kind as a house for human beings, it must be habitable. Call these alterations improvements or repairs, they are necessary to make the object of the contract what it ought to be—habitable.

Agent for Appellant—W. Livingstone, S.S.C.
Agents for Respondent—Jardine, Stodart, & Frasers, W.S.

Thursday, May 30.

FIRST DIVISION.

M'NEILL'S TRUSTEES *v.* CAMPBELL.

Teind—Interim Locality—Suspension.—A.S. 1809, § 5.

Note of suspension of a threatened charge by the minister on an interim decree of locality *refused.*

This was a suspension of a threatened charge upon an interim decree of locality. The suspenders were the trustees of the late John M'Neill of Ardnacross, and the respondent the Rev. Colin Campbell, minister of the united parishes of Kilninver and Kilmelford. The ground of suspension was that the stipend which the suspenders had been called upon to pay greatly exceeded the true amount of their teind, as determined by a valuation of the Sub-Commissioners in 1629. The suspenders averred that decree of approbation of the said subvaluation had been obtained by other heritors in so far as it referred to their lands. In 1866 the suspenders raised an action of approbation of the said sub-valuation, and obtained decree in absence. An error in the summons was afterwards discovered,