pens in such cases) is very unsatisfactory, but the result of the best consideration which I have been able to give to it is, that I am unable to acquit either vessel of contributory fault. In my opinion, therefore, the interlocutor under appeal ought to be reversed, and the two actions remitted with a declaration that the collision was due to the fault of both vessels, and that neither of the parties should have their costs either in this House or in the Courts below.

Lord Fitzgerald—My Lords, the question is entirely one of controverted facts and contradictory evidence. The case has been so exhaustively treated by your Lordships that I can add nothing which would be valuable. I confine myself therefore to expressing my entire concurrence.

Interlocutor appealed from reversed, actions remitted with a declaration that the collision was due to the fault of both vessels, and that neither of the parties should have their costs in the Court below.

Counsel for Appellants—Webster, Q.C.—Bucknill. Agents—Lowles, Nelson, Jones & Thomas —J. & J. Ross, W.S.

Counsel for Respondents—Phillimore, Q.C.—Stubbs. Agents—Stokes, Saunders & Stokes—Melville & Lindesay, W.S.

COURT OF SESSION.

Saturday, July 5.

FIRST DIVISION.

[Lord Kinnear, Ordinary.

EARL OF MANSFIELD *v.* CAIRD.

Lease — Landlord and Tenant — Manufactory Buildings—Obligation to Repair—Expiry of Lease.

A lease was granted for 99 years of subjects extending to 66 acres, where there was considerable water-power. The lease set forth that the tenant proposed to erect mills for the purposes of manufacture, and he bound himself, his heirs and assignees, within three years from the date of entry, "to erect works on the grounds hereby sett to the extent and value of £500 sterling: And further, the said W. M. binds and obliges him, and his heirs, executors, and successors, that whatever buildings and water-wheels of every kind which may be erected on the premises, with the aqueducts or dams that may be made thereon, shall at the expiry of this lease be left in complete repair in every respect, it being understood that the said W. M. and his foresaids are to be at liberty to take down any buildings, water-wheels, dams, and aqueducts which he may erect on the premises upon replacing them by others of equal value upon the ground sett." On the expiry of the lease the successor of the landlord brought an action against the assignee of the original tenant to have him ordained to put into complete repair the whole buildings of every description that were on the ground, to which the tenant's defence was that he was only bound to leave in complete repair buildings worth £500. *Held* that the tenant was bound on the expiry of the lease to leave the whole buildings and works then occupied and used for manufacturing purposes in a complete state of repair.

On 1st March 1785 Thomas Graham of Balgowan, afterwards Lord Lynedoch, proprietor of the subjects after mentioned, entered into a tack with William MacAlpine, merchant in Glasgow, the narrative of which was as follows—"Whereas the said William MacAlpine having made proposals of leasing from the said Thomas Graham, for a term of ninety-nine years, part of his lands of Craigengall and Bridgetown of Almond, lying upon the water of Almond, in the shire of Perth, for erecting mills for the purposes of manufacture, of which proposals the said Thomas Graham has accepted, and in order that the said William MacAlpine might be secured in a right to the water on the other side of said river, the said Thomas Graham did enter into a contract with David Smyth of Methven, of date the day of , by which the said David Smyth has granted him a right to the water on the other side of said river of Almond in manner therein specified." By the tack Graham let to MacAlpine, his heirs and assignees, for 99 years from Candlemas 1785, 4 acres of the lands of Craigengall, and about 62 acres of the lands of Bridgetown of Almond, at the rent of £46, 10s. for the first twelve years, and £93 for the remaining eighty-seven years. The tack contained the following clauses—"As also, the said William MacAlpine binds and obliges him and his foresaids, betwixt and the term of Candlemas 1788, to erect works on the grounds hereby sett to the extent and value of £500 sterling: And further, the said William MacAlpine binds and obliges him, and his heirs, executors, and successors, that whatever buildings and water-wheels of every kind which may be erected on the premises, with the aqueducts or dams that may be made thereon, shall at the expiry of this lease be left in complete repair in every respect, it being understood that the said William MacAlpine and his foresaids are to be at liberty to take down any buildings, water-wheels, dams, and aqueducts which he may erect on the premises upon replacing them by others of equal value upon the ground sett."

This action was raised in 1884 by the Earl of Mansfield, then in right of Lord Lynedoch, under the said tack, as proprietor of the estate of which the subjects let formed part, against Edward Caird of Finnart, who had acquired MacAlpine's right in a portion of the subjects let. The conclusions of the action were for declarator that the defender was bound to fulfil the obligations of the lease, so far as the same had reference to the lands which he had occupied, and so far as yet unfulfilled, and for decree that "the defender ought and should be decerned and ordained, by decree foresaid, forthwith to put into complete repair in every respect the whole buildings, water-wheels, aqueducts, dams, fences, dykes, and enclosures, in and upon the said lands, and that at the sight of a person to be appointed by our said Lords in the process to follow hereon: Or otherwise, the defender ought and should be

decerned and ordained, by decree foresaid, to make payment to the pursuer of the sum of £1435," as the estimated cost of repairs on the subjects in terms of the obligations of the lease. He averred that at the expiry of the lease many of the buildings erected on the subjects were in a dilapidated state, and that the defender declined to repair them.

The defender denied this averment. He maintained that assuming it to be the case that the obligations of the lease regarding repairs included the whole buildings, these buildings were, having regard to the nature of the materials and ordinary tear and wear, in such a state as the pursuer was bound to accept them in. He alleged, that in any view there were on the premises at the expiry of the lease at Candlemas 1884 buildings in complete repair of a value exceeding £500, and he maintained that his obligations were thus implemented.

He pleaded—"(2) On a sound construction of the said tack, the obligations therein contained, and now sought to be enforced, as to buildings and others, relate only to buildings and others of the value of £500. (3) On a sound construction of the said tack, the defender being bound to erect buildings, &c., on the ground of the value of £500, and being entitled to take down said buildings upon replacing them by others of equal value, the obligations as to repairing buildings relate only to buildings and others erected in implement of said obligation, or to buildings substituted therefor in terms of the tack."

On 17th June 1884 the Lord Ordinary (Kinnear) allowed a proof.

The pursuer reclaimed, and argued that the obligation which the tack imposed on the tenant or his assignee to leave the buildings erected on the ground in good repair at its expiry was absolute, and not limited to buildings of the value of £500, and that he was entitled to have this question determined before going to proof.

The defender (who concurred in desiring a judgment on the question) replied—The obligation to maintain was to be read in direct conjunction with the obligation to erect, and therefore the tenant was only bound to leave buildings of the value of £500.

At advising—

Lord President—The construction of the particular clause here in question depends, not on that clause alone, but on a consideration of the nature of the lease, and the purposes for which it was entered into by the parties.

It is clearly set out in the narrative of the contract that Mr MacAlpine, the lessee, made proposals to the landlord of leasing from him for a term of ninety-nine years part of his lands lying on the water of Almond, for erecting mills for the purposes of manufacture, and that the landlord accepted these proposals. The object, therefore, of the lease plainly was that mills might be erected upon this ground, not as a temporary measure, but as a permanent devotion of the ground to the purposes of manufacture, and the lease was granted for ninety-nine years with a view to carrying on the manufacturing business in which Mr MacAlpine proposed to engage.

Accordingly the lease conveys to MacAlpine, and his heirs and assignees, sixty-six acres lying on the water of Almond, and there is also an arrangement with a neighbouring proprietor in order to secure to him both sides of the river, so that he might the more effectually erect the works necessary for his trade or manufacture. The rent stipulated for the first twelve years of the lease was £46, 10s., and for the remaining eighty-seven years £93 sterling—that is to say, £93 was the full rent, of which only one-half was to be payable during the first twelve years of the lease. There is then an obligation on the lessee to erect works on the ground sett to the extent and value of £500, meaning thereby works of a manufacturing kind—buildings for the purposes of trade.

Then follows the clause on which more particularly the question depends, and it is said by the lessee to be naturally connected with the one immediately preceding, which contains an obligation to erect works on the ground to the value of £500. But I think it is impossible to read this clause as limited by the words which are the subject of the obligation in the clause which precedes, for the introductory words of the clause are "and further," and then follows "whatever buildings and water-wheels of every kind." That description does not accord with works which are to be only of the value of £500. If it had been intended that the nominative to this clause should be "works of the value of £500," then the clause would have been expressed in the same way as in an ordinary agricultural lease, and the works would have been described as "which works," or the "works to be erected." But this clause is in marked contrast to such a clause as that. The terms of it are "whatever buildings, and water-wheels of every kind which may be erected on the premises," that is to say, at any time, "with the aqueducts or dams that may be made thereon, shall at the expiry of this lease be left in complete repair in every respect, it being understood that the said William MacAlpine and his foresaids are to be at liberty to take down any buildings, water-wheels, dams, and aqueducts which he may erect on the premises upon replacing them by others of equal value upon the ground sett."

I must say the conclusion to which I come may be expressed in a very few words, and does not admit of much argument or exposition. The object of the landlord in inserting this clause was to secure that on the expiry of the lease, which was for ninety-nine years, he should receive from the tenant a going concern in complete repair, and I think that was very reasonable and natural in the circumstances. The parties must have foreseen that the works, if successful, would go on extending, for they were susceptible of infinite improvement in the course of time from the progress of invention, and it therefore occurred to them that a hundred years after there would be quite different works on the ground with regard to which they were contracting. Therefore the landlord made this stipulation—no doubt a very important one, but I do not see that it could be better expressed—that however large or improved, the works standing at the expiry of the lease should be handed over in good repair. That, in my opinion, is the fair meaning of the clause. But, on the other hand, I think it is as clear that the obligation does not extend to buildings of any kind except those used for trade or manufacture. If, for example, there had been erected on these

sixty-six acres a farm-steading or a dwelling-house, which it would have been quite lawful to do, such buildings would not have fallen under the clause, for such buildings could not be included under the description "buildings, water-wheels, dams, and aqueducts which he may erect on the premises."

Lord Mure concurred.

Lord Shand—I am of the same opinion. The ground which is the subject of the lease here is of large area; there is considerable water-power on both sides of the river, and the lease is for a long period. Therefore, while the particular stipulation with regard to the erection of buildings on the ground during the first three years of the lease is that they are to be of the value of £500, I think it is clear that both parties must equally have expected that during the long course of the lease there would be a considerable number of additional buildings put up. If it had been intended to give effect to what is now the contention of the tenant, that could have been done in two or three words. He asks us to limit the operation of the clause by reading it as meaning "buildings which may be erected in implement of the foregoing obligations." I think there is no warrant for limiting the obligation in such a manner, and that the defender's plea-in-law should be repelled.

The Court pronounced this interlocutor:—

"Find that according to the true construction of the lease executed by the predecessors of the parties on the 1st March 1785 the tenant or his assignee is bound on the expiry of the lease to leave the whole buildings and works then occupied and used for manufacturing purposes, in a complete state of repair; and with this finding remit to the Lord Ordinary to proceed."

Counsel for Pursuer and Reclaimer—Mackintosh—Graham Murray. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for Defender and Respondent—Trayner—Macfarlane. Agent—J. Smith Clark, S.S C.

In a similar question with Hector Sandeman, who had by assignation acquired M'Alpine's right in the remainder of the subjects contained in the tack, the argument for Caird was adopted, and the same judgment was pronounced.

Counsel for Defender—Gloag—W. Campbell. Agents—Skene, Edwards, & Bilton, W.S.

Saturday, July 5.

FIRST DIVISION.

WHYTE, PETITIONER.

Poor's-Roll—Undischarged Bankrupt.

Circumstances in which an undischarged bankrupt was admitted to the benefit of the poor's-roll.

This was an application by John Whyte for the benefit of the poor's-roll, to enable him to defend an action at the instance of Margaret Young, formerly a domestic servant in his employment. She sued him for damages for seduction, and also for aliment for a child of which she alleged he was the father. She had already been found entitled to the benefit of the poor's-roll.

The applicant was formerly minister of the parish of South Queensferry, from which charge he had been deposed. His estates had been sequestrated, and he had no means of subsistence, except what the trustee and his creditors allowed him. Intimation of the dependence of the action was made to the trustee, but he refused to sist himself.

The pursuer objected to a remit being made, on the ground that there was no precedent for the admission of an undischarged bankrupt to the poor's-roll.

Lord President—The applicant here is called to answer in an action of damages for seduction, and not merely a claim of aliment for the maintenance of a bastard child. In these circumstances, looking to the nature of the action, the Court are of opinion that he is entitled to the benefit of the poor's-roll.

The Court remitted to the reporters on the *probabilis causa litigandi.*

Thereafter on 19th July, the reporters having reported that there was a *probabilis causa*, the Court admitted the applicant to benefit of the poor's-roll.

Counsel for Petitioner—Armour. Agent—N. J. Finlay, W.S.

Counsel for Objector—Gardner. Agent—A. Adam, W.S.

HOUSE OF LORDS.

Monday, July 7.

(Before Lords Blackburn, Watson, and Fitzgerald.)

FLEMING *v.* YEAMAN.

(*Ante*, Dec. 1, 1883, p. 164)

Bankruptcy—Sequestration—Contingent Debt.

In a petition for sequestration of the estates of a debtor who had become notour bankrupt, the petitioning creditor founded on a debt forming the balance of an account-current and vouched by a number of I O U's. It appeared from a letter of agreement by him which was produced, that he had agreed that until adjustment of the account between him and the debtor the I O U's should be retained as vouchers of the account-current, "upon which I cannot sue you or do diligence for them against you." *Held* (*aff.* judgment of First Division) that the debtor having become notour bankrupt, the creditor was not debarred by this agreement from applying for sequestration, founding on the I O U's as vouchers of the debt.

Notour Bankruptcy—Debtors (Scotland) Act 1880 (43 *and* 44 *Vict. c.* 34).

A charge was given on a decree obtained