otherwise I do not think that I would have been inclined to alter it, but as the case stands the tendency of my opinion is with the judgment of the Sheriff and against the appellant. The case would have been different if the accident had happened upon private property. But here the owner puts his building in a place where he knows that the public are admitted by the same kind of tolerance that is extended to himself, and that there was a chance of tampering with the door, and the defender was in these circumstances bound to take that into consideration when arranging as to the kind of fastening to be used. The doors are heavy and the fastening bad. One of the witnesses said that the fastening was safe enough if left alone, but I think that the fastening was not safe, if tampered with in a way that might have been expected. The defender must have known that if the fastening was tampered with the result might happen which did unfortunately happen. I think that the whole matter turns upon the fact that the ground upon which the building was placed was public or *quasi* public, and not private property. Many dangerous things are safe if left to themselves, such as spring-guns and dynamite, but then the question is, are these things safe in the position they occupy. Upon the whole matter I am of opinion that the judgment of the Sheriff is right.

Lord Young—That is my opinion also. I regret that this trifling case did not cease in the Sheriff Court. I agree with your Lordship's judgment, which I think is substantially this, that the door was insufficient with respect to the fastening, having regard to the risks to which it was exposed. The place where this shed was was public ground, and it was explained that the magistrates tolerate sheds there as well as allow the children to play. Well, the construction of the shed and the fastening of the door ought to be enough for the risks to which it is exposed. The test, on the whole, is whether the defender has done his duty by others, and here I think he has not.

Lord Craighill—This is a narrow case, but in the end I have come to the same conclusion as your Lordships. Fault must be established against the defender if the pursuer is to prevail, and the question is, did he do all in his power to prevent a probable accident? Children were in the habit of playing at that place, and there was a temptation to aspiring youth in the construction of the door itself. If the defender was bound to take that into consideration I do not think he did so, and therefore he did not do all that was necessary.

Lord Rutherfurd Clark—I agree

The Court pronounced this interlocutor:—

"Find (1) that the defender's building mentioned in the record is placed on ground not belonging to him, and in a locality open to the public, and to which the public resort; (2) that having regard to the risks to which it was thus exposed, the fastening of the door of the said building was insufficient: Find in law that in these circumstances the defender is responsible for the injuries sustained by the pursuer's daughter, and is liable in damages accordingly: Therefore dismiss the appeal and affirm the judgment of the Sheriff appealed against: Of new assess the damages at fifty pounds sterling, and ordain the defender to make payment of that sum to the pursuer: Find the pursuer entitled to expenses in this Court."

Counsel for Pursuer—Jameson—G. W. Burnet. Agents—Henry & Scott, S.S.C.

Counsel for Defender—Gillespie. Agents—Macpherson & Mackay, W.S.

Friday, January 14.

SECOND DIVISION.

[Sheriff of Lanarkshire.

GRACIE *v.* THE PULSOMETER ENGINEERING COMPANY (LIMITED).

Lease—Landlord and Tenant—Hypothec—Articles in Premises for Sale on Commission.

Held that the landlord's hypothec did not extend to articles which were in the tenant's possession only as samples of goods belonging to a person for whom he acted as agent, and from whom he received assistance with his rent in respect of the accommodation they required.

Gilbert Bogle & Company rented an office at No. 6 Waterloo Street, Glasgow, from Robert Gracie, No. 11 Bothwell Street, factor for and as representing the proprietors of the subjects, for three years from the term of Whitsunday 1884. Gilbert Bogle & Company described themselves as yachting agents, and had upon their premises certain pulsometers, a kind of steam-pump used on board yachts, made by the Pulsometer Engineering Company (Limited) of London. That company's name was on these steam-pumps. On 7th November 1885 Gracie raised an action of sequestration for rent against Gilbert Bogle & Company, and attached the pulsometer steam-pumps which were upon the premises. The Pulsometer Engineering Company claimed delivery of these pumps, but Gracie refused to give them up on the ground that they were liable to the landlord's hypothec. This process of interdict was then brought against Gracie in the Sheriff Court of Lanarkshire by the Pulsometer Engineering Company to interdict the defender from selling them or otherwise interfering with them.

The Pulsometer Engineering Company pleaded —"The defender having attached and threatened to sell goods belonging to pursuers, and not having any right over same, the latter are entitled to warrant and decree as craved."

The defender pleaded—"(3) The goods sequestrated and claimed by the pursuers being the sole stock and plenishing (excepting a writing-desk) of the premises in question, are subject to the landlord's right of hypothec, and have been lawfully secured under the sequestration action. (4) Even should the pursuers' allegation of ownership be proved, the goods would still, under the circumstances above set forth, be liable to the landlord's right of hypothec."

Interim interdict was granted, and a proof allowed, from which it appeared that Gilbert Bogle

& Company had taken the premises as yachting agents; that the names of several firms for whom they acted as agents were put upon the windows of the premises, and among them that of the Pulsometer Company; that the steam-pumps in question were sent as samples of goods (which might be sold, however, if the goods were wanted in a hurry), and that in consideration of the space so occupied the company credited Gilbert Bogle & Company with £30 per annum to enable them to get a better office than they would otherwise have occupied; that besides the steam-pumps there was also in the premises a small amount of ordinary office furniture, but the steam-pumps in dispute were far the most important and valuable in the premises.

On 27th July the Sheriff-Substitute (GUTHRIE) issued an interlocutor by which he found that the articles in dispute belonged to the Pulsometer Company, and were not subject to the hypothec of the landlord. He therefore made perpetual the interim interdict already granted.

"*Note.*—The following propositions as to hypothec in urban tenements are I think well settled, and are to be found in Bell's Comm. ii. 30, and Prin. 1275 and *seq.*, in the recent case of *Nelmes & Co.* v. *Ewing* [November 23, 1883], 11 R. 193, and *Bell* v. *Andrews* [May 22, 1885], 12 R. 961, where the authorities are fully cited:—

"1. The landlord of urban subjects has a hypothec for his rent over all moveables brought into the place let.

"2. The hypothec as a rule applies only to articles belonging to the tenant, and therefore not to articles deposited with him for temporary purposes or in the course of his ordinary business, as things left with a jeweller or carpenter to be repaired (see below prop. 6).

"3. But in a question with the landlord, things necessary for the tenant's proper enjoyment of the place let according to its intended use, although not belonging to him, are presumed to be his and are subject to the landlord's hypothec: and the true owner is held by reason of his having allowed them to be so brought into the place let, to have taken the hazard of the rent, and assented to the landlord's hypothec. When these things are the whole 'plenishing' of a house or factory or shop to which the landlord looks as security for payment of his rent, and which if wanting he might insist on the tenants putting into his premises on the pain of removing, it does not appear in principle to be material whether the owner lends them for hire or gratuitously, yet if they are let for hire it has been thought to be an additional ratio for the hypothecation that the lender takes or may take the risk into account in fixing the hire.

"4. This extension of the hypothec beyond the tenant's own moveables does not affect single articles lent or belonging to lodgers or members of the tenant's family, and not forming part of the permanent and ordinary furnishing of the house or shop. Thus in the latest case a daughter's pianoforte was held exempt, and in many Sheriff Court cases, pianofortes and sewing-machines have been held not subject to hypothec though hire was paid for them. There is no authority for this practice where hire is paid beyond certain general *dicta* of Lords Moncreiff, Deas, and others, and indeed it is rather contrary to the case of *Penson* v. *Robertson*. It seems, however, to proceed on grounds of expediency and on the existence of a generally-known custom of hiring out such articles which precludes the landlord's reliance on them as securing his rent. In the latest cases the Court has avoided giving any opinion on the point whether such single hired articles are subject to hypothec; but the inclination of the judges in *Bell* v. *Andrews* is favourable to freedom, and Lord Shand doubts *Penson* v. *Robertson*. I think therefore that the first sentence of this paragraph may be taken as applying to single articles lent for hire.

"5. The landlord's hypothec extends over the goods in a shop—the rights of *bona fide* buyers being protected. Bell's Comm. ii. 31, Prin. 1276-7.

"6. It does not affect the goods in a store or warehouse for which the owner pays store rent, or the cattle on a grazing farm for which the owner pays grazing rent (Bell's Comm. ii. 31, Prin. 1276), on the obvious ground that the business for which the warehouse or farm is let involves the temporary occupation of the premises by the cattle or goods of third parties, and that it would be inconsistent with the implied terms of the lease to allow a hypothec except over the unpaid store rent or grazing rent.

"7. The hypothec does not extend over the effects of a sub-tenant beyond the amount of the sub-rent unpaid, unless, in urban subjects, subletting be expressly excluded by the lease.

"The respondents' tenant here is a commission agent entrusted by his principals with samples of their goods and manufactures for sale. The claimant is a company which makes pulsometer engines, and employed the respondents' tenant to exhibit and sell them. Besides a commission the tenant had an allowance of £30 to help to pay his rent in consideration of the large space occupied by the petitioner's engines. These engines have been included in a sequestration for rent at the instance of the respondents. Although the case does not quite readily fall under any of the propositions above set forth, it seems to me that, upon the whole, there is no ground of principle on which the landlord is entitled to these machines as falling within his hypothec. There is no question as to the property of the engines, but only as to the footing on which they were brought into the premises. They were certainly not in the position of hired or lent furniture, for they were not there for the use and enjoyment of the tenant, nor did he pay hire for them. On the contrary, he got a substantial payment from the owners for standing room, and I would class the respondents rather with owners of goods stored in a warehouse, or with sub-tenants, than with a lender or hirer. The letting of an office or warehouse for the exhibition and sale of the miscellaneous articles in which a commission agent deals involves in varying degrees the possession of property belonging to third parties. The general rule, as Lord Moncreiff says (15 S. 43), applies properly only to the tenant's own property: there is as yet no authority for extending the hypothec to the goods of third parties in such circumstances as we have here; to admit it would be inconsistent with the character of the business for which the place was let and inconvenient for trade."

The defender appealed to the Court of Session, and argued—In order to bring articles in a tenement, but which did not belong to the tenant,

under the landlord's hypothec three conditions were necessary—(1) That the goods should not be deposited on the premises for a merely temporary purpose; (2) that they should be on the premises with the knowledge of the owner of the goods; (3) that the tenant should not have informed the landlord that they belonged to another person and not to him. In this instance these conditions were present. It was not necessary, although it might be important to the question, that the goods were for the use of the premises let. The landlord had a right to ask the tenant to furnish the premises let to him in a proper manner—*Jaffray* v. *Carrick*, November 18, 1836, 15 S. 43. The pulsometers were upon Bogle's premises in his capacity as a yachting agent, and the landlord was entitled to assume that these articles belonged to him—*Wilson* v. *Sponkie*, December 17, 1813, F.C.; Hunter on Landlord and Tenant, ii. 378; *Adam* v. *Sutherland*, November 3, 1863, 2 Macph. 6; *Nelmes* v. *Ewing*, November 23, 1883, 11 R. 193; Bell's Comm. ii. 31.

Counsel for the respondents were not called on.

At advising—

LORD JUSTICE-CLERK—Mr Low in his very clear speech has stated all that could be said on the appellant's behalf, but he has not succeeded in showing us that his case is well founded either in principle or authority. These articles, which are said to be the subjects of the hypothec, were not the property of the tenant, either for residential purposes or as part of his stock-in-trade. He hires premises for his business, acting as agent for different parties, and, among others, as agent for the pursuers. He was not a sale agent, but an agent to exhibit samples to induce customers to buy these articles from the manufacturers. He was a yachting agent, and as such he had samples of those machines as incident to yachting equipment, and he undertook to recommend them to persons wishing to fit out yachts. The general law of hypothec is, that property which is not the property of the tenant cannot be subject to the landlord's hypothec; and the question is, whether these engines, not being the tenant's property, come under any of the exceptions to the general law. Mr Low has not shown us that they do, and I think on principle that they do not. The exceptions to the general law depend upon the articles being subservient to the tenant's use, and all the cases turned on that. But here there is nothing of the kind. On the whole matter I think the judgment of the Sheriff-Substitute is right.

LORDS YOUNG, CRAIGHILL, and RUTHERFURD CLARK concurred.

The Court pronounced this interlocutor:—

"Find that the engines specified in the prayer of the petition belong to the petitioner, and are not subject to the hypothec of the landlord represented by the defender: Therefore dismiss the appeal and affirm the judgment of the Sheriff-Substitute appealed against: Of new grant interdict as craved.

Counsel for Pursuers (Respondents)—Jameson—Younger. Agents—J. & J. Ross, W.S.

Counsel for Defender (Appellant)—Low. Agents—Menzies, Coventry, & Black, W.S.

Friday, January 14.

FIRST DIVISION.

[Lord M'Laren, Ordinary.

THE MAGISTRATES AND COUNCIL OF THE CITY OF GLASGOW *v.* HALL (COLLECTOR FOR CITY PARISH OF GLASGOW).

Valuation—Valuation Roll—Assessment for Poor-Rate—School-Rate—Subject not Yielding Profit—Poor-Law Amendment Act 1845 (8 *and* 9 *Vict. c.* 83), *sec.* 37—*Valuation Act* 1854 (17 *and* 18 *Vict. c.* 91), *secs.* 6, 23, *and* 30.

The entry of the annual value of lands and heritages in the valuation roll is conclusive of the value for the year to which the roll applies, and the parochial board must, in assessing the lands and heritages for poor-rate, take such annual value, and allow therefrom the deductions mentioned in sec. 37 of the Poor Law Act 1845. It is irrelevant to allege that deduction of these items has already been made by the assessor in making up the roll.

In the amended valuation roll made up for the year ending Whitsunday 1885 the yearly rent or value of the lands and heritages belonging to the Glasgow Corporation Waterworks was fixed by the Assessor of Railways, Canals, &c., at £116,126.

In February 1885 intimation was made to the Corporation, as Waterworks Commissioners, by the Collector of Poor and School Rates for the City Parish that they were assessed for the year ending 14th May 1885, under the Poor Law Amendment Act 1845 (8 and 9 Vict. cap. 83), for the relief of the poor of that parish, and also under 35 and 36 Vict. cap. 62, for the Glasgow school rate, as owners and occupiers of lands and heritages within the parish of the annual value of £11,696, the poor and school rate upon which amounted to £807, 2s. 11d., being £563, 9s. 7d. of poor rate, and £243, 13s. 4d. of school rate.

Upon the receipt of this notice the Corporation objected, and represented to the collector that he had failed to make the deduction allowed by section 37 of the Poor Law Amendment Act of 1845, which provides—"That in estimating the annual value of lands and heritages the same shall be taken to be the rent at which, one year with another, such lands and heritages might in their actual state be reasonably expected to let from year to year under deduction of the probable annual average cost of the repairs, insurance, and other expenses, if any, necessary to maintain such lands and heritages in their actual state, and all rates, taxes, and public charges payable in respect of the same, provided always that no mine or quarry shall be assessed unless it has been worked during some part of the year preceding the day on which the assessment may be ordered to be levied."

The collector, on the grounds stated below, refused to make the deductions demanded, maintaining that every proper deduction had already been made.

The Corporation offered the collector the amount of the assessment less 20 per cent., a deduction which had been allowed in previous years as hereafter explained, which offer he re-