that it could be held that in 1899 Mrs Crawford Leslie had in any true sense "granted" provisions to her younger children. Her deed of 1885 was, as already explained, of a testamentary character, and also defeasible in the event of the children's predecease. The argument against the deduction in question being allowed seems to necessitate a reading of the proviso by which the words "which have been granted" are deprived of all meaning, unless indeed they must be taken as equivalent to "which shall be granted"—neither of which contentions appears to me to be tenable. Upon the question under discussion I am therefore in favour of the petitioner, and against the younger children.

The deductions claimed by the petitioner in computing the free rental were allowed.

Counsel for the Petitioner—Hon. W. Watson. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for the Respondents—Cullen. Agents—Tods, Murray, & Jamieson, W.S.

Friday, March 17.

OUTER HOUSE.

[Lord Ardwall.

NEWLANDS *v.* GILLANDERS.

Expenses — Process — Fees to Counsel — Agent's Account of Expenses—Court of Session Act 1868 (31 *and* 32 *Vict. cap.* 100), *secs.* 22 *and* 23—*A.S., February* 6*th*, 1806.

An action for the sum contained in a law-agent's business account was undefended, and decree in absence was pronounced. The account along with the account of expenses in obtaining the decree in absence was, in terms of the Act of Sederunt, 6th February 1806, remitted to the Auditor to tax and report. *Held* that counsel was entitled to receive a fee for moving the approval of the report, and the agent to charge for instructing counsel to that effect and attending the motion.

The Court of Session Act 1868 (31 and 32 Vict. cap. 100), sec. 22, enacts that "Where a defender shall not enter appearance on or before the second day after the summons has been called in Court, the cause may immediately be enrolled in the Lord Ordinary's motion roll as an undefended cause for decree in absence"; and section 23 enacts "when any cause is enrolled as an undefended cause before the Lord Ordinary, the Lord Ordinary shall without any attendance of counsel or agent grant decree in absence in common form in terms of the conclusions of the summons, or subject to such restrictions as may be set forth in a minute written on the summons by the agent for the pursuer."

It is enacted by the Act of Sederunt, 6th February 1806, in regard to actions by law agents for payment of a business account, "The Lord Ordinary before whom the process may come shall remit the account to the Auditor of Court, and no decree shall be pronounced, either in absence or after having heard parties, without a report having been made by the Auditor."

Andrew Newlands, S.S.C., in Edinburgh, brought an action against Dr Ian L. G. Gillanders and Euphemia S. Barclay or Gillanders, his wife, residing at Wynberg, South Africa, but formerly of London, to recover payment of a business account due him by them. The action was undefended, and decree in absence was pronounced. On the pursuer's motion the account sued for was remitted to the Auditor to tax, along with the account of expenses of obtaining decree in absence. In this latter account there were charged a fee to counsel for moving the Court to approve of the Auditor's report, and also a fee of 6s. 8d. to the agent for instructing counsel and attending the motion. The former fee the Auditor disallowed; the latter fee he reduced to 5s.

The pursuer lodged a note of objections to the Auditor's report, and argued—The present case was governed by that of *Hunters* v. *Alexander*, May 20, 1882, 19 S.L.R. 619. He also cited Begg on Law-Agents, p. 170; Smith on Expenses, p. 301; Coldstream's Procedure, p. 35.

LORD ARDWALL sustained the note of objections for the pursuer to the Auditor's report.

Counsel for the Pursuer—Cullen. Agent—Andrew Newlands, S.S.C.

Friday, June 2.

SECOND DIVISION.

[Lord Stormonth Darling, Ordinary.

HETHERINGTON *v.* GALT.

Property—Feu-Charter—Boundary—Error in Measurements in Titles—Effect of Words "or thereby"—Adjustment of Boundary by Agreement between Proprietors—Boundary Adjusted and Followed by Possession Binding on Singular Successors.

A portion of ground supposed to be rectangular and measuring, according to a plan annexed to the charter, 200 feet at front and back, was in 1883 feued out in two rectangular and contiguous plots. The feu-charter set forth the area of each plot and the boundary lines and their measurements. The measurement of the one plot at front and back bore to be 120 feet "or thereby"; the measurement of the other plot at front and back bore to be 80 feet "or thereby." When the respective proprietors proceeded to mark

out the line of boundary between their plots it was discovered that the original portion of ground was not truly rectangular but measured 201 feet in front and 199 feet behind. As it was therefore impossible to draw a straight line of division giving correctly rectangular plots in accordance with the figures contained in the feu-charter, the proprietors by mutual agreement marked out a line of boundary at no point diverging more than 8 inches from the straight, and planted upon it a row of trees at their mutual expense. The plots were subsequently acquired by singular successors, the descriptions and measurements in the various dispositions being a repetition of those in the original feu-charter. In 1905 a dispute arose between the owners of the plots as to the true line of boundary.

Held that the errors in the measurements which made an adjustment of the boundary necessary were covered by the words "or thereby," and that the boundary as adjusted by the original proprietors, followed by possession, was accordingly consistent with the titles and binding upon singular successors.

Thomas Chalmers Hetherington, proprietor of St Kitts, Colinton Road, Edinburgh, brought an action of suspension and interdict against Alexander Galt, proprietor of Trengweath, Colinton Road, and adjoining St Kitts, in which he sought to interdict the latter from cutting down certain trees alleged by the complainer to form the boundary between the properties and to belong in common to both. The respondent contended that the trees were situated within the boundary of his property and belonged to him. The question at issue between the parties was what was the true line of boundary between the properties.

The facts of the case are fully set forth in the opinion of the Lord Ordinary *infra*.

The following is an excerpt from the feu-charter of 27th April 1883 by which the whole block of ground, which was subsequently divided into the two feus belonging to the complainer and respondent respectively, was given off:—"We . . . do hereby dispone to and in favour of George Thomas Beilby . . . In the first place, all and whole that piece of ground measuring one rood twenty-four poles nineteen yards or thereby imperial measure and bounded as follows, viz.—On the north or north-west by a line running parallel to and at a distance of six feet south or south-east from the southern or south-eastern boundary of the public road from Edinburgh to Colinton along which it extends eighty feet or thereby; on the west or south-west by unfeued ground belonging to us along which it extends two hundred and twenty feet or thereby; on the south or south-east by ground agreed to be feued to the said James Duncan, along which it extends eighty feet or thereby, and on the east or north-east by the piece of ground hereinafter disponed in the second place, along which it extends two hundred and twenty feet or thereby: And, in the second place, all and whole that piece of ground measuring two roods sixteen poles twenty-nine yards or thereby imperial measure, and bounded as follows, viz.—On the north or north-west by a line running parallel to and at a distance of six feet south or south-east from the southern or south-eastern boundary of the said road from Edinburgh to Colinton, along which it extends one hundred and twenty feet or thereby; on the west or south-west by the piece of ground before disponed in the first place, along which it extends two hundred and twenty feet or thereby; on the south or south-east by ground agreed to be feued to the said James Duncan, along which it extends one hundred and twenty feet or thereby; and on the east or north-east also by ground agreed to be feued to the said James Duncan, along which it extends two hundred and twenty feet or thereby. . . . as the said two pieces of ground are delineated and coloured green on a plan or sketch thereof annexed and signed as relative hereto. . . . And the said George Thomas Beilby and his foresaids shall be bound immediately on delivery hereof, the said lot or piece of ground having been previously measured or staked off by our architect at the expense of the said George Thomas Beilby, to enclose the said piece of ground with a sufficient temporary fence, and thereafter to build and erect boundary walls to the said pieces of ground."

The Lord Ordinary (STORMONTH DARLING) after proof granted interdict.

Opinion.—"This is an unfortunate dispute about a very small matter between the owners of two adjoining villas on the outskirts of Edinburgh. The action being one of suspension and interdict, the actual question raised is whether the respondent, who is owner of the villa called Trengweath, is to be interdicted from cutting down or otherwise interfering at his own hand with any of the trees which the complainer, who is owner of the villa called St Kitts, asserts to be growing on the boundary between the two properties. The respondent at present only proposes to cut down three trees which are said to be too close to the others, and, I daresay, would be better away. But that is not a question for me, and the problem really involved is what is the true boundary between the feus. If the trees are on the line of march they are undoubtedly common property, and cannot be removed without the consent of both proprietors.

"The feus were given off practically at the same time in 1883, although for convenience the feu-charter was taken in name of Mr Beilby, who was to have the larger of the two feus, viz., St Kitts, and he disponed to Mr Shiells, who was to have the smaller feu, viz., Trengweath. The feu-contract was recorded on 27th April 1883, and the disposition not till 15th May. But the dimensions of the two feus were separately described in the feu-contract, and this description, so far as it related to Trengweath, was exactly reproduced in

the disposition by Bielby to Shiells. I do not think that anything turns on the fact that for conveyancing purposes Beilby was for a short time vested in the right to both plots of ground. So far as the present question is concerned, I think that the transactions must be regarded as simultaneous.

"When Beilby and Shiells came to lay off their grounds it was found that the plan of the whole block appended to the feu-charter was not perfectly accurate. The plan showed a rectangular block measuring 200 feet both in front and at the back, of which St Kitts was to have 120 feet or thereby, and Trengweath 80 feet or thereby, front and back. The actual measurement showed about 201 feet on the Colinton Road and about 199 feet to the back. There was a clause requiring the erection of boundary walls on all sides of both feus, but the feuars arranged with the superiors that they should not insist on the erection of a wall between the two feus, and that the line of march should be indicated by a row of trees. The feuars proceeded to have this done, and the trees were bought and planted at joint expense, on a line mutually agreed on and staked out before the planting was commenced. The line drawn was practically straight, except where a slight bend into the ground of St Kitts was made in order to leave more room for the drive up to the door of Trengweath, which was in cutting. The trees were planted before Whitsunday 1884. No writing passed, but the two feuars continued to possess their respective grounds in accordance with the agreement. When any trees in the row had to be cut, as sometimes happened, it was done by mutual consent. About eight years ago Mr Beilby put up, at his own expense, a light fence of wire netting, and as this was mainly to keep animals of his own from straying into his neighbour's ground, he erected the fence on his own side of the row of trees and entirely at his own expense. All this stands upon evidence which is absolutely uncontradicted.

"The complainer acquired St Kitts from Mr Beilby on 6th April 1902. He was told at the time of his purchase about the agreement as to the row of trees, and, so long as Shiells remained owner of Trengweath, there was no change of possession. But Shiells sold Trengweath to the respondent in May last, with entry at Whitsunday 1904, and there is a conflict of evidence as to whether Shiells informed the respondent's agent, as undoubtedly he ought to have done, of the agreement about the row of trees. In this state of matters I cannot hold it proved that he did give the information. Certainly the respondent himself never heard of it till 11th July last, when the complainer having heard that the respondent proposed to fell some trees in the row, wrote to him telling him of the old agreement, and offering to see him on the subject. Unfortunately this suggestion was not adopted and the matter passed into the hands of the law-agents.

"The respondent's case is that he is not bound by any verbal agreement between the former proprietors, even though followed by prescriptive possession, and that having bought on the faith of the recorded titles he is entitled to the boundary as therein defined. His plea would I think be well founded if the complainer's contention involved any material deviation from the boundary in the titles. But it cannot be said that there is any material deviation. The titles do not define the boundary except by measurements which are not precisely accurate, and do not profess to be so, for every measurement is qualified by the words 'or thereby.' If there had been 120 feet for St Kitts and 80 feet for Trengweath, both in the front and at the back, it would have been possible to draw a mathematically straight line from the point at which these measurements met in front to the point where they met at the back. There being a foot more than the titles gave for both plots in the front, and a foot less for both plots at the back, some slight re-adjustment was necessary, and when the persons with the full right to make the adjustment made it in a way satisfactory to themselves, and exhibited the line by marks visible on the ground, and possession for more than twenty years followed, I cannot hold that even a singular successor is entitled to re-open the whole question. I should say the same even if there had been no inaccuracy in measurement, and the slight deviation in the line of march had been caused by something in the lie of the ground—something in short which was not merely a matter of temporary or personal convenience. No doubt a row of trees is not a fence, but march-stones are not a fence, and if the boundary had been indicated by march-stones so near the boundary given in the titles as sufficiently to indicate their purpose, I cannot doubt that a singular successor would have been held bound by them. The deviation in this case is so slight as to be measured only by inches. Mr Bennet, the surveyor who was examined for the respondent, gives the exact distance of some of the trees from the imaginary straight line in the titles, and the distance is in no case more than a foot, generally only a few inches. No doubt his measurements all have the effect of throwing the line of trees into the respondent's property, but when a line intended as a march and prescriptively possessed as a march is so close an approximation to the title boundary as that, it is I think sufficiently covered by the qualifying words 'or thereby,' and so no question of bounding title really arises.

"At all events, it seems to me that the existence of the row of trees ought to have put the respondent on his inquiry. It would be vain for him to say that the wire-netting fence misled him, and he does not say so. This fence is of a slight construction, with none of the substantiality of a mutual fence; and it is not in a straight line. Neither the respondent nor his agent profess to have considered the question of boundary from anything which they saw

on the ground; their sole reliance is on the titles. A purchaser is not bound to inspect the ground which he is purchasing for any glaring deviation from the description in the titles, but when measurements in that description are qualified by inexact words like 'or thereby,' I do not think that he is safe to rely on the measurements being minutely accurate, and I do think that he is bound to take note of any visible object which may serve to explain the description.

"None of the cases cited seem to me of much assistance, and I do not myself remember any that would be, unless perhaps *Strang* v. *Stewart*, 2 Macph. 1015, affirmed 4 Macph. (H.L.) 5. In that case there are some clear expressions of opinion to the effect that adjoining proprietors may contract with each other that a fence shall be erected at mutual expense as a march fence, or that a fence not originally so erected may be treated as such, and if so treated for the prescriptive period must be recognised and maintained as a march fence by singular successors. The actual proof in that case did not satisfy the Court that there had been any adoption of the fence (which consisted of a hedge and ditch) as a march. Here the case is not one of adoption, and the proof of agreement is clear. If agreement had been proved in *Strang* v. *Stewart*, it is plain that the judgment wou'd have been the other way. There was a difference between that case and the present, inasmuch as the titles there merely described the two properties as bounded by each other. But I think I make sufficient allowance for the difference when I concede that the respondent here would not have been bound by the agreement made and acted on by the former proprietors if it had involved any material deviation from the boundary indicated in the titles, and if there had been nothing on the ground to mark what the boundary so agreed on was.

"The complainer maintained, as an alternative argument, that if the trees in question are on the respondent's side of the march, they are so near the march and derive so much of their nourishment from the complainer's soil that they must be regarded in law as common property. There are passages both in the Digest and the Institutes (Dig. xli, 1, 7, 13, and Inst. ii, 1, 31) which bear that if a tree was planted so near a boundary as to extend its roots into the land of a neighbour it was regarded by the civilians as common property. But I do not think that this rather vague rule has ever been adopted by the law of Scotland. Certainly in the somewhat analogous case of a proprietor's tree extending its branches over the ground of his neighbour, the case of *Halkerston* (1781), M. 10,495, shows that the result is not to give the neighbour any joint right of property in the tree, but merely to give him a right to demand that the owner of the ground in which the tree stands shall lop the overhanging branches.

"Accordingly I think the whole question here is whether the trees proposed to be cut are on the march, in which case they are common property, or on the respondent's ground, in which case they are wholly his. Being of opinion that they are on the march, I shall make the interdict formerly granted perpetual."

Argued for the reclaimer and respondent—The trees being situated upon his side of the true boundary line, were his property. The boundary line must be ascertained by reference solely to the titles, which were bounding titles and admitted of no deviation. As a singular successor he was entitled to rely solely upon his title and was not bound by any agreements made by former proprietors. The words "or thereby" were mere words of style and did not affect the title.—*North British Railway Company* v. *Magistrates of Hawick*, December 19, 1862, 1 Macph. 200, 35 Scot. Jur. 94; *Stewart, &c.* v. *Greenock Harbour Trustees*, January 12, 1866, 4 Macph. 283, 1 S.L.R. 103; *North British Railway Company* v. *Hutton*, February 19, 1896, 23 R. 522, 33 S.L.R. 357. At most they could only qualify a title in the case where the granter of the disposition had conveyed away the whole of his land and where it was therefore physically impossible for him to give the exact figures contained in the disposition if in fact the property turned out to be smaller than described. Here his predecessor obtained his conveyance from the grantee in the original feu-charter at a time when the latter was vested in both plots.

Argued for the respondent and complainer—The trees formed the boundary and were accordingly common property. The words "or thereby" indicated that the measurements were only meant to be approximate — *Davis* v. *Sheppard*, 1866, L.R. 1 Ch. 410, at 416—and it was found in fact that without some modification they were inapplicable to the feus. The parties accordingly adjusted the boundary, and the adjustment made by them, being permitted by the titles under the words "or thereby," was binding upon singular successors. The question at issue was what did the titles mean; and no better explanation was available than that furnished by the parties who originally had to interpret them and mark out a boundary.—*Girdwood* v. *Paterson*, June 3, 1873, 11 Macph. 647, 10 S.L.R. 439; *Strang* v. *Stewart*, March 31, 1864, 2 Macph. 1015. In any case, the reclaimer was bound by acquiescence, the line of boundary having been patent to him when he acquired the feu.—*Muirhead* v. *Glasgow Highland Society*, January 15, 1864, 2 Macph. 420.

At advising—

LORD JUSTICE-CLERK—The facts to be considered in this case are (1) that the plot of ground which is divided into two feus, now belonging to the parties to this case respectively, was according to the original feuing plan rectangular, measuring 200 feet both front and back; (2) that when it came to be divided it was found that it was not rectangular, but measured 201 feet at the front and 199 feet at the back, so that it was not possible in dividing it up into

two feus to draw any line of division which should give correctly rectangular plots; (3) that an arrangement was come to, and assented to by the superior, that instead of erecting a boundary wall between the two feus the line of division was to be marked off by a line of trees, planted at the joint expense of the feuars, and in a line staked off by mutual agreement; (4) that this line was by agreement made not exactly straight, it being a convenience to one of the feuars that at one point, to make the approach to his house more convenient, a slight curve should be made in the line fixed to bound the properties; (5) that the trees were planted accordingly and the feus possessed in accordance with the arrangement come to; (6) that when it was thought desirable to thin the trees, those to be removed were agreed upon by both feuars; (7) that when the complainer took his feu from Mr Beilby, in whose name the original feu-charter of the whole ground had been taken, he was informed of the arrangements above noted, and he and the then feuar of the other feu, Mr Shiells, acted in accordance with the agreement; (8) that Shiells sold to the respondent, but it is not proved that he told him of the arrangement.

These being the facts, the present dispute has arisen in consequence of the respondent proposing to fell some of the trees as being on his feu without the consent of the complainer, and declining to confer with him on the matter.

In considering what are the rights of parties I lay out of view altogether the fact that a light wire fence was erected by Mr Beilby on his own ground, as I do not see how that can affect the question at issue. It is not in any sense of the nature of a permanent erection, and was not intended as a designation of march boundaries, and was never treated as such.

It is to be noted that, in addition to the fact that the measurements are not in accordance with the description, the titles expressly modify each measurement given by the words "or thereby," and therefore if the respondent takes his stand, as he does, upon the titles, he is faced by this expression, which, if it means anything at all, must mean that slight variations might be unavoidable, and would in the establishment of the two feus call for some adjustment on the division of the plot. Had he inquired, as I agree with the Lord Ordinary he was called on to do, he would have ascertained that adjustment had been made and the march settled by the planting of the trees. Any deviation there is from a straight line is of the slightest, and the words "or thereby" may reasonably be held to cover it. I am of opinion with the Lord Ordinary that, although the line of trees is not in a strict sense a fence, that they are just as sufficient a mode of marking a boundary as march stones, and that if adjoining feuars choose to use them as such, such an adjustment of the march may bind a singular successor. I make no comments on the cases quoted, except to say that I adopt the Lord Ordinary's views on them.

On the whole matter I see no ground for interfering with the judgment under review, and would move that it be affirmed.

LORD KYLLACHY—In this case I agree with your Lordship and the Lord Ordinary. The case as presented to us perhaps touched some questions of delicacy — questions I mean as to the extent to which singular successors are affected by things done or suffered by their predecessors in title. But when the exact situation is understood I think it is fairly clear that the Lord Ordinary's judgment may be sufficient without trenching on any rule of law and keeping well outside the region of controversy. The important considerations are, it appears to me, these—(1) In the first place, it is proved, and indeed not disputed, that the row of trees in question was planted by the respective authors of the complainer and respondent at mutual expense and at the time when the original feu was divided between them. (2) In the next place, it is also proved that it was so planted in order to denote the line of march between the two properties from north to south, as that line of march had been adjusted and settled between them, which it required to be, *inter alia*, by reason of certain difficulties in the measurements contained in the titles.

Again, it is I think also clear that the adjustment so made, although probably more or less connected with the existence of the said difficulties, was in itself quite consistent with the titles—that is to say, consistent not only with the original feu-charter but also the disposition in the respondent's favour. It was so consistent for this, if for no other reason, that all the measurements were throughout qualified by the words "or thereby," leaving a latitude clearly in my opinion sufficient to cover the alleged minute discrepancies or variations on which the respondent founds.

These are, it appears to me, the important facts, and such being the position (the adjustment made being consistent with the title, and being also proper and necessary and followed by possession) I have I confess no difficulty in concluding that the adjustment of the march was and is effectual not only as against the original owners but also against singular successors. It was so in my opinion if for no other reason on the principle of *contemporanea expositio*, followed by possession and actings of parties which were themselves similarly interpretive, and by the interpretation involved in which it cannot be doubted that singular successors are affected and bound.

LORD KINCAIRNEY—I have considered this case very carefully and concur in the opinion of the Lord Ordinary and of your Lordships. The question is not without nicety and novelty. A row of trees is not a very common kind of fence, but in this case it certainly was in appearance, as it is proved to have been in fact, intended to indicate the march between these two properties. There was nothing else to indicate the boundary. The netting was not in fact meant as a fence. There was no agree-

ment that it should be so. I think it is the same as if it had been a hedge or a wall. The configuration of the ground required some divergence from a mathematical line between the two subjects and the terms of the title specially provided for it. I think the row of trees formed a march fence within the latitude allowed by the title. It was not against but in accordance with the right of parties as expressed in the titles.

The Court adhered.

Counsel for the Reclaimer—Craigie, K.C. —D. Anderson. Agents—T. F. Weir & Robertson, S.S.C.

Counsel for the Respondent—Clyde, K.C. — M'Robert. Agents — Ross, Smith, & Dykes, S.S.C.

Saturday, June 3.

SECOND DIVISION.

[Sheriff Court of the Lothians and Peebles at Edinburgh.

M'INTOSH *v.* POTTS.

Landlord and Tenant—Sequestration for Rent—Landlord's Hypothec—Goods on Hire Belonging to Third Party—Right of Landlord to Sell—Sale of Third Party's Goods while Some of Tenant's still Unexposed—Oppression.

Included among a tenant's effects sequestrated by her landlord for rent was a piano known to the landlord to have been hired from and to be the property of a third party. In the course of the sale, and when £92, 19s. had been realised, the piano was exposed and sold for £17, 6s. 6d., the remainder of the effects subsequently bringing £60. The rent due to the landlord with interest and agent's expenses amounted to £80, 2s. 6d. and the expenses of the sale together with taxes due amounted to £31, 18s.

In an action by the owner of the piano against the landlord for damages on the ground that the sale was illegal and unwarrantable because the piano had been sold at a time when (*firstly*) enough had already been realised to pay the whole debt, and when (*secondly*) effects belonging to the tenant were still unsold, *held* (1) that looking to the amount of the debt, the expenses of sale and the sum due for taxes, no such margin had been recovered when the piano was exposed as to make the sale of the piano oppressive or illegal; (2) that the pursuer was barred from founding on the order in which the articles had been sold by the fact that he had neither applied to the Sheriff nor the judge of the roup to have the piano reserved until the end.

On 31st August 1897 the trustees of the deceased Henry M'Intosh (the father of the pursuer of the present action) let a piano on hire to Mrs Helen M. Turnbull, who resided in a house rented by her from Miss Mary Potts, the defender in the present action. On 5th March 1900 Miss Mary Potts presented a petition to the Sheriff of the Lothians and Peebles for sequestration of Mrs Turnbull's effects in security and for payment of her rent for the year ending Whitsunday 1900 and obtained a warrant to inventory and serve. In the inventory was included the piano. Subsequently, on 13th March 1900 and 25th January 1901, warrants to sell were obtained, but as Mrs Turnbull continued to pay her rent by instalments the warrants were never carried into effect. On 3rd May 1900 the hirer's agent wrote to the defender's agent in the following terms:—"I give you formal notice that the piano is our property. . . . If it should be ultimately necessary for you to realise the effects will you kindly communicate with us, as we would be willing to come to an arrangement in the event of the tenant's own effects not being sufficient to cover your claim."

On 20th July 1904 Miss Mary Potts presented another petition for the sequestration of Mrs Turnbull's effects for arrears of rent and obtained a warrant to sell. The piano, which had all along remained in the house, was again included in the inventory, and a correspondence took place between the agents of the hirer and the agents of Miss Potts, in which the former objected to the inclusion of the piano in the inventory but no appearance was entered by them in the sequestration. The piano was thereafter sold along with Mrs Turnbull's other effects.

On December 1904 Henry W. M'Intosh brought this action in the Sheriff Court at Edinburgh against Miss Mary Potts in which he sued her for £33 sterling, being the value of the piano. He averred, *inter alia*—"(Cond. 8) After sundry procedure the defender obtained a warrant of sale under said sequestration "to sell so much of the sequestrated effects as will pay' the two rents in question, being £70, and expenses. Under this warrant effects belonging to the said Mrs Turnbull, amounting in value to £142, 14s. 6d., being more than double the rents for which the said process of sequestration was obtained, were sold. This sale was greatly in excess of what the warrant authorised, yet notwithstanding thereof defender wrongfully and illegally sold the pursuer's said piano over and above Mrs Turnbull's said effects, the value of which is at least £33, and for which value the defender is liable to the pursuers. (Cond. 9) It was the defender's duty to have, in any event, sold her tenant's effects before touching the pursuer's piano, and to have stopped the sale as soon as the effects sold were reasonably sufficient to cover the sums in the warrant, and the sale so far as regards the pursuer's piano was, to the knowledge of the defender, wholly illegal and without warrant or justification of any kind."

The pursuer also referred to the roup roll, which showed that the whole effects realised £170, 15s., and that £92, 19s. was realised