

thought it clear when the pursuer had stated his case, and the defenders had not been able to make any relevant defence to it, and would not have allowed any evidence as to such a matter. The defenders attempted to say that there was a contract to that effect between the parties. But clearly there was no contract established by the evidence which alone could be a defence to the action. It would be rather an anomalous but still perfectly stateable contract, that the one party was entitled and bound to discharge the sewage of the burgh upon these lands, and that the other party was entitled and bound to receive it. Such a contract would need very distinct expression indeed, and there is no relevant allegation of such a contract upon record, and no support of it in the evidence. As to the plea of acquiescence, the proposition is this—that as the pursuer did not object to the drainage works when they were being constructed, therefore he is barred from objecting for all time to the sewage being sent upon his lands. I think that is an extravagant proposition. I think there is no evidence of any agreement between Mr Houldsworth and the Police Commissioners, and that being so, I think we ought to adhere to the Lord Ordinary's interlocutor.

LORD CRAIGHILL and LORD RUTHERFURD CLARK concurred.

The Court refused the reclaiming-note, adhered to the Lord Ordinary's interlocutor, and superseded consideration of the interdict till the first sederunt day of the following session.

Counsel for the Reclaimers—Balfour, Q.C.—Darling—M'Kechnie. Agent—D. Hill Murray, Solicitor.

Counsel for the Respondent—Graham Murray—Ure. Agents—Murray, Beith, & Murray, W.S.

Friday, July 15.

FIRST DIVISION.

[Lord Lee, Ordinary.]

SMITH v. LIVERPOOL AND LONDON AND GLOBE INSURANCE COMPANY.

Arbitration—Objections to Decree—Oversman chosen by Lot—Oversman Shareholder in an Unincorporated Company.

In an action of reduction of the nomination of an oversman, and of the decree-arbitral pronounced by him in a submission between an insurance company and a person insured, on these grounds—(1) that the oversman was chosen by lot; and (2) that the oversman was a shareholder in the company—it was proved that each arbiter nominated one person as oversman, but that each regarded the other's nominee as fit for the office, and they accordingly chose the oversman by lot. The oversman accepted, and when the proceedings in the arbitration were nearly concluded, recollected that he was a shareholder in the company. He at once informed the arbiters, who approved of his continuing to

act. The oversman's interest in the matter in dispute was very trifling. *Held* (1) that as the arbiters had concurred in thinking the oversman a fit person for the office, the fact that he had been chosen by lot did not invalidate his nomination; but (2) that the decree-arbitral should be reduced, as the oversman, being a shareholder in the company which was a party to the submission, had acted as judge in his own cause.

Declinature—Arbiter—Court of Session Act 1868 (31 and 32 Vict. cap. 100), sec. 103—A.S., Feb. 1, 1820.

Held that the 103d section of the Court of Session Act 1868, which provides that it shall not be a ground of declinature that the judge (whether in the Court of Session or in any of the inferior courts) is a partner in any joint-stock company carrying on the business of life or fire insurance, does not apply to arbiters; and that the A.S., Feb. 1, 1820, which provides that the fact of a judge holding shares in a chartered bank is not a ground of disqualification, had no bearing on the case, as the company in question was unincorporated.

By policy of insurance dated 17th November 1884, the Liverpool and London and Globe Insurance Company (which was unincorporated) insured the stock and utensils in trade of John Smith, shoemaker, Stenton, East Lothian, against loss by fire to the extent of £300. On 9th May 1885 the subjects insured were destroyed by fire. It was provided in the policy that differences between the company and the insured should be referred to arbitration. A deed of submission was accordingly entered into, in which Smith's claims were referred to the decision of Messrs James Brand, auctioneer, Dunbar, and John Stewart Mair, merchant, Glasgow. They accepted office, and nominated Mr William Lyon, auctioneer, Edinburgh, to be oversman, and he accepted office.

After having been nominated, Mr Lyon heard the proof in the arbitration along with the other arbiters, and the arguments of parties upon it. The proof occupied two days. Evidence was fully led and considered by the arbiters and oversman. The arbiters having differed in opinion as to the amount to which the pursuer was entitled, it was arranged that they should meet with the oversman in Edinburgh, and give in written reasons in support of their respective opinions. The day before this meeting it had been by accident recalled to Mr Lyon's memory that he was a shareholder in the defenders' company, and at the meeting on the following day, viz., 26th April 1886, he stated to the arbiters and the clerk that he held stock in the company. Both arbiters requested him to continue to act.

On Mr Lyon issuing notes of his proposed award, Smith raised objections to the competency of his acting as oversman. On 7th July 1886 Mr Lyon pronounced a decree-arbitral in the submission, awarding Smith £70 in full of his claims (£326, 2s. 9d.), finding him liable in one-half the expenses of the reference (£63, 4s. 10d.), and in his own expenses.

Smith raised an action of reduction of Mr Lyon's nomination, and of his decree-arbitral. He averred that Mr Lyon had been chosen by lot, and, secondly, that he was a shareholder in the

company, and was employed as the company's valuator. He pleaded, *inter alia*—“(1) The nomination of the said William Lyon as oversman in the said submission having been determined by chance, and not by the mutual choice of the said arbiters, the said deed of nomination, and all that has followed on it, ought to be set aside. (4) The said William Lyon having been personally disqualified from acting as oversman, his said nomination and the said decree-arbitral ought to be reduced.”

On 14th December 1886 the Lord Ordinary (LEE) allowed a proof. The Lord Ordinary's note and the opinion of the Lord President contains the material facts proved.

On 23d March 1887 the Lord Ordinary sustained the reasons of reduction set forth in the first and fourth pleas-in-law for the pursuer, and therefore reduced in terms of the conclusions of the summons.

“*Note.*—This is a reduction of a decret-arbitral pronounced by the oversman in a submission between the Liverpool and London and Globe Insurance Company and the pursuer as a policy-holder, relative to the amount of damage suffered through a fire in the pursuer's shop.

“The grounds of reduction alleged are—*Firstly*, that the oversman was not properly appointed, having been selected by the arbiters by casting lots; and *secondly*, that the oversman was personally disqualified, being himself interested in the subject-matter of reference as a shareholder of the defenders' company, and also as a person employed by them as a professional valuator.

“The facts ascertained by the evidence are as follows:—

“1. The oversman was selected by casting lots. After some discussion as to the propriety of appointing a practical shoemaker, each arbiter proposed an auctioneer. The arbiter appointed by the company proposed Mr Lyon, and the arbiter appointed by the pursuer proposed Mr Dowell. As neither would agree to the oversman proposed by the other, the arbiters agreed to cast lots, and the lot fell upon Mr Lyon.

“2. Mr Lyon was at this time, and still is, a holder of capital stock of the defenders' company to the extent of £50, and the present value of which is about £330, being 25 shares, each of the value of £33, 10s. The total stock of the company is £245,000. Mr Lyon had also been employed by the company occasionally as a valuator.

“3. At the time when he was so selected, Mr Lyon was unknown to both arbiters excepting by repute as an auctioneer of experience. Neither arbiter had made any inquiries as to his fitness, and neither was aware that he was a shareholder in the defenders' company. It is now stated by each of them that had this been known he would not have been proposed or appointed; but it was stated by the pursuer's arbiter at the time when this mode of selection was agreed to, that he had no objection to Mr Lyon, and supposed that he would be capable of filling the position although he did not know him.

“4. When the result of the arbiters' meeting to select an oversman was communicated to the parties and to Mr Lyon, neither he nor the defenders noticed or adverted to the fact that he was a shareholder. The fact appears to have

been overlooked by them, and was not mentioned even when the formal nomination and acceptance were executed. It was not within the knowledge of the pursuer or his agents. It was first mentioned after the proof had been concluded, and at the meeting of arbiters and oversman for consideration of the award, when Mr Lyon stated that it had come to his recollection. At this meeting the agents of the parties were not present. But the arbiters, considering that the proceedings were so far advanced, concurred in asking Mr Lyon to proceed. The clerk suggested no difficulty, and Mr Lyon appears to have agreed to do so, without any communication with the parties or their agents. A minute of devolution was accordingly executed at this meeting.

“5. As soon as the fact came to the knowledge of the pursuer's agents, they lodged a minute declining the oversman's jurisdiction, and requesting the arbiters to name a new oversman. Notwithstanding of this, Mr Lyon proceeded to issue his notes of proposed award (against which the pursuer's agents represented under protest), and he subsequently, on 1st July 1886, issued the award now under reduction. The pursuer's agent appears also to have protested against the mode in which the oversman was selected when it came to their knowledge.

“I. As to the question of casting lots, the law stands upon a clear principle. It requires that both arbiters shall exercise a judgment upon the fitness of the person selected—*In re Cassel*, 9 B. and C. 624; *Hodson v. Drury*, 16 East. 51; *The European and American S. & M. Company v. Crosskey*, Scott's Repts. 8 Com. B.N.S. 397, and 29 L.J., Com. Pl. 155; Bell on Arb. 188; Russell on Arb. 226. A bare selection by lot cannot therefore be supported. If, however, each arbiter exercises his judgment as to the fitness of two persons, and both agree that both of these are fit and proper for the office, it is no objection that lots have been cast as to which of them shall be appointed. In such a case, however, it is essential and it is implied in the decisions overruling the objection, that both of the persons for whom lots have been cast must have been selected by each of the arbiters as fit for appointment—*Neale v. Ledger*, 16 East. 51; *re Hopper*, 2 L.R., Q.B. 367.

“In the present case I am of opinion that there was no agreement as to the fitness of Mr Lyon, such as existed with reference to the oversman appointed in the case of *Hopper*. A material fact, which was within the knowledge both of Mr Lyon and of the defenders at the time when the nomination was signed and accepted, was from inadvertence uncommunicated to the arbiter or to the other party. According to well-established practice, it was the duty of the oversman to intimate that he was a shareholder of the defenders' company when he was informed of the appointment, or at least before proceeding to exercise his functions; and Mr Lyon recognised this duty by mentioning the matter to the arbiters as soon as it came to his recollection. The nomination was intimated to him about 24th February. It was accepted by him on 2d March. But the fact that he was a shareholder was not mentioned to the arbiters until 26th April; and it did not reach the pursuer's agents until some days after he had agreed

at the request of the arbiters to continued to act. Whether it was an absolute disqualification or not, I think that the parties interested should have been informed of it. They might have waived the objection, but the arbiters could not do so, nor did they until the 26th April when they did do so on account of the advanced stage of the proceedings, and without the concurrence of the parties. Both arbiters state that at the time of the appointment they would have recognised the fact as an objection, and would not have made the appointment had they known of it.

"I am therefore of opinion that the appointment in this case must be regarded as a bare appointment by lot, and that it cannot be supported.

"I think that the case is ruled by that of *Crosskey*, and is not in the same class as the cases of *Neale v. Ledger* and of *Hopper*.

"II. With regard to the other objection, my opinion is that it is also well-founded. No doubt the interest of Mr Lyon was extremely small; so small, that in no event could the arbitration affect him to the extent of more than a few shillings. But I cannot say that his interest was so remote or shadowy as to raise no duty of disclosure.

"I think that there was a duty of disclosure incumbent both upon him and upon the defenders. It cannot be said that it was immaterial whether that duty was discharged or not, for it is impossible now to say that the objection would have been waived.

"The question therefore is, whether it is a good ground of declinature that an oversman is a shareholder of the company which is concerned as one of the parties to the arbitration, and I think it is.

"Although it does not stand upon the same ground as the objection of relationship to one of the parties, which is statutory, it is clearly implied in recent enactments that at common law there is no answer to it—See Court of Session Act 1868, sec. 103, and Act of Sederunt, February 1, 1820. And there are many cases in which the objection has been given effect to (see *Aberdeen Bank v. Scottish Equitable Insurance Company*, 22 D. 162; *Blaikie's Trustees v. Scottish Widows Fund*, 2 Macph. 595, in which six Judges were allowed to decline).

"It was argued that the case of a Judge of the Supreme Court is different, and that his declinature rests entirely upon privilege. I cannot assent to this view. I think that the right to decline arises out of the existence of a ground of objection. In so far as it can be called a privilege, it is possessed, even in a more unqualified way, by arbiters and oversmen. For a judge is under obligation to exercise his office, and cannot refuse to do his duty towards any of the public except upon a sufficient ground. The situation of an arbiter or oversman is not less delicate than that of a judge, and he can always decline. The only peculiarity in the case of a judge arises from the limited number. For it was held in two cases that where the duty of deciding a cause could not be done if a declinator was sustained, it must be repelled—*Douglas, Heron, & Company*, 1774, Hailes, 563; *Friendly Insurance Company*, Elch. Jurisdiction, 50.

"III. It was contended that even if these ob-

jections were well founded, they were not a sufficient ground for reducing the nomination and decreet-arbital after so much procedure. I think that the case of *Ommaney v. Smith*, 13 D. 678, and the two cases in 5 Brown's Supp. there mentioned, are decisive against this contention. It cannot be said that in this case there was any delay in taking the objection."

The defenders reclaimed, and argued—(1) That as regarded the selection by casting lots, it was proved that both of the persons for whom lots were cast had been chosen by each of the arbiters as fit for the office. Each arbiter no doubt preferred his own nominee, but at the same time he considered the other arbiter's nominee as a fit and proper person. This was just the case of *Neale v. Ledger*, June 3, 1812, 16 East. 51; and in *re Hopper*, January 17, 1867, L.R., 2 Q.B. 367, where the nomination had been sustained. (2) As regarded the question of interest, there might be an inquiry into what interest would bias—Bell on Arbitration, secs. 234, 240, 244. Now, the utmost interest that that Lyon could have in the result of the arbitration was a shilling. It was not any interest that would disqualify—*Drew v. Drew and Leburn*, March 8, 1855, 2 Macq. 1; in *re Elliot*, January 31, 1848, 2 De G. & Sm. 17. It was to be observed that all the cases upon which the Lord Ordinary founded dealt with the objection on the ground of relationship, and that was a statutory objection. The disqualification of judges on this ground where there was not the slightest interest had been found to operate the greatest inconvenience—*Commissioners of Highland Roads and M'Neil v. Machray, Croal, & Company*, June 25, 1858, 20 D. 1165—and it was to be distinguished from all other objections—*Duke of Athole v. Robertson*, December 15, 1869, 8 Macph. 299. In the case of other objections, the Court had full power to deal with them—*Lord Advocate v. Commissioners of Supply for the County of Edinburgh*, June 5, 1861, 23 D. 933, 944; *Sibbald's Trustees v. Greig*, January 13, 1871, 9 Macph. 399; *Gray v. Fowlis*, March 5, 1847, 9 D. 811. It was impossible to say that in these cases there was no interest, but the Court considered themselves free to judge of the circumstances. Besides, in the case of an arbiter, the question was not of such delicacy as in the case of a judge. The only question was whether the interest was sufficient to bias the mind of an ordinary man. A further argument was to be drawn from the provisions of the Court of Session Act 1868, sec. 103. This applied to the case of the judges in all inferior courts, and an arbiter was on the same footing as an inferior judge—*Forbes v. Underwood*, January 22, 1886, 13 R. 465.

Argued for the respondent—(1) That there were three classes of cases which dealt with choice by lot—(a) tossing for exclusive right to appoint. That was plainly bad. (b) Tossing for the appointment of one of a class of selected persons. That was good. (c) Tossing for one of a class of persons taken haphazard. That was bad, and that was the present case. The presumption was against appointment by lot, and therefore it must be clearly shown that the arbiters selected the parties to toss for—*In re Cassel*, June 22, 1829, 9 B. & C. 624; *Ford v.*

Jones, January 28, 1832, 3 B. & Ad. 248; *in re Greenwood*, January 29, 1839, 9 Ad. & E. 699; *The European and American S. & M. Company v. Crosskey*, January 27, 1860, Scott's Rep. 8 C.B. N.S. 397, 29 L.J., C.P. 155. In all the cases founded on by the claimer there was a judgment as to fitness. That was absent here. (2) As regarded interest—(a) The oversman held shares in the company. There was therefore on him a duty of disclosure. He must have known of his holding—Bell on Arbitration, sec. 234. In any case there was a duty of disclosure on the company. They must have known that he was on the register. (b) As to the question of the amount of interest—It was very doubtful if there was any interest in the case of *Drew*, *supra cit.* At all events, both in that case and in the case of *Elliot*, *supra cit.*, the objection was waived. Here the objection was not waived. The parties were in ignorance of its existence, and the arbiters were not entitled to waive it—Bell on Arbitration, sec. 250; *in re Hodson*, 1839, 7 Dowling's Rep. 569. The arbiters' mandate was unlimited except in this, that they should not appoint a person exceptionable at law.

During the discussion the Lord President called attention to the case of *Dimes v. Grand Junction Canal Proprietors*, June 29, 1852, 3 Clark's H. of L. Cas. 759.

At advising—

LORD PRESIDENT—In this case the Lord Ordinary has reduced the award on two separate grounds, each of which requires serious consideration.

1. He has held that the nomination of the oversman was illegal, in respect that the arbiters in selecting him by drawing lots, had not exercised their judgment in the selection of a person suitable for the office. Were that correct, I should be of opinion with the Lord Ordinary that the nomination was invalid on this ground. But we must look at the precise state of the facts; and that seems to me to be well brought out in the evidence of each of the arbiters. Mr Brand, after narrating the facts as to his nomination and as to his correspondence with Mr Mair, the other arbiter, goes on to state that the proposal on his part was that they should take a practical man as oversman. He did not, however, stand upon that, but went on to discuss the question who would be a proper person to appoint. He is asked—“(Q) You were of opinion that an auctioneer would be quite a good man in the circumstances?—(A) When I proposed Mr Dowell I said that he was a man of long experience, and if he was not able to tell the price of a pair of shoes of a different size, he was clever enough, and had experience enough to get some person in his employment that would be able to do so. I knew what Mr Lyon's profession was, and what firm he belonged to. I had no objection to him on account of his being an auctioneer. I knew Mr Lyon's firm by repute, and I knew his son very well. There is no doubt his firm has a good reputation. I said to Mr Mair that I had no objection to Mr Lyon. I said that to him before the names were put into the hat. (Q) Did you say something of this kind, ‘I suppose he will be all right?’—(A) I don't think I made such a remark.” Mr Mair, the other arbiter, gives this account of the matter. He says—“Mr Brand

said he preferred having an auctioneer. He seemed to have changed his mind. I said, ‘What do you say to Mr William Lyon?’ He said he preferred Mr Dowell. We then had some little talk in regard to that. I said I did not care much whether it was Mr Dowell or Mr Lyon that was appointed, but still after having nominated Mr Lyon, I preferred him. He said the same thing—that having nominated Mr Dowell, he preferred him. After some little talk, I said, ‘Well, seeing that neither of us seem to care which gentleman is appointed, let us put the names into a hat, write two slips of paper, each containing the name of one gentleman, put them into the hat and draw, and whichever of the gentlemen is drawn let him be nominated as oversman.’ That was done, and Mr Lyon was drawn.”

Now, it was argued by the counsel for the pursuer that to proceed in this way was to substitute chance for choice, and no doubt that is a very terse and emphatic way of putting the matter, provided only that the facts support it. But in the present case it is impossible to say that there was no choice. There was a selection not of one person only, but of two. Each of these was selected as eligible—I may almost say—as equally eligible. But each of the arbiters having selected his man, was a little obstinate as to which should give in. Now, in that condition of affairs it is plain that, if chance does come in, it comes in to a very limited extent. It is a chance which of two candidates selected as eligible is chosen. I think that is not a good objection; and I am glad to see that the view suggested by common sense has been adopted in two very important cases decided in England. These cases are not authorities binding upon us, but they commend themselves as being thoroughly sound in principle.

2. But another objection has been stated to the award which is much more formidable, and which is, in my opinion, conclusive of the case. It turns out that Lyon was a shareholder in the company which is here as defender. It is true that he was interested only to a small extent, and I shall consider that afterwards. At the outset I think it right to state that I attach no moral blame to Mr Lyon, and I give complete credence to his story, that he forgot that he was a shareholder in the company when he accepted the appointment as oversman. So soon as he remembered that he was interested in the company he acted with the utmost candour. The fact was not found out; it was communicated by him. But it is said that the amount was so small that it could not affect his judgment; that it is not conceivable that a man in his position could be biassed by so paltry an interest. To say that is to mistake the nature and essential character of the objection. For the objection is this—He becomes a judge in his own cause, and in that case the amount of the interest is immaterial. No man is entitled to be a judge in his own cause, and if he acts as such his judgment is undoubtedly a bad judgment. This is a principle perfectly well settled in the law. The Lord Ordinary has cited cases to that effect—*Aberdeen Bank v. Scottish Equitable Insurance Company*, December 3, 1859, 22 D. 162, and *Blaikie's Trustee v. Scottish Widows Fund*, February 4, 1864, 2 Macph. 595. These are both strong cases,

and quite in point. The Judges who there declined were members of the societies who were parties to the litigations. They never doubted for a moment that they must decline; and I suppose none of your Lordships could doubt that it would be incompetent for him to sit in the case of a company in which he was a shareholder. That is a matter of everyday practice, and nobody has ever thought of doubting it. No doubt the objection may be removed by the parties minuting their waiver of the objection. But that only confirms what I have been saying, for if it were not necessary it would not be done. I have said before, and I am prepared to say again, that this objection might be removed by legislation, and to some extent this has been done by the 103d section of the Court of Session Act 1868. But the provision there is limited, and certainly does not apply to arbiters or oversmen, and accordingly we are now exactly where we were in *Blakie's Trustee v. Scottish Widows Fund, supra*. I may add that a very important case in England—*Dimes v. Grand Junction Canal Proprietors*, June 29, 1852, 3 Clark's H. of L. Cas. 759—occurred, where Lord Cottenham was set aside, when acting as Lord Chancellor—one of the litigants in a case before him being a company in which he was a shareholder. And the question was considered so important that not only was it very fully argued in the House of Lords, but the English Judges were consulted, and in an elaborate judgment it was decided that the whole proceedings were void. It was said that the law was not the same as to this in England and Scotland. I think as regards this particular objection it is absolutely identical. I was anxious to learn if this company was incorporated, because the A.S., February 1, 1820 empowers Judges to act although they are shareholders in chartered banks which are parties to the litigation. The ground of this enactment is that the litigant is the corporation and not the corporator. Accordingly in that case there is not the same objection. But where the company is not incorporated, as is the case here, each shareholder is a party to the litigation, and therefore the Act of Sederunt does not apply.

LORD MURE, LORD SHAND, and LORD ADAM concurred.

The Court pronounced this interlocutor:—

“Recal said interlocutor in so far as it sustains the reasons of reduction set forth in the first plea-in-law for the pursuer: *Quoad ultra* refuse the reclaiming-note, and adhere to said interlocutor in so far as it sustains the reasons of reduction set forth in the fourth plea-in-law for the pursuer, and reduces, declares, and decerns in terms of the conclusions of the summons, and finds the defenders liable to the pursuer in expenses,” &c.

Counsel for Pursuer and Respondent—Shaw—Wilson. Agent—J. J. Dyer, S.S.C.

Counsel for Defender and Reclaimer—Darling—G. R. Gillespie. Agent—A. P. Purves, W.S.

Saturday, July 16.

FIRST DIVISION.

[Lord Trayner, Ordinary.

WYLLIE GUILD (M'MILLAN'S FACTOR).

Judicial Factor—Investment of Funds—Loan on Buildings in course of Erection.

Held that a judicial factor was not entitled to take credit in his accounts for a sum of money lent by him on the security of buildings in course of erection.

On the 20th December 1886 Mr Wyllie Guild, chartered accountant in Glasgow, was appointed judicial factor upon the estate of the deceased Michael M'Millan. By his last will and testament, dated 28th September 1811, Mr M'Millan directed that after payment of certain bequests the remainder of his property should be funded for the erection and endowing of a school in Glasgow for soldiers' children, and he named a body of managers.

This estate fell within the provisions of the Educational Endowments (Scotland) Act 1882. The Educational Commissioners included it in a scheme, approved of on 19th May 1885, relating to Glasgow, and called upon Mr Wyllie Guild to make it over to them. He accordingly presented a petition to the Court of Session praying the Court to authorise him to denude and to exoner and discharge him of his office. The Lord Ordinary ordered service upon the Glasgow City Educational Board, and thereafter remitted the factor's accounts to an accountant. From the accountant's report it appeared that the factor had, among other investments, lent in February 1878 £2000 over subjects in Burnbank Gardens, Glasgow, which were at the time in course of erection. It was estimated that the building would “be worth when completed £3250. On 20th February 1878 the architect granted a certificate that £1200 might be paid to account. This was done, and in addition the balance of £800 was deposited in bank to await the requirements of the building. Shortly thereafter the borrower failed, leaving the security-subjects unfinished, and the feu-duty in arrear. The judicial factor thereafter expended the £800 balance in completing, as far as possible, the subjects, but this was insufficient to erect a portion of the buildings intended for stables, &c., estimated to produce one-fourth of the whole rental. The free rents from the property were insufficient to meet the interest at $4\frac{1}{2}$ per cent. on the bond by £424, 7s. 9d., being the amount of interest in arrear at 20th June 1886.”

The Educational Endowment Board objected to the factor taking credit in his accounts for the sum of £2000 invested by him in this manner.

On 25th January 1887 the Lord Ordinary (TRAYNER), having considered the accountant's report and heard parties, found that Mr Wyllie Guild in his factorial accounts was not entitled to take credit for the sum of £2000 advanced by him in loan on the security of the subjects in Burnbank Gardens, Glasgow, and granted leave to reclaim.

“*Opinion.*— . . . In this case the loan was given over subjects still in the course of erection.