Court, together with the letter of 3rd July, should be handed over to the complainer.

LORD TRAYNER—I agree. Putting out of view the complainer's statement, and simply taking that of the respondent, I find in it a confession of a most iniquitous transaction. I cannot but regard the demand for payment of these bills as a most impudent attempt to defraud this poor woman of money to which the respondent was not entitled. I agree that the bills should be handed over to the complainer, and the respondent found liable in the whole expenses of the case.

The Court adhered to the interlocutor of the Lord Ordinary, with additional expenses, and directed the Clerk of Court to deliver to the complainer the five promissory-notes and the letter of 3rd July 1895.

Counsel for the Complainer—Guthrie—W. Thomson. Agent—Marcus J. Brown, S.S.C.

Counsel for the Respondent—W. Campbell—Graham Stewart. Agents—Clark & Macdonald, S.S.C.

Friday, January 24.

SECOND DIVISION.

[Lord Kyllachy, Ordinary.

CHANCELLOR'S TRUSTEES *v.* CHANCELLOR.

Trust — Marriage-Contract — Power of Appointment — Vesting — Entail — Provisions to Younger Children.

By his marriage-contract an heir of entail conveyed to trustees certain funds, including the provisions he was entitled to make out of the entailed estate in favour of his younger children. These funds were to be held by the trustees "in trust for behoof of the children of the said intended marriage not succeeding to the said entailed estate, and that in such shares or proportions, and subject to such conditions," as the granter "shall appoint by any writing under his hand," and failing such appointment, for behoof of the younger children alive at the granter's death in equal shares, the issue of predeceasing children coming in place of their parents, and being entitled to the share which would have fallen to them if they had been alive.

On the marriage of A, a younger son, the granter appointed to him and his lawful children in the event of his death, or his or their assignees, £1500 as his share of the marriage-contract provision. The deed of appointment was declared irrevocable and to be held as delivered from the date of execution, and under it A was taken bound to assign the sum to his marriage-contract trustees. A predeceased his father without issue, and survived by his wife, to whom he bequeathed his whole estate. The granter was survived by a son, who succeeded to the entailed estate, and two daughters.

In a competition between the latter and A's widow, *held* that the provision of £1500 vested in A at the date of the deed of appointment, and was carried by his will.

Entail — Younger Children — Daughter of Predeceasing Eldest Son not Succeeding to Entailed Estate.

In his marriage-contract the heir of an entail in favour of "heirs-male" made a provision for behoof of the younger children of the marriage, viz., those not succeeding to the entailed estate, who should be alive at his death, the issue of predeceasing children taking their parent's share.

Opinion by Lord Young, that the only daughter of the eldest son, who predeceased his father, and therefore did not succeed to the entailed estate, was entitled to a share of the provision.

By the antenuptial contract of marriage between John George Chancellor of Shieldhill and Miss Isabella Adolphus Ross, dated 22nd June 1847, John George Chancellor, who was the heir of entail in possession of the entailed estate of Shieldhill, *inter alia*, bound the heirs and substitutes of tailzie who should succeed to him to pay to the trustees under the contract of marriage the sum of £2000, or such other sum as should be equal to three years' rent of the said estate, and that at the first term of Whitsunday or Martinmas after his death, to be held by the trustees "in trust for behoof of the children of the said intended marriage not succeeding to the said entailed estate, and that in such shares or proportions, and subject to such conditions if more than one such child, as the said John George Chancellor shall appoint by any writing under his hand, and failing such appointment the said sum shall be held by the trustees for behoof of the younger children who shall be alive at the death of the said John George Chancellor, in equal shares or proportions, the issue of such other child or children as may have predeceased always coming in place of their parents, and being entitled to the share that would have fallen to their parent had he or she been alive." This provision bore expressly to be granted in exercise of the power in a bond of tailzie of the Shieldhill estate, dated 11th April 1727, reserving to the heirs of entail the liberty "to provide their younger children to three years' free rent of the said lands."

In 1885 John George Chancellor, acting under the authority of the Court of Session, granted in favour of the marriage-contract trustees a bond and disposition in security for £2804, 8s. 9d., being the estimated amount of three years' free rental of the said entailed estate.

On 15th March 1894 John George Chancellor died, predeceased by his wife.

The children of the marriage were (1) Major Alexander Chancellor, who died on 21st April 1893 leaving a daughter, Isabella

Blanche Dora Chancellor, in pupillarity; (2) Hume Frederick Chancellor, who survived his father and succeeded to the entailed estate; (3) the Reverend Robert Blair Maconochie Chancellor, who died on 3rd January 1890 without issue; and (4) Elizabeth Blanche Chancellor; and (5) Mrs Mary Forbes Chancellor or Chadwick, who both survived their father.

On the occasion of the marriage of his son, the Reverend Robert Blair Maconochie Chancellor, with Miss Henrietta Maria Orde-Powlette, John George Chancellor, by a separate deed of appointment dated 24th July 1888, on the narrative that the marriage was about to take place, and that in the negotiations in connection therewith it had been covenanted that he should grant these presents, appointed to his said son or his lawful issue in the event of his death, or his or their assignees, such a sum out of his marriage-contract trust funds as should make his said son's share of the total trust funds divisible among the younger children of the marriage to amount to £1500. By the deed of appointment it was declared that the deed should be held as delivered immediately after execution, that it should not be subject to revocation or alteration by John George Chancellor, and that Robert Blair Maconochie Chancellor should be bound to assign his whole rights and interests under it to his marriage-contract trustees. Thereafter in his marriage settlement, executed on 29th August 1888, Robert Blair Maconochie Chancellor assigned the said sum of £1500 to his marriage-contract trustees. The marriage was dissolved by the death without issue of Robert Blair Maconochie Chancellor on 3rd January 1890. He left a will dated 14th May 1889, by which he bequeathed his whole estate, real and personal, to his wife, and appointed her his executrix. She subsequently married the Reverend Henry Milner Sharples, and in their marriage settlement, dated 29th September 1893, conveyed, *inter alia*, the said sum of £1500 to the marriage-contract trustees.

After the death of John George Chancellor on 15th March 1894, his marriage-contract trustees raised an action of multiplepoinding for the division of the trust-estate, including the said sum of £2804, 8s. 9d. Claims were lodged by Mr and Mrs Sharples' marriage-contract trustees, and by Miss Elizabeth Blanche Chancellor, and by Major and Mrs Chadwick's marriage-contract trustees, as representing Mrs Mary Forbes Chancellor or Chadwick. No claim was lodged for Miss Isabella Blanche Dora Chancellor, the daughter of Major Alexander Chancellor, the eldest son of John George Chancellor, who predeceased his father.

Mr and Mrs Sharples' marriage-contract trustees claimed the £1500 which John George Chancellor on 24th July 1888 had appointed to his son Robert or his assignees. This claim was opposed on behalf of the two daughters of John George Chancellor, on the ground that Robert died before his father, and that in terms of the father's marriage-contract no part of the marriage-contract provision of three years' free rent of the estate of Shieldhill vested in any child who predeceased the father.

On 5th August 1895 the Lord Ordinary (KYLLACHY), *inter alia*, found "that in the just construction of the marriage-contract of the late John George Chancellor, the provisions thereby conceived in favour of his younger children did not vest till his death," and accordingly repelled the claim of Mr and Mrs Sharples' marriage-contract trustees.

Note.—"The Lord Ordinary has not been able to find grounds for holding that the shares of the younger children vested before the death of their father. The presumption, no doubt, is for vesting at the dissolution of the marriage, but the peculiarity of this case is that there is no gift except to the younger children of the marriage (that is to say—to the children not succeeding to the entailed estate); and until the death of the father (the heir of entail and granter of the provisions) the class of younger children cannot be ascertained. That, in the Lord Ordinary's opinion, excludes vesting at the earlier period, especially when taken along with the destination-over to the issue of predeceasers, which, although not conclusive, is always in such cases an element.

"It was argued that there might be vesting at birth in the whole children other than the first-born son, subject to defeasance in the case of any child coming to succeed to the entailed estate. But vesting subject to defeasance can hardly operate when there is no original gift, It was also argued that there is in the marriage-contract no reference to *survivorship* except in the case of *failure of appointment*. But it is not, in the Lord Ordinary's opinion, possible to construe the deed as giving a power to appoint to a class of objects larger than the class of objects taken in default of appointment. On the whole, the Lord Ordinary does not see his way to sustain the claim for the representatives of the predeceasing younger son, who died without issue."

The claimants, Mr and Mrs Sharples' marriage-contract trustees, reclaimed and argued—Under the clause in his marriage-contract John George Chancellor had full power to appoint a share of the three years' free rent to any of his younger children, so as to make that share vest on appointment. This power of appointment he had exercised on the marriage of his son Robert, and the £1500 vested in Robert at that date. The case was ruled by *Oswald* v. *Oswald*, December 20, 1821, 1 S. 246. That case decided a general point, and was cited as an authority in all the text books—Menzies' Conveyancing, 3rd ed. p. 742; Bells' Conveyancing, 3rd ed., p. 888; M'Laren's Wills and Succession, 3rd ed., p. 1082. Further, the Aberdeen Act (5 Geo. IV. c. 87) applied; under sec. 5 of that Act a provision of this nature, when settled in the marriage-contract of a child who predeceased the granter, remained valid and effectual as if such child had survived the granter. It

might be argued that the provision did not vest in Robert at the date of the deed of appointment, because he might subsequently have succeeded to Shieldhill as heir of entail, and thus passed out of the category of "younger children." But the Aberdeen Act, sec. 4, expressly provided that a provision of this kind should be extinguished on any child succeeding to the entailed estate. In such a case the vesting would have taken place subject to defeasance on Robert succeeding as heir of entail—*Wright's Trustees* v. *Wright*, February 20, 1894, 21 R. 568.

Argued for claimants Miss Elizabeth Blanche Chancellor and Mrs Chadwick's Marriage-Contract Trustees—At his marriage John George Chancellor had divested himself of the three years' free rent of Shieldhill in favour of his trustees, and this fund could not come into existence till after his death. He had divested himself entirely of the fund, reserving only a power of appointment. Under this power he could only appoint to a child (1) not succeeding to the entailed estate, and (2) surviving him. In order to find out the persons to whom the class "younger children" applied, the date of the father's death must be waited for, because it was impossible to predicate before his death which of his children would succeed to Shieldhill as heir of entail. No vesting therefore took place before the father's death—*Burnett* v. *Burnett*, March 4, 1854, 16 D. 780; *Cotton* v. *Mackenzie*, March 1, 1872, 10 Macph. (H.L.) 12, opinion of Lord Chelmsford, p. 23. The case of *Oswald* was not reported satisfactorily, and must not be looked upon as an authority. From anything that appeared in the report of that case, or in the session papers, it may have proceeded on special grounds. The destination in that case was also different, being to their "several" younger children. The Aberdeen Act did not apply to the present case—*Callander* v. *Callander*, May 21, 1869, 7 Macph. 777—and sec. 5 of that Act altered the common law. This case was governed by the common law, and the general rule of law on this point was that a provision payable to a child at the granter's death lapsed if the child predeceased the granter and left no issue—Menzies' Conveyancing, p. 459. Further, the appointment was in effect an appointment to Robert's children as well as to Robert. It was beyond the power of appointment conferred by the marriage-contract to appoint to grandchildren. The appointment being therefore bad in part, the whole deed was vitiated, and the appointment was null—*Blaikie's Trustees* v. *Oxley*, February 25, 1862, 24 D. 589.

At advising—

LORD YOUNG—The question argued before us deals with a sum of money, being a provision made by the late Mr Chancellor of Shieldhill, in his marriage-contract, in favour of his younger children. It is a sum of £2800, being three years' rent of the entailed estate of Shieldhill, which by his marriage-contract he bound the heirs of entail of that property to pay to his marriage trustees. The provision, speaking generally, in the marriage-contract is that the marriage-contract trustees shall hold this sum for behoof of his younger children—that is, as he explains, those not succeeding to the estate of Shieldhill—in such proportions—so much to each—as he may appoint, or failing any appointment, then equally. He died, and his marriage trustees have this sum in their hands now, and, as I have stated, it forms part of the fund *in medio*.

We are only concerned with the state of his family to this extent, that he left behind him a son—his second son, as it happened—who succeeded to the entailed estate of Shieldhill; therefore he makes no claim upon the funds. His eldest son predeceased him, leaving a daughter, but for whom no claim is made. The third son, Robert, married in his father's lifetime, and predeceased his father without leaving any issue. He also left two daughters, one married, and, I think, the other not. On the marriage of his third son Robert, he was, in effect—not quite formally but in effect—a party to the marriage-contract, and undertook an obligation that Robert should have £1500 as his share of the sums in the hands, or which should come to be in the hands, of his marriage-contract trustees.

The question which was argued before us really regarded the claim of the deceased Robert's executors under his will, or the beneficiaries under his will, to the £1500 provided to him in his marriage-contract to be paid by his father's marriage trustees. It is claimed by them upon the ground that that was a good and binding obligation in favour of Robert, and had not lapsed in consequence of Robert predeceasing his father; and that being so, that upon his death without issue and leaving a will, it passed, according to his will, to those who are claiming under it. The answer made to this is that it was incompetent for the father to make a provision in favour of Robert otherwise than conditionally upon his surviving his father, that being the true construction of the language of his father's marriage-contract, and also being the true meaning of the provision in the deed of entail that the heir in possession should be at liberty to burden the heirs of entail with provisions in favour of his younger children to the extent of three years' rent. The entail does contain that provision. It provides that the heirs in possession shall have full power and liberty to provide their younger children with three years' free rent of the lands, so far as the same are free and unaffected at the time with liferents—and so on. The contention is—and that is the question which we have to decide—that the true meaning of this is that it is not in the power of the heir to make the provision a burden upon the heirs of entail succeeding to the entailed estate excepting in favour of younger children who survive. Now, the entail here says nothing upon that subject. It only says, in the words which I have read, that it shall be in the power of the heir in possession to burden the heirs succeeding in favour of his younger children to the extent of three years' free rent. It

makes no express provision as to whether that shall be conditional upon younger children surviving the father. Whether or not the meaning is limited to those who survive the father so as to make the provision a burden upon the succeeding heirs of entail upon younger children surviving, I say the entail contains nothing express upon that subject. There is a provision, as we all know, in the Aberdeen Act to substantially the same effect. It is the fourth clause—"Be it enacted that it shall and may be lawful to the heir of entail in possession of any such entailed estate as aforesaid to grant bonds of provision or obligations binding the succeeding heirs of entail in payment out of the rents or proceeds of the same to the lawful child or lawful children of the person granting such bonds or obligations who shall not succeed to such entailed estate, of such sum or sums of money, bearing interest from the granter's death, as to him or her shall seem fit; provided always that the amount of such provisions shall in no case exceed the proportions following of the free yearly rents or free yearly value of the whole of the said entailed lands and estates after deducting the public burdens, liferent provisions, including those to wives or husbands authorised to be granted by this Act, the yearly interest of debts"—and so on—"Provided always—[and this is what I referred to]—"that such provision shall, except in the case of the settlement thereof by a marriage-contract as hereinafter mentioned, be valid and effectual only to such child or children as shall be alive at the death of the granter, or to the child or children of which the wife of the granter shall be then pregnant, and upon any such child succeeding to the entailed estate, the provision granted to him or her, in so far as not previously paid, shall be extinguished for ever." Then section 5 enacts—"Provided always that if any child to whom any such provision as aforesaid may be granted shall marry, and that such provision or any part thereof shall, with the consent of the granter of the same, be settled in the contract made in consideration of the marriage of such child, and such child so marrying shall die before the granter of such provision, then, and in all such cases, the provision or any part thereof so settled in consideration of such marriage, shall remain and be effectual as if such child had survived the granter."

That is quite distinct language of the Aberdeen Act, that a provision in terms of the liberty given by it to the heir in possession should not be effectual except in favour of younger children who survive the granter, except in the case of a provision settled in a marriage-contract, but that it shall in that case be effectual in favour of the child although he does not survive the granter. I have pointed out that the entail here which gives liberty to the heir in possession, contains no provision upon either subject, and if the question had arisen upon it only, we should have had to consider whether there was anything contained in the deed giving this provision which limited it to younger children not succeeding to the estate who survived the granter, and how that might have been decided I have not considered in this case, because there is no claim made here for any child who predeceased the granter, except the child for whom a provision was made in his marriage-contract, or fixed in his marriage-contract, viz., Robert.

Therefore we have only to consider whether in the case of an entail containing a liberty to provide three years' free rent, we shall read the power given by it as more limited than the power which the Aberdeen Act gives to the granter. Now, I should not be disposed to do that in any case or in any view, but I think the Aberdeen Act is itself expressly applicable, for it gives a larger power, because the preamble of it signifies that it means to enlarge the powers which are given by existing entails which contain them. If existing entails contain any power, then the Aberdeen Act will not limit it; for the purpose of that Act is to extend the liberty, not to restrain it. I do not read the preamble, but I call attention to it to show that that is the meaning and intent of the statute. Therefore if I had any difficulty in holding that the power which is given by this Shieldhill entail to the heir in possession to give three years' free rent to his younger children may be construed as entitling him to make a provision in favour of a child who is about to be married—I say, if I read the entail as not extending the giving of liberties so far, I should hold that the liberty was so far extended by the Aberdeen Act, for the purpose and intention of that Act, as I have said already, is to extend to the extent which is specified in the Act, the liberty which is contained in any deed of entail. Therefore I hold it to be clear that Mr Chancellor, who made this provision, was at liberty, so far as the obligation upon succeeding heirs of entail was concerned, to make a binding obligation upon them in the marriage-contract of his son Robert, although Robert predeceased him, it being provided that it should have effect although the married child in whose contract the provision was made or guaranteed by the father predeceased him. Now that leads clearly to the decision of the only point which was argued before us in favour of those claiming through Robert, to the effect that the provision made in his favour, and guaranteed by the father in his marriage-contract, is good, although Robert predeceased him, and that it must therefore go according to Robert's will.

I have stated that there was another child who predeceased the father, viz., his eldest son. He is now represented by a daughter, for whom, however, no claim is lodged. If a claim had been lodged on her behalf I must say I should have been very favourable to it. The only answer to it that occurs to me is that if the eldest son had survived he would have succeeded to the entailed estate, and that the provision in the marriage-contract is only in favour of the children who did not succeed to the entailed estate, or the children

of those predeceasing who would not have succeeded had they survived, and that as the eldest son would have taken nothing if he survived, his child could take nothing. I am not very much impressed by that argument, because it would apply to the second, third, and fourth sons—to every one of them—if he had survived and been, at the father's death, the heir. They would have taken nothing, so that one son after another might have died leaving children, and none of them would have taken, because each of them in succession, if he had survived, would have taken the entailed estate. I think that is a kind of argument to which I would not give much favour; but we do not need to consider it at present at least, there being no claim put in for the daughter of the eldest son.

LORD TRAYNER—The only question argued before us under this reclaiming-note was, whether the £1500 appointed to Mr Robert Chancellor vested in him prior to his father's death. In dealing with this question I do not think it necessary to consider the distinction to which our attention was called between provisions to "children of the marriage" under a marriage contract, and to "younger children" under the powers conferred on heirs of entail by the Entail Statutes. The provisions made by Mr Chancellor under his marriage-contract are partly of the one character and partly of the other, inasmuch as the fund provided by Mr Chancellor, and over which he reserved to himself the power of appointment, consists of moveable estate belonging to him as an individual, and money to be provided out of the rents of the entailed estate of which he was the heir in possession. This question which we have to determine (which appears to be one as much of trust law as of entail law) is not affected by the distinction referred to, seeing that under Mr Chancellor's marriage-contract the terms "children of the marriage" and "younger children" are used to describe the same class, namely, the children of the marriage not succeeding to the entailed estate. It is in favour of "younger children" in this technical sense, that Mr Chancellor reserved power to appoint, and it is in this view of his power that I deal with the question before us. The facts of the case need not be resumed. From them it clearly appears, I think, that Mr Chancellor intended that the £1500 appointed to his son Robert should vest at once. There is no intelligible explanation on any other ground why the deed of appointment should so carefully provide and declare that it was an irrevocable deed, to be held as delivered from the date of the execution, and still more why under it Robert should have been taken bound to assign the sum appointed to him to the trustee under his marriage-contract then about to be executed. Mr Chancellor evidently thought that he was providing and intended to provide his son not with a mere expectancy, but with a fund which that son could settle on his intended wife, and children if they had any. Now, was there any reason why the vesting so plainly intended should not take effect. It is contended that such vesting could not take effect, because the persons entitled to take the fund under Mr Chancellor's appointment could not be definitely ascertained until his death; before that event it was impossible to say who would be the heir of entail and also younger children. The fact here stated is true, but the inference drawn from it does not necessarily follow. Robert might have been heir of entail no doubt. But at the date of the appointment to him, and at the date of his death, he was a younger child. Even had he survived his father he would still have held the same character, seeing that there was then surviving a son older than Robert. Accordingly, at the date when the appointment was made, Robert was an object of the power, and continued to be so as long as he lived. There was nothing in the Shieldhill entail or in Mr Chancellor's marriage-contract to prevent him dividing or apportioning the fund so as to make it vest during his lifetime. The only reference in the marriage-contract to any right to be enforced after Mr Chancellor's death is the equal division of the fund among the objects of the power, failing apportionment by Mr Chancellor himself. This provision cannot affect the question before us, seeing that *quoad* Robert there had been no failure to appoint. Had Robert lived and succeeded to the entailed estate, the right vested in him by the deed of appointment would have been ineffectual, because then Robert would not have been an object of the power, and no claim could have been enforced by him in respect of it.

Nor should it be forgotten that Mr Chancellor was dealing with a fund of his own providing, of which he had the absolute disposal except in so far as limited by the terms of his marriage-contract. Seeing, therefore, that he intended Robert's share to vest at once, that nothing in the marriage-contract prevented such vesting, and that the appointment in favour of Robert was valid as in favour of an object of the power, I am of opinion that vesting took place in Robert, and that the claim of his executrix to the £1500 should be sustained.

The case of *Oswald* cited to us, but not brought under the consideration of the Lord Ordinary, appears to be quite in point.

LORD JUSTICE-CLERK—I concur in the opinions which your Lordships have expressed.

LORD RUTHERFURD CLARK was absent.

The Court recalled the Lord Ordinary's interlocutor, ranked and preferred the claimants Mrs Henrietta Maria Orde-Powlett or Chancellor or Sharples' marriage-contract trustees in terms of their condescendence and claim to the extent of £1500 out of the fund *in medio*, and remitted the cause back to the Lord Ordinary to proceed.

Counsel for Pursuers and Real Raisers, Mr and Mrs Chancellor's Marriage-Con-

tract Trustees—Cullen. Agents—Davidson & Syme, W.S.

Counsel for Claimants Mr and Mrs Sharples' Marriage-Contract Trustees—Macfarlane. Agents—John C. Brodie & Sons, W.S.

Counsel for Claimant, Miss Elizabeth Blanche Chancellor—Pitman. Counsel for Claimants Major and Mrs Chadwick's Marriage-Contract Trustees—Dundas. Agents—J. & F. Anderson, W.S.

Thursday, January 30.

FIRST DIVISION.

[Lord Low, Ordinary.

CLARKE *v.* SCOTT.

Ship—Charter-Party—Insurance—Obligation by Owner to Pay Insurance—Collision—Relief—Transaction.

The owner of a steam trawler hired her out for a certain period under an agreement whereby the charterer was to find crew, stores, &c., and the owner was "to pay insurance only." At the date of the charter-party the trawler was insured, according to the usual practice in the case of such vessels, so as to leave one-fifth of three-fourths of her value uncovered, and the owner continued to pay the premiums upon the existing policies. It was proved that it would have been possible to insure the trawler for her full value.

During the period of the demise of the trawler, she came into collision with, and seriously damaged, another vessel, the collision being due to the fault of the master and crew of the trawler, for whom the charterer was responsible. The owner of the trawler intimated the loss to his underwriters, and, without the knowledge of the charterer, settled through the underwriters with the owners of the other vessel, the damage to both vessels, with the exception of one-fifth of three-fourths, being paid by the underwriters.

In an action brought by the owner against the charterer for repayment of the damage not covered by the insurance, *held* (*aff.* judgment of Lord Low) that the defender must be assoilzied, on the grounds (1) that the owner, having undertaken to insure, must bear any loss which could have been covered by insurance; and (2) that not being agent for the charterer, he had no authority to settle claims on his behalf for which the charterer alone was liable.

On 31st December 1894, John Martin Clarke, shipowner, Leith, raised an action for payment of certain sums of money, against James R Scott, Granton, in circumstances thus set forth by the Lord Ordinary in his opinion—"By agreement dated 14th June 1894 the pursuer hired his steam trawler 'Rosslyn' to the defender for the period of three months, at the sum of £14 per week. It was provided as follows:—'The said James Scott to find crew, stores, &c., and all working expenses, the boat to be handed over in good order and condition, and to be returned in the same good order and condition, fair wear and tear excepted, the said J. M. Clarke to pay insurance only.' The defender accordingly obtained possession of the boat, and worked her from Shields with his own crew. In August 1894 the 'Rosslyn' came into collision with the 'Hugo Georg' of Stettin, and both vessels were damaged, the latter the more seriously of the two. It is not disputed that the 'Rosslyn' was in fault. The 'Rosslyn' was insured by the pursuer in two insurance and indemnity associations or clubs, the one at North Shields and the other at Sunderland. It appears that under the rules of these associations it is impossible to insure for the full value—one-fifth of three-fourths of the value always remaining uncovered. The pursuer had insured for the greatest amount possible with these associations. . . . . After the collision the associations settled with the owners of the 'Hugo Georg' for the injury done to that vessel. The amount was fixed at £264, of which the associations paid £225, being the total amount less one-fifth of three-fourths. The balance of £39 odds was paid by the pursuer. . . . The pursuer admits that no communications passed between him and the defender in regard to the claim of the 'Hugo Georg,' and that the defender had nothing to do with the settlement."

The sums sued for were the above mentioned sum of £39, 14s. 9d., a sum of £9, 4s. 9d., being the uninsured portion of the cost of repairs to the "Rosslyn" rendered necessary by damage resulting from the collision and from the carelessness of the defenders, and not from fair wear and tear, and lastly a sum of £22, being demurrage due for the detention of the vessel while these repairs were being executed.

The pursuer averred—"At the time of the said agreement being made, the 'Rosslyn' was insured to the extent of four-fifths of the value of said vessel, this being the highest amount for which vessels of the class of the 'Rosslyn' can be insured. This was well-known to the defender, who has himself effected insurances on vessels of the same class on exactly the same footing. The pursuer duly paid the premiums of insurance on said vessel in terms of the agreement. It was the understanding of both parties that the clause as to the payment of insurance had reference to the existing insurance on said vessel, by which she was covered as fully as vessels of her class can be when insured in the ordinary clubs in which all trawlers of her class are insured. The said clause, if it implied any obligation on the pursuer to insure at all, implied only that the said vessel should be insured in the manner usually adopted in the case of trawlers, and did not impose on the pursuer any obligation, as now maintained by the defender, of covering the