

the rules of good husbandry, would not be fully implemented.

It is perfectly true in many and probably in most cases that the incoming tenant is by arrangement allowed to come in and sow the grass seed for himself, because, while the obligation is as I have stated, it is, if not expressed, implied by custom that the incoming tenant must pay for the seed the grass of which he is to reap and for the cost of sowing it. But this is not his right. It is a mere arrangement for mutual convenience between the outgoing and the incoming tenant that the incoming tenant should be allowed to do himself that which he must otherwise pay for, and the doing of which is not a matter of profit to the outgoing tenant. But that does not affect the obligation upon the outgoing tenant in such a case as the present to sow the grass seeds with the waygoing crop, receiving the cost of the seeds and sowing from the incoming tenant.

I therefore agree with the judgment which your Lordship proposes.

LORD SKERRINGTON—I concur.

LORD KINNEAR and LORD MACKENZIE were sitting in the Extra Division.

The Court pronounced this interlocutor—

“Recal the interlocutor of the Sheriff-Substitute dated 15th July 1911: Find in fact in terms of the first six findings in fact in said interlocutor: Find further in fact (7) that the five-shift rotation requires that grass be sown along with the grain crop on the fields in question: Find in law that the pursuer is entitled to decree as craved: Find and declare accordingly in terms of the crave of the initial writ, and decern: Find the pursuer and appellant entitled to expenses, and remit,” &c.

Counsel for Pursuer—Constable, K.C.—D. M. Wilson. Agents—Kinmont & Maxwell, W.S.

Counsel for Defender—Johnston, K.C.—T. G. Robertson. Agents—Steedman & Richardson, S.S.C.

Tuesday, May 28.

## FIRST DIVISION.

[Lord Ormidale, Ordinary.]

MILLS v. KELVIN & JAMES WHITE, LIMITED.

*Process—Diligence—Recovery of Documents—Slander—Documents in the Hands of Crown Officials—Precognitions Taken by Defenders.*

A manager brought an action of damages against his former employers for having, as he alleged, falsely, maliciously, and without probable cause, lodged with the procurator-fiscal a charge of theft, and also one of fraud, against him. An issue and counter issue having been allowed, the Court

granted the pursuer a diligence to recover “All charges, statements, or other writings lodged by the defenders or their solicitor, or by any of their directors, with the Procurator-Fiscal, Glasgow, or the Crown Agent, Edinburgh, and relating to charges of theft or fraud against the pursuer between 1st November 1911 and 16th January 1912.”

R. K. Mills, instrument maker, Clarkston, pursuer, brought an action against Kelvin & James White, Limited, nautical instrument makers, Glasgow, defenders, in which he claimed £5000 damages for slander in respect, *inter alia*, of their having, as he alleged, falsely, maliciously, and without probable cause, lodged certain criminal information with the procurator-fiscal against him.

The pursuer, who had formerly been in the defenders' service as works manager, but who had been dismissed, averred—“(Cond. 4) In or about the month of November 1911 the defenders, through their law agent, lodged with the Procurator-Fiscal at Glasgow two serious criminal charges against the pursuer, viz., (*first*) a charge of the theft of certain gauges, jigs, and other articles which were the property of the defenders, and (*secondly*) a charge of fraud in connection with the despatch of said articles to the premises of Messrs Burt Brothers in Birmingham. The precise words in which the defenders formulated the said charges against the pursuer are unknown to him, but the substance of the charges is as above set forth, and said charges were put forward by the defenders on or about the 4th, 8th, and 15th of November 1911, and these were maliciously persisted in and pressed in the following months of December and January. The defenders have prevented the pursuer from obtaining the documents which the defenders, through their law agent and directors, lodged with the criminal authorities, but he believes and avers that the charge of theft was contained in a statement lodged in or about November 1911 with the procurator-fiscal, and the charge of fraud was made in or about the month of December or January following and was contained in what purported to be precognitions and statements of certain of the defenders' directors and servants and Mr F. H. Harris (works manager for Burt Brothers), and in certain letters written by or on behalf of said directors (who were acting for the defenders) to the Crown Agent in Edinburgh.”

He pleaded—“(1) The defenders having falsely, maliciously, and without probable cause lodged the said criminal information with the procurator-fiscal against the pursuer, the defenders are liable in reparation.”

The defenders, who admitted that in the month of November 1911 they “laid before the Procurator-Fiscal at Glasgow certain information which had come to their knowledge with reference to the pursuer's actings, with a view to the prosecution of

the pursuer on a charge of theft or fraud," pleaded, *inter alia*—" (2) The defenders having acted with probable cause and without malice in lodging the said criminal information with the procurator-fiscal, they should be assoilzied. (3) The statements made by the defenders in the information laid by them before the procurator-fiscal being true in point of fact, the defenders should be assoilzied. (4) The pursuer having been guilty of theft as condended on, the defenders are entitled to absolvitor."

On 8th March 1912 the Lord Ordinary (ORMIDALE) approved of the following issues and counter issue:—"1. Whether the defenders, in or about the months of November and December 1911 and January 1912, falsely, maliciously, and without probable cause, lodged, or caused to be lodged, with the Procurator-Fiscal at Glasgow a charge or charges of the theft by pursuer of certain gauges, jigs, or other articles which were the property of the defenders, to the loss, injury, and damage of the pursuer? 2. Whether the defenders, in or about said months, falsely, maliciously, and without probable cause, lodged, or caused to be lodged, with the Procurator-Fiscal at Glasgow, or the Crown Agent at Edinburgh, a charge or charges of fraud against the pursuer, to his loss, injury, and damage?" Counter issue.—"1. Whether during the period between 1st January 1911 and 21st September 1911 the pursuer, while in the service of the defenders, fraudulently caused to be made for himself by the defenders' employees, and at the defenders' cost, duplicates of the tools, gauges, patterns, and other articles employed in the manufacture of the defenders' instruments, and also caused to be delivered to himself a complete azimuth mirror, the property of the defenders, and further fraudulently caused the said duplicates and other articles and the said mirror to be forwarded to Birmingham on various dates during said period, for his own purposes, and to await his further instructions?"

The pursuer lodged a specification of documents for the recovery of which he craved a diligence. The first article was as follows:—"1. All charges, *applications*, statements, or other writings, lodged by the defenders or their solicitor or by any of their directors with the Procurator-Fiscal, Glasgow, or the Crown Agent, Edinburgh, and relating to charges of theft or fraud against the pursuer between 1st November 1911 and 16th January 1912." [The word "*applications*" in italics was deleted in the print as amended.]

His Lordship having granted diligence for the recovery of the documents called for in the first article as amended, the defenders reclaimed, and argued—The pursuer was not entitled to recover the precognitions taken by the defenders, for these were in the same position as precognitions taken by the procurator-fiscal. Such precognitions were not recoverable—*Sheridan v. Peel*, 1907 S.C. 577, 44 S.L.R. 406.

Argued for pursuer—The specification had been intimated to the Lord Advocate and he had not lodged objections. That being so, it was well settled that the pursuer was entitled to recover the documents called for—*Henderson v. Robertson*, January 20, 1853, 15 D. 292.

The Court (the LORD PRESIDENT, LORD KINNEAR, LORD JOHNSTON, and LORD MACKENZIE) adhered.

Counsel for Pursuer—Morison, K.C.—C. H. Brown. Agents—Carmichael & Miller, W.S.

Counsel for Defenders—Macmillan, K.C.—Hon. W. Watson. Agents—Alexander Morison & Company, W.S.

Thursday, May 30.

### FIRST DIVISION.

GIBSON (CHRYSTAL'S TRUSTEE) v. CHRYSTAL.

*Insurance—Life Insurance—Husband and Wife—Bankruptcy—Married Women's Assurance Policies Act 1880 (43 and 44 Vict. cap. 26), sec. 2.*

By a policy of assurance or "endowment bond" an assurance society, in consideration of the payment of a certain sum annually in advance, promised to pay to the assured on the maturity of the bond, twenty years after the date thereof, the sum of £1136. The society further promised that in the event of the death of the assured before the expiration of the twenty years, and while the bond was in force, to pay immediately upon receipt of satisfactory proof of death, the amount of the bond, £1000, to his wife if living, and if not to his executors, administrators, or assigns. The assured died before the expiration of the twenty years.

*Held*, in a Special Case (*dub.* the Lord President), that the policy or bond was protected by the Married Women's Policies of Assurance (Scotland) Act 1880, sec. 2, and that the widow of the assured, and not the trustee on his sequestrated estate, was entitled to the proceeds of the policy.

The Married Women's Policies of Assurance (Scotland) Act 1880 (43 and 44 Vict. cap. 26) enacts—Section 2—"A policy of assurance effected by any married man on his own life, and expressed upon the face of it to be for the benefit of his wife, or of his children, or of his wife and children, shall, together with all benefit thereof, be deemed a trust for the benefit of his wife for her separate use, or for the benefit of his children, or for the benefit of his wife and children; and such policy, immediately on its being so effected, shall vest in him and his legal representatives in trust for the purpose or purposes so expressed, or in any trustee nominated in the policy,