

sixty-six acres a farm-stering or a dwelling-house, which it would have been quite lawful to do, such buildings would not have fallen under the clause, for such buildings could not be included under the description "buildings, water-wheels, dams, and aqueducts which he may erect on the premises."

LORD MURE concurred.

LORD SHAND—I am of the same opinion. The ground which is the subject of the lease here is of large area; there is considerable water-power on both sides of the river, and the lease is for a long period. Therefore, while the particular stipulation with regard to the erection of buildings on the ground during the first three years of the lease is that they are to be of the value of £500, I think it is clear that both parties must equally have expected that during the long course of the lease there would be a considerable number of additional buildings put up. If it had been intended to give effect to what is now the contention of the tenant, that could have been done in two or three words. He asks us to limit the operation of the clause by reading it as meaning "buildings which may be erected in implement of the foregoing obligations." I think there is no warrant for limiting the obligation in such a manner, and that the defender's plea-in-law should be repelled.

The Court pronounced this interlocutor:—

"Find that according to the true construction of the lease executed by the predecessors of the parties on the 1st March 1785 the tenant or his assignee is bound on the expiry of the lease to leave the whole buildings and works then occupied and used for manufacturing purposes, in a complete state of repair; and with this finding remit to the Lord Ordinary to proceed."

Counsel for Pursuer and Reclaimer—Mackintosh—Graham Murray. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for Defender and Respondent—Trayner—Macfarlane. Agent—J. Smith Clark, S.S.C.

In a similar question with Hector Sandeman, who had by assignation acquired M'Alpine's right in the remainder of the subjects contained in the tack, the argument for Caird was adopted, and the same judgment was pronounced.

Counsel for Defender—Glog—W. Campbell. Agents—Skene, Edwards, & Bilton, W.S.

Saturday, July 5.

## FIRST DIVISION.

WHYTE, PETITIONER.

*Poor's-Roll—Undischarged Bankrupt.*

*Circumstances in which an undischarged bankrupt was admitted to the benefit of the poor's-roll.*

This was an application by John Whyte for the benefit of the poor's-roll, to enable him to defend an action at the instance of Margaret Young,

formerly a domestic servant in his employment. She sued him for damages for seduction, and also for aliment for a child of which she alleged he was the father. She had already been found entitled to the benefit of the poor's-roll.

The applicant was formerly minister of the parish of South Queensferry, from which charge he had been deposed. His estates had been sequestrated, and he had no means of subsistence, except what the trustee and his creditors allowed him. Intimation of the dependence of the action was made to the trustee, but he refused to sist himself.

The pursuer objected to a remit being made, on the ground that there was no precedent for the admission of an undischarged bankrupt to the poor's-roll.

LORD PRESIDENT—The applicant here is called to answer in an action of damages for seduction, and not merely a claim of aliment for the maintenance of a bastard child. In these circumstances, looking to the nature of the action, the Court are of opinion that he is entitled to the benefit of the poor's-roll.

The Court remitted to the reporters on the *probabilis causa litigandi*.

Thereafter on 19th July, the reporters having reported that there was a *probabilis causa*, the Court admitted the applicant to benefit of the poor's-roll.

Counsel for Petitioner—Armour. Agent—N. J. Finlay, W.S.

Counsel for Objector—Gardner. Agent—A. Adam, W.S.

## HOUSE OF LORDS.

Monday, July 7.

(Before Lords Blackburn, Watson, and Fitzgerald.)

FLEMING v. YEAMAN.

(*Ante*, Dec. 1, 1883, p. 164)

*Bankruptcy—Sequestration—Contingent Debt.*

In a petition for sequestration of the estates of a debtor who had become notour bankrupt, the petitioning creditor founded on a debt forming the balance of an account-current and vouched by a number of IOU's. It appeared from a letter of agreement by him which was produced, that he had agreed that until adjustment of the account between him and the debtor the IOU's should be retained as vouchers of the account-current, "upon which I cannot sue you or do diligence for them against you." *Held* (*aff. judgment of First Division*) that the debtor having become notour bankrupt, the creditor was not debarred by this agreement from applying for sequestration, founding on the IOU's as vouchers of the debt.

*Notour Bankruptcy—Debtors (Scotland) Act 1880 (43 and 44 Vict. c. 34).*

A charge was given on a decree obtained

in the Court of Session against a debtor. The debtor was insolvent and the charge was allowed to expire without payment, but after its expiry the debtor presented an appeal to the House of Lords which he had intimated while the charge was current. *Held* (aff. judgment of First Division) that there was notour bankruptcy under the statute which could not be affected by the appeal.

This case is reported in the Court of Session, ante p. 164, December 1, 1883.

Fleming (suing in *forma pauperis*) appealed to the House of Lords and argued his case in person.

Counsel for the respondent were not called on.

The House affirmed the interlocutor of the First Division, and dismissed the appeal.

Agents for the Appellant—Simson, Wakeford, Goodhart, & Medcalf—William Officer, S.S.C.

Counsel for Respondent—Lord Adv. Balfour, Q.C.—Law. Agents—William Bell—D. S. & T. Littlejohn, Dundee.

## COURT OF SESSION.

Tuesday, July 8.

### SECOND DIVISION.

[Sheriff of Lanarkshire.

#### MANNERS v. RAEBURN & VEREL

*Ship—Ship's Husband—Commission to Ship's Husband—Rebates on Commissions.*

The owner of several shares in a vessel which was managed by a ship's husband on behalf of the whole owners, on the footing that his remuneration should be by way of a commission of a fair amount on freight, sued him for an accounting with regard to certain voyages. His defence was that he had already accounted on the footing that his commission was to be  $7\frac{1}{2}$  per cent. on the gross freight, he paying all commissions and brokerage, which was a proper charge, and was conform to a resolution of a majority of the owners. This resolution was arrived at after the voyages in question were completed. *Held* that it formed no answer to the claim for an accounting for these voyages.

In the subsequent accounting it appeared that the account was truly kept on the footing of a commission to the ship's husband of  $2\frac{1}{2}$  per cent. on freight, he charging all outlays against the ship, and that he had received from merchants certain rebates from commissions which he had paid to them and charged against the ship. *Held* that he was bound to give the ship credit for these rebates.

William Manners was part owner to the extent of nine sixty-fourths of the steamship "Kremlin" of Glasgow, which was purchased by himself and the other co-owners in June 1881. Raeburn & Verel, shipbrokers in Glasgow, were appointed by the owners ship's husbands and managers of

the vessel, and acted as such from the time of its purchase.

In 1882, after the "Kremlin" had completed three voyages, accounts were rendered to the owners by Raeburn & Verel. Only the accounts relating to the first and second voyages—the latter of which was finished in March 1882—need here be referred to. These showed with regard to the first voyage, payments to a firm of Primrose & Co. in Shanghai, after allowing for an erroneous entry which need not be here detailed, of £324 8s. 3d., and that Raeburn & Verel had received as commission for that voyage £148, 3s. For the second voyage the account showed £324, 10s. 6d. as paid to a firm of Patton & Co., London, and that Raeburn & Verel had received as their commission £134, 10s. 8d. Manners regarding the accounts as insufficiently stated, raised the present action in November 1882 in the Sheriff Court at Glasgow against Raeburn & Verel, praying the Court "to ordain the defenders to produce a full account of their intromissions as ship's husbands or managers for the steamship 'Kremlin,' of Glasgow, or as agents for the pursuer in the management of the said ship, or otherwise in relation thereto, and to pay to the pursuer the sum of £100 sterling, or such other sum as may appear to be the true balance due to him," and failing their producing an account, to pay him £100.

The material averments of the pursuer and the answers of the defenders thereto were as follows:—" (Cond. 3) In the course of their management of said vessel the defenders have from time to time rendered to the pursuer statements of their intromissions with the earnings of the said vessel; but these do not disclose the full details of their intromissions, and in particular do not disclose, as they ought to do, the amount of money which the defenders have received, either in the shape of direct charges against the ship and her owners—as remuneration to the defenders as managers or agents aforesaid—or in the shape of premiums, rebatements, discounts, return brokerages on accounts or charters for said vessel, or commissions or shares of commissions on freight, charter or insurance premiums, or otherwise. (Cond. 4) . . . The books and accounts in which the defenders have kept the ship's accounts have to a certain extent been exhibited to the pursuer; but these, so far as the pursuer has seen them, do not fully disclose the sums which the defenders have, as the pursuer believes and avers, retained, received, or taken credit for in the course of their management. (Ans. 3 and 4) Denied and explained that according to defenders' practice, which is believed to be usual in the case of ship agency business, they rendered to the various owners abstract statements at the end of each voyage, and the details and vouchers were given at meetings of the owners in defenders' office, the accounts having been twice audited and found correct by the auditor, Mr W. T. Duncan, C.A., Glasgow." The pursuers further stated that when the management of the vessel was entrusted to the defenders no specific arrangement was made as to commission, but it was mutually understood that a direct commission of a fair amount on the gross freight earned should be charged. This was admitted by the defenders, who stated that in their account they had charged  $7\frac{1}{2}$  per cent. commission on the gross freight,