payment be converted into security? How—if it could—could it be determined that a man in a condition of constructive bankruptcy, had money applicable to the constitution of such a security. Where, in an assurance that an obligation would be extinguished by payment, of course so soon as the debtor could, can he read obligation at all?

The respondent speaks as to the understanding. He says that the understanding was that he should pay the bill whenever money came into his hands. Understanding and obligation are by no means the same. An expression of intention on the part of the bankrupt would create an understanding, but would fail to create an obligation enforceable at law; and an understanding, or even an obligation to pay when one shall have money to pay, is one which could not form the basis of an action. What kind of decree would it be to decern a debtor to pay when he could.

The statement of the respondent is enough, as it appears to me, for the disposal of the case against him. As might be expected when the constitution of the supposed obligation is only verbal, the import of the conversation between the parties at the time slightly differs. He says that the arrangement was not to pay it, that is, the bill, but to pay him, that is, the respondent, the £60, but after that he says that "he was to pay the money so soon as I should have it." "I told him," he subsequently says, "that I would pay him *as soon as I could.*" It seems to me to require a great deal of ingenuity to extract an obligation to any effect out of such an assurance. It is certain that no obligation was come under of a tangible description, or one clear or fixed as to period or in any way within the reach of legal compass. It would certainly appear to be a strange reading of the Act of 1696 to hold that an assurance given that something would be done, and when the debtor should be in a position to do it, should constitute an obligation, and take the act done out of the operation of the Statute. Loose understandings proved by conversations would form a very easy method of dispensing with the operation of the Act. So little faith can be put in such 'understanding' that we have here the fact that the two parties flatly contradicted each other as to a similar 'understanding' existing in respect of a whole class of other bills. Surely something of a very different character must be proved before supporting an appropriation to one creditor of a portion of the estate in security of an obligation not then pushed.

Such an assurance as this seems to have been here practically and substantially leaves the alleged obligant to do the act or not to do it just as he pleased. He is in no way bound or fettered. There was, at the date of its constitution, no pressure from any definite, precise, or tangible obligation, and therefore the payment must, I think, be viewed as voluntary and so made in violation of the Act 1696.

The other judges concurred.

Agents for Advocator—Gibson-Craig, Dalziel & Brodies, W.S.

Agents for Respondent—Murdoch, Boyd & Co., W.S.

Saturday, June 27.

FIRST DIVISION.

LECK *v.* MERRYFLATS PATENT BRICK CO.

Lease—Reversion of Possession—Interdict. A tenant of lands for a particular purpose interdicted from using the ground for another purpose.

Henry Leck, proprietor of the lands of Upper Merryflats, in the parish of Govan and county of Lanark, let the said lands in 1863, on a twelve-years' lease, to Caird, Watson, & Co., for the purpose of making and disposing of bricks, tiles, pipes, and other articles. These parties subset the lands to the respondents. The complainer alleged that the "Merryflats Patent Brick Co. have recently, unlawfully and unwarrantably, and without the complainer's knowledge or consent, sublet or otherwise granted the use of a portion of the said lands adjoining the road leading from Paisley Road to Greenock Road, to the respondent John Coghill, contractor, Clydebank House, Yoker, for the formation of part of a private railway or tramroad from the Glasgow and Paisley joint line of railway to the site of a poorshouse and other buildings proposed to be erected by the Govan Parochial Board, and others, on the lands of Lower Merryflats, adjoining the complainer's said lands on the north. The said private railway or tramroad is used, or is intended to be used, by the respondent John Coghill for the conveyance of building materials from the said Glasgow and Paisley joint line of railway to the said lands of Lower Merryflats, for the purpose of constructing the said poorshouse and other buildings, but the respondents have no right to use or occupy any portion of the complainer's lands for any such purpose."

The complainer asked interdict.

The Lord Ordinary (MURE) pronounced this interlocutor:—

"*Edinburgh, 15th June* 1868.—The Lord Ordinary interdicts, prohibits, and discharges the respondents, or any of them, and all others acting under their authority, from using the railway or tramroad in question, in so far as the same is constructed on the property of the complainer, for the carriage of materials from the Glasgow and Paisley joint line of railway to the site of a poorhouse, and other buildings connected therewith, proposed to be erected on the lands of Lower Merryflats, or for any purpose other than that of the carriage of materials for the use of, or manufacture at, the respondents' works."

The respondents reclaimed.

CLARK and LANCASTER for reclaimers.

YOUNG and MACKENZIE for respondents.

At advising—

LORD PRESIDENT—As to the last part of the Lord Ordinary's interlocutor, it is a sufficient objection to it that it is not clear, and in an interdict clearness is necessary in order that the party interdicted may know what it is he is not to do. As to the rest, I have no doubt that his Lordship is right. The attempt on the part of the respondent is plainly to invert the nature of his possession. The subject is given him for one particular purpose, expressed in the deed itself. The object of the agreement with the contractor is to use the ground for another purpose. Now, on the authority of *Mercer* and other cases, that is clearly illegal. I think we must adhere, only varying the interlocutor as I have suggested.

The other judges concurred, and the following interlocutor was pronounced:—"Recall the interlocutor complained of, and remit to the Lord Ordinary of new to pass the note, and interdict, prohibit, and discharge the respondents and all others from making any use of the railway or tramroad mentioned in the note of suspension except for the

purposes of the works of the Merryflats Patent Brick Company."

Agents for Complainer—Murray, Beith, & Murray, W.S.

Agents for Respondents—Millar, Allardice, & Robson, W.S.

Saturday, June 27.

SECOND DIVISION.

SCOULLARS *v.* CRAWFORD & FULTON.

Issue—Reparation—Culpa. Form of issue adjusted to try an action of assythment founded on the alleged fault of the defenders, the pursuers alleging that the deceased was lawfully on the premises when he received the injury which caused his death.

This was an action of damages by the widow and children of a man who was killed by the falling of the roof of a shed in course of erection by the defenders. The pursuers averred that the shed fell through the fault of the defenders, and that the deceased was at the time "at work below the roof which fell, being then engaged in laying a line of rails through the shed." The defence was (1) a denial of fault, and (2) that the deceased had no business to be where he was when the shed fell.

The pursuers proposed an issue for trial, simply putting the question whether the deceased was killed through the fault of the defenders. The defenders objected to the proposed issue that it did not embrace the question whether the deceased, who was not in the defenders' employment, was at the time lawfully within the premises. They maintained that this ought to be put in issue, because, even assuming fault on their part to be proved, there was no obligation on them to pay damages to the pursuers unless it was also proved that the deceased was lawfully on the premises; and without this averment the action would not have been relevant. They referred to *Teasdale* v. *Monklands Railway Company*—Sc. Law Rep., ii, 6.

The Lord Ordinary (Ormidale) reported the point, with an opinion that the pursuers were not bound to take the issue contended for by the defenders.

Watson and Trayner, for the pursuers, argued that the whole case could be tried under the general issue of fault. They referred to *Frazer* v. *Younger & Son*, 5 Macph. 861.

Solicitor-General and Burnet, for the defenders, were not called upon.

The Court held that the pursuers were bound to take an issue as proposed by the defenders, and it was adjusted in the following terms:—

"It being admitted that the pursuer, Mrs Isabella Smith or Scoullar, is the widow, and the other pursuers are the lawful children, of the said deceased Andrew Scoullar.

"Whether, on or about the 4th day of December 1867, the said Andrew Scoullar, when engaged in laying a line of rails below a shed, then in the course of erection by the defenders, upon the west quay of the Albert Harbour, Greenock, sustained injuries, in consequence of which he died, by the falling of the roof of said shed, through the fault of the defenders—to the loss, injury, and damage of the pursuers, or any of them?"

Agents for Pursuers—Neilson & Cowan, W.S.

Agent for Defenders———Wm. Mason, S.S.C.

HOUSE OF LORDS.

Monday, June 8.

GREIG *v.* UNIVERSITY OF EDINBURGH.

(3 Macph. 1151.)

Poor-Rates—University—Assessment—Crown—Annual Value—Beneficial Occupation. The University of Edinburgh held liable in poor-rates.

Per Lord Chancellor. The general principle is, that, the Crown not being named in the assessing Statutes, and not being bound by Statute when not expressly named, any property which is in the occupation of the Crown, or of persons using it exclusively in and for the service of the Crown, is not rateable to the relief of the poor.

The University buildings have an "annual value."

The University of Edinburgh brought an action in the Court of Session against the appellant, George Greig, inspector of poor of the City parish of Edinburgh, for declarator that they were not liable, either as owners or as occupants, to be assessed for poor-rates for the city parish of Edinburgh, in respect of the University buildings. The ground upon which the University claimed exemption was, that the buildings of the University were national or public property, or property dedicated to national or public purposes, and from the occupation of which no revenue was derived.

The Lord Ordinary (Barcaple) found against the pursuers, but the Second Division of the Court reversed, and decerned in terms of the conclusions of the summons.

This appeal was then presented.

Sir Roundell Palmer, Q.C., J. T. Anderson, and Turner, for appellant.

Lord Advocate (Gordon) and Mellish Q.C., for respondents.

At advising—

Lord Chancellor—My Lords, in this case an action of declarator was raised by the University of Edinburgh against the Parochial Board of the parish of Edinburgh, through their public officer, to have it declared that the University are not liable as owners or occupiers of the University buildings to any assessment for the poor-rate. The record was closed, but no proof was led; and, upon the averments on the record and consideration of the pleas in law, the Lord Ordinary assoilzied the defender from the conclusions of the summons. From that interlocutor a reclaiming note was presented to the Second Division of the Court of Session, to recall the interlocutor and declare in terms of the conclusions of the libel. The Court of Session pronounced an interlocutor to that effect, and from that decision of the Court of Session this appeal comes before your Lordships.

My Lords, two questions which are very different have been argued at your Lordships' bar. One of the arguments has been that the buildings of the University of Edinburgh were exempt from rateability on the score of what I may term Crown privilege,—irrespectively of any question as to value. The second ground of argument was, that they were exempt—or rather that they ought not to be rated—on the score of being of no annual value. I think your Lordships will be of opinion that these two questions must be kept distinct. If the argument of the respondents prevails on either of these grounds