river. But though this pond cannot be looked upon as a *piscina*, I think the landlord has a right to the fish in it under his reserved right, and that the tenant has no such right.

There is this further point to be attended to. This pond is at the extremity of the respondent's farm, and the neighbouring tenant has access to about one-fourth of it. Has he a right of boating so as to reach the fish? So far, therefore, as this first interdict is concerned, I think the Lord Ordinary's interlocutor should be recalled. In regard to the other, I think it safer to adhere to the interlocutor of the Lord Ordinary. We have, no doubt, the assertion of a right on the part of the tenant, but immediately after an interview at which the right was asserted, the tenant states that he wrote a letter disclaiming it.

LORD COWAN declined to decide the general question. He arrived at the same result as the majority, but he preferred to rest his judgment on the specialities of the case. The principal of these were, that the pond had been made by the landlord himself, that he had stocked it with fish, had staked it to prevent netting, and had put on a grating at the lower end to prevent fish escaping.

LORD NEAVES concurred with the Lord Justice-Clerk.

Agents for Petitioner—Mackenzie & Kermack, W.S.

Agent for Respondent—D. F. Bridgford, S.S.C.

Friday, November 20.

LINDSAY *v.* BROWN.

Bankrupt—Mandate—Recal—Revocation. A party granted a bond and disposition in security of a loan, and at the same time a letter by which he agreed that the lender should have power to appoint a factor to uplift the rents, but to account to the proprietor for his intromissions, after paying the interest of the loan. A factor was appointed. *Held* that this agreement was practically putting the lender in possession of the rents, and that the appointment was not recalled by the sequestration of the proprietor.

This was a suspension and interdict brought by the trustee on the sequestrated estate of William Duncan junior, S.S.C., against Matthew Brown, cabinetmaker, Edinburgh, for the purpose of interdicting the latter from collecting or interfering with the rents of certain heritable subjects belonging to the trust, due at the term of Martinmas 1867. The Lord Ordinary (MURE) granted interim-interdict, and thereafter, on the passed note, made the interdict perpetual, with expenses in favour of the complainer. The respondent reclaimed, and amongst other questions the following arose and was disposed of :—

It appeared that the bankrupt Duncan had, prior to his sequestration, borrowed £1000 from a Mr Baigrie, to whom he granted a bond and disposition in security over his heritable property, and *unico contextu* with the bond, he also granted a letter setting forth that it was part of the agreement under which the loan was granted, that, while he held the money, Baigrie should have power to appoint a factor to uplift the rents of the subjects included in the bond, such factor to account to him (Duncan) for his intromissions, after paying the interest of the loan to Baigrie. In virtue of this arrangement, the respondent was appointed factor, his appointment being verbal, but being understood to be by Baigrie and Duncan jointly. The question now was, *inter alia*, whether this appointment fell by the sequestration of Duncan. It was contended by the trustee that it did; that the arrangement in question was one which conferred only a personal right; that it did not amount to putting the creditor in possession, as under a decree of maills and duties; that it was merely a joint-mandate, revocable (so far as Brown was concerned) by either mandant; and that the parties having chosen to rely upon an arrangement having that character, it was not for the Court to give it a higher and a different character.

SHAND and MACINTOSH for complainer.

TRAYNER and SCOTT for respondent.

The Court, however, held that the mandate, whether joint or by Baigrie alone, was for behoof of Baigrie the creditor, and was in substance a putting of Baigrie in possession of the rents so far as necessary for his interest. That being so, it was not a mandate which was revocable by Duncan, or which fell by Duncan's sequestration. Upon the merits of the case generally the Court recalled the Lord Ordinary's interlocutor, and refused the note of suspension, with modified expenses.

Agent for Complainer—William Spink, S.C.C.

Agent for Respondent—Thomas Wallace, S.S.C.

Saturday, November 21.

M'CALLUM *v.* PATRICK.

Fishing—29 Geo. II., c. 23—Possession of Waste Ground — Permanent Residence — Proprietor—Hut—Title to Eject. Held that the right conferred by the British Fishery Act. 29 Geo. II., c. 23, is given solely for fishing purposes, and not for permanent residence, and that the proprietor of lands upon a part of which, in exercise of the right of fishing as protected by the Statute, a hut had been erected, was entitled to a warrant to eject from it occupants who wished to apply it to the purpose of permanent residence.

This case originated in the Sheriff-Court of Argyllshire by a petition at the instance of Mr Patrick of Benmore. The petition was as follows:—"The petitioner humbly sheweth,—That he is heritable proprietor of the estates of Kilmun and Benmore, including, *inter alia*, the lands of Creggan, which is a part of the farm of Kilmun, and also of the lands of Gareletter, which is part of the farm of Blairmore.

"That the respondents trespassed and intruded themselves violently and illegally on the said lands of Creggan, part of the farm of Kilmun, where they now reside, and erected without the knowledge or consent of the petitioner a hut or tent, or other temporary dwelling-place, in or near to the said lands of Creggan. During a part of the year, the respondents erected, also without the consent or leave of the petitioner, a hut or tent, or other temporary residence, in or near the lands of Gareletter, which is part of the farm of Blairmore, which last-mentioned hut or tent is occasionally shifted about from place to place, all to the loss, injury, and damage of the petitioner.

"The petitioner has frequently desired and required the respondents to flit and remove from the said huts or tents, to which they have no legal