

items of damage. Of the two the claim for *solutium* is perhaps the more clear and strong. At any rate, if the one of these claims be admissible, I think the other must be so equally. If the one is rejected, the other must be so also. The foundation of the claim is relationship; and the relationship which admits the one must equally admit the other. If the limit is passed in the one case, it is as much passed in the other. The decision in the case of *Greenhorns* fixed that brothers and sisters had no legal title to sue for reparation of the loss of a brother, so far as concerned *solutium* to feelings. I think it follows that the present pursuers have no legal title to sue for the damages now claimed by them, which, though different in kind, I consider to stand in point of law in no different position from the other.

I am, on these grounds, of opinion that the Lord Ordinary's judgment should be adhered to.

Agent for Pursuers—M. Macgregor, S.S.C.

Agents for Defenders—Dalmahoy & Cowan, W.S.

Thursday, July 14.

SECOND DIVISION.

GRIERSON *v.* KERR.

Landlord and Tenant—Lease—Farm Mismanagement—Deterioration. Circumstances in which held, in accordance with a report from a man of skill to that effect, that allegations of mismanagement made by a landlord against his tenant were ill founded.

This was an appeal against a judgment pronounced by the Sheriff of Dumfriesshire on a petition of interdict at the instance of Sir Alexander William Grierson of Rockhall, against John Kerr, tenant of the farm of Bluntfield and Hazleshaw, belonging to the petitioner under a lease for 19 years, and which expires in 1878. The petition sets forth that soon after the respondent's entry to said farm the petitioner put the houses and fences into a tenable state of repair, and expended considerable sums in feuing and drainage. It alleged that the respondent had mismanaged the cultivation of the farm, failed to uphold the houses, to protect the fences, and to uproot the whins; and that he had burned the heather to the injury of the game. By these alleged acts it was said that the farm had been greatly deteriorated. The following is the prayer of the petition:—"May it therefore please your Lordship to appoint a copy of this petition, and of the deliverance to follow hereon, to be intimated to the respondent in common form, and in the meantime to interdict the respondent and all others in his name from further, at his own hand, burning any part of the remaining heather on the said high lands on the said farm of Bluntfield and Hazleshaw, and, on again advising, to declare the interdict permanent; and further, to remit to a qualified person, or qualified persons, to visit and inspect the said farm and the farm buildings and fences thereon, and to report as to the respondent's alleged mismanagement of the said farm, and as to the state of the buildings and fences thereon, and as to the consequent damage to the petitioner arising therefrom, and from the reckless burning of the heather, and also as to what is necessary and proper still to be done in fulfilment of the stipulations in the said memorandum of agreement; and to ordain the respondent forthwith to execute all operations that may be

deemed to be necessary and proper to be done in the premises; and in the event of the respondent failing to reside on the said farm during the remaining period of his lease, and to execute the operations foresaid, and manage the same properly, to appoint a qualified person to reside thereon and manage the said farm at the respondent's risk and expense during that period; and to give such further directions or orders, or to do otherwise in the premises as to your Lordship shall seem proper; and further, to find the respondent liable in the damage caused to the petitioner by the respondent's said mismanagement and reckless conduct, and decern therefor, and to find the respondent liable in expenses."

The respondent, in his defence, denied the statements contained in the petition. Thereafter a remit was made to Mr Jardine, Government Inspector of Drainage, to inspect the farm, and report as to the alleged mismanagement. Mr Jardine, *inter alia*, reported that he considered the respondent had generally managed the farm in accordance with the memorandum of agreement, but suggested that he should clear the farm of whins during the remaining three years of the lease, and not burn any more heather. The Sheriff-Substitute (Hope) gave effect to Mr Jardine's report, and, of consent, granted interdict against burning more heather on said farm, and *quoad ultra* sustained the defences, and found the petitioner liable in modified expenses.

The following is the note added to the Sheriff-Substitute's judgment:—

"*Note.*—The first point to be decided is the effect to be given to the report by Mr Jardine. From the authorities he has seen, the Sheriff-Substitute thinks that it is binding on the parties so far as it disposes of the points remitted. The petitioner, who applied for it, maintains that it is not; but it is difficult to see how he could be held as not consenting to the remit, seeing that he not only prayed for it in the petition, but made a motion to the same effect. The fact that the report is not to his mind will not annul his judicial consent. The respondent has consented also, although the procurator who was acting for him temporarily when the motion was made did not feel justified in consenting at that time. The latest writer on Sheriff-court practice says—'The proper evidence of the consent of parties is a minute. There appears, however, no absolute necessity for that, provided the consent be otherwise apparent.'—(Wilson, p. 177). It may be assumed that the respondent's procurator, who consented to or acquiesced in the remit when he heard of it, would have done the same if he had been present when the motion was made.

"In these circumstances, the report would seem to be binding. The Act of 1853 is very explicit:—'It shall be competent to the Sheriff to remit to persons of skill, or other persons, to report on any matter of fact, and where such remit shall be made of consent of both parties, the Sheriff shall hold the report to be final and conclusive with respect to the matter of such remit.'—(§ 10). The only points which the report has enabled the Sheriff-Substitute to decide are the question of the heather burning (as to which it is not necessary to say anything, as the respondent has consented to the interdict being made perpetual), and that of the state of a certain field. It is plain that if the respondent is not using the farm as an arable one he is bound to lay it all down in grass.

"The petitioner having given up the question of damage in this petition, and the lease being so nearly at an end, it does not seem expedient to allow a proof to be gone into about the fences, houses, and whins. The petitioner has delayed too long in making this complaint if the respondent has been as much in fault as is alleged, and besides, if the question of damages is to be raised at the expiry of the lease, these matters must be gone into then in a different action. The respondent has an opportunity before then of fulfilling any obligation incumbent upon him, and perhaps no further proceedings will then be thought necessary by the landlord.

"The petitioner having given up so much of his case, and the interdict as to the burning of heather proceeding upon a report that more burning is not expedient, and not that the burning hitherto has been contrary to the lease, as set forth in the petition, it seems proper that the petitioner should pay modified expenses."

The petitioner appealed to the Sheriff (NAPIER), who adhered to his Substitute's judgment, and dismissed the appeal.

The petitioner further appealed.

FRASER and JOHNSTONE for him.

JOHN MARSHALL and M'KIE in answer.

The Court, without calling on the counsel for the respondent, unanimously dismissed the appeal, with costs. The Court expressed a strong opinion that a tenant should not be harassed with actions of this nature.

Agent for Appellant—James Stewart, W.S.

Agents for Respondent—Scott, Bruce, & Glover, W.S.

Wednesday, July 13.

FIRST DIVISION.

JAMIESON (BONTINE'S CURATOR BONIS).

Curator bonis—Lunatic—Shareholder—Company.

A party who was a shareholder in a quarrying company became a lunatic. His curator applied to the Court for power to make his ward a shareholder in a new company formed for the same purpose as the old, on the ground that the new company was limited, likely to be prosperous, and that the change would be greatly to the benefit of his ward's estate, and unattended with risk. The Court granted authority to the curator, as the doing so was absolutely necessary for the judicious management of the ward's estate.

On 17th June 1865 Mr W. C. Bontine, of Gartmore and Ardoch, became proprietor of three shares in the Drum Slate Quarry Company. Having become a lunatic, Mr George Auldjo Jamieson, C.A., was appointed *Curator Bonis* to him. Mr Jamieson on various occasions applied to the Court for special powers, which were granted. In a note for special powers presented in November last, he *inter alia* craved that power should be granted to him—(1) To concur with the other present partners in the Drum Slate Quarry in assigning their interest to the proposed Llynnydrym Slate Company (Limited), or to another company, with limited liability as therein mentioned. (2) To accept fully paid up stock in the new company in lieu of the present interest of Mr Bontine in the existing adventure; and (3) To sign on behalf of Mr Bontine the memorandum of the articles of association,

and to agree on his behalf to postpone to such extent as he may think right the dividend payable on the shares assigned to Mr Bontine to the dividend payable on the new stock to be issued for the purpose of completing the development of the quarry." In his note to the Accountant of Court, to whom the matter had been remitted for inquiry, the curator made the following statement as to the reasons for granting the special powers asked for:—"From the assignment in favour of Mr Bontine, which is now produced, it will be seen that he paid to Mr Morgan Lloyd £500 on 1st July 1865 as part of the consideration money for 3-20th shares in that quarry; and under the authority conferred upon him by the Court, the curator has since paid the following sums under the obligation undertaken by Mr Bontine:—

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| 1868. August 3, of this date, | £1799 17 4 |
| 1869. March 2, do., | 98 17 0 |
| | <hr/> |
| | £1898 14 4 |

making in all, with interest added at 5 per cent., an amount of £2612 which has been defrayed by Mr Bontine on account of this adventure.

"The curator has been advised that, in terms of the arrangement made between Mr Bontine and Mr Morgan Lloyd, he is bound to concur with the other partners in this concern in defraying the necessary expenses of developing and working the undertaking.

"As explained in his former report, immediately after his appointment, and when Mr Morgan Lloyd first intimated his claim in respect of this undertaking, the curator procured a report from a mining engineer as to the nature and capabilities of the quarry, and that report he now again submits to the Accountant. More recently, as Mr Robert Bell, with whom the curator was acquainted as a mineral tenant on estates under his charge in Scotland, and who has himself a slate quarry in the Isle of Man, was going into the North Wales district, he asked him to examine this quarry and to report confidentially his opinion upon it, and that report the curator now begs also to lay before the Accountant.

"By the deed of assignment in favour of Mr Bontine it is provided 'That the said William Cunninghame Bontine, his executors, administrators or assigns, shall on the first day of November next' (Eighteen hundred and sixty-five), 'pay to the said Morgan Lloyd the said sum of Five hundred and fifty pounds, together with interest thereon at the rate of 5 per cent. per annum from the said first day of July (1864) until payment, and shall from time to time duly contribute three-seventeenth' (should be twentieth) 'portions of the costs, charges, and expenses of performing, and observing the terms and covenants of the said lease, and of working the said quarry, and of all matters incident thereto, including the sum of Sixty-six pounds two shillings, being his proportion of the said expenses from the said first day of July to the present time, and that, until some further arrangement be made, the said quarry shall be carried on under the management of the said Morgan Lloyd, his executors or administrators, and that he, the said William Cunninghame Bontine, his executors, administrators or assigns, will consent to the proprietors of the said quarry being registered as a limited company for working the same.'

"The curator was satisfied from the first that the best course that could be taken for Mr Bon-