forcement of Church discipline—is the immediate end for promoting which the interposition of the Court is craved by the Presbytery. I agree in the view quoted to us, expressed by Mr Sheriff Barclay (14 Journal of Jurisprudence, p. 632); and I have hitherto been under the impression that the practice has been as he states it. Indeed I have never doubted it. Witness-bearing is a debt to justice; it is a duty—a moral duty—a citizen's duty,—it is not an ecclesiastical act; and its enforcement by a Civil Court is appropriate and legitimate.

Viewing the present question as limited to the claim for aid by or with concurrence of a Presbytery of the Established Church, I do not doubt that this Court can grant, and ought to grant, the aid which is demanded. The recognised relation between the Established Church and the State excludes all doubt on the point.

But I am further of opinion, and on broader ground, that the aid of the Civil Court to enforce the attendance of witnesses may be given, and ought to be given, when craved and required, even in causes within churches not established—that is, within a voluntarily constituted jurisdiction. This is well illustrated by the case of arbitration. The interposition by the Civil Court to compel a witness to attend and depone before an arbiter has been frequently exercised, and authoritatively recognised. On this point there are decisions from time to time between 1690 and 1860, and the practice has been accordingly.

On both grounds, I concur in recalling the interlocutor of the Sheriff, and remitting to him to interpone his authority to enforce the attendance of witnesses.

LORD JERVISWOODE concurred.

The Court recalled the interlocutor of the Sheriff, and remitted to him to interpone his authority to enforce the attendance of witnesses.

Counsel for the Petitioners—Dean of Faculty (Clark) and Lee. Agents—Menzies & Coventry, W.S.

Counsel for the Respondents—Watson and Mair. Agent—W. R. Skinner, S.S.C.

Wednesday, May 20.

SECOND DIVISION.

THOMSON *v.* JAMIESON.

[Lord Mackenzie, Ordinary.

Lease—Construction—Fallow Break.

Terms of agricultural lease under which *held* that the term fallow break did not include land which had produced a green crop during the last year of the lease.

This was a reclaiming note against an interlocutor of the Lord Ordinary (Mackenzie), in an action at the instance of an outgoing farmer against the trustee of the estate of Mr George Dundas, younger of Dundas, for payment of the sum of about £926, for labouring and manuring one-sixth of the farm of Echline, Dalmeny, in the last year of a nineteen years' lease, in terms of the tack. Under his lease the pursuer was taken bound, *inter alia*, to have during the last four years of the lease one-sixth part of the lands in fallow or a drilled crop properly cleaned and manured, and that wheat should not be sown except after fallow or a drilled green crop properly manured and horse or hand harrowed; and further, it was agreed that during the last year of the lease he should be paid for labouring and manuring the fallow break, according to the valuation to be fixed by arbitration, as well as for the value of the land left in bare fallow, according to the average rent of the farm. In accordance with these agreements, the pursuer, in the autumn of 1871, had 81 acres of land as fallow break for the succeeding year, and these constituted as nearly as possible one-sixteenth of the whole farm, having regard to the necessity of not dividing the fields. He thoroughly cleaned and manured these 81 acres, and in the spring of 1872 planted therein a green crop, which was sold at his displenishing sale in the autumn of that year. The sum claimed by the pursuer was for labouring and manuring these 81 acres, constituting the fallow break. The defender had several pleas in defence, but his chief contention was that there was really and truly no fallow break on the farm during the last year of the lease, on account of the green crop sown by the pursuer in that season.

The Lord Ordinary pronounced the following interlocutor:—

"*Edinburgh, 22d January* 1874.—The Lord Ordinary having heard the counsel for the parties, and considered the closed record and proof, Assoilzies the defender from the conclusions of the summons, and decerns: Finds the pursuer liable in expenses, of which allows an account to be given in, and remits the same, when lodged, to the Auditor to tax and to report.

"*Note.*—The pursuer was tenant of the farm of Echline, on the estate of Dundas, under a lease for nineteen years from Martinmas 1853; and the question raised by him in the present case depends upon the construction of a clause in that lease, imposing an obligation upon the landlord at the expiry of the lease at Martinmas 1873. Before adverting specially to that clause, it is necessary to notice the obligations imposed upon the tenant with reference to cropping the farm. It is provided by the lease, as regards the cropping of the farm, that of the arable land there shall be in any one year not less than one-sixth part in summer 'fallow or green crop, and not less than one-sixth part in grass, sown off with the first crop after summer fallow or green cross, but not sown down with wheat after beans;' that the pursuer shall not 'take two white crops successively from the same land without a fallow or drilled green crop intervening, except that he may take barley after wheat which has been preceeded by a summer fallow or potato or turnip crop properly dunged and horse and hand hoed,' and which barley land must be sufficiently wrought, cleaned, and dunged; that during the last four years of the lease one-fifth of the arable land, but not necessarily the same land, shall be kept in grass, 'sown off after fallow or green crop, beans excepted, or with barley after beans;' and that there shall be during the last four years of the lease 'one-sixth part of the land in fallow or a drilled crop, properly cleaned and manured, and that wheat shall not be sown except after fallow or a drilled green crop, properly manured and horse and hand-hoed.' The pursuer also bound himself to consume upon the

farm all the straw and fodder grown thereon, except the hay and straw of the last year's crop, which he might sell, unless the landlord or incoming tenant took it at valuation, and 'not to carry off any dung from the lands hereby let, but to consume the same thereon, with the exception of such as shall he made after sowing the barley and turnip crops of the last year of this lease,' which is to be made over to the landlord or incoming tenant at valuation. Such being the obligations of the tenant as regards the cropping and dung of the farm, it is, on the other hand, provided by the lease, 'that during the last year of this lease the said George Thomson, or his foresaids, shall be paid for labouring and manuring the fallow break according to the valuation to be fixed by arbitration as aforesaid, as well as for the value of the land left in bare fallow, according to the average rent of the farm.' This is the clause upon which the pursuer founds the claim made in the present action. During the last year of the lease the pursuer had no land in fallow, but had rather more than one-sixth of the farm in drilled green crop, 16 acres being in turnips, 42 acres in potatoes, and 23 acres in beans, making in all 81 acres. The pursuer laboured these 81 acres in the usual way, for the purpose of growing thereon the said turnips, potatoes, and beans, and it is proved that he manured the land for these crops in the spring and summer of 1872 with a full quantity of the manure of the farm-yard, and also with police dung, guano, and potato manure. On leaving the farm, the pursuer sold by public roup, and received the price of the whole of these crops of turnips, potatoes, and beans, which were not good crops in consequence of the wetness of the season. In these circumstances, the pursuer, founding upon the last-mentioned clause of the lease, has raised the present action for the purpose of obtaining payment from the landlord of the sum of £926, 12s. 3½d., as the amount which he maintains to be due to him 'for labouring and manuring the fallow break,' being a charge of nearly £12 per acre. This sum is composed of £592, 12s. as the value of the manure of his farm yard which he put into the land; £1, 11s. 6d, paid for the measurement of that dung before it was spread on the land; £82, 13s. 8d. as the price of guano; £10, 19s. 2d. as the price and railway freight of police manure; and £238, 15s. 3½d., charged by the pursuer for labouring the land, which includes all the labour specially required for each of the above-mentioned crops. The ground upon when the pursuer maintains this claim is, that the land which under the old system of farming, was ploughed and cleaned, and left to rest for a year in fallow during each shift of cropping, and was called the fallow break, is now, in consequence of furrow draining, improved implements, and increased manuring facilities, rendered capable of growing green crops with advantage to the land and profit to the farmer, except in heavy clay soils, or in wet and backward seasons, and that the term, 'fallow break' now includes, in the phraseology of agriculture, not only any land which may be in fallow, but also the land on which the green crops, such as turnips, potatoes, and beans, which have supplanted fallow, are grown. The defender, on the other hand, maintains that the term 'fallow break' includes only the land which is fallowed, and that when any land is sown with green crop it ceases to be fallow, and becomes the green crop break or division.

"A very long proof has been led by the parties for the purpose of showing the technical meaning of the terms "fallow break" and "bare fallow," which are used in the clause of the lease on which the pursuer founds. From this proof it appears to be the usual practice that an outgoing tenant, when he leaves land fallow, is paid for labouring and manuring that fallow, and pays no rent for it, and that the incoming tenant, who is to reap the benefit which the land has derived from the rest and labour and manure, pays the rent and the cost of the manure. There is no difficulty in getting an incoming tenant to undertake that customary obligation, as he reaps the benefit of it. It is also established by the proof that no case has ever occurred in which an outgoing tenant has been paid for labouring and manuring the land, from which he has taken a way-going green crop. The Lord Ordinary doubts whether any incoming tenant could be got to come under an obligation to that effect. The clause founded upon by the pursuer, if his construction of it be correct, contains an unusual, if not a startling, stipulation. But if the construction of the defender is correct, it is an ordinary and usual stipulation. This being the case, the pursuer requires to show very clearly that the only meaning of which the clause is susceptible is that for which he contends, more especially seeing, as appears from the proof, that agriculturists are very loose in their phraseology, and that it is only within the last thirty years that green crops have supplanted fallow.

"The Lord Ordinary is of opinion that it is not established by the proof that the term fallow break includes not only the fallow land but also the land under green crop. The pursuer's witnesses, no doubt, say so; but the witnesses for the defender are of a different opinion, and state that as soon as the land is put under green crop it ceases to be the fallow break, and becomes green crop land.

"Such being, as the Lord Ordinary thinks, the import of the proof, it becomes important to ascertain what is the true grammatical meaning of the words 'fallow break' and 'fallow,' and what is the sense in which they are used in the clause founded on by the pursuer.

"According to Dr Johnson, the adjective 'fallow' means—(1) 'pale red or pale yellow; (2) 'unsowed, left to rest after the years of tillage (supposed to be so called from the colour of naked ground);' 'ploughed but not sowed; ploughed as prepared for a second aration;' (4) 'unploughed, uncultivated;' and the noun 'fallow' means—(1) 'ground ploughed in order to be ploughed again;' (2) 'ground lying at rest.' The word 'break,' according to Dr Johnson, means, 'the state of being broken,' and, according to Dr Jamieson, it means 'a division of land in a farm.' Such being the meaning of these words, the word 'fallow,' and the term 'fallow break' in the clause, cannot, the Lord Ordinary thinks, according to the true or grammatical sense thereof, apply to land which is not fallow, that is, ploughed but not sowed, but which is under green crop.

"The Lord Ordinary is of opinion that not only is the true and correct meaning of the words adverse to the pursuer's claim, but that the sense in which these words are used in the lease also excludes it. In the lease there occur, as appears in the passages above given, the words 'fallow, 'summer fallow,' 'fallow break,' and 'bare fallow.

All these words, it is thought, mean one and the same state of the land, the term 'summer fallow' being used because the fallow is ploughed and made chiefly in summer, the term 'bare fallow,' which occurs only in the clause on which the pursuer rests his claim, being used because the land is naked, or without a crop, and the term 'fallow break' being used to designate the land in fallow.

"Now, the words 'fallow' and 'summer fallow' are used in the lease in contradistinction to, and as something different from, a green crop, and the option is given to the pursuer either to have fallow or green crop yearly in one-sixth of the farm. In the last four years of the lease he is bound to have one-sixth part of the land in fallow or drilled green crop, and the clause founded on by him is the counterpart of that obligation. Now that clause, following upon the distinction made in the lease between fallow and green crops, and the option in regard thereto given to the pursuer as tenant, provides that the pursuer 'shall be paid for labouring and manuring the fallow break,' that is, as the Lord Ordinary thinks, the part of the farm which he shall leave in fallow, according to the valuation of arbiters,' 'as well as for the value of the land left in bare fallow, that is, left in fallow according to the average rent of the farm. The clause is divided in two parts. The cost of labouring and manuring the 'fallow is to be paid as ascertained by arbitration, and the pursuer is to be paid for it,' 'as well as for,'—that is, equally with—the value of the land left in fallow, and that is to be taken at the average rent of the farm. The phraseology of this clause is no doubt loose. But the Lord Ordinary cannot find any grounds, either in the lease or in the proof, in which the term 'fallow break' can be held to have a different meaning in the clause from what the word 'fallow' has in the previous parts of the lease, or from what that term has according to its ordinary acceptation, and to include land under green crop or anything except fallow land, or on which the term 'bare fallow' can be held to have been used in the clause, for the purpose of distinguishing fallow from land under green crop, because the term 'fallow break' was used in the first part of the clause, as applying to both fallow and land under green crop.

"The claim which the pursuer makes for labour includes not only the labour expended in ploughing and cleaning the land, but also that specially employed in preparing the land for the reception of his crops of turnips, potatoes, and beans, in sowing or planting these crops, in singling the turnips, and in hoeing, drilling, and furrowing up in the mode required for those crops. The sum claimed for labour is nearly £3 per acre, which, according to the pursuer's own evidence, includes only about 12s. for ploughing. The remainder, therefore, with the exception of the cost of gathering the wrack and other weeds, seems to be applicable to the special tillage required by the above-mentioned crops. Such a claim by a tenant, who has sold and got the price of the crops, appears to the Lord Ordinary to be extravagant in itself, and wholly unwarranted by the clause in the lease. The ish from the farm being at Martinmas, the outgoing tenant could alone plough and manure the fallow, as the incoming tenant had no right to do so. It is proved that with such an entry that is always done by the outgoing tenant. Accordingly, the lease stipulates for his remuneration, that he is to be paid for the labouring and manuring of the fallow break, that is, for the whole labour and manure expended by him for the incoming tenant, who gets the whole benefit thereof.

"The pursuer also claims payment not only for the whole manure made on the farm, which he put into the land for the growth of his turnips, potatoes, and beans, but also for the whole of the police manure, guano, and potato manure which he purchased specially for the benefit of those crops. Even if the clause in the lease could be interpreted as the pursuer contends, it could never, the Lord Ordinary thinks, sanction his claim for the price of the guano and potato and police manure. Further, the turnip, potato, and bean crops consumed a large portion of these manures, and also of the farm yard manure, and yet the pursuer concludes for the whole value or price thereof. Under the lease the pursuer is bound to consume on the farm the dung made thereon, and he is only entitled to be paid for such 'as shall be made after sowing the barley and turnip crops of the last year' of the lease, and for what he might expend in manuring the fallow break, but not for other manure left on the farm unconsumed. (*Greig*, 7 Macph. 1109). These provisions show that it was not the intention of the contracting parties that he should be paid for dung consumed by his way-going green crop, but only for dung laid out in manuring the fallow land, of which the incoming tenant would reap the whole benefit. If the claim of the pursuer were warranted by the lease, he would be entitled to be paid for the whole labour and manure of his way-going green crop, which was expended by him solely for the purposes of that crop, although a very large proportion of both was exhausted thereby, and although, as he admits, he grew that crop because he believed it to be for his advantage, which, if the season of 1872 had been good, it would have been. It would require very clear and express provisions in the lease to support such an unjust claim, and yet, if the pursuer's construction of the lease is correct, that is what he is entitled to. The pursuer contended that, if not entitled to the whole cost of labour and manure, he has right to the proportion thereof not exhausted by the green crops. But the lease makes no such distinction, which, the Lord Ordinary thinks, it would have done in clear and express terms if such a claim as that now made by the pursuer had been within the contemplation of the parties. The absence of any such provision is adverse to the pursuer's claim. It is also against the pursuer's claim that he received at his entry to the farm 96 or thereby acres of land which had been in green crop immediately before his entry, without making any payment for the labour and manure expended thereon."

At advising—

Lord Benholme—I am clear the interlocutor of the Lord Ordinary should be affirmed. I think the terms "fallow" "bare fallow" "summer fallow" and "fallow break" all mean that portion of the farm left without growing any crop. It is proposed to comprehend under this term land under any sort of crop, and I think that is a confusion of terms. As the tenant has taken off a crop, it is not equitable for him to ask the whole expense of the labour and manure in consequence of which he has reaped the crop.

Lord Neaves—I concur. The question What is the contract? It is in the lease, which s

to be construed according to its terms, and as far as the words used in it are ordinary words we understand them ourselves, but if technical words are used we must go to authority, and especially look at the instrument itself, and see where the word is used in different places, and give it, if possible, the same meaning throughout. Here we have the term "fallow" occurring, but it is a remarkable fact that except in one place it is contrasted with green crop, and when this is the general use of the term in the lease it is to be presumed that it is the same in the clause in dispute, if nothing appears plainly to contradict the presumption. The clause in dispute is not very precise or accurate, but it is not sufficient to overturn the rest of the ease, where fallow is contrasted with green crop—that is the prevailing tendency of the lease. It must also be borne in mind that the tenant makes this claim as something exceptional and unexampled, to make up for an unusual detriment he suffered. Now if parties go into unusual contracts they should be very precise in the terms used.

LORD ORMIDALE—I concur. The hardship to the tenant was pressed upon us, but then it must be borne in mind he was not bound to have a green crop at all, and if he had sown none would have had all the compensation stipulated for. Why did he incur that loss?

LORD JUSTICE-CLERK—I also concur, on these grounds—(1) In the lease itself "fallow" is distinguished from green crop. (2) The evidence negatives the contention of the tenant. (3) As the tenant had the benefit of the crop grown on the land, the principle of his claim is abandoned.

Counsel for the Pursuer—Charles Scott and Black. Agent—David Curror, S.S.C.

Counsel for the Defender—Watson and Mackay. Agents—Dundas & Wilson, C.S.

Thursday, May 21.

FIRST DIVISION.

[Lord Shand, Ordinary.

JAMES HENRY MITCHELL AND OTHERS *v.* WILLIAM BURN AND OTHERS.

Ship—Charter-party—Bill of Lading—Contract.

Certain foreign merchants chartered a vessel from shipowners who had no domicile in Scotland, along with the services of the crew and of the captain, who had authority to sign bills of lading on behalf of the charterers. The shippers of a cargo of sugar, for which the captain had signed a bill of lading, raised an action in the Court of Session for breach of contract against the shipowners, which they endeavoured to found by arresting in the hands of their own assignees in Glasgow certain sums which, as they alleged, were due by them to the shipowners as freight. *Held* that there was no contract between the shippers and the shipowners, and consequently that no sums belonging to the latter had been arrested.

The pursuer of this action, James H. Mitchell, was a planter in Jamaica, the other pursuers being Messrs Gillespie & Co., merchants in London. The defenders were William Burn, John Stavers and William Heslop, owners of the ship "Northumberland," and residing furth of Scotland. The object of the action was to recover the sum of £1500 in name of damages for breach of a contract to deliver a certain quantity of sugar, the contract being constituted by the bill of lading granted for the shipment. It was alleged that a large portion of the sugar had been washed away altogether, while that which was delivered was to a great extent damaged by salt water. In order to found jurisdiction against the defenders, the pursuers arrested a considerable sum of money in the hands of Messrs Turnbull, Williamson & Co. merchants in Glasgow, who, as the pursuers averred, were indebted to the defenders on account of freight. The pursuers put in the following minute:—"(1) That the 'Northumberland' was chartered as stated in the first article of the defenders' statement of facts, and that No. 17 of process is a true copy of the charter party, and shall be held as equivalent to the original, and that said charter party was acted upon by the charterers and owners both on the homeward and outward voyages. (2) That the firm, Anderson, Anderson, & Company, mentioned in said charter party, acted in entering into said charter party as the agents for Messrs Davidson, Colthirst & Company, merchants, Jamaica. (3) That the shippers of the cargo, Mr Harvey and Mr Mackinnon, were aware of the facts admitted in the preceding articles before they loaded the homeward cargo on board the 'Northumberland' and received the bills of lading therefor—that said bills of lading were signed by the captain at the request of the charterers, in terms of the obligation to that effect in the charter party; and that the terms of freight under the bills of lading had been previously arranged between the said shippers and charterers."

The Lord Ordinary pronounced the following interlocutor:—

"*Edinburgh, 5th January* 1874.—The Lord Ordinary having considered the cause, Finds that the pursuers by the arrestments founded on have not attached any funds belonging to the defenders; sustains the defenders' plea of no jurisdiction; dismisses the action, and decerns; finds the pursuers liable to the defenders in expenses, and remits the account thereof when lodged to the Auditor to tax and report.

"*Note.*—The pursuers of the present action in April 1872 shipped a quantity of sugar on board of the vessel 'Northumberland, belonging to the defenders, then in Jamaica, to be conveyed to this country; and the object of the action is to recover damages, estimated at £1500, in respect of the defenders' alleged failure to implement the contract or obligation constituted by the bill of lading granted for the shipment,—the pursuers averring that part of the sugar shipped was not delivered, and that part was delivered in a damaged condition, injured by sea water.

"The defenders, the owners of the vessel, reside in England, and are not liable to the jurisdiction of this Court on the ground of domicile. The pursuers however maintain that they have created jurisdiction against the defenders by virtue of arrestments which have been used in the hands of Messrs Turnbull, Williamson & Co., merchants in Glasgow, who were indebted, as the pursuers allege, to the defenders in a considerable sum on account of freight. The defenders deny that Turnbull, Williamson & Co. were their debtors, and maintain