has a servitude of right of entrance through the other by means of a pend referred to in the titles. Further, there is no prohibition against separation of the feus after the deed is recorded. This property appears in a short time to have passed through a variety of hands, for we find it first of all disponed to the Browns, then almost immediately transferred to the Leith Property Investment Company, and by them sold to the defender Jack. Stables as required by the conditions of the feu-contract have been erected upon one part, but no buildings of the character specified have been commenced upon the other area. It is in respect of this failure that the pursuer seeks to irritate not only the area unbuilt upon, but also that portion upon which buildings conform to the conditions of the contract have been erected. It would be a very strong step for us to comply with the pursuer's contention, and nothing that I can see in the deeds would warrant us in so doing. The fair presumption is, that as the subjects are separate, and the proprietors separate, nothing omitted or neglected by the one shall irritate or render void the feu held by the other.

LORD SHAND—I am of the same opinion. This question does not arise between the original superior and the original vassal, for one of these areas of ground has passed into the hands of a third party for value. But even if we had before us the case of the original feuar, I am not prepared to say that I should have formed a different opinion. The pursuer maintains that the provisions of the feu-contract are clear and distinct, but looking to what your Lordship has enumerated as to the differences of feu-duty, and also as to the provisions for building on the different areas, it is clear that the disposition must be regarded as really two and not one. In that view some construction of the deed is required, but fairly looked at it comes to this, that those disponees who fail to erect on their several pieces of ground suitable buildings shall irritate their respective areas to the superior. The separation of the feus which was contemplated in the original feu-contract has taken place, and it remains that each feuar shall build and maintain suitable erections on his own area which shall not be forfeited to the superior through any failure on the part of his neighbour to implement his contract.

LORD DEAS was absent.

The Court adhered.

Counsel for Reclaimer—Hon. H. J. Moncreiff—Strachan. Agents—Welsh & Forbes, S.S.C.

Counsel for Respondents—Mackintosh—Thorburn. Agents—Boyd, Macdonald, & Jameson, W.S.

Wednesday, November 8.

FIRST DIVISION.

LAIDLAW (SLOANE'S CURATOR), PETITIONER.

Trust—Nobile Officium—*Where Trustee becomes Insane*—Curator bonis *Resigning Trust on Behalf of Ward.*

A *curator bonis* for a lunatic who was trustee under a *mortis causa* settlement and antenuptial marriage-contract, *authorised* to resign said trusts on behalf of his ward.

William Laidlaw, accountant, Glasgow, was in March 1881 appointed by the Court *curator bonis* to John Sloane, formerly joint agent of the Commercial Bank of Scotland, Limited, Glasgow, on two medical certificates that Sloane was of unsound mind and incapable of managing his affairs. On entering on the management of the estate of the said John Sloane the *curator bonis* discovered that he was an acting trustee along with James Templeton, manufacturer, Glasgow, and Adam Morrison, writer there, under the trust-disposition and settlement, dated 26th September 1850, and codicil thereto dated 20th April 1858, of the deceased Nathaniel Harvey, banker, Campbeltown, and that he and his co-trustees were entered in the register of shareholders of the Commercial Bank of Scotland, Limited, as proprietors of sixteen shares of £100 each (upon which the sum of £20 per share had been paid).

The *curator bonis* also found that the said John Sloane was, along with Patrick Proctor Alexander and Charles Archibald Campbell, both residing in Edinburgh, acting as trustee under the antenuptial contract of marriage between James Hay Stuart, banker, Glasgow, and Jessie Campbell Harvey, his wife, dated 16th March 1857, and that the trustees under that trust were entered in the register of shareholders of the Commercial Bank as proprietors of twenty-seven shares of £100 each (upon which the sum of £20 per share has been paid).

This was a petition presented to the Court by the said William Laidlaw, as *curator bonis* to the said John Sloane, in which, after stating the facts above narrated, and that his ward had no beneficial interest in either of the said trusts, he craved the Court "to remove the said John Sloane from the foresaid trusts . . . . and to authorise and empower the remaining trustees in each of the said trusts to execute the trusts by themselves, and, *inter alia*, to execute all transfers which may be necessary to divest the said John Sloane of the said stock of the Commercial Bank of Scotland, Limited, and to vest the said stock in themselves as trustees foresaid; or otherwise, to grant authority to the petitioner to resign the trusts in question on behalf of his ward, and to execute on behalf of his ward the transfers which may be necessary for divesting his said ward of the said stock."

The petitioner produced letters from the co-trustees in both of the said trusts consenting to this application.

Authorities—M'Laren on Wills and Succession, ii. 224, 228, and cases there cited; *Walker*, July 1, 1868, 6 Macph. 973.

The Court, without delivering opinions, granted authority to the *curator bonis* to resign the trusts on behalf of his ward.

Counsel for Petitioner—Begg. Agents—Morton, Neilson, & Smart, W.S.

Friday November 10.

SECOND DIVISION

[Lord Lee, Ordinary.

MORRISON *v.* BAIRD & COMPANY.

Master and Servant — Reparation — Employers Liability Act 1880 (43 *and* 44 *Vict. c.* 42), *sec.* 6 — *Removal of Action to Court of Session—Competency.*

Held (1) that an action of damages against an employer in respect of injuries suffered by his servant while in his employment may competently be laid both at common law and under the Employers Liability Act 1880 ; and (2) that the removal of such an action from the Sheriff Court to the Court of Session, under section 6 of that Act, brings up for decision the whole action both at common law and under the Act.

Observations (*per* Lord Justice-Clerk and Lord Young) on the nature of the change effected in the law by the Employers Liability Act 1880.

This was an action raised in the Sheriff Court of Lanarkshire at Airdrie, at the instance of Mrs Christina Bird or Morrison, widow of Sylvester Morrison, concluding for £500 damages in respect of his death while in the employment of the defenders William Baird & Co., from injuries received when at his work in their Westfield Limestone Pit.

The pursuer averred—"(Cond. IV.) The whole work in the Westfield Pit is carried on under the control and supervision of a general manager, and a staff under him, appointed and paid by the defenders. Their general manager, Mr William Cameron, is non-resident, but comes to inspect and supervise the works once a-week or thereby. Under him John Campbell acts as underground manager, and is constantly in the pit. These managers and the staff employed by the defenders have the whole control and management of the works. They have the power to employ or dismiss any of the men in the pit, and to order any portion of the work to be done or to be stopped. The character of the working is very hazardous, chiefly owing to the great height and steep dip of the limestone seam. The men working on the benches [explained by a preceding article to mean plies or slabs of limestone separated by "beds" or natural splits] require chains fastened to the rock to enable them to hold on and keep a footing on the benches. It is the duty of those in charge of the works, and employed for the purpose by the defenders, to see that every possible precaution is taken for the safety of the men working in the pit. The mine is worked under 'The Metalliferous Mines Act, 1872'. (Cond. V.) The defenders are in the habit of arranging with certain of their men to excavate one or more of the working faces of limestone in the pit, giving them a fixed rate for every ton of limestone produced at the bottom of the shaft, and authorising them to employ the necessary bossers, benchers, breakers, and drawers. Such arrangements are not made for any fixed period, and either party can bring them to an end whenever he pleases. In all cases the defenders retain to themselves the whole control and supervision of the working, and of its various parts, and of all the men in the mine, and all the workmen engaged in the mine form one organisation, and are subject to one general control exercised by the defenders or by those to whom their authority is delegated. (Cond. VI.) At the time when the accident hereinafter mentioned occurred, one of the working faces of the said pit was wrought by James M'Intyre, a miner residing in West Calder, under an arrangement with the defenders such as is above described. M'Intyre had under him the various classes of workmen required for taking out the stones. The said deceased Sylvester Morrison, who was not himself a practical miner, was for a fortnight prior to the said accident engaged under M'Intyre as a drawer. His work was to draw the limestone in the trucks from the working face to the pit shaft. On the forenoon of said 22d April 1881 he was requested by the said James M'Intyre to take his dinner an hour before the other miners took theirs, and to come while they were absent to assist him in removing stones from the place where the benchers were working, down to where the breakers were working, that they might thus clear the way for the benchers to resume work when they had taken their dinner. He did as he was ordered, and while he was engaged removing the stones a large mass of rock, weighing several tons, fell from the face of rock above them, crushing the said Sylvester Morrison, and jamming him against other stones which lay beside him, and inflicting serious internal and external injuries through which he died on or about 29th April 1881. M'Intyre also suffered injuries which prevented him resuming work for some weeks. (Cond. VII.) The mass of rock which fell down and caused the accident had been left by those in charge of the mine in a dangerous position, projecting over the face of the rock, almost detached from the rest of the rock, and almost without any support. The accident through which the said Sylvester Morrison lost his life occurred through the culpable negligence and fault of the defenders, or of the said William Cameron, John Campbell, or James M'Intyre, or one or more of them, or of others in the defenders' employment, in charge of the working of said pit, or at least of the said working face, or by reason of the defective and insufficient arrangements made by the defenders for carrying on the works. The said Sylvester Morrison did not know that the said mass of rock was insufficiently supported. He was ordered from his regular work of drawing trucks along the levels to the pit shaft to the place where he met the accident, without being told that he incurred any special risk. After the accident wooden supports were placed on the roof of the pit along the said sand gurry, to prevent more accidents arising from stones falling down on the men working below."

The defenders denied fault. They averred that the work of excavation in their pit was done under contracts with limestone miners, who were paid at a certain rate per ton excavated, and that these