a slater, and describing the state of the stair, and being satisfied with the man's recommendations as to the repairs necessary to make it safe, and that, doing so, he did it on his own responsibility. The action is founded on his failure to make it safe, and I agree with the Sheriff that the failure is established, and consequently his responsibility for the accident.

Lord Craighill—I am of the same opinion. The pursuer seeks here to recover a sum of money in name of damages for injuries sustained by him by the fall of a stair in a tenement belonging to the defender while he was ascending it with a sack of coals. The question is, is there anything in the facts of the case to support his claim? I think there is. The defender came into possession of these premises about six years before the date of the accident, and one of the first things to which his attention was called was the safety of the stair leading to the successive flats of the tenement. It was clear that things could not remain in the state in which they were, and what he set about was to do that which was necessary to put the stair in a condition of safety to those using it. The steps were much worn. The defender did not apply for advice to anyone skilled in the making or repairing of stairs, but employed a slater to make the repairs by indenting every step of the stair and patching them with Caithness stone. He did not inquire whether the indentation of all the steps would endanger the safety of the stair, but ordered it to be done in that way. Now, it is quite true that such work may be done—and be done efficiently—by a slater, but it is equally true that it is not the usual work of a slater but of a mason. I think it is proved that the operation of piecing a stair of this kind, which was a hanging-stair of great breadth, is attended with greater risk than it would be on stairs of a different description, and I think it is proved further that the steps of this stair were weakened by the indentations. I therefore think the defender took on himself the risk of his repairs proving dangerous to the safety of the stair. He can suggest no reason why the stair gave way as it did, and none has been suggested except that of the pursuer—that it was owing to the weakening of the steps by the indentations—and I think this is shown to be the only tenable explanation by the fact that the greater number of steps were broken off at the edge. On the whole matter I agree with your Lordship that the defender having repaired the stair in this way at his own risk is responsible for the injuries caused to the pursuer by its having given way.

Lord Rutherfurd Clark—I think this is a very narrow case indeed, but on the whole I am not disposed to differ from the judgment your Lordships have pronounced.

The Lord Justice-Clerk was absent.

The Court pronounced this interlocutor:—

"The Lords . . . Find that the pursuer sustained the injuries libelled by the fall of a stair forming part of the subjects in Maxwell Street, Glasgow, belonging to the defender, and acquired by him five or six years ago: Find that at that time the said stair was in an inferior condition, and that three years ago complaints of its insecurity were made to the defender: Find that the defender, without consulting anyone skilled in building operations, thereupon instructed a slater and plasterer to cut out a portion of each of the steps of the stair worn by use, and replace it with Caithness flagstone, and that this was done accordingly, but imperfectly, inasmuch as the new stones inserted as aforesaid from time to time became loose and required to be replaced: Find that by the said operation the stair was materially weakened, and rendered unfit to bear the strain of ordinary use, and that it gave way while the pursuer was ascending it with a load of moderate weight: Find in law that the defender failed in the duty incumbent on him as proprietor of the said subjects by dealing with the stair as aforesaid whereby it was weakened, and by so doing without previously ascertaining from a skilled person that the course proposed could be followed with safety: Therefore dismiss the appeal, affirm the judgment of the Sheriff-Substitute and of the Sheriff appealed against, of new find the defender liable in damages to the pursuer, and assess the same at one hundred and fifty pounds sterling, and ordain the defender to make payment to the pursuer of that sum," &c.

Counsel for Pursuer (Respondent)—R. Johnstone—Shaw. Agent—John Macpherson, W.S.

Counsel for Defender (Appellant)—Mackintosh—G. Wardlaw Burnet. Agents—Cumming & Duff, S.S.C.

Wednesday, November 19.

FIRST DIVISION.

[Lord M'Laren, Ordinary.

BIRRELL *v.* TAYLOR.

Process—Competency—Value of Cause—Act 50 *Geo. III. cap.* 112, *sec.* 28—*Community of Interest.*

An underwriter of a policy of insurance on a ship sued the owner for repetition of the sum of £38, 8s. 9d. alleged to have been overpaid in respect of damage sustained by the ship. The sum sued for was made up of £23, 1s. 3d. said to be due to the pursuer, his own right, and of the claims of two other underwriters under the same policy, each of whom had assigned his interest to the pursuer in consideration of the sum of £7, 13s. 9d. *Held* that as the assignations were for value, the sum sued for exceeded £25, and that the action was competent in the Court of Session.

Question—Whether if the assignations had been gratuitous the claims were sufficiently connected to entitle the pursuer to sue?

This was an action at the instance of Walter Birrell, underwriter, Glasgow, for himself, and as assignee of James A. Birrell and John Hardie, underwriters there, against Robert Taylor, shipowner, Dundee, for the sum of £38, 8s. 9d.

On 4th December 1879, the defender, through his brokers, Messrs Joseph Gibson & Company,

Dundee, effected a policy of insurance with the pursuer, and James A. Birrell and John Hardie, and other underwriters, for £3500 on the screw-steamer "Neilson Taylor," belonging to the defender, for twelve months from 19th December. The pursuer underwrote this policy for £75, and James A. Birrell and John Hardie underwrote it for £25 each. On 23d September 1880 the "Neilson Taylor" sustained damage at sea. After this damage had been repaired Mr Joseph Gibson, average stater, Dundee, made up an average statement from accounts and information supplied by the defender, bringing out as the amount payable by the pursuer and other underwriters on the policy the sum of £2152, 15s., or £61, 10s. 1¾d. per cent. The pursuer, and James A. Birrell and John Hardie, through their brokers, Wingate, Birrell, & Company, passed this claim of £61, 10s. 1¾d. per cent., and on 29th April 1881 paid to the defender their respective proportions of the claim, amounting in all to £76, 17s. 6d.

In this action the pursuer averred that after this settlement he discovered, in December 1881, that the accounts on which the average statement was based contained many items not incurred in consequence of the stranding, but really incurred for alterations, additions, and improvements on the steamer; that several of the accounts were grossly overcharged, and that the amount thereof had not really been paid by the defender. The pursuer further averred that the defender knew all along that the claim of £61, 10s. 1¾d. per cent. was far more than the loss caused by the stranding; but that in the full knowledge of this fact he falsely and fraudulently represented to Mr Gibson and to Messrs Wingate, Birrell, & Company, and to the pursuer and James A. Birrell and John Hardie, that the claim was all made in respect of loss caused by the stranding. Further, that the defender falsely and fraudulently represented to the same persons that he had paid the whole of the accounts, when he knew that he had objected to some of them as overcharged, and had in consequence refused to pay a large part thereof. The pursuer averred that the sum of which he and James A. Birrel and John Hardie had been defrauded by the defender amounted in all to £38, 8s. 9d. The pursuer produced assignations by James A. Birrell and John Hardie to him of their claims against the defender. These assignations each bore to have been granted in consideration of the sum of £7, 13s. 9d. paid by the pursuer.

The defender stated in his defences that these assignations were granted without value, and for the sole purpose of trying to make the claim up to the sum of £25. This, however, was not maintained at the bar.

The defender pleaded that the action was incompetent in the Court of Session.

The Lord Ordinary (M'Laren) on 17th October 1884 repelled this plea.

"*Opinion.*—In this action by underwriters against a shipowner, the defender maintains that the action is not competent in the Court of Session, because the pursuer is an assignee of other underwriters, and the interest of any one underwriter is less than £25.

"I agree that it is not competent by vesting a series of unconnected claims in an assignee to evade the rule against claims below the value of £25. But here the claims arise upon the same document, and the underwriters might have sued collectively in their own names for their several shares. In such a case the aggregate of all the claims is the value of the cause.

"The case appears to me to be undistinguishable from *Nelson* [10th June 1876], 3 R. 810."

The defender reclaimed, and argued—The contract here had been implemented, and the ground of action was fraud; there was therefore no community of interest. The sum for which the pursuer sued in his own right was under £25. *Gibson, Thomson, & Co.* v. *Cameron*, June 9, 1827, 5 S. 731; *Dykes* v. *Henry and Others*, March 4, 1869, 7 Macph. 603.

The pursuer replied—The assignations to the pursuer were for value, and the difference which the cause would make to the pursuer was the sum in the conclusion of the summons. Even if the assignations had not been for value, the question arose out of the same set of circumstances—*Nelson, Donkin, & Company* v. *Browne and Others*, June 10, 1876, 3 R. 810.

At advising—

Lord Mure—I am satisfied that the Lord Ordinary has come to a right conclusion in this case. No doubt the decisions of this Court show that when several sums are slumped together so as to raise the total amount sued for to £25, the action will not be sustained if the assignations are without value, and are simply for the purpose of making the action competent. That was the unanimous decision in the case of *Gibson, Thomson, & Company*, in which it was admitted that the assignation was without value.

In the present case, however, I think there was a community of interest before the assignations were made, because the action is for repetition, or charges which are said to have been improperly made and paid by different parties who were interested in the same policy.

Now, it was settled in *Nelson's* case that when the parties, in circumstances similar to the present, stood as defenders, an action against them for an amount exceeding £25 was competent, though the sum alleged to be due by each was less than that amount. In the present case the pursuer has acquired the other interests, and founds on the assignations by which those rights were conveyed to him, and he has therefore taken himself—for I must assume that the assignations were for value, as they bear to be, and are not challenged by way of reduction—out of the decision in the case of *Gibson, Thomson, & Company.* I think that the pursuer is possessed of the whole interest, and that he is therefore entitled to sue.

Lord Shand—The question here is, what is the value of the cause? It appears that the pursuer had originally in his own right a claim for £23, 1s. 3d., and that he bought two claims, for each of which he paid the sum of £7, 13s. 9d., and now, if his statements are true and relevant, he is a creditor to the extent of £38, 8s. 9d., the sum sued for. He sues for that sum, and if successful he will recover it. Therefore it seems to me that the value of the cause to him is £38, 8s. 9d.

I assume that the assignations were for value, and were not assignations to the pursuer as a mere trustee to recover for the assignors. They bear to be for value for the sums of £7, 13s. 9d.

paid down, and that is apparently not disputed, in spite of the statement by the defender on record. It must be assumed, then, that they were for value, and if that is so, I think there is an end of the question. If it had appeared that they were not granted for value, that the pursuer was merely an agent for these sums of £7, 13s. 9d., and that he was only suing in his own right for £23, 1s. 3d., it might have made all the difference. On that question, however, I desire to reserve my opinion. The interests here appear to a certain extent to be connected, and the action might have been competent even if the assignations had been gratuitous. That, however, is a question of difficulty, and upon it I give no decided opinion.

The case of *Gibson, Thomson, & Company*, then, has no application if it is assumed or conceded that the assignations were for value, as there the ground of judgment was that the assignations were gratuitous, and simply to enable the pursuer to sue.

Lord Adam—I assume that the assignations here were for value, and I think that we are entitled to do so, for they are produced, and bear to be for value, and it is not seriously disputed that they were so granted.

That being so, the pursuer's interest in the cause is the sum sued for, £38, 8s. 9d., and that is a sum which quite entitles him to sue in this Court. I agree with Lord Shand that if the assignations had not been for value it would have been a difficult question, whether, on the ground of community of interest, the action would have been competent. That would have raised a nice question, and I should have required to give it more consideration before deciding it.

The Lord President and Lord Deas were absent.

Counsel for Pursuer (Respondent)—Mackintosh—Dickson. Agents—J. & J. Ross, W.S.

Counsel for Defender (Reclaimer)—J. P. B. Robertson—Hay. Agents—Rhind, Lindsay, & Wallace, W.S.

HOUSE OF LORDS.

Thursday, November 20.

(Before Lord Chancellor, Lord Blackburn, and Lord Watson.)

ORR EWING *v.* EARL OF CAWDOR.

(*Ante*, vol. xxi. p. 322, 11 R. p. 471—January 29, 1884.)

Superior and Vassal—Disposition—Clause of Relief from Public Burden occurring in Disposition in favour of the Crown—Transmissibility in favour of Successor of Crown.

A Crown vassal executed in 1767 a disposition of certain lands in favour of the Crown, with procuratory of resignation *ad remanentiam*. The disposition contained a clause "in favour of His Majesty and his royal heirs and successors," of relief from certain specified burdens, and every other parish or public burden which might be demanded from them, for and in respect of the lands disponed. In an action raised by a successor of a disponee from the Crown against the representative of the original disponer, for implement of the obligation, the House (*aff.* judgment of Second Division) assoilzied the defender on the ground that the obligation was one strictly and inalienably in favour of the Crown and the royal successors of the Crown in the lands, and therefore not transmissible to the effect of entitling the pursuer to enforce it against the defender.

This case is reported *ante*, vol. xxi. p. 322, 11 R. p. 471—January 29, 1884.

The pursuer, Mr Orr Ewing, appealed to the House of Lords.

The respondent was not called on.

At delivering judgment—

Lord Chancellor—My Lords, I have often had occasion to admire the ingenuity of counsel at your Lordships' bar, especially of such counsel as those who have addressed your Lordships on this case, but I own, having heard those able arguments, I should have thought that this was about as hopeless a case to argue as could possibly be imagined.

Here is a contract between a subject and the Crown. The subject parts with lands for public purposes, expressed on the face of the document, to the Crown, and the intention is as clear and manifest as any words in the English language could have expressed, that this is to be a conveyance for the benefit of the Crown, and of the Crown alone, for all time to come. There can be no doubt as to the construction of the words "royal heirs and successors," because they occur in many places in the deed, and in some of those places it must be admitted, at page 23 especially, that they cannot by possibility mean "royal heirs"—and successors, whether royal or not. I have no difficulty in saying that if there had not been the context which there is in this deed, I should have thought the natural interpretation of the adjective was to apply it to both "heirs" and "successors" being such an adjective as it is, and applicable to such a person, the word "successors" being appropriate to the succession to the Crown, and not, except in the case of corporations, appropriate to private persons. I should have thought, even without the explanatory context and the clear evidence of intention which there is in this deed, that at least the burden of proof would have been on anyone alleging that the word "royal" did not cover both the substantives, to show something in the deed leading to that conclusion.

But this is made as clear as possible by the declaration several times expressed, once at the commencement of the deed, in immediate connection with the words of disposition, "have sold and disponed, and hereby sell and dispone, to His Majesty and his royal heirs and successors, to remain inseparably annexed with the Crown of these realms." Obviously, that not only does not contemplate, but it positively excludes, any succession except royal succession. And the same intention is repeated in the conveyancing clause at the bottom of page 23. It is to be conveyed "*ad perpetuam remanentiam*, to the effect that