£2000 to £1907. Therefore it seems to me that the petitioners can be under no reasonable and honest apprehension about the ultimate payment of their debt, and about the regular and termly payment of interest, that there is no *prima facie* evidence of insolvency, and that there is *prima facie* evidence that the process is attempted for some other and less justifiable object than the mere payment of debt." It is quite clear what the error of the Sheriff-Substitute has been. He thinks there is no *prima facie* evidence of insolvency, "because the petitioners can be under no reasonable and honest apprehension about the ultimate payment of their debt." It is not a question of "ultimate" payment. The question is whether the respondent is able to make present payment of the debt. In all the circumstances I think there is ample evidence of insolvency; and if there is *prima facie* evidence of insolvency concurring with the production of an expired charge, there is *prima facie* evidence of notour bankruptcy, and the Sheriff-Substitute should have proceeded to grant decree of *cessio.*

LORD LEE—My opinion is that the Sheriff-Substitute has gone too fast in throwing out this petition. The case, as was explained to us, was before us on a *caveat*, and the only question, therefore, was whether the petition should be entertained and proceeded with in terms of the statute.

The only point for consideration is, whether there was *prima facie* evidence of notour bankruptcy sufficient to entitle the petitioner to a warrant in terms of the 8th section of the Act. I think that the statute requires the Sheriff to consider this point, and that he is not bound to accept as in all cases sufficient and conclusive the fact that a charge for payment has expired. To constitute notour bankruptcy the statute requires that insolvency shall concur with the expired charge. But in the case of an undisputed debt, neither paid nor offered to be paid, I think that an expired charge is sufficient to raise a presumption of insolvency, and therefore affords *prima facie* evidence of notour bankruptcy.

The provisions of the second and third subsection of clause 9, as to the procedure which is to follow, appears to me sufficient to enable the Sheriff to afford the bankrupt an opportunity at a later stage of showing that the petition ought to be refused.

The LORD PRESIDENT concurred.

LORD MURE and LORD SHAND absent.

The Court pronounced this interlocutor—

"Sustain the appeal: Recal the interlocutor appealed from, and before remitting to the Sheriff find the appellants entitled to expenses in this Court, allow an account thereof to be given in, and remit the same to the Auditor to tax and report to the Sheriff: Further, remit the cause to the Sheriff to proceed therewith in terms of law, with power to decern for the taxed amount of the expenses hereby found due."

Counsel for the Appellants—Gloag—Graham Murray. Agents—Watt & Anderson, S.S.C.

Counsel for the Respondent—D.-F. Mackintosh—Salvesen. Agent—J. Smith Clark, S.S.C.

Friday, March 19.

SECOND DIVISION.

SCOTT *v.* SCOTTISH ACCIDENT INSURANCE COMPANY (LIMITED).

Policy of Insurance—Construction—Liability Defined by Notice on Policy—Ambiguity to be Interpreted "contra proferentem."

A man effected a policy of insurance with an accident company, which provided that "if the insured shall sustain any bodily injury . . . which shall occasion permanent partial disablement (as defined on the back hereof) then the company shall be liable to pay to him the sum of £200." On the back of the policy there was the following:—"Notice.— . . . Permanent partial disablement implied the loss of one hand, the loss of one foot, or the complete and irrecoverable loss of sight."

Held that the notice was ambiguous in its terms, and must be read in the most favourable way for the insured, and that consequently he was entitled to recover the sum of £200 for permanent partial disablement from hernia if he had otherwise complied with the conditions of the policy.

On 3rd February 1885 John Scott, timber merchant, Finnieston Sawmills, Glasgow, effected a policy of insurance with the Scottish Accident Insurance Company (Limited), having its registered office at No. 115 George Street, Edinburgh.

The policy contained the following clause—"If the insured shall sustain any bodily injury caused as aforesaid (viz., by violent accidental means) which shall occasion permanent partial disablement (as defined on the back hereof), then the company shall be liable to pay to him the sum of £200 within one calendar month, after satisfactory proof of such disablement shall have been furnished to the directors, and if such injury does not entitle the insured to the compensation for permanent total or permanent partial disablement, as above provided, but shall independently of all other causes immediately and totally disable and prevent him from attending to business of any kind, then compensation shall be paid to him at the rate of £3 per week for the period of such continuous total disablement as shall immediately follow the said accident and injury, or at the rate of 15s. so long as he shall be thereby rendered partially unable to attend to business. But the period during which compensation for total or partial temporary disablement, or both, is to be paid, shall not for any single accident exceed twenty-six consecutive weeks from the date thereof." And on the back of the policy the following definition was given:—"Notice.—Permanent total disablement implies the loss of both hands or of both feet, or the loss of a hand and a foot. Permanent partial disablement implies the loss of one hand, the loss of one foot, or the complete and irrecoverable loss of sight." The said policy also contains a provision in the following terms:—"Provided always that this policy shall not extend to, nor cover the death or injury of the insured . . . arising from natural disease, or weakness, or exhaustion consequent upon disease or any surgical operation

rendered necessary thereby, or arising from such disease, weakness, exhaustion, or surgical operation, although accelerated by accident."

On 27th October 1887 an accident befel the insured, in consequence of which he raised an action in June 1888 against the said insurance company, concluding for the sum of £200, with interest at 5 per cent from 30th November 1887.

The parties, *inter alia*, averred as follows:—"(Cond. 2) On the 27th of October 1887 an accident befel the pursuer, which resulted in his permanent partial disablement. While superintending his men and assisting them in the removal of some 'log ends' of wood from one woodyard to another, both of which are situated in Galbraith Street, Finnieston, and belong to him, a 'log end' fell upon him by accident in Galbraith Street aforesaid, striking him on the back or shoulders and rolling over his head. By the force of the blow the pursuer was knocked down, had his back and one of his knees seriously injured, and sustained a severe rupture on the left side. A notice of the accident, accompanied by a medical certificate, was sent to the defenders on 31st October 1887. The counter statements are denied, under reference to the proposal for insurance referred to. (Ans. 2) Admitted that an accident happened to the pursuer on 27th October 1887 by a log end falling upon him. Believed to be true that the pursuer was thereby temporarily injured in his back and knees, and explained that a rupture which had formerly existed on the pursuer's left side was thereby considerably increased in size, but he did not suffer the loss of a hand, or of a foot, or of his sight. Further explained and averred, that the said rupture existed for some years prior to the said accident, and that the defenders in issuing the policy to the pursuer were misled by the statement in pursuer's proposal for insurance dated 3d February 1885, to the effect that he had not been ruptured. The proposal form is produced and referred to. The defenders believe that the said statement was made in error, but not with intent to deceive. The notice and certificate are referred to. *Quoad ultra* denied. (Cond. 3) In consequence of the accident above mentioned the pursuer suffered great pain, and was for several weeks confined to the house, and under constant medical attendance. He still suffers from severe hernia, which is incurable. The pursuer is able to attend partially to the duties of his business, but he is in consequence of the injury to his side permanently incapacitated from performing his ordinary duties connected with his calling, which he was capable of performing prior to the date of the said accident. The pursuer intimated to the defenders that the result of the said accident had been to inflict on him permanent partial disablement, and in respect thereof he claimed compensation in terms of the said contract of insurance. The defenders refused, however, to admit the pursuer's claim, and the present action has thus been rendered necessary. The counter statements are denied. (Ans. 3) Admitted that the pursuer was for several weeks confined to the house in consequence of said accident. Admitted that the pursuer has intimated to the defenders that the result of the said accident had been to inflict on him permanent partial disablement. *Quoad ultra* denied. Explained that the pursuer is now able to attend to his ordinary business, that he has not suffered permanent partial disablement as defined by the policy, and that the defenders have offered to compensate him under the policy for five weeks total temporary disablement, and for partial temporary disablement for such longer period as the pursuer may have been partially disabled from attending to business, and are still willing to do so, but he refuses all such payment, and demands to be paid as for permanent partial disablement. The hernia or rupture complained of by the pursuer arose from natural disease, and existed previous to the accident in question, although the defenders believe it has been aggravated and its development accelerated by the accident."

The pursuer pleaded—"(1) The pursuer having, in consequence of the accident in question, suffered permanent partial bodily disablement, is entitled to decree as concluded for, with expenses."

The defenders pleaded—"(1) The pursuer's averments are not relevant. (2) The pursuer not having suffered permanent partial bodily disablement as defined by the policy, the defenders ought to be assoilzied, with expenses. (3) The pursuer having in his proposal for the policy in question made the statement that he had no rupture, which statement was untrue in fact, and misled the defenders in entering into the said policy, the pursuer is barred from insisting in the present claim, so far as made in respect of an injury arising from said rupture. (4) The injury complained of by the pursuer having arisen from natural disease or weakness, though possibly accelerated by the accident, the defenders are entitled to absolvitor, with expenses."

Upon 14th November 1888 the Lord Ordinary (Trayner) sustained the first plea-in-law for the defenders, dismissed the action, and decerned.

"*Opinion.*—The pursuer in this action claims payment from the defenders of a sum of £200, which he says is due to him in respect of an insurance effected by him with the defenders. The defenders deny liability on the ground that the injuries suffered by the pursuer, as alleged, are not covered by the policy.

"By the policy issued by the defenders they undertake to pay the pursuer the sum of £200 in the event of his sustaining any bodily injury caused by violent, accidental, external, and visible means, 'which shall occasion permanent partial disablement (as defined on the back hereof).' On the back of the policy is printed this notice, 'Permanent partial disablement implies the loss of one hand, the loss of one foot, or the complete and irrecoverable loss of sight.' If this is regarded as an exhaustive definition of the 'permanent partial disablement' of the policy, then this action cannot be maintained, for the injuries sustained by the pursuer do not fall within the definition. But the pursuer contends that what is called a definition is only illustrative; and that while permanent partial disablement implies the specific injuries enumerated, it does not exclude other injuries having the effect of permanent partial disablement. If the word 'implies' on the back of the policy is to be regarded etymologically, and apart from the language of the policy itself, I agree with the pursuer. But I cannot so regard it here. The parties, by issuing and accepting the policy

respectively, have agreed to regard the 'notice' on the back of it as a definition; and as a definition covers the whole limits or signification of the thing defined, I must hold that permanent partial disablement in the sense of the policy means, and means only, the special forms of injury enumerated in the so-called definition. I am therefore of opinion that the pursuer has not set forth relevant grounds to sustain an action on the policy in question."

The pursuer reclaimed, and argued—There was here no exhaustive definition given, but only illustrations to meet cases which might be arguable, *e.g.*, it might be argued that a musician who only used his hands and met with an accident causing the loss of one foot was not permanently partially disabled. This notice said he was to be so regarded. But to say that persons insuring with this company against accidents who might meet with accidents to their hands, their spines, their knee-caps, and so on, could not recover under their policies unless they had lost one hand, or one foot, or where rendered totally blind, was extravagant. No one would insure on such conditions. If that was really intended it should have been made plain beyond possibility of a doubt. Any dubiety or ambiguity must be interpreted in favour of the insured, and against the person issuing the policy according to the maxim, *verba sunt interpretanda contra proferentem*.

The respondents argued—This notice was a proper definition. It was so referred to *in gremio* of the policy, for it was the only writing on the back. "Implies" has, according to the best dictionaries, not only the sense of "involving," but also of "signifying," "importing," "denoting," "meaning." The pursuer had no cause of complaint. He could not have expected to be insured against all accidents for the small premium he paid. The limitations in the notice were perfectly fair and open. The pursuer was not deprived of all redress, for there were really two contracts in this policy—one for certain payments down, and the other for weekly payments in cases not embraced under the definition. The pursuer here was entitled to so much a week, and had been offered compensation on that footing, but had declined it.

At advising—

LORD JUSTICE-CLERK—The policy here provides that "if the insured shall sustain any bodily injury caused as aforesaid, which shall occasion permanent partial disablement (as defined on the back hereof), then the company shall be liable to pay to him the sum of £200." Now, the pursuer's accident as described in the condescendence is this—"While superintending his men and assisting them in the removal of some 'log ends' of wood from one woodyard to another, both of which are situated in Galbraith Street, Finnieston, and belong to him, a 'log end' fell upon him by accident in Galbraith Street aforesaid, striking him on the back or shoulders and rolling over his head. By the force of the blow the pursuer was knocked down, had his back and one of his knees seriously injured, and sustained a severe rupture on the left side." He accordingly claims £200 for permanent partial disablement. The defenders maintain that under the terms of the notice on the back of the policy they are not liable as for permanent partial disablement. The policy refers to what is in the notice by the words "as defined on the back hereof." The notice does not bear on the face of it to be a definition, and can only be taken as such because so referred to in the policy. Whatever it is to be called the terms of the notice are most ambiguous, and no better test of their ambiguity can be given than the fact that the counsel for the defenders read to us fifteen different synonyms for the only verb used. All depends on the meaning to be attached to the word "implies." If the notice is to be regarded as a notice to the insured it must be held to mean whatever the insured could reasonably regard it as meaning. The ambiguity is not to be interpreted in favour of the party who draws up the policy, but is to be interpreted in the most favourable sense for the insured.

I cannot read it as the Lord Ordinary has done. He thinks that in no case of injury can a person recover as for permanent partial disablement unless he has lost one hand, or one foot, or both his eyes. That would be to give the policy an extraordinary meaning. It would never lead anyone to read it in that way, and such an interpretation would be contrary to the common sense of mankind. A policy may limit the payment of £200 in case of an accident to the case of the loss of a hand or of a foot, but it must make the intention to do so quite plain. I suspect that very little business would be done by the defenders if people thought those policies were only to be read as the company suggests.

It was said that there are here two contracts, and that the pursuer has a claim under the second one, although not under the first. But under the former the most he can receive is £78, or £3 for 26 weeks, which is very different from £200 down, and the defenders' contention is to make a man who has met with an injury to his spine or to his head entitled only to so much a week. If that was the intention of the defenders they should have made it impossible to read their policy in any other way. Here I think it is to be read in the way most favourable to the pursuer. I am therefore for sustaining the appeal, and repelling the first plea-in-law for the defenders.

LORD YOUNG and LORD LEE concurred.

LORD RUTHERFURD CLARK was absent.

The Court sustained the appeal.

Counsel for the Pursuer—Ure. Agents—Reid & Guild, W.S.

Counsel for the Defenders—Jameson—Crole. Agents—J. & R. A. Robertson, S.S.C.