terms of the lease the dung had to be used upon the farm. It could not be sold.

At advising—

Lord Lee—This is an action at the instance of the trustee on the sequestrated estates of the deceased George Wilson Murray, who died in June 1887, and is directed against his successors in the farm under the contract of lease. By the terms of the lease Mr Murray's daughters became the tenants upon his death. But this was subject of course to Mr Murray's rights and interests in the stock and crop and furniture. It appears, however, that his testamentary trustees entered into possession of the farm for the purpose of realising the crop of 1887, and that they continued to possess till the sequestration of the deceased tenant, which took place in January 1888.

The position of matters at the date of the sequestration therefore was that the trustee had right to recover from the testamentary trustees what they had realised from the crop of 1887, and had right to remove and sell any moveable property or effects upon the farm belonging to the deceased.

I do not think that any question which arose between the deceased tenant and his successors in the lease was of the nature of a question between outgoing and incoming tenant. The trustee in bankruptcy did not represent an outgoing tenant but a deceased tenant, whose successors under the lease might have been different persons altogether from his next-of-kin or executors.

But while such was the strict legal position it appears from the evidence that it was quite recognised by all concerned, on the occurrence of the sequestration, that time would be required for realising the effects belonging to the deceased tenant, and for enabling his successor in the farm to enter upon the possession, and begin the cultivation of it. For this purpose some interim arrangements were obviously necessary, unless the defenders, as successors named in the lease, chose to renounce the succession and leave the trustee to wind up the estate as he best could. In this state of matters various interim arrangements were made, and I think it not of much consequence whether they were made by Mr Graham with or without the authority of his wife and sister-in-law if it appears, as it does, that they ultimately took the benefit of these arrangements and adopted the lease.

In the result there are only three points upon which the Lord Ordinary's decision has been challenged before us. For the respondents agreed to pay the value of the thrashing mill, estimated at £3.

1. The first point is as to the wire fences and gates. I see no reason to differ from the Lord Ordinary as to the proof about these being necessary for the cultivation of the farm and of a permanent character, and in that view I am unable to hold that they formed part of the moveable estate of the deceased Mr Murray.

But the peculiarity of the case is that the lease contains a stipulation that the whole wire fencing is to be paid for by the landlord at the expiry of the lease "if left in good order." This may be merely a premium on attention to the fences. But it is said to imply that the wire fencing belonged to the tenant. I cannot assent to that, looking to the whole conditions of the lease, and in the absence of proof that the wire fencing in question was either paid for by the deceased, or put up by him, or possessed by him, otherwise than as fencing for which there was to be a money claim at the expiry of the lease, "if left in good order."

I am for adhering to the Lord Ordinary's judgment on this point.

2. The second question is as to the grass. I think that this point is settled by the case of *Keith*, 4 S. 267, as commented on and explained in the case of *Lyall*, also referred to by the Lord Ordinary. It was there decided that a tenant possessing under a lease fixing the term of Whitsunday for his removal from "grass," was not bound to remove from land sown with grass in the preceding year for the purpose of a hay crop, but it was also decided that he must remove from all other grass not being "crop."

The proposal to make the defenders pay on the next year after the deceased tenant's right had terminated the value of second and third years' grass is in my opinion unprecedented and untenable, even on the supposition that the pursuer is to be dealt with as an outgoing tenant at the term of Whitsunday 1888. It is not a case of new grass sown for a hay crop at all.

Here also, therefore, I agree with the conclusion reached by the Lord Ordinary.

3. The third point is as to the dung. It was not on the farm at the death of Mr Murray, but was made from the straw and turnips belonging to his executors, and which were consumed on the farm in terms of the stipulation to that effect in article 11 of the regulations, which require that "all the straw and turnips produced on the farm shall be consumed thereon, and all the manure made thereon shall be applied annually to the lands." I agree with the Lord Ordinary that such dung can form no part of the deceased's estate. The carted dung is not in dispute.

The Lord Justice-Clerk, Lord Young, and Lord Rutherfurd Clark concurred.

The Court adhered.

Counsel for the Pursuer—Comrie Thomson—Jameson—G. W. Burnet. Agent—A. Morison, S.S.C.

Counsel for the Defenders—Sir C. Pearson—Low. Agents—Henderson & Clark, W.S.

Friday, July 19.

FIRST DIVISION.

MACKENZIE *v.* COULTHART AND OTHERS.

Interdict—Breach of Interdict.

Circumstances in which the Court *pronounced* a sentence of two months' imprisonment for breach of interdict.

William Dalziel Mackenzie of Newbie, in the county of Dumfries, had obtained interdicts against John Coulthart, William Hill, and John Birnie, all residing at Powfoot, in the said county, interdicting and prohibiting them from erecting or maintaining or using during the open salmon fishing season stake-nets on the shores of the

Solway, between high and low water-mark, on the portion of the complainer's salmon fishings of Newbie, known as the Powfoot and Howgarth Scaurs. This was a petition and complaint by Mr Mackenzie and his tenant in the fishings of Newbie, against Coulthart, Hill, and Birnie for breach of these interdicts. In the prayer of the petition the petitioners craved the Court "to find that the said respondents respectively, by their actings and proceedings above set forth and complained of, acted illegally, and have been guilty of a breach and violation of interdict granted by your Lordships as above set forth, and of contempt of the authority of your Lordships; and in respect thereof to inflict upon them such punishment, by imprisonment or otherwise, as to your Lordships shall seem necessary; and further, to find the said John Coulthart, William Hill, and John Birnie jointly and severally liable in the expenses of the petition and complaint, and of all proceedings to follow hereon."

No answers were lodged, but the respondents having appeared, denied that they had been guilty of the breaches of interdict complained of.

A proof was thereafter taken at Dumfries, at which Coulthart and Birnie appeared for themselves, but no appearance was made for the respondent Hill.

The Court pronounced the following decree.

"Find (1) that the respondent John Coulthart has broken the interdicts granted by the Second Division of the Court of Session on 1st and 3rd December 1881; (2) that the respondent William Hill has broken the interdicts granted by said Division of the Court on 3rd December 1881; and (3) that the respondent John Birnie has broken the interdict granted by said Division of the Court on 1st December 1881: Therefore decern and adjudge the respondents John Coulthart, William Hill, and John Birnie each to be imprisoned for the space of two months, and to be thereafter set at liberty; and for that purpose grant warrant to officers of Court to convey the said respondents from this bar to the prison of Edinburgh, thereafter to be dealt with in due course of law: Authorise the petitioners to remove the nets complained of at the expense of the respondents, and authorise execution to pass on a copy hereof certified by the Clerk of Court: Find the respondents liable in expenses," &c.

Counsel for the Petitioners—Johnstone. Agents—Hope, Mann, & Kirk, W.S.

Friday, June 21.

FIRST DIVISION.

[Lord Fraser, Ordinary.

ADAMS *v.* GREAT NORTH OF SCOTLAND RAILWAY COMPANY.

Arbitration—Contract—Reference—Disqualification.

The arbitration clause in a contract for the making of a railway provided that the arbiter should not be disqualified from acting by being or becoming consulting engineer to the railway company. *Held* that he was not barred from acting as arbiter by the fact that he had revised the specifications and schedules upon which the work which formed the subject of the arbitration was performed.

Process—Arbitration—Decree-Arbitral—Reduction.

In a reduction of a decree-arbitral on the ground that the arbiter had given decree for a larger sum in name of penalties than was claimed by the party in whose favour decree was granted, the latter offered to discharge the excess. The Court *held* that the proper remedy was to reduce the decree *quoad* the excess.

Arbitration—Decree-Arbitral—Reduction.

By the arbitration clause in a contract for the making of a railway it was provided that "all disputes and differences which have arisen or shall or may arise between the parties under or in reference to this contract, or in regard to the true intent, meaning, and construction of the same, or of the said specifications, conditions, and schedules, or as to what shall be considered carrying out the work in a proper, uniform, and regular manner, . . . or as to any other matter connected with or arising out of this contract, and generally all disputes and differences in any way connected with the construction of this contract, or arising out of the execution of or failure to execute properly the works hereby contracted for or not," should be submitted and referred to the final sentence and decree-arbitral of the arbiter named. The contractor was bound to complete the line of railway on 30th September 1884 under a liquidate penalty of £20 for every day's delay, but it was stipulated by the railway company that 400 yards of embankment forming part of the line should not be formed until another contractor had completed the east abutment of a bridge and the diversion of a river, or until he had received the written instructions of the engineer to proceed with the embankment. The line was not completed till 1st May 1886. The arbiter found that the contractor was liable in penalties for each day's delay (exclusive of Sundays) from 30th September 1884 to 1st May 1886. In an action of reduction of the decree-arbitral brought by the contractor, it was proved that the contractor had not got access to the ground on which the 400 yards of embankment was to be formed until February 1886. The arbiter stated that he was satisfied that there was no delay in consequence of the contractor not getting access to part of the ground till February 1886. The Court *held* that as the whole matter, including the construction of the contract, had been referred to the arbiter, the Act of Regulations prevented the Court from interfering with the arbiter's award, even on the ground of injustice.

By the Great North of Scotland (Buckie Extension) Railway Act 1882 the railway company were empowered to make a railway from Port-