

erected for a piggery. For the damage thus sustained she seeks by this action to make her landlord liable. The Sheriff-Substitute decided in favour of the pursuer and assessed the damage at £25, but on appeal the Sheriff recalled that judgment and assozied the defender. I am clearly of opinion that the Sheriff was right.

The pursuer can only succeed in her action on showing that she has suffered damage through breach of contract on the part of the defender, or through wrong done by him. Now, the only contract between the parties was the contract of lease. Under that contract the landlord's obligation was to maintain the subjects let wind and water tight, and to repair whatever in the fabric of the building became defective through actual decay. But the landlord was under no obligation to restore or rebuild the subjects if they were destroyed by *damnum fatale* or by the fault of others for whom he was not responsible. That, however, is what happened. The workings of the Legbrannock Company, who were not the tenants of Robertson, destroyed the pursuer's house, and the lease thus came to an end *rei interitu*, not through any fault of the landlord. It appears clear enough, therefore, that no claim arises against Mr Robertson (or his representatives, who are now the defenders) on the ground of breach of contract. It is not alleged that Robertson failed to fulfil any of the obligations incumbent on him before the destruction of the pursuer's house. Nor has she a claim against the defender on the ground of wrong. The wrong from which she suffered was done, not by the defender, but by third parties whose conduct was not in any way under the defender's control. If the pursuer has a claim in respect of the damage she has sustained (and it appears more than probable she has), it is a claim against the wrongdoer, but not against the defender.

The pursuer maintained that she was entitled to damages against the defender on the ground that after the destruction of her house he had agreed to rebuild or repair the same so as to make it suitable for her occupation, and that he had failed to do so. I think this part of the pursuer's case is not proved.

The other Judges concurred.

The Court refused the appeal.

Counsel for the Pursuer and Appellant—Black. Agent—A. S. Gray, W.S.

Counsel for Defenders and Respondents—Salvesen. Agent—H. B. & F. J. Dewar, W.S.

Tuesday, June 16.

FIRST DIVISION.

[Sheriff of Lanarkshire.

BENNET AND OTHERS v. MACLELLAN.

(*Ante*, vol. xxvii., p. 653.)

*Ship—Liabilities of Owners inter se—Power of Majority of Owners to Bind Minority—Action Compromised without Consent of One Owner—Liability for Share of Law Expenses.*

A ship having been lost, an action was raised in England, by the cargo-owners against the shipowners resident there.

The dependence of the action was intimated to the owner of one share in the ship who was resident in Scotland, but he declined to join in the defence. The defendants were found liable in a large sum in name of damages, with the costs of the action. Having discharged the liability the English shipowners raised an action to recover the amount against an assurance association with which the ship had been insured. Judgment having been given against the shipowners, they appealed, and pending appeal a substantial sum was offered to them in full of all claims which on the advice of counsel they accepted.

In an action by them against the Scotch shipowner, *held* (1) that the latter was bound to bear his share of the liability incurred to the cargo-owners, and had not been impliedly discharged by the action against the assurance association having been compromised without his consent; and (2) that he was also bound to bear his share of the costs of the proceedings in the English Courts.

Counsel for the Pursuers and Appellants—Comrie Thomson—Aitken. Agents—Webster, Will, & Ritchie, S.S.C.

Counsel for the Defender and Respondent—Dickson—Ure. Agents—Macpherson & Mackay, W.S.

Tuesday, June 16.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

THE MIDDLE WARD OF LANARKSHIRE ROAD TRUSTEES v. JAMIESON (LORD BELHAVEN'S TRUSTEE).

*Road—Private Railway—Level-Crossing—Removal and Regulation of such Crossings—Rights of Road Trustees.*

Authority to carry a private railway across a public road to certain coal-pits was granted by Statute Labour Road