Argued for the appellant—(1) There was community of interest here, and therefore really one action, which being for more than £25 was appealable—*Dykes* v. *Merry & Cuninghame*, March 4, 1869, 7 Macph. 603; *Nelson, Donkin, & Company* v. *Browne*, June 10, 1876, 3 R. 810. (2) This must be taken as a final judgment in the cause as against Livingston; if appeal were not taken now, the decree assoilzieing him would be extracted, and it would be impossible to appeal against it at a later date.

At advising—

LORD PRESIDENT—I am of opinion that this appeal is incompetent. The dilemma seems to me to be complete. If the conclusion for £1, 1s. 10d. is part of the cause in which Mr Livingston is interested, then the whole merits of that cause have not been disposed of. If, on the other hand, that sum does not form part of the action against Livingston, it is a claim for less than £25.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court dismissed the appeal as incompetent.

Counsel for the Pursuer and Appellant—M'Lennan. Agent—Robert Broatch, L.A.

Counsel for the Defenders and Respondents—Wilson. Agents—Henry Wakelin & Hamilton, S.S.C.

Friday, January 11, 1889.

SECOND DIVISION.

[Sheriff of Nairn.

DAVIDSON *v.* MACPHERSON.

Landlord and Tenant — Reclamation of Waste Lands—Right of Tenant to Repudiate Obligations of Lease in respect of Agricultural Depression—Specific Implement or Damages.

A tenant under an agricultural lease for nineteen years bound himself to reclaim certain waste lands during its currency. After partially implementing this obligation he refused to proceed with his reclamation further. In an action by the landlord to have him ordained to do so, he pleaded that the land was not adapted for reclamation, that to bring it into cultivation would involve his financial ruin, and that he was justified in abandoning the work in respect of changes in the condition of agriculture not foreseen by either of the parties when the lease was entered into. The Court *held* the defence irrelevant.

Observations per curiam as to whether the landlord's remedy in such circumstances is specific implement or damages.

By lease dated 7th January and 22nd March 1881 Hugh Davidson of Cantray let to Angus Macpherson the farm of Cantraydown in the county of Nairn. Macpherson had for about twelve years previously been tenant of the farm under an improving lease, and had expended large sums in improvements and reclamations. By the lease of 1881 he bound himself, *inter alia*—"(*Fourth*) To improve and reclaim and bring under proper cultivation such an extent of the pasture or waste land on the farm hereby let as shall, with the present extent of arable land thereon, make at Whitsunday 1891 a total extent of arable land of at least 280 imperial acres, and that by annual instalments of not less than one-tenth part of the deficiency at entry of the said total extent."

The extent of the arable land on the farm at the date of the lease was 220 acres or thereby, and in the five years between 1881 and 1886 Macpherson had only reclaimed 20 acres. The landlord accordingly in December 1886 brought an action in the Sheriff Court of Inverness, Elgin, and Nairn at Nairn, concluding that a remit be made to a person of skill to visit and inspect the farm, and report to the Court "whether the defender has up to date implemented the obligations undertaken by him in the said lease to improve, reclaim, and bring under proper cultivation the proportion of the pasture and waste land on the said farm which by the lease he bound himself by annual instalments of one-tenth part to improve, reclaim, and bring under proper cultivation, so that there should at Whitsunday 1891 be a total extent of arable land, old and new, on the farm of at least 280 imperial acres, there having been 220 acres or thereby of arable land at the commencement of the lease, and if there is not such proportion and extent reclaimed and brought under cultivation, to report what works are necessary to bring up the arable land to the extent at which it ought to stand at the date hereof, and the probable cost of such works, and to ordain the defender to execute such works at the sight and to the satisfaction of an inspector appointed by the Court; or otherwise, or failing his doing so within such period as the Court shall appoint, to grant warrant to the pursuer to execute such works at the sight and to the satisfaction of said inspector, and on the cost of the several works to be executed hereunder being ascertained and fixed by the Court, to ordain the defender to pay the same to the pursuer, including the costs of said report." There were also conclusions based upon other claims in the lease relative to the ditches and fences on the farm which need not be further referred to.

The pursuer founded upon the claim in the lease above quoted, and averred (Cond. 5) that no attempt had been made to improve or bring under cultivation any of the waste lands on the defender's farm since 1885, and that he had refused to proceed with the improvement of it as undertaken.

He pleaded—"(1) The defender having refused, or at least delayed to implement

the obligations undertaken by him by his said lease, the pursuer is entitled to have the prayer of this petition granted. (2) The pursuer having incurred loss to the amount of the sum sued for, by the defender's refusal or delay to implement his lease, he is entitled to decree as craved."

The defender averred—"(Stat. 7) By the said lease the defender became bound to reclaim and bring under proper cultivation in the manner therein specified 60 acres of waste land before Whitsunday 1891. The defender has at considerable expense, involving much loss to himself, implemented this stipulation to the extent of about 20 acres, but he is compelled for the following reasons to give up further reclamation, viz.—(1) The remaining waste land is of sterile quality, and not adapted for profitable cultivation, it being only valuable in its present condition as a pastoral subject, and would if the surface were broken become absolutely worthless; (2) the waste land (which consists partly of hill face, a portion whereof is water-run and full of earth-fast stones, partly of close rock, and partly of surfaceless moss full of tree-roots) could not be brought into cultivation without excessive expenditure, which would involve the utter ruin and bankruptcy of the defender; and (3) even supposing the waste lands were suitable for cultivation, which they are not, the defender avers that he is justified in abandoning the work of reclamation, in respect of the unprecedentedly depressed condition of agriculture, and the exceedingly low prices obtainable for produce of the soil, circumstances which could not have been foreseen or anticipated by the defender at the date when the lease was entered into. It is averred that said reasons exist, and further reclamation is under the circumstances rendered practically impossible, and the clause in the lease relative thereto is of the nature of an impossible condition."

The defender pleaded—"(7) The only proper remedy against the defender for failure to implement the obligation to reclaim waste lands as undertaken by him in the lease being by action of damages, the prayer of the petition, condescendence, and pleas-in-law, so far as relating thereto, are incompetent and irrelevant. (8) The defender, for the reasons enumerated in article 7 of the statement of facts, is entitled to abandon the further reclamation of waste land. (9) The obligation to reclaim being of the nature of an impossible condition, should be held *pro non scripto*."

The Sheriff-Substitute (RAMPINI) allowed a proof—the pursuer to lead. Evidence was accordingly taken at great length, the import of which, so far as relevant, appears sufficiently from the opinions of the Sheriff-Substitute and the Court.

The Sheriff-Substitute on 4th April 1888 found "... that since the date of his entry to the said farm in 1869 the defender has reclaimed from waste 130 acres of land or thereby, and that the arable land on the said farm now amounts to 240 acres or thereby, being 40 acres less than the extent which the defender agreed to reclaim by Whitsunday 1891; that the reclamation works are not now being proceeded with; ... that the defender has expended on reclamation works and improvements and otherwise upon the farm, from first to last, the sum of £4740 or thereby; that he started with a capital of £500, and that that sum, as well as all profits derived from the farm, has been sunk upon it, and that he is now in debt to the extent of £1000 or thereby; that the present action being one for specific performance, requires the sanction of the Court to have the same carried into effect; that the contract founded on is not binding in equity on the defender, and that the pursuer's remedy, if he any has in the premises, is one of damages, and not for specific performance: Therefore assoilzies the defender from the conclusions of the action, dismisses the same, reserving to the pursuer the right to raise any such action of damages as he may think proper, and to the defender his defences thereto as accords," &c.

"*Note.*— . . . The true defence to this action is to be found in the 7th plea, in which the defender contends that the landlord's remedy for his failure to fulfil the obligation under which, with his eyes open, he entered, is by action of damages, and not by an action for specific performance.

"Whether or not, as maintained by the pursuer, the option lies with the landlord to adopt either the one or the other remedy, the Sheriff-Substitute cannot doubt that whatever discretion the landlord may have, in cases like the present—whether that discretion is based on contract or on common law—that discretion is controlled by the higher discretion which is inherent in the Court. This is a discretion which is different from the landlord's, in that it is not based on tacks or sets or estates regulations, however stringent, but on abstract principles of right and justice. It is a discretion which will not sanction what appears either unreasonable or injudicious. Even the authorities quoted by the pursuer do not go the length of maintaining that a discretion which puts it into the power of one man to ruin another is one to which any court of justice is bound to give effect. Besides, it must be kept in view that even if the landlord has under his estates regulations or otherwise any such option as that which he claims here, he cannot make that option operative without the aid of the law. Whatever his remedy may be—be it specific performance or damages only—he cannot exact it from the tenant without the decree of a competent court. . . .

"It seems to the Sheriff-Substitute that if the pursuer wished the Court to enforce specific performance he was bound to produce stronger reasons for invoking the equitable jurisdiction of the Court than he has done. He has not shown that his common law right to claim damages for breach of contract would not afford him a complete and sufficient remedy for any injury that he may have received. The Sheriff-Substitute is not prepared to say that if this had been a case of obstinate and

wilful refusal on the part of the defender to fulfil his obligations the Court might not have been bound to decree specific performance. In his opinion it is nothing of the kind. The defender does not say 'he will not'—he says 'he cannot' perform his obligations, and if he instructs this position by adequate evidence, he has a good ground for claiming the indulgence and consideration of the Court. For, as was said in a well-known Sheriff Court case—*Glasgow, &c., Steamboat Company* v. *Henderson*, Guthrie's Select Cases, 189—'It is only in a case of something approaching to absolute necessity that the Court would be justified in taking so important a step' as to decern specific implement of a contract. . . .

"After a careful examination of the few and infrequent cases illustrating the doctrine in question which are to be found in the reports, the Sheriff-Substitute has arrived at the conclusion that underlying all the decisions—whether they apply to contracts relating to land, or contracts relating to moveables—is one great broad and intelligible general principle, and this seems to him to be that while contracts which merely entail hardship, however great, will not relieve an obligee from the consequences of his bargain, contracts which entail results actually ruinous and unreasonable will not be enforced—See in particular the case of *Moore* v. *Paterson*, December 16, 1881, 9 R. 337, *et seq.* The obligation which the defender has here undertaken is not strictly an impossible one. But suppose it carried out, what would be the result? The actual value of the land—as distinguished from its adaptability to this or that particular purpose—would, by no fault of the defender, not be improved, and the defender would not only be benefited thereby, as in return for his increased rent he has a right to claim to be benefited, but, as he tells us himself, he would be ruined. The cost of the reclamation which still remains to be done he estimates—and his witnesses, practical men and farmers, corroborate his figures—at from £800 to £1000. He is already in debt to the extent of about £1000, and this debt has been caused by the expense he has already put on the farm. Nor does this represent the whole of the capital he has spent on it. He calculates his total expenditure on Cantraydown at £4740. Not only his original capital and the money he subsequently borrowed, but every farthing he made out of it, was spent upon it. After more than eighteen years' connection with the farm he—one of the most able and experienced agriculturists in the North—is a poorer man than when he entered it. To go on any longer as he is doing would, he says, infallibly lead to his bankruptcy, and the Sheriff-Substitute sees no reason to doubt this assertion. As for the insinuation that his refusal is prompted from a desire to turn Cantraydown into a grazing farm, he not only repudiates it, he asserts its physical impossibility.

"What equity there is in, or what good can possibly come out of the landlord's present course of action the Sheriff-Substitute utterly fails to see. But the propriety of it is a question for the pursuer and his advisers. So far as this Court is concerned, the question for its determination is, Is that action justifiable? Is it, looking to the probable results of a decree for specific implement, on the land, on the position and interests of the landlord, and on the position and interests of the tenant, and taking into account the changed circumstances of the times, a wise, fair, just, or reasonable thing to insist that these reclamation works should be persevered in? Common sense seems to dictate an answer in the negative. *Lex neminem cogit ad vana seu inutilia peragenda*—the law and the common sense of the case are both comprised in this maxim."

The pursuer appealed.

At advising—

LORD JUSTICE-CLERK — This is a very deplorable case indeed, deplorable both in its circumstances and deplorable in the way in which it has been dealt with. The defender in this case became tenant, not for the first time, in 1881 on a lease for nineteen years, and that lease was entered into at his request, because he desired to have a longer occupation of the farm in order to get the benefit of the improvements which he had already made. He had occupied the farm, I think, for twelve years before. He was a man of undoubted skill in agriculture, and must be presumed to have been perfectly competent to enter into a contract for the lease of any farm in the district, and most of all competent to know the obligations he could undertake as regards the farm which he had already occupied for twelve years. It appears that during the previous years of his tenancy he had from time to time reclaimed certain portions of the farm, and his case is that in making these reclamations he had spent very large sums of money indeed—a great part of which money had been got from the farm itself. After all that he enters into this lease in 1881 at his own request. In so doing he made a stipulation, as against what the landlord desired, by which the amount to be reclaimed, which was originally intended to be 80 acres, should be limited to 60 acres, and in the first years of this lease he had reclaimed 20 of these acres. There remain 40 acres which he has neglected to do anything to since 1885. In that state of matters the landlord raised an action in the Sheriff Court for the purpose, not of getting specific implement in the sense of absolutely compelling the defender to do the work himself, or employing other people to do it, but for the purpose of having an order of Court pronounced ordaining him to do it so that he might have no answer to a claim for repayment if in the event of his failure the landlord was compelled to do it himself.

The idea of specific implement in a case of this kind is out of the question. As Lord Young pointed out in the course of the discussion, specific implement cannot be enforced in almost any circumstances. All you can do is to put a man in prison—to sub-

ject him to the hardships of the law—in order if possible to compel him to do what he is bound to do, but actually to compel him is out of the power of the law. Any judgment in this petition ordering the defender to do the work would be an order under which no punishment as for failure to fulfil a decree *ad factum præstandum* could follow. The conclusions are entirely alternative—that he is to get an opportunity under order of Court to do the thing himself, and if he fails to do it, he is placed in the position that he shall have no answer to the demand that it shall be done at his expense.

But then it is said—"Although I am under that obligation, and admit that I am in breach of that obligation, I am entitled to escape from any of the consequences of it because of the circumstances which have occurred since the lease was entered into." I do not think it has been maintained that if the question had been raised in 1881 any such defence could have been set up, nor that anything has happened to the lands since 1881 that places them, as the subject of the lease, in any different position from that in which they stood when it was entered into. If this had been a case in which through some extraordinary flood all the top soil had left the land which was to be reclaimed, and nothing left but big boulders or gravel, that would have been a totally different case, for the subject of reclamation would have disappeared entirely. That would have been a *damnum fatale* for which the defender was not responsible, and he might have said in defence—"I am not in possession of the subject; it no longer exists." But in point of fact there is not the slightest suggestion that the lands the pursuer gave into possession of his tenant in 1881 unreclaimed, on the footing and contract that he was to reclaim 60 acres, are any different now from what they were then.

But then it is said the circumstance which makes the case different from what it was in 1881, which entitles and compels the Court to interfere in favour of the tenant, is, that although the reclamation might formerly have been done at a profit, it cannot, in consequence of the agricultural depression and the exceptional fall in agricultural prices, now be a paying thing to reclaim these lands. Now, is that a defence against this claim? This tenant is put into possession of this farm for nineteen years, and his lease will run on to the year 1900, and at this stage of the lease he asks to be freed from his obligations because at the present time owing to the state of the markets he cannot make it pay. If that is to be a defence to an obligation of this kind it would simply result in this, that every lease will be interfered with against the landlord when prices are low, but that the tenant may hold the farm and get the advantages of it when prices are high. It is not proposed by the defender to give up the farm. I am very much inclined to think that if he had proposed to give up the farm the state of matters might have been very different, for no doubt the landlord would not have gone into this long and troublesome litigation with him. But what the tenant has done is to ask a court of equity to hold that he is not bound to fulfil the obligations in his lease in present circumstances, although he is to be entitled to have advantage of anything that may occur to his benefit during the remainder of its course. Nothing could be further from equity than that. It was with the very object of getting a sufficient term to cover all the fluctuations of the market that might take place, and thereby to recoup himself, that this long lease was entered into by the defender.

Well, the landlord having failed to induce him to fulfil his obligations raised this action, and I think he raised it most properly, and that his conclusions in regard to the question of reclamation are most aptly drawn. He asks that the tenant should be ordained to fulfil his obligation under the contract, and failing his doing it at sight of a person of skill, which is reasonable, then that he himself should be entitled to go upon the ground and have the work done at the sight of that person of skill at the expense of the defender. I see no answer to that, and I think that the greatest mistake that has been made in this case was when the Sheriff-Substitute, instead of giving effect to the pursuer's pleas, allowed the defender to insist on a proof. Then we have this enormous print. In that proof the pursuer was made to lead. In my opinion that was also entirely wrong, for the pursuer ought simply to have tabled his lease and said—"That is my contract, and I stand on it." Then, if any proof had been allowed, it was for the defender to show why he should escape from fulfilling his obligation. The fact of the pursuer leading added enormously to the extent of the proof, and to the expense which has been incurred in this, which in its nature is an extremely simple case.

It is said by the defender that even if he is in default the result of that default can only be to render him liable in damages. Whatever may be the name under which what he has to pay is to be paid, it undoubtedly practically comes to be damages and nothing else, for this simple reason, that if he fulfils his obligation under the order of the Court, there is an end of the case; if, on the other hand, he does not fulfil the obligation under the order of the Court, then the damages for his not doing so which the landlord may recover will simply be the price at which the landlord will have to get the work done. That is the measure of the loss. Of course it is loss the amount of which the pursuer cannot at present definitely fix. The views I have formed lead me to the conclusion that the Sheriff-Substitute in his interlocutor and in his reasons for it has been entirely wrong, and that the course of procedure which led to his giving that decision was also unfortunately wrong, and I think his interlocutor should be recalled.

Lord Young—I concur in your Lordship's opinion and in the result at which you have arrived. Your Lordship has

characterised the litigation here as deplorable, and I do not think that the word is too strong. It is deplorable. It commenced by a summary application to the Sheriff to invoke his assistance between landlord and tenant in settling some very trifling matters in dispute between them, and I think it might have been and ought to have been quite summarily dealt with. Your Lordship has pointed out that prior to the lease of 1881—a lease for nineteen years—the tenant had been in the farm under a prior contract for a considerable number of years. He therefore knew the farm very well, and by his lease of 1881 he became bound—I say nothing about the fences or drains at this moment—"to improve and reclaim"—[*His Lordship read stipulation* 4 *of the lease*]. This is a very distinct obligation, and I need not say a perfectly lawful obligation. The parties are agreed that there were 220 acres arable at the date of the lease, so that 60 acres required to be reclaimed in order to bring up the number to 280 acres, and that according to the plain meaning of the obligation which I have read was to be at the rate of 6 acres per annum—60 acres in the ten years between 1881 and 1891. Now, the defender knew what he was doing when he came under that obligation. There is no suggestion that he is to be relieved on the ground of ignorance. He was well acquainted with the farm—as well as anybody could be. He knew there were 60 acres in pasture. There were a good many more, but he agreed to bring in that number at the rate of 6 acres per annum for ten years. Well, in December 1866 the landlord presents this summary application to the Sheriff upon the ground that the defender had failed and was failing to bring the waste or pasture land into cultivation at the rate specified in his obligation, and he asked the Sheriff, as judge ordinary of the bounds, to remit to some person in whom he had confidence to ascertain whether —[*His Lordship read the conclusions of the action*]. A more proper or simple application to a judge ordinary by a landlord is not conceivable. If that course had been taken, a responsible man acquainted with these matters would have visited this small farm and might have reported next day, and the whole thing might have been settled, really not within a few weeks but within a few days, and at an expense which might almost be measured in shillings, certainly only a few pounds, and instead of that in this summary application we have this ridiculous amount of litigation, and then it terminates in this, that the Sheriff is of opinion, and so expresses himself, that the tenant is admittedly in breach of his contract obligation—a perfectly lawful contract obligation—but that the landlord's remedy is by an action of damages, and therefore he dismisses this process.

We have had a great deal said about specific performance as distinguished from leaving the party who is wronged to his remedy in damages. All these observations are, in my opinion, quite out of place in the present case. Frequently the Court will not order specific performance. Indeed, as a rule it will not order specific performance where that would be hard on the party who is required to perform, and where complete justice would be done to the other party by damages. I think that may be stated as a rule. Where the party can procure specific implement for himself with money damages awarded to him, he practically gets specific performance. If there is an obligation to deliver a certain quantity of any marketable commodity—quite a common article which can be got in the market—to order specific performance—to order delivery of it—would be inconvenient, and is never resorted to. What is done is to order payment in the form of damages, if it would enable the party against whom the breach has been committed to secure specific implement himself by going into the market and getting the article, and indeed there is nothing else practicable, for this Court could not compel a man to go into the market and buy goods to perform the contract. He might say—"I am not going into the market, and you can do your worst. We could put him into jail for contempt, but it is far easier to order him to pay a sum of money which will enable the party he has disappointed to procure specific implement himself. But then if it is a particular article—one could give many instances—a picture—anything to which a peculiar and special value attaches, and where complete justice cannot be done by damages—the Court will order specific performance, and order the party who has the article to deliver it over, as the other party is entitled to have it. But that is where justice would not be done by damages, and therefore specific performance is ordered.

But we are not interested in that particular matter at all, although it is as plain as sunshine how the law stands and what is its application to the case here, for admittedly the landlord's legal right is to have 6 acres annually of the present pasture or waste land reclaimed. He has got for a valuable consideration the contract obligation of another party to do it. I am not called upon to consider how the lessee was affected by that obligation being there. I assume it was considered. I am dealing with the case just as I should have done if the farm had been given to the tenant without rent for these ten years. He is under obligation to do it—by a legal contract—an onerous contract for which he has received full consideration satisfactory to himself, and it is his legal duty to do it, and the landlord's legal right to have it done. Now, I have said there is no question of specific performance. The object of this action is not to compel him with his own hand or by workmen employed by him to do these things. The inspector sent by the Sheriff or anybody else is not to stand over him with a whip until he does it. The purpose of the action is to declare a legal obligation on him and a legal right corresponding to it in the landlord, and to give him an opportunity of performing it himself if he

is so disposed, but otherwise the alternative is to put the landlord in a condition to do it himself by authorising the access to the farm necessary for that purpose, and providing him with the money. Now, if that is the landlord's legal right, and the party whose obligation it is to do it does not perform his legal obligation, what other remedy can there be except authorising the landlord to do it himself, and to ordain the party who has failed to perform his legal obligation to provide the means. And that is the simple prayer of this petition, and there is really no answer to it. There is no relevant defence stated on record—none whatever in respect of this obligation on which the Sheriff remarks whimsically. He says—"All that he is seeking to do is to obtain relieve from certain obligations in that lease which are pressing heavily upon him in consequence of changed times, changed conditions, and changed circumstances." What right have I to give him that relief; what right has the Sheriff-Substitute at Nairn to give him that relief? One does not know how the Legislature may interfere with contracts in the future, but it has not interfered with such a contract as this at all, and I should like to point out in the view of impressing it upon parties that this agricultural tenant, like other agricultural tenants, has no right to his farm at all except what his contract with the landlord gave him. But for his contract with the landlord he has no more right to it than any other person you choose to name, man, woman, or child. This contract alone gave him right to be there, to touch it, to make money by it, or lose money by it. The contract with the landlord is the only thing which distinguishes him from the rest of the world, and the obligation is plain, and he must perform it. The landlord has performed his part of the obligation—that is admitted—and the Sheriff-Substitute thinks it a very small matter that he should interpose to relieve the tenant from performing his obligation because it will press heavily upon him in these times.

I think probably the best course would be to remit to the Sheriff to appoint a proper party to see that the tenant does his duty according to the terms of the lease, and in the event of his failure of duty to perform that obligation now, that the landlord should be authorised to do it, and at his expense.

LORD RUTHERFURD CLARK concurred.

LORD LEE—I also am of the same opinion. There is only one observation I have to make, and it is this, that I do not understand the opinions that have been delivered as having any application to the case one can imagine—the case of circumstances being discovered by the landlord and tenant rendering it possible for the tenant to say that there does not remain 40 acres of reclaimable ground—I mean ground reasonably reclaimable.

The Court pronounced this interlocutor:—

"Recal the interlocutor of the Sheriff-Substitute of 4th April 1888 appealed against: Find in fact that by the lease the defender undertook to improve and reclaim, and bring under proper cultivation, such an extent of the pasture or waste land on the farm of Cantraydown as should, with the extent of the arable land thereon at the commencement of the lease, make at Whitsunday 1891 a total extent of arable land of at least 280 imperial acres, and that by annual instalments of not less than one-tenth part of the deficiency at entry of the said total extent: Find that at the commencement of the said lease the said deficiency amounted to 60 acres: Find that by April 1885 the defender had reclaimed, in terms of the said lease, 20 acres of the waste or pasture land on the said farm, making up the quantity of arable land on the said farm to 240 acres: Find that since April 1885 the defender has reclaimed no further portion of the said waste or pasture land, and that at the date of raising the present action the defender had failed to reclaim the extent of waste or pasture land stipulated for in the lease to the extent of 10 acres: . . . Find that no sufficient grounds have been established by the defender for withholding implement of the stipulations of the said lease relative to the reclamation of waste or pasture land: . . . Therefore ordain the defender forthwith, at the sight and to the satisfaction of Robert Black, civil engineer, Inverness, (1) to improve, reclaim, and bring under proper cultivation, in terms of the said lease, 10 acres of the pasture or waste land on the farm of Cantraydown, being the quantity which the defender was bound to reclaim at the date of raising the present action; . . . reserving to the pursuer all action competent to him to enforce implement, if necessary, of the defender's obligation contained in the said lease to reclaim the remaining portion of the waste or pasture land on the said farm necessary to make up the 280 acres stipulated for: Remit to the said Robert Black to see the said works performed to his satisfaction, and to report quarterly the progress made by the defender with the execution of the said works: Find the pursuer entitled to expenses in the Inferior Court and in this Court," &c.

Counsel for Pursuer and Appellant—D.-F. Mackintosh—Ure. Agents—Macrae, Flett, & Rennie, W.S.

Counsel for Defender and Respondent—Balfour—Orr. Agents—Cumming & Duff, S.S.C.