conveyance to Walker. But at least No. 2 was like No. 1 conveyed without reservation, and therefore no new right could be given to any other proprietor inconsistent with the exclusive right of property conferred on the immediate grantee. In the same way each successive grant of a building stance in the terrace rendered it impossible, as regarded that particular subject, to create any new burden in favour of future grantees of other stances. All this makes it very difficult to work out the theory of implied grant in reference to such a subject. But the fundamental condition of the doctrine appears to me to be excluded by the nature of the subject-matter. The one indispensable condition, as Lord Campbell expounds the doctrine, is previous possession and enjoyment by the granters, and when a piece of vacant ground is parcelled out for building there can be no previous enjoyment by the owner of the unoccupied sites of a servitude for the benefit of dwelling-houses not yet erected. It seems to me impossible to hold that the purchaser of the first parcel given off with a sufficient access acquires any right over the remainder of the ground which is not conferred upon him in terms by his title.

On the whole matter, therefore, the conclusions at which I have arrived are that the defenders have no written title to the servitude in question, either by way of grant in the titles of dominant tenements or by way of burden imposed by the titles of a servient tenement; that although they have possessed an access by the lane for a considerable time they have not enjoyed it long enough to acquire a right of servitude by prescription; and, lastly, that the facts are not sufficient to support the hypothesis of an implied grant.

LORD ADAM—I concur.

LORD M'LAREN—I agree with all that has been said by Lord Kinnear regarding the ground of judgment disclosed in the Lord Ordinary's note. I see no reason for the conclusion to which he came that a right to the use of this lane could be derived from a supposed mutual contract by the feuars in their capacity as members of the association.

I have more difficulty on the question of implied grant, for I confess I think that a very reasonable and equitable principle of our law. It has been liberally admitted in England, and I should have every disposition to give it a liberal application to grants of land in this country. But, in the first place I am perfectly satisfied, for the reasons given by Lord Kinnear, that apart from that principle there could be no right to the turning-place, because the turning-place is in the title of the feu first given off, and in order that there should be a right to it it would be necessary to hold that a right to the granter had been reserved. Now, I think, not only upon the authorities reviewed by Lord Justice Thesiger in the case cited, but in view of the reasoning in that very strong judgment, that it must be admitted that there is no corresponding right by implied reservation in the case of a division of land, but if a granter desires to reserve any servitude to himself he must do so by express words in the title-deed. I think the non-existence of a right over the turning-place makes a serious breach in the argument in favour of an implied grant, which almost necessarily supposes a right to the lane as a whole.

The chief difficulty in my mind to admitting such a right is this, that the superior of the various feuars is careful to express all those rights which it is intended should be enjoyed by the feuars as a whole. There is a statement of conditions, and a clause binding the superior to insert like conditions in the other feus, which is the proper mode of constituting stipulations for the common interest of the feuars. In the absence of any reference to the lane in this statement of conditions and burdens, there is a strong suggestion that no right was intended to be given. Then again, each feuar gets his conveyance of a part of the lane without any burden being put upon him to communicate the benefit to the rest, and that in a manner notifies to him that there is no servitude upon other people's properties any more than upon his own.

While I cannot say that I have a clear opinion on this point, I am not disposed to say anything contrary to the views expressed by Lord Kinnear.

LORD PRESIDENT—I concur in the opinion of Lord Kinnear.

The Court sustained the reclaiming-note; recalled the interlocutor of the Lord Ordinary; repelled the defences; found, decerned, and declared in terms of the declaratory conclusions of the summons; and granted interdict in terms of the conclusions of the summons to that effect.

Counsel for the Pursuer—Guthrie, Q.C. —Wilton. Agents—Robertson, Dods, & Rhind, W.S.

Counsel for the Defenders—W. Campbell, Q.C.—Horne. Agents—Carmichael & Miller, W.S.

Thursday, July 20.

FIRST DIVISION.

[Lord Pearson, Ordinary.

BANKES *v.* ANDERSON AND OTHERS.

Entail—Disentail—Entail Amendment Act 1875 (38 *and* 39 *Vict. c.* 61), *sec.* 5, *sub-sec.* (2)—*Value of Expectancies of Next Heirs—Process—Proof—Remit to Man of Skill.*

In a petition for authority to disentail an entailed estate, the three next heirs, who declined to give their consents to the disentail, and whose expectancies accordingly fell to be valued under the Entail Amendment Act of 1875, consented to the usual remits, suggested the name of the man of skill, and represented by their local agent accompanied him on his survey of the estate. They subsequently lodged objections to

his report, maintaining that he had undervalued the property, specifying the particulars in which he had been mistaken, and moved for a proof.

The Lord Ordinary (Pearson) having remitted of new to the man of skill to consider the objections put forward by the next heirs, the Court *adhered, holding* that, whatever might have been the case had the respondents originally demanded a proof, they were not in the circumstances entitled to depart from the mode of inquiry to which they had consented.

Opinion (*per* Lord President) that the respondent in a petition to disentail, where the interests at stake are of a momentous nature, is entitled to a proof with regard to the value of the entailed estate if he comes forward at once and demands it, and that he should not be compelled to accept the opinion of a man of skill.

Entail—Disentail—Entail Amendment Act 1875 (38 *and* 39 *Vict. c.* 61), *sec.* 5, *sub-sec.* (2)—*Averments as to Health of Heir in Possession—Process—Proof or Remit to Medical Man.*

The respondents in a petition to disentail, presented by the heir in possession, made certain averments with regard to the petitioner's health as affecting the value of her interest in the estate. These averments were all founded upon present symptoms, and did not involve the previous history of the petitioner.

Held (*aff.* judgment of Lord Pearson, and *distinguishing* the case of *Macdonalds* v. *Macdonald*, March 12, 1880, 7 R. (H.L.) 41) that while these averments were relevant, the proper mode of inquiring into their correctness was by means of a remit to a medical man to make an examination of the petitioner.

On 5th July 1898 Mrs Maria Ann Liot Bankes, heiress of entail in possession of Letterewe and Gruinard, presented a petition for authority to disentail these estates. The petitioner was born in 1839, and the deed of entail under which she held her estates was dated 31st March and 25th April 1883, and recorded in the Register of Tailzies on 18th June of the same year. The three next heirs entitled to succeed to the entailed estates were Mrs Ada Jane Bankes or Anderson and her two sons, all of whom were of full age and subject to no legal incapacity.

The petitioner averred—"The said Mrs Ada Jane Bankes or Anderson, Allan Meyrick Anderson, and Robert Holme Anderson have not as yet consented to this application, but the petitioner is prepared to pay the values of their expectancies or interests, as the same may be determined by your Lordships, in terms of the foresaid statutes in the event of their not consenting, or in the event of their consenting to this application she will produce in the course of the proceedings to follow hereon a deed or deeds of consent duly executed by them."

The Entail Amendment (Scotland) Act 1875 (38 and 39 Vict. c. 61), sec. 5, sub-sec. (2) (to which the petitioner referred), enacts—"In the event of any of the foresaid heirs, except the nearest heir for the time, . . . declining or refusing to give . . . his consent, the Court may dispense with such consent in terms of the provisions following (that is to say), (*a*) when any of the foresaid heirs entitled to succeed except the nearest heir for the time declines or refuses to give . . . his consent, the Court shall, on a motion to that effect by the petitioner in the application, and on a statement by him of the declinature or refusal . . . of such heir or heirs aforesaid, . . . ascertain the value in money of the expectancy or interest in the entailed estate with reference to such application of such heir or heirs declining or refusing to give consent as aforesaid."

The Entail (Scotland) Act 1882 (45 and 46 Vict. c. 53), sec. 13, enacts that the provisions of sec. 5 of the Entail Amendment Act 1875 shall apply to the nearest heir as well as to other heirs.

On 4th October 1898 Lord Pearson, as Lord Ordinary officiating on the Bills, remitted to the Hon. J. W. Moncreiff, W.S., to inquire into the regularity of the procedure, to Mr J. J. Davidson to inspect the estates, and to report what in his opinion was their net value, and to Mr George M. Low, actuary, to value the interests or expectancies of the three next heirs of entail in the said lands. The three next heirs appeared by their agent at the proceedings in the Bill Chamber, and it was upon their suggestion that Mr Davidson was substituted as the man of skill for the reporter originally nominated by the Lord Ordinary.

On 17th January 1899 Mr Davidson presented his report, in which he stated that the estates extended to 69,627 acres, of which 51,450 acres were under deer forest; that the property was mainly and essentially a sporting one; that in his judgment the present sub-division of the property for sporting purposes was probably as judicious an arrangement from the letting point of view as could be adopted; that the sporting rental of the property might be taken at £2500 per annum, the crofting and farm rents amounting to £726 besides; and that in his opinion the present value of the property was £65,000.

It appeared that on his visit to and perambulation of the estate Mr Davidson was accompanied by the local agent of the three next heirs.

On 9th May 1899 Mr Low presented his report, in which he valued the expectancies of the three next heirs at a total sum of £17,288, or alternatively, and upon the footing that their interests should be valued as prospective rights of liferent merely, at a total sum of £12,115.

The petitioner lodged objections to Mr Low's report, based chiefly upon the ground that in estimating the probable duration of life of the petitioner and the next heir of entail he had followed the rule of the Carlisle Tables, which apply to

male lives only, whereas the probability of life of females of the same age is higher.

The three next heirs lodged objections to Mr Davidson's report, and relying upon a report furnished by a neighbouring factor maintained that the value of the estates was £87,584.

The respondents subsequently lodged amended objections to both reports, in which, with reference to Mr Davidson's report they averred and offered to prove that the present arrangement of the property was a bad one from a letting point of view, specifying in detail the disadvantages attendant upon it, and with reference to Mr Low's report they made the following averment:—"The heiress in possession is in a precarious state of health, suffering from extreme physical debility, more or less bronchial trouble, and great stomachic derangement, combined with nervous symptoms of an anxious kind, which seriously affect her expectation of life, and the respondents maintain that these facts are proper subjects of preliminary inquiry, and that the result must be taken into account in the reporter's calculations."

On 29th June 1899 the Lord Ordinary (PEARSON) pronounced an interlocutor by which he (first) remitted of new to Mr Davidson to consider the objections to his report; (second) remitted of new to Mr Low to report with regard to the objections to his report, and (third) remitted to Dr Byrom Bramwell "to examine the petitioner, and to inquire into the facts and circumstances averred in the amended objections for the respondents, touching the petitioner's state of health, and to report whether and to what extent (if any) her expectation of life is thereby affected."

Opinion.—"This is a petition to disentail, in which the three next heirs have refused their consent. In such a case the statutes enjoin the Court to ascertain the value in money of the expectancy or interest of such heirs in the entailed estate with reference to the application.

"Remits were made to a valuator and an actuary according to the ordinary practice.

"The valuator has reported the value of the estate to be £65,000, and the net rental £2715, 1s. 5d. The respondents object to this valuation as being considerably under the true value; and they have lodged in process a valuation obtained on their own instructions, which brings out a value of over £87,500, and a net rental of £3808. The estate is mainly a sporting one, consisting largely of deer forest ground. The main objection of the respondents is that hitherto the most has not been made of the estate, and that in order to draw the full annual value of it, it ought to be redivided and let according to a different scheme. The respondents asked to be allowed a general proof on the subject of the value of the estate.

"It seems to me that no reason has been shown for departing from the ordinary practice in this case. Indeed, it appears to me to be a strong case for following it, because the objections are based largely on matters of mere opinion, and raise questions as to what the rental would have been if the estate had been differently divided and differently managed. I do not say that the considerations urged by the respondents are irrelevant. But in my judgment the proper way to deal with them is not to allow a proof at large, but to remit them to the reporter for his consideration.

"I was unwilling however to make the report of the respondents' valuator the subject of the remit, it being virtually a precognition; and I have allowed the respondents to formulate their averments in amended objections now lodged. I propose to remit of new to Mr Davidson to consider these objections and any answers thereto which the petitioner may lodge, and to report. It remains to be seen whether this will result in an alteration of Mr Davidson's figures. If it does, there will require to be a new remit to the actuary.

"The report of the actuary is also objected to, and by both parties.

"1. The actuary assumed, as he was bound to do in the absence of objection, that the petitioner's life was an average one. The respondents now object to this assumption, and make averments as to her state of health, alleging that her expectation of life is seriously affected. The averments are, in my opinion, sufficient to warrant inquiry into the matter. The respondents stated their preference for an inquiry by way of proof on this head also. But the petitioner, through her counsel, expressed her willingness (if the averments are considered to be relevant) to submit to be examined by a medical man selected by the Court; and I am clearly of opinion that this is the proper course in the circumstances of this case. It is easy to figure cases in which this course might not be appropriate, as where the averments relate to matters of old date. Here all the averments touching the petitioner's health are founded on present symptoms, and (I should suppose) admit of being tested by examination in the ordinary way, in the light of such information regarding the history of the case and the surrounding circumstances, as the medical man may think material. If he should find any difficulty in obtaining the necessary information, it is open to him to present an interim report to that effect.

"The petitioner, on the other hand, objects to the actuary's report, on the ground that he has underestimated her expectancy of life, and that of her sister, the heir-presumptive, and has thus overestimated the value of the expectancies of the two postponed heirs, who are males. This is said to have resulted from the actuary having calculated the expectations of life upon tables which are applicable to male lives only, it being averred that the probabilities of life of females of the ages of the petitioner and her sister are materially higher. I see no objection to asking for an explanation from the actuary on this head, and I shall do so by way of a supplementary remit."

The respondents reclaimed, and moved

for a proof both as to the value of the property and as to the health of the petitioner. Argued—1. With regard to the value, no doubt a remit was the usual mode of ascertaining the facts, but here the circumstances were complicated and peculiar, and the determination of questions involving serious pecuniary interests should not be left to the opinion of one man of skill. Mr Davidson had already given his decision, and to refer the objections to him for reconsideration would be idle. It was doubtful whether a remit was competent when one of the parties objected to it,—*Quin* v. *Gardner & Sons, Limited*, June 22, 1888, 15 R. 776. 2. With regard to the petitioner's health, the respondents had a right to inquiry. The most appropriate form for that inquiry to take was a proof, and proof had been allowed in *Macdonalds* v. *Macdonald*, March 19, 1879, 6 R. 869, *rev.* March 15, 1880, 7 R. (H.L.) 41. [Counsel for the respondents intimated that, although he had refrained from putting them into print, he was in a position to make averments as to the petitioner's health which would necessitate the facts of her past life being inquired into]. *De Virt* v. *Wilson*, Dec. 19, 1877, 5 R. 328, also referred to.

Argued for the petitioner—The Lord Ordinary had taken the proper course on both matters. 1. With regard to value, a remit to a reporter was not only the usual but the appropriate method of arriving at what at the very best was necessarily matter of opinion—*Pringle* v. *Pringle*, June 12, 1891, 18 R. 895. But, in any event, if the respondents desired a proof, they were too late now in asking for it. They had consented to the original remits, and could not now propose to supersede that mode of inquiry. 2. With regard to the petitioner's health, the averments here were of a nature easily distinguishable from those in the case of *Macdonald, ut sup.* There certain historical facts in Captain Macdonald's life were averred which were eminently suitable for proof in the ordinary way. Here, the averments, one and all, dealt with symptoms presented by the petitioner at the present time, and therefore most readily tested by medical examination, to which the petitioner was quite willing to submit.

LORD ADAM—This reclaiming-note is presented in a petition for authority to disentail, and the questions raised before us relate to the ascertainment of the value of the interests of the three next heirs of entail. It seems that in the course of the proceedings in the Outer House the Lord Ordinary remitted to Mr Davidson, as a man of skill, with a view to ascertaining the value of the entailed estate. I understand—and it is not made matter of dispute—that Mr Davidson was not the person originally suggested by the Lord Ordinary, but another person, and that owing to the representations of the reclaimers—the respondents in the petition—the name of Mr Davidson was substituted for that of the person originally suggested. That being so, the Lord Ordinary made the remit, and Mr Davidson has since reported, and the respondents have put in objections to his report. Now, I do not think that by appearing as they did and allowing a remit to be made to Mr Davidson the respondents barred themselves from objecting to Mr Davidson's report, or from maintaining that it should not be treated as conclusive, but in the circumstances I think they have been parties to a course of procedure which ought to be followed out. If they had appeared before the Lord Ordinary and asked a proof, his Lordship might or might not have granted it instead of making a remit, but they did not do so, and that being so, I think the Lord Ordinary has taken the proper course in remitting to Mr Davidson to consider the objections to his report, and I do not suppose that Mr Davidson is so wedded to his own views as not to consider impartially the points raised in the objections. On this question, therefore, I think the interlocutor of the Lord Ordinary is right.

With reference to the other question raised, namely, as to the health of the petitioner, it is alleged in the objections lodged by the respondents to the report of the actuary Mr Low, that the petitioner is in a state of health which prejudicially affects her expectancy of life, and that her life is not to be taken, as it has been taken by Mr Low, as an average life. The question again is as to the mode of procedure to be adopted. The Lord Ordinary has remitted to a medical man to examine the petitioner, but the respondents say that, the question being one of fact, they are as a matter of right entitled to have a proof as in any ordinary case. Now, I do not doubt facts and circumstances may be averred in a particular case which might make it the judicious course to allow a proof, but I am clearly of opinion that the Court is not bound in all cases to ascertain the facts by a proof, but that the usual course is for the Court to ascertain the facts in the way it thinks most judicious. That being so, the question is, whether the averments made by the respondents are such as to require a proof, or whether the facts can be sufficiently ascertained by the medical examination of the petitioner, and I have come to be of opinion that the facts averred here, the averments all being, as the Lord Ordinary says, "founded on present symptoms," can be sufficiently ascertained by the examination of the petitioner by a medical man. On this point also, therefore, I think the Lord Ordinary's interlocutor is right.

LORD M'LAREN—There is no doubt that the ordinary mode of informing the Court as to the facts and matters of opinion necessary for the decision of a summary petition is by remit to a person of skill. That is the practice, not only in entail petitions, but also in cases of guardianship, and in petitions for the appointment of factors. But though in such cases occasionally proof is allowed, I am not sure that the conditions of the inquiry are exactly the same. Certainly the appoint-

ment of a factor to take care of an infirm person does not amount to *res judicata*, or bar proceedings of a more formal character for determining that person's state of mind. In such cases as we have here the decision of the Court is final. But it must be kept in view that a very large portion of the entail petitions which come before the Lord Ordinary are unopposed, and that the mode of remitting to a reporter is the best means available to a judge when he is dealing with a case *ex parte*. Further, there are cases where the expectant heirs are represented by agents or watching counsel, but where they are quite content that the facts should be ascertained in the ordinary way, and they only attend to make certain that all relevant points are before the Court.

If the expectant heir, however, should wish for any reason that the facts should be ascertained in a more formal manner, I should expect him to appear and state to the Lord Ordinary that in his view this was too important a case to be dealt with by a remit, and that he desired a proof on the question of value or some other question. But if he contents himself with suggesting a name for the Lord Ordinary's consideration, and then complains of the report because it is not altogether what he expects, I am not prepared to say that as a matter of right he is to be indulged with a proof.

In the present case it appears to me that on the matter of valuation the valuator has gone very carefully into the point before him, and I have no doubt that he will consider fairly the objections which the respondents propose to take. He would be a very unsuitable man for his duties if he were not prepared to consider points sent to him for reconsideration. On this question of value, accordingly, I am of opinion with Lord Adam that no sufficient grounds have been shown for reopening the question. I do not say, however, that if it appeared from the report of the valuator that there were questions of fact demanding investigation with which he was unable to deal except upon evidence, we should not order a proof, for I think that might be justified on the same grounds on which the House of Lords directed an inquiry into the facts in the case of *Macdonald*.

As regards the health of the petitioner, that is a very material element, because it affects the expectancy of all the heirs of entail if the expectation of life of the heir in possession is less than that proper to her age. The Lord Ordinary has said here of the averments touching the petitioner's health that they are all founded on present symptoms. That appears to me correctly to characterise these averments, and there being nothing in those averments to lead us to think that an inquiry into the petitioner's past life is necessary, I agree with the Lord Ordinary that an inquiry by a medical man is the proper method.

LORD KINNEAR—I agree with what has been said. There is no question that the ordinary method of ascertaining the value of an expectancy is by remits to men of skill in valuing land and the expectancy of life, but it is not doubtful that expectant heirs who object to that method may be entitled to say that there are facts in the case relating to the value of the estate and the expectancy of life of a preceding heir which ought to be made the subject of proof in the ordinary way followed in an ordinary action. The questions raised may be of great importance, and I do not say that expectant heirs may not be entitled to proof if they apply for that mode of inquiry at the right time. In the present case I think the application is made too late. It is said that the respondents had no opportunity to interfere, but it is plain that that is not the case. They were entitled to appear at the earlier stages of the case, and we were told by Mr Guthrie, and he was not contradicted, that the respondents were represented both at the remit to Mr Davidson and before Mr Davidson when he went to the ground to inspect it. Now, if parties allow a proceeding like this, which necessarily occasions expense and occupies time, to proceed without objection, they having opportunity to object, it is too late for them afterwards to throw over that mode, being the usual mode of inquiry, and to adopt another. On that ground I think the Lord Ordinary has rightly disposed of the objections to Mr Davidson's report.

As regards the objections to Mr Low's report, I think the Lord Ordinary's ground of judgment perfectly sound. If this were such a case as occurred in *Macdonald*, where special facts in the history of the expectant heir's life were averred, which affected the value of his interest, I should have thought that was a case for allowing proof, but no such averments are made here.

LORD PRESIDENT — These proceedings take place under the section of the entail Act which requires the Court to ascertain the value in money of the expectancy of the heir whose interest is to be considered. These are very general words, and they involve a somewhat complex problem. The same set of words applies to both the questions we are now to consider.

As regards the question of the state of this lady's health, I think there is a very clear ground of judgment. The Court is not by the words of the statute tied to any one mode of ascertaining the value of the life of the heir, and of course the health of the heir only affects her probable longevity. But, on the other hand, in the case of the expectation of life of anyone, the broad fact of age is that with which you start and also probably end, for unless there are exceptional circumstances further inquiry is at an end. But then it has been held, first, that where the ordinary presumption is said to be varied by the actual and present state of health of the person in question, that is naturally to be ascertained by medical examination of that person, but that, secondly, and on the other hand, where the problem is complicated by antecedent historical facts which bear on the

question of health, then a proof must be allowed. I think that the judgment in *Macdonald* means that it must be allowed, those facts being directly relevant to the problem, which is a complicated one of medical opinion, but of medical opinion to be affected by those facts.

When I turn from that case to the present, it seems to me that all the elements which were held in *Macdonald's* case to lead to a proof are absent, for I think that the Lord Ordinary has rightly characterised the respondents' averments. Therefore upon that ground I am of opinion with your Lordships that the Lord Ordinary is right, and that there is no sufficient averment for inquiry by way of proof. And I part from this by saying that Mr Johnston's very clear exposition of his argument postulated, what he hinted was his case, that there were facts in the history of the heir's life which should be investigated. But averments of such facts are entirely absent.

As regards the question of value, it seems to me that it is in a different position. Here again the Court is not tied to any one form of inquiry. I suppose your Lordships would agree that if the respondents came forward with a definite view of the value, the Lord Ordinary might order a proof. On the other hand, he might not, and he might rest content with the opinion of an expert. But I am bound to say that I should greatly regret if it were inferred from the decision in this case that a momentous question of value, even when it depended merely upon an estimate of value, was to be concluded against an objecting respondent by the opinion of one individual. I see nothing in the statute to warrant that. The Court is to "ascertain," but to ascertain by means appropriate to the interests involved; and I for my part should have great hesitation in refusing the request of any party who promptly came forward and asked for a proof. But then your Lordships consider that in the present case the respondents have so conducted themselves and managed their procedure that the other course has been definitely embarked upon. That is a question of inference from the circumstances; your Lordships have had much greater experience than I in such matters; and upon that ground, and that alone, I concur.

The Court adhered.

Counsel for the Petitioner—Guthrie, Q.C.—Chree. Agents—A. P. Purves & Aitken, W.S.

Counsel for the Respondents—H. Johnston, Q.C.—C. K. Mackenzie. Agent—A. S. Douglas, W.S.

Thursday, July 20.

FIRST DIVISION.

[Sheriff Court of Lanarkshire.

A. & J. FAILL *v.* WILSON.

Lease—Quarry—Outgoing—Breach of Conditions of Working—Competency of Action for Implement at Expiry of Lease.

Where at the expiry of a lease of a quarry which contains provisions as to the condition in which the quarry is to be left by an outgoing tenant, the landlord founds, not on a breach of these conditions, but on violation of the course of working prescribed to the tenant during the whole course of his occupancy, the proper claim is for damages, and an action for the execution by the tenant of remedial measures is incompetent.

Lease—Breach of Conditions of Working—Renewals of Lease as Bar to Objections.

An action was raised at the instance of a landlord against an outgoing tenant founded upon certain alleged breaches of the conditions of the lease during the whole course of the tenancy. There had been two extensions of the lease during the period without the landlord having suggested that the conditions were being violated.

Circumstances in which *held* that there had been no breach. *Observed* that the fact that no objection had been taken at the time to the course of working adopted by the tenant, and the subsequent renewals of the lease, were important elements in showing that there had been substantial compliance with the provisions of the lease.

By minute of lease dated 28th December 1882, entered into between the trustees of Mr and Mrs Steel, and Mr William Wilson, contractor, Kilsyth, of the second part, the first parties let to the second party the whinstone quarry of Overcroy, Dumbartonshire, for the period of five years from Candlemas 1883. The lease contained the following provisions—"*Second*, The second party binds himself to carry on the operations of quarrying and removing stone in a regular and systematic manner with one continuous wall or face; and always to quarry out the whole rock to the level or bottom as the work proceeds; and when breaking ground, to preserve and carefully lay aside what arable soil may be obtained; as also to deposit the whole tirring and refuse of the workings on the ground quarried out, and spread the same, with all such arable soil, on levels corresponding with the adjacent lands; the whole operations to be performed to the satisfaction of the first parties or their surveyor, who shall at all times have access to the whole workings and operations; and the tenant shall also be bound regularly to drain off the water from the quarry workings, and to erect, so far as not already done, and maintain at all times sufficient fences