

principal debtor, and cautioner stand jointly and severally bound as full debtors therefor." And with these variations, it is ordered and adjudged, that the said interlocutors of 5th December 1811, and 21st January 1812, be, and the same are, hereby affirmed, with £147 costs, to be paid to the respondents, Messrs Glynn and Hallifax.

1816.

HENDERSON
v.
GLYNN, &c.

For the Appellant, *Sir Saml. Romilly, Mat. Ross, Alex. Irving.*

For the Respondents, *Messrs Glynn and Hallifax, John M'Farlane, W. G. Adam.*

For the Respondent, *Mr Selkrig, Wm. Adam, John Leach, John Clerk, Jas. Moncreiff.*

NOTE.—Unreported in the Court of Session.

[Dow., vol iii., p. 233.]

1815.

WM. BAYNE, Esq. of Newmill,	<i>Appellant;</i>
JOHN WALKER, Tenant in Newmill,	<i>Respondent.</i>

BAYNE
v.
WALKER.

House of Lords, 3d July 1815.*

LANDLORD AND TENANT—DESTRUCTION OF SUBJECT LET, BY FIRE—CULPA.—In the Court of Session it was held where the farm-house of the tenant was burned down by accidental fire, that the landlord was liable to rebuild the house. Reversed in the House of Lords.

The appellant is proprietor or landlord, and the respondent tenant, of the farm of Newmill, in the county of Fife.

At a time when the respondent's wife was confined to bed of severe indisposition, the farm-house was, unfortunately, burned to the ground, without any blame attachable to the respondent; and the present action was raised by him, first, before the sheriff, and afterwards insisted on before the Court of Session, insisting that the farm-house should be re-built by the appellant, or that the respondent should be empowered to re-build it himself, and to retain the rents until the expense should be paid.

In defence, the appellant stated that a landlord was not

* Omitted at its proper date.

1816.

 BAYNE
 v.
 WALKER.

bound, in any case, to re-build a farm-house destroyed by accidental fire.

On proof, it appeared that there was a wooden bed situated about forty inches from the fire-place, containing straw in the bottom of it, with part of the straw sticking out through the bottom, in the spaces between the deals, and it was in this bed that the fire originated.

Both the judgment of the sheriff, and (when taken to the Court of Session), the Court, held the landlord, appellant, liable to re-build the farm-house, it appearing that there was "no evidence of culpable negligence on the part of the tenant, sufficient to subject him in the expense of re-building the house in question."

The appellant brought the present appeal to the House of Lords, pleading, 1st, That the fire was occasioned without any fault on the part of the landlord, or for which he could be answerable by law. 2d, That where he has been guilty of no fault, the landlord is not bound to undergo the loss arising from damage done by fire. 3d, That the landlord is not liable *ex lege* to maintain his tenant in possession of the subject let, and to repair or replace the same when any part of it is destroyed by any fault or accident not imputable to the tenant. 4th, That there was no obligation in the lease to subject him in such liability.

After hearing counsel,

The Lord Chancellor addressed the House (*vide* speech in Dow's Report), and proposed the following judgment, which was carried accordingly.

It is ordered and adjudged, and the Lords find that the respondent, by his petition to the sheriff-depute of Fifeshire, required that it might be found that the appellant was liable to re-build the dwelling-house on the farm of Newmill, and to put it in the situation in which it was before the fire in the proceedings mentioned; and that the appellant might be decerned immediately to do so, and failing of his doing so, to grant warrant to the respondent to re-build and repair the said house, and to find the appellant liable in the expense thereof, and to allow the respondent to retain his rent until the said expense should be paid; and the Lords are of opinion, and find, that the appellant is not liable to re-build the said dwelling-house, as prayed by the said petition, sup-

posing there was no culpable negligence on the part of the respondent; and, therefore, and inasmuch as no other relief is sought by the said petition, the Lords find that it is not necessary for them to consider whether there was or was not evidence of culpable negligence on the part of the respondent, sufficient to subject him in the expense of re-building the said house; and it is therefore ordered and adjudged that the several interlocutors of the sheriff-depute of Fife, and the several other interlocutors complained of in the said appeal be, and the same are hereby reversed; and that the defender be assoilzied in the process before the sheriff, without prejudice to the question, whether there was culpable negligence in the respondent; and without prejudice to any question whether the respondent is entitled to any other relief than the relief prayed in his said petition to the sheriff-depute of Fifeshire.

1816.

BAYNE
v.
WALKER.

For the Appellant, *William Adam, John Macfarlane.*

For the Respondent, *David Cathcart, Robt. Bell.*

NOTE.—The case, as thus disposed of, was expressly meant to decide the general question of law as to the landlord's non-liability to rebuild the house for his tenant, when burned down by accidental fire.

1816.

ALEXANDER CAMPBELL, JAMES CAMPBELL, JOHN MACMURRICK, WILLIAM ALSTON, and DAVID M'CULLOCK, all Merchants and Underwriters in Glasgow, } *Appellants;*

CAMPBELL, & C.
v.
HAMILTON, & C.

JAMES HAMILTON, Senior, and COMPANY,
Merchants in Glasgow, *Respondents.*

House of Lords 29th June 1816.

INSURANCE—UNSEAWORTHYNESS—An insurance on the cargo of a vessel from Greenock to New York was held to be good—the objection, that the vessel was lost, owing to her unseaworthiness prior to her commencing the voyage insured, not having been proved in evidence.

An insurance was effected on a cargo of goods shipped at