feu; he may pull down one and put up another when he pleases, and will do nothing in contravention of the provisions of the feu-charter so long as he has only one house and offices at a time built upon the feu, to the building of which the superior cannot refuse his consent. Now, the vassal here says that he began by erecting upon a corner of his feu a small house, which might do for all the house he was going to erect, but was put in such a position that it might serve as one of the offices of a large house to be afterwards built. There may be some reason in that, but we cannot decide this question upon that footing. Upon this ground I am of opinion with your Lordship that the Lord Ordinary's judgment should be affirmed and the reclaiming-note dismissed.

Lord Craighill—I concur with your Lordships and in the interlocutor of the Lord Ordinary. I confess there does not appear to me to be any difficulty in the case. The action is brought to have it declared that the defender has incurred the irritancy of his feu and lost his right to the subjects *ob non solutum canonem* by reason of his failure to comply with the conditions of the feu-contract. Now, the alleged failure consists in the non-payment by the vassal to his superior of at least two years' feu-duty. The fact is that a good deal more than two years' feu-duty is in arrear. But that which is said in defence is, that the vassal had asked the superior to do certain things in regard to the erection of buildings upon the feu, but that he had refused to do so, and that therefore the vassal was entitled under the rule of law as laid down by Mr Bell to withhold the payment of the feu-duty until the superior duly performed his part. Well, if the vassal had been plainly right and the superior wrong on the face of the feu-contract there might perhaps have been something to say for the vassal's position. But there is a dispute between the two parties as to the proper construction of the feu-contract, and while this contention subsists between the parties I think that to affirm what is stated in defence would be to make the vassal judge in his own cause. I am therefore of opinion with your Lordships that the reclaiming-note should be refused.

Lord Rutherfurd Clark—I am of the same opinion. I think we may fairly postpone the signing of the interlocutor for a fortnight.

Lord Justice-Clerk—I would only wish to say that in regard to the point raised by Lord Young as to whether the vassal would be acting in contravention of the provisions of the feu-charter if he were to erect buildings upon his feu after the date at which he was taken bound by the charter to erect them, I understand that your Lordships have expressed no opinion upon that matter at all.

The Court, after giving the defender an opportunity of purging the irritancy, refused the reclaiming-note, and adhered to the interlocutor of the Lord Ordinary.

Counsel for Pursuer—Gloag—M'Clure. Agents—Cumming & Duff, S.S.C.

Counsel for Defender—Rhind—Baxter. Agent—William Officer, S.S.C.

Friday, June 25.

FIRST DIVISION.

SINCLAIR, PETITIONER.

Judicial Factor — Curator bonis — *Process—Petition for Recal.*

A petition for recal of an appointment of a *curator bonis* who had been appointed by the Junior Lord Ordinary *held* to be competently presented in the Inner House.

The Act 20 and 21 Vict. c. 56, section 4, enacts that "All summary petitions and applications to the Lords of Council and Session which are not incident to actions or causes actually depending at the time of presenting the same shall be brought before the Junior Lord Ordinary officiating in the Outer House, who shall deal therewith and dispose thereof as to him shall seem just, and in particular all petitions and applications falling under any of the descriptions following shall be so enrolled before, and dealt with and disposed of by, the Junior Lord Ordinary, and shall not be taken in the first instance before either of the two Divisions of the Court, viz.— . . . (4) Petitions and applications for the appointment of judicial factors, factors *loco tutoris* or *loco absentis*, or curators *bonis*, or by any such factors or curators for extraordinary or special powers, or for exoneration or discharge." . . .

This petition for recal of the appointment of *curator bonis* to a lunatic, who was stated in the petition to have recovered, and to be capable of managing his own affairs, was presented in the first instance in the Inner House. The curator had been appointed by the Junior Lord Ordinary on January 6, 1886.

On the petitioner craving order for intimation and service, the competency of presenting such an application in the first instance was doubted. It was argued by the petitioner that the Court of Session (Scotland) Act 1857 did not expressly authorise the Junior Lord Ordinary to deal with applications for recal as distinguished from applications for exoneration and discharge—*Simpson, Petitioner*, Jan. 11, 1860, 22 D. 350; *Lawson, Petitioner*, Dec. 19, 1863, 2 Macph. 355; and these unreported cases—*M'Innes*, Nov. 13, 1867; *Milne*, Nov. 13, 1867. The petition was therefore properly presented in the Inner House.

The Court ordered intimation, and thereafter on resuming consideration of the petition, no answers to which were lodged, recalled the appointment as craved.

Counsel for Petitioner—Guthrie. Agents—John C. Brodie & Sons, W.S.

Saturday, June 26.

FIRST DIVISION.

[Sheriff-Substitute of the Lothians.

M'GOVAN *v.* TANCRED, ARROL, & COMPANY.

Reparation — Master and Servant — Employers Liability Act 1880 (43 *and* 44 *Vict. c.* 42), *secs.* 4 *and* 7—*Delivery of Notice of Injury.*

Held that it was sufficient under sections 4 and 7 of the Employers Liability Act 1880