(in the last paragraph of his opinion) that as to the second parcel "the defenders concede that they must pay the sum claimed by the superior—that is to say, a year's rent of the feu—because by their infeftment in the first parcel they became proprietors of land exceeding the stipulated value—that is to say, three chalders victual in yearly standing rent."

The controversy therefore relates to the liability of the defenders for a year's rent of the first of the subjects described in the conclusions of the summons, and the answer depends upon the construction to be put on the second part of the obligation, by which the superior binds and obliges himself, his heirs and successors, "to accept and receive the heir or heirs of the saids John Ware, Archibald Buchanan, and George Macindoe, respective and successive, in and to their particular parts of the foresaid 20s. land, with the pertinents as above described . . . and also shall receive in and to the foresaid lands any tenant that shall happen to buy the same frae the saids persons, or ony of them, or their foresaids, the buyers thereof not exceeding the rank above written."

This latter provision is that with which alone we are now concerned, though for its interpretation it is necessary to take into account the first part of the clause which has just been quoted. The pursuer contends that the true interpretation is, that the obligation to receive "in and to the foresaid lands any tenant that shall happen to buy the same fra the saids persons, or ony of them, or their foresaids," is only to receive any buyer from these persons or their heir or heirs.

The defenders, on the other hand, contend that the obligation extends not only to buyers from the original feuars, or their heir or heirs, but also to buyers from buyers or their heir or heirs. The Lord Ordinary has adopted the latter view, and I concur in his judgment, the reasons for which are explained in his note. My view of the matter is short and simple. I think that by the words "from the said persons, or any of them or their foresaids," we are referred back to the dispositive clause of the feu-contract, which bears that the superior has "set and in feu-ferm and heritage perpetually demites, as he by their presents sets, and in feu-ferm and heritage perpetually demites, to the said John Wair and his heirs whatsomever or assignees (wha shall not exceed three chalders victual in yearly standard rent) heritably, perpetually, and irredeemably, all and whole," &c. The assignees who are here mentioned are not merely those to whom assignation has been granted before infeftment on the feu-charter was expede, but "ony tenant that shall happen to buy the same from the saids persons or ony of them or their foresaids." These assignees are entitled to acquire the lands; they are entitled—for that is the clear implication—to convey the lands, and those to whom they convey, as much as the assignees themselves, are entitled to an entry on the terms which are specified in this clause of obligation.

This appears to me to be the true, and it is the natural interpretation, for the idea that a buyer from an heir was to be received by payment of a taxed composition, and that a buyer from him was to be received only on payment of a year's rent, is a fanciful and unreasonable intention to ascribe to a superior.

The view of the contract taken by the Lord Ordinary seems to me to be warranted by the terms of the feu-contract itself, and to be recommended by the considerations which influenced him in reaching his conclusion.

With reference to the other question, whether the defenders are not in the sense of the feu-charter "three chalder men," I think it unnecessary to say anything, as that subject is as good as exhausted by the explanation given by the Lord Ordinary.

The Court adhered.

Counsel for Pursuer (Reclaimer) — D.-F. Mackintosh, Q.C.—Dundas. Agents — Dundas & Wilson, C.S.

Counsel for Defenders (Respondents)—Pearson—W. Campbell. Agents—Murray, Beith, & Murray, W.S.

Tuesday, January 25.

SECOND DIVISION.

GILLIGAN *v.* MILNE & COMPANY.

Master and Servant — Reparation — Employers Liability Act 1880 (43 *and* 44 *Vict. c.* 42), *sec.* 1.

A labourer was injured while removing logs from a pile to a cart by the pile falling on him. He raised an action against his employer stating that the workmen who formed the pile had done so carelessly, that he had never been instructed as to the proper mode of taking it down, and was unskilled in such work, and that the foreman was present when he was taking it down in an improper way, and did not interfere with him. *Held* that the work to which he had been put being ordinary unskilled labour, there was no blame attachable to the master or his foreman in sending him to do it without special instruction, and that no relevant averment of fault had been made. Action therefore *dismissed*.

This was an action of damages for bodily injury raised by Peter Gilligan, a labourer, against his employers George Milne & Company, shipowners and timber merchants, Aberdeen. The action was laid both at common law and under the Employers Liability Act 1880.

The pursuer was a labourer in the defenders' woodyard, and on 29th July 1886 his leg was broken by the fall upon him of some planks of wood which had been piled in the defenders' yard, and which he was assisting to remove to a cart.

In the record (as amended) he averred that there was a foreman over the squad of four men to which he belonged, and that neither he himself nor any of those working with him had ever been instructed how to conduct the work of taking the wood from the piles to the carts. "(Cond. 3) The logs or planks, which were of considerable weight, measured 20 feet long, and were 6 inches by 3 in breadth and depth, were piled up in tiers or ranks to the height of about 6 feet. They were not piled in such a way as to insure safety to the men working at them. The planks were cut at

the saw-bench by men working by the piece, who (to save time) piled them in a very careless manner, and in consequence the tiers were very unsteady, and very liable to fall. Moreover, several logs were, without the pursuer's knowledge, built in between the backmost tier and the wall so as to rest or press against the said tier, and its unsteadiness was thereby increased. Further, it is averred that the logs were piled in an unusual place (viz., inside the mill), and so near the saw-bench, that there was not sufficient room for the work of removal, and that the want of proper space added to the difficulty and danger of the operations. There were no 'binders' on the tiers to prevent them from falling, so in the circumstances mentioned it was dangerous to remove the logs tier by tier, and they should have been removed flat by flat. The pursuer and his fellow-workmen were, however, in ignorance of the danger, and were also unskilled and inexperienced, and they proceeded under the direction of the defenders' foreman, to whom the superintendence of the work had been entrusted by the defenders, to remove the logs tier by tier. The foreman saw them at the work, and it was his duty to have pointed out to them the danger, and to have provided against it, but he gave no warning and no directions to them." He then set out (Cond. 4) that when two of the three tiers had been taken down, and he was taking the topmost plank off the remaining tier, the tier bulged out and fell on him, and caused the injury in respect of which the action was raised. "Had the planks been built up at a sufficient distance from the saw-bench the pursuer could have escaped; as it was, he was jammed against the bench." "(Cond. 5) The said accident was due to the fault and negligence of the defenders, or of those for whom they are responsible, in not exercising reasonable care in the proper building of the pile in question, or in failing to instruct the pursuer and those associated with him how to perform the work. The foreman, after the accident happened, said that the pile should have been taken down by reducing all the tiers equally. Had the foreman so instructed them at the commencement of the job, or sent an experienced man to work with the squad, the accident would not have occurred."

The defenders denied fault, and alleged that in any view there was contributory negligence. They maintained also, on the record as amended in the Court of Session, that the pursuer's statements were irrelevant.

Proof having been allowed, the pursuer appealed for jury trial, and proposed an issue for the trial of the cause.

The defenders objected that there was no issuable matter on record, the only averment of fault of a specific kind being made as to the fault of the ordinary workman who had piled the logs. The work was certainly ordinary labouring work, which required no special skill, so that the pursuer's averment, that though unskilled he had been put to work without instruction in it, did not raise any relevant case against the defenders.

The pursuer admitted that he had not set out a case on which an issue should be granted at common law, but argued that he was entitled to an issue under the Act. The averments showed that the foreman was present, and did not interfere to prevent ignorant men doing the work in an unsafe way. That was tantamount to an order so to do it.

At advising—

Lord Justice-Clerk—My own inclination has always been to give the fullest opportunity to workmen to take advantage of the Employers Liability Act, which was passed for their protection, and I would not be readily moved from such construction of the Act by subtle distinctions. But there is here no specification of fault on the defenders' part, or on the part of those for whom he is responsible, which it is possible to sustain as relevant. The duty of the pursuer as he states it, was to assist, as one of a squad of four men, to remove some logs to another place. This was just a very ordinary piece of labour, and ordinary common intelligence would have enabled him to see to his safety in the work. Apparently the duty was not properly discharged, and the logs came down and fell on the pursuer's leg and broke it. There is no specific fault alleged as to a wrong method of piling. It is said somewhat falteringly that there ought to have been binders there. But, on the whole, I am of opinion that we have no case here for making the employer liable.

Lord Young—I am of the same opinion. If the employer had been there himself the action would have been direct against him for any fault committed in the work, because he was the only person to be made responsible, and the allegation would have been that he (the master) had failed in his duty to the labourer in not seeing that the workmen removed the logs in a safe way. I could not have sustained it for a moment, nor is the Act of any further moment than to make the master responsible in certain cases where prior to the Act he was not responsible for the fault of someone put to do the master's duty instead of himself. Under the common law prior to the Act he was not responsible for the fault of anyone put by him (the master) to do his, the master's, duty. The Act corrects this, and declares that he shall be liable for anyone put to do the master's duty. But there is no relevant averment of fault against the foreman here, and it is only the foreman's fault for which the master is liable under the Act, and there is none alleged. We look somewhat carefully in this class of cases to the kind of work, and we would be disposed to favour an action where a master sets an unskilled workman to a dangerous work requiring skill in order to its careful performance. But here the character and kind of work was of the most ordinary description. Of course even the most common-place work may be so performed as to lead to an accident, and such frequently happens, but then the master is not responsible.

On the whole matter, looking to the character of the work and all which is alleged about it, I am of opinion that neither at common law nor under the Act is there any case for imposing liability.

Lord Craighill—I am of the same opinion. I do not think the fault here can be imputed to the defenders or to any workman for whom they were responsible. Were we to hold the Act to apply, I think we should be making it an Act giving protection to workmen against themselves.

I quite agree with Lord Young that where the work requires skill for its performance the workman is entitled to protection. Here, however, the work was of the plainest description, and the workman was to blame in not using his own eyesight.

Lord Rutherfurd Clark concurred.

The Court sustained the plea that the action was not relevant, and dismissed the action.

Counsel for Pursuer—Wilson. Agents—Macpherson & Mackay, W.S.

Counsel for Defenders—Sym. Agents—Cuthbert & Marchbank, S.S.C.

Tuesday, January 25.

OUTER HOUSE.

[Lord Trayner.

REID *v.* REID AND OTHERS.

Jurisdiction—Curator bonis—*Appointment in Respect of Moveable Property in Scotland.*

A man who was in business in England, and the bulk of whose estate was heritable, and situated in England, came to Scotland for a temporary purpose, and while in Scotland became insane and was committed to an asylum. In a petition by his wife to have a *curator bonis* appointed to him, the Lord Ordinary appointed a *curator bonis*, but made the appointment only *ad interim*, in order that proceedings might be taken, if deemed advisable, to have his estates put under management in England.

Mrs Caroline Jane Rodhouse or Reid, 22 Nile Grove, Edinburgh, presented this petition for the appointment of a *curator bonis* to her husband George Reid. She averred—"The said George Reid, who was sometime a land-agent, and resided at Einhallow, Addiscombe, Croydon, London, has for some time past had his only residence and domicile in Edinburgh, and latterly resided at No. 5 West Maitland Street there. He was on the 31st day of December last 1886 committed to the Royal Asylum, Morningside, Edinburgh, under warrant granted by the Sheriff of the Lothians and Peebles, and he still remains there."

She further averred that in consequence of mental derangement Mr Reid was incapable of managing or of giving directions for the management of his affairs, and produced medical certificates to that effect. The amount of the said George Reid's estate was not definitely known to the petitioner, but she averred that he possessed personal estate of considerable value in addition to landed property in England, and that his whole estate amounted to several thousands of pounds. There were five children of the marriage, the eldest of whom was fourteen years of age, and in these circumstances the petitioner craved the appointment of a *curator bonis* to her husband.

Answers were lodged for Mr Reid, and also for Charles Frederic Cameron, London, his attorney, Mrs Eleanor Reid or Richardson, his sister, and for Miss Lena Reid and Miss Mary Reid, his daughters.

The respondents admitted that Mr Reid was a native of Scotland, but averred that for many years he had been in business in London; that almost the whole of his estate consisted of real property and building ground acquired by him at various times in the immediate neighbourhood of London; that shortly after coming to Edinburgh, which he did in order to see his children who were at school there, about seven months before the petition was presented, Mr Reid executed a power of attorney in favour of the respondent Charles Frederic Cameron, solicitor, of Gresham House, City, London, for the management of his property in England in the districts above referred to; that Mr Reid's real estate consisted of sixteen freehold houses with rents varying from £25 to £65 a-year, and of six leasehold houses, one of which was leased at £145 a-year, and the rest worth about £25 to £30 a-year, together with sundry pieces of building land in Woolwich and elsewhere in the neighbourhood of London; that his personal property consisted of a few shares in English and foreign companies of purely nominal value, and of cash in bank; that the freehold and leasehold property was heavily mortgaged, and it was of such a nature that though there was a considerable surplus rent available for the maintenance of Mr Reid and his family, great care and attention was required to keep the subjects fully let and in good repair, and as the selling value did not in any way correspond with the rental, any hostile action by the mortgagees by way of foreclosure would lead to results most disastrous to the estate. Further, that Mr Reid had in England certain disputed claims both by and against him, involving from £1200 to £1500, which would require much skill and care for their settlement; and that he had no property whatever in Scotland other than money either in cash or in uncashed bank drafts left in care of a friend. "In these circumstances application is in course of being made in England for the appointment of a Committee in Lunacy of Mr Reid's estate, and the appointment of a *curator bonis* in Scotland even if competent would greatly embarrass its proper management, and would be inexpedient and inconvenient."

The following authorities were quoted for the petitioner—*Dalrymple* v. *Ranken*, January 25, 1836, 14 S. 1011; *E. of Buchan* v. *Harvey*, December 21, 1839, 2 D. 275; *Murray* v. *Baillie*, February 24, 1849, 11 D. 710; *Bonar*, November 12, 1851, 14 D. 10; *Hay and Others*, July 16, 1861, 23 D. 1291; *Sawyer* v. *Sloan*, December 17, 1875, 3 R. 271. Inquiry was competent in petition for curator although opposed by lunatic—*Bryce* v. *Graham*, January 25, 1858, 6 S. 425; *Macfarlane*, November 12, 1847, 10 D. 38; *Irving* v. *Swan*, November 7, 1868, 7 Macph. 86; *Yule*, November 29, 1861, 19 S.L.R. 140. In regard to English lunacy proceedings—Elmer on Lunacy Practice, pp. 5, 11, 17, 20; Lunacy Regulation Acts of 1853 and 1862, 16 and 17 Vict. c. 70, sec. 45, and 25 and 26 Vict. c. 86. A Scotch appointment of *curator bonis* can be recorded in England and have the effect of an inquisition there—*in re Talbot*, 1882, 20 Chan. Div. 272, *per* Jessel, M.R.; *in re Bruere*, 17 Chan. Div. 775.

The Lord Ordinary appointed a *curator bonis ad interim.*

"*Opinion.*—If Mr Reid had heritable estate in