Edinburgh, and to which my noble and learned friend has referred. Beyond all doubt every one of these documents existing and having their origin in the 17th century is favourable to the case of the appellant, and unfavourable, in my judgment, to the case of the respondents. I attach very much less weight to the authorities dating from the year 1700 (I refer to those in the 18th century) because at that time the jurisdiction had then been transferred, as has been said, from the Teind Commissioners to the Court of Session, and under that transfer the business was to be conducted in the Court of Session as a regular civil suit. When that was the law it was the most important thing in the world, that the Court of Session should require every person who had the same sort of interest which is represented in a civil suit to be called in any proceeding before the Court of Session sitting as the Commissioners of Teinds. But even with regard to all those authorities running down from the year 1700, putting aside one or two recent cases which have been referred to, which may be said now to be under review, as well as the particular case upon which we are now engaged, it appears to me that several of them have been founded upon the *Purvishaugh case*, which clearly must be given up as a binding authority for the purpose we are discussing, and as to the others of them, it appears to me, that they do not all establish the purpose for which they are cited of shewing, that the stipendiary must have been called in proceedings of this kind.

I am very glad my noble and learned friends have arrived at the conclusion to which they have come. I entirely concur with them in that conclusion. I think there is nothing special in these particular cases to exempt them from the general conclusion, and I am quite prepared to concur in the motion made by my noble and learned friend.

Sir Roundell Palmer.—Will your Lordships allow me to remind you that by the interlocutors below the appellants have been ordered to pay and have paid expenses? Of course that will be set right in your Lordships' judgment.

LORD CHANCELLOR.—I apprehend this will be the proper course. Turning to *Skene's case*, where we find the interlocutors of the Lord Ordinary, it will be sufficient to reverse that interlocutor so far as it "Finds, that the appellants in this cause, Henry David Forbes, John Gordon Cumming Skene, James Gordon Hay, and Major Paton, have not produced valuations of their respective teinds which can be sustained as effectual against the ministers of the parish, and decerns: Finds them respectively liable to the objectors in expenses, allows an account thereof to be given in, and remits the same when lodged to the auditor to tax and report." That will be reversed, and this House will probably direct to be substituted for it a finding, that the teinds of the appellants' lands have been valued under the decree in each case, and are not liable for additional stipend.

LORD COLONSAY.—The interlocutors of the Inner House will also be reversed, I suppose.

LORD CHANCELLOR.—Yes, this will be put in proper form. The question I shall have to put to your Lordships will be, that the interlocutor of the Lord Ordinary and of the Inner House be reversed so far as they affect the several cases of the appellants, and that the words I have read be struck out, and that in lieu thereof we find, that they have established their valuation, and that they are not liable to be localed upon for teinds. Your Lordships will also further direct that the expenses paid by the several appellants be repaid to them by the respondents.

Mr. Anderson.—And that the appellants should have their costs below?

LORD CHANCELLOR.—No, there are several other parties who are not before us now who have proved their valuations, and as regards them they neither pay nor receive expenses.

Interlocutors reversed, with a finding and directions as to the repayment of expenses in the Court below.

Appellants' Agents, Henry and Shiress, S.S.C.; W. and H. P. Sharp, Old Broad St. London; Loch and Maclaurin, Westminster; J. Auld, W.S.; Burchells, Westminster.—*Respondents' Agents*, H. and A. Inglis, W.S.; Martin and Leslie, Westminster.

FEBRUARY 28, 1871.

JOHN COPLAND, *Appellant*, *v.* HON. MARMADUKE CONSTABLE MAXWELL, *Respondent.*

Landlord and Tenant—Trout Fishing—Artificial Pond—Implied Exception—*M., the owner of a farm in which he had made an artificial pond, which he stocked with trout, let the farm to C. for nineteen years for agricultural purposes, there being no express stipulation in the lease as to the pond. The previous tenant H. had not fished the pond, and the subjects were let "as presently possessed by H."*

HELD (affirming judgment), *That the fishing in the pond having been treated as a separate subject, was not conveyed by the lease to C., and that C. had no right to fish for trout with rod and line in such pond without the landlord's consent.*

SEMBLE, *at common law, the right to take trout in the streams and lakes of an agricultural farm, is impliedly excepted out of the lease, and reserved to the landlord*—Per *Lords* WESTBURY *and* COLONSAY.[1]

This was an appeal from a decision of the Second Division. The respondent, Mr. Maxwell, was proprietor of the estate of Terregles in Kirkcudbrightshire, and in 1863 he let a farm on that estate, called Mainshead or Prospect Hall, to the appellant for nineteen years. On the edge of the farm there was an artificial pond lying between the farm and other lands of the respondent. The pond had been made in 1849, to supply a tile work, which had since been discontinued; and the respondent had stocked it with fish, chiefly trout, but there were also some parr and salmon. The pond was a mile from Mr. Maxwell's residence. In the record the respondent set forth, that he and his family had been in the habit of fishing in this pond, and that when he let the farm to the appellant for agricultural purposes only, he did not intend to include the use of the fishing of the pond to the tenant. But recently the tenant had begun to fish in the pond, and asserted his right to do so, and attempted to exclude the respondent and his friends from the fishing. On the other hand, the tenant, in his part of the record, stated, that he had retired from business, and when he offered to take the said farm a plan of the lands then shewn to him shewed, that the pond was part of the farm, that the lease contained certain exceptions and reservations, but did not reserve the pond or the fishings therein to the landlord; that he had, since he became tenant, constantly washed his sheep in the pond, and fished for the brown trout that frequented the pond, and the previous tenants had done so also. When he took the farm, he had in view an agreeable residence, as well as an agricultural use of the lands; that the landlord cannot get to the pond without trespassing on the tenant's land; and therefore, that the right of fishing belonged to the tenant.

The proceedings commenced in the Sheriff Court with a petition of the respondent to interdict the tenant from fishing in the pond. The Sheriff substitute granted interim interdict. The Sheriff, however, on appeal, altered this order, and granted a proof of the averments. Another petition having been presented, there was an advocation. Lord Barcaple, after proof, pronounced judgment in favour of the tenant, holding that, as the lease did not specially except the fishing, the tenant had at common law the right to fish for trout with the rod in the pond. On appeal, the Second Division, consisting of Lord Justice Clerk Patton, Lords Cowan and Neaves, reversed the interlocutor, holding, that where such a lease is silent, the right of catching trout in the streams belongs to the landlord and not to the tenant. The tenant now appealed against the judgment.

Lord Advocate (Young), *Manisty* Q.C., and *Brand*, for the appellant.—The decision of the Court below is wrong. At common law a tenant of an agricultural farm has the right to catch all the fish he finds in the streams within the farm, unless the lease expressly excludes him. There is no express authority either for or against this proposition, and it is most in harmony with the other admitted principles of the contract between landlord and tenant—*Mackenzie* v. *Rose*, 6 W. S. 31. It is true there is a *dictum* of Mr. Hunter to the contrary in his treatise on Landlord and Tenant, but no authority is cited. If no right of property was to be deemed to pass to the tenant under his contract, except what is useful for agriculture, it would preclude the tenant from catching the birds or small animals frequenting his lands. The only exception to this rule is that regarding game, but that is an anomaly traceable to the old doctrine, that the ownership of a ploughgate of land was a necessary qualification to catch game—1621, c. 31. Thus the tenant is entitled to kill foxes—*Colquhoun* v. *Buchanan*, M. 4997; and rabbits—*Moncreiff* v. *Arnot*, 6 S. 531. The case of *Duke of Richmond* v. *Dempster*, 4 Irvine, 10, whether rightly or wrongly decided, applied only to catching trout with nets, and the question as to rod fishing was left open in that case.

Here there is nothing in the lease or in the evidence to shew, that the landlord reserved or excepted the use of the pond from the lease, and a pond is merely an enlargement of the running stream, and subject to the same laws. And it cannot be said, that the fish in the pond, any more than in the running water, were the property of the landlord, for they are *res nullius* until captured.

Sir R. Palmer Q.C., and *J. T. Anderson*, for the respondent, were not called upon.

LORD CHANCELLOR HATHERLEY.—My Lords, in this case the appellant complains of two interlocutors, one by the Sheriff substitute and the other by the Court of Session, interdicting the appellant from fishing in a certain pool or stream, whichever it may be called, which adjoins the property occupied by him, under a lease or tack for agricultural purposes. The pond or pool

[1] See previous reports 7 Macph. 142: 41 Sc. Jur. 79. S. C. L. R. 2 Sc. Ap. 103: 9 Macph. H. L. 1: 43 Sc. Jur. 246.

is of this description; it is fed by small streams. Those streams are said in the evidence to be occasionally absolutely dry in summer. It was originally a swampy place. There is some tradition, but there is no distinct evidence upon that subject, of its having been formerly a loch, but it was a species of swamp, and not of any great use to the person occupying the adjacent farm for agricultural purposes. It was let originally to Mr. Herbertson, who is still alive, and who is a witness in the cause; and when it was so let to him originally, it appears, as far as we can see, to have comprised the pond in question. That is a matter of some dispute; but, at all events, subsequent transactions make that dispute of very little importance.

In 1849, while it was thus occupied by Herbertson, the proprietor, the present respondent, was minded to make use of this pool for the purpose of supplying certain tile works which he had on another farm, which marched on one side of the pond, as the farm now occupied by the appellant marched on the other side of the pond. He accordingly applied it to this use, and made certain arrangements for that purpose, pulling down a certain hatch, or something of that sort, through which the pond was to be fed, and a certain dam was constructed. It afterwards occurred to him, before the year 1853, in the year 1852, that he would like to make use of this pool (which had been thus formed by means of the damming and the other operation which he had carried on in order to use it for the title work) as a receptacle for trout, and he accordingly put a grating at the issue of the pool, which pool would naturally otherwise issue into the unrestricted stream finding its way thereby into the river Nith. He put a grating across that part of it which would prevent the fish passing down the stream, and he then took a number of fish, which he had collected for the purpose, and placed them in this pool. The fish, therefore, were so placed, that in summer time they would have no exit whatever, inasmuch as there would be the grating to prevent their descending to the Nith, and the streams above which fed the pool would be dry. At other times, when the streams were not so dry, they might have the means of finding their way upwards, but down the stream they could not pass. He further, somewhere about the end of the year 1852, in order to secure this as a place for fishing, placed stakes at the bottom of the pool in order to prevent any fishing by means of a net.

In this state of things a new tack was had of the farm as an agricultural farm by Herbertson, the original tenant, and with him was associated his nephew Mr. Richardson, who also gives evidence, and Herbertson's statement of the whole matter is this: He says—"When this operation took place for the tile work, I made no objection, and whether the pool was to be taken as included in my tack or not, I certainly did not in the slightest degree intimate any dissent from the pool being dealt with in the way described, namely, being converted into that which would be pleasurable to the landlord as a place in which the landlord might fish;" and he says distinctly, that from that time, that is to say, from the time when the pool was so appropriated, he did not consider that as property which was subject to his tack, and further, that he never had any desire from that time forth, nor, as he thought, had he any right, to interfere with the use to which he had allowed the pool to be appropriated. His impression was, "I thought it was better occupied." Whether he meant in the strict technical sense of being occupied as a tenant occupies land I know not; but he said, "I thought that it was better occupied than when it was simply a morass which was of no use to me, and therefore from that time I conceived that I had done with the pool."

The nephew does not give evidence of exactly the same character. He is called by the appellant, and the nephew, in his examination in chief, says—"I fished in the pond several times." That "several times" turns out, in cross examination, to have been three times in ten years, and on one single occasion only did anybody else fish with him, a man of the name of Alexander, a joiner, who fished with him for about half an hour. That is the extent to which either the uncle or the nephew appears to have exercised any right or control over the pool in any shape or way, except that both the uncle and the nephew seem to have made use of the pool for washing their carts, and I think for watering their cattle.

That being so, in 1862 the tile work was gîven up altogether, and about the same time the place was restocked, so that the landlord clearly intimated his intention to exercise, and did exercise, those rights which he appears to have resumed over this property. When this was done, the property was let to the present appellant, Mr. Copland, in 1863. He was to take it, (I think the expression is,) "as presently possessed by the existing tenant." That is the phraseology which is used in letting the property to him, and now, upon that state of facts, the question is, how far the appellant is justified in contending, that he has a right to fish in this pool.

The learned Judge, the Lord Ordinary, conceived that he had that right. The three learned Judges who disposed of this case in the Court of Session, each and all of them, came to the other conclusion, namely, that he had no such right. That decision was not rested by all the learned Judges upon precisely the same ground. Two of them took a twofold ground. First, that by the general law of Scotland it is not an accessory to an agricultural lease, that the tenant should have the right of angling or fishing in a stream passing through the land of which he had the tack; and secondly, that in this particular case, regard being had to all that had been done,

whether you regard the property as included in the tack or not, the appropriation of this pool as a fish pool had been permitted to proceed to such an extent, by what had been allowed to be done with reference to it, as to make the fish the subject of property. Passages were cited from Erskine's Institutes, and it was said, that according to the general rule of the civil law the fish had been appropriated, by placing them in the pool, from which they had no escape in summer, and only a partial escape in winter, so as to make them the subject of property. One learned Judge rested his judgment entirely upon what he conceived to be the general law of Scotland, namely, that the taking of a farm for agricultural purposes does not include the special right of fishing. But it appears to me, that upon the second ground alone, without thinking it necessary for the purpose of this case to say more upon the general law, or in fact anything at all upon the general law, where the other part of the case appears to me so clear, it is quite enough to say, that in the circumstances which here took place, it is clear that Herbertson, if he ever possessed the right at all of dealing with this pool for the purpose of fishing, entirely gave up that right when he allowed that to be done which I have described as having been done. The fish were clearly allowed to be appropriated as the fish of the landlord by those acts which took place, and having been so allowed to be appropriated as the fish of the landlord, and the property, having passed from Herbertson to Copland upon exactly the same terms and conditions as those under which it was held by Herbertson, Copland can no more take the fish than Herbertson himself could take them. It appears to me, that, independently of the question of the general law, these fish are not in the condition of fish simply swimming in a burn in a state of nature, taking their course down that burn, but they are most distinctly fish within the principle laid down by Erskine which applies to "fish in a fish pond, or birds" (as he describes it) "in a volary." In the case of fish which have been caught for the express purpose of being placed in a certain pond, and which are confined at all seasons of the year, it is not because there is an exit for them in a particular direction during certain seasons of the year, and because they can at certain other seasons of the year move in another direction, that they cease to be impressed with that character of property which the exercise of dominion over them in this fashion confers upon the person who has so appropriated them.

During the argument the case was put of a person who keeps birds in an aviary. It is exactly the same thing. He allows them to fly out, and they return to their haunt to which they have become accustomed. And just in the same way fish during certain seasons of the year naturally go where they have been at other times, and return to the place to which they have become accustomed, and from which they cannot pass at all downwards to the general stream.

It therefore seems to me, that the decision of this case may well be rested, independently of the principle of law, upon the circumstances and facts of the case as regards Herbertson's departure from any right or interest in the fish, if any such he had; and that Copland, taking exactly the same position from him, is in the same condition as regards the appropriation of this property and the exercise of its rights by the owner. Therefore I am of opinion, that in this case the interlocutors complained of should be affirmed, and that the petition of appeal should be dismissed with costs.

LORD CHELMSFORD.—My Lords, I entirely agree with my noble and learned friend. It is unnecessary on the present occasion to determine the general question as to the right of trout fishing in ponds upon farms under lease, as between the landlord and the tenant, because it will be quite sufficient in this case, as it appears to me, to decide it upon its special circumstances.

The pond in question was formed in the year 1849, by consent of Mr. Herbertson, the tenant, for the purpose of providing water power for a tile work belonging to the landlord. And undoubtedly, when that pond was originally formed, the landlord had a paramount right to the use of the water of the pond, with which the tenant could not interfere. The tenant had agreed to allow him that right, and to make whatever rights he might have as tenant subordinate to those of the landlord. The landlord afterwards, in the year 1853, stocked this pond with trout; he put up a grating for the purpose of preventing the trout escaping lower down, and he also, about that time, put down stakes to prevent persons fishing in the pond with nets. All this was done either with the consent of the tenant, or at all events with his allowance and submission, and undoubtedly it indicated the right and power of the landlord over that pond.

That was the state of things in the year 1853 when Herbertson, the former tenant, took a new lease. Now the question is what that lease included—whether with that lease the right of fishing for trout in this pond passed to the tenant. It is very important to consider what had been done by the landlord, with the consent of the tenant, under the new lease of 1853, previously to that time, and undoubtedly, as far as the appearance of exclusive right in the landlord goes, that seems to have been ceded to him by the tenant. Then did this lease of 1853 give to Herbertson the right of fishing? We have not the lease of 1853 before us, but we have the evidence of Herbertson upon the subject, and he would know perfectly well what passed to him under that lease. Now he was asked in the first place, with regard to the original construction of the pond, "Did you give up all right to the grounds whereon the pond was made?" And his answer I

should say is affirmative. "I was glad to see it better occupied than it was before." He then states the putting up of the sluice. There was a key to the sluice, which was kept by some of Mr. Maxwell's people. And he says—"I did not consider myself entitled to fish in the pond, far less to give leave to other persons." There we have the opinion of the tenant, and nobody can know better than he whether the right of fishing, which is the only question here, passed to him, under that lease of 1853. It is quite unnecessary upon the present occasion to consider whether the property in the pond passed to the tenant. It is enough to say, that, according to the tenant's own construction of the lease, which he received in the year 1853, he had no right of fishing in that pond.

Then the lease which is made to the appellant in 1863 is a lease of "the farm and lands of Mainshead and Prospecthall as presently possessed by James Herbertson and Robert Richardson." Now what was presently possessed by James Herbertson and Robert Richardson? James Herbertson tells you that he, at all events, was not possessed of the right of fishing, and therefore, as only that passed to the appellant which was "presently possessed by James Herbertson," it is quite clear, that the right of fishing did not pass to him under the lease of 1863.

Upon these short grounds I agree with my noble and learned friend, that the interlocutors should be affirmed, and the appeal dismissed with costs.

LORD WESTBURY.—My Lords, it must not for a moment be supposed that I cast, nor do I at all think that it was the intention of my two noble and learned friends who have already spoken to cast, the least degree of doubt or uncertainty upon the statement of the law of Scotland which is contained in the majority of these judgments now before us. I quite agree, that the special circumstances of the case would amount to conclusive proof to this effect, that it would be impossible to hold, that a right of fishing in this piece of water passed under the existing lease. But it might still be contended, on the part of the tenant, that, although it did not pass, yet as his land ran up to and bordered upon that piece of water, he would, in respect of the possession of his land, have a right to fish in the water. It becomes necessary, therefore, to apply one peculiar principle of the law of Scotland, namely, that an agricultural lease is so construed there as not to include, as passing to the tenants, a particular right which is not at all classed among agricultural purposes or a mode of agricultural enjoyment of a farm, and I think that it is clearly established, that by the law of Scotland a tack of an agricultural farm includes of course every right and every mode of enjoyment necessary for the purposes of the contract between the landlord and the tenant; but that, supposing that agricultural farm to contain pieces of land which border upon a running stream in which the exclusive right of fishing is in the proprietor, it never can be contended, consistently with the law of Scotland, that by reason of the tenant having a right to the agricultural enjoyment of the land bordering upon the river, he gets the right to use the river for another purpose, namely, the purpose of the enjoyment of fishing therein. I entirely subscribe to what is cited in this case from the treatise of a well known writer, Mr. Hunter, who says—"The right of hunting, shooting, and fishing, and exercising similar sports, subject to liability for damage, is also reserved *ex lege*." It does not stand in need of a special reservation; the law supplies that reservation.

Now, I entirely concur also with the leading passages which state that principle contained in the judgments of the Lord Justice Clerk and of Lord Cowan. The Lord Justice Clerk says—"If the right (that is, the right of fishing) be incident to the property of the lands, as it is universally said to be, the tenant can only claim to exercise it on the assumption that it has been communicated to him by the proprietor." This thing, therefore, which is wholly independent of the agricultural enjoyment of the land, must be shewn to have formed part of the tack or grant before an agricultural tenant can claim the right to this particular franchise.

So also it is said subsequently, and I think quite correctly, by Lord Neaves, who concurs generally with the Lord Justice Clerk—"There is no property in trout in the burn, any more than in the running water there." That is for the purpose of distinguishing this case from the case of an ordinary fish pond enclosed all round, where the fish may be said to be no longer feeding in a state of nature, and where the landlord or owner has unquestionably a property in them. "But the right to fish," Lord Neaves says, "is a privilege to the proprietor of the soil, and no stranger is entitled to take away the trout any more than he is entitled to ladle out the water." Such a right is not in my opinion let by an ordinary agricultural lease.

Independently, therefore, of the special circumstances of this case, though I quite concur with my noble and learned friends in thinking, that they amount to sufficient proof that by the contract between the parties the tenant was not intended to have any enjoyment of the right of fishing, yet I am clearly of opinion, independently of those special circumstances, that in an ordinary agricultural lease of lands in Scotland, where those lands include a loch, or a pond in which there is the enjoyment of fishing, (I mean by the enjoyment of fishing, where there are fish which would yield enjoyment to a sportsman,) or where the lands included in the agricultural lease border upon a river in which there is a right of fishing,—I am clearly of opinion that in such an ordinary agricultural lease, independently of words of special grant, or special enjoyment, the agricultural lease itself would not confer upon the tenant the right to the franchise of fishing either in the loch or in the pool, or in the running stream. If that be the correct law of

the case, (and I find nothing to bring it into doubt here, and it is undoubtedly asserted by the Lord Justice Clerk and Lord Cowan as being the general law of Scotland, and it is not denied by Lord Neaves,) I am of opinion, that upon that ground, as well as in the special circumstances of this case, the decision of the Court below was right, and that this appeal ought to be dismissed with costs.

LORD COLONSAY.—My Lords, considering the history of this piece of water, and the special circumstances of the case, it appears to me, that the tenant has no right to fish in this pond. It was part of the farm originally let to Mr. Herbertson, but during Herbertson's possession of the farm a change took place. The character of this piece of the farm was totally altered: it was converted into a pond for the use of the landlord, not at that time for fishing, but for driving the machinery of a tile work; and when that tile-work ceased to be carried on, the landlord availed himself of the preceding position of matters to convert this into a fish pond. That was done with the full concurrence of Herbertson, and from that time forward Herbertson does not appear to have exercised, or to have claimed, any right of fishing in the pond. And the landlord and his family appear to have always used and exercised that right. The manner in which he used it is specified in the evidence, and the precautions which he took to preserve its character as a fish pond are also set forth.

Now I see in these facts enough to satisfy me, that the transaction which took place then, and what followed on that transaction, was a transference of this piece of land, from the character which it had formerly possessed of being part of the tenancy of the tenant, into a sheet of water, which was in the entire occupation of the landlord. The fish were confined there, they were prevented from getting down, and it was to all intents and purposes a fish pond. I therefore think that, in the circumstances of this case, the exclusive right of fishing there belonged to the landlord.

Upon the more general question which has been presented, there is no authority in the way of a decision in favour of the respondent. It is a very large question, and it is perhaps unnecessary to dispose of it in this case. At the same time, as it has been presented to us, it may not be proper to allow any idea to prevail, that such of your Lordships as entertain a decided opinion upon it abstained from expressing it on account of any doubt with respect to the judgment which has been pronounced upon that question. I am of opinion, that the judgment which has been pronounced upon the general question was also a right judgment. It is true, I believe, that there is no direct decision upon it. I am not aware that the point has been raised before, but certainly there is no decision against that opinion of the Judges, and the tendency of the writers, as far as we have them, is in favour of it. As to the general understanding which is referred to by the Lord Ordinary, that is an impression upon his Lordship's mind of which we have no evidence at all. And it rather militates against the existence of that impression when we find a writer of eminence, whose work has long been in the hands of the public, and who has carefully considered these matters, I mean Mr. Hunter, laying it down the other way, and, so far as I know, no writer has stated the doctrine differently from Mr. Hunter. I think that it is rather an extravagant proposition to hold, that in the case of an agricultural lease, which is silent as to the exercise of his right of fishing, it is to be contended, that by the letting of the land to a tenant the exclusive right of fishing in all the lakes and streams within the boundaries of an extensive farm belongs to the tenant. The Lord Advocate admitted, that his argument must go to that length in order to sustain the general proposition,—not to sustain this case, (for that was not contended,) but that the argument itself, pushed to its legitimate result, must come to that, namely, that in all rivers, within the bounds of the most extensive farms, the landlord has parted with his right of fishing to the tenant without any expression in the lease to that effect.

There is, I believe, a difference between the principles upon which a lease is construed in Scotland and in England, for some things are held to be conveyed by a lease in England which are not held to be conveyed in Scotland. In England I believe the right of shooting is conveyed to the tenant by the lease unless it is excluded, but certainly that is not the case in Scotland. No express reservation of the right of the landlord is required in Scotland, but that right is held to belong to him. There are also other matters which belong to him. The general principle acted upon is this—What was this farm let for? Was it let for one purpose or for another? Did the landlord part with rights which are accessory to his right of property but which have no connection whatever with the enjoyment of the land for the purpose for which the land was let? I do not think, therefore, that a tenant has the right of fishing in a stream, the property of the landlord, running through the farm, or in lakes which are in the farm. He has the enjoyment of the water for the primary uses to which water is applicable, and for which it may be necessary for the purposes of the farm, but the right to catch fish is not necessary for the purposes of the farm. Therefore I apprehend that the general doctrine which has been laid down in the Court below is the sound doctrine, and upon both points I think that this case must be decided against the appellant.

Interlocutors affirmed, and appeal dismissed with costs.

Appellant's Agents, D. F. Bridgeford, S.S.C., Norris, Allens, and Carter, Bedford Row, London. — *Respondent's Agents*, Mackenzie and Kermack, W.S., Loch and Maclaurin, Westminster.