COURT OF TEINDS.

Monday, December 12.

(Before the Lord President, Lord Mure, Lord Craighill, and Lord Kinnear.)

STEWART, PETITIONER.

Church—Glebe—Authority to Feu—Right of Pre-emption—Glebe Lands (Scotland) Act 1866 (29 *and* 30 *Vict. c.* 71), *sec.* 17.

In a case where a minister had received authority to feu a part of his glebe, which, however, remained unfeued for several years —*held*, following the case of *Inveresk* (June 30, 1881, not reported), that the conterminous proprietors, although they had failed to exercise their right of pre-emption within the statutory period, might still be allowed to purchase that portion of the glebe if all parties interested were willing they should do so.

By interlocutors of the Court of Teinds, dated 19th March 1877 and 13th January 1879, pronounced in a petition at the instance of the Rev. James Stewart, minister of the parish of Peterhead, in the Presbytery of Deer and county of Aberdeen, presented on 31st May 1876, authority was granted in terms of the Glebe Lands (Scotland) Act 1866 (29 and 30 Vict. c. 71) to feu the three parts of which the glebe consisted. Of these three parts two were subsequently feued for building purposes, but the rest remained unfeued.

The conterminous proprietors of the portion unfeued were the Governors of the Merchant Maiden Hospital of Edinburgh. By the 17th section of the Glebe Lands (Scotland) Act 1866 it is enacted—"When the Court shall have made an order or interlocutor granting authority to feu or let on building lease and fixing the minimum feu-duty or rent, any proprietor whose lands are conterminous with the glebe mentioned in such order or interlocutor may, within thirty days of the date of such order or interlocutor, intimate his willingness to feu or lease or to purchase so much of the said glebe at such a rate of feu-duty or rent or price as the Court may, on a consideration of the whole circumstances of the case, and after directing such inquiry as they may consider necessary, determine."

The Governors of the Merchant Maiden Hospital of Edinburgh, and the petitioner, with the consent of the Presbytery of Deer and of the heritors of the parish, lodged a minute in the petition on 8th December 1887, praying the Court to allow the Governors, notwithstanding the fact that they had not exercised their right of pre-emption within the statutory period, to purchase that part of the glebe which was unfeued, at such a price as the Court after due inquiry should fix.

The Court, following the course adopted in regard to the minute for *The Heritors of Inveresk and the Rev. John G. Beveridge* (dated 30th June 1881) in petition the said *John G. Beveridge* (boxed 16th November 1867) [not reported], granted the prayer of the minuters, and pronounced the following interlocutor:—

"The Lords having considered the minute for the Governors of the Maiden Hospital founded by the Company of Merchants of the City of Edinburgh and Mary Erskine, and for the Rev. James Stewart, petitioner, and heard counsel thereon, Find that the price or value of the piece of ground marked field No. 1 in plan, forming part of the glebe of the parish of Peterhead authorised to be feued, shall be £836, 5s. sterling; and the Lords, in terms of the 17th section of the statute, sell, dispone, adjudge, decern, and declare the said piece of ground . . . to pertain and belong, heritably and irredeemably, to the Governors of said Hospital: . . . But supersede extract until consignation of the price shall be made in the hands of the Royal Bank of Scotland, and the receipt be deposited in the hands of the Clerk of Court, and decern."

Counsel for the Minuters—W. K. Dickson. Agent—R. C. Gray, S.S.C.

COURT OF SESSION.

Friday, December 16.

FIRST DIVISION.

[Sheriff of Forfarshire

FRASER *v.* HOOD.

Reparation—Master and Servant—Bodily Injury—Servant Working in face of known Danger—Employers Liability Act 1880 (43 *and* 44 *Vict. c.* 42), *sec.* 1, *sub-sec.* 1.

Held that a stableman who undertook the management of a horse which he knew to be vicious, was not entitled to reparation for injuries caused by a bite from the horse.

James Fraser, stableman, Brechin, sued his employer John Hood, carting contractor there, for damages for injuries sustained by him from the bite of a horse, the property of the defender.

He averred—"The pursuer was in the employment of the defender as a carter for about five years till 1st January last, when he was appointed stableman, and continued in that situation until the occurrence of the accident after mentioned. It formed part of the pursuer's duties as stableman to attend to the feeding of the horses kept in Mr Hood's stable, and before leaving for the night to look round all the horses in the stable and see that they were properly fastened up." "On or about the evening of Tuesday the 31st of May last, the pursuer entered the stable about nine o'clock for the above purpose. He was immediately followed by the defender, who called his attention to the fact that one of the horses had broken loose from its halter, and desired him to fasten it on again. The pursuer proceeded up the stall to do this, but on his stooping down to lift up the halter, the horse bit and seized his left arm, crushing it severely. This occurred in the presence of the defender." "The horse in question, which was an entire horse, was a vicious and dangerous animal, and on several

previous occasions it had attacked, bitten, and severely injured those who were in charge of it. On the 6th of June, about a week after the accident above mentioned, it attacked the man in charge of it, and he was obliged to kill it in self-defence. The defender well knew of the vicious and dangerous character of the horse in question. The said horse was usually muzzled when out driving, and in the stall he was secured by two halters, the one a leather band round his neck, the other a halter with blinders. He was frequently in the habit of breaking loose from the last mentioned halter, and it was this halter which the pursuer was endeavouring to put on when the accident happened. The said halter had been frequently repaired, and it was not strong enough for the purpose." "The said personal injuries were caused to the pursuer by reason of defects in the plant connected with or used in the business of the defender, in respect that he so used the said vicious and dangerous horse and defective halter. The said accident was due to the defender's fault and negligence in so keeping, and using in his business said vicious and dangerous horse."

The defender pleaded—"The pursuer being in the knowledge of the character of the horse in question, and having continued to work and attend same without objection or complaint to the defender, the defender should be assoilzied with expenses."

The Sheriff-Substitute (ROBERTSON) on 27th October 1887 allowed a proof. The pursuer appealed to the Court of Session for jury trial, and lodged an issue.

The defender argued—The pursuer accepted the ordinary risks of his employment, and the accident was one of these. His employment as stableman included the charge of this horse. His averments showed his knowledge of the horse's character. This horse was not "plant" in the sense of 43 and 44 Vict. cap. 42, sec. 1, sub-sec. 1. This case was distinguished from *Haston* v. *Edinburgh Tramways Company*, March 11, 1887, 14 R. 621. In that case the horse was being used. Here the horse was standing in the stable. There was here no fault on the master's part—*Keir* v. *Crichton*, February 14, 1863, 1 Macph. 407. Knowledge of the defect barred the pursuer from recovering—*M'Gee* v. *Eglinton Iron Company*, June 9, 1883, 10 R. 955, 20 S.L.R. 649; *Thomas* v. *Quatermain*, 18 L.R., Q.B.D. 685.

Argued for the pursuer—Knowledge of risk barred action when the risk was ordinary, but here the risk was extraordinary—*M'Leod* v. *Caledonian Railway Company*, October 31, 1885, 23 S.L.R. 68. The case of *Haston* decided that a horse was "plant"—*Yarmouth* v. *France*, 19 L.R., Q.B.D. 647. A workman who was aware of the master's knowledge of the defect was not under an obligation to give notice of it.

At advising—

LORD PRESIDENT—This is an action of damages for injuries sustained from the bite of a horse. The defender is a carting contractor, and keeps a number of horses. The pursuer is a stableman in the defender's employment. The occurrence took place on Tuesday 31st May last, in the evening, and the *species facti* seems to have been this—One of the horses got loose, and the defender requested the pursuer to fasten him up again, and while doing so the accident occurred. The pursuer says—"The horse in question, which was an entire horse, was a vicious and dangerous animal, and on several previous occasions it had attacked, bitten, and severely injured those who were in charge of it." Now, as the pursuer had been in the defender's employment for some time, not indeed as stableman, but as carter, from which post he was promoted to be stableman, he must have been quite aware that this was a dangerous animal, which had on various occasions attacked, bitten, and severely injured those in charge of it. That shows he knew the risk he was encountering in going into the stall. He might have declined to touch the horse at all, but notwithstanding his knowledge of the animal he chose to undertake the duty. Whether he performed it carelessly and recklessly or not is of no consequence; he willingly encountered a known and obvious risk, and therefore cannot recover damages under this action.

I am unable to distinguish this case from the case of *M'Gee* and the two cases there cited. I am therefore for dismissing the action.

LORD MURE—I concur.

LORD ADAM—I concur. I only wish to add that I do not think the Employers Liability Act makes any difference in the law applicable to this case. Even assuming the horse was "plant," and the "defect in the plant" its vicious temper, the Act says the workman shall have no remedy against his employer on account of such defect, unless the defect had not been discovered or remedied owing to the negligence of the employer. Therefore I think in such cases as this the workman is in the same position as before the passing of the Act.

LORD SHAND was absent from illness.

The Court pronounced this interlocutor:—

"The Lords having heard counsel on the record and issue proposed by the pursuer, Disallow said issue, and dismiss the action and decern: Find the pursuer liable in expenses," &c.

Counsel for the Pursuer and Appellant—Fleming. Agent—Alfred Sutherland, W.S.

Counsel for the Defender and Respondent—James Reid. Agents—Macpherson & Mackay, W.S.

Friday, December 16.

SECOND DIVISION.

[Lord Fraser, Ordinary.

DARLING AND ANOTHER *v.* ROSS.

Right in Security—Sale—Pipes Underground—Delivery.

A written contract of sale was entered into, by which the proprietor of bleachworks, on the narrative that certain per-