under the conditions imposed by the Bankruptcy Acts."

The Lord Ordinary (KYLLACHY), by interlocutor of 14th July 1893, found that the defenders were bound to implement the sale they had entered into.

The defenders reclaimed, and argued—The minute did not expressly give a power of sale. At common law an *ex facie* absolute disponee with recorded back-bond was only a security holder, and could not sell by private bargain without the debtor's consent, or the consent of the bankrupt debtor's trustee—*Baillie* v. *Drew*, December 2, 1884, 12 R. 199; *Gardyne* v. *Royal Bank of Scotland*, March 8, 1857, 13 D. 912; Bell's Comms. ii. 272.

At advising—

LORD JUSTICE-CLERK—I think this case is disposed of by the documents before us. The pursuer Duncan got an *ex facie* absolute disposition to the subjects mentioned in the summons, and under that disposition there is no doubt that he could have sold them by private bargain. But his debtor Stewart and he entered into a minute of agreement, which minute was recorded, and it is said that his position has been so altered by it that he cannot sell these subjects by private bargain. I find, however, that according to this minute Duncan was to have full power over the subjects, and that its execution was not in any way to "affect or prejudice his right to lease, feu, or sell said subjects or any part thereof," *i.e.*, he is to sell them under the title he has as an *ex facie* absolute proprietor, because the minute goes on, "all which powers shall remain as entire as if this minute of agreement had not been entered into, and as if the absolute right of proprietorship and beneficial interest of the said William Duncan constituted by the said disposition in his favour had been in no way qualified by this minute of agreement." Then the sixth article assumes that the pursuer is specially authorised to sell the subjects either by public roup or private bargain. These provisions seem to me to leave the pursuer's position as to selling the subjects as if nothing had been done to affect his position as proprietor. The Lord Ordinary's interlocutor is, in my opinion, right, and I move that we adhere to it.

LORD YOUNG—It is sufficient for the decision of this case for us to hold that the title given in the conveyance by the pursuer to the buyer is a good one, and is sufficient implement of the contract of sale between them. I think, however, that the minute of agreement assumes—and rightly assumes—that a creditor who has taken a disposition as security qualified by a recorded back-letter, which this minute of agreement really is, has an absolute power of sale. I do not doubt that the law laid down by Mr Bell is right, that the possession of an absolute disposition with a back-bond recorded puts a creditor in a different position from that in which he would have been if he had not got his back-bond recorded. I do not doubt, however, that he has the power of sale over the subjects, and I think that power is rightly assumed in the minute of agreement. The minute no doubt allows the creditor to sell, and provides that he shall account for the balance of the sum received above the amount necessary to satisfy his debt, but I repeat that it is quite sufficient for the decision of the case that the conveyance was sufficient implement of the contract between the parties.

LORD RUTHERFURD CLARK—In my opinion, under this minute the pursuer is entitled to sell the subjects by private bargain.

LORD TRAYNER was absent.

The Court adhered.

Counsel for the Reclaimer—G. Stewart. Agents—Curror, Cowper, & Curror, W.S.

Counsel for the Respondent — Craigie. Agent—William Duncan, S.S.C.

Tuesday, November 7.

SECOND DIVISION.

[Lord Wellwood, Ordinary.

BURNS *v.* THE STEEL COMPANY OF SCOTLAND, LIMITED.

Process—Jury Trial—Verdict—Rider by the Jury—Reparation.

In an action by a widow for damages for the death of her husband caused by the alleged fault of the defenders in not firmly securing a disused gate, the jury returned a unanimous verdict for the defenders, but added this rider, "While accepting unanimously the law as laid down by your Lordship, we do not think that a due measure of supervision and care over the gate in question had been exercised by the defenders." The verdict was entered for the defenders. The pursuer moved for a rule to show cause why a new trial should not be granted.

Held that the verdict of the jury negatived fault on the part of the defenders, and that the rider was not inconsistent with the verdict, and the rule *refused*.

This was an action by Mrs Jane Armstrong or Burns, widow of Michael Burns, labourer, Glasgow, against The Steel Company of Scotland, Limited, for £400 as damages for the death of her husband, which she alleged was caused by the fault of the defenders.

The defenders were proprietors of a large piece of vacant ground to the north of their Blochairn Iron Works in Glasgow, on which stood two cottages let by the defenders to some of their employees. The ground was surrounded by a high sleeper fence. In this fence was a large wooden gate the body of which was about fifteen feet long and seven feet high. It was moved on overhead pulleys. The ground being vacant, the defenders about two years before the date of the accident, caused the gate to be firmly fixed up. A wicket-gate at the side allowed the inhabitants of the cottages entrance to the piece of ground.

About 26th January 1893 the defenders let one of the cottages to their foreman Henry Healy. On that day Healy removed his furniture into the cottage. To allow the lorry upon which the furniture was placed to approach the cottage, the gate, which had somehow had its fastenings removed, was pushed to one side by the pursuer's husband and Healy. After the furniture had been placed in the cottage and the lorry had come out again, the same persons tried to shut the gate, when it fell down and killed the pursuer's husband. The defenders were not aware that the gate had been unfastened.

The issue for the trial of the cause was whether the pursuer's husband was killed "through the fault of the defenders."

The jury returned this verdict—"The jury unanimously find for the defender."

The jury added this rider to their verdict as noted by the Judge presiding at the trial (LORD WELLWOOD)—"The foreman added that he had been asked to state by the jury that while accepting unanimously the law as laid down by your Lordship, we do not think that a due measure of supervision and care over the gate in question had been exercised by the Steel Company."

The verdict was entered for the defenders.

The pursuer applied for a rule to show cause why a new trial should not be granted, and argued—The verdict was contrary to the evidence, as shown by the rider the jury had appended to their verdict. It was admitted that the law laid down by the learned Judge presiding at the trial was right, but the jury had misunderstood it, and showed this by the rider. They thought that the law laid down meant that if the defenders had once fixed the gate no responsibility attached to them ever afterwards, and they indicated that the defenders had been guilty of negligence in not seeing the gate was kept fixed. The meaning of the verdict was that there was fault on the part of the defenders, or at least the verdict and the rider were so inconsistent that a new trial ought to be granted—*Florence* v. *Mann*, December 17, 1890, 18 R. 247.

At advising—

LORD WELLWOOD—In this case there was evidence adduced at the trial that this gate, the fall of which caused the death of the pursuer's husband, was in a defective condition if it was to be used as a gate, but there was also evidence that by the order of the defenders, the Steel Company, the large gate had been nailed up some time before, leaving a wicket gate for the use of the tenants of the cottages. There was evidence for the defenders also that it was the intention of the Steel Company that their tenants should use the wicket-gate only as the means of going to and from their houses, and that the large one should be kept shut and used as a fence, and that if it had been left in that condition it would have been quite safe.

I told the jury that even if they found that the gate when used as a gate on the occasion in question was unsafe, the defenders would not be liable for the accident caused by its unfitness if it was proved that they ordered it to be shut up, that it was as a matter of fact shut up, and that it had not thereafter been opened and used as a gate with their knowledge and consent.

I think the jury quite understood the directions I gave them, and I was not asked to give any other direction, either on matters of fact or on the law.

When the jury returned their verdict, and added the rider to it which has been read to your Lordships, I asked them again if they had understood the directions I gave them. They said they did, and I then entered the verdict as a verdict for the defenders.

My own impression is that what the jury meant to express by the rider to their verdict was this, that although according to the law laid down the defenders were not under any legal obligation to do so, they should, in the opinion of the jury, have kept a closer watch on their tenants, and prevented them from using the gate. Although I cannot say that I agree in this view, there is nothing in the rider inconsistent with the verdict of the jury, which proceeds on this, that no fault inferring legal liability had been proved against the defenders.

I am therefore of opinion that the motion for a rule should be refused.

LORD YOUNG—I see no cause for granting a rule.

LORD RUTHERFURD CLARK, LORD TRAYNER, and the LORD JUSTICE-CLERK concurred.

The Court refused to grant a rule.

Counsel for the Pursuer—Guy. Agents—Clark & Macdonald, S.S.C.

Counsel for the Defenders — Fleming. Agents—Tods, Murray, & Jamieson, W.S.

Tuesday, November 7.

FIRST DIVISION.

[Lord Low, Ordinary.

BLACK *v.* CLAY.

Landlord and Tenant—Lease—Agricultural Holdings (Scotland) Act 1883 (46 *and* 47 *Vict. cap.* 62), *sec.* 7—*Compensation for Unexhausted Improvements — Notice — Determination of Tenancy.*

Section 7 of the Agricultural Holdings (Scotland) Act 1883 provides that a tenant shall not be entitled to compensation under the Act "unless four months at least before the determination of the tenancy" he gives notice in writing to the landlord of his intention to make a claim for compensation under the Act.

The lease of a farm bore to be for nineteen years from and after the