time; that the right to insist upon the previous demands had been waved in October, provided there was no farther delay; that there was farther delay, and a delay for a time which in itself was unreasonable, even if there had been no neglect before. A reasonable construction must be put on the act, for the benefit of the tenant; but not such a construction as would leave the landlord without any adequate remedy, and enable the tenant to make of his covenant just what he pleased.—(*Vide* 1 Sch. Lef. 443.)

July 26, 1814.

LEASES FOR LIVES, RENEWABLE FOR EVER.—DEMAND.—FORFEITURE.

Decree accordingly *affirmed*. Judgment.

Agent for Appellant, LANE.
Agent for Respondent, FLADGATE.

IRELAND.

APPEAL FROM THE COURT OF EXCHEQUER.

MOUNTNORRIS (Earl of)—*Appellant*.
WHITE—*Respondent*.

WHERE, on the dropping of one of the lives, in a lease for three lives with covenant for perpetual renewal, repeated applications were made to the tenant to renew according to his covenant, particularly in 1798 and 1796, and he made no offer to renew till 1804 or 1805, when some conversations took place respecting a renewal upon the tenant's relinquishing a suit in equity, which he was carrying on against his landlord, but which conversations ended without any thing being done, and the landlord re-

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fused to renew; the House of Lords, reversing a decision of the Irish Court of Exchequer, held that the tenant's right to a renewal was forfeited, and that the case was not one, where relief could be granted under the Tenantry Act, 19, 20, Geo. 3, cap. 30.

Sentientibus Lords Eldon and Redesdale, that relief under the act is to be confined to cases of simple innocent neglect; that a simple demand, (without any menace of forfeiture, &c.) followed by neglect for an unreasonable time, is sufficient to conclude the tenant, and bar his relief; that, where there have been several demands, if the terms of the last demand are not complied with, the original demand remains the foundation of the right; that inability to pay is no excuse; that the character of a general agent is sufficient to authorize one to demand and receive the fines; and that if there had been a consent to wave the forfeiture connected with the relinquishing the suit, the transaction would have been a new agreement within the statute of frauds.

Dubitante Lord Eldon, whether, if there had been a waver of the right connected with another transaction, it was competent to take one part of the bargain, and act upon it as if the other part had been out of the question—also, whether, when the landlord acquired a right to the forfeiture, the agent could pass from it without a special authority.

Semble that, in these cases, equity in Ireland relieves against the strongest negative clauses in the contract.

Bill filed in the Court of Exchequer, Feb. 11, 1806.

THIS cause arose upon a bill, in the nature of a bill for specific performance of a covenant for renewal in two leases for three lives, each renewable for ever.

Leases.

The leases were granted in 1747, of certain lands (Killish and others) in the County of Wexford, by the Earl of Anglesea, (represented by the Appellant,) to one Fielding, son in law of James White, (represented by Respondent,) who was the Earl of Anglesea's agent, manager, and receiver, to whom

Fielding, being only a trustee for White, soon after assigned his interest. In this lease it was covenanted, that "if it should happen on the failure of "any life therein nominated, or to be nominated, "that the tenant should not pay to the Earl of "Anglesea, for every life so failing, the sums of "8*l.* for one part of the lands, and 12*l.* for the "other part, by way of fines, and nominate ano-"ther life within 12 calendar months; after the "death of such life, it should be lawful for the "Earl of Anglesea, his heirs and assigns, to refuse "to renew at his or their option." The interest in one of these leases was acquired from Hawtry White, son of James White, by the Respondent, Hawtry's nephew, in 1788, and the interest in the other lease in 1804.

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Covenant in the leases, that on failure to renew, in 12 months after the death of a life in the leases, it should be at the option of the landlord to renew or not.

One of the lives dropped in 1784; and various applications were made to Hawtry White, and to the Respondent, after his interest in the lands was known, to renew. The times and nature of these applications were set forth in the evidence of Sir Frederick Flood, the Appellant's friend and agent; and Mr. Morton, Respondent's solicitor. Sir F. Flood stated, that in 1788, Hawtry White came to *Camolin Park*, the seat of Lord Mountnorris, to pay some arrears of rent, and on that occasion Deponent and Appellant applied for the fines; and that the answer by Hawtry White was, "that he "thought he had done a great deal, in bringing in "so large a sum for rents, which he was obliged to "borrow, and that he could do no more at that "time." In or about 1796 he made another application to Hawtry White, in the Grand Jury room

Life dropped, 1784.

Evidence.

Demand in 1788.

Demand in 1796.

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Other applications.

at Wexford, saying, that he did not wish that any advantage should be taken of his laches, *if he renewed without delay.* He afterwards applied to Respondent, to renew for the premises held by him, and desired him to speak to his Uncle to do the same; that before and since he had sent repeated messages to Hawtry, to the same effect, being induced to it the more, from Appellant's pressing occasion for money at that time, and particularly that he sent a message in 1803 or 1804, by a confidential servant of Hawtry White's, which the servant delivered, but without effect. In 1796, relying on the Respondent's promises to renew, he caused a calculation of the fines, &c. to be made, having been assured by the Respondent that the life dropped in 1786, whereas it had in fact dropped at a much earlier period.

Concealment of the real time of the dropping of a life.

Sir F. Flood then gave an account of an application to him by Respondent, for a renewal, early in 1805; and that an offer was made to relinquish a law-suit, carried on against Appellant by one Dubois and by Respondent, in consideration of renewal; but that Sir F. Flood referred him to Lord Mountnorris himself, who was soon expected from England; that upon his Lordship's arrival some conversation took place on the subject of renewal, all connected with the settling of Dubois's suit, but that at length intimation was given in April, 1805, that the Appellant would not renew after such gross lapses and neglects.

The effect of Morton's evidence was, that upon these applications by the Respondent for renewal, (the first of them, as he stated, at the close of 1804,) both Sir F. Flood and Appellant had at first

agreed to renew, but afterwards refused. Nothing was said about Dubois's suit in his presence, but he was not present at the whole of the conversations.

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In January, 1806, the Appellant filed a bill, to perpetuate the testimony of his witnesses.—On Feb. 11, 1806, the Respondent filed his bill for renewal; and in Feb. 1808, the Court decreed a specific performance of the covenant for renewal, on payment of rent, renewal fines, septennial fines, and interest.

Jan. 806. Bill by Appellant, to perpetuate testimony.

Bill for specific performance, by Respondent, Feb. 1806, and decree for renewal, Feb. 5, 1808.

From this decree Lord Mountnorris appealed.

Romilly and —— for Appellant; *Hart* and *Bell* for Respondent.

Lord Redesdale. This was an appeal from a decision of the Court of Exchequer, in Ireland, under the following circumstances, (states them, and particularly the covenant, by which, upon failure of renewal within a limited time, it was to be optional with the landlord whether to renew or not.) This latter clause distinguished the present case from that which had the other day been under consideration by their Lordships. It was a very strong clause, and if there had not been determined cases in favour of renewal, notwithstanding such negative clauses, it would be extremely difficult to get over it; for it allowed 12 months to the tenant to provide and pay the fines; and there was an express provision that, in case the tenant did not pay, the landlord should not be compelled to renew. But in looking at the cases determined in Ireland, it would be found that the Courts there had given

July 27, 1814. Observations in Judgment.

Tenants relieved against the express stipulation of the contract.

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LEASE.—COVENANT—TENANTRY ACT.

relief in cases where there were such express negative clauses.—This case must therefore depend on the construction of the Irish Tenantry Act.

Tenantry act.

The circumstances of the case were singular, and there appeared to have been neglect, to a very considerable extent. It appeared from the evidence of Sir Frederick Flood, who was the person entrusted with the management of the Appellant's affairs in Ireland, in the Appellant's absence, that "in 1788 "he was present when Hawtry White came to "Camolin Park to pay certain arrears of rent, "and was asked for his fines, to which he answered, "*that he thought he had done a great deal, &c. and could do no more at that time;*" and it had been represented that the Appellant submitted to that excuse. The next transaction was in the Grand Jury room at Wexford, in 1796; where Sir F. Flood asked why H. White did not pay his fines, adding, that he did not wish any advantage to be taken, in case there were no farther delay. Here then was an express intimation, that there had been delay from 1788 to 1796; of which Sir F. Flood conceived the Appellant had a right to take advantage, but thought it might be waved provided there were no farther delay. The evidence on this point was clear and uncontroverted. The impression on Sir F. Flood's mind then was, that the demand of 1788 was sufficient. (His Lordship then adverted to the rest of Sir F. Flood's evidence, the general effect of which has been before set forth.) It was material to attend to the deposition of Sir F. Flood, as he considered every thing as connected with Dubois's suit, and that if there was any chance of

Demand in 1788.

Demand, 1796.

an agreement to renew at all, the settling of that suit must be part of the transaction. On the part of the Respondent, it had been contended that these conversations amounted to a waver of the right to insist on the previous demands; and the question was, whether they did so or not. One thing was material, which had not been dwelt upon at the bar, though the Counsel's attention had been called to it by him. If what Sir F. Flood said was true, that the transaction was connected with Dubois's suit, it was a new agreement within the statute of frauds. He did not think it necessary however to consider that question; as Morton in no degree fairly contradicted Sir F. Flood's account of the conversation with the Respondent White, in 1804, or 1805—though they differed a little as to the time, and Sir F. Flood might be mistaken in that, as Morton spoke from his books. Sir F. Flood connected this with Dubois's suit. Morton was silent as to the suit, but he did not say that he stated all that passed, so that they might be reconciled.—(His Lordship proceeded farther to comment on the evidence: the result on the whole being, that all the subsequent conversations about renewal were connected with the settlement of Dubois's suit; and that Lord Mountnorris, having refused to come to any agreement even on these terms without good advice, at length determined not to renew at all, and filed a bill to perpetuate the testimony of his witnesses.)

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If the alleged consent to renew after forfeiture was connected with Dubois's suit, it was a new agreement within the statute of frauds.

Then it appeared, that in 1788 there was a demand sufficient to put him on his guard, and to apprize him that it was incumbent on him to pro-

Demand in 1788 sufficient.

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ceed to renew, (for he ought to have known the time of the death of the *cestui que vie*, his father;) and that there was a dereliction of renewal till 1796; and that Sir F. Flood then understood that he was not entitled to a renewal:—and yet all this was to be set aside by the evidence of Morton, intended to show that there was a waver, and consent to renew! It did then appear to him infinitely too much to say here that the demand was waved.

They were told, that in the Court below it was considered that the demand must be expressed to be for the purpose of concluding the tenant under the act, in case he neglected or refused to renew. There was no such thing in the statute; and it was not an opinion which he was inclined to hold. But here it was clear, that Flood conceived the demand of 1788 to be such as he could take advantage of. It did appear to him, then, that this did not come within the equity of the Tenantry Act; which he considered as clearly applicable only to cases of simple innocent neglect, and not to cases where a demand was made, and not complied with in a reasonable time. Here there was a demand in 1788; and it could not be argued with effect, that because the Appellant demanded for the tenth time what was his right, that he thereby forfeited the benefit of the nine first demands; for that was the amount of it. If a person, after several previous demands, made another, and the last demand was instantly complied with, that would raise a different question. But it was impossible by a subsequent, to destroy the effect of an original demand. Unless the subsequent demand was immediately complied with,

The demand need not be accompanied with a threat not to renew if not complied with.

Relief to the tenant under the Tenantry Act to be given only in cases of simple innocent neglect.

Where there had been several demands, and the last not complied with, the original demand remained the foundation of the right.

the original demand was that upon which the right was founded. July 27, 1814.

Lord Eldon (Chancellor.) He concurred in the last observation. It appeared to him that the Court below had conceived, that if a new demand were made, it was a waver of former demands. 'It was impossible to say that such must necessarily be the effect of the new demand. That must depend upon its nature. Suppose a landlord were to say, 'I made 'a demand a long time ago, and more than a rea- 'sonable time has clapsed without compliance on 'your part: I now again demand payment; and if 'you pay immediately, I shall not take advantage 'of your refusal or neglect.' Suppose, then, the tenant did not pay immediately, was he to be allowed to turn round and say, 'Your new demand 'is to be considered as a waver of your previous de- 'mands, though the terms of it have not been com- 'plied with, and though you protested against its 'being so considered.' It was impossible to sustain any such doctrine. He had before been of opinion that it was impossible to sustain it; but in these Irish cases, it was a great happiness to him, and must add much to the weight of their Lordships' decisions, to have the benefit of the assistance of his noble friend (*Lord Redesdale.*)

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How it ever happened that equity came to interpose in cases of this kind, he could not conceive; but now it was said, that if a life dropped and a fine was to be paid, and another life to be nominated within 12 months after, and it had been so agreed between the parties, equity would relieve the tenant, though no fine was paid nor life nominated

Difficult to conceive how equity came to interpose in the face of express covenant.

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till the end—suppose—of three years; because, they said, that the time for renewal was not of the essence of the contract, and compensation might be made to the landlord. But he maintained, that it baffled all calculation to say exactly what was compensation, when the tenant neither paid, nor nominated a life, till the end of three years, when he ought to have paid at the end of one year, and then nominated a life; and when, if he had so done according to his contract, he might, at the end of three years, be compellable to pay another fine, and nominate another life. The Courts, however, had gone the length of throwing all the error of the calculation on the landlord, and relieving the lessee. But here the landlord had said, that he would not trust to the ordinary doctrines and rules of equity. 'I do not choose,' he said, 'that any Court on 'earth should decide for me; and I expressly de- 'clare, that unless my tenant performs his cove- 'nant, he shall have no renewal, unless it be my 'will and pleasure to renew.' Why, to interfere in such a case, what was it but saying, that persons could not be bound by a contract out of the rules of the Courts? He had been very much disinclined to think that this could have been supported by authority; but he saw there was authority; and therefore he agreed, that the election reserved by the landlord was of no more avail than if there had been no such clause in the leases.

They had in Ireland stretched their equity in favour of these tenants to an extent of which there was here no example. The hardships of some decisions by the House of Lords in this country had

been complained of, and so this act was passed. He wished it had been better considered; but there it was, and they must deal with it as they best could. The act said, "Whereas, from various causes and "accidents, tenants neglected to pay," &c. Why, look at Sir Frederick Flood's evidence: he said, that when White came to pay his rent, and was asked for his fines, the answer was, "that he "thought he had done a great deal in bringing so "much money for rents, which he had been obliged "to borrow; and that he could do no more at that "time." Why, did the legislature mean that this representation of inability to pay was one of the accidents and causes to be relieved against? Then the act went on,—"That Courts of Equity, on "an adequate compensation being made," (it was impossible to calculate the compensation,) "shall "relieve such tenants and their assigns against "such lapse of time, if no circumstance of fraud be "proved against such tenants; unless it be proved "to the satisfaction of such Courts, that the land-"lords, or lessors, or persons entitled to receive "such fines, had demanded" (in writing would have been said, if it had been so meant) "such fines "from such tenants, or their assigns, and that the "same had been refused or neglected to be paid "within a reasonable time after such demand." In the first place, when they came to consider the various accidents and causes of neglect, could inability to pay be an accident, or a cause of neglect, against which it was intended to relieve? Certainly some such idea had been entertained in Ireland. A man stated his circumstances as an excuse for non-pay-

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Inability to pay not one of the various accidents and causes of neglect to be relieved against under the Tenantry Act.

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If after demand there is delay for an unreasonable time, the cause of the delay is no excuse.

Concealment of the time when a life dropped.

ment. But if, after demand, there was neglect,—meaning there a want of due diligence,—or refusal to pay, did the act say that the cause signified one farthing?

Now here it appeared, that a life had dropped in 1784, which White had represented as having dropped in 1786; and it was difficult to believe that he should be so little attentive to the time of his father's death, as not to know whether he died in 1784 or 1786. But though it might be a fraud to conceal in this manner the death of a life, his opinion did not at all turn on that point. This, however, was clear, that he must have known, that when a life dropped, it was his duty, within 12 months after, to pay a fine, and nominate another life. But that was not done; and when, in 1788, three or four years after the life dropped,—and whether three years or twenty-three was as to this purpose the same,—he was asked for his fines, he answered, "that he thought he had done a great "deal, &c. and could do no more at that time."

Demand.

But the Counsel had said, there must not only be a demand, but the demand must be made in a minacious manner. "You must not only demand "your fines, but you must threaten, that unless "they are paid in a reasonable time, you will refuse "to renew." But when the statute said, "unless it "be proved that the landlord, lessor, or person en-"titled to receive them, had *demanded* such fines," &c., the demand must, *primâ facie*, be taken to be for the purpose of asserting the right; and it was on others to show that, in order to be by law effectual, it must be made in a particular manner, and under

particular circumstances. Then Sir F. Flood stated, that his next application, (and his character of general agent was sufficient authority,) "after that of "1788, was in the Grand Jury room at Wexford, "some years ago,—thinks about 12 or 14 years "ago,—when he asked White why he did not pay "the fines." Now here was a notable law on their construction—this was merely to awaken the tenant—"Don't forget you owe me a fine"—that was all, according to this doctrine—and a reasonable time after was 14 years!—"But that though "the said Hawtry had been hostile in his conduct "and acts against the Appellant; yet, for depo-"nent's part, he wished that no legal advantage "should be taken, *if he, White, would use no* "*farther delay.*" Now if it was not necessary that the demand should be in writing, he would ask, whether this was not sufficiently *minacious*—"that "no legal advantage should be taken, if he, White, "used no farther delay?" Why, did not that, in common sense and common parlance, mean, "If "you do use farther delay, legal advantage shall be "taken?" and was the plea of the want of money to be admitted against this?—though, of all the various accidents and causes of neglect, want of money in England, Ireland, and Scotland, was the chief. Another passage which escaped the Counsel's attention was material:—"That he had before "and since sent repeated messages, &c. to Hawtry "to pay his fines, and informed him of the Appel-"lant's great want of money." This added great weight to the demands which were proved. If Lord Mountnorris then acquired the right of refusal

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The character of a general agent sufficient authority to demand and receive fines.

When the Appellant ac-

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quired the right of refusal to renew, doubtful if his agent could pass from it.

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to renew, he doubted whether it was competent to Sir F. Flood to pass from it: but here it was unnecessary to consider that question, as it appeared that Sir F. Flood took care to disavow all consent to renew without the personal concurrence of Lord Mountnorris, to whom he referred the Respondent.

Then it was said, that there was a waver of the right. He had often had reason to lament how easily the provisions of that wise statute, the statute of frauds, might be evaded. But he admitted (a new agreement was a different thing) that Lord Mountnorris might say, 'The various causes and 'accidents are all reduced to your want of money.' 'I am in great want of money also; and if you pay 'immediately, I shall renew.' He had a right to do so: but admitting that to be the law, he must have clear fact upon which to administer that law, and the matter must not be left *in dubio* by conflicting evidence. It appeared that the parties had other matters to settle, and the fines and whole matters were to be settled together. Here then was a case of quite a different character from one where there was only the mere fact of a waver; for if other interests were in question, and formed part of the bargain, he doubted whether the Court of Exchequer could separate the one part from the other, and pick out that portion which consisted in the waver. But it did not seem necessary even to decide that. It appeared quite enough that there was a demand before Lord Mountnorris returned to Ireland; that a reasonable time, and more than a reasonable time, from the period of that demand had elapsed before any thing was done. When he did

return, the treaty of arrangement included other matters; and nothing was said which could be considered as amounting to waver, unless the whole of the arrangements had taken place. He was happy to find that his noble friend, (*Lord Redesdale*,) who was so well acquainted with Irish customs and Irish proceedings, concurred with him in the opinion, that this claim for renewal could not be supported under this Tenantry Act. But he protested, that unless they could decide so as not to relieve tenants from all control in these cases,—so as not to give to *gross neglect* and refusal the character of *mere neglect*,—it would be hardly possible to say with certainty what was the law as between landlord and tenant in that country; and the landed property there would be put into such a state, that no one could know how long he might be landlord, or what might be his duty as a tenant.

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Importance of decision.

Lord Redesdale. In 1717 a case of renewal had been determined in Ireland, which came here some time after. That was a case of mere neglect, and the decision was affirmed. There was another the same year, *Philpott v. Rowley*, which was dismissed for *laches*. In several cases which followed, the prejudice began to run in favour of renewal, and the Tenantry Act was passed. Then came the case of *Magrath v. Muskerry*, where the bill was dismissed for gross neglect on the part of the tenant. Therefore, neither among the cases which had been determined here while the appellate jurisdiction was exercised by this House, nor among those determined in Ireland after the appellate jurisdiction returned to the House of Lords there,

Decided cases.

Anderson v. Sweet, 2 Bro. P. C. 430.

Philpott v. Rowley.

Magrath v. Muskerry, 1 Ridg. P. C. 469. T. 1787.

No case in which relief had been given, where there was gross, &c. neglect.

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was there any case in which relief was given where there appeared gross, wilful, and obstinate neglect.

Judgment. Decree *reversed*.

Agents for Appellant, WILLIAMS and BROOKS.
Agent for Respondent, FLADGATE.

SCOTLAND.

APPEAL FROM THE COURT OF SESSION.

SMITH and others (Underwriters)—*Appellants*.
ROBERTSON and others (Merchants)—*Respondents*.

May 2, June 8, July 27, 1814.

INSURANCE.—ABANDONMENT.

INSURANCE on ship Ruby, at and from Halifax to Plymouth, captured on the voyage—intelligence of the capture and immediate abandonment, and some steps taken by the underwriters to settle the loss—intelligence then of her being re-captured, and refusal by the underwriters to settle, except for a partial loss. Held by the Scotch Admiralty Court and Court of Session, that upon notice of abandonment, given on intelligence of the capture, the transaction was closed, and not subject to be disturbed by any event appearing on subsequent intelligence, and the judgment *affirmed* in the House of Lords on the ground of the acceptance of the abandonment by the underwriters; by this means keeping clear of the principle on which the Court of King's Bench had decided the cases of *Bainbridge v. Neilson*, and *Faulkner v. Ritchie: sed quere*, Whether it does not appear that *Lord Eldon* (Chancellor) was far from being satisfied with these decisions.

Dubitante Lord Eldon, whether there might not be found to be as much uncertainty in the law of marine insurance as in any other branch of the law.

Insurance on ship Ruby, August, 1805.

THE ship Ruby, belonging to Respondents, merchants at Greenock, was insured at Glasgow, "at and