not liquid in the sense that a sum due by bond is. It is a matter of contract in consideration of something to be done. It is paid for possession of the subject let. If the tenant says he has not got entire possession, that is a good answer to the claim for rent." That principle has been affirmed over and over again, and very emphatically in the case of *Muir* v. *M'Intyres* decided only last year, where a claim for abatement was rested upon the ground of the accidental destruction by fire of a part of the subjects let. The difficulty the Court had to deal with was that there was no fault on the part of either landlord or tenant, and the landlord very plausibly maintained that as the loss of possession was due to a mere accident, he was still entitled to the fulfilment of the entire contract of lease. It was held that the accidental destruction of a part of the subjects let put the case in the same position as if possession of part of the subjects had not been delivered. The case of *Muir* v. *M'Intyres* is in fact *a fortiori* of the present, and of every case where a landlord has not given full possession of the subjects let. The Lord Ordinary has stated his ground of judgment quite clearly and distinctly, and I have no doubt that it is sound.

LORD MURE and LORD ADAM concurred.

LORD SHAND was absent

The Court remitted to the Lord Ordinary to allow the defenders a proof of their averments in support of their claim for abatement of rent, and to allow to the pursuer a conjunct probation.

Counsel for the Pursuer (Reclaimer)—Graham Murray — Shennan. Agents — Gill & Pringle, W.S.

Counsel for the Defenders (Respondents)—H. Johnston. Agent—Peter Adair, S.S.C.

Saturday, November 17.

SECOND DIVISION.

WATSON *v.* CALLENDAR COAL COMPANY.

Poor's Roll—Appeal from Sheriff Court, and Reporters divided in Opinion.

A pursuer in a Sheriff Court action for damages for personal injury appealed to the Court of Session against a judgment of a Sheriff, affirming the judgment of his Substitute, and assoilzieing the defenders. The pursuer applied for the benefit of the poor's roll, and the reporters on the *probabilis causa* were equally divided in opinion. The Court (following the case of *Carr, &c.* v. *North British Railway Company*, November 1, 1885, 13 R. 113) *refused* the application.

Samuel Watson, surfaceman, Kerse Lane, Falkirk, raised an action in the Sheriff Court at Falkirk against the Callendar Coal Company, Falkirk, concluding for a sum in name of damages for personal injury alleged to have been sustained by him from the fault of the defenders.

The Sheriff-Substitute (SCOTT MONCRIEFF), after proof, assoilzied the defenders, and his judgment was affirmed by the Sheriff (MUIRHEAD).

The pursuer appealed, and applied for admission to the poor's roll. A remit was made to the reporters in the *probabilis causa*, who reported that they were equally divided in opinion. It was stated that of the reporters there were one counsel and one agent on each side.

The pursuer moved the Court to admit. He admitted that the circumstances of the case were identical with those of *Carr, &c.* v. *North British Railway Company*, November 1, 1885, 13 R. 113, in which the First Division refused to admit, but argued that the case of *Marshall* v. *North British Railwoy Company*, July 13, 1881, 8 R. 939, was in his favour and that it was in the discretion of the Court to grant the application.

The defenders argued that the question was no longer open, and that the Court were bound to follow the unanimous judgment of the First Division in the case of *Carr* v. *North British Railway Company, supra.*

LORD JUSTICE-CLERK—I think we must refuse this application.

LORD RUTHERFURD CLARK—I am of opinion that we are bound to plead the decision of the First Division in the case of *Carr*, in which the circumstances were precisely similar to those in the present case, unless we are to send this case to the whole Court to discuss, which I think unnecessary.

LORD LEE concurred

The Court refused the application.

Counsel for Applicant—Macnair. Agent—J. D. Turnbull, S.S.C.

Counsel for the Respondent—Dickson. Agents—Peddie & Ivory, W.S.

Saturday, November 17.

FIRST DIVISION.

[Sheriff of the Lothians.

NICOL *v.* JOHNSTON.

Process—Sheriff—Failure to Lodge Defences—Prorogation—Discretion of Sheriff—Sheriff Court Act 1853 (16 *and* 17 *Vict. c.* 80), *sec.* 6—*Sheriff Court Act* 1876 (39 *and* 40 *Vict. c.* 70), *sec.* 48.

The Statute of 1853, sec. 6, provides—"When any condescendence or defences . . . or other paper shall not be given in within the periods prescribed or allowed by this Act, the Sheriff shall dismiss the action, or decern in terms of the summons, as the case may be, by default, unless it shall be made to appear to his satisfaction that the failure to lodge such paper arose from unavoidable or reasonable causes, in which case the Sheriff may allow the same to be received on payment of such sum in name of expenses as he shall think just." . . .

In an action in the Sheriff Court the Sheriff-Substitute decerned against the defender in respect his defences were not timeously lodged. On appeal the Sheriff, after