the election held in conformity with the Ballot Act 1872, and the other relative statutes. The authority of the Court for this purpose is accordingly desired by the petitioners. With this view it will be necessary to make up from the valuation roll a correct list of voters, including such females as are pointed out by the Act of 1882. It will also be necessary to fix a day for the election, and to have some fit person appointed as returning officer in order to conduct the election under the Ballot Act, seeing that the senior Bailie (Mr James Spence), on whom the duty is thrown by the Ballot Act, has left Stromness and become resident in Aberdeen, and has demitted office, and that the petitioner Mr John Aim Shearer, the other Bailie, is a canditate for re-election." The prayer of the petition was that the Court should "authorise and ordain the petitioner, John Stanger Copland, Town-Clerk, Stromness, and treasurer to the Police Commissioners thereof, to make up and certify a list or roll of electors of the said burgh of Stromness, duly qualified in terms of law, including male occupiers of lands or premises of the yearly value of £4 and upwards as appearing in the valuation roll, and female occupiers of lands or premises as aforesaid who are not married, or, being married, do not live in family with their husbands, or otherwise, including only persons qualified in terms of the said charter of Stromness; and to authorise and appoint the Sheriff-Substitute of Orkney, at Kirkwall, whom failing William Cowper, Esq., Town-Clerk of Kirkwall, to act as returning officer at the election of magistrates and councillors, on Tuesday the 3rd day of November next, or on such other day as your Lordships may appoint, due intimation thereof being given as your Lordships may direct, with all the statutory and other powers competent and necessary for the discharge of the said office in manner provided by the General Police and Improvement Scotland Act 1862, and the other Acts regulating municipal election in Scotland."

When the petition was heard in Single Bills on 10th November, the date of elections named in the charter, and the first Tuesday in November specified by 3 and 4 Will. IV., c. 76, amended by the Municipal Elections Amendment Acts of 1868 and 1870, had both elapsed, and the Court refused to consider the petition if it involved a determination of the question whether the roll should be made up under the charter or under the Municipal Elections Acts, and whether vote by ballot applied, and stated that the parties must decide these questions for themselves or bring a declarator. The Court, however, consented to appoint a returning officer and continued the hearing for fourteen days.

The petitioners lodged a minute stating that they were advised that the election of magistrates for the burgh of barony of Stromness fell to be made in terms of the charter of the burgh of 1817 except as regards the manner of taking the poll, to which the provisions of the Ballot Act applied.

The Court thereafter appointed the Sheriff-Substitute to act as returning officer at the election to be held on the 18th December, but refused to insert in the interlocutor that he was vested with the statutory powers provided by the Ballot Act 1872.

Counsel for Petitioners—Lorimer. Agent—William Graham, Solicitor.

Tuesday, December 1.

SECOND DIVISION.

[Sheriff of Aberdeenshire.

GORDON *v.* PYPER.

Reparation — Personal Injury — Seaman Injured by Defective Rope—Relevancy.

A seaman employed on board a trawler sued the owner for damages for personal injury, and alleged that he had been ordered to take off the slack of a rope at the steam winch while the trawl was being hauled. Part of the covering of the splicing of the rope had become frayed, and on a previous occasion on which he had been similarly engaged the ragged end had been caught by the winch, causing a check which proved dangerous to the other seamen who were hauling the trawl. On the present occasion he saw the frayed end again approaching the winch, and seized it in order to prevent an accident, with the result that his hand was crushed by the winch. He did not allege that the rope had been supplied in a defective state.

Held that it was the duty of the master of the trawler to have repaired the defective rope, and that the owner was not responsible for his failure to do so.

John Gordon, seaman, Aberdeen, who had been employed as cook on board the trawler "North Coast," sued the owner, William Pyper, merchant, Aberdeen, for damages for personal injury incurred.

He alleged that he had been "asked to lend a hand at hauling the trawling gear, which he did. The gear consists of a large bag net, which is suspended from a long beam, at each end of which there is an iron chain, known as a bridle, by which the beam and trawl are towed through the sea. In order to bring the beam up to the level of the deck in hauling the gear, there is attached to a short chain fixed about six feet from the after head a wire rope known as the dandy bridle. This dandy bridle passes through a small davit on the quarter of the vessel, is carried across the deck to a snatch block, and thence forward along the deck to the drum of a steam winch, which is situated in front of the fore hatchway. In order to bring the dandy bridle to the steam winch when the trawl is down, it is necessary to connect it in the first place with another wire rope, known as a messenger. On hauling the gear on

the occasion in question the dandy bridle was attached to a messenger; the messenger was put round the drum of the steam winch, which was set in motion, and the pursuer was engaged pulling out the slack as it came off the drum of the winch. The coverings of the splicing of the dandy bridle and messenger were defective, a quantity of the spun yarn or tow used for covering the splicing being loose and hanging down. The dandy bridle was insufficiently attached to the messenger by means of clip hooks and an eye instead of by means of a shackle and screw and an eye. The result of the spun yarn being loose is that the wire rope is liable to get fixed in the yarn in going round the barrel; this causes the rope to slacken on the barrel of the winch, and if the tension is relieved where the eyes held by the clip hooks are they are liable to get disconnected. The weight of the beam trawl then pulls the dandy bridle rapidly back through the snatch block and davit into the sea, to the serious danger of the men who are attending to the heaving of the gear in the after part of the vessel. While the gear in question was in use on the 'North Coast' this repeatedly happened, and the day before the pursuer was hurt and another nearly lost his fingers through this happening. The pursuer, on the occasion in question, observing the loose spun yarn, and being apprehensive that it would get entangled with the wire rope, and so disconnect the dandy bridle and messenger and cause the beam and trawl-net to fall back into the sea to the danger of himself and of the men at the davit in the manner above set forth, put his left hand on the spun yarn and endeavoured to prevent it entangling, and doing so his hand was caught and crushed in the coils of rope. . . . The pursuer's injuries were sustained by him through the defender's failure to supply proper gear for the hauling of the beam trawl on board said trawler. The coverings of the splicing of said dandy bridle and messenger were defective, and the loose spun yarn, especially when associated with clip hooks, constituted a source of danger. The fastening of the dandy bridle and messenger together by means of an eye and clip hooks was also highly dangerous. Clip hooks are used and are suitable for the rigging of vessels, but it is not customary to use them, and it is not right to use them, where a weight depends on the rope, and where it is possible the tension on the rope may be momentarily relieved in the vicinity of the joining through an entanglement taking place or otherwise. The usual and proper fastening for a dandy bridle and messenger is a shackle and screw, which cannot get unfastened from the eye whether the rope be taut or slack. Had the dandy bridle and messenger been so connected on the occasion in question there would have been no danger of their getting unfastened and the beam trawl again falling into the sea, and the men attending to the gear of the vessel would have run no risk. Had they been so connected it would not have been necessary for the pursuer to have put his fingers on the spun yarn or on the drum of the winch, and he would have escaped the injuries he has received."

Upon 10th November 1891 the Sheriff-Substitute (BROWN) allowed a proof.

The pursuer appealed for jury trial, and argued—The pursuer was entitled to proceed against the owner, because he had sent his ship to sea with defective appliances. The pursuer saw that these appliances were not in good order, and he endeavoured to act so that danger should not result from them. In doing so his hand was hurt, but that was the direct result of the improper machinery the owner had supplied. The case of a seaman was different from that of a labourer on land, because the seaman could not refuse to work although in the face of a seen danger—*Rothwell* v. *Hutchison, &c.*, January 21, 1886, 13 R. 463.

The respondent argued — In the first place, it was plain from the pursuer's own statement that this accident occurred from his own fault in placing his hand where he should not have put it, and that the danger was obvious to him. Secondly, if there was fault in having this messenger rope badly spliced, it was the fault of the captain of the vessel, not of the owner, who had supplied the vessel with all proper gearing. The captain and the pursuer were fellow-workmen.

At advising—

LORD JUSTICE-CLERK—I think no relevant case has been stated here for the pursuer. He was a seaman on board a trawler, and upon the day of the accident he was engaged in taking off the slack of a rope called the "messenger" at the steam winch in the forward part of the ship while the rest of the crew were engaged in assisting the drawing up of the trawl.

His case is that some part of the covering of the splicing of the rope had become frayed, and that on a previous occasion the frayed portion had got caught at the winch, with the result that the dandy bridle of the trawl attached to the "messenger" got loose and ran back through the block causing danger to the men who were hauling in the trawl; that on this occasion, standing at the winch, he saw this loose tow coming towards the winch; that he caught hold of it, and tried to prevent the same kind of accident from happening again. But it seems to me that the state of the rope is not disclosed as being defective as regards the original supply; it had got frayed through use on board, and it was for the people on board, and for the captain, to see that was put right, which could have been done in a very short time, and without the exercise of any special skill. But it does not seem to me that there is any ground of action against the owners. They supplied a "messenger" rope which it is not said was unfit when supplied for its work. The owners cannot be held responsible for the fault of the captain in not keeping it in proper repair.

LORD YOUNG, LORD RUTHERFURD CLARK, and LORD TRAYNER concurred.

The Court dismissed the appeal.

Counsel for the Appellant — Kennedy. Agent—J. D. Macaulay, S.S.C.

Counsel for the Respondent — Watt. Agent—A. Urquhart, S.S.C.

Tuesday, December 1.

SECOND DIVISION.

[Lord Wellwood, Ordinary.

SMITH (ALLAN'S TRUSTEE) *v.* ALLAN & SONS.

Landlord and Tenant — Lease — Construction—Obligation to Maintain—Arbiter—Proof—Damages for Breach of Contract.

A lease stipulated that the premises let should be maintained and left in good condition to the satisfaction of an arbiter, failing which the landlord should be entitled to execute all necessary work at the expense of the lessees as the same should be certified by the arbiter.

In an action by the landlord, *held* that the remedy specified in the lease was not exclusive of his right to sue for damages for breach of the lessee's obligation of maintenance.

Upon 6th March 1886 John Baird Smith, writer, Glasgow, trustee of the late Thomas Allan senior, let to Thomas Allan & Sons, the works of Springbank and Roselea, under a letter of lease from the lessees' agents, which provided, *inter alia*—"Our clients (the lessees) shall accept of the whole premises let, including the machinery, plant, and others, conform to inventories to be prepared at the sight of Alexander Steven after mentioned, and to be subscribed as relative to the lease as in good tenantable and working order and condition, and shall bind themselves and their successors, at their own expense, to maintain and uphold them in the like good order, repair, and condition during the whole period of the lease, and to leave them so at the termination thereof, ordinary depreciation and tear and wear excepted, but so that at all times during the currency of the lease and at the termination thereof the said ironworks, including the said machinery, plant, and others, shall be maintained in good tenantable and working condition as going works, and that to the satisfaction of Alexander Steven, engineer in Glasgow, whom failing by death or otherwise, Thomas Steven, after designed, who shall have right from time to time to obtain access to the said works upon giving reasonable notice for the purpose of inspecting the same, and ascertaining whether our clients are keeping these and the said machinery, plant, and others in working order and in the condition foresaid; and in the event of the said Alexander Steven, whom failing as aforesaid, the said Thomas Steven, being of opinion that the said works, machinery, plant, and others are not being kept in said working order and condition, and our clients failing to put them in such working order and condition foresaid within a reasonable time after notice in writing requiring our clients to do so, either by him or your clients or their agent, then your client shall be entitled, without any further intimation or judicial steps, to execute all such repairs or other work necessary to put the said works, machinery, plant, and others in good working order and condition as aforesaid, and for doing which our clients shall be bound to give all necessary facilities, and that at the expense of our clients or their foresaids, who shall be liable in payment of the expense thereof, as the same shall be certified by the said Alexander Steven, whom failing the said Thomas Steven."

On 18th December 1888 Mr Smith required the defenders to execute certain repairs he then considered necessary, but the defenders declined to do so, and upon 31st January of that year they left the premises. Mr Smith then appealed to Mr Alexander Steven, the arbiter, who, after some procedure, upon 5th March 1890 pronounced an interlocutor finding that the lessees had failed to keep the premises in good order and repair in fourteen specified particulars.

Upon 25th Febuary 1891 Mr Smith raised an action against Thomas Allan & Sons to have them ordained to pay the cost or expense of executing the repairs specified in the arbiter's interlocutor, "or otherwise to pay the pursuer the sum of £750."

The pursuer averred—"(Cond. 4) The said premises were not re-let after the defenders left them, and they have since been unoccupied, and the plant and machinery have not been in actual use since the defenders left them. It is very doubtful, in view of the delay and the deterioration in consequence of the defenders' failure to fulfil their obligations which have now taken place, whether the said premises, plant, and machinery will be again occupied and used, and in these circumstances it would be unreasonable for the pursuer to execute the repairs in question. In consequence of the defenders' refusal to execute said works, and the consequent delay, the works, &c., in question have, since the termination of the defenders' tenancy, deteriorated to such a further extent that the repairs and operations for which the defenders were and are liable would not now restore them to the state of repair in which the defenders were bound to leave them, or into such a state as would enable the pursuer to re-let them as a foundry, and it is therefore reasonable that the pursuer should be paid the cost of said repairs. The said works, &c., are worth £1500 less than they otherwise would have been in respect of the defenders' failure duly and timeously to execute said repairs; and in consequence of the defenders' said failure the pursuer has suffered loss and damage to the extent of £750."