

than a sense of public duty. Therefore, it would require the very strongest possible cause to shew that their decision should be overturned. It was not without a feeling of great responsibility that they opposed this application, but in the circumstances they felt that they were bound to do so most seriously.

At advising—

LORD JUSTICE-CLERK—My Lords, we have before us a very important application. It is one made under the statute of 1835, in relation to an accusation for forgery. Forgery prior to the year 1832 was a capital offence, but in that year it appeared to our Legislature that the more lenient tendencies of modern times required that it should be removed from that category, and accordingly an Act was passed whereby capital punishment in cases of forgery was abolished, and the offence was left punishable only with an arbitrary punishment. In this Act of 1832 there was no provision made as to bail in cases of forgery. This, it is clear, was an oversight, for though the tendencies of the age demanded that the crime be no longer punished with death, still there were considerations regarding the particular crime of forgery which rendered it most inexpedient to allow the panel the privilege of insisting upon being admitted to bail. The Act of 1835 was accordingly passed, to remedy the oversight which had been made. Section 1 gives to the panel the power to apply to the public prosecutor to be admitted to bail, but takes away the right which he previously had, to insist upon being admitted to bail. Section 2, proceeding upon the footing that the application to the public prosecutor has been made and refused, enacts that it shall be in the power of the Court of Justiciary, on the application of the panel, to admit him to the privilege of bail, provided it shall appear to the Court to be consistent with the ends of justice to do so. Now, it has been argued before us, on the part of the Crown, that this enactment simply restored the crime of forgery, so far as the question of bail was concerned, to the position it occupied before the passing of the statute of 1832. But there was an inherent power in this Court of liberating on bail even persons accused of capital crimes, if the Court thought it essential to the ends of justice, and no such mere limited power of that sort was intended to be conferred by this second section of the Act of 1835. There are reasons, as I said before, which render it impossible that a panel charged with this species of crime should be allowed to insist upon bail, and therefore an intermediate enactment was passed, whereby he was deprived of the right; but a discretionary power was vested in the Court of granting the application of the panel, provided they were satisfied that it was consistent with the ends of justice.

Having made these observations upon the legal question involved in this case, I may now state my opinion, and it is the opinion of the Court, that the panel here has failed to satisfy us that it would be consistent with the ends of justice that we should admit him to bail. In a case such as this it is most important both for the panel and for the public that nothing should fall from the Court which should prejudice the case either way, and I therefore refrain from making any remarks upon the facts of the case which were mentioned to us. There is one element, however, that I may state as weighing with us in the determination to which we have come, and that is, that the application was

only made after the first diet against the panel had been called, and after delay had been granted at the panel's own request. We have carefully considered the other matters which were stated to us on both sides of the bar; and though I consider myself precluded from going into them under the present circumstances, I may add, that we consider it was incumbent upon the panel to adduce reasons why the judgment of the Crown counsel in refusing bail should be interfered with by the Court. Seeing that he has, in our opinion, failed to do so, we have no alternative but to refuse the prayer of this petition.

LORDS COWAN and NEAVES concurred.

Application for bail refused.

## COURT OF SESSION.

Tuesday, July 18.

### FIRST DIVISION.

REID v. LAIRD.

(Ante, p. 422.)

*Property—Foreshore—Medium Filum—Estuary.* In a question of division of shore-ground along an estuary, the true *medium filum* is the middle line of the whole expanse of water at low tide, and not that of the main stream.

In this case the following interlocutor was pronounced:—"Find that the boundary between the property belonging to the pursuer and that belonging to the defenders, so far as the said properties consist of shore-ground between high-water mark as now existing and low-water mark, has never been fixed or ascertained in any way; find that the said boundary-line must be now settled and fixed, upon the principle of ascertaining the average line of the centre of the river Clyde at low water opposite the said properties, and dropping a perpendicular from the said average line on the land boundary between the said properties at high-water mark as that existed before any part of the shore-ground was embanked or gained from the sea by either party; therefore remit to Professor Macquorn Rankine, of the University of Glasgow, to lay down on a copy of the Ordnance Survey map a straight line representing the average direction of the middle line of the river Clyde at low water, commencing at that part of the river which is opposite the point of the hill of Ardmore on the north, and Cappelow on the south, and extending thence eastward for two and a-half miles, and from the said straight line to lay down a perpendicular at right angles to the said straight line, falling upon the point representing the original land boundary between the said properties, being the point represented by the letter E on the plan No. 13 of process."

Professor Rankine having laid down a line as in accordance with this remit, it was objected for the pursuer that the reporter had not taken the average direction of the middle line of the river, as between the low-water line on the south and the low-water line on the north side of the river respectively, but had disregarded the low-water line of the north shore.

The Court accordingly, after hearing parties, made a second remit to Professor Rankine, to make

any additional report he might think desirable, in regard to the objection.

Professor Rankine accordingly made a second report, in which he stated that in considering the state of the Clyde at low water it was necessary to distinguish between the boundaries of the main stream and the boundaries of the whole expanse of water in the estuary. At low water the main stream is bounded on the south by the low-water mark. On the north it is bounded by a chain of sandbanks, beyond which at low water lies a body of water forming no part of the main stream, and receiving at low water no part of the waters of the Clyde.

The question arose whether the true *medium filum* was to be taken as the middle line of the main stream, or as the middle line of the whole expanse of water covered at low tide.

The Court were of opinion that, looking to the character of the Clyde at Port Glasgow, which was that of a river in its estuary, and also looking to the nature of the question—the division of a piece of shore ground, valuable just because it adjoined a navigable river—the true *medium filum* was the centre of the whole expanse covered by water at low tide.

Agent for Pursuer—William Mason, S.S.C.

Agents for Defenders—Adam & Sang, S.S.C.

Tuesday, July 18.

SCOTT v. THE CLYDE NAVIGATION TRUSTEES,  
AND OTHERS.

*Process—Suspension and Interdict—Contractor—Arbitration.* Circumstances in which a note of suspension was passed, and interim interdict granted, to try the question, Whether the Trustees of the Clyde Navigation were entitled to avail themselves of the clause in a contract for building a new dock, giving them power, under certain circumstances, to enter upon possession of the works, and prosecute them to completion at the contractor's expense.

This was a reclaiming note against an interlocutor in the Bill Chamber pronounced by the Lord Ordinary (MACKENZIE), passing a note of suspension and interdict at the instance of William Scott, contractor in Govan, against the Trustees of the Clyde Navigation, and Robert Bruce Bell and Daniel Miller, civil engineers in Glasgow.

The note of suspension and interdict craved their Lordships "to suspend the proceedings complained of, and to interdict, prohibit, and discharge the respondents, the Trustees of the Clyde Navigation, from taking possession of the work at present being executed by the complainer at Salter's Croft, on the river Clyde, in the harbour of Glasgow, or any part thereof, or of any materials upon the ground, or of any plant or machinery, or erections thereon; as also from carrying on any of the said works by themselves or by their servants, and from re-letting the said works or any part thereof, and from doing any other acts professing or bearing to be in terms of article 11 of the contract entered into between the said Trustees of the Clyde Navigation and the complainer on the 18th and 29th days of June 1869; and from impeding or interfering with the complainer in any manner of way in executing or completing the said works, or otherwise; or at least to interdict, prohibit, and discharge the said respondents from doing any of

the acts above specified, or any other acts purporting to be in terms of said article 11 of the said contract, unless and until it shall have been determined by a duly qualified and competent arbiter that a case entitling the said respondents, the Trustees of the Clyde Navigation, to act upon the said 11th article of the said contract has arisen; and further to interdict, prohibit, and discharge the said respondents from referring or submitting to the respondents, Robert Bruce Bell and Daniel Miller, as arbiters named in the said contract, any question or dispute arising between them and the complainer in regard to the said article 11th of said contract, or the rights and powers competent to the respondents under the said article, or in regard to the method to be followed by the complainer in mixing and applying the cement or cement-mortar to be used by him in constructing the brick invert specified in said contract, or in regard to the mode or system of draining the works embraced in said contract, along the course of their construction; and from referring or submitting any such questions or disputes to any other of the arbiters named in the said contract than John Frederick Bateman, Esq., civil engineer, London, and also to interdict, prohibit; and discharge the respondents, Robert Bruce Bell and Daniel Miller, from acting as arbiters in any question under the said 11th article of the said contract, and in particular from acting as arbiters to decide whether the complainer has been guilty of any such suspension of the works connected with the invert of the graving dock at Salter's Croft, to which the said contract relates, or of any other act or omission in connection with the said invert, as to warrant the other respondents, the Trustees of the Clyde Navigation, in acting upon the said 11th article of the said contract; and also from acting as arbiters in regard to any questions or disputes in regard to the method to be followed by the complainer in mixing and applying the cement or cement-mortar foresaid, or draining the said works during their construction; or to do otherwise in the premises as to your Lordships shall seem proper."

The Lord Ordinary, on 5th July 1871, passed the note, and granted interdict as craved, in terms of the second or alternative part of the prayer of the note, and in terms of the remainder of the prayer of the note which follows the said alternative part. The note appended to this interlocutor will explain the circumstances of the case, and is as follows:—

"*Note.*—The complainer is the contractor for the construction of a graving-dock and other works on the Clyde, for the Trustees of the Clyde Navigation, in terms of a contract and relative specification and plans. That contract contains a clause empowering the Trustees to take the works out of the hands of the complainer in the event of his neglecting to conduct the works with due diligence, or neglecting to complete them in a workmanlike manner. It is further thereby declared, that in all cases of defective description or ambiguity in the specification, the matter shall be referred to the engineers, Messrs Bell and Miller, whose decision shall be considered as correct, and be binding upon all parties, and also that the contractor shall furnish the said engineers with a description of the arrangements which he proposes for carrying out the works, and must modify and alter the same as directed by them, and carry out the works in accordance with their directions.