

Saturday, March 15.

SECOND DIVISION.

[Lord Young, Ordinary.]

HENDERSON AND OTHERS v. LLOYD'S REGISTER.

*Shipping Law—Classification on Lloyd's Register—New Regulation as to Load-line after Class given Originally—Breach of Contract.*

A steamer was in 1872 classed in the highest class on Lloyd's Register, and continued to be so classed, being periodically surveyed down to 1877. A new rule was promulgated by the committee of Lloyd's as to the "load-line" in the case of "awning-decked" vessels, which that in question was, and was notified to the owners in January 1877. The owners refused compliance therewith, and in terms of a provision to that effect contained in the rule the classification of their steamer was in April 1877 expunged from the register. In an action of damages at the instance of the owners against Lloyd's Register, held that there was no implied contract between the parties to keep the vessel in the highest class on the register provided there was observance of the rules in force at her admission, and defenders assoltized accordingly.

This was an action of damages at the instance of Thomas Henderson and others, owners of the s.s. "California" of Barrow, against Lloyd's Register of British and Foreign Shipping, and the trustees thereof as representing that association.

The s.s. "California," one of the transatlantic fleet of the Anchor Line Company, was an iron screw steamer of 3287 tons gross, and 2096 net register. She had two decks and an awning deck, and two engines of 1047 horse-power nominal, and was built for the owners in 1871-72.

Lloyd's association surveyed and classified British and foreign ships, and published classified lists of such ships from year to year, and had places of business in England, Scotland, and Ireland. They published rules and regulations from time to time, and had no deed or articles of association other than these.

Before the "California" was built, and with a view to her classification in the register, the plans for her construction were submitted to the committee of the association for approval. They complied in every respect with the rules for the building of iron awning-decked steamers, including the rule (§ 43) that "In these awning-decked vessels there must be scuppers and ports at the main deck, through the side, to discharge water and combings, and hatches as fitted to a weather deck;" and after being examined, the plans were passed and approved by the committee. The construction of the vessel proceeded under the special survey of one of the surveyors, and in terms of the rules of the association. On 18th June 1872 she was classed and entered in the register book as an iron screw awning-decked steamer of the highest class, marked as built under special survey, and with the character "100 A1, subject to periodical survey." A certificate of classification to that effect was issued by the defenders.

It was averred by the pursuers—(Cond. 6) By

the then existing rules of said association, which formed the contract between the pursuers and the defenders' association under which the foresaid special survey and classification were made, the defenders' association became bound to retain the "California" in the class assigned to her in their register, and to let her appear as holding that class in the printed copies of their register, which are published and circulated by them annually, "so long as on annual and periodical special surveys" she was "found to be in a fit and efficient condition to carry dry and perishable cargoes to and from all parts of the world." The vessel stood in the annual lists from 1872 to 1876 as of the classification beforementioned; but the pursuers stated that notwithstanding their compliance with the rules as to surveys, and the thorough repair and efficiency of the steamer, her classification was expunged from the register in January 1877, and also from the printed copies thereof for 1877 in which she appeared as a ship which had been deprived of her class in consequence of non-compliance with the rules. It was averred (Cond. 9) "The expunging of the "California's" classification from said register, and the publication and circulation of the copies of said register for 1877, in which she is represented as having been deprived of her classification as aforesaid, were illegal and unwarrantable violations of the contract between the pursuers and the defenders, under which the "California" was registered. When the "California's" classification was expunged as aforesaid, there was still a considerable period to run before another annual survey required to be made upon her by said rules, and the next periodical special survey of her will not fall due until June 1880. (Cond. 10) When said ship was classified (in June 1872) as aforesaid, the rules of the defenders' association as to the building and classification of iron steamships, including awning-decked vessels, were those which had been published by the association under date 1st July 1869. They required no load-line to be fixed for or marked on any awning-decked ships; and upon the faith of these and the other rules of said association then in force the pursuers contracted with the defenders' association as aforesaid."

In 1873 and 1874 the committee of Lloyd's issued regulations in regard to awning-decked ships, providing that there should be scuppers and ports for the discharge of water, &c., and with reference to a load-line on such vessels, and on 8th December 1875 they issued this circular:—(No. 340) "With reference to the notices numbered 305 and 314, issued by the committee of the society in February and August 1873, calling attention to the conditions under which awning-decked vessels are classed in the register book, I am directed in forwarding to you copies of these notices, to acquaint you that the committee having become aware that the condition, on classification, that the ports and scuppers at the main deck must remain open for the discharge of water continues to be contravened, have resolved that in all cases of awning-decked vessels classed in the register book a load-line shall be determined on for them, to be marked on the ship's sides, and recorded in the register book and on the certificate of classification. Under these circumstances, I am to request you will submit to me for the committee's consideration the load-line you suggest for adop-

tion in the case of your iron screw steamer. I have to add that in every instance of non-compliance with this requirement within six months of the date hereof, the character of the vessel will be expunged from the register book."

Lloyd's rules and regulations, published in April 1876, contained the following under the head of "awning-decked vessels" (sec. 43):—"The plans of such vessels and a maximum load-line must be submitted to the committee for approval; and the load-line thus sanctioned is to be inserted in the certificate and in the register book and on the ship's sides. Awning-decked vessels loaded to a greater draught of water than such maximum load-line will thereby lose their character in the register book." The words "and on the ship's sides" in the regulation here quoted were new. About a month after the regulations for 1876 were published the "California" underwent her first periodical survey, and Lloyd did not then fix or mark a load-line for her, certifying her as in a complete state of repair and efficiency.

In 1876 a circular (No. 354) was issued by Lloyd's, calling attention to the fact that the requirement of the circular (No. 340) as to the load-line above quoted had not been complied with, and subsequently in January 1877 another circular was issued, which stated, *inter alia*, that "in the absence of a reply thereto (*i.e.* to the circular of 8th December 1875), the committee feel it to be out of their power to continue the character of the vessel in the register book, and that unless a satisfactory reply be received prior to the re-printing of the book in April next, the vessel's character will be expunged therefrom by a red line." That circular, it was averred by the pursuers, gave the owners of awning-decked vessels till April 1877 to mark a load-line on their ships; but from a marking against her, in red, in the register book printed for the year 1877 it appeared that the "California" was deprived of her classification in January 1877. The marking was as follows, "177," and was explained by a foot-note to the following effect:—"A red line, with date under it, in this column indicates that the class was withdrawn from non-compliance at that date with the society's rules."

The pursuers averred that the circular of December 1875 was *ultra vires* of the committee of Lloyds, and they disputed their right to apply a load-line at all to the "California," or to expunge her classification for non-compliance with it. They also said they had contracted with Lloyd's on the faith of the old rules as in force in June 1872. The circulars noticed above were not, it was alleged, applicable to the "California," for her ports and suppers had not been closed. Again, the provision as to a load-line on awning-decked ships was not retrospective, and could not affect the steamer, so that no load-line was ever fixed by the rules for her. The committee had not, it was said, the right to apply their load-line rule to the "California," nor to strike her out of the register, and by illegally doing so had caused loss and damage to her owners such as was represented by the sum sued for.

The defenders, on the other hand, alleged that theirs was a private unincorporated society, with no trade or business of its own, merely an association for the purpose of getting a faithful and accurate classification of the merchant shipping of the United Kingdom and of foreign vessels

frequenting British ports, the register thus made being annually printed for the use of the subscribers. The "California's" classification was not obtained for a term of years, and neither Lloyd's nor anyone acting for them had entered into any contract ensuring that the steamer should continue on the register without any additional requirements for safety than were at first exacted when she was admitted. The survey, it was averred, only guaranteed that the ship certified under it was up to the existing standard. Awning-decked vessels were, it was stated, peculiarly liable to be overloaded in consequence of their structure, and of a custom of loading them as though they were built of full scantlings to the extreme upper deck, and Lloyd's committee had come to the honest and impartial conclusion that safety required a change. The various circulars quoted show their efforts in this direction, and ultimately they came to the final resolution to deprive all non-compliant vessels of their classification. Lloyd's further stated that without the precaution of the load-line as now required they would not be faithfully and accurately representing the character of the "California," were they to retain her in the highest class in the register.

The pursuers pleaded—"(1) Upon a sound construction of the contract between the pursuers and defenders, the defenders were bound to continue the classification of the pursuers' vessel so long as the conditions specified in the defenders' rules at the date of her classification continued to be fulfilled. (2) The defenders having, in breach of the contract between them and the pursuers under which the said vessel was classified, withdrawn and expunged the classification of the said vessel, to the pursuers' loss, injury, and damage, the pursuers are entitled to reparation as concluded for."

The defenders pleaded, *inter alia*—" (1) None of the defenders being subject to the jurisdiction of the Court of Session, the action should be dismissed. (2) *Separatim*, none of the individual defenders being subject to the jurisdiction of the Court of Session, the action cannot be maintained against them or the Society of Lloyd's Register of British and Foreign Shipping. (3) The action is incompetently laid against the said society, and should be dismissed. (4) The averments of the pursuers are not relevant or sufficient to support the conclusions of the summons against any of the defenders. (5) There not having been any contract between the pursuers and the Society of Lloyd's Register, or anyone on its behalf, to the effect labelled, the action cannot be maintained. (6) The adoption of the regulations requiring a load-line as a condition of awning-decked vessels retaining their classification having been lawful, and within the powers of the committee according to the rules and regulations in force in 1872, and, *separatim*, according to the practice of the society, the committee were entitled to expunge the 'California' from the register, and the defenders are entitled to absolvitor."

The Lord Ordinary (YOUNG) pronounced an interlocutor repelling the first, second, and third pleas-in-law for the defenders, but sustaining the fourth and fifth, and in respect thereof assoilzieing the defenders, and finding them entitled to expenses, &c. He added this note:—

"*Note.*—The pursuers' steamer 'California' was built at Glasgow in 1871-2 under the survey of one of Lloyd's surveyors, and in 1872 was classed 100 A1 at Lloyd's, and thereafter down to 1877 was continued in that class on Lloyd's register, being periodically surveyed as required by Lloyd's rules and regulations. The ship has an awning deck, and it appears there have always been some special rules regarding awning-decked ships. Those existing in 1872 were presumably, and indeed admittedly, complied with in the case of the 'California.' Since then a new rule has been introduced by the committee of Lloyd's, whereby it required 'that in all cases of awning-decked vessels classed in the register book a load-line shall be determined on for them, to be marked on the ship's sides, and recorded in the register book and on the certificate of classification,' and that, failing compliance, the committee will not continue the character of the vessel in the register book. The pursuers had due notice of this new rule in January 1877, and were required to take the proper steps for complying with it before the reprint of the register book in April following. They refused compliance on the ground that the committee were not entitled 'to apply their load-line rule' to the 'California,' or to 'expunge her classification for non-compliance with it.' The committee thinking otherwise, deprived the 'California' of her classification, and for this the pursuers now sue Lloyd's association for damages as for breach of contract.

"The defenders object to the jurisdiction of this Court, and also plead that the action is incompetently laid against the association. I cannot sustain these pleas, for I am of opinion, 1st, that, assuming the facts averred to disclose a good cause of action to the pursuers against Lloyd's association in the matter to which they relate, this Court has jurisdiction to entertain it; and 2d, that the association, which has appeared, has been well called according to our rules of procedure. I do not dwell on these pleas, for the defenders further maintain that the facts averred disclose no good cause of action, and I am very clearly of opinion that they do not.

"The pursuers' case depends on the validity of their proposition that the facts averred by them imply a contract between them and the defenders with respect to the 'California,' whereby the classification of that vessel on the register shall be preserved so long as the rules and regulations of the association in force at the date of the original registration in 1872 are complied with. I cannot sustain this proposition.

"The defenders allege that it is necessary to the end and object for which their association was formed and exists 'that the committee shall, from time to time, and as occasion requires, exact qualifications for the several classes which have the effect of excluding ships whose structure has been ascertained by experience to expose them to danger or objection, and it has always been the practice of the committee to alter the rules according to these considerations, and with reference to ships built under survey and already classed, and to exact compliance of the rules so altered as a condition of the vessels' retaining their classification.' The pursuers deny this, but I must regard the denial as immaterial, for if the defenders' practice has not been governed

by the considerations mentioned, I think it very clear that it ought to have been, and I can see no ground for implying a contract with the pursuers to the effect that their ships shall be so dealt with. The value of a classification at Lloyd's consists only in the confidence which it gives to the public, the measure of which is precisely the trust reposed in the association and its servants. The chief duty of the association is not to shipowners, but to the public who employ ships to carry themselves and their goods in reliance on the classifications of the association as in truth certificates of safety or of the absence of avoidable causes of danger, and, indeed, it is only in so far as this duty is performed to the public satisfaction that shipowners can benefit by the classification of their ships. The association can only apply the rules which existing experience suggest as proper to be followed, but the public who rely on their certificates (or classification), properly expect that they will be duly vigilant to observe facts connected with shipping, and guard against dangers as growing experience may disclose them. The explanation which the defenders give on record of the dangers which have of late years, and since 1872, been found to attend awning-decked vessels, and which induced them to make the rule of which the pursuers complain is intelligible and instructive. It would be a grave misfortune and greatly impair public confidence in the association if a court of law were to hold that they were under implied contract with respect to all ships already classified which compelled them to continue the classification after they had become satisfied that it was undeserved, and therefore misleading. That this or any other Court should order them to do so as under contract to that effect is of course extravagant. If such order were made, the association would no doubt comply with it, but would probably announce on the face of their register that it was an act of obedience on their part, and implied no certificate by them on their own judgment that the ship was worthy. But such an order is obviously out of the question. Damages may no doubt be given for breach of a contract which the Court would not enforce specifically, but here, I think, is no contract at all to the effect alleged.

"I therefore repel the first, second, and third pleas for the defenders, but sustain the fourth and fifth, and assoilzie the defenders, with expenses."

The pursuers reclaimed.

At advising—

LORD ORMDALE—In this action, which is at the instance of the owners of the steamship "California" against Lloyd's Association, formed for the purpose of surveying and classifying British and foreign ships, and publishing classified lists of ships from year to year, the pursuers conclude for £1000 in name of damages.

That the ground of action is breach of contract or implied contract cannot be doubted, having regard to the pursuers' allegations and pleas. After setting out the circumstances in which the "California" was built under the inspection and survey of the defenders in 1872, and to their satisfaction, the pursuers state that she was thereupon registered "as an iron screw awning-decked

steamer of the highest class, viz., in class 100 A 1 ;" and the pursuers add that for this classification and survey they paid the defenders £115, 15s., and obtained a certificate by the defenders of the classification. The pursuers further allege "that by the then existing rules of said association, under which the foreshaid special survey and classification were made, the defenders' association became bound to retain the 'California' in the class assigned to her in the register and to let her appear as holding that class in the printed copies of their register which are published, and circulated by them annually, so long as on annual and periodical special surveys she was found to be in a fit and efficient condition to carry dry and perishable cargoes to and from all parts of the world."

Such is the contract as averred by the pursuers in respect of the breach of which by the defenders they conclude for damages in the present action.

The breach, again, is alleged by the pursuers as follows:—"But notwithstanding the pursuers' compliance with the said rules as to surveys, and notwithstanding the thorough repair and efficiency of the said steamer, her said classification was expunged by the defenders' association, or their committee or officers for whom they are responsible, from their register in or about January 1877, and also from their printed copies thereof for 1877, in which she appears as a ship which had been deprived of her class in consequence of non-compliance with the rules of said association." The pursuers then go on to state more particularly how and in what manner the alleged breach of contract took place. They state that when the "California" was classified in June 1872 the rules of the defenders' association required no load-line to be fixed or marked on any awning-decked ships, but that notwithstanding of this they made a new or altered rule, which they published in 1876, to the effect that a load-line previously approved of by them must be marked on ships and inserted in the register-book and certificate of classification, failing which the vessels would lose their character in the register-book.

It is in these circumstances the question arises, whether the pursuers' action is maintainable as for breach of contract or implied contract?—the only ground upon which they argued that it was. In dealing with this question it is obvious, on the pursuers' own showing, that the rules and regulations of the defenders' association are made part of the pursuers' allegations, and that, indeed, their allegations could not stand or be intelligible except in connection with the rules and regulations. The rules and regulations must therefore be carefully examined.

According to the pursuers' contention, the new or altered rule, to the effect that a load-line required to be approved of by the defenders' association, and marked on awning-decked ships, could not be applied to the "California," which had been some years previously entered and classified in the defenders' register. Now, in the first place, I can find no rule or regulation to this effect, and none such is referred to or founded on by the pursuers in the record, or was referred to or founded on by them at the debate. There are, on the contrary, plain indications in the rules and regulations to the effect that the defenders are entitled to enact from time to time new or altered

rules as might be found from experience to be necessary for the classification of ships or for allowing ships to remain in the register. For example, article or section 17 of the rules and regulations, which provides that no "new rule or alteration in any existing rule materially affecting the classification of ships to take effect until the expiration of six months from the time it shall have been determined on," clearly and, I think, unmistakably implies that new rules or alterations in old ones may be made, even although they should materially affect the classification of ships, provided they are not to take effect till the expiration of six months from the time they were determined upon. *Prima facie*, therefore, the new or altered rule of which the pursuers complain, to the effect that a load-line marked on the "California" was requisite for the continuation of her classification, was within the power and competency of the defenders, unless indeed it could be said that due notice of the new or altered rule had not been given. But although there is some indication of this in the record, it was expressly stated for the pursuers at the debate that they did not insist in any such objection. Nor did the pursuers allege at the debate any more than they have done in the record that in making new or altered rules the defenders were actuated by malice or any other improper motive whatever. Their action is not laid upon anything of the nature of slander of title or property.

It was argued, however, on the part of the pursuers—and this was in reality the only ground on which they seemed to think their action maintainable—that while the defenders, taught by experience, might be at liberty from time to time to alter old and make new rules and regulations for the classification of ships so far as their structure was concerned, it was *ultra vires* of them to make a new or altered rule regarding, not the structure, but the management or control of ships already entered in their register. But the answer made by the defenders to this view of the matter, to the effect that in good sense and reason there was no room for the distinction thus pointed at, so far as the new or altered rule in question is concerned, appears to me to be quite satisfactory. The new or altered rule has in no correct sense anything whatever to do with the management or control of the ship—that is to say, with the voyage she might undertake, or at what season she might sail, or with what cargo she might be laden, and these were the illustrations given by the defenders in support of their contention. The stipulation as to a load-line which forms the subject of the new or altered rule complained of by the pursuers appears to me to be very much of the same character with, and is certainly calculated, as it was obviously intended, to effect the same object as the old or former rule as to ports or scuppers, in lieu of which, or, more correctly speaking, in respect of the want of observance of which it was made. According to the old or former rule, as referred to by the pursuers themselves, the scuppers required to be closed and the ports secured on awning-decked vessels; but it having been found from experience that this was neglected or wilfully neglected, the new rule requiring a load-line became necessary. I do not see, therefore, that the new rule requiring a load-line to be marked on awning-decked ships can be fairly said to relate to the management or control of the ship any

more than the closing of the scuppers and the securing of the ports as required by the old rule could be said to be of that character. Discarding a distinction which appears to me to be out of place in an inquiry like the present, and looking at the matter in a reasonable and practical sense, it appears to me that it may very well be held that requiring a load-line or closing the scuppers and securing the ports are truly so closely connected with the structural arrangements of a ship as to be in truth and reality part of such arrangements. And it would, I very much fear, lead to disastrous consequences if a court of law were to hold that the defenders' association are under an implied contract with respect to all ships already classified which compelled them to continue the classification after they have become satisfied that it was undeserved. To compel them to do so would be tantamount not only to defeat the very object of the defenders' association, but to make their register in place of a guide and aid to shipowners, merchants, and insurers, a means of deceiving and misleading them.

For these reasons, and as the pursuers have failed even in averment to show that there has been any breach of contract, express or implied, on the part of the defenders, I am of opinion that the Lord Ordinary's interlocutor reclaimed against is right and ought to be adhered to. The pleas taken in defence to the jurisdiction of the Court were, it is right to state, expressly given up at the debate.

LORD GIFFORD—I think that the Lord Ordinary's interlocutor is well founded, and ought to be adhered to. The action is an action of damages at the instance of the registered owners of the screw steamer "California" of Barrow against Lloyd's association and the trustees thereof, concluding for payment of £1000 as damages sustained by the pursuers through an alleged breach of contract committed by the association in respect that they had not continued the classification of the "California" after January 1877, and for not having published in their register for 1877 a notice of the "California" precisely as classed in previous registers. I think the pursuers have set forth no relevant grounds on which they are entitled to damages against the defenders.

The whole question turns upon the terms of the rules and regulations of Lloyd's association, upon the alterations made from time to time in these regulations, and on the admitted fact that the pursuers have refused to comply with the conditions contained in the defenders' rules and regulations for 1876 relative to the marking of a load-line upon awning-decked steamships. There are no disputed facts between the parties—the defenders' liability for damages is a pure question of law, which can be decided upon the record and documents in the present stage of the litigation just as well now as at or after a jury trial, and so both parties have argued the questions raised.

The "California" was originally classed and registered at Lloyd's in June 1872, immediately after she was built, when she was entered and published in the class 100 A1 and marked as having been built under special survey. Periodical surveys were thereafter held, and the classification was continued in the years 1873,

1874, 1875, and 1876, and the ship was entered in the same class in the registers of these years. In 1875 and 1876, however, a question arose between the owners of the "California" and the authorities of Lloyd's association regarding the observance by the "California" and her owners of certain rules and regulations of Lloyd's relating to the fixing and marking upon awning-decked steamers of a maximum load-line. Ultimately the owners of the "California" refused to comply with the regulations regarding this load-line, and in the register published in January 1877 the name of the "California" was inserted with a red-ink marking annexed consisting of a red line with figures 177, and this marking was explained by a footnote in the following terms:—"A red line with date under it in this column indicates that the class was withdrawn from non-compliance at that date with the society's rules."

The record and correspondence explain in what consisted the "California's" non-compliance with the society's rules. One of the rules is that awning-decked vessels like the "California" shall have a maximum load-line submitted to the committee for approval, and the load-line sanctioned by the committee shall be inserted in the certificate and in the register book. This rule was not in force at the date of the original classification of the "California," but has been enacted since, having been an alteration on the laws carried into effect in 1875. The owners of the "California" allege that this new law was *ultra vires* of Lloyd's association, so far at least as the "California" was concerned; and founding upon the fact that the ship was originally classified and registered in 1872, when a load-line was not required as a condition of classification, her owners maintain that they are entitled to have that original classification continued without any load-line at all, and that so long as the vessel lives and structurally complies with Lloyd's rules.

It is admitted that if the vessel were built now—that is, in the present year—and if it was now for the first time seeking classification at Lloyd's and entry in Lloyd's Register, it must have complied with the condition as to the maximum load-line. It is conceded that as to all future ships Lloyd's association may make any conditions they please as to classification and registration, but it is said that having once granted in any one year a classification to a vessel under the rules in force in that year, they must continue the classification in all future years as under the old rules, and that a vessel which once gets on the register is not to be subjected in future years to any varied rules or alterations which may from time to time be made.

Alternatively the pursuers plead that even if Lloyd's have power from time to time to vary their rules and regulations so as to bind all vessels whensoever they may happen to have been originally registered, still such alterations or variations upon the rules must be limited to the structural qualifications of the vessel, and that Lloyd's association have no right to vary their rules on such a matter as a load-line, which does not refer to the structure of the vessel, but rather to its management or to the depth to which it may be safely loaded.

It appears to me that the pursuers' contention in both its branches is ill founded.

The origin and purpose of Lloyd's association, as appears from its rules and regulations, was "for the purpose of obtaining a faithful and accurate classification of the mercantile shipping of the United Kingdom and of the foreign vessels trading thereto," and the whole management of the association is vested in a committee elected as provided in the laws. By section 17 the committee are empowered to make bye-laws for their own government and proceedings, said bye-laws not being inconsistent with the original constitution; and provision is made for the introduction of new bye-laws after certain notices; and the section closes with the important provision that "No new rule or alteration in any existing rule materially affecting the classification of ships shall take effect until the expiration of six months from the time it shall have been determined on."

I am of opinion that this power of from time to time varying the rules and regulations entitled the defenders to enact the bye-law in question requiring a maximum load-line to be fixed and marked, and that such bye-law, after the lapse of six months, was binding on and applicable to all such vessels as the "California" without regard to the date at which they may have been originally classed. The object of Lloyd's Register is to inform the public or all persons who consult it of the character and qualities of all vessels classed and registered therein. It is to give shippers and merchants notice of how far they may rely upon the vessel's name as affording means for the safe carriage of goods and of passengers, and that as at the date of each successive publication of the register. It would defeat the whole object of the publication if it were not brought down to date and made applicable to the existing state of each registered vessel. Accordingly the insertion of a vessel in the register for the year 1877 means that the vessel, according to its class, has complied with the conditions necessary to registration applicable to the year 1877, or to the date when the register is published. A merchant—a shipper of goods—would not care to be told that any particular vessel was a good vessel ten or twelve years before, or that when she was originally classed, at however distant a date, she had complied with the regulations then in force. What the merchant or the intending shipper of goods, or the proposed passenger, wants to know is whether the ship is still up to the mark—whether she has complied with all the existing regulations of Lloyd's, and is now, at the time of the last entry, entitled to a particular classification. If the entry means anything else than this, it would be a delusion and a snare, and therefore whenever a ship does not comply with the existing conditions of registration or classification, Lloyd's association are not only entitled but are bound to notify this to the public and to all who purchase their register. The classification of a ship is not a thing which, once given, subsists for ever, or subsists for the whole life of the ship. It must necessarily be renewed or continued from time to time, and Lloyd's association are quite as much entitled to say upon what terms they will continue the classification, as they are to fix upon what terms they will originally grant it. Necessarily, especially with new forms and new devices, in the construction of vessels, experience will show what dangers arise and what

precautions must be observed in the use of particular kinds of ships, and it would be destructive of the utility of the register if Lloyd's association could not avail itself of new experience, and could not from time to time vary its rules. And not less destructive would it be if antiquated rules were made applicable to some vessels and the improved or perfected rules to others, and that merely because the original date of registration may happen to vary. Plainly the same standard of qualification must be equitably and impartially applied to all ships of the same kind whensoever they happened to be built or whensoever they first happened to avail themselves of registration.

Nor is there any good or well-founded distinction between a condition of classification dependent upon the build or structure of a vessel and a condition dependent on the load-line or on the depth to which a vessel may be safely loaded. It appears to me that it is quite as appropriate to the functions of Lloyd's to fix a load-line in cases when this can be done, as to fix that a vessel shall have scuppers or pumps. The safety of the ship and of the goods and passengers it carries is the thing to be secured as far as foresight can do it, and merchants and underwriters look to Lloyd's to secure this as far as it can be done. Now the case in hand is this:—Lloyd's committee say—In our opinion awning-decked steamships are a good and safe kind of ships, but it is essential to their safety that they be not loaded beyond a certain depth, and we shall fix the maximum load-line beyond which the loading must not go. Surely this is reasonable—surely Lloyd's are entitled to say that a ship, according to its structure or in consequence of that structure, will not be a safe ship unless it has so many feet of free-board—that is to say, neither goods nor passengers should venture in it if it is sunk deeper than the load-line which we fix. The pursuers in the present case say—We won't have your load-line; we won't observe any such load-line; and we must not allow it to be marked; but we insist that, notwithstanding, you shall certify our ship as 100 A1, and leave us to load it as deeply as we please, and if you give the slightest hint in your register that we refuse to abide by your load-line you shall pay us £1000 of damages.

It appears to me that this contention is quite groundless. I can find no contract whereby Lloyd's association bound themselves to renew and continue the "California's" classification all the ship's life, or so long as she remained structurally sufficient. I see nothing to prevent Lloyd's from requiring a maximum load-line as a condition of the renewal of their certificate of safety, and assuming that the skilled men who constitute Lloyd's committee are honestly of opinion that a limitation of the load is essential to the safety of an awning-decked steamer like the "California," then I think that Lloyd's committee are not only entitled but bound to intimate this to their subscribers, their members, and to the public who buy their register. They have done no more than this, and instead of being liable in damages they are entitled to commendation.

The LORD JUSTICE-CLEER concurred.

The Court adhered.

Counsel for the Pursuers (Reclaimers)—Asher—Mackintosh. Agents—Hamilton, Kinnear, & Beaton, W.S.

Counsel for the Defenders (Respondents)—Balfour—Robertson. Agents—Webster, Will, & Ritchie, S.S.C.

Friday, March 14.

## FIRST DIVISION.

### CITY OF GLASGOW BANK LIQUIDATION—

(DALZIEL'S AND WISHART'S CASES) —

JAMES WISHART AND GEORGE DALZIEL v. THE LIQUIDATORS.

*Public Company—Winding-up—Fee and Liferent—Liability of Liferenters and Fiars both Standing on Register.*

Where two parties who were in right of stock in a bank of unlimited liability, respectively as liferenter and fiar, both signed the transfer, and the names of both were placed on the stock register accordingly—*held*, upon the failure of the bank, that both being partners they fell to be placed on the list of contributories.

*Married Women's Property (Scotland) Act 1877 (40 and 41 Vict. c. 29)—“Antenuptial Debt.”*

Where a party married a wife who held stock in a bank, there being no antenuptial marriage contract between the parties—*held*, upon the failure of the bank within a month subsequent to the date of the marriage, that under the provisions of the Married Women's Property (Scotland) Act 1877 the liability following upon the possession of the stock was an “antenuptial debt” within the meaning of the Act, and that the husband was not liable further than to the amount of property brought to him by his wife.

James Wishart, Kirkcaldy, presented a petition to have his name removed from the list of contributories of the City of Glasgow Bank, on which it had been placed in respect of £200 consolidated stock of the bank.

On September 19, 1878, the petitioner had married Jane Skinner, daughter of Peter Skinner of Drunzie. There was no marriage-contract. Some time before the marriage Mr Skinner had acquired two shares in the City of Glasgow Bank, which were then entered, and at the date of the bank's suspension on 2d October 1878 remained entered in the share register in these terms:—“Peter Skinner of Drunzie, Strathmiglo, in liferent, and Miss Jane Skinner, Strathmiglo, in fee.” The petitioner had no shares in the bank, nor did his name appear on the register, and it was not till after the suspension that he heard that his wife's name was so entered, or that she had any interest in the bank. The liquidators, however, put his name on the list of contributories in respect of the stock so held by his wife.

The petitioner maintained that he was not liable for the calls made upon him for the stock, as the case came under the Act 40 and 41 Vict. cap. 29 (the Married Women's Property (Scotland) Act 1877), this being a debt contracted by his

wife before the marriage, he having received with her only a sum of about £72 and a few articles of household furniture, and nothing since the marriage. That Act provided—“In any marriage which takes place after the commencement of this Act the liability of the husband for the antenuptial debts of his wife shall be limited to the value of any property which he shall have received from, through, or in right of his wife at or before or subsequent to the marriage, and any Court in which a husband shall be sued for such debt shall have power to direct any inquiry or proceedings which it may think proper for the purpose of ascertaining the nature, amount, and value of such property.”

Petitioner's authorities—*Matthewman's Case*, 1866, L.R. 3 Eq. 781; *Ex parte Canwell*, Mar. 16, 1864, 4 D.G., J., and S. 539; *Williams v. Hardie*, 1866, L.R. 1 Eng. and Ir. App. 9; *Reid v. Moir*, July 13, 1866, 4. Macph. 1060.

Respondents' authorities—*Ex parte Luard*, 29 L.J. Chan. App. 269; *Sadler's Case*, 3 D.G. and S. 36; *Buckley on Companies Acts*, p. 66; *Lindley on Partnership*, 1356.

After counsel had been heard on the above point, leave was granted by the Court to the petitioner to amend his petition to the effect of putting in a plea that his wife, who was the fiar of the shares, her father still holding the liferent at the time of the failure of the bank, was not a partner of the bank, and so was not liable to contribute. It was argued that the shares were bought by Mrs Wishart's father, that he drew the dividends, and that the bank failed before the liferent terminated. Such a divided interest in the stock of joint-stock companies as liferent and fee had long been recognised—*Rollo*, M. 8282, 4 Pat. App. 521; *Thompson v. Lyell*, Nov. 18, 1836, 15 S. 32; *Bell's Prin. secs. 1037 and 1050*. This was not the ordinary case of liferent and fee, but the shares were only intended to come to the daughter at the death of her father, and therefore the interest of the daughter should be treated as a successive interest, and not as a joint interest—*Hill's Case*, 20 L.R. (Eq.) 585; *Lindley on Partnership*, 1077, 1364.

Argued for respondents that Mrs Wishart had actually signed the transfer, which bound her as much as signing the contract, and that in the contract there was no provision for such an interest as that ascribed by the petitioner. Further, following *Rollo's* case, the lady had really a present interest in the stock, as if a bonus had been given to the shareholders it would have come to her and not to the liferenter. She and her father were really in the position of having a joint interest in the stock.

The Rev. George Dalziel also presented a petition for removal of his name from the list of contributories of the City of Glasgow Bank, in which he had been placed in respect of £100 stock of the bank.

The stock referred to in the transfer was acquired by the petitioner himself, and was thereafter entered in the stock ledger of the said bank under the following heading, viz.:—“The Rev. George Dalziel, 3 Leven Street, Edinburgh, and Mrs Helen Lindsay or Dalziel, his wife, and the survivor of them in liferent, and Miss Margaret Helen Dalziel, their daughter, in fee, excluding