

This is expressly stated in the report, and obviously was one of the considerations by which the judgment was influenced. Here, not merely is there reference to previous possession in the lease to the defender, but there is a similar reference in the case of the pursuer. So far, therefore, from being adverse, the decision referred to seems to me to support the defender's contention, for as I read the opinion of the Lord Chancellor, if there had been anything in the lease by which not expressly but by implication the farm as previously possessed had been let to the tenant, and the previous possession had included the use of the road in dispute, the judgment appealed against would not have been reversed.

Of course, though the defender is in my opinion entitled to the use of the road, the use must be taken with reasonable consideration for the interests of the pursuer, and had it appeared that avoidable injury to the pursuer's land had been caused, a remedy against that might, on the pursuer's complaint, have been afforded; but such is not the case presented by the pursuer, nor is there any ground for such a complaint supported by the proof.

Upon all these things the Sheriff and the Sheriff-Substitute are agreed; but the Sheriff is of opinion that the use of the road by the defender ought to be made the subject of regulation, and this is the reason for which the absolvitor granted by the Sheriff-Substitute was recalled and the action remitted for further procedure. The defender's use of the road, however, appears to me not to require regulation. There has been no abuse, and therefore there is nothing calling for a remedy by regulation. Furthermore, regulation might create difficulties not easily solved. What seems to be pointed at is the construction of a gate in the march fence through which access could be obtained from the defender's fields to the road upon the pursuer's farm. But who would bear the expense of such a provision? The pursuer is not liable, nor is there liability on the defender, whose right is not made dependent upon the formation of such an access. And what of Lord Stair? He might not approve of such a proceeding, and at the end of defender's lease he might ask that things should be restored to their former condition. All these considerations seem to me to render inexpedient any attempt at regulation in the circumstances of the present case.

Whether, had more been asked by the defender, we might not have given more than a possessory judgment need not be considered, for the defender is content to take things as these have been left by the Sheriff-Substitute.

LORD RUTHERFURD CLARK and LORD ADAM concurred.

The LORD JUSTICE-CLERK and LORD YOUNG were absent.

The Court pronounced this interlocutor:—

“Find that by the lease to the pursuer, which was granted in 1880, the farm of East Muntloch was let to him as occupied at the time by David M'Kitterick: Find that by the lease to the defender, which was granted in 1874, by the same landlord, the farm of Car-drain was let to him as then possessed by

Alexander Drynan: Find that the defender since his entry to his farm has used the service-road in question as an accessory of his farm, in manner described in the record, and that it was so used by his predecessor in the occupancy of the farm: Find that in these circumstances the defender is entitled to continue in use of said road as formerly enjoyed, and that no case for the regulation of this use has been established: Therefore recal the interlocutor of the Sheriff appealed against; affirm the judgment of the Sheriff-Substitute; find the defender entitled to expenses in the Inferior Court in so far as not found due by the judgment of the Sheriff-Substitute, and to expenses in this Court,” &c.

Counsel for Appellant—J. P. B. Robertson—Dunsmore. Agent—David Milne, S.S.C.

Counsel for Respondent—Jameson—Law. Agents—Smith & Mason, S.S.C.

Friday, January 30.

FIRST DIVISION.

GLASGOW SHIPOWNERS ASSOCIATION v.
CLYDE TRUSTEES AND LORD BLANTYRE.

Process—Sisting Party—Suspension and Interdict—Competency.

In a suspension and interdict against carrying out certain operations upon a navigable river, a minute was lodged for a third party who had a substantial interest to have the operations carried on, craving to be sisted as a respondent in the action. The Court *repelled* an objection to the competency of the proposed appearance, sisted the minuter, and allowed him to lodge answers if so advised.

This note of suspension and interdict was presented by the Glasgow Shipowners Association, and by certain shipowners in Glasgow, the chairman and members of the association, as such, and also as individuals, against the trustees of the Clyde Navigation. The complainers craved that the respondents should be interdicted from executing any works for the lengthening or extension, towards the centre of the river Clyde, of the piers or slipways on both sides of the river at the East Ferry at Erskine.

Answers were lodged for the respondents, in which, *inter alia*, they stated that the operations complained of were being undertaken by them in obedience to an interlocutor of the First Division of the Court of Session, pronounced on 14th March 1883, affirmed by the House of Lords on 24th March 1884, ordaining them to execute the works complained of, for the extension of the Erskine ferry slips towards the centre of the river. These interlocutors were pronounced in an action of declarator, &c. at the instance of *Lord Blantyre v. Clyde Trustees*, not reported upon this point. In that action the Clyde Trustees resisted, but unsuccessfully, a demand by Lord Blantyre that the ferry slips should be extended. Delay having taken place in the execution of the works ordained to be executed by the Clyde Trustees, Lord Blantyre brought the

matter again before the Court, and on 14th July 1884 an interlocutor in the following terms, *inter alia*, was pronounced—“Of new ordain the defenders to execute the works specified in the interlocutor of 14th March 1883, at sight and to the satisfaction of Sir John Coode; and remit to Sir John Coode accordingly to see the said works executed and completed, with special instructions to him to require the defenders to proceed with and complete the said works with all possible despatch, and to report to the Court if any unnecessary delay occurs.”

The respondents pleaded, *inter alia*—“(2) All parties not called. (4) The works complained of being authorised by statute and ordained by judgment of the Court of Session, affirmed in the House of Lords, the respondents are entitled and bound to execute them, and the interdict should be refused, with expenses.”

On 6th January 1885 the Lord Ordinary on the Bill Chamber granted interim interdict after hearing counsel. The respondents reclaimed, and when the case appeared in the Single Bills, the Court, on their motion, ordered intimation of process to be made to Lord Blantyre, and sent the case to the Summar Roll.

A minute was lodged for Lord Blantyre stating that the minuter “being proprietor of Erskine Ferry, had a substantial interest in the cause, viz., that the works at the said ferry which the trustees were ordained to execute by interlocutor of the First Division of 14th March 1883, affirmed by judgment of the House of Lords of 21st March 1884, and which they were of new ordained by interlocutor of the First Division of 4th July 1884 to execute at sight of Sir John Coode with all possible despatch, should be completed without delay, and that the present application for interdict should be refused.” The minuter therefore craved the Court to sist him as a respondent in the cause, with or without ordaining him to lodge answers as the Court might think proper.

The complainers objected to the competency of sisting in a process of suspension and interdict a party against whom the application was not directed, founding on *Laing's Sewing Machine Company v. Norrie & Sons*, 5 R. 29.

Counsel for Lord Blantyre was not called upon.

At advising—

LORD MURE—The circumstances in this case are materially different from these in the case to which we were referred—*Laing's Sewing Machine Co. v. Norrie & Sons*, 5 R. 29. There no appearance was entered for the original respondents, but a third party appeared by minute alleging that he held a similar patent, and sought in this way to have the validity of the patent tested. The proposed sist was resisted, and the Court decided that the minuter was not entitled to sist himself as a defender, and that the complainers were entitled to the suspension and interdict which they craved.

In the present case the Clyde Trustees are the respondents called. They are in the course of carrying out certain operations ordered by the House of Lords under a judgment dated 21st March 1884 with a view to lengthen the piers or slipways at East Erskine Ferry.

When the case appeared in the Single Bills we

on the motion of the respondents, ordered intimation of the process to be made to Lord Blantyre. That intimation has been given, and Lord Blantyre now seeks to compare as a party to the process.

In these circumstances I think that he should be allowed to appear and lodge answers if so advised.

LORD SHAND—The complainers in this case direct their process of suspension and interdict against the Clyde Trustees alone. Now, the Clyde Trustees have no desire to lengthen these piers, and they are only about to do so in obedience to an interlocutor of this Court, affirmed by the House of Lords. The effect of refusing to allow Lord Blantyre to compare would be to have the Clyde Trustees called to support the lengthening of these piers when they have really no interest in the matter.

I am still of the opinion which I expressed in the case of *Norrie* in 5 R. 29, which I then thought and still think to have been wrongly decided—that the real parties interested ought to have been allowed to appear as respondents in the process. Nor do I anticipate any technical difficulty arising in the present case having the effect of rendering the decree inoperative.

I am therefore of opinion that Lord Blantyre should be allowed to sist himself, and lodge answers if so advised.

LORD M'LAREN—I am entirely of the same opinion. The right of a pursuer to bring in additional defenders is, we know, absolute; should he, in the course of the proceedings, discover that parties having an interest to defend have inadvertently been omitted, the mode in which such new defenders are called is by means of a supplementary summons. The right, on the other hand, of a defender to appear, is one of a more limited character, but considering that the rights of a pursuer are so extensive, the Court should, I think, allow a defender to appear whenever it can be shown that he has a direct interest in the subject-matter of the action. Some distinction may perhaps be drawn between personal and real actions, but as the present is a real action relating to the possession and use of a heritable subject, I think that in any question tending to control or regulate the use of such a real right, all parties having an interest should be allowed to sist themselves as defenders.

THE LORD PRESIDENT and LORD DEAS were absent.

The Court allowed Lord Blantyre to sist himself, and to lodge answers if so advised.

Counsel for Complainers—Ure. Agents—Campbell & Smith,

Counsel for the Clyde Trustees—Lorimer. Agents—Webster, Will, & Ritchie, S.S.C.

Counsel for Lord Blantyre—Dundas. Agents—J. & J. Ross, W.S.