

doctrine. He took his title with notice of the terms on which the principal feu was created, and he might have redeemed if he had thought fit to do so by payment of the arrear of feuduties due to the superior. If he does not consider this for his interest, that cannot be a reason why the superior should suffer.

LORD BLACKBURN—My Lords, I listened during the learned arguments upon a subject with which I am not quite familiar, and I have read with great attention the judgments on the opposite sides. At the end of this I have come to exactly the same conclusion as has just been expressed by the two noble and learned Lords who have spoken before me. I do not think that there would be any benefit derived from my attempting to state in my own language the arguments which have been stated by those who are so much more conversant with the subject than I am, and therefore I content myself with saying that I agree in the motion which has been made by the noble and learned Lord near me (Lord Watson).

LORD FITZGERALD—My Lords, the very able and exhaustive reasons of my noble and learned friend (Lord Watson) for reversing the interlocutor of the Court of Session are to me full and convincing, and I do not propose to add a word save to express my satisfaction that the conclusion arrived at in this action of declaration of irritancy *ob non solutum canonem* indicates that in this respect the principles of Scotch law are in substantial accord with the law of England. For example, if in England or Ireland a grant had been made in perpetuity reserving a rent with condition of re-entry on non-payment, an action of ejectment at common law might be maintained on non-payment for condition broken, and be followed by results substantially similar to those in the present case. I concur in the judgment proposed.

The House reversed the interlocutor of the Second Division, and remitted the cause to the Court of Session, with a declaration that the appellants (pursuers) should have decree in terms of the conclusions of the summons.

Counsel for Pursuer (Appellant)—Asher, Q.C.—H. Johnston—C. Neish. Agents—Neish & Howell—Henderson & Clark, W.S.

Counsel for Defender (Respondent)—Davey, Q.C.—Strachan. Agents—Faithfull & Owen—Davidson & Syme, W.S.

COURT OF SESSION.

Friday, July 10.

FIRST DIVISION.

[Sheriff of Argyllshire.

COMMISSIONERS OF SUPPLY OF ARGYLL-SHIRE *v.* CAMPBELL.

Property—Building Restrictions—Reservation in Feu-Disposition of Rights of Adjoining Feuars—Servitude of Light—Interdict.

In 1863 a feu-charter was granted of a piece of ground which was described as bounded by a lane on the north. It was an express condition of the feu that within three years from the date of entry certain buildings were to be erected on the ground, the plans for which were to be submitted to and approved of by the superior. The buildings were erected according to plans approved of by the superior, which provided not only an entrance from the main street, but also a door of access from the lane, and a window looking into the lane. In 1877 a feu-disposition was granted of the ground to the north, in which it was declared that the boundary on the south was the ground conveyed by the feu-charter of 1863. The subjects disposed included therefore the *solum* of the lane. This feu-disposition contained the following reservation—"But specially excepting and reserving the rights of the public, and reserving also to the adjoining feuars their right of access by the lanes and the whole rights and privileges which they at present possess in connection with the subjects above disposed." The clause of warrandice declared that "this warrandice shall apply to the *solum* of the lanes passing through the said subjects only in so far as the rights of the said public and of the adjoining feuars shall not be thereby prejudiced, which rights are specially reserved." The feuar to the north having proposed to build over the lane, leaving a pend under the buildings, the feuar to the south presented a note of suspension and interdict to have him restrained from doing so. *Held* that the door from the lane, and the window looking into the lane, were privileges reserved to the adjoining feuar in the title of 1877, that the proposed operations were an invasion of his rights, and interdict granted.

Question reserved, whether when a subject is described as bounded by a lane, that necessarily implies that a right of access to and from the subjects by the lane is thereby given?

By feu-charter dated 22d December 1863, Robert Macfie, Esq. of Airds and Oban, feued to the Commissioners of Supply of the County of Argyll a piece of ground in Argyll Street, Oban, measuring 60 feet or thereby in front of the street, and 53 feet in depth from west to east, bounded as follows, viz., "by the said street on the west, by a lane leading from the said street to the North Bridge on the north, and by the unfeued ground

on the east and south, and consisting of eleven poles and twenty yards or thereby." This piece of ground was conveyed to the commissioners for the purpose of their building a court-house, police-station, cells, and other offices thereon, and they, shortly after they obtained their entry, erected the buildings upon the ground, as required by their feu-contract. There was a gate from the court behind the court-house buildings which led into the lane, and the window which lit the lobbies of the police-station house also looked into the lane.

By feu-charter of 27th February 1877 Macfie feued to Dr Neil M'Nab Campbell, Oban (the appellant), a building stance at the corner of Argyll Square and Airds Place there, extending to 27 poles 23 yards, bounded "on the north by the said street called Airds Place, along which it extends seventy-two feet or thereby; on the east, partly by the stances held in feu by John M'Culloch, tide-surveyor, partly by the stance feued to Duncan Livingstone, vintner in Oban, and partly by the stance already feued to the said Neil Macnab Campbell; on the south, partly by the said stance formerly feued to the said Neil Macnab Campbell, and partly by the stance feued to the Commissioners of Supply of Argyllshire; and on the west by the said street called Argyll Street, along which it extends to eighty-seven feet or thereby . . . together with the whole buildings and erections on the said piece of ground, so far as the same belong to me, but specially excepting and reserving the rights of the public, and reserving also to the adjoining feuars of their right of access by the lanes, and the whole rights and privileges which they at present possess in connection with the subjects above disposed." The *solum* of the lane above referred to, and into which the buildings erected by the commissioners opened, was included in the titles of Dr Campbell.

About two years prior to the raising of the present action Dr Campbell caused plans to be prepared of the buildings which he proposed to erect upon this stance, and thereafter he proceeded to erect a tenement, for a hotel, &c., upon the ground. In September 1884 the Commissioners of Supply for Argyllshire raised this action in the Sheriff Court of Argyllshire against Dr Campbell, in which they sought to have him interdicted, *inter alia*, from erecting a house or other buildings in or over the lane, forming the north boundary of the said court-house and police-buildings.

The complainers averred that the lane—which was about 7 feet wide—had been theretofore used as a passage for horses and carts, and that if the buildings proposed to be erected were completed the public would be deprived of a lane, the use of which they had possessed from time immemorial, and they would be deprived of access, air, and light to their buildings.

The respondent averred that the lane in question was on his property, and formed part of it, that it led only to buildings of which he was proprietor. He averred that the complainer's titles gave them no right of property, or servitude of passage or light over any part of the lane, and as they had only acquired the ground in 1863 they had no servitude by prescription.

The complainers pleaded, *inter alia*, that the operations complained of were an encroachment

on their property, and that they were therefore entitled to interdict. "(2) The respondents' author having conveyed the said subjects to him, under express reservation of the rights of the public, and the adjoining feuars, of access by the lane, and also the whole rights and privileges which they then possessed, the respondent is not entitled to build over the said lane, and from which his own title excludes him."

The respondent pleaded:—“(2) The whole ground on which the operations complained of are being carried on, being the exclusive property of the respondent, the complainers' are not entitled to challenge or in any way to interfere therewith. (3) The pursuers are not entitled to prevent the defender building on the alleged lane referred to, in respect—(1st) That their title being a bounding one gives them no right of property therein; (2d) that they have no right of servitude or any other right or interest in the said lane; (3rd) that they are barred by acquiescence in the defender's having already built thereon.”

The Sheriff-Substitute (CAMPION) allowed the parties a proof, the import of which sufficiently appears from the note to his interlocutor, and thereafter upon 22d January 1885 he granted interdict as craved.

“*Note.*—The pursuers are heritable proprietors of a piece of ground in Argyll Street, Oban, conform to feu-charter granted by Robert Macfie, Esq., of Airds and Oban, dated 22d December 1863, upon which is built a court-house, police constable's dwelling-house, police station, and cells. This building is bounded by a lane on the north or west side, by which access is gained to the police cells, which lane the defender now proposes to build over, interfering not only with the access to the door leading to the police cells, but also to the light of the pursuers' buildings. This lane originally led to, and was the means of access to, various old houses at the back of the piece of ground where the defender is now erecting the building complained of. These old houses were built upon leases which have fallen in, and the whole of the ground is now feued to the defender, conform to two feu-charters dated 1876 and 1877. It is not disputed that the defender has every intention of building over this ground, and over the lane which the pursuers claim a right of access to their property by. It is in the defender's title that there are reserved the rights of the public, and reserving also to the adjoining 'feuars their right of access by the lanes, and the whole rights and privileges which they at present possess in connection with the subjects above disposed.' There can be no doubt but that the lane, against the encroachment upon which interdict is now sought, is one of those referred to there, and access by which is reserved to the adjoining feuars, the only one now interested being the pursuers, who have had access by it, they allege, 'from time immemorial,' and the proof shows that they have had it since 1864 or 1865, when the court-house was built. The defender accepted his title under that reservation, and by that he must now be bound. The pursuers are not claiming any right of property, but only a right of access, which they have undoubtedly enjoyed for at least seven years, and in which state of possession they are entitled to be protected from interruption.”

The respondent appealed to the Court of Session, and argued—Each of the parties held their ground under a bounding charter. The commissioners had no right of access to their buildings by the lane; they may have had a *de facto* privilege of using the lane. There was no servitude here, or implied grant, and clearly there could be no prescriptive use. The question was one depending entirely upon the interpretation of the titles. The superior had no interest to interfere with the commissioners using this lane so long as the appellant did not complain. The appellant was entitled to cover over this lane so long as he did not interfere with any existing servitudes.

Authorities—*Carson v. Miller*, March 13, 1863, 1 Macph. 604; *Gow's Trustees v. Mealls*, May 28, 1875, 2 R. 729; *Walton v. Magistrates of Glasgow*, July 20, 1876, 3 R. 1130; *M'Laren v. City of Glasgow Union Railway Company*, July 13, 1878, 5 R. 1042; *Allan v. Magistrates of Rutherglen*, December 18, 1801, 4 Pat. Ap. 269.

Replied for the complainers—The lane was in existence prior to 1863, when the commissioners obtained their charter. A servitude might be constituted by grant in the title of the servient tenement—*Bell's Prin.* 991; *Dinwiddie v. Corrie*, November 23, 1821, 1 S. 156. This was really a servitude by reservation, and what the appellant proposed was to substitute a very inferior right for the one now enjoyed by the respondents. What they at present enjoyed was access by a lane to their buildings; what the appellant proposed to give them was access by a pend. The legal aspect of the respondents' right was a servitude implied in their titles, and the words upon which this rested were—"Reserving the rights of the public, and reserving also to the adjoining feuars their right of access by the lanes, and the whole rights and privileges which they at present possess in connection with the subjects above disposed." There was here clearly a servitude of access reserved.

Authorities—*Bennet v. Playfair*, January 24, 1877, 4 R. 321; *Mackenzie v. Carrick*, June 27, 1869, 7 Macph. 419; *Scott v. Edinburgh, Leith, and Granton Railway Company*, November 16, 1848, 11 D. 91; *Trustees of Free St Mark's Church*, January 26, 1869, 7 Macph. 415.

The passages in the titles of the parties which have any bearing upon the present question are quoted in the opinion of the Lord President.

At advising—

LORD PRESIDENT—The appellant Dr Campbell, and the Commissioners of Supply of the County of Argyll, who are respondents, are feuars from the same superior. Their feus are adjacent, and both of them have a frontage to a public street in Oban called either Argyll Street or Argyll Square—sometimes the one and sometimes the other—Dr Campbell's feus having a frontage also to Airds Place, which runs at right angles to Argyll Street. There is upon the ground of the defender's (Dr Campbell's) feus a certain lane which is mentioned in the titles, and there is no doubt that the *solum* of that lane is within the property of Dr Campbell; but the Commissioners of Supply assert a right to the use of that lane, and the question before us really turns upon what is the nature and extent of the use which the Commissioners of Supply are entitled to have of the lane in question as an access to their pro-

perty, or, speaking more precisely, as an access to the back portion of their property. The lane runs along the west side of the commissioners' property from Argyll Street. Now, this question depends chiefly upon the terms of the titles, but also upon some matters of fact, which I shall endeavour to state in connection with the clauses of the dispositions or charters.

The earlier of the titles is that of the Commissioners of Supply, which is dated in December 1863, and there there is feued to them a piece of ground which is described as being bounded by Argyll Street on the west, by the lane leading from the said street to the North Bridge on the north, and by unfeued ground on the east and south. That lane leading from Argyll Street to the North Bridge is the lane in question. There is an express condition of the feu that the Commissioners of Supply shall, within three years from the after-mentioned term of entry, erect upon the said lot or piece of ground a court-house, and a police constable's dwelling-house or police station and cells, with relative offices, and no buildings other than those necessary for such purposes shall be erected on the said subjects, and it is stipulated that no building of any sort, however small, shall be erected on the said subjects hereby disposed, except such as shall have been submitted in design to and approved of by the superior. There are a number of other obligations laid upon the feuars which are not relevant to the present question. Now, if the matter stood entirely upon the terms of that title, a question might perhaps be raised as to what is the effect of describing this feu as being bounded on the north by a lane leading from Argyll Street to the North Bridge—whether that description of boundary on one side of the feu would necessarily imply that the feuars under this particular deed were to have the right of access by that lane; but the question does not by any means arise purely in that form. In the first place there is here the very express stipulation which I have just read, that buildings are to be erected on the ground feued, and that they are to be erected of a particular description, and to be applied to a particular purpose, and not to be erected until the design shall have been submitted to and approved of by the superior.

Now, the commissioners proceeded very shortly after the date of their title to erect such buildings, and it is not disputed that those buildings were erected with the entire approval of the superior—the plans being submitted to him. The buildings so erected consisted, as was contemplated by the charter, of court-house, police-station and cells with relative offices, and while there was a door of access from Argyll Street, there was also provided an access from the lane; there was built on the side next the lane a door of entrance to the back part of the premises, and also a large window looking out upon the lane. All this was done within a very short time as I have said of the title being obtained by the Commissioners of Supply, and they went on to possess their subjects in this way for somewhere about fourteen years before Dr Campbell, the defender, obtained his title, for his title is dated in 1877, and it must be observed that when that title was granted the condition of matters was this, that the adjacent ground had been feued, that the land had been specially referred to in

the charter of that adjacent ground, that the building had, with the approval of the surveyor, been erected in such a way as to have an access both from Argyll Street and from the lane, and also a large window abutting upon the lane.

Now, in that state of matters Dr Campbell obtained his title, and the ground conveyed is described as forming the corner stance of Argyll Street and Airds Place, bounded on the north by the street called Airds Place, on the east by the stances held in feu by John M'Culloch, and partly by the stances already feued to Campbell himself; on the south partly by the stances feued to Campbell, and partly by the stances feued to the Commissioners of Supply of Argyllshire, and on the west by the street called Argyll Street, which lot or piece of ground extends to 27 poles and 23 yards or thereby standard measurement—"all as delineated and coloured pink on the plan annexed and subscribed by me (that is, the superior) as relative hereto." Now, there is no doubt that the ground so conveyed is bounded by the feu of the Commissioners of Supply on the south, and therefore the property conveyed by this feu-disposition extends up to the line of boundary of the court-house feu, and so comprehends the *solum* of the lane. If there had been any doubt about this otherwise, it would have been made quite clear by the circumstance that the measurement of 27 poles 23 yards would not be complete without including the *solum* of that lane, and there can be no dispute that the *solum* of that lane is conveyed to Dr Campbell. We come therefore to consider from the other clauses of this feu-disposition under what restrictions he was put with regard to the use of the *solum* of that lane. In the first place, there is this reservation—"But specially excepting and reserving the rights of the public, and reserving also to the adjoining feuars their right of access by the lanes, and the whole rights and privileges which they at present possess in connection with the subjects above disposed." Now, there is here special reference to the state of possession at the time when this title was granted. Then in the clause of warrandice, the superior grants warrandice, but excepts therefrom the current tacks of the subjects hereby disposed, and declares that this warrandice shall apply to the *solum* of the lanes passing through the said subjects, only in so far as the rights of the public and of the adjoining feuars shall not be thereby prejudiced, which rights are specially reserved. It appears to me, therefore, that Dr Campbell in taking his title with this reservation must be bound to respect any use of this lane which has already been obtained in point of fact by the adjoining feuars, where that use is expressly conferred on these adjoining feuars by the terms of their title, because reference to the present possession and use of the lane is made in the clause of reservation which I have already read, and which forms a qualification in the dispositive clause.

Now, that being so, it appears to me very clear that the Commissioners of Supply are entitled to the use of this lane, and the only remaining question is, what is the limit or what is the nature of that use? In the first place, it is very clear that they are entitled to access by means of that lane to their back premises. There is a door opening out of their buildings erected

under plans approved of by the superior, immediately after they got their title, and access by that door from Argyll Street through the lane is plainly matter of right to them. But then there is further the large window which looks on to the lane, and that seems to me to be a certain privilege connected with the lane secured to the Commissioners of Supply by that reference in Dr Campbell's title, which reserves to adjoining feuars all the privileges they at present possess in connection with the subjects. That being so, the question arises whether the operations contemplated by Dr Campbell are an invasion of the rights of the commissioners, and I am of opinion that they constitute such an invasion. It is proposed by Dr Campbell to build over this lane—to make a building fronting Argyll Street, which shall occupy the entire frontage of his ground, leaving only a pend under the buildings which he is to erect, by means of which access shall be obtained to the back ground of the commissioners. If this question had arisen under circumstances in which a certain defined occupation of the lane had been assumed by the commissioners and recognised in the reservation in Dr Campbell's title, whether the commissioners would have been entitled to say that they were entitled to anything more than access by this lane is a question which need not be considered. There is a good deal of difficulty in saying that a close pend is a lane, and that the conversion of a lane into a close pend is not a material alteration of the nature of the way by which access is obtained to the subject. However, if that had arisen purely, there would have been on the other hand probably a very important element for consideration,—whether this right of the commissioners being after all nothing more than a right of servitude, they must not submit to have that right of servitude restricted in such a way as to be least burdensome on the servient tenement consistently with maintaining the use of it for the dominant tenement; but that question does not arise purely, because we have here to deal with a window as well as a door, and I think that window is part of the privilege in possession of the commissioners at the time Dr Campbell got his title, and falls under the reservation in that title; and it is quite clear that if this pend is to be erected with a mass of buildings above it, the window will be rendered almost, if not entirely, useless; and that therefore seems to me to constitute a very serious invasion of the privilege secured to the Commissioners of Supply in the manner that I have already explained.

Upon these grounds I am of opinion that the Sheriff-Substitute's interlocutor is right.

LORD MURE—I am of the same opinion. The clause of reservation is a very peculiar one, and was made in peculiar circumstances. The only possible difficulty that can be raised about it is the fact that the property of the lane—the *solum* of it—undoubtedly belongs to Dr Campbell, the appellant, and in that respect the case is altogether different from those cases to which we were referred, where the dispute was between proprietors who had a common interest. In 1863, the Commissioners of Supply, under their titles obtained from the superior, erected buildings from plans assented to by the superior, and those

buildings had not only a door, as an entrance from the lane, but also a window looking into that lane, from which window light was obtained for the lobby of the prison. It was a very important matter indeed for the commissioners that they should have a window into this lane by which they were to get light. Now, so stood the facts when Dr Campbell's title was granted. In his title there is this very special reservation—reserving the rights of the public, and reserving also to the adjoining feuars their right of access by the lane, and the whole rights and privileges which they at present have in connection with it. It appears to me that these rights and privileges are broad enough to cover the continuance of the use of the window by which light is obtained from the lane. In these circumstances I think it is an invasion of what the commissioners thought they were allowed to do by the superior, to build over this lane. On that ground I agree with your Lordship.

LORD SHAND—I am of the same opinion as your Lordships. The title given to the commissioners in its boundaries describes the ground given out as bounded by a street on the west, by a lane leading from the said street to the North Bridge on the north; and if the question had occurred between the commissioners and the superior shortly after the granting of that deed, whether the commissioners were entitled to obtain access to that lane and to use it as a frontage, and to have an entrance to their property from it, perhaps the point might have been attended with some difficulty. I am not aware that the question has ever been decided, what is the effect of having the subjects described as bounded by a lane—whether that necessarily implies that a right of access to and from the subjects by the lane is thereby given. My impression is that that must be a question of circumstances. I should be disposed to hold that if the lane described as one of the boundaries is used as a thoroughfare from one street to another, there is, by implication, a right of access thereby given; and that is the kind of lane that is here described, because it is described as a lane used as a thoroughfare leading from the street on the one hand to the North Bridge, which is another street altogether, on the other.

Again, if it were evident that there were certain premises on the adjoining feus—such as, for example, stables or ashpits, or the like—and that the lane might be useful for these, I cannot doubt that it would be implied that access to and from the lane might be given. Whether in the absence of such circumstances as I have supposed the mere boundary by a lane conferred a right of access, is a matter perhaps attended with difficulty. But I think we are entirely relieved of any such difficulty in the present case, because I think that what followed as between the commissioners and the superior makes it perfectly clear that as in a question with the superior the commissioners have the right which they seek to maintain here, to have this as a lane unbuil upon, and a lane which shall be useful to them for the purpose of affording the entrance by a door which was sanctioned by the superior. There is, in the first place, the boundary in the title; in the next place, there is the approval of the plans by the superior immediately after the title was

granted, showing that there was to be a door into that lane, and a window looking into it; and thirdly, we have the possession of about 20 or 21 years since the date of the deed. Taking all these things together, I think it is clear that, looking to the title and the actings of the parties, and the possession, if this property were still in the hands of the superior he would not be entitled to build over that subject. Then a question arises with the singular successor. I am of opinion that the singular successor is equally bound under the clause of warrandice. The clause referring to the existing privileges which adjoining feuars have makes it clear that whatever obligations lay upon the superior so long as the property was in his hands, equally apply to his successor, the present appellant. I am therefore clearly of opinion that the appellant is not entitled to shut up this lane to which right is maintained by the commissioners, or to build over the lane and exclude the commissioners from access to it.

On the minor question, as to whether there might be a building over part of the lane, leaving still the access available to the commissioners, there is a distinction between this case and the cases of *Bennet v. Playfair*, and *M'Kenzie v. Carrick*, that this is a case of servitude right only; and it rather appears that if this had been a case where the building over of a portion of the lane could not have been shown to be in any way injurious to the property of the commissioners, there might have been room for the argument maintained by the appellant. If the commissioners' property had been, we shall say, 100 yards inside of the entrance to this lane, and the proposal had merely been to arch over 8 or 10 or 12 yards, it may be quite possible that the Commissioners would have had no right or title to object, because they would have to show that there was injury to their property. That was the kind of case that occurred in *Allan v. The Bailies of Rutherglen*, reported in the 4th volume of Paton's Appeals, where an objection arose to the owner of the ground arching over a pathway which had been used from time immemorial by the public. The owner proposed to arch it over to a very considerable extent—to make a long tunnel. The public objected, and it was found that the objection was good; but notwithstanding the owner was held entitled to arch over that way to a small extent—that is, to such an extent as did not appreciably injure the footpath—and if this had been an injury of that kind, the case being one of servitude, I could very well see the argument which might be maintained by the appellant. But this case plainly differs from that; it is obvious that building, even in part, over this subject, so as to enable the appellant to put up his houses with a frontage towards Argyll Street, and give an archway as an entrance to his passage instead of an open lane, would appreciably injure the commissioners' property; it would destroy in a great measure the use of the window, and might affect even the use of the door in that lane. I am accordingly of opinion that, even to that extent, the appellant is not entitled to erect a building. It must be borne in mind that, in this case as well as in the two cases to which I have referred, it is not merely the right of access that is given—it is a right of access by a lane, which is, I think a more

valuable right than merely a right of access by itself.

On the whole matter I agree with your Lordship in thinking that we should adhere to the Sheriff-Substitute's interlocutor.

LORD ADAM was on circuit during the hearing of the cause, and delivered no opinion.

The Court affirmed the judgment of the Sheriff-Substitute.

Counsel for Petitioners—Mackintosh—Murray. Agents—Mitchell & Baxter, W.S.

Counsel for Respondent—Strachan—G. Wardlaw Burnet. Agent—W. T. Sutherland, S.S.C.

Tuesday, January 27.

SECOND DIVISION.

[Lord Fraser, Ordinary.]

DET NORSKE BJERGNINGS OG DYKKERCOMPAGNI *v.* M'LAREN AND OTHERS.

Foreign—Decree Conform—Proof.

An action was brought to enforce the decree of a foreign court awarding to the pursuer a sum as due for salvaging the defender's vessel. The defence was that the pursuer was not a salvor, but was employed to give his services for a reasonable sum to be agreed on; that there was no proper suit or inquiry in the foreign court, which had no jurisdiction over the defender, whose captain did not know the language of the place, and had never submitted the matter to the foreign court; and that the foreign court proceeded on incompetent evidence, and acted at variance both with the law of Scotland and of the foreign country. The Lord Ordinary allowed a proof of the averment that the captain did not understand the language of the place or agree to submit the question, and that there was no proper trial or inquiry. The Court recalled the interlocutor, and allowed the parties a proof of their respective averments.

In July 1884 the ship "Ardanbhan" of Glasgow went ashore on the coast of Norway near Egersund. She was in a position of danger, lying as she was upon the rocks, and leaking, and a telegram was sent to Christiania for assistance. Assistance was brought by two steamers belonging to a salvaging company in Christiania (the pursuers). On the arrival of their steamers at the scene of the accident, the captain of the "Ardanbhan" refused to agree to pay any specific sum for their services, but employed them to do their best to get the ship into a position of safety.

The vessel was got off and taken into Egersund. While she lay there the salvage company applied, in accordance with Norwegian law, to the Sheriff at Egersund for a Maritime Court to determine what should be allowed for salvage services. A Court was found and sat, and ultimately held the company entitled to salvage money, and awarded one-fourth of the value of what had been salvaged, this sum amounting to a sum equal in British money to £2777, 15s. 6d. The master left the port without paying it, and

this action was brought to have decree conform to that of the Norwegian Maritime Court for £2777, 15s. 6d., being the sum thereby allowed, or otherwise of the sum of £5000.

The pursuers produced a translation of the decree of the Maritime Court, on whose decree they founded. It bore that the master of the "Ardanbhan" had with his agent agreed to attend without a summons, and that he was present with his agent in Court during the proceedings, and had protested that the company (pursuers) were not salvors, but that all the Court had to determine was to fix a payment for their services in aid of the captain and crew.

It was certified by the British Vice-Consul at Christiansand that the magistrate presiding was the competent authority on maritime matters for the district, and that the award bore his signature.

The pursuers maintained that they had salvaged the vessel with great danger, difficulty, and expense, and that the appearing before the Maritime Court was agreed on by them with the captain and his agent, the terms on which (on their arrival at the wreck, and the captain's refusal to agree to pay any specific sum) they gave their services being that their remuneration should be fixed by the Maritime Court.

The defenders averred that the agreement was that the amount to be paid should be fair and reasonable. They denied that the pursuers had been put to loss or danger by their services. They tendered £800 in full of all claims. With regard to the proceedings of the foreign Court, they averred (Ans. 7) as follows:—"Explained that the captain of the s.s. 'Ardanbhan' does not know Norwegian, did not agree to have the question of salvage settled by the Norwegian Courts, and was not aware that any Norwegian Court was professing to settle said claim. Explained further that there was no proper trial of the cause; that there was no inquiry into the facts, and no opportunity given to the owners of the s.s. 'Ardanbhan' or the master to consider or answer the claim alleged to have been made, and that the Court proceeded on hearsay, and on inferences from facts which were not legally proved. The alleged judgment proceeds on facts alleged by the salvors, but which never existed, and is erroneous in fact and in law. Explained further that the owners of the s.s. 'Ardanbhan,' the present defenders, were no parties to said proceedings, were not cited thereto, are not liable thereunder, and have in no way recognised or submitted to the authority of the Norwegian Courts, which have no jurisdiction over the defenders, and had none at the time of said proceedings. Said proceedings are not binding on the Scottish Courts, either according to the law of Norway or the law of Scotland. Explained further that the award includes compensation to persons other than the pursuers who had assisted in the salvage." . . .

The Lord Ordinary pronounced this interlocutor:—"Allows to the defenders a proof of their averments contained in the answer to the seventh article to the condescendence, to the effect that the captain of the steamship 'Ardanbhan' did not know the Norwegian language, and did not agree to have the question of salvage settled by the Norwegian Courts, that there was no proper trial of the cause, and no inquiry into the facts,