

perform that service, namely, to go to the West Coast of Africa and back again. But as the owner would only be liable under the clause in an action for damages, the parties very wisely chose to measure their damages, and accordingly the measure is that the hire is to cease on the contingency of there being "a loss of time from a deficiency of men or stores, breakdown of machinery, want of repairs, or damage, whereby the working of the vessel is stopped for more than forty-eight consecutive working hours, until she be again in a fit state to resume her service." I say that I read for "efficient" "fit" only. What service? She was to be a vessel which was fit to go on certain voyages described in the concluding portion of the clause. Now, was she that? On the portion of the voyage from Las Palmas to Harburg she was clearly unable to do it. When was the moment that she again became fit? Nothing was done to her to make her fit on the first day of the discharge. When did the period begin at which she was again fit for the performance of "that service," namely, the service between these ports? I say, only upon the day when she was put by repairs into a state in which she was fit to perform the voyages which she was originally required to perform, and in which state the owner undertook that she should be during the whole period.

For these reasons, my Lords, I of course concur with the judgment of the Lord Chancellor and of my two noble and learned friends opposite with regard to the portion of the voyage from Las Palmas to Harburg. But I have also come to the conclusion that the pursuer is not entitled to any portion of the sum which he has claimed. The Court in Scotland appear to have given the sum of £60 in a vague sort of way. I am of opinion that if the pursuer is entitled to anything he is entitled to payment for the entire ten days occupied in the discharging, and that we cannot go into the question of dawdling in the discharge. But I am of opinion that he is entitled to nothing; and therefore I do not agree with the view which has been expressed by the majority of your Lordships that the interlocutor of the Court of Session in Scotland should be amended as proposed.

Their Lordships affirmed with variation the judgment appealed against without costs in their Lordships' House or in the Court below.

Counsel for the Appellants—Finlay, Q.C.—D. C. Leck. Agents—Lowless & Co.

Counsel for the Respondents—J. Gorell Barnes, Q.C.—F. W. Hollams. Agents—Hollams, Sons, Coward, & Hawksley.

COURT OF SESSION.

Saturday, January 17, 1891.

OUTER HOUSE.

[Lord Stormonth Darling.

ORR v. SMITH.

Process—Expenses—Approval of Auditor's Report—Tender—Extract.

An unsuccessful complainer in a note of suspension and interdict against the erection of a boundary wall tendered the taxed amount of expenses under deduction of the expense of approval and decree and of extracting the interlocutor. The Lord Ordinary found that the respondent was entitled to an extract at the complainer's expense, and that the tender was insufficient, and he accordingly approved and decerned in the ordinary form for the taxed amount.

Complainer's authorities—*Allan v. Allan's Trustees*, 13 D. 1270; *Magistrates of Leith v. Gibb*, 19 S.L.R. 399; *Bannatyne v. M'Lean*, 21 S.L.R. 479.

Respondent's authorities—*Hunter v. Stewart*, 20 D. 60; *Scott v. North British Railway Company*, 22 D. 922.

Counsel for the Complainer—G. W. Burnet. Agent—F. J. Martin, W.S.

Counsel for the Respondent—C. N. Johnston. Agents—Thomson, Dickson, & Shaw, W.S.

Thursday, March 19.

FIRST DIVISION.

[Lord Low, Ordinary.

ABDY AND ANOTHER (RELIANCE MUTUAL LIFE ASSURANCE SOCIETY TRUSTEES), AND OTHERS v. BRINGLOE (HALKETTS' JUDICIAL FACTOR) AND OTHERS.

(*Ante*, vol. xxvii., p. 551.)

Husband and Wife—Marriage-Contract—Income of Trust-Estate—Assignment of by Wife.

By antenuptial marriage-contract a wife conveyed to trustees her *acquisita* and *acquirenda* with a direction to pay to herself the free annual income of the trust-estate during the subsistence of the marriage, such payment being made exclusive of the *jus mariti* and right of administration of her husband, her own receipt being a sufficient discharge to the trustees.

In security of certain funds borrowed by the husband, the spouses granted a bond and assignation in which the wife, with the special advice and consent of her husband, assigned to defender her whole right and interest under the marriage-contract, including the capital, and income payable to her thereunder.